Docket #0211 Date Filed: 05/18/2020

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
SPEEDCAST INTERNATIONAL LIMITED, *et al.*,	§	**Case No. 20-32243 (MI)**
Debtors.[1]	§	**(Jointly Administered)**

CERTIFICATE OF SERVICE
(Relates to Docket No. 209)

I hereby certify that true and correct copies of the exhibits attached hereto and listed below were served upon all parties listed as receiving electronic notice *via* the courts' ECF noticing system on May 18, 2020.

EXHIBIT LIST

No.	Description	MAR	OFF	OBJ	ADM	DAT	Disposition After Trial
1.	Declaration of Christopher J. Kearns, *In re SpeedCast International Limited, et al.*, Case No. 20-32243 (MI) (Bankr. S.D. Tex. May 18, 2020), ECF No [210].						
2.	Interim DIP Order and DIP Credit Agreement, *In re Southcross Energy Partners, L.P., et al.*, Case No. 19-10702 (MFW) (Bankr. D. Del. Apr. 2, 2019), ECF Nos. 59 and 59-1.						
3.	Final DIP Order, *In re Southcross Energy Partners, L.P., et al.*, Case No. 19-10702 (MFW) (Bankr. D. Del. May 7, 2019), ECF No. 200.						

[1] A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at http://www.kccllc.net/speedcast. The Debtors' service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.

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No.	Description	MAR	OFF	OBJ	ADM	DAT	Disposition After Trial
4.	Final DIP Order and DIP Credit Agreement, *In re EdgeMarc Energy Holdings, et al.*, Case No. 19-11104 (BLS) (Bankr. D. Del. June 18. 2019), ECF Nos. 223 and 223-1.						
5.	Final DIP Order and DIP Credit Agreement, *In re Cloud Peak Energy Inc., et al.*, Case No. 19-11047 (KG) (Bankr. D. Del. July 18, 2019), ECF Nos. 447 and 447-1.						
6.	DIP Credit Agreement, *In re Joerns WoundCo Holdings, Inc., et al.*, Case No. 19-11402 (JTD) (Bankr. D. Del. June 26, 2019), ECF No. 61-1.						
7.	Final DIP Order, *In re Joerns WoundCo Holdings, Inc., et al.*, Case No. 19-11402 (JTD) (Bankr. D. Del. July 25, 2019), ECF No. 175.						
8.	DIP Motion, DIP ABL Credit Agreement, and Term DIP Credit Agreement, *In re Blackhawk Mining LLC, et al.*, Case No. 19-11595 (LSS) (Bankr. D. Del. July 19, 2019), ECF No. 18.						
9.	Final DIP Order, *In re Blackhawk Mining LLC, et al.*, Case No. 19-11595 (LSS) (Bankr. D. Del. Aug. 13, 2019), ECF No. 185.						
10.	Interim Additional DIP Order and Term Sheet, *In re Blackhawk Mining LLC, et al.*, Case No. 19-11595 (LSS) (Bankr. D. Del. Oct. 17, 2019), ECF No. 294.						
11.	Final Additional DIP Order, *In re Blackhawk Mining LLC, et al.*, Case No. 19-11595 (LSS) (Bankr. D. Del. Oct. 24, 2019), ECF No. 314.						
12.	Final DIP Order, *In re Barneys New York, et al.*, Case No. 19-36300 (CGM) (Bankr. S.D.N.Y. Sept. 5, 2019), ECF No. 222.						
13.	DIP Credit Agreement, *In re Barneys New*						

No.	Description	MAR	OFF	OBJ	ADM	DAT	Disposition After Trial
	York, et al., Case No. 19-36300 (CGM) (Bankr. S.D.N.Y. Sept. 5, 2019), ECF No. 222-1.						
14.	Interim DIP Order and DIP Credit Agreement, *In re GCX Limited, et al.*, Case No. 19-12031 (CSS) (Bankr. D. Del. Sept. 16, 2019), ECF Nos. 49 and 49-1.						
15.	Final DIP Order, *In re GCX Limited, et al.*, Case No. 19-12031 (CSS) (Bankr. D. Del. Oct. 15, 2019), ECF No. 107.						
16.	DIP Credit Agreement, *In re Murray Energy Holdings Co., et al.*, Case No. 19-56885 (JEH) (Bankr. S.D. Ohio. Oct. 29, 2019), ECF No. 28-2.						
17.	Final DIP Order, *In re Murray Energy Holdings Co., et al.*, Case No. 19-56885 (JEH) (Bankr. S.D. Ohio. Dec. 12, 2019), ECF No. 431.						
18.	Final DIP Order, ABL DIP Agreement, and Term Loan DIP Agreement, *In re Bumble Bee Parent, Inc., et al.*, Case No. 19-12502 (LSS) (Bankr. D. Del. Dec. 19, 2019), ECF Nos. 173, 173-1, and 173-2.						
19.	Interim DIP Order and DIP Credit Agreement, *In re Southern Foods Group, LLC, et al.*, Case No. 19-36313 (DRJ) (Bankr. S.D. Tex. Nov. 14, 2019), ECF No. 133.						
20.	Final DIP Order, *In re Southern Foods Group, LLC, et al.*, Case No. 19-36313 (DRJ) (Bankr. S.D. Tex. Dec. 23, 2019), ECF No. 608.						
21.	Final DIP Order and DIP Credit Agreement, *In re Sanchez Energy Corporation, et al.*, Case No. 19-34508 (MI) (Bankr. S.D. Tex. Jan. 22, 2020), ECF No. 865.						
22.	Interim DIP Order and DIP Credit Agreement, *In re RentPath Holdings, Inc.*,						

No.	Description	MAR	OFF	OBJ	ADM	DAT	Disposition After Trial
	et al., Case No. 20-10312 (BLS) (Bankr. D. Del. Feb. 13, 2020), ECF Nos. 80 and 80-1.						
23.	Final DIP Order, *In re RentPath Holdings, Inc., et al.*, Case No. 20-10312 (BLS) (Bankr. D. Del. Mar. 10, 2020), ECF No. 171.						
24.	Final DIP Order and DIP Credit Agreement, *In re Foresight Energy LP, et al.*, Case No. 20-41308-659 (Bankr. E.D. Mo. Apr. 9, 2020), ECF No. 267.						

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Dated: May 18, 2020

Respectfully submitted,

HOGAN LOVELLS US LLP

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Proposed Counsel for the Committee

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
SPEEDCAST INTERNATIONAL LIMITED, *et al.*,	§	
	§	**Case No. 20-32243 (MI)**
Debtors.[1]	§	**(Jointly Administered)**
	§	**Re: Docket Nos. 27, 200**

DECLARATION OF CHRISTOPHER J. KEARNS IN SUPPORT OF OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE EMERGENCY MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO (A) OBTAIN POSTPETITION FINANCING AND (B) USE CASH COLLATERAL, (II) GRANTING LIENS AND PROVIDING CLAIMS WITH SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (III) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES, (IV) MODIFYING THE AUTOMATIC STAY, (V) SCHEDULING A FINAL HEARING AND (VI) GRANTING RELATED RELIEF

I, CHRISTOPHER J. KEARNS, HEREBY DECLARE AS FOLLOWS:

1. I am a Managing Director and co-head of the Corporate Finance practice of Berkeley Research Group, LLC ("BRG"), a professional services firm with offices located at 810 Seventh Avenue, Suite 4100, New York, New York 10019. BRG is the financial advisor to the Official Committee of Unsecured Creditors of SpeedCast International Limited, *et al.* (the "Committee").

2. I submit this declaration in support of the objection (the "Objection") of the Committee to *Emergency Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II)*

[1] A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at http://www.kccllc.net/speedcast. The Debtors' service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.

Granting Liens and Providing Claims With Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing and (VI) Granting Related Relief [ECF No. 27] (the "DIP Motion").[2]

BACKGROUND AND EXPERIENCE

3. I am a Certified Public Accountant, a Certified Insolvency and Restructuring Advisor, a Certified Turnaround Professional, and a Certified Fraud Examiner. I have over 40 years of financial experience as an auditor, corporate officer and, for approximately the past 29 years, as an advisor or crisis manager in bankruptcy and turnaround matters.

4. Prior to joining BRG in June 2015, I was one of the founding members of Capstone Advisory Group, LLC ("Capstone"), a financial services consulting firm, founded in January 2004, which provided a vast array of services to businesses. The services provided by Capstone included consultation in business turnaround and restructuring situations, workouts and reorganization, bankruptcy matters, crisis management, transaction advisory and due diligence services, forensic accounting, valuation and dispute resolution services. Prior to co-founding Capstone, from 1991 to 2004, I was a senior managing director of FTI Consulting, Inc. ("FTI") (and predecessor firms) and the co-leader of FTI's New York office. My experience and client assignments during that period were substantially similar to the assignments I have performed at Capstone.

5. Prior to 1991, I was employed by Bristol-Myers Squibb Company for approximately three years (including serving as Assistant Corporate Controller), and a major international public accounting firm for ten years in the mergers and acquisitions group, and in the audit practice. I have served as a principal financial advisor in numerous complex

[2] Capitalized terms used but not defined herein have the meaning ascribed in the Objection.

bankruptcies and restructurings. I have also served as a testifying expert witness in matters concerning solvency, valuation, contract breach, lost profits and various financial/business issues in bankruptcy and restructuring.

6. Additionally, I have gained extensive knowledge and experience through my consultancy and work experience including in the areas of business turnaround and restructuring situations, out-of-court workouts, bankruptcy matters, crisis management, transaction advisory and due diligence services and dispute resolution.

7. My current billing rate for this matter is $1,095 per hour. I was assisted by others at BRG, who worked at my direction and under my supervision. My and BRG's compensation is not contingent upon the litigation outcome of this matter.

8. In support of the Objection, Hogan Lovells US LLP and Husch Blackwell LLP, proposed counsel to the Committee ("Counsel") has requested that I compare the Exit Fee component of the Proposed DIP Financing to DIP financings ("DIPs") in recent cases that I consider comparable.

THE DEBTORS' PROPOSED DIP FINANCING

9. The Proposed DIP Financing is $180 million, comprising $90 million in New Money Loans and $90 million in Roll-Up Loans. The Roll-Up Loans are exchanged for pre-petition loans on a cashless, dollar-for-dollar basis.

10. $35 million of the New Money Loans were funded after entry of the Interim Order on April 23, 2020 and the remaining $55 million will be available upon the entry of the Final Order. The same timing applies to the Roll-Up Loans. The maturity date of the DIP Facility is nine months from the Petition Date.

11. The Roll-Up Loans accrue interest at LIBOR plus 1.75% per annum whereas the New Money Loans accrue interest at LIBOR plus 8.0% or ABR plus 7.0% per annum. The default rate premium is 2%.

12. The Proposed DIP Financing includes (i) a commitment fee of 2.0% on New Money Loans, (ii) a delayed draw commitment fee of 0.5% on undrawn New Money Loans and (iii) the DIP agent fees, which were filed under seal. I have been provided a confidential copy the Fee Letter.

13. The Proposed DIP Financing also includes an Exit Fee of 5.0% applicable to both the New Money Loans and the Roll-Up Loans. Therefore, as a percentage of the New Money Loans only, the Exit Fee is 10%.

REVIEW OF COMPARABLE DIPs

14. BRG maintains a database of DIPs going back a number of years. I reviewed the database for cases which filed for bankruptcy during the period January 1, 2019 through the Petition Date (April 23, 2020), which included nearly 200 DIPs in total. For completeness, I also contacted other senior members of the BRG Corporate Finance group to identify any additional recent DIPs which include exit fees. In addition, I requested the list of comparable DIPs considered by the Debtors' Investment Banker, Moelis & Company, in reviewing and negotiating the Proposed DIP Financing.

15. For purposes of my analysis, I considered DIPs which included total financing of $50 million or more. This group is comprised of 61 DIPs, 13 of which also included an exit fee.[3] The 13 DIPs approved on a final basis during this period which included total financing of $50

[3] For the DIPs under $50 million, only one DIP included an exit fee in excess of 5% (an exit fee of 7% in the Astria Healthcare, *et al.* chapter 11 cases). However, the DIP was refinanced and the exit fee was not triggered.

million or more and an exit fee are as follows (see detailed schedule attached hereto as Exhibit I):

SpeedCast International - DIP Exit Fees Comparison

$ in Millions

Date	Debtor	District	Total DIP	New Money Loans	Roll-Up Loans	Exit Fee	Exit Fee as a % of New Money
5/7/2019	Southcross Energy Partners	District of Delaware	$ 255.0	$ 127.5	$ 127.5	1.50%	1.50%
6/18/2019	EdgeMarc Energy Holdings, LLC	District of Delaware	107.8	30.0	77.8	2.50%	2.50%
7/18/2019	Cloud Peak Energy Inc.	District of Delaware	81.0	45.0	28.0	1.00%	1.00%
7/25/2019	Joerns WoundCo Holdings Inc.	District of Delaware	80.0	40.0	40.0	2.00%	4.00%
8/13/2019	Blackhawk Mining LLC	District of Delaware	275.0	175.0	100.0	2.50%	2.50%
9/3/2019	Barneys New York	Southern District of New York	217.0	14.9	202.1	8.00%	40.27%
9/16/2019	GCX Limited	District of Delaware	54.5	54.5	-	3.00%	3.00%
12/12/2019	Murray Energy	Southern District of Ohio	440.0	350.0	90.0	1.00%	1.26%
12/19/2019	Bumble Bee Parent, Inc.	District of Delaware	280.0	80.0	200.0	2.00%	2.00%
12/23/2019	Dean Foods Company	Southern District of Texas	425.0	236.2	188.8	1.25%	2.25%
1/22/2020	Sanchez Energy	Southern District of Texas	200.0	150.0	50.0	1.00%	1.00%
3/10/2020	RentPath Holdings, Inc.	District of Delaware	74.1	74.1	-	Various	Various
4/9/2020	Foresight Energy	Eastern District of Missouri	175.0	100.0	75.0	1.00%	1.00%
SpeedCast International Limited			**$ 180.0**	**$ 90.0**	**$ 90.0**	**5.00%**	**10.00%**

16. The total, DIP financing for these transactions ranged from $54.5 million to $440 million, and the amount of new money loans ranged from $14.9 million to $350 million.

17. The exit fees ranged from 1% to 3% of the loan amount subject to the exit fee for eleven of the cases (including the Foresight Energy, LLC, *et al.* chapter 11 cases where the exit fee was paid in equity of the restructured entity and the Joerns WoundCo Holdings, Inc., *et al.* chapter 11 cases where the exit fee was paid in new debt). The exit fee in the RentPath Holdings, Inc., *et al.* ("RentPath") chapter 11 cases was a ticking fee based on the timing of closing a sale process and ranged from 3.5% to 19.6%. The exit fee in the Barneys New York, Inc., *et al.* ("Barneys") chapter 11 cases was 8% (see discussion below).

18. For nine of the DIPs, the exit fee was applicable to the new money loans only. Four of the DIPs included an exit fee on both the new money loans and the roll-up loans.

19. The exit fee as a percentage of the new money loans only ranged from 1% to 4% for eleven of the DIPs considered.

20. The exit fee as a percentage of the new money loans in the Barneys cases was 40.3%, as the exit fee of 8% applied to both the new money loans and a portion of the roll-up

loans.[4] The ratio of the rolled-up loans subject to the exit fee to the new money loans was approximately 4 to 1. The next highest roll-up loans to new money loans ratio subject to an exit fee in my list of comparable DIPs was 2.6 to 1 for the EdgeMarc Energy Holdings, LLC, *et al.* chapter 11 cases, and even in those cases, the exit fee as a percentage of new money was only 2.5%. Therefore, I would consider the exit fee as a percentage of the new money loans subject to an exit fee in the Barneys case to be an outlier.

21. As mentioned above, the exit fee in the RentPath cases was a ticking fee based on the timing of closing a sale process, so I also would consider the RentPath cases to be an outlier.

22. I analyzed these transactions on a holistic basis and, therefore, considered coupon rates and other fees, including but not limited to commitment, structuring, and other fees. Consideration of these factors did not change my conclusion.

CONCLUSION

23. Notwithstanding the circumstances of these cases as discussed in the *Declaration of Michael Healy in Support of Debtors' Chapter 11 Petitions and First Day Relief* [ECF No. 16] as well as in the Objection, in my opinion the Exit Fee included in the Proposed DIP Financing is substantially above market and not reasonable under the circumstances.

[*Signature Page Follows*]

[4] The exit fee was applicable to the total Tranche A loans of $75 million. Tranche A included $14.9 million of new money loans and $60.1 million of rolled-up loans.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Dated: May 18, 2020
New York, New York

/s/ Christopher J. Kearns
Christopher J. Kearns

Exhibit I

Exhibit I

SpeedCast International - DIP Exit Fees Comparison

$ in Millions

Date	Debtor	Total DIP	New Money Loans	Roll-Up Loans	Exit Fee	Exit Fee as a % of New Money	Coupon	Commitement Fee	Other Fees	Notes
5/7/2019	Southcross Energy Partners	$ 255.0	$ 127.5	$ 127.5	1.50%	1.50%	New Money:L+10.00% / ABR+9.00% / Roll-Up: L+5.25%	1.00%		1, 4
6/18/2019	EdgeMarc Energy Holdings, LLC	107.8	30.0	77.8	2.50%	2.50%	ABR+5.25% (minimum of 10.50%)	3.00%	Undrawn commitment fee of 2.50%	1, 5
7/18/2019	Cloud Peak Energy Inc.	81.0	45.0	28.0	1.00%	1.00%	Adj. L+9.00% / ABR+8.00%	N/A	PIK upfront fees of $350,000 / PIK Backstop fee	1
7/25/2019	Joerns WoundCo Holdings Inc.	80.0	40.0	40.0	2.00%	4.00%	L+6.00% / Base Rate+5.00%	3.00%	Backstop fee payable in stock or cash	Exit fee PIK, applies to new money and roll up
8/13/2019	Blackhawk Mining LLC	275.0	175.0	100.0	2.50%	2.50%	Revolver: L+6.00% / Term Loan: L+9.50%	1.00%	Unused commitment fee 50 bps to 100 bps	1, 6, 7, 8
9/3/2019	Barneys New York	217.0	14.9	202.1	8.00%	40.27%	L+2.25% to L+12.00%	5.00%	Weekly fee of $100,000; Enhancement fee of 25.00%	9
9/16/2019	GCX Limited	54.5	54.5	-	3.00%	3.00%	8.50%	3.25%		1
12/12/2019	Murray Energy	440.0	350.0	90.0	1.00%	1.26%	New Money: L+11.00% / Base Rate+10.00% / Roll Up: L+9.5% to 9.75%	3.00%	Backstop fee 5%	New Money and Roll-up subject to Exit Fee
12/19/2019	Bumble Bee Parent, Inc.	280.0	80.0	200.0	2.00%	2.00%	ABL: L+4.50%, Base Rate+3.50% / Term Loan: L+10.50%, Base Rate+9.50%	N/A	Undrawn commitment fee of 25 bps	1
12/23/2019	Dean Foods Company	425.0	236.2	188.8	1.25%	2.25%	L+7.00% / ABR+6.00%	N/A	Undrawn commitment fee of 50 bps	New Money and Roll-up subject to Exit Fee, 3
1/22/2020	Sanchez Energy	200.0	150.0	50.0	1.00%	1.00%	New Money: L+8.00% / Roll-up: 7.25%	0.50%	Backstop fee 5%	1
3/10/2020	RentPath Holdings, Inc.	74.1	74.1	-	Various	Various	L+7.00%	2.00%	Backstop Premium of 3.5%	1, 10
4/9/2020	Foresight Energy	175.0	100.0	75.0	1.00%	1.00%	L+11.00% / Base Rate+10.00%	3.00%	1% Delayed Draw Fee ($55mm drawn at close)	1, 2, exit fee is payable in equity
	SpeedCast International Limited	**$ 180.0**	**$ 90.0**	**$ 90.0**	**5.00%**	**10.0%**	**New Money: L+8.00%, ABR+7.00% / Roll-up: L+1.75%**	**2.00%**	**Unused commitment fee of 50 bps**	**Exit fee includes the roll-up**

1) Exit fee on New Money only
2) Put Option Premium of 5% of the New Money DIP to be paid in equity upon a successful reorganization.
3) Excludes prepetition AR Securitization facility
4) New money comprised of $72.5 million + $55 million letter of credit facility. 1% Commitment fee described as a Structuring fee.
5) Fees were higher prior to the Availability period, which began with the Final DIP Order, order approving the stalking horse bidder, and no event of default.
6) New Money comprised of $90 million Revolver Loan and $50 million Term Loan.
7) DIP Order indicates that the exit fee is charged in lieu of 3.00% Origination Fee
8) Initial DIP funding of $240 million included an Exit fee of 1.50% of the Revolving Loans, 1.00% of the Term Loans; DIP Amendment funding of $35 million included Exit Fee of 2.5%
9) The exit fee was applicable to the total Tranche A loans of $75 million. Tranche A included $14.9 million of new money loans and $60.1 million of rolled-up loans.
10) Exit Fee was a ticking fee based on the timing of closing a sale process and ranged from 3.5% to 19.6%

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
SOUTHCROSS ENERGY PARTNERS, L.P., *et al.*,	)	Case No. 19-10702 (MFW)
Debtors.[1]	)	Jointly Administered
	)	**RE: D.I. 14**

INTERIM ORDER, PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, AND 507, (I) AUTHORIZING THE DEBTORS TO OBTAIN SENIOR SECURED SUPERPRIORITY POST-PETITION FINANCING, (II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) AUTHORIZING THE USE OF CASH COLLATERAL, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

Upon the motion (the "**Motion**")[2] of Southcross Energy Partners, L.P. ("**Southcross**" or the "**Borrower**"), Southcross Energy Partners GP, LLC ("**Southcross GP**"), and Southcross's direct and indirect subsidiaries, each of which is a debtor and debtor in possession (collectively, the "**Debtors**") in the above-captioned cases (the "**Chapter 11 Cases**"), pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506(c), and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq*. (the "**Bankruptcy**

[1] The debtors and debtors in possession in these Chapter 11 Cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southcross Energy Partners, L.P. (5230); Southcross Energy Partners GP, LLC (5141); Southcross Energy Finance Corp. (2225); Southcross Energy Operating, LLC (9605); Southcross Energy GP LLC (4246); Southcross Energy LP LLC (4304); Southcross Gathering Ltd. (7233); Southcross CCNG Gathering Ltd. (9553); Southcross CCNG Transmission Ltd. (4531); Southcross Marketing Company Ltd. (3313); Southcross NGL Pipeline Ltd. (3214); Southcross Midstream Services, L.P. (5932); Southcross Mississippi Industrial Gas Sales, L.P. (7519); Southcross Mississippi Pipeline, L.P. (7499); Southcross Gulf Coast Transmission Ltd. (0546); Southcross Mississippi Gathering, L.P. (2994); Southcross Delta Pipeline LLC (6804); Southcross Alabama Pipeline LLC (7180); Southcross Nueces Pipelines LLC (7034); Southcross Processing LLC (0672); FL Rich Gas Services GP, LLC (5172); FL Rich Gas Services, LP (0219); FL Rich Gas Utility GP, LLC (3280); FL Rich Gas Utility, LP (3644); Southcross Transmission, LP (6432); T2 EF Cogeneration Holdings LLC (0613); and T2 EF Cogeneration LLC (4976). The debtors' mailing address is 1717 Main Street, Suite 5200, Dallas, TX 75201.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms further below in this Interim Order, the DIP Documents, or the Motion, as applicable (as such terms are defined herein).

Code"), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), for entry of interim and final orders, among other things:

(i) authorizing the Borrower to obtain, and the Borrower's Debtor subsidiaries (collectively, in their capacity as such, the "**Guarantors**" and, together with the Borrower, the "**Loan Parties**") to guaranty, debtor-in-possession credit financing in an aggregate principal amount of up to $255 million (the "**DIP Financing**") to be funded by certain of the Prepetition Term Lenders (in their capacity as lenders under the DIP Facilities, the "**DIP Lenders**") under a secured term loan and letter of credit facility (the "**DIP Facility**") consisting of (A) new money term loans (the "**DIP Term Loans**")) in an aggregate principal amount of up to $72.5 million, (B) letter of credit term loans (the "**DIP LC Loans**") in an aggregate principal amount of up to $55 million, the proceeds of which will be used to cash collateralize letters issued (or deemed issued) under a letter of credit sub-facility in an aggregate principal amount of up to $55 million (the "**DIP L/C Sub-Facility**") and (C) roll-up term loans (the "**DIP Roll-Up Loans**" and, together with the DIP Term Loans and the DIP LC Loans, the "**DIP Loans**"), which shall be subject and subordinate to the DIP Term Loans and DIP LC Loans, to refinance dollar-for-dollar Prepetition Term Loans held by the DIP Lenders in the aggregate amount of $127.5 million;

(ii) authorizing the Loan Parties, in connection with the DIP Facility, to (A) execute and enter into the Superpriority Secured Debtor-in-Possession Credit Agreement, among the Loan Parties, the DIP Lenders, certain Prepetition Revolving Lenders, as issuers of DIP Letters of Credit (the "**DIP L/C Issuers**"), and Wilmington Trust, National Association, as administrative and collateral agent (collectively, solely in such capacities, the "**DIP Agent**" and, together with the DIP Lenders, the "**DIP Secured Parties**"), substantially in the form attached hereto as Exhibit A (as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof, the "**DIP Credit Agreement**" and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments and amendments executed and delivered in connection therewith, including the Approved Budget (including any permitted variances), the "**DIP Documents**") and (B) to perform all such other and further acts as may be required in connection with the DIP Documents;

(iii) granting to the DIP Agent, for the benefit of the DIP Lenders, valid, enforceable, non-avoidable and automatically and fully perfected liens and security interests, subject only to the Carve-Out and the Permitted Senior

Liens, to secure the DIP Obligations, which liens and security interests shall have the rankings and priorities set forth herein;

(iv) granting superpriority administrative claims to the DIP Secured Parties payable from, and having recourse to, all prepetition and post-petition property of the Loan Parties' estates and all proceeds thereof (other than Avoidance Actions, but, upon entry of the Final Order, including Avoidance Proceeds), subject to the Carve-Out and the Permitted Senior Liens;

(v) authorizing the Loan Parties (A) upon entry of this Interim Order, to incur in a single draw on the Closing Date, DIP Term Loans in an aggregate principal amount of up to $30 million (the "**Initial DIP Term Loans**") and DIP LC Loans in an aggregate principal amount of up to $55 million (the incurrence of such loans upon entry of this Interim Order, the "**Interim Financing**") and (B) upon entry of the Final Order, to incur in a single draw on or within 30 days after the entry of the Final Order, DIP Term Loans in an aggregate principal amount of $42.5 million (the "**Delayed Draw DIP Loans**"), in each case subject to the terms and conditions set forth in the DIP Documents, this Interim Order, and the Final Order;

(vi) authorizing the Debtors (A) upon entry of this Interim Order, to use proceeds of the DIP LC Loans to cash collateralize (in the amount of 103% of the face amount) the DIP Letters of Credit and to deem the Prepetition the Letters of Credit to be cancelled and reissued under the DIP L/C Sub-Facility (the "**Prepetition L/C Refinancing**") and (B) upon entry of the Final Order, to use the DIP Roll-Up Loans to refinance and discharge dollar-for-dollar Prepetition Term Loans held by the DIP Lenders in the aggregate amount of $127.5 million (the "**Prepetition Term Loan Refinancing**" and, together with the Prepetition L/C Refinancing, the "**Prepetition Debt Refinancing**");

(vii) authorizing the Debtors' use of the proceeds of the DIP Facility pursuant to the DIP Credit Agreement and other the DIP Documents, including the Approved Budget (subject to permitted variances);

(viii) authorizing the Debtors to continue to use the Cash Collateral (subject to the Approved Budget and permitted variances thereunder) and all other Prepetition Collateral, and the granting of the Adequate Protection Obligations to the Prepetition Secured Parties with respect to, *inter alia*, such use of their Cash Collateral to the extent of diminution in the value of the Prepetition Collateral (including Cash Collateral);

(ix) approving certain stipulations by the Debtors with respect to the Prepetition Loan Documents and the Prepetition Collateral as set forth herein;

(x) modifying the automatic stay as set forth herein and the DIP Documents, to the extent necessary, to implement and effectuate the foregoing and the other terms and provisions of the DIP Documents, the Interim Order and Final Order; and

(xi) scheduling a final hearing (the "**Final Hearing**"), to be held within 30 days after the Petition Date, to consider entry of the Final Order approving the DIP Facilities and use of Cash Collateral, as set forth in the DIP Motion and the DIP Documents; and

the Court having jurisdiction to consider the matters raised in the Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having authority to hear the matters raised in the Motion pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the requested relief being a core proceeding that the Court can determine pursuant to 28 U.S.C. § 157(b)(2); and due and proper notice of the Motion and opportunity for a hearing on the Motion having been given to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion, the D'Souza Declaration and the Howe Declaration; and the Court having held an interim hearing on the Motion (the "**Interim Hearing**"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Interim Hearing establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion being in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and the Court having determined that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[3]

A. *Petition Date*. On April 1, 2019 (the "**Petition Date**"), each of the Debtors filed a separate voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (this "**Court**") commencing the Chapter 11 Cases.

B. *Debtors in Possession*. The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. *Committee Formation*. As of the date hereof, the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**") has not appointed a statutory committee in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (if appointed, a "**Committee**").

D. *Jurisdiction and Venue*. The Court has core jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and, pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order by the Court in connection with the Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution. Venue of

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

the Chapter 11 Cases and related proceedings is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

E. *Notice*. The Interim Hearing was held pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). Adequate and sufficient notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, and under the circumstances, no other or further notice of the Motion or the entry of this Interim Order shall be required, except as set forth in paragraph 38 below. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

F. *Debtors' Stipulations*. After consultation with their attorneys and financial advisors, and without prejudice to the rights of a Committee or any other party in interest (subject to the limitations thereon contained in paragraphs 19 and 20 below), the Debtors acknowledge, admit, stipulate and agree that:

(i) Prepetition Revolving Credit Facility. Pursuant to that certain Third Amended & Restated Revolving Credit Agreement, dated as of August 4, 2014 and amended six times through August 10, 2018 (as amended, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the "**Prepetition Revolving Credit Agreement**" and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments, and amendments executed and delivered in connection therewith, the "**Prepetition Revolving Facility Documents**"), among Southcross, as borrower, Wells Fargo Bank, National Association, as administrative agent (in such capacity, the "**Prepetition Revolving Agent**"), and the lenders party thereto (the "**Prepetition Revolving Lenders**" and, together with the Prepetition Revolving Agent, the "**Prepetition Revolving Secured Parties**"), the

Prepetition Revolving Lenders provided revolving credit and other financial accommodations to, and issued letters of credit for the account of, Southcross (the "**Prepetition Revolving Facility**"), which Prepetition Revolving Facility has been guaranteed on a joint and several basis by each of the Guarantors.

(ii) Prepetition Revolving Debt. As of the Petition Date, the Borrower and the Guarantors were justly and lawfully indebted and liable to the Prepetition Revolving Secured Parties, without defense, counterclaim, or offset of any kind, in respect of (a) outstanding loans in the aggregate principal amount of not less than $81.1 million, (b) undrawn Letters of Credit (as defined in the Prepetition Revolving Credit Agreement) (the "**Prepetition Letters of Credit**") in the amount of not less than $25.9 million, and (c) three Secured Hedging Agreements (as defined in the Prepetition Revolving Credit Agreement) with a notional value of not less than $275 million, pursuant to and in accordance with the terms of, the Prepetition Revolving Facility Documents (collectively, such indebtedness together with accrued and unpaid interest thereon and fees, expenses, charges, indemnities, and other obligations incurred in connection therewith as provided in the Prepetition Revolving Facility Documents, the "**Prepetition Revolving Debt**").

(iii) Prepetition Term Facility. Pursuant to that certain Term Loan Credit Agreement, dated as of August 4, 2014 (as amended, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the "**Prepetition Term Loan Credit Agreement**" and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments, and amendments executed and delivered in connection therewith, the "**Prepetition Term Facility Documents**"), among Southcross, as borrower, Wilmington Trust, N.A., as successor administrative agent (in such capacity,

the "**Prepetition Term Agent**" and, together with the Prepetition Revolving Agent, the "**Prepetition Agents**"), and the lenders party thereto (the "**Prepetition Term Lenders**" and, together with the Prepetition Term Agent, the "**Prepetition Term Secured Parties**" and, together with the Prepetition Revolving Secured Parties, the "**Prepetition Secured Parties**"), the Prepetition Term Lenders provided term loans to Southcross (the "**Prepetition Term Facility**" and, together with the Prepetition Revolving Facility, the "**Prepetition Secured Credit Facilities**"), which Prepetition Term Facility has been guaranteed on a joint and several basis by each of the Guarantors.

(iv) Prepetition Term Debt. As of the Petition Date, the Borrower and the Guarantors were justly and lawfully indebted and liable to the Prepetition Term Secured Parties, without defense, counterclaim or offset of any kind, in respect of loans (the "**Prepetition Term Loans**") in the aggregate principal amount of not less than $ $429,140,515.29, pursuant to and in accordance with the terms of the Prepetition Term Facility Documents (collectively, such indebtedness together with accrued and unpaid interest thereon and fees, expenses, charges, indemnities, and other obligations incurred in connection therewith as provided therein, the "**Prepetition Term Debt**" and, together with the Prepetition Revolving Debt, the "**Prepetition Secured Debt**").

(v) Validity of Prepetition Secured Debt. (a) The Prepetition Secured Debt constitutes legal, valid, binding, and non-avoidable obligations of the Borrower and the Guarantors, enforceable in accordance with the terms of the Prepetition Secured Debt Documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code) and (b) no portion of the Prepetition Secured Debt or any payments made to the Prepetition Secured Parties or applied to or paid on account of the

obligations owing under the Prepetition Secured Debt Documents prior to the Petition Date is subject to any contest, attack, rejection, recovery, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action, or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law.

(vi) Prepetition Liens. The liens and security interests granted to the Prepetition Secured Parties (the "**Prepetition Liens**"), pursuant to and in connection with the Prepetition Secured Debt Documents, are (a) valid, binding, perfected, enforceable liens and security interests in the Shared Collateral (as defined in the Intercreditor Agreement) (the "**Prepetition Collateral**"), (b) not subject to avoidance, recharacterization, subordination, recovery, attack, effect, counterclaim, defense, or claim under the Bankruptcy Code or applicable non-bankruptcy law, and (c) as of the Petition Date, subject only to Permitted Senior Liens permitted under the Prepetition Secured Debt Documents.

(vii) No Control. None of the Prepetition Secured Parties control the Debtors or their properties or operations, have authority to determine the manner in which any Debtor's operations are conducted or are control persons or insiders of the Debtors by virtue of any of the actions taken with respect to, in connection with, related to, or arising from the Prepetition Secured Debt Documents.

(viii) No Claims or Causes of Action. No claims, counterclaims or causes of action of any kind or nature exist against, or with respect to, the Prepetition Secured Parties under any agreements by and among the Debtors and any such party that is in

existence as of the Petition Date, whether related to the Prepetition Secured Debt Documents, any other agreement, the Debtors or otherwise.

G. *Findings Regarding the DIP Financing and Use of Cash Collateral.*

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

(ii) The Loan Parties have an immediate and critical need to obtain the DIP Financing and to continue to use the Prepetition Collateral (including "cash collateral" within the meaning of section 363(a) of the Bankruptcy Code ("**Cash Collateral**")), in each case on an interim basis, in order to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures, to administer these Chapter 11 Cases, to cash collateralize the Prepetition Letters of Credit (in the amount of 103% of the face amount of issued and outstanding Prepetition Letters of Credit), and to satisfy other working capital and operational needs. The access of the Loan Parties to sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition Collateral, incurrence of new indebtedness under the DIP Documents and other financial accommodations provided under the DIP Documents are necessary and vital to the preservation and maintenance of the going concern values of the Loan Parties and to a successful reorganization of the Loan Parties.

(iii) The Loan Parties are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Loan Parties are also unable to obtain secured

credit allowable under section 364(c)(1), 364(c)(2), or 364(c)(3) of the Bankruptcy Code without granting to the DIP Secured Parties the DIP Liens and the DIP Superpriority Claims and incurring the Adequate Protection Obligations, in each case subject to the Carve-Out and the terms and conditions set forth in this Interim Order and in the DIP Documents.

(iv) Based on the Motion, the Howe Declaration, the D'Souza Declaration, and the record presented to the Court at the Interim Hearing, the terms of the DIP Financing and the terms on which the Loan Parties may continue to use the Prepetition Collateral (including Cash Collateral) pursuant to this Interim Order and the DIP Documents are fair and reasonable, reflect the Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(v) Absent order of the court and the provision of adequate protection, consent of the Prepetition Secured Parties is required to the Loan Parties' use of Cash Collateral and the other Prepetition Collateral. The Prepetition Secured Parties have consented, are deemed, pursuant to that certain Intercreditor Agreement, dated as of August 4, 2014, by and among Southcross, the Prepetition Agents, and the other grantors party thereto (the "**Intercreditor Agreement**" and, together with the Prepetition Revolving Facility Documents and the Prepetition Term Facility Documents, the "**Prepetition Secured Debt Documents**"), to have consented or have not objected to the Loan Parties' use of Cash Collateral and the other Prepetition Collateral, and the Loan Parties' entry into the DIP Documents solely in accordance with and subject to the terms and conditions in this Interim Order and the DIP Documents.

(vi) The DIP Financing and the use of the Prepetition Collateral have been negotiated in good faith and at arm's length among the Loan Parties and the DIP Secured Parties, and all of the Loan Parties' obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing and the DIP Documents, including, without limitation, all "Obligations" (as defined in the DIP Documents), in each case owing to the DIP Secured Parties or any of their respective banking affiliates (collectively, the "**DIP Obligations**"), shall be deemed to have been extended by the DIP Secured Parties and their respective affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise.

(vii) The Prepetition Secured Parties have acted in good faith regarding the DIP Financing and the Loan Parties' continued use of the Prepetition Collateral (including Cash Collateral) to fund the administration of the Loan Parties' estates and continued operation of their businesses (including the incurrence and payment of the Adequate Protection Obligations and the granting of the Adequate Protection Liens), in accordance with the terms hereof, and the Prepetition Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of sections 363(m) and 364(e), as may be applicable, of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(viii) The Prepetition Secured Parties are entitled to the adequate protection provided in this Interim Order as and to the extent set forth herein pursuant to sections 361, 362, 363, and 364 of the Bankruptcy Code. Based on the Motion and on the record presented to the Court, the terms of the proposed adequate protection arrangements and of the use of the Prepetition Collateral are fair and reasonable, reflect the Loan Parties' prudent exercise of business judgment, and constitute reasonably equivalent value and fair consideration for the use of the Prepetition Collateral; *provided* that nothing in this Interim Order or the other DIP Documents shall (a) be construed as the affirmative consent by any of the Prepetition Secured Parties for the use of Cash Collateral other than on the terms set forth in this Interim Order and in the context of the DIP Financing authorized by this Interim Order, (b) be construed as a consent by any party to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior or junior), or (c) prejudice, limit, or otherwise impair the rights of any of the Prepetition Secured Parties, subject to any applicable provisions of the Intercreditor Agreement, to seek new, different, or additional adequate protection for any diminution in value of their interests in the Prepetition Collateral from and after the Petition Date or assert the interests of any of the Prepetition Secured Parties and the rights of any other party in interest to object to such relief are hereby preserved.

(ix) Use of the DIP LC Loans, upon entry of the Interim Order, to cash collateralize all Letters of Credit (in the amount of 103% of the face amount) and use of the DIP Roll-Up Loans, upon entry of the Final Order and the funding of the Delayed Draw DIP Term Loans, to refinance and discharge the DIP Lenders' Prepetition Term Loans (in an amount equal to the DIP Term Loans and DIP LC Loans provided by such

DIP Lenders under the DIP Facility) reflects the Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties.

(x) The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Rules. Absent granting the relief set forth in this Interim Order, the Loan Parties' estates will be immediately and irreparably harmed. Consummation of the DIP Financing and the use of the Prepetition Collateral (including Cash Collateral) in accordance with this Interim Order and the DIP Documents are, therefore, in the best interests of the Loan Parties' estates and consistent with the Loan Parties' exercise of their fiduciary duties.

H. *Permitted Senior Liens; Continuation of Prepetition Liens.* Nothing herein shall constitute a finding or ruling by this Court that any alleged Permitted Senior Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing herein shall prejudice the rights of any party-in-interest, including, but not limited to, the Debtors, the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, or a Committee (if appointed), to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Permitted Senior Lien and/or security interests. The right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Permitted Senior Lien and is expressly subject to the DIP Liens. The Prepetition Liens, and the DIP Liens that prime the Prepetition Liens, are continuing liens and the DIP Collateral is and will continue to be encumbered by such liens in light of the integrated nature of the DIP Facilities, the DIP Documents, and the Prepetition Secured Debt Documents.

I. *Immediate Entry*. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2).

IT IS HEREBY ORDERED THAT:

1. *Interim Financing Approved.* The interim relief requested in the Motion is granted and the use of Cash Collateral on an interim basis, the Interim Financing and the Prepetition L/C Refinancing are authorized and approved, in each case in accordance with the terms and conditions set forth in the DIP Documents, the Approved Budget (including any permitted variances) and this Interim Order. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled on the merits.

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

(a) The Loan Parties are hereby authorized to execute, deliver, enter into and, as applicable, perform all of their obligations under the DIP Documents and such other and further acts as may be necessary, appropriate, or desirable in connection therewith, in each case in accordance with and subject to the terms of this Interim Order and the DIP Documents. The Borrower is hereby authorized to borrow money and obtain letters of credit pursuant to the DIP Credit Agreement, subject to any limitations on borrowing under the DIP Documents, which shall be used for all purposes permitted under the DIP Documents, including, without limitation, to pay certain costs, fees, and expenses related to the Chapter 11 Cases, to pay the Adequate Protection Payments, to cash collateralize the Prepetition Letters of Credit (in the amount of 103% of the face amount of issued and outstanding Prepetition Letters of Credit), and to fund working capital and for general corporate purposes of the Loan Parties during the Chapter 11 Cases, in each case, subject to the Approved Budget (including any permitted variances) and in accordance with this

Interim Order and the DIP Documents and the Guarantors are hereby authorized to guaranty the DIP Obligations.

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

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

(ii) the execution and delivery of, and performance under, one or more amendments, waivers, consents, or other modifications to and under the DIP Documents, in each case, in such form as the Loan Parties, the DIP Agent and the requisite DIP Lenders and (if required under the DIP Documents) the DIP L/C Issuers may agree, it being understood that no further approval of the Court shall be required for any authorizations, amendments, waivers, consents, or other modifications to and under the DIP Documents (and any fees and other expenses, amounts, charges, costs, indemnities, and other obligations paid in connection therewith) that do not (A) shorten the maturity of the extensions of credit thereunder or increase the aggregate commitments or the rate of interest payable thereunder, (B) increase existing fees or add new fees thereunder (excluding, for the avoidance of doubt, any amendment, consent or waiver fee), or (C) shorten the

case milestones set forth in Section 8.23 of the DIP Credit Agreement. The foregoing shall be without prejudice to the Loan Parties' right to seek approval from the Court of any material modification or amendment on an expedited basis;

(iii) the non-refundable payment to the DIP Agent and/or the DIP Lenders, as the case may be, of all reasonable and documented fees (which fees shall be, and shall be deemed to have been, approved upon entry of this Interim Order and upon payment thereof, shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action, or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise) and any amounts due (or that may become due) in respect of the indemnification obligations, in each case referred to in the DIP Documents (and in any separate letter agreements between any or all of the Loan Parties, on the one hand, and any of the DIP Secured Parties, on the other, in connection with the DIP Financing) and the costs and expenses as may be due from time to time, including, without limitation, reasonable and documented fees and expenses of the professionals retained by any of the DIP Agent and DIP Lenders, in each case, as provided for in the DIP Documents, whether or not such fees or expenses arose prior to or after the Petition Date without the need to file retention motions or fee applications or to provide notice to any party; and

(iv) the performance of all other acts necessary, appropriate, or desirable under or in connection with the DIP Documents.

3. *Prepetition Debt Refinancing*. Upon entry of this Interim Order, in accordance with paragraph 9 below, the Debtors are hereby authorized to use the proceeds of the DIP LC Loan to cash collateralize the Prepetition Letters of Credit (in the amount of 103% of the face amount of issued and outstanding Prepetition Letters of Credit) and the Prepetition Letters of Credit will be deemed to have been cancelled and reissued as DIP Letters of Credit in their full amounts and without modification of the terms of the Prepetition Letters of Credit other than their deemed issuance as DIP Letters of Credit under the DIP L/C Sub-Facility. Upon entry of the Final Order, the Debtors shall use the DIP Roll-Up Loans to refinance and discharge the DIP Lenders' Prepetition Term Loans (in an amount equal to the DIP Term Loans and DIP LC Loans provided and/or committed to under the DIP New Money Facility), in each case subject to the terms and conditions set forth in the DIP Documents and the reservation of rights of parties in interest in paragraph 19 below. Upon expiration of the Challenge Period without a successful Challenge having been brought with respect thereto, the DIP Roll-Up Loans issued under this paragraph 3 shall be deemed indefeasible and the Prepetition Secured Debt refinanced thereby shall be discharged. Notwithstanding anything to the contrary herein or in the Intercreditor Agreement (as may be amended and/or modified from time to time after the Petition Date), (x) the claims and liens in respect of the DIP Roll-Up Loans shall be subject and subordinate to the claims and liens in respect of the DIP LC Loans and the DIP Term Loans in all respects, and (y) the claims and liens in respect of the DIP Roll-Up Loans shall be *pari passu* with the Prepetition Revolving Debt in all respects such that distributions on the Prepetition Revolving Debt are pro rata with the sum of the DIP Roll-Up Loans and the Prepetition Term Loans; *provided* that any proceeds allocated on account of the DIP Roll-Up Loans and the Prepetition

Term Loans shall be applied first to the repayment of the DIP Roll-Up Loans before any Prepetition Term Loan.

4. *DIP Obligations*. Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid, binding and non-avoidable obligations of the Loan Parties, enforceable against each Loan Party thereto in accordance with the terms of the DIP Documents and this Interim Order as of the date of the entry of this Interim Order. No obligation, payment, transfer or grant of security to the DIP Secured Parties under the DIP Documents or this Interim Order shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under section 502(d), 544, 548, or 549 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any defense, reduction, setoff, recoupment, claim, or counterclaim.

5. *Carve-Out*.

(a) As used in this Interim Order, the "**Carve-Out**" shall mean a carve-out from the DIP Superpriority Claims, the DIP Liens (other than DIP Liens in the Cash Collateral, held in the Cash Collateral Account, securing DIP Letters of Credit), the 507(b) Claims, and the Adequate Protection Liens, in an amount equal to the sum of (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the Carve-Out Trigger Notice); (ii) all reasonable fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code, in an aggregate amount not to exceed $50,000 (without regard to the Carve-Out Trigger Notice); (iii) to the extent allowed by the Court at any time, whether by interim order, procedural order or

otherwise, all unpaid fees and expenses (the "**Professional Fees**") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code or by a Committee, if any, pursuant to section 328 and 1103 of the Bankruptcy Code (collectively, the "**Professional Persons**"), at any time on or before the first business day following the earlier of (a) delivery by the DIP Agent (acting upon the express prior written direction of the Required Lenders (as defined in the DIP Credit Agreement)) of a Carve-Out Trigger Notice and (b) the Maturity Date (as defined in the DIP Credit Agreement) (such day, the "**Carve-Out Trigger Date**"), whether allowed by the Court prior to or after the Carve-Out Trigger Date; and (iv) Professional Fees incurred after the Carve-Out Trigger Date in an amount not to exceed $4,000,000 (the "**Post Trigger Date Carve-Out Amount**"); *provided* that any success, completion, or similar fees payable from the Post-Trigger Date Carve-Out Amount shall be subject and subordinate, and junior in right of payment, to all other Professional Fees payable from the Post-Trigger Date Carve-Out (collectively, the "**Carve-Out Amount**"), in each case subject to the limits imposed by the DIP Orders. For purposes of the foregoing, "**Carve-Out Trigger Notice**" shall mean a written notice delivered by email by the DIP Agent (acting upon the express prior written direction of the Required Lenders (as defined in the DIP Credit Agreement)) to the Debtors' lead restructuring counsel, the U.S. Trustee, and counsel to any Committee, which notice may be delivered following the occurrence and during the continuation of an "Event of Default" under the DIP Documents (an "**Event of Default**"), stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

(b) Prior to the occurrence of the Carve-Out Trigger Date, the Debtors are authorized (subject to the Approved Budget) to pay Professional Fees that are authorized

to be paid in accordance with the provisions of the Bankruptcy Code and any order entered by the Court establishing procedures for the payment of compensation to Professional Persons in these Chapter 11 Cases, as the same may be due and payable, and such payments shall not reduce the Carve-Out Amount. Any payment or reimbursement made after the Carve-Out Trigger Date on account of Professional Fees incurred after the Carve-Out Trigger Date shall permanently reduce the Carve-Out on a dollar-for-dollar basis, *provided* that the Carve-Out shall not include, apply to or be available for any fees or expenses incurred by any party in connection with the restricted uses thereof set forth in paragraph 20.

(c) Immediately upon the Carve-Out Trigger Date, and prior to the payment of any DIP Secured Party or Prepetition Secured Party on account of adequate protection, the Debtors shall fund a reserve in an amount equal to the Carve-Out Amount (the "**Carve-Out Reserve**") from all cash on hand (including Cash Collateral, but excluding all Cash Collateral in the Cash Collateral Account that secures the DIP Letters of Credit as of such date, and, including any available cash thereafter held by any Debtor (exclusive of any cash utilized to cash collateralize the Prepetition Letters of Credit in connection with the Prepetition L/C Refinancing)). The Carve-Out Reserve shall be held for the benefit of the Debtors in a segregated non-interest bearing account at the DIP Agent or another financial institution agreed to by the Borrower and the Required Lenders (as defined in the DIP Credit Agreement) in trust to pay the Professional Fees and other obligations benefiting from the Carve-Out and the Carve-Out Reserve shall be available only to satisfy such obligations benefiting from the Carve-Out until paid in full; *provided* that the DIP Agent shall follow the instructions of the Debtors with respect to

the disbursement of the Carve-Out Reserve consistent with the provisions of this Interim Order; *provided further* that the DIP Agent shall not be liable to any Professional Person or any other person or entity with respect to the Carve-Out Reserve held at the DIP Agent, and all actions (or inactions) by the DIP Agent related thereto shall be exculpated by all such parties, except in the event a court of competent jurisdiction determines that the DIP Agent breached its obligations under this Interim Order by not following an instruction of the Debtors that was consistent with the provisions of this Interim Order with respect to the Carve-Out Reserve; *provided further*, that, to the extent the Carve-Out Reserve has not been reduced to zero after the payment in full of such obligations, it shall be used to pay the DIP Agent for the benefit of the DIP Secured Parties until the DIP Obligations have been indefeasibly paid in full in cash and all DIP Commitments have been terminated. Notwithstanding anything to the contrary herein, the Prepetition Agents and the DIP Agent, each on behalf of itself and the relevant secured parties, (y) shall not sweep or foreclose on the Carve-Out Reserve and (z) shall have a security interest upon any residual interest in the Carve-Out Reserve, available following satisfaction in cash in full of all obligations benefitting from the Carve-Out, and the priority of such lien on the residual shall be consistent with this Interim Order. Further, notwithstanding anything to the contrary herein, (A) the failure of the Carve-Out Reserve to satisfy in full the Professional Fees shall not affect the priority of the Carve-Out and (B) in no way shall the Carve-Out, the Post-Trigger Date Carve-Out Amount, the Carve-Out Reserve, or any of the foregoing be construed as a cap or limitation on the amount of the Professional Fees due and payable by the Debtors.

(d) Notwithstanding anything to the contrary herein or in the DIP Documents, the Carve-Out shall be senior to the DIP Obligations, the DIP Superpriority Claims, the DIP Liens (other than the DIP Liens in the Cash Collateral in the Cash Collateral Account that secures the DIP Letters of Credit), the Adequate Protection Obligations, the 507(b) Claims, the Adequate Protection Liens, and all other liens and claims granted under this Interim Order, the DIP Documents, or otherwise securing or in respect of the DIP Obligations or the Adequate Protection Obligations.

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

7. *DIP Superpriority Claims.* Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against the Loan Parties (without the need to file any proof of claim) with priority over any and all claims against the Loan Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses or other claims arising under section 105, 326, 328, 330, 331, 365, 503(b), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code (including the Adequate Protection Obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment, which

allowed claims (the "**DIP Superpriority Claims**") shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which DIP Superpriority Claims shall be payable from and have recourse to all prepetition and post-petition property of the Loan Parties and all proceeds thereof (excluding the Loan Parties' claims and causes of action under sections 502(d), 506(c), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and similar statutes or common law (collectively, the "**Avoidance Actions**"), but including, upon entry of the Final Order, any proceeds or property recovered, unencumbered or otherwise from Avoidance Actions, whether by judgment, settlement, or otherwise ("**Avoidance Proceeds**"), subject only to the liens on such property, the Carve-Out. The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise. The DIP Superpriority Claims shall be *pari passu* in right of payment with one another and senior to the Adequate Protection Claims; *provided* that the DIP Superpriority Claims in respect of the DIP Roll-Up Loans shall be subject and subordinate to the DIP Superpriority Claims in respect of the DIP Term Loans and the DIP LC Loans.

8. *DIP Liens*. As security for the DIP Obligations, effective and perfected upon the date of the Petition Date and without the necessity of the execution, recordation or filing of mortgages, security agreements, control agreements, pledge agreements, financing statements, notations on certificates of title for titled goods or other similar documents, or the possession or control by the DIP Agent of, or over, any DIP Collateral, the following security interests and liens are hereby granted to the DIP Agent for its own benefit and the benefit of the DIP Lenders

(all property identified in clauses (a) through (c) below being collectively referred to as the "**DIP Collateral**", subject to the Carve-Out and in each case in accordance with the priorities set forth in the table below (all such liens and security interests granted to the DIP Agent, for its benefit and for the benefit of the DIP Lenders, pursuant to this Interim Order and the DIP Documents, the "**DIP Liens**"):

(a) First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected first priority senior security interest in and lien upon all tangible and intangible prepetition and post-petition property of the Loan Parties, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date, is not subject to a valid, perfected, and non-avoidable lien (collectively, "**Unencumbered Property**"), including, without limitation, any and all unencumbered cash of the Loan Parties (whether maintained with the DIP Agent or otherwise) and any investment of such cash, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, letter-of-credit rights, investment property and support obligations, commercial tort claims, all books and records pertaining to the property described in this paragraph, all property of the Loan Parties held by any DIP Secured Party, all other goods (including but not limited to fixtures) and personal property of the Loan Parties, whether tangible or intangible and wherever located, Avoidance Proceeds (following entry of the Final Order), capital stock of subsidiaries,

wherever located, and, to the extent not covered by the foregoing, all other assets or property of the Debtors, whether tangible, intangible, real, personal or mixed, and the proceeds, products, rents, and profits of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise, of all the foregoing, in each case other than the Excluded Property (as defined in the DIP Documents) and Avoidance Actions, but including any proceeds of Excluded Property that do not otherwise constitute Excluded Property.

(b) Liens Priming Prepetition Secured Parties' Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected first priority priming security interest in and lien upon all Prepetition Collateral and DIP Collateral (wherever located and the proceeds, products, rents and profits thereof), subject and subordinate only to the Permitted Senior Liens, but senior in all respects to the Prepetition Liens and the Adequate Protection Liens (any such liens primed pursuant to this clause (b), the "**Primed Liens**"); *provided* that the DIP Liens in respect of the DIP Roll-Up Loans shall remain subject to the Intercreditor Agreement except that any proceeds allocated thereunder on account of the DIP Roll-Up Loans or the Prepetition Term Debt shall be applied first to the repayment in full of the DIP Roll-Up Loans before being applied to any Prepetition Term Debt.

(c) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected security interest in and lien upon all prepetition and post-petition property of the Loan Parties (wherever located, and the proceeds, products, rents, and profits thereof) immediately junior to (i) valid, perfected, and non-avoidable liens (other than Primed Liens) in

existence immediately prior to the Petition Date, (ii) valid non-avoidable liens (other than Primed Liens) that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code and (iii) the liens in favor of the DIP L/C Issuers in respect of the Cash Collateral Accounts, securing the Loan Parties' obligations under the DIP Letters of Credit (the liens described in the foregoing clause (i) through (iii), the "**Permitted Senior Liens**"); *provided* that nothing in this paragraph (c) shall limit the rights of the DIP Secured Parties under the DIP Documents to the extent the liens described in the foregoing clause (i) or (ii) are not permitted thereunder.

(d) Liens Senior to Certain Other Liens. The DIP Liens shall not be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Loan Parties and their estates under section 551 of the Bankruptcy Code, (B) unless otherwise provided for in the DIP Documents or in this Interim Order, any liens or security interests arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal, or other governmental unit (including any regulatory body), commission, board, or court for any liability of the Loan Parties, or (C) any intercompany or affiliate liens or security interests of the Loan Parties or (ii) subordinated to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code granted after the date hereof.

(e) Relative Priority of DIP Liens. Notwithstanding anything to the contrary herein, the DIP Liens in respect of the DIP Roll-Up Loans shall be subject and subordinate to the DIP Liens in respect of the DIP Term Loans and the DIP LC Loans in all respects.

(f) For the avoidance of doubt, any DIP Liens on DIP Collateral relating to real property of the Debtors granted pursuant to this paragraph 8 shall include, for the ratable benefit of the related DIP Secured Parties, in each case to the extent constituting DIP Collateral, all of each Debtor's right, title and interest now or hereafter acquired in and to all land, together with the buildings, structure, parking areas, and other improvements thereon, now or hereafter owned by any Debtor, including all easements, rights-of-way, and similar rights relating thereto and all leases, tenancies, and occupancies thereof, and (a) all goods, accounts, inventory, general intangibles, instruments, documents, contract rights and chattel paper, (b) all reserves, escrows or impounds and all deposit accounts maintained by each Debtor with respect to such real estate, (c) all leases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any person a possessory interest in, or the right to use, all or any part of such real estate, together with all related security and other deposits, (d) all of the rents, revenues, royalties, income proceeds, profits, accounts receivable, security and other types of deposits, and other benefits paid or payable by parties to the leases for using, leasing, licensing possessing, operating from, residing in, selling or otherwise enjoying such real estate, (e) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of such real estate, (f) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages, and appurtenances appertaining to the foregoing, (g) all

property tax refunds payable with respect to such real estate, (h) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof, (i) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by each Debtor as an insured party, and (j) all awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made to any Debtor by any governmental authority pertaining to any condemnation or other taking (or any purchase in lieu thereof) of all or any such real estate.

9. *Establishment of Cash Collateral Accounts; Maintenance of Letters of Credit.*

(a) In order to cash collateralize the new letters of credit issued and the Prepetition Letters of Credit deemed issued (the "**DIP Letters of Credit**") under the DIP L/C Sub-Facility, in accordance with the DIP Documents and this Interim Order, the Loan Parties shall, and are hereby authorized to, deposit as a single installment in cash into one or more non-interest-bearing cash collateral accounts established with the DIP Agent (the "**Cash Collateral Accounts**") the proceeds of the DIP LC Loans, which shall cash collateralize the DIP Letters of Credit in the amount of 103% of the face amount of issued and outstanding DIP Letters of Credit. The amounts on deposit in the Cash Collateral Accounts shall be subject to (y) a first-priority security interest and lien in favor of the DIP Agent for the benefit of the DIP L/C Issuers, securing the obligations of the Loan Parties under the DIP Letters of Credit, and (z) subject to the Carve-Out, a second-priority security interest and lien in favor of the DIP Agent for the benefit of the DIP Secured Parties, securing the other DIP Obligations.

(b) The Loan Parties are authorized to renew DIP Letters of Credit issued under the DIP L/C Sub-Facility on an uninterrupted basis and to take all actions reasonably appropriate with respect thereto on an uninterrupted basis. Without limitation of the foregoing, upon entry of this Interim Order, the Prepetition Letters of Credit shall be deemed to have been cancelled and reissued as DIP Letters of Credit in their full amounts and without modification of the terms of the Prepetition Letters of Credit other than their deemed issuance as DIP Letters of Credit issued under the DIP L/C Sub-Facility. The DIP L/C Issuers shall be authorized to apply any Cash Collateral held against the amount of any draw on any DIP Letter of Credit, and reducing the DIP L/C Sub-Facility by such amount so applied, without notice of any kind or further order or action by the Court and the automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified to the extent necessary to permit the DIP L/C Issuers to so apply any such Cash Collateral in the Cash Collateral Accounts. All issued and outstanding DIP Letters of Credit shall be cash collateralized at 103% of the face amount thereof and shall be deemed to be secured by Priority DIP Financing Liens (as defined in the Intercreditor Agreement) and the Cash Collateral advanced as DIP LC Loans under the DIP Facility. The DIP Letters of Credit shall remain cash collateralized as set forth herein at all times, and except as provided below with respect to Alternate Cash Collateral (as defined below), the Debtors shall have no right to use the Cash Collateral Accounts securing the DIP Letters of Credit, and such cash collateralization shall not be subject to any reduction by any chapter 11 plan, order of the Court, or otherwise; *provided* that, subject to the terms and conditions (including in section 9.03(j) of the DIP Credit Agreement) of the DIP Documents, the Borrower shall have the right to withdraw

proceeds on deposit in the Cash Collateral Accounts (which shall be accompanied by corresponding reduction in the DIP L/C Sub-Facility by such amount so withdrawn) in an amount up to the "Alternate Cash Collateral Amount" (as defined in the DIP Credit Agreement) to cash collateralize customer and/or supplier obligations (such cash collateral, the "**Alternate Cash Collateral**") in lieu of issuing Letters of Credit.

(c) To the extent there exists or comes to exist any cash of the Debtors' estates that is not Cash Collateral, wherever located and however held, such cash shall be deemed to have been used first by the Debtors' estates and such cash, to the extent applicable, shall be subject to the DIP Liens and DIP Superpriority Claims granted to the DIP Lenders hereunder.

10. *Protection of DIP Lenders' Rights.*

(a) So long as there are any DIP Obligations outstanding or the DIP Lenders have any outstanding Commitments (as defined in the DIP Documents) (the "**DIP Commitments**") under the DIP Documents, the Prepetition Secured Parties shall (i) have no right to and shall take no action to foreclose upon, or recover in connection with, the liens granted thereto pursuant to the Prepetition Secured Debt Documents or this Interim Order, or otherwise seek to exercise or enforce any rights or remedies against such DIP Collateral, including in connection with the Adequate Protection Liens, (ii) be deemed to have consented to any transfer, disposition or sale of, or release of liens on, such DIP Collateral (but not any proceeds of such transfer, disposition or sale to the extent remaining after payment in cash in full of the DIP Obligations and termination of the DIP Commitments), to the extent such transfer, disposition, sale or release is authorized under the DIP Documents, and (iii) not file any further financing statements, trademark filings,

copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in such DIP Collateral unless, solely as to this clause (iii), the DIP Agent or the DIP Lenders file financing statements or other documents to perfect the liens granted pursuant to this Interim Order, or as may be required by applicable state law to continue the perfection of valid and non-avoidable liens or security interests as of the Petition Date.

(b) To the extent any Prepetition Secured Party has possession of any Prepetition Collateral or DIP Collateral or has control with respect to any Prepetition Collateral or DIP Collateral that is subject to a DIP Lien, then such Prepetition Secured Party shall be deemed to maintain such possession or exercise such control as gratuitous bailee and/or gratuitous agent for perfection for the benefit of the DIP Secured Parties and shall comply with the instructions of the DIP Agent (acting upon the express prior written direction of the Required Lenders (as defined in the DIP Credit Agreement)) with respect to the exercise of such control.

(c) Any proceeds of Prepetition Collateral subject to the Primed Liens received by any Prepetition Secured Parties, whether in connection with the exercise of any right or remedy (including setoff) relating to the Prepetition Collateral or otherwise received by either of the Prepetition Agents, shall be segregated and held in trust for the benefit of and forthwith paid over to the DIP Agent for the benefit of the DIP Secured Parties in the same form as received, with any necessary endorsements. Notwithstanding the foregoing, the rights of setoff and first priority security interests of the financial institutions providing cash management services (solely to the extent related to cash

management obligations and as governed by the cash management order entered in these Chapter 11 Cases) are preserved.

(d) The automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified to the extent necessary to permit the DIP Secured Parties to enforce all of their rights under the DIP Documents and (i) immediately upon the occurrence of an Event of Default, to declare (A) the termination, reduction, or restriction of any further DIP Commitment to the extent any such DIP Commitment remains and (B) all applicable DIP Obligations to be immediately due and payable, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Loan Parties, and (ii) unless the Court orders otherwise during the Remedies Notice Period, upon the occurrence of an Event of Default and the giving by the DIP Agent of five business days' prior written notice (which shall run concurrently with any notice required to be provided under the DIP Documents) (the "**Remedies Notice Period**") delivered by email to the Debtors' lead restructuring counsel (with a copy to the Committee, if any, and the U.S. Trustee), (A) to withdraw consent to the Loan Parties' continued use of any Cash Collateral or (B) to exercise all other rights and remedies provided for in the DIP Documents and under applicable law; *provided* that, during the Remedies Notice Period, the Loan Parties shall be permitted to continue to use Cash Collateral in the ordinary course of business (subject to the Approved Budget and any permitted variance) and may request an expedited hearing before the Court to determine whether an Event of Default has occurred and is continuing and/or seek nonconsensual use of Cash Collateral. Subject to entry of the Final Order, in no event shall (y) the DIP Secured Parties or the Prepetition Secured Parties be subject to the equitable doctrine of "marshaling" or any

similar doctrine with respect to the DIP Collateral or (z) the "equities of the case" exception in section 552(b) of the Bankruptcy Code apply with respect to the secured claims of the Prepetition Secured Parties or the Prepetition Liens.

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

11. *Limitation on Charging Expenses Against Collateral*. Subject only to and effective upon entry of the Final Order, except to the extent of the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral (including Cash Collateral) or the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent (acting upon the express prior written direction of the Required Lenders (as defined in the DIP Credit Agreement)) or the applicable Prepetition Agent (acting upon the express prior written direction of the Required Lenders (as defined in the Prepetition Revolving Credit Agreement or the Prepetition Term Loan Credit Agreement, as applicable)), as the case may be, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Secured Parties or the Prepetition Secured Parties, and nothing contained in this Interim Order shall be deemed to be a consent by the DIP

Secured Parties or the Prepetition Secured Parties to any charge, lien, assessment, or claim against the DIP Collateral under section 506(c) of the Bankruptcy Code or otherwise.

12. *Payments Free and Clear*. Subject to the Carve-Out, any and all payments or proceeds remitted to the DIP Agent on behalf of the DIP Secured Parties pursuant to the provisions of this Interim Order or the DIP Documents shall be received free and clear of any claim, charge, assessment, or other liability, including, without limitation, and subject to entry of the Final Order, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) of the Bankruptcy Code (whether asserted or assessed by, through, or on behalf of the Debtors) or 552(b) of the Bankruptcy Code.

13. *Use of Cash Collateral*. The Debtors are hereby authorized, subject to the Approved Budget (including any permitted variances) and the terms and conditions of this Interim Order, to use all Cash Collateral.

14. *Adequate Protection of Prepetition Secured Parties*. The Prepetition Secured Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1), and 507 of the Bankruptcy Code, to adequate protection of their respective interests in the Prepetition Collateral, for and equal in amount to the aggregate diminution in the value of the Prepetition Secured Parties' prepetition security interests in the Prepetition Collateral from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including, but not limited to, the Debtors' use, sale or lease of Cash Collateral and other Prepetition Collateral, the imposition of the automatic stay and/or the Carve-Out (the "**Adequate Protection Claims**"); *provided* that the avoidance of any Prepetition Secured Party's interests in Prepetition Collateral shall not constitute diminution in the value of such Prepetition Secured Party's interests in Prepetition

Collateral. In consideration of the foregoing, the Prepetition Secured Parties are hereby granted the following (collectively, the "**Adequate Protection Obligations**"):

(a) Adequate Protection Liens. Each of the Prepetition Revolving Agent (for itself and for the benefit of the Prepetition Revolving Lenders) and the Prepetition Term Agent (for itself and for the benefit of the Prepetition Term Lenders) is hereby granted (effective and perfected upon the Petition Date and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements, or other agreements), in the amount of its respective Adequate Protection Claim, a valid, perfected replacement security interest in and lien upon (the "**Adequate Protection Liens**") the DIP Collateral (including, without limitation, upon entry of the Final Order, the Avoidance Proceeds), which Adequate Protection Liens shall secure the respective Adequate Protection Claims, and in each case shall be (i) *pari passu* with each other Adequate Protection Lien granted hereunder, subject to the Intercreditor Agreement, and (ii) subject and subordinate only to the Carve-Out, the DIP Liens, and the Permitted Senior Liens; *provided* that the DIP Roll-Up Loans shall be pari passu with the Prepetition Revolving Debt in all respects such that distributions on the Prepetition Revolving Debt are pro rata with the sum of the DIP Roll-Up Loans and the Prepetition Term Loans; provided that any proceeds allocated on account of the DIP Roll-Up Loans and the Prepetition Term Loans (including in respect of the Adequate Protection Obligations) shall be applied first to the repayment of the DIP Roll-Up Loans before any Prepetition Term Loan.

(b) 507(b) Claims. Each of the Prepetition Agents (on behalf of the applicable Prepetition Secured Parties) are hereby granted an allowed superpriority

administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of their respective Adequate Protection Claims with, except as set forth in this Interim Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code (the "**507(b) Claims**"), which 507(b) Claims (subject to DIP Liens and DIP Superpriority Claims) shall have recourse to and be payable from all of the DIP Collateral (including, without limitation, subject to entry of the Final Order, the Avoidance Proceeds). The 507(b) Claims shall be (i) *pari passu* with each other 507(b) Claim granted hereunder, subject to the Intercreditor Agreement, and (ii) subject and subordinate only to the Carve-Out, the DIP Superpriority Claims, the DIP Liens, and the Permitted Senior Liens. Except to the extent expressly set forth in this Interim Order or the DIP Credit Agreement, the Prepetition Secured Parties shall not receive or retain any payments, property or other amounts in respect of the 507(b) Claims unless and until the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and the DIP Superpriority Claims have indefeasibly been paid in cash in full and all DIP Commitments have been terminated.

(c) Adequate Protection Cash Payments. In each case subject to reallocation or recharacterization as payment of principal under section 506(a) and (b) of the Bankruptcy Code as may be ordered by the Court in connection with a timely and successful Challenge pursuant to paragraph 19 or 20 below, until the indefeasible discharge of the Prepetition Secured Debt, the Prepetition Agents, for the benefit of the applicable Prepetition Secured Parties, shall receive current payment in cash on the last business day of each month in an amount equal to the sum of all post-petition unpaid

interest accruing on all outstanding principal, interest, fees, and other amounts owing under the applicable Prepetition Secured Debt (as of the Petition Date), in each case at the applicable default rate (the payments in this subparagraph (c), the "**Adequate Protection Payments**").

(d) Prepetition Secured Parties Fees and Expenses. The Loan Parties shall make current cash payments of the reasonable and documented prepetition and post-petition fees and expenses incurred by the Prepetition Agents or the Ad Hoc Group in connection with the Chapter 11 Cases (limited, in the case of the advisors to the Prepetition Term Lenders that are members of the Ad Hoc Group, to Houlihan Lokey, Inc., Willkie Farr & Gallagher LLP, Young Conaway Stargatt & Taylor, LLP, and one local counsel in each material jurisdiction; in the case of the advisors to the Prepetition Revolving Agent and the Prepetition Revolving Lenders, to RPA Advisors, LLC, Vinson & Elkins LLP, and one local counsel in each material jurisdiction; and, in the case of the advisors to the Prepetition Term Agent, to Arnold & Porter Kaye Scholer LLP and one local counsel in each relevant jurisdiction) promptly upon receipt of invoices therefor, which payments (to the extent for fees, expenses, and disbursements incurred after the Petition Date) shall be made within 10 days (which time period may be extended by the applicable professional) after the receipt by the Debtors, the Committee, if any, and the U.S. Trustee (the "**Review Period**") of invoices therefor (the "**Invoiced Fees**") and without the necessity of filing formal fee applications, including such amounts arising before or after the Petition Date. The invoices for such Invoiced Fees shall include the number of hours billed (except for financial advisors compensated on other than an hourly basis) and a summary description of services provided and the aggregate expenses

incurred by the applicable professional firm; *provided*, *however*, that any such invoice (i) may be limited and/or redacted to protect privileged, confidential, or proprietary information and (ii) shall not be required to contain individual time detail (*provided* that such invoice shall contain (except for financial advisors compensated on other than an hourly basis) summary data regarding hours worked by each timekeeper for the applicable professional and such timekeepers' hourly rates). The Debtors, the Committee, if any, and the U.S. Trustee may object to any portion of the Invoiced Fees (the "**Disputed Invoiced Fees**") within the Review Period by filing with the Court a motion or other pleading, on at least ten days' prior written notice (but no more than thirty days' notice) of any hearing on such motion or other pleading, setting forth the specific objections to the Disputed Invoiced Fees in reasonable narrative detail and the bases for such objections; *provided* that payment of any undisputed portion of Invoiced Fees shall not be delayed based on any objections thereto.

(e) Financial Reporting. The Debtors shall provide the Prepetition Agents with financial and other reporting substantially in compliance with the reports and notices provided for in the DIP Documents, in each case when and as required under the DIP Documents.

(f) DIP Roll-Up Facility. Subject to entry of a Final Order, the Debtors shall use the DIP Roll-Up Loans to refinance and discharge dollar-for-dollar Prepetition Term Loans held by the DIP Lenders in the aggregate amount equal to the DIP Term Loans and the DIP LC Loans funded under the DIP Facility.

15. *Reservation of Rights of Prepetition Secured Parties*. Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code,

including section 506(b) thereof, the Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Prepetition Secured Parties; *provided* that any of the Prepetition Secured Parties may request further or different adequate protection, and the Debtors or any other party may contest any such request.

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

(a) The DIP Agent, the DIP Lenders and the Prepetition Secured Parties are hereby authorized, but not required, to file or record (and to execute in the name of the Loan Parties, as their true and lawful attorneys, with full power of substitution, to the maximum extent permitted by law) financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over cash or securities, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Agent, on behalf of the DIP Secured Parties, or the Prepetition Secured Parties shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over any cash or securities, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable, and not subject to challenge, dispute, or subordination, at the time and on the date of entry of this Interim Order. Upon the request of the DIP Agent (acting upon the express prior written direction of the Required Lenders (as defined in the DIP Credit Agreement)), each of the Prepetition Secured Parties and the Loan Parties, without any further consent of any party, is authorized (in the case of the Loan Parties) and directed (in the case of the

Prepetition Secured Parties) to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Agent to further validate, perfect, preserve, and enforce the DIP Liens. All such documents shall be deemed to have been recorded and filed as of the Petition Date.

(b) This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction, taking possession of or control over cash, deposit accounts, securities, or other assets, or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement, customs broker agreement or freight forwarding agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens, or to entitle the DIP Secured Parties to the priorities granted herein. Notwithstanding the foregoing, a certified copy of this Interim Order may, in the discretion of the DIP Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized and directed to accept such certified copy of this Interim Order for filing and/or recording, as applicable. The automatic stay of section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit the DIP Agent to take all actions, as applicable, referenced in this subparagraph (b) and the immediately preceding subparagraph (a).

17. *Milestones*. It is a condition to the DIP Facilities that the Debtors shall comply with the Case Milestones (as defined in the DIP Credit Agreement). Any Case Milestone that would otherwise fall on a Saturday, Sunday or federal holiday will be treated in accordance with Bankruptcy Rule 9006. The failure to comply with any Milestone shall constitute an Event of Default, in accordance with the terms of the DIP Credit Agreement.

18. *Preservation of Rights Granted Under This Interim Order*.

(a) Other than the Carve-Out, Permitted Senior Liens and other claims and liens expressly granted by this Interim Order, no claim or lien having a priority superior to or that is *pari passu* with those granted by this Interim Order to the DIP Secured Parties or the Prepetition Secured Parties, respectively, shall be permitted while any of the DIP Obligations or the Adequate Protection Obligations remain outstanding, and, except as otherwise expressly provided in this Interim Order, the DIP Liens and the Adequate Protection Liens shall not be (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Loan Parties' estates under section 551 of the Bankruptcy Code, (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise, (iii) subordinated to or made *pari passu* with any liens arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal, or other domestic or foreign governmental unit (including any regulatory body), commission, board, or court for any liability of the Loan Parties, or (iv) subject or junior to any intercompany or affiliate liens or security interests of the Loan Parties.

(b) Notwithstanding any order that may be entered dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or that otherwise is at any time entered, (i) the DIP Superpriority Claims, the 507(b) Claims, the DIP Liens, and the Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations and Adequate Protection Obligations shall have been indefeasibly paid in full in cash (and that such DIP Superpriority Claims, 507(b) Claims, DIP Liens, and Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest), (ii) the other rights granted by this Interim Order shall not be affected, and (iii) the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in this paragraph 18 and otherwise in this Interim Order.

(c) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated, or stayed, such reversal, modification, vacatur, or stay shall not affect (i) the validity, priority or enforceability of any DIP Obligations or Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Agent, the Prepetition Revolving Agent or the Prepetition Term Agent, as applicable, of the effective date of such reversal, modification, vacatur, or stay or (ii) the validity, priority, or enforceability of the DIP Liens or the Adequate Protection Liens. Notwithstanding any such reversal, modification, vacatur, or stay of any use of Cash Collateral, any DIP Obligations or any Adequate Protection Obligations incurred by the Loan Parties to the DIP Secured Parties or the Prepetition Secured Parties, as the case may be, prior to the actual receipt of written notice by the DIP Agent, the Prepetition Revolving Agent, or the

Prepetition Term Agent, as applicable, of the effective date of such reversal, modification, vacatur, or stay shall be governed in all respects by the original provisions of this Interim Order, and the DIP Secured Parties and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Interim Order and the DIP Documents.

(d) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Obligations, the DIP Liens, the DIP Superpriority Claims, the 507(b) Claims, the Adequate Protection Liens, and the Adequate Protection Obligations and all other rights and remedies of the DIP Agent, the DIP Lenders and the Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall survive, and shall not be modified, impaired, or discharged by the entry of an order (i) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, dismissing any of the Chapter 11 Cases, terminating the joint administration of the Chapter 11 Cases or by any other act or omission, (ii) approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents), or (iii) confirming a chapter 11 plan in any of the Chapter 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Loan Parties have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in the Chapter 11 Cases, in any successor cases if the Chapter 11 Cases cease to be jointly administered and in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Obligations, the DIP Liens, the DIP Superpriority Claims, the 507(b) Claims, the Adequate Protection Liens, and the Adequate Protection

Obligations and all other rights and remedies of the DIP Secured Parties and the Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall continue in full force and effect until the DIP Obligations are indefeasibly paid in full in cash, as set forth herein and in the DIP Documents, and the Commitments have been terminated.

19. *Effect of Stipulations on Third Parties*.

(a) The Debtors' stipulations, admissions, agreements and releases contained in this Interim Order shall be binding upon (i) the Debtors and their estates, in all circumstances and for all purposes and (ii) all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases (including a Committee, if any) and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors, in all circumstances and for all purposes unless (A) such committee or any other party in interest (subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so), in each case, with standing granted by the Court, has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, *inter alia*, in this paragraph 19) (1) objecting to or challenging the amount, validity, perfection, enforceability, priority, or extent of the Prepetition Secured Debt or the Prepetition Liens or (2) otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests, or defenses (collectively, a "**Challenge**") against the Prepetition Secured Parties or their respective subsidiaries,

affiliates, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals and their respective successors and assigns thereof, in each case in their respective capacity as such (each, a "**Representative**" and, collectively, the "**Representatives**") in connection with matters related to any claims of the Debtors against the Prepetition Secured Parties, the Prepetition Secured Debt Documents, the Prepetition Secured Debt, the Prepetition Liens, the Prepetition Collateral, or otherwise, *provided* that all pleadings filed in connection with a Challenge shall set forth the basis for such challenge or claim, (B) such Challenge has been filed prior to the latest of (1) (Y) with respect to parties in interest with standing (other than a Committee), 75 calendar days after entry of this Interim Order and (Z) with respect to a Committee, if any, 60 calendar days after the appointment of the Committee, (2) any such later date as has been agreed to, in writing, by the Prepetition Revolving Agent or the Prepetition Term Agent (acting upon the express prior written direction of the Required Lenders (as defined in the DIP Credit Agreement)) (as applicable), and (3) any such later date as has been ordered by the Court for cause upon a motion filed and served within any applicable time period set forth in this paragraph 19 (the time period established by the foregoing clauses (1) through (3), the "**Challenge Period**") (for the avoidance of doubt, if a Committee is appointed after the period in sub-clause (1)(Y) has expired, the Challenge Period shall have expired), and (C) there is a final non-appealable order sustaining such Challenge in favor of the plaintiff in such timely filed adversary proceeding or contested matter. Any Challenge not so specified prior to the expiration of the Challenge Period shall be deemed forever, waived, released, and barred.

(b) If no such Challenge is filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such proceeding, then (i) the Debtors' stipulations, admissions, agreements, and releases contained in this Interim Order shall be binding on all parties in interest, including, without limitation, the Committee, if any, (ii) the obligations of the Loan Parties under the Prepetition Secured Debt Documents, including the Prepetition Secured Debt, shall constitute allowed claims not subject to defense, claim, counterclaim, recharacterization, subordination, offset, or avoidance, for all purposes in the Chapter 11 Cases, and any subsequent chapter 7 case(s), (iii) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens, not subject to recharacterization, subordination, avoidance, or other defense, (iv) the Prepetition Secured Debt and the Prepetition Liens shall not be subject to any other or further claim or challenge by a Committee, if any, any non-statutory committees appointed or formed in the Chapter 11 Cases or any other party in interest acting or seeking to act on behalf of the Debtors' estates, and (v) any defenses, claims, causes of action, counterclaims, and offsets by a Committee, if any, any non-statutory committees appointed or formed in the Chapter 11 Cases, or any other party acting or seeking to act on behalf of the Debtors' estates, whether arising under the Bankruptcy Code or otherwise, against any of the Prepetition Secured Parties and their Representatives arising out of or relating to the any claims of the Debtors against the Prepetition Secured Parties, the Prepetition Secured Debt Documents or otherwise shall be deemed forever waived, released, and barred. If any such Challenge is filed during the Challenge Period, the stipulations, admissions, agreements, and releases contained in this Interim Order shall nonetheless remain binding

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

20. *Limitation on Use of DIP Financing Proceeds and Collateral*. Notwithstanding anything herein or in any other order entered by the Court to the contrary, no proceeds of the DIP Facilities, DIP Collateral, Prepetition Collateral (including Cash Collateral), or the Carve-Out may be used (a) for Professional Fees incurred for (i) any litigation or threatened litigation (whether by contested matter, adversary proceeding, or otherwise, including any investigation in connection with litigation or threatened litigation) against any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties or for the purpose of objecting to or challenging the validity, perfection, enforceability, extent, amount or priority of any claim, lien, or security interest held or asserted by any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties or (ii) asserting any defense, claim, cause of action, counterclaim, or offset with respect to the DIP Obligations, the Prepetition Secured Debt (including, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code,

applicable non-bankruptcy law or otherwise), the DIP Liens, or the Prepetition Liens or against any of the Prepetition Secured Parties or their respective Representatives, (b) to prevent, hinder, or otherwise delay any of the DIP Agent's or the Prepetition Secured Parties' assertion, enforcement, or realization on the Prepetition Collateral or the DIP Collateral in accordance with the DIP Documents, the Prepetition Secured Debt Documents or this Interim Order other than to seek a determination that an Event of Default has not occurred or is not continuing, or in connection with a Remedies Hearing, (c) to seek to modify any of the rights granted to the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties under this Interim Order or under the DIP Documents or the Prepetition Loan Documents, in each of the foregoing cases without such parties' prior written consent, which may be given or withheld by such party in the exercise of its respective sole discretion, or (d) to pay any amount on account of any claims arising prior to the Petition Date unless such payments are approved by an order of the Court (including, without limitation, hereunder); *provided* that notwithstanding anything to the contrary herein, the Committee, if any, may use the proceeds of the DIP Facilities, DIP Collateral (including Cash Collateral), and/or the Carve-Out to investigate (but not prosecute or initiate the prosecution of, including the preparation of any complaint or motion on account of) prior to (but not after) the delivery of a Carve-Out Trigger Notice, (y) the claims and liens of the Prepetition Secured Parties, and (z) potential claims, counterclaims, causes of action, or defenses against the Prepetition Secured Parties; *provided further* that no more than an aggregate of $50,000 of the proceeds of the DIP Facilities, DIP Collateral (including Cash Collateral, but excluding all Cash Collateral in the Cash Collateral Account that secures the DIP Letters of Credit), and/or the Carve-Out may be used by the Committee, if any, in respect of the investigations set forth in the preceding proviso (the "**Investigation Budget**").

21. *Release*. Subject to (i) entry of a Final Order and (ii) paragraph 19 hereof, and as further set forth in the DIP Documents, the Debtors, on behalf of themselves and their estates (including any successor trustee or other estate representative in these Chapter 11 Cases or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases) and any party acting by, through, or under any of the Debtors or any of their estates, hereby stipulate and agree that they forever and irrevocably (a) release, discharge, waive, and acquit the current or future DIP Agent and other current or future DIP Secured Parties, the Prepetition Revolving Secured Parties, and the Prepetition Term Secured Parties, and each of their respective participants and each of their respective affiliates, and each of their respective former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, successors, assigns and predecessors in interest (collectively, "**Released Parties**"), from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description, arising out of, in connection with, or relating to the DIP Facilities, the DIP Documents, the Prepetition Loan Documents, or the transactions and relationships contemplated hereunder or thereunder, including, without limitation, (i) any so-called "lender liability" or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code (including, without limitation, Avoidance Actions),

and (iii) any and all claims and causes of action regarding the validity, priority, perfection, or avoidability of the liens or secured claims of the DIP Agent, the other DIP Secured Parties, the Prepetition Revolving Secured Parties and the Prepetition Term Secured Parties; and (b) waive any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability, and nonavoidability of the DIP Loans, the DIP Liens, the DIP Superpriority Claims, the Prepetition Secured Debt, the Prepetition Liens, the Adequate Protection Claims, the Adequate Protection Liens, and any adequate protection payment obligations pursuant to this Interim Order. For the avoidance of doubt, the foregoing release shall not constitute a release of any rights arising under the DIP Documents. Notwithstanding the releases and covenants contained above in this paragraph, such releases and covenants in favor of the Released Parties shall be deemed acknowledged and reaffirmed by the Debtors each time there is an advance of funds, extension of credit, or financial accommodation under this Interim Order and the DIP Documents.

22. *Exculpation*. Nothing in this Interim Order, the DIP Documents or any other documents related to these transactions shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent or any DIP Lender of any liability for any claims arising from the prepetition or post-petition activities of the Debtors in the operation of their business, or in connection with their restructuring efforts. So long as the DIP Agent and the DIP Lenders comply with their obligations under the DIP Documents and their obligations, if any, under applicable law (including the Bankruptcy Code), (a) the DIP Agent and the DIP Lenders shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral or any reserves established pursuant to this Interim Order, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the

value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency, or other person and (b) all risk of loss, damage, or destruction of the DIP Collateral shall be borne by the Loan Parties.

23. *Order Governs*. In the event of any inconsistency between the provisions of this Interim Order, the DIP Documents, or any other order entered by the Court, the provisions of this Interim Order shall govern. Notwithstanding anything to the contrary in any other order entered by the Court, any payment made, or authorization contained in, any other order entered by the Court shall be consistent with and subject to the requirements set forth in this Interim Order and the DIP Documents, including, without limitation, the Approved Budget (including any permitted variances); *provided* that the Approved Budget (including any permitted variances) shall not constitute a cap or limitation on any Professional Fees and shall not affect the Carve-Out.

24. *Binding Effect; Successors and Assigns*. The DIP Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in the Chapter 11 Cases, including, without limitation, the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, the Committee, if any, any non-statutory committees appointed or formed in the Chapter 11 Cases, the Debtors, and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, the Debtors, and their respective successors and assigns; *provided* that the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties shall

have no obligation to permit the use of the DIP Collateral (including Cash Collateral) or to extend any financing to any chapter 7 trustee, chapter 11 trustee, or similar responsible person appointed for the estates of the Debtors.

25. *Limitation of Liability*. In determining to make any loan or other extension of credit under the DIP Credit Agreement, to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents, the DIP Agent and the DIP Lenders (and the Prepetition Secured Parties in respect of the use of Cash Collateral) shall not (a) be deemed to be in "control" of the operations of the Debtors, (b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates, and (c) be deemed to be acting as a "Responsible Person," "Owner," or "Operator" with respect to the operation or management of the Debtors, so long as the DIP Agent's and the DIP Lenders' actions do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a vessel or facility owned or operated by a Debtor, or otherwise cause liability to arise to the federal or state government or the status of "responsible person" or "managing agent" to exist under applicable law (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute).

26. *Inapplicability of Bar Date; Master Proof of Claim*. Any order entered by the Court establishing a bar date for any claims (including, without limitation, administrative claims) in any of the Chapter 11 Cases or any subsequent chapter 7 case of any of the Debtors shall not apply to any DIP Secured Party, any Prepetition Term Secured Party or any Prepetition Revolving Secured Party. The DIP Secured Parties, Prepetition Secured Parties and the Prepetition Revolving Secured Parties shall not be required to file proofs of claim or requests for

approval of administrative expenses authorized by this Interim Order in any of the Chapter 11 Cases or any subsequent chapter 7 case of any of the Debtors. The provisions of this Interim Order, and, upon the entry thereof, the Final Order, relating to the amount and/or priority of the DIP Loans, the Prepetition Term Debt, the Prepetition Revolving Debt, the Adequate Protection Claims, the Adequate Protection Liens, any adequate protection payments pursuant to this Interim Order, the Prepetition Liens, the DIP Liens and the DIP Superpriority Claims shall constitute a sufficient and timely filed proof of claim and/or administrative expense request in respect of such obligations and such secured status. However, in order to facilitate the processing of claims, to ease the burden upon the Court, and to reduce an unnecessary expense to the Debtors' estates, each of the Prepetition Revolving Agent and the Prepetition Term Agent is authorized to file in the Debtors' lead Chapter 11 Case *In re Southcross., et al.,* Case No. 19-10702 (MFW) , a single, master proof of claim on behalf of the Prepetition Revolving Secured Parties and the Prepetition Term Secured Parties, as applicable, on account of any and all of their respective claims arising under the applicable Prepetition Secured Debt Documents and hereunder (each, a "**Master Proof of Claim**") applicable against each of the Debtors. Upon the filing of a Master Proof of Claim, (a) the Prepetition Revolving Agent and the Prepetition Revolving Secured Parties and (b) the Prepetition Term Agent and the Prepetition Term Secured Parties, as applicable, and each of their respective successors and assigns, shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against each of the Debtors of any type or nature whatsoever with respect to the applicable Prepetition Secured Debt Documents, and the claim of each Prepetition Secured Party (and each of its respective successors and assigns), named in a Master Proof of Claim shall be treated as if such entity had filed a separate proof of claim in each of the Chapter 11 Cases. The

Master Proofs of Claim shall not be required to identify whether any Prepetition Secured Party acquired its claim from another party and the identity of any such party or to be amended to reflect a change in the holders of the claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from the transfer of all or any portion of such claims. Nothing in this Interim Order shall waive the right of any DIP Secured Party or any Prepetition Secured Party to file its own proof of claim against any of the Debtors. The provisions of this paragraph 26 and each Master Proof of Claim are intended solely for the purpose of administrative convenience and shall not affect the right of each Prepetition Secured Party (or its successors in interest) to vote separately on any plan proposed in the Chapter 11 Cases. The Master Proofs of Claim shall not be required to attach any instruments, agreements, or other documents evidencing the obligations owing by each of the Debtors to the applicable Prepetition Secured Parties, which instruments, agreements, or other documents will be provided upon reasonable written request to counsel to the Prepetition Revolving Agent and Prepetition Term Agent, as applicable.

27. *Secured Party Consents.* No approval, agreement, or consent requested of the DIP Secured Parties and/or the Prepetition Secured Parties by the Debtors pursuant to the terms of this Interim Order or otherwise shall be inferred from any action, inaction, or acquiescence of the DIP Secured Parties or the Prepetition Secured Parties, as applicable, other than a writing acceptable to the DIP Secured Parties or the Prepetition Secured Parties, as applicable, that is signed by such person(s) and expressly shows such approval, agreement or consent, without limitation. Nothing herein shall in any way affect the rights of the DIP Secured Parties or the Prepetition Secured Parties as to any non-Debtor entity, without limitation. Unless expressly required otherwise hereunder, any determination, agreement, decision, consent, election,

approval, acceptance, waiver, designation, authorization, or other similar circumstance or matter of any of the DIP Secured Parties or the Prepetition Secured Parties, as applicable, hereunder or related hereto, shall be in the such person(s)' sole and absolute discretion.

28. *Insurance*. To the extent that any of the Prepetition Revolving Agent or Prepetition Term Agent is listed as loss payee or additional insured under any of the Borrower's or Guarantors' insurance policies, the DIP Agent is also deemed to be the loss payee or additional insured, as applicable, under such insurance policies and shall act in that capacity and distribute any proceeds recovered or received in respect of any such insurance policies, *first*, to the payment in full of the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted), and *second*, to the payment of the applicable Prepetition Secured Debt.

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

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

31. *Payments Held in Trust for the DIP Agent and DIP Lenders*. Except as expressly permitted in this Interim Order or the DIP Documents, in the event that any person or entity receives any payment on account of a security interest in DIP Collateral, receives any DIP Collateral or any proceeds of DIP Collateral, or receives any other payment with respect thereto

from any other source prior to indefeasible payment in full in cash of all DIP Obligations under the DIP Documents, and termination of the Commitments in accordance with the DIP Documents, such person, or entity shall be deemed to have received, and shall hold, such payment or proceeds of DIP Collateral in trust for the benefit of the DIP Agent and the DIP Lenders and shall immediately turn over such proceeds to the DIP Agent, or as otherwise instructed by the Court, for application in accordance with the DIP Documents and this Interim Order.

32. *Credit Bidding*. The DIP Secured Parties shall have the right to credit bid, in accordance with the DIP Documents, up to the full amount of the DIP Obligations other than the amount of the DIP Roll-Up Loans, in any sale of the DIP Collateral. Subject to entry of a Final order, paragraph 19 hereof, and the Intercreditor Agreement, the DIP Secured Parties shall have the right to credit bid, in accordance with the DIP Documents, the amount of the DIP Roll-Up Loans in any sale of the DIP Collateral. Subject to entry of a Final order and subject to paragraph 19 hereof, each of the Prepetition Secured Parties shall have the right to credit bid, subject to the Intercreditor Agreement, up to the full amount of the applicable Prepetition Secured Debt in any sale of the Prepetition Collateral, in each case pursuant to section 363(k) of the Bankruptcy Code and subject to any successful Challenge, without the need for further Court order authorizing the same and whether any such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code or otherwise.

33. *Wind Down Budget*. In the event that the Debtors pursue a "Section 363 Sale" (as defined in the DIP Credit Agreement) of all or substantially all of the Debtors' assets, then in connection with such Section 363 Sale, the Debtors and the Required DIP Lenders will negotiate

in good faith a reasonable wind-down budget (the "**Wind-Down Budget**") to pay all allowed (i) post-petition claims, (ii) administrative expense and priority claims and (iii) professional fees and expenses necessary to wind-down the Debtors' estates in a reasonable and appropriate timeline. Notwithstanding anything else to the contrary in this Interim Order, subject and subordinate to the Carve Out (i) the net proceeds of any Section 363 Sale shall first satisfy the Wind-Down Budget before repayment of any DIP Obligations, Adequate Protection Obligations, 507(b) Claims, Prepetition Secured Debt or any other claims against the Debtors and (ii) any credit bid shall be subject to the Debtors having sufficient cash at the consummation of the Section 363 Sale to satisfy the Wind-Down Budget. For the avoidance of doubt, the Cash Collateral Accounts that secure the DIP Letters of Credit shall not be used as part of the Wind Down Budget or the Carve-Out.

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

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

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

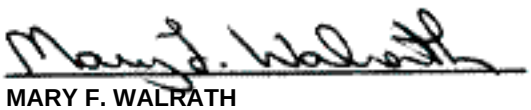
37. *Final Hearing*. The Final Hearing is scheduled for May 7, 2019 at 11:00 a.m. (Prevailing Eastern Time) before the Court.

38. *Objections*. Any party in interest objecting to the relief sought at the Final Hearing shall file and serve written objections, which objections shall be served upon (a) counsel to the Debtors, (i) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 (Attention: Marshall S. Huebner, Darren S. Klein, and Steven Z. Szanzer) and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, P.O. Box 1347, Wilmington, DE 19899 (Attention: Andrew R. Remming and Robert J. Dehney), (b) counsel to the DIP Agent and DIP Lenders, (i) Arnold & Porter Kaye Scholer LLP, 70 W. Madison Street, Suite 4200, Chicago, IL 60614 (Attention: Seth J. Kleinman and Alan Glantz) and (ii) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019-6099 (Attention: Joseph G. Minias, Paul V. Shalhoub, and Leonard Klingbaum), and (iii) Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, Delaware 19801 (Attention: Matthew B. Lunn), (c) counsel to the Prepetition Revolving Agent, (i) Vinson & Elkins LLP, Trammell Crow Center 2001 Ross Ave, Suite 3900, Dallas, Texas, 75201 (Attention: Bill Wallander, Brad Foxman, and Matt Pyeatt), (d) counsel to the Prepetition Term Agent, (i) Arnold & Porter Kaye Scholer LLP, 70 W. Madison Street, Suite 4200, Chicago, IL 60614 (Attention: Seth J. Kleinman and Alan Glantz) and (ii) Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, Delaware 19801 (Attention: Matthew B. Lunn) , (e) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attention: Richard Schepacarter), (f) counsel to the Ad Hoc Group, (i) Willkie Farr & Gallagher LLP, (Attention: Joseph G. Minias, Paul V. Shalhoub, and Leonard Klingbaum) and (ii) Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, Delaware 19801 (Attention: Matthew B. Lunn), and (g) counsel to Southcross Holdings LP and its non-Debtor subsidiaries, (i) Debevoise & Plimpton LLP, 919 Third Avenue, New York, NY 10022 (Attention: Natasha Labovitz), and (h) any other party that

has filed a request for notices with the Court, in each case to allow actual receipt by the foregoing no later than April 16, 2019 at 4:00 p.m. (prevailing Eastern Time).

39. The Debtors shall promptly serve copies of this Interim Order (which shall constitute adequate notice of the Final Hearing, including, without limitation, notice that the Debtors will seek approval at the Final Hearing of a waiver of rights under sections 506(c) and 552(b) of the Bankruptcy Code) to the parties having been given notice of the Interim Hearing, to any party that has filed a request for notices with the Court and to the Committee after the same has been appointed, or such Committee's counsel, if the same shall have been appointed.

Dated: April 2nd, 2019
Wilmington, Delaware



MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

SENIOR SECURED SUPERPRIORITY PRIMING

DEBTOR-IN-POSSESSION CREDIT AGREEMENT

dated as of

April [●], 2019

among

Southcross Energy Partners, L.P.,
a Debtor and a Debtor-in-Possession, as Borrower,

Wilmington Trust, National Association,
as DIP Agent,

The Issuing Banks Party Hereto,

and

The Lenders Party Hereto

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ANNEXES, EXHIBITS AND SCHEDULES

THIS SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT dated as of April [●], 2019, is among: Southcross Energy Partners, L.P., a Delaware limited partnership and a debtor and debtor-in-possession (the "**Borrower**"); each of the Issuing Banks from time to time party hereto; each of the Lenders from time to time party hereto; and Wilmington Trust, National Association, as agent for the Lenders (in such capacity, the "**DIP Agent**");

RECITALS

A. The Borrower entered into that certain Term Loan Credit Agreement dated as of August 4, 2014 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the "**Prepetition Term Loan Agreement**"), with the financial institutions from time to time party thereto as lenders (together with their successors and assigns, collectively, the "**Prepetition Term Lenders**") and Wilmington Trust, National Association, as successor administrative agent for the Prepetition Term Lenders (together with its successors in such capacity, the "**Prepetition Term Agent**"), pursuant to which the Prepetition Term Lenders extended to the Borrower term loans ("**Prepetition Term Loans**") and made certain other financial accommodations to the Borrower and the other Loan Parties (as defined therein) pursuant to the terms thereof (such credit facility, together with the Loan Documents (as defined therein), the "**Prepetition Term Loan Facility**").

B. The Borrower entered into that certain Third Amended and Restated Revolving Credit Agreement dated as of August 4, 2014 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the "**Prepetition Revolving Loan Agreement**"), with the financial institutions from time to time party thereto as lenders (together with their successors and assigns, collectively, the "**Prepetition Revolving Lenders**"), the financial institutions acting as issuing banks for the Prepetition Letters of Credit (the "**Prepetition LC Issuers**") and Wells Fargo Bank, N.A. as administrative agent for the Prepetition Revolving Lenders (together with its successors in such capacity, the "**Prepetition Revolving Agent**"), pursuant to which the Prepetition Revolving Lenders extended revolving loans to the Borrower (the "**Prepetition Revolving Loans**"), issued Prepetition Letters of Credit and made certain other extensions of credit to the Borrower (such credit facility, together with the Loan Documents (as defined therein), the "**Prepetition Revolving Loan Facility**" and together with the Prepetition Term Loan Facility, the "**Prepetition Facilities**").

C. On April 1, 2019 (the "**Petition Date**"), the Loan Parties filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (the "**Chapter 11 Cases**") in the United States Bankruptcy Court for the District of Delaware (together with any other court having jurisdiction over the Chapter 11 Cases or any proceeding therein from time to time, the "**Bankruptcy Court**"). The Loan Parties are continuing to operate their businesses and manage their properties as debtors and debtors-in-possession under Sections 1107 and 1108 of the Bankruptcy Code.

E. Subject to the conditions precedent set forth herein, and the terms and conditions set forth herein, the Borrower has requested, and the Lenders and each Issuing Bank party hereto

are willing to make available the credit facilities provided for herein for the purposes set forth herein. The parties hereto further agree as follows:

ARTICLE I
DEFINITIONS AND ACCOUNTING MATTERS

Section 1.01 Terms Defined Above. As used in this Agreement, each term defined above has the meaning indicated above.

Section 1.02 Certain Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"**ABR**", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

"**Acceptable Plan**" shall mean a Chapter 11 Plan that (i) provides for the termination of the unused commitments under the Credit Facility and the Payment in Full in cash of the Secured Obligations (and, as applicable, cash collateralization of any issued and undrawn Letters of Credit) upon the effective date of such plan, (ii) provides that the effective date of such plan shall occur by a date that is within the applicable Case Milestones, and (iii) contains customary releases and other exculpatory provisions for the DIP Agent, the DIP Lenders, the Prepetition Revolving Agent, the Prepetition Term Agent, and the Prepetition Lenders in form and substance reasonably satisfactory to the DIP Agent (at the direction of the Required Lenders), and the Prepetition Revolving Agent, and the Prepetition Term Agent.

"**Additional Roll-Up Schedule**" has the meaning assigned to such term in Section 2.01(d).

"**Adjusted LIBO Rate**" means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the LIBO Rate for such Interest Period *multiplied* by the Statutory Reserve Rate.

"**Administrative Questionnaire**" means an Administrative Questionnaire in a form supplied by the DIP Agent.

"**Affected Loans**" has the meaning assigned to such term in Section 5.05.

"**Affiliate**" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"**Agency Fee Letter**" means that certain Fee Letter, by and between the Borrower and the DIP Agent, dated as of the Effective Date, as may be amended, restated, supplemented or otherwise modified from time to time.

"**Agreement**" means this Senior Secured Superpriority Priming Debtor-in-Possession Credit Agreement, as the same may from time to time be amended, modified, supplemented or restated.

"**Alternate Base Rate**" means, for any day, a rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day *plus* 0.5% and (c) the Adjusted LIBO Rate for a one-month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) *plus* 1.0%. If the DIP Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate or the Adjusted LIBO Rate for any reason, including the inability or failure of the DIP Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) or (c), as applicable, of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, respectively.

"**Alternate Cash Collateral Amount**" means up to the amount set forth on Schedule 1.02(a).

"**Anti-Terrorism Law**" has the meaning assigned to such term in Section 7.26(a).

"**Applicable Margin**" means (a) with respect to the DIP Term Loans, (i) for any ABR Borrowing thereof, 9.00%, and (ii) for any Eurodollar Borrowing thereof, 10.00% and (b) with respect to any Roll-Up Loans, 5.25%.

"**Applicable Percentage**" means, with respect to any Lender, the percentage of the aggregate Credit Exposures represented by such Lender's Credit Exposure at such time.

"**Approved Bankruptcy Court Order**" means (a) the DIP Orders and the Cash Management Order, as each such order is in effect from time to time and (b) any other order entered by the Bankruptcy Court regarding, relating to or impacting (i) any rights or remedies of the DIP Agent or any Lender, (ii) the Loan Documents, the "Loan Documents" as defined in the Prepetition Term Loan Agreement and the "Loan Documents" as defined in the Prepetition Revolving Loan Agreement (including the Loan Parties' (as defined therein) obligations thereunder), (iii) the Collateral, any Liens thereon or any superpriority claims (including, without limitation, any sale or other disposition of Collateral or the priority of any such Liens or superpriority claims), (iv) use of cash collateral, (v) debtor-in-possession financing, or (vi) adequate protection or otherwise relating to the Prepetition Facilities, (vii) any Chapter 11 Plan, or (viii) any transaction outside of the ordinary course of business with any Loan Party, that, in the case of each of the matters described under clauses (a) and (b), (x) is in form and substance satisfactory (or, solely in the case of matters referred to in clause (b)(viii), reasonably satisfactory) to the Required Lenders in all respects, (y) once entered, has not been vacated, reversed or stayed and (z) has not been amended or modified except in a manner satisfactory (or,

solely in the case of matters referred to in clause (b)(viii), reasonably satisfactory) to, the Required Lenders.

"**Approved Budget**" means, as of the Effective Date, the Initial Approved Budget and, thereafter, any budget approved by the Required Lenders pursuant to Section 8.01(q).

"**Approved Counterparty**" means (a) any Lender or any Affiliate of a Lender and (b) any other Person whose (or whose credit support provider's) long term senior unsecured debt rating is A-/A3 by S&P or Moody's (or their equivalent) or higher.

"**Approved Fund**" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"**Asset Sale**" means any sale, transfer, assignment, conveyance or other disposition by any Loan Party, or any of its Subsidiaries to any Person (including by way of redemption by such Person) of any Property (including, without limitation, any capital stock or other securities of, or Equity Interests in, another Person), but excluding (a) dispositions resulting from Casualty Events, and (b) sales and other dispositions of Property pursuant to Sections 9.11(a)-(e).

"**Assignment and Assumption**" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 12.04(b)), and accepted by the DIP Agent, in substantially the form of Exhibit F or any other form approved by the DIP Agent (including electronic documentation generated by ClearPar, Markitclear or other electronic platform).

"**Availability Period**" means the period from and including the Effective Date to but excluding the Maturity Date.

"**Bail-In Action**" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

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

"**Bank Products**" means any of the following bank services: (a) commercial credit cards, (b) stored value cards, and (c) treasury or cash management services (including, without limitation, deposit accounts, funds transfers, automated clearinghouse services, auto-borrow services, zero balance accounts, returned check concentration, controlled disbursement services, lockboxes, account reconciliation and reporting service, trade finance services, overdraft protection, and interstate depository network services).

"**Bank Products Provider**" means any Lender or Affiliate of a Lender that provides Bank Products to the Borrower or any other Loan Party; provided, that such Lender or Affiliate must have delivered a Secured Party Designation Notice to the DIP Agent.

"**Bankruptcy Code**" shall mean Title 11 of the United States Code entitled "Bankruptcy," now and hereafter in effect, or any applicable successor statute.

"**Bankruptcy Court**" shall have the meaning assigned to such term in the recitals of this Agreement.

"**Bankruptcy Laws**" shall mean the Bankruptcy Code, and all other insolvency, bankruptcy, receivership, liquidation, conservatorship, assignment for the benefit of creditors, moratorium, rearrangement, reorganization, or similar laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally

"**Bid Deadline**" shall have the meaning assigned to such term in Section 8.24(g).

"**Bid Procedures**" shall have the meaning assigned to such term in Section 8.23(f).

"**Bid Procedures and Sale Motion**" shall have the meaning assigned to such term in Section 8.23(f).

"**Bid Procedures Order**" shall have the meaning assigned to such term in Section 8.23(f).

"**Board**" means the Board of Governors of the Federal Reserve System of the United States of America or any successor Governmental Authority.

"**Borrower**" has the meaning assigned to such term in the preamble hereto.

"**Borrower Materials**" has the meaning assigned to such term in Section 8.01.

"**Borrower Notice**" has the meaning assigned to such term in the definition of "Flood Zone Documentation".

"**Borrowing**" means Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

"**Business Day**" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York, New York or Dallas, Texas are authorized or required by law to remain closed; and if such day relates to a Borrowing or continuation of, a payment or prepayment of principal of or interest on, or a conversion of or into, or the Interest Period for, a Eurodollar Loan or a notice by the Borrower with respect to any such Borrowing or continuation, payment, prepayment, conversion or Interest Period, any day which is also a day on which banks are open for dealings in dollar deposits in the London interbank market.

"**Capital Expenditures**" means, in respect of any Person, for any period, the aggregate (determined without duplication) of all expenditures and costs that are capitalized on the balance sheet of such Person in accordance with GAAP, exclusive of, with respect to each Loan Party, expenditures and costs incurred by such Loan Party to the extent that an unaffiliated third Person has provided such Loan Party with funds to pay such expenditures and costs prior to incurrence.

"**Capital Leases**" means, in respect of any Person, all leases which shall have been, or should have been, in accordance with GAAP, recorded as capital leases on the balance sheet of the Person liable (whether contingent or otherwise) for the payment of rent thereunder.

"**Carve-Out**" has the meaning assigned to such term in the DIP Orders, as applicable; *provided, however*, that notwithstanding any other provision of the DIP Orders or the Loan Documents to the contrary, in no event shall the Carve-Out apply to amounts held in the Letter of Credit Account.

"**Case Milestones**" shall have the meaning assigned to such term in Section 8.23.

"**Cash Equivalents**" means, collectively, (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency thereof maturing within one year from the date of acquisition thereof, (b) commercial paper maturing no more than six months from the date of creation thereof and currently having the highest rating obtainable from either S&P or Moody's, (c) certificates of deposit maturing no more than one year from the date of creation thereof issued by any Lender or commercial banks incorporated under the laws of the United States, having combined capital, surplus and undivided profits of not less than $500,000,000 and having a rating of "A" or better by a nationally recognized rating agency, or (d) time deposits maturing no more than thirty (30) days from the date of creation thereof with commercial banks or savings banks or savings and loan associations each having membership either in the FDIC or the deposits of which are insured by the FDIC and in amounts not exceeding the maximum amounts of insurance thereunder.

"**Cash Management Order**" has the meaning assigned to such term in Section 6.01(f).

"**Casualty Event**" means any loss, casualty or other insured damage to, or any nationalization, taking under power of eminent domain or by condemnation or similar proceeding of, any Property of the Loan Parties or any of their Subsidiaries.

"**Change in Control**" means:

(a) the Sponsors and their Affiliates, collectively, shall cease to beneficially own and control, directly or indirectly, Equity Interests in the General Partner representing a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in the General Partner;

(b) the acquisition of ownership, directly or indirectly, beneficially or of record, by any person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof) other than the Sponsors and their respective Affiliates of Equity Interests representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in the General Partner;

(c) the General Partner shall cease to be the sole general partner of the Borrower, with substantially the same (or more expansive) powers to manage the Borrower as are granted to the General Partner under the Organization Documents of the Borrower as of the Effective Date;

(d) the Borrower shall cease to beneficially own and control, directly or indirectly, all of the Equity Interests in each of the other Loan Parties; or

(e) within any period of twelve (12) consecutive calendar months, individuals who were neither (i) members of the board of managers, or similar governing body, of the General Partner on the first day of such period, (ii) persons who were appointed or nominated by such persons, nor (iii) persons who were appointed or nominated by a Sponsor (or an Affiliate of a Sponsor) shall constitute a majority of the members of the board of managers, or similar governing body, of the General Partner.

For the avoidance of doubt, neither proposed entry into a "stalking horse" Qualified APA, entry into (but not consummation of the transactions pursuant to) a Qualified APA in accordance with the Bid Procedures Order nor the filing or proposal of (but not consummation of the transactions pursuant to) an Acceptable Plan shall constitute a Change in Control.

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

"**Chapter 11 Cases**" shall have the meaning given to such term in the recitals to this Agreement.

"**Chapter 11 Plan**" means a plan of reorganization or liquidation filed in any of the Chapter 11 Cases under Section 1121 of the Bankruptcy Code.

"**Claim**" means all claims, demands, rights, actions, causes of action, liabilities, duties, damages, losses, obligations, diminution in value, judgments, decrees, suits, liens, undertakings, rights to property or information, and controversies of any kind or nature whatsoever, whether absolute or contingent, due or to become due, accrued or unaccrued, disclosed or undisclosed, foreseen or unforeseen, apparent or not apparent, disputed or undisputed, liquidated or unliquidated, at law or in equity, or known or unknown, and whether existing, accrued or arising on, before or after the Petition Date, including all claims arising under state, federal or foreign laws, common law, statutes, rules, regulations or agreements. Without limiting the generality of the foregoing, the term "Claim" shall include the items described in the definition of "Claim" in 11 U.S.C. § 101(5), all claims or causes of action under Chapter 5 of the Bankruptcy Code (including Sections 542, 544, 545, 546, 547, 548, 549 and 550 of the Bankruptcy Code), all claims or causes of action under Sections 105 or 362 of the Bankruptcy Code, all claims or causes of action under any other Bankruptcy Law, all claims or causes of action arising under the

Uniform Fraudulent Conveyance Act, Uniform Fraudulent Transfer Act, or Uniform Voidable Transactions Act as in effect in any state, and all rights of contribution, subrogation, exoneration or indemnity.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

"**Collateral**" means any and all Property of the Loan Parties or any other Person that is secured by a Lien under one or more Security Instruments.

"**Commitment**" means, (a) with respect to each applicable Lender, the Term Commitment and/or the DIP LC Commitment of such Lender, as the context may require, and (b) with respect to all Lenders, the aggregate Term Commitments and/or the aggregate DIP LC Commitments of all Lenders, as the context may require.

"**Commitment Letter**" means that certain Commitment Letter, dated March 31, 2019, by and among the Borrower, certain funds or accounts managed by Solus Alternative Asset Management LP, and certain funds or accounts managed by Sound Point Capital Management, LP, as may be amended, restated, supplement and/or otherwise modified from time to time.

"**Commodity Exchange Act**" means the Commodity Exchange Act (7 U.S.C. 1, et seq.), as amended from time to time, any successor statute, and any rule, regulation, or order of the Commodities Futures Trading Commission (or the application or official interpretation of any thereof).

"**Connection Income Taxes**" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"**Consolidated Subsidiaries**" means each Subsidiary of the Borrower (whether now existing or hereafter created or acquired) the financial statements of which shall be (or should have been) consolidated with the financial statements of the Borrower in accordance with GAAP.

"**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "**Controlling**" and "**Controlled**" have meanings correlative thereto.

"**Credit Exposure**" means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender's Loans and such Lender's unused Delayed Draw Term Commitment.

"**Credit Facility**" means, individually and collectively as the context may require, the DIP Term Loan facility, Letter of Credit facility and Roll-Up Loan facility established under this Agreement.

"**Debt Issuance**" means any issuance by a Loan Party or its Subsidiaries of Indebtedness for borrowed money to any Person that is not a Loan Party.

"**Debt Issuance Proceeds**" means with respect to any Debt Issuance, all cash proceeds and Cash Equivalents received by the Borrower and its Subsidiaries from such Debt Issuance (other than from any other Loan Party) after payment of, or provision for, all underwriter fees and expenses, SEC and blue sky fees, printing costs, fees and expenses of accountants, lawyers and other professional advisors, brokerage commissions and other out-of-pocket fees and expenses actually incurred in connection with such Debt Issuance.

"**Default**" means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"**Defaulting Lender**" means any Lender that has (a) failed to fund any portion of its Loans within three (3) Business Days of the date required to be funded by it hereunder, (b) notified the Borrower, the DIP Agent, any Issuing Bank or any Lender in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend or expect to comply with its funding obligations under this Agreement or generally under other agreements in which it commits to extend credit, (c) failed, within three (3) Business Days after request by the DIP Agent or the Required Lenders, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans, (d) otherwise failed to pay over to the DIP Agent or any Lender any other amount required to be paid by it hereunder within three (3) Business Days of the date when due, unless the subject of a good faith dispute, or (e) (i) become or is insolvent or has a parent company that has become or is insolvent, (ii) become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or (iii) become the subject of a Bail-In Action; *provided* that a Lender shall not become a Defaulting Lender solely as a result of the acquisition or maintenance of an ownership interest in such Lender or Person controlling such Lender or the exercise of control over a Lender or Person controlling such Lender by a Governmental Authority or an instrumentality thereof.

"**Delayed Draw DIP Funding Date**" shall mean any Business Day specified in a Notice of Borrowing delivered by the Borrower to the DIP Agent and on which the conditions set forth in Section 6.02 are satisfied or waived in accordance with the terms hereof and the Delayed Draw DIP Term Loans are made by the Lenders holding Delayed Draw Term Commitments pursuant to Section 2.01(b).

"**Delayed Draw DIP Term Loan**" shall mean the loan made by the Lenders to the Borrower on the Delayed Draw DIP Funding Date pursuant to Section 2.01(b)

"**Delayed Draw Term Commitment**" means (a) with respect to each applicable Lender, the commitment of such Lender to make a portion of the Delayed Draw DIP Term Loans to the

Borrower hereunder on the Delayed Draw DIP Funding Date in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name on Annex I hereto as of the date hereof, as such amount may be increased, reduced or otherwise modified at any time or from time to time and recorded on the Register pursuant to the terms hereof and (b) with respect to all Lenders, the aggregate commitments of all Lenders to make such Loans. The initial amount of each Lender's Delayed Draw Term Commitment as of the Effective Date is set forth on Annex I hereto under the heading "Delayed Draw Term Commitment", which shall total $42,500,000 in the aggregate for all Lenders.

"**DIP Agent**" has the meaning assigned to such term in the preamble hereto.

"**DIP LC Commitment**" means (a) with respect to each applicable Lender, the commitment of such Lender to make a portion of the DIP LC Loans to the Borrower hereunder on the Effective Date in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name on Annex I hereto as of the date hereof, as such amount may be increased, reduced or otherwise modified at any time or from time to time and recorded on the Register pursuant to the terms hereof and (b) with respect to all Lenders, the aggregate commitments of all Lenders to make such Loans. The initial amount of each Lender's DIP LC Commitment as of the Effective Date is set forth on Annex I hereto under the heading "DIP LC Commitment", which shall total $55,000,000 in the aggregate for all Lenders.

"**DIP LC Loans**" means the loans made by the Lenders to the Borrower on the Effective Date pursuant to Section 2.01(c).

"**DIP Order**" means, collectively, the Interim DIP Order and, from and after its entry by the Bankruptcy Court, the Final DIP Order.

"**DIP Term Loans**" shall mean, collectively, the Initial DIP Term Loans, the Delayed Draw DIP Term Loans, and the DIP LC Loans.

"**Disqualified Capital Stock**" means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event, matures or is mandatorily redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or is convertible or exchangeable for Indebtedness or redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock) at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days after the earlier of (a) the Maturity Date and (b) the date on which there are no Loans, LC Exposure or other obligations hereunder outstanding and all of the Commitments are terminated.

"**dollars**" or "**$**" refers to lawful money of the United States of America.

"**Domestic Subsidiary**" means any Subsidiary that is organized under the laws of the United States of America or any state thereof or the District of Columbia.

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

"**EEA Member Country**" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Effective Date**" means the date on which the conditions specified in Section 6.01 are satisfied (or waived in accordance with Section 12.02) and the Initial DIP Term Loans and the DIP LC Loans have been funded.

"**Embargoed Person**" has the meaning assigned to such term in Section 9.22.

"**Environmental Laws**" means any and all Governmental Requirements pertaining in any way to health, safety, the environment, the preservation or reclamation of natural resources, or the management, Release or threatened Release of any Hazardous Materials, in effect in any and all jurisdictions in which the Borrower or any Subsidiary is conducting, or at any time has conducted, business, or where any Property of the Borrower or any Subsidiary is located, including, the Oil Pollution Act of 1990 ("**OPA**"), as amended, the Clean Air Act, as amended, the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980 ("**CERCLA**"), as amended, the Federal Water Pollution Control Act, as amended, the Occupational Safety and Health Act of 1970, as amended, the Resource Conservation and Recovery Act of 1976 ("**RCRA**"), as amended, the Safe Drinking Water Act, as amended, the Toxic Substances Control Act, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, the Hazardous Materials Transportation Act, as amended, and other environmental conservation or protection Governmental Requirements.

"**Environmental Permit**" means any permit, registration, license, notice, approval, consent, exemption, variance, spill or response plan, or other authorization required under or issued pursuant to applicable Environmental Laws.

"**EP Contract**" means that certain Gas Gathering and Processing Agreement (Portions of Atascosa, Dimmit and La Salle Counties) dated February 18, 2014, entered into between Frio LP and EP Energy E&P Company, L.P., a Delaware limited partnership, as in effect on the Effective Date.

"**Equity Interests**" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such Equity Interests.

"**Equity Issuance**" means (a) any issuance by the Borrower of shares of its Equity Interests to any Person that is not a Loan Party (including, without limitation, in connection with the exercise of options or warrants or the conversion of any debt securities to equity) and (b) any capital contribution from any Person that is not a Loan Party into any Loan Party or any Subsidiary thereof. The term "Equity Issuance" shall not include (A) any Asset Sale or (B) any Debt Issuance.

"**Equity Issuance Proceeds**" means (a) with respect to any Equity Issuance, all cash proceeds and Cash Equivalents received by the Borrower and its Subsidiaries from such Equity Issuance (other than from any other Loan Party) after payment of, or provision for, all underwriter fees and expenses, SEC and blue sky fees, printing costs, fees and expenses of accountants, lawyers and other professional advisors, brokerage commissions and other out-of-pocket fees and expenses actually incurred in connection with such Equity Issuance, and (b) with respect to existing Equity Interests, cash contributions made to the Borrower from the holders of its Equity Interests on account of common equity.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute.

"**ERISA Affiliate**" means each trade or business (whether or not incorporated) which together with the Borrower or a Subsidiary would be deemed to be a "single employer" within the meaning of section 4001(b)(1) of ERISA or subsections (b), (c), (m) or (o) of section 414 of the Code.

"**ERISA Event**" means (a) a "Reportable Event" described in section 4043 of ERISA and the regulations issued thereunder, (b) the withdrawal of the Borrower, a Subsidiary or any ERISA Affiliate from a Plan during a plan year in which it was a "substantial employer" as defined in section 4001(a)(2) of ERISA, (c) the filing of a notice of intent to terminate a Plan or the treatment of a Plan amendment as a termination under section 4041 of ERISA, (d) the institution of proceedings to terminate a Plan by the PBGC, (e) receipt of a notice of withdrawal liability pursuant to section 4202 of ERISA or (f) any other event or condition which could reasonably be expected to constitute grounds under section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan.

"**EU Bail-In Legislation Schedule**" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"**Eurodollar**", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

"**Event of Default**" has the meaning assigned to such term in Section 10.01.

"**Excepted Liens**" means: (a) Liens for Taxes, assessments or other governmental charges or levies (other than Liens imposed pursuant to Section 401(a)(29) or 412(n) of the Code or by ERISA) that arose prior to the Petition Date and which were, as of the Petition Date, not

delinquent or which were being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (b) Liens arising by operation of law in connection with workers' compensation, unemployment insurance or other social security, old age pension or public liability obligations which are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (c) to the extent arising by operation of law, statutory landlord's liens, operators', interest owners', vendors', carriers', warehousemen's, repairmen's, mechanics', suppliers', workers', materialmen's, construction or other like Liens, in each case, arising by operation of law in the ordinary course of business or incident to the operation and maintenance of Properties each of which is in respect of obligations that are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (d) subject to the Cash Management Order, Liens arising solely by virtue of customary deposit account agreements with the creditor depositary institution or any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies and burdening only deposit accounts or other funds maintained with a creditor depository institution, *provided* that no such deposit account is a dedicated cash collateral account or is subject to restrictions against access by the depositor in excess of those set forth by regulations promulgated by the Board and no such deposit account is intended by the Borrower or any of its Subsidiaries to provide collateral to the depository institution or any other Person (other than the Secured Parties pursuant to the Security Instruments); (e) zoning and land use requirements, easements, restrictions, servitudes, permits, conditions, covenants, exceptions or reservations affecting, and minor irregularities or deficiencies in title to, any real Property of the Borrower or any Subsidiary that do not secure Indebtedness and which in the aggregate do not materially impair the use of such Property for the purposes of which such Property is held by the Borrower or any Subsidiary or materially impair the value of such Property subject thereto; (f) to the extent in accordance with the Approved Budget (subject to Permitted Variances), Liens on cash or securities pledged to secure performance of tenders, surety, appeal and supersedeas bonds, government contracts, performance and return of money bonds, bids, trade contracts, leases, statutory obligations, regulatory obligations, obligations in respect of workers' compensation, unemployment insurance or other forms of government benefits or insurance and other obligations of a like nature incurred in the ordinary course of business; (g) Liens, titles and interests of lessors of Property leased by such lessors to the Borrower or any Subsidiary, restrictions and prohibitions on encumbrances and transferability with respect to such Property and the Borrower's or such Subsidiary's interests therein imposed by such leases, and Liens and encumbrances encumbering such lessors' titles and interests in such Property and to which the Borrower's or such Subsidiary's leasehold interests may be subject or subordinate, in each case, whether or not evidenced by UCC financing statement filings or other documents of record; *provided* that such Liens do not secure Indebtedness of the Borrower or any Subsidiary and do not encumber Property of the Borrower or any Subsidiary other than the Property that is the subject of such leases; (h) Liens, titles and interests of licensors of software and other intangible Property licensed by such licensors to the Borrower or any Subsidiary, restrictions and prohibitions on encumbrances and transferability with respect to such Property and the Borrower's or such Subsidiary's interests therein imposed by such licenses, and Liens and encumbrances encumbering such licensors' titles and interests in such Property and to which the Borrower's or such Subsidiary's license interests may be subject or subordinate, in each case, whether or not

evidenced by UCC financing statement filings or other documents of record; *provided* that such Liens do not secure Indebtedness of the Borrower or any Subsidiary and do not encumber Property of the Borrower or any Subsidiary other than the Property that is the subject of such licenses; and (i) to the extent arising prior to the Petition Date, judgment and attachment Liens not giving rise to an Event of Default, *provided* that any appropriate legal proceedings which may have been duly initiated for the review of such judgment shall not have been finally terminated or the period within which such proceeding may be initiated shall not have expired and no action to enforce such Lien has been commenced. Any Lien described in clauses (a) through (d) shall remain an "Excepted Lien" only for so long as (A) the appropriate Loan Party shall cause any proceeding instituted contesting such Lien to stay the sale or forfeiture of any portion of the Collateral on account of such Lien, (B) the appropriate Loan Party shall maintain adequate reserves related to such Lien to the extent required by GAAP, and (C) such Lien shall in all respects be subject and subordinate in priority to the Liens created and evidenced by the Security Instruments, except if and to the extent that the Governmental Requirements creating, permitting or authorizing such Lien provides that such Lien is or must be superior to the Liens created and evidenced by the Security Instruments; *provided* that no intention to subordinate the first priority Liens granted in favor of the DIP Agent for the benefit of the Secured Parties pursuant to the Security Instruments is to be hereby implied or expressed by the permitted existence of such Excepted Liens.

"**Excluded Taxes**" means, with respect to the DIP Agent, any Lender, any Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of the Borrower or any Guarantor hereunder or under any other Loan Document, (a) Taxes (i) imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income Taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, or (ii) that are Other Connection Taxes, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Borrower or any Guarantor is located, (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 5.04(b)), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 5.03(f), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts with respect to such withholding tax pursuant to Section 5.03(a) or Section 5.03(c), and (d) any United States federal withholding taxes imposed by FATCA.

"**Executive Order**" has the meaning assigned to such term in Section 7.26(a).

"**Exigent Circumstance**" means the existence of any of the following events or conditions, in each case as determined by DIP Agent (at the direction of Required Lenders acting reasonably and in good faith): (i) any material portion of Collateral threatens to decline speedily in value; (ii) DIP Agent (at the direction of Required Lenders acting reasonably) believes that fraud, concealment, material misrepresentation, theft or the withholding or fraudulent removal of

Collateral or proceeds of a material portion of Collateral has occurred; (iii) to the extent constituting an Event of Default, a Person (other than a Secured Party in their capacity as such) repossesses or forecloses upon any material portion of Collateral, or (iv) any other event or circumstance occurs or exists that materially and imminently threatens the value or liquidation prospects of any material portion of Collateral, the enforceability or priority of the Liens securing the Secured Obligations or the collectability thereof.

"**Exit Fee**" has the meaning assigned to such term in Section 3.05(e).

"**Extraordinary Receipts**" shall mean the Net Cash Proceeds received by any Loan Party not in the ordinary course of business (and not consisting of proceeds from the sale of inventory sold in the ordinary course of business), including, without limitation, (a) proceeds under any insurance policy on account of damage or destruction of any assets or property of such Loan Party (that are not Casualty Events), (b) indemnity payments, (d) foreign, United States, state or local tax refunds, (c) pension plan reversions and (d) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action.

"**FATCA**" means sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any regulations or official interpretations thereof.

"**FCPA**" means the Foreign corrupt Practices Act of 1977, as amended.

"**FDIC**" means the Federal Deposit Insurance Corporation.

"**Federal Flood Insurance**" means federally backed Flood Insurance available under the National Flood Insurance Program to owners of real property improvements located in Special Flood Hazard Area in a community participating in the National Flood Insurance Program.

"**Federal Funds Effective Rate**" means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the DIP Agent from three Federal funds brokers of recognized standing selected by it.

"**FEMA**" means the Federal Emergency Management Agency, an agency of the United States Department of Homeland Security that administers the National Flood Insurance Program.

"**Final DIP Order**" means a Final Order of the Bankruptcy Court in substantially the form of the Interim DIP Order (with only such modifications thereto as are necessary to convert the Interim DIP Order to a Final Order and to authorize and approve the Roll-Up in the full amount set forth on Schedule 2.01(d) and such other modifications as are satisfactory in form and substance to the DIP Agent and the Required Lenders in their discretion), which order shall not have been vacated, reversed, modified or stayed, and as the same may be amended,

supplemented or modified from time to time after entry thereof in accordance with the terms hereof but only with the written consent of the DIP Agent or the Required Lenders.

"**Final Order**" means an order or judgment of the Bankruptcy Court as entered on its docket that has not, in whole or in part, been reversed, vacated, modified, amended or stayed pursuant to any applicable Federal Rule of Bankruptcy Procedure or any other applicable rule of civil or appellate procedure, and as to which the time to appeal, petition for certiorari, or seek re-argument or rehearing has expired, or as to which any right to appeal, petition for certiorari or seek re-argument or rehearing has been waived in writing in a manner satisfactory to the parties in interest, or if a notice of appeal, petition for certiorari, or motion for re-argument or rehearing was timely filed, the order or judgment has been affirmed by the highest court to which the order or judgment was appealed or from which the re-argument or rehearing was sought, or a certiorari has been denied, and the time to file any further appeal or to petition for certiorari or to seek further re-argument has expired.

"**Financial Officer**" means, for any Person, the chief financial officer, principal accounting officer, treasurer or controller of such Person. Unless otherwise specified, all references herein to a Financial Officer means a Financial Officer of the Borrower or of the General Partner acting on behalf of the Borrower.

"**Financial Statements**" means the Borrower and its Consolidated Subsidiaries' audited consolidated balance sheet and related statements of income or operations (and, as to balance sheets and statements of income or operations, accompanied by consolidating schedules), stockholders' equity and cash flows as of the end of and for the fiscal year ending December 31, 2018, setting forth in each case in comparative form the figures for the previous fiscal year.

"**Flood Insurance**" means, for any owned real Property improved by one or more buildings located in a Special Flood Hazard Area, Federal Flood Insurance or private insurance that meets or exceeds the requirements set forth by FEMA in its Mandatory Purchase of Flood Insurance Guidelines. Flood Insurance shall be in commercially reasonable amounts at least up to the maximum policy limits set under the National Flood Insurance Program.

"**Flood Insurance Laws**" means (a) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (b) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (c) the National Flood Insurance Reform Act of 1994 (amending 42 USC § 4001, et seq.), as the same may be amended or recodified from time to time, and (d) the Flood Insurance Reform Act of 2004 and any regulations promulgated thereunder.

"**Flood Zone Documentation**" means with respect to any fee interest in any real property improved by a Building or Mobile (Manufactured) Home located in the United States of any Loan Party, to the extent required to comply with Flood Laws: (1) a completed standard flood hazard determination form, (2) if the real property is located in a special flood hazard area, a notification to the applicable Loan Party ("**Borrower Notice**") and, if applicable, notification to such Loan Party that flood insurance coverage under the National Flood Insurance Program is not available because the community does not participate in the National Flood Insurance Program, (3) documentation evidencing the applicable Loan Party's receipt of the Borrower

Notice and (4) if the Borrower Notice is required to be given and flood insurance is available in the community in which the real property is located, evidence of applicable flood insurance in such form, on such terms and in such amounts as required by the Flood Insurance Laws and as required by the Required Lenders.

"**Foreign Lender**" means any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"**Foreign Subsidiary**" means any Subsidiary that is not a Domestic Subsidiary.

"**Fund**" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"**GAAP**" means generally accepted accounting principles in the United States of America as in effect from time to time subject to the terms and conditions set forth in Section 1.05.

"**General Partner**" means Southcross Energy Partners GP, LLC, a Delaware limited liability company and the sole general partner of the Borrower.

"**Governmental Authority**" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supranational bodies, such as the European Union or the European Central Bank).

"**Governmental Requirement**" means any law, statute, code, ordinance, order, determination, rule, regulation, judgment, decree, injunction, franchise, permit, certificate, license, rules of common law, authorization or other directive or requirement, whether now or hereinafter in effect, of any Governmental Authority.

"**Guarantors**" means, collectively, each Subsidiary of the Borrower.

"**Guaranty and Collateral Agreement**" means that Debtor-in-Possession Guaranty and Collateral Agreement executed by the Borrower and the Guarantors in substantially the form of Exhibit E granting and confirming security interests in certain Collateral and unconditionally guarantying on a joint and several basis, payment of the Secured Obligations, as the same may be amended, modified or supplemented from time to time.

"**Hazardous Material**" means any substance regulated or as to which liability might arise under any applicable Environmental Law including: (a) any chemical, compound, material, product, byproduct, substance or waste defined as or included in the definition or meaning of "hazardous substance," "hazardous material," "hazardous waste," "solid waste," "toxic waste," "extremely hazardous substance," "toxic substance," "contaminant," "pollutant," or words of

similar meaning or import found in any applicable Environmental Law; (b) Hydrocarbons, petroleum products, petroleum substances, natural gas, oil, oil and gas waste, crude oil, and any components, fractions, or derivatives thereof; and (c) radioactive materials, explosives, asbestos or asbestos containing materials, polychlorinated biphenyls, radon, infectious or medical wastes.

"**Hedging Agreement**" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement, whether exchange traded, "over-the-counter" or otherwise, involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions (including any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act); *provided* that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees, or consultants of the Borrower or the Subsidiaries shall be a Hedging Agreement.

"**Hedging Termination Value**" means, in respect of any one or more Hedging Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedging Agreements, (a) for any date on or after the date such Hedging Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedging Agreements, as determined by the counterparties to such Hedging Agreements.

"**Highest Lawful Rate**" means, with respect to each Lender, the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Loans or on other Secured Obligations under laws applicable to such Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws allow as of the date hereof.

"**Hydrocarbons**" means oil, gas, casinghead gas, drip gasoline, natural gasoline, condensate, distillate, liquid hydrocarbons, gaseous hydrocarbons and all products refined or separated therefrom.

"**Immaterial Real Property**" means any real Property designated by the Borrower as Immaterial Real Property, if and for so long as the fair market value (as reasonably determined by the Borrower and approved by the Required Lenders) of such Immaterial Real Property, together with all other Immaterial Real Property so designated by the Borrower, does not exceed $1,000,000 at any time.

"**Indebtedness**" means, for any Person, the sum of the following (without duplication): (a) all obligations of such Person for borrowed money or evidenced by bonds, bankers' acceptances, debentures, notes or other similar instruments; (b) all obligations of such Person (whether contingent or otherwise) in respect of letters of credit, surety or other bonds and similar instruments; (c) all accounts payable and all accrued expenses, liabilities or other obligations of such Person to pay the deferred purchase price of Property or services, except (i) trade accounts

payable of such Person arising in the ordinary course of business if and to the extent that such trade accounts payable are not past due by more than ninety (90) days or that are being contested in good faith by appropriate proceedings diligently pursued and for which adequate reserves have been established or are subject to an offset in favor of such Person as a result of accounts receivable owed to such Person and (ii) non-cash purchase price adjustments or non-cash earnouts and the portion of any cash purchase price adjustments or cash earnouts that is not determinable; (d) all obligations under Capital Leases; (e) all obligations under Synthetic Leases; (f) all Indebtedness (as defined in the other clauses of this definition) of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien on any Property of such Person, whether or not such Indebtedness is assumed by such Person, *provided*, *however*, that the amount of such Indebtedness of any Person described in this clause (f) shall, for purposes of this Agreement, be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness or (ii) the fair market value of the Property encumbered; (g) all Indebtedness (as defined in the other clauses of this definition) of others guaranteed by such Person or in which such Person otherwise assures a creditor against loss of the Indebtedness (howsoever such assurance shall be made) to the extent of the lesser of the amount of such Indebtedness and the maximum stated amount of such guarantee or assurance against loss; (h) all obligations or undertakings of such Person to maintain or cause to be maintained the financial position or covenants of others or to purchase the Indebtedness or Property of others; (i) obligations to pay for electricity, natural gas, other Hydrocarbons and other commodities under contracts having an initial term in excess of one (1) year even if such electricity, natural gas, other Hydrocarbons, and other commodities are not actually taken, received or utilized by such Person; (j) any Indebtedness of a partnership for which such Person is liable either by agreement, by operation of law or by a Governmental Requirement but only to the extent of such liability; and (k) Disqualified Capital Stock.

"**Indemnified Taxes**" means Taxes other than Excluded Taxes.

"**Indemnitee**" has the meaning assigned to such term in Section 12.03(b).

"**Information**" has the meaning assigned to such term in Section 12.11.

"**Initial Approved Budget**" has the meaning assigned to such term in Section 6.01(d).

"**Initial DIP Term Loan**" shall mean the loan made by the Lenders on the Effective Date pursuant to Section 2.01(a).

"**Initial Roll-Up Loans**" has the meaning given to such term in Section 2.01(d).

"**Initial Term Commitment**" means (a) with respect to each Lender, the commitment of such Lender to make a portion of the Initial DIP Term Loans to the Borrower hereunder on the Effective Date in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name on Annex I hereto as of the date hereof, as such amount may be increased, reduced or otherwise modified at any time or from time to time and recorded on the Register pursuant to the terms hereof and (b) with respect to all Lenders, the aggregate commitments of all Lenders to make such Loans. The initial amount of each Lender's Initial Term Commitment

as of the Effective Date is set forth on Annex I hereto under the heading "Initial Term Commitment", which shall total $30,000,000 in the aggregate for all Lenders.

"**Intellectual Property**" shall have the meaning assigned to such term in Section 7.16(d).

"**Interest Election Request**" means a written request by the Borrower to convert or continue a Borrowing in accordance with Section 2.04, substantially in the form of Exhibit C.

"**Interest Payment Date**" means (a) with respect to any ABR Loan, the last Business Day of each calendar month and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, following an Event of Default and during the continuance thereof, upon demand by the Required Lenders.

"**Interest Period**" means with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one or three months thereafter, as the Borrower may elect in its applicable Notice of Borrowing or Interest Election Request; *provided* that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (c) no Interest Period for any Borrowing shall extend beyond the Maturity Date. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"**Interim DIP Order**" means an interim order authorizing and approving, among other things, (a) the DIP Facilities and the extensions of credit thereunder including the incurrence by the Loan Parties of secured indebtedness in accordance with this Agreement, (b) the form of this Agreement and the other Loan Documents, (c) the granting of liens and claims in favor of the DIP Agent and Lenders, (d) the payment by the Loan Parties of the fees contemplated by this Agreement, (e) the provision of adequate protection to the Prepetition Term Lenders and the Prepetition Revolving Lenders in a manner satisfactory to the Required Lenders, (f) the other obligations of the Loan Parties under this Agreement and the other Loan Documents, and (g) such other matters as are usual and customary for orders of this kind, which order shall be in form and substance satisfactory to the Required Lenders (and with respect to any provision that affects the rights or duties of the DIP Agent, the DIP Agent) in all respects and shall not have been vacated, reversed, modified or stayed, and as the same may be amended, supplemented or modified from time to time after entry thereof in accordance with the terms hereof but only with the prior written consent of the Required Lenders (and with respect to any provision that affects the rights or duties of the DIP Agent, the DIP Agent).

"**Investment**" means, for any Person: (a) the acquisition (whether for cash, Property, services or securities or otherwise) of Equity Interests of any other Person (including, without limitation, any "short sale" or any sale of any securities at a time when such securities are not

owned by the Person entering into such short sale); (b) the making of any deposit with, or advance, loan or capital contribution to, assumption of Indebtedness of, purchase or other acquisition of any other Indebtedness or equity participation or interest in, or other extension of credit to, any other Person (including the purchase of Property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such Property to such Person, but excluding any such advance, loan or extension of credit having a term not exceeding ninety (90) days representing the purchase price of inventory or supplies sold by such Person in the ordinary course of business); (c) the purchase or acquisition (in one or a series of transactions) of Property of another Person that constitutes a business unit or (d) the entering into of any guarantee of, or other contingent obligation (including the deposit of any Equity Interests to be sold) with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person.

"**ISP**" means, with respect to any Letter of Credit, the "International Standby Practices" published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

"**Issuing Banks**" means, individually or collectively as the context requires, each of Wells Fargo, RBC and UBS AG, in their respective capacities as issuers of Letters of Credit hereunder (but limited, in the case of Wells Fargo, to Prepetition Letters of Credit deemed issued hereunder (and all amendments, replacements and extensions thereof)), their respective successors in such capacity as provided in Section 2.07(i), and, if requested by the Borrower and consented to by the DIP Agent (acting at the direction of the Required Lenders), any other Person who accepts such appointment and executes a joinder to this Agreement, in form and substance reasonably satisfactory to the Borrower and the DIP Agent, to act as an Issuing Bank under this Agreement. Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term "Issuing Bank" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"**LC Cash Collateralization Amount**" means an amount equal to 103% multiplied by the amount of all LC Obligations existing at such time.

"**LC Commitment**" means, with respect to each Issuing Bank, the LC Commitment of such Issuing Bank as set forth in Annex I hereto (under the heading "LC Commitments") as of the date hereof, as such amount may be reduced or otherwise modified at any time or from time to time in accordance with the terms of this Agreement.

"**LC Disbursement**" means a payment made by any Issuing Bank pursuant to a Letter of Credit.

"**LC Exposure**" means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time *plus* (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time.

"**LC Obligations**" means, at any time, the aggregate maximum amount then available to be drawn under all issued and outstanding Letters of Credit, as calculated in accordance with Section 2.07(l).

"**LC Participant**" shall have the meaning assigned to such term in Section 2.07(d).

"**LC Sublimit**" means, at any time, $52,597,087.38.

"**Lender Counsel**" means Willkie Farr & Gallagher LLP.

"**Lender Financial Advisor**" means Houlihan Lokey, Inc.

"**Lender Professionals**" means the Lender Financial Advisor and the Lender Counsel.

"**Lenders**" means the Persons listed on Annex I and any Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

"**Letter of Credit**" means any standby letter of credit issued (or deemed issued) pursuant to this Agreement or any Letter of Credit Agreement, including without limitation, the Prepetition Letters of Credit deemed issued hereunder upon the Effective Date.

"**Letter of Credit Account**" means a blocked, non-interest bearing trust account maintained by the DIP Agent in which the proceeds of the DIP LC Loans shall be deposited and held as provided in this Agreement. Neither the Borrower nor any of the other Loan Parties shall have any property interest of any kind in the Letter of Credit Account or the funds held therein.

"**Letter of Credit Account Prepayment Notice**" means a written notice delivered by the Borrower and signed by a Responsible Officer thereof to the DIP Agent substantially in the form of Exhibit K hereto requesting a withdrawal of funds from the Letter of Credit Account and disbursement of such funds to the DIP Agent to be applied to prepay Loans, which notice shall set forth (i) the date of such withdrawal (which shall be a Business Day), (ii) the amount of such withdrawal and (iii) the LC Cash Collateral Amount (after giving effect to such withdrawal).

"**Letter of Credit Account Withdrawal Notice**" means a written notice delivered by the Borrower and signed by a Responsible Officer thereof to the DIP Agent substantially in the form of Exhibit L hereto requesting a withdrawal of funds from the Letter of Credit Account and disbursement of such funds to an account of the Borrower, which notice shall set forth (i) the date of such withdrawal (which shall be a Business Day), (ii) the amount of such withdrawal, (iii) the identity of the customers and/or suppliers whose obligations will be cash collateralized and (iv) other information requested by the DIP Agent (at the direction of the Required Lenders) that is necessary or appropriate (as determined by the Required Lenders) to determine pro forma compliance with the Loan Documents (including, without limitation, any proposed or existing arrangements under the proviso to Section 9.03(j)).

"**Letter of Credit Agreements**" means all letter of credit applications and other agreements (including any amendments, modifications or supplements thereto) submitted by the Borrower, or entered into by the Borrower, with any Issuing Bank relating to any Letter of Credit.

"**Letter of Credit Deposit Amount**" means, at any time, the total amount on deposit in the Letter of Credit Account at such time that is then available for disbursement by the Issuing Banks in the event of an LC Disbursement as provided in Section 2.07(e).

"**Lewis Contract**" means that certain Gas Transportation, Processing and Purchase Agreement dated October 1, 2012, by and among Southcross Marketing Company Ltd., Lewis Petro Properties, Inc., and BP America Production Company, as amended.

"**LIBO Rate**" means, with respect to any Eurodollar Borrowing for any Interest Period therefor, the rate per annum (rounded to the nearest 1/100th of 1%) determined by the DIP Agent by reference to the ICE Benchmark Administration London Interbank Offered Rate for deposits in Dollars (as set forth on the applicable Bloomberg screen page or by or such other commercially available source providing such quotations as may be designated by the DIP Agent from time to time) at approximately 11:00 a.m., London, England time, on the second full Business Day preceding the first day of such Interest Period; *provided*, *however*, that to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the LIBO Rate shall be the interest rate per annum determined by the DIP Agent to be the average of the rates per annum at which the DIP Agent is offered deposits in Dollars by major banks in the London interbank market in London, England at approximately 11:00 a.m., London, England time, two Business Days prior to the first day of such Interest Period. Notwithstanding anything to the contrary contained in this definition, the LIBO Rate shall be deemed not to be less than one percent (1.0%) at any time.

"**Lien**" means any interest in Property securing an obligation owed to, or a claim by, a Person other than the owner of the Property, whether such interest is based on the common law, statute or contract, and whether such obligation or claim is fixed or contingent, and including but not limited to the lien or security interest arising from a mortgage, deed of trust, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" shall include easements, restrictions, servitudes, permits, conditions, covenants, exceptions or reservations. For the purposes of this Agreement, the Borrower and its Subsidiaries shall be deemed to be the owner of any Property which they have acquired or hold subject to a conditional sale agreement, or leases under a financing lease or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person in a transaction intended to create a financing.

"**Loan**" or "**Loans**" means the DIP Term Loans and the Roll-Up Loans.

"**Loan Documents**" means, collectively, this Agreement, the Notes, the Letter of Credit Agreements, the Letters of Credit, the Agency Fee Letter, and the Security Instruments.

"**Loan Parties**" and "**Loan Party**" mean, collectively or individually as the context requires, the Borrower and the Guarantors.

"**Material Adverse Change**" means any circumstance or event that has had a Material Adverse Effect.

"**Material Adverse Effect**" means any event, condition or circumstance (other than as a result of (i) the commencement of the Chapter 11 Cases by the Loan Parties, the events and conditions related and/or leading up thereto and the effect of bankruptcy conditions in the industry in which the Borrower operates as of the Effective Date, each as disclosed in materials provided to the Prepetition Term Lenders prior to the Petition Date or in the "first day" motions or declarations filed in the Chapter 11 Cases, and (ii) any defaults under agreements that have no effect under the terms of the Bankruptcy Code as a result of the commencement of a proceeding under chapter 11 of the Bankruptcy Code and the Chapter 11 Cases) that, individually or in the aggregate, (a) has had or would reasonably be expected to have, a material adverse effect on the business, operations, properties, assets or condition of the Borrower and its Subsidiaries, taken as a whole or (b) has resulted in, or would reasonably be expected to result in, a material impairment of the validity or enforceability of, or a material impairment of the material rights, remedies or benefits available to the Lenders, the Issuing Banks, the DIP Agent or the collateral agent under any Loan Document.

"**Material Contracts**" means, collectively, (a) the EP Contract, (b) the Lewis Contract, (c) the Services Agreements, (d) the Shared Services Agreement, and (e) each other contract for which the breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

"**Material Indebtedness**" means, to the extent incurred on or after the Petition Date, Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Hedging Agreements, of any one or more of the Borrower and its Subsidiaries in an aggregate principal amount equals or exceeds $4,000,000. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of the Borrower or any Subsidiary in respect of any Hedging Agreement at any time shall be the Hedging Termination Value.

"**Material Real Property**" means any real Property which is not Immaterial Real Property.

"**Maturity Date**" means the date that is the earliest to occur of: (a) the Scheduled Maturity Date; (b) the effective date of any confirmed Acceptable Plan or any other Chapter 11 Plan of the Loan Parties; (c) the date on which all or substantially all of the assets of the Loan Parties are sold in a sale under a chapter 11 plan or pursuant to Section 363 of the Bankruptcy Code and (d) the acceleration of the maturity of the Loans upon the occurrence of any Event of Default.

"**Moody's**" means Moody's Investors Service, Inc. and any successor thereto that is a nationally recognized rating agency.

"**Mortgage**" means each mortgage, deed of trust or any other document (if any) creating and/or evidencing a Lien on real or immovable Property and other Property in favor of the DIP Agent for the benefit of the Secured Parties, which shall be in a form reasonably satisfactory to the DIP Agent, as the same may be amended, modified, supplemented or restated from time to time in accordance with the Loan Documents.

"**Mortgaged Property**" means any real Property owned by the Borrower or any of its Subsidiaries that is subject to a Lien pursuant to the DIP Orders and/or a Mortgage.

"**National Flood Insurance Program**" means the program created by the United States Congress pursuant to the Flood Insurance Laws, that mandates the purchase of flood insurance to cover real property improvements located in Special Flood Hazard Areas in participating communities and provides protection to property owners through a federal insurance program.

"**Net Cash Proceeds**" means, for any event requiring a repayment of Loans pursuant to Section 3.04(b), the gross cash proceeds (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received) from such event, net of reasonable attorneys' fees, accountants' fees, amounts required to be applied to the repayment of Indebtedness secured by a Lien expressly permitted hereunder on any asset which is the subject of such event (other than any Lien pursuant to a Security Instrument) and other customary fees and expenses actually incurred in connection therewith, and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), in each case, to the extent included in the Approved Budget (subject to Permitted Variances).

"**Net Sale Proceeds**" means for any sale or other disposition of Property pursuant to an Asset Sale, the gross cash proceeds (including any cash received by way of deferred payment pursuant to a promissory note, receivable or otherwise, but only as and when received) received from such Asset Sale, net of (a) reasonable transaction costs (including, without limitation, any underwriting, brokerage or other customary selling commissions, reasonable legal, advisory and other fees and expenses (including title and recording expenses), associated therewith and sales, VAT and transfer taxes arising therefrom), (b) the amount of such gross cash proceeds required to be used to permanently repay any Indebtedness (other than the Secured Obligations) which is permitted hereunder and which is secured by the respective Property which was sold or otherwise disposed of, (c) the estimated net marginal increase in income taxes which will be payable by the Borrower or any Subsidiary with respect to the fiscal year of the Borrower in which the Asset Sale occurs as a result of such Asset Sale, and (d) the amount of all reserves required to be maintained by the Borrower or any Subsidiary in accordance with GAAP for any potential indemnity obligations that may be required to be made by the Borrower or any Subsidiary of as a result of such Asset Sale; *provided*, *however*, that (i) such gross proceeds shall not include any portion of such gross cash proceeds which the Borrower determines in good faith should be reserved for post-closing adjustments (to the extent the Borrower delivers to the DIP Agent a certificate signed by a Responsible Officer as to such determination), it being understood and agreed that on the day that all such post-closing adjustments have been determined (which shall not be later than thirteen (13) months following the date of the respective Asset Sale), the amount (if any) by which the reserved amount in respect of such Asset Sale exceeds the actual post-closing adjustments payable by the Borrower or any Subsidiary shall constitute Net Sale Proceeds on such date received by the Borrower and/or any Subsidiary from such Asset Sale, and (ii) at such time as the Borrower and the Subsidiaries are no longer required to maintain any indemnity reserves in accordance with GAAP as a result of any Asset Sale, the amount (if any) by which such reserved amount in respect of such Asset Sale

exceeds the actual amount of indemnity payments made by the Borrower or any Subsidiary for which such reserves were required to be maintained in respect of such Asset Sale shall constitute Net Sale Proceeds at such time, in each case, to the extent included in the Approved Budget (subject to Permitted Variances).

"**Notes**" means the promissory notes of the Borrower described in Section 2.02(d) and being substantially in the form of Exhibit A, together with all amendments, modifications, replacements, extensions and rearrangements thereof.

"**Notice of Borrowing**" means a written request by the Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit B, or such other form as shall be approved by the DIP Agent.

"**OFAC**" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"**Organization Documents**" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non US jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

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

"**Other Taxes**" means all present or future stamp or documentary taxes or any other excise or Property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 5.04).

"**Participant**" has the meaning assigned to such term in Section 12.04(d)(i).

"**Participant Register**" has the meaning assigned to such term in Section 12.04(d)(ii).

"**Partnership Agreement**" means that certain Third Amended and Restated Limited Partnership Agreement of the Borrower dated as of August 4, 2014, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"**Payment in Full**" means the Secured Obligations hereunder have been indefeasibly paid in full in cash and the Commitments have been reduced to zero (0) (other than (i) contingent indemnification obligations for which no Claim has been asserted and (ii) any Letters of Credit outstanding that (A) have been cash collateralized pursuant to Section 2.07(j) or (B) have had other arrangements made with respect to them that are reasonably satisfactory to the applicable Issuing Bank).

"**PBGC**" means the Pension Benefit Guaranty Corporation, or any successor thereto.

"**Permitted Variances**" has the meaning assigned to such term in Section 9.01.

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

"**Petition Date**" has the meaning assigned to such term in the recitals to this Agreement.

"**Plan**" means any employee pension benefit plan, as defined in section 3(2) of ERISA, which (a) is currently or hereafter sponsored, maintained or contributed to by the Borrower, a Subsidiary or an ERISA Affiliate or (b) was at any time during the six (6) calendar years preceding the date hereof, sponsored, maintained or contributed to by the Borrower or a Subsidiary or an ERISA Affiliate.

"**Platform**" has the meaning assigned to such term in Section 8.01.

"**Prepetition Agent**" means, individually or collectively as the context may require, the Prepetition Revolving Agent and the Prepetition Term Agent.

"**Prepetition Collateral**" means the "Collateral" under (and as such term is defined in) the Prepetition Loan Agreements.

"**Prepetition Facility**" has the meaning assigned to such term in the recitals to this Agreement.

"**Prepetition LC Issuers**" has the meaning assigned to such term in the recitals to this Agreement.

"**Prepetition Lenders**" means, individually or collectively as the context may require, the Prepetition Revolving Lenders and the Prepetition Term Lenders.

"**Prepetition Letters of Credit**" means, collectively, letters of credit issued by the Prepetition LC Issuers under the Prepetition Revolving Loan Facility, which, as of the Effective Date, were issued and undrawn, and which are listed on Annex II hereto.

"**Prepetition Loan Facility**" means, individually or collectively as the context may require, the Prepetition Revolving Facility and the Prepetition Term Facility.

"**Prepetition Obligations"** means, collectively, (i) the "Secured Obligations" as such term is defined in the Prepetition Revolving Loan Agreement and (ii) the "Secured Obligations" as such term is defined in the Prepetition Term Loan Agreement.

"**Prepetition Revolving Agent**" has the meaning assigned to such term in the recitals to this Agreement.

"**Prepetition Revolving Lenders**" has the meaning assigned to such term in the recitals to this Agreement.

"**Prepetition Revolving Loan Agreement**" has the meaning assigned to such term in the recitals to this Agreement.

"**Prepetition Revolving Loan Facility**" has the meaning assigned to such term in the recitals to this Agreement.

"**Prepetition Revolving Loans**" has the meaning assigned to such term in the recitals to this Agreement.

"**Prepetition Secured Parties**" means the "Secured Parties" as such term is defined in the Prepetition Credit Agreements.

"**Prepetition Term Agent**" has the meaning assigned to such term in the recitals to this Agreement.

"**Prepetition Term Lenders**" has the meaning assigned to such term in the recitals to this Agreement.

"**Prepetition Term Loan Agreement**" has the meaning assigned to such term in the recitals to this Agreement.

"**Prepetition Term Loan Facility**" has the meaning assigned to such term in the recitals to this Agreement.

"**Prepetition Term Loans**" has the meaning assigned to such term in the recitals to this Agreement.

"**Prime Rate**" means, for any day, the prime lending rate published in *The Wall Street Journal* for such day; *provided* that if *The Wall Street Journal* ceases to publish for any reason such rate of interest, "Prime Rate" shall mean the prime lending rate as set forth on the Bloomberg page PRIMBB Index (or successor page) for such day (or such other service as determined by the DIP Agent from time to time for purposes of providing quotations of prime lending interest rates); each change in the Prime Rate shall be effective on the date such change

is effective. The prime rate is not necessarily the lowest rate charged by any financial institution to its customers.

"**Professional Fees**" has the meaning assigned to such term in the DIP Orders.

"**Property**" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible (including, without limitation, cash, securities, accounts, contract rights and, with respect to any Person, Equity Interests or other ownership interests of any other Person), whether now in existence or owned or hereafter acquired.

"**Proposed Budget**" has the meaning assigned to such term in Section 8.01(q).

"**Public Lender**" has the meaning assigned to such term in Section 8.01.

"**Purchase Money Indebtedness**" means Indebtedness, the proceeds of which are used to finance the acquisition, construction, installation, transport and/or improvement of inventory, equipment or other Property in the ordinary course of business.

"**Qualified APA**" means an asset purchase agreement, stock purchase agreement or any similar agreements or documents in respect of a Qualified Sale Transaction.

"**Qualified Sale Transaction**" means a Section 363 Sale which provides for Payment in Full concurrently with the consummation of such sale and is in form and substance reasonably satisfactory to the Required Lenders.

"**RBC**" means Royal Bank of Canada - New York Branch.

"**Recovery Event**" means the receipt by the Borrower or any Subsidiary of any cash insurance proceeds or condemnation awards payable by reason of a Casualty Event.

"**Redemption**" means with respect to any Indebtedness, the repurchase, redemption, prepayment, repayment, or defeasance or any other acquisition or retirement for value (or the segregation of funds with respect to any of the foregoing) of such Indebtedness. "**Redeem**" has the correlative meaning thereto.

"**Register**" has the meaning assigned to such term in Section 12.04(c).

"**Regulation D**" means Regulation D of the Board, as the same may be amended, supplemented or replaced from time to time.

"**Related Parties**" means, with respect to any Person, such Person's Affiliates and the respective partners, directors, officers, employees, agents and advisors of such Person and of such Person's Affiliates.

"**Release**" means any depositing, spilling, leaking, pumping, pouring, placing, emitting, discarding, abandoning, emptying, discharging, migrating, injecting, escaping, leaching, dumping, or disposing.

"**Remedial Work**" has the meaning assigned to such term in Section 8.11(a).

"**Required Lenders**" means, at any time one or more Lenders having greater than fifty percent (50%) of the aggregate Credit Exposure; *provided* that the total Credit Exposure of the Defaulting Lenders (if any) shall be excluded from the determination of Required Lenders.

"**Responsible Officer**" means, as to any Person, the Chief Executive Officer, the President, any Financial Officer or any Vice President of such Person. Unless otherwise specified, all references to a Responsible Officer herein shall mean a Responsible Officer of the Borrower or of the General Partner acting on behalf of the Borrower.

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

"**Roll-Up**" has the meaning given to such term in Section 2.01(d).

"**Roll-Up Loans**" has the meaning given to such term in Section 2.01(d).

"**Sanctions**" has the meaning assigned to such term in Section 7.26(d).

"**S&P**" means Standard & Poor's Ratings Group, a division of The McGraw-Hill Companies, Inc., and any successor thereto that is a nationally recognized rating agency.

"**Scheduled Maturity Date**" means October 1, 2019; *provided* that the Borrower shall have the right to extend the Scheduled Maturity Date for a period of ninety (90) days subject to satisfaction of the following conditions precedent: (i) the Borrower shall have provided the DIP Agent with not less than five (5) Business Days' prior written notice of its request for such extension; (ii) the Required Lenders shall have consented to such extension; and (iii) the Borrower shall have paid to the DIP Agent for the benefit of each Lender that consents to the extension within four (4) Business Days of the Borrower's request, an extension premium in an amount equal to 1.00% of such Lender's Loans then outstanding, which fee shall be payable on the date of such extension and shall be paid in cash unless the Required Lenders in their sole discretion elect that such premium be paid-in-kind.

"**SEC**" means the Securities and Exchange Commission or any successor Governmental Authority.

"**Section 363 Sale**" means a sale of all or substantially all of the assets and business of the Loan Parties conducted pursuant to Section 363 of the Bankruptcy Code (it being understood, for the avoidance of doubt, that the Loan Parties may sell Properties listed on Schedule 9.11 pursuant to Section 9.11(j) and the Net Sale Proceeds thereof shall be applied in accordance with Section 3.04(b)(ii)).

"**Secured Obligations**" means any and all obligations of and amounts owing or to be owing by the Borrower, any Subsidiary or any other Loan Party (whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising): (a) to the DIP Agent, any Issuing Bank, any trustee or any Lender under any Loan Document; (b) [reserved]; (c) to any Bank Products Provider in respect of any Bank Products; and (d) all renewals, extensions and/or rearrangements of any of the above. For the avoidance of doubt, the "Secured Obligations" shall include all Loans, Initial DIP Term Loans, Delayed Draw DIP Term Loans, Roll-Up Loans, and all fees hereunder or under any other Loan Document.

"**Secured Parties**" means, collectively, the DIP Agent, each Issuing Bank, each Lender, and each Bank Products Provider.

"**Secured Party Designation Notice**" means a notice from any Lender or an Affiliate of a Lender substantially in the form of Exhibit J.

"**Security Instruments**" means the DIP Orders, the Guaranty and Collateral Agreement, the Mortgages, the other agreements, instruments or certificates described or referred to in Schedule 1.02(a), and any and all other agreements, instruments, consents, or certificates now or hereafter executed and delivered by the Borrower or any other Person (other than Bank Products agreements or participation or similar agreements between any Lender and any other lender or creditor with respect to any Secured Obligations pursuant to this Agreement) in connection with, or as security for the payment or performance of the Secured Obligations, the Notes, this Agreement, or reimbursement obligations under the Letters of Credit, as such agreements may be amended, modified, supplemented or restated from time to time.

"Services Agreements" means, collectively, (a) that certain Transportation Services Agreement dated as of May 7, 2015 and effective as of May 1, 2015, between Southcross NGL Pipeline Ltd. and Frio LaSalle Pipeline, LP, (b) that certain Gas Gathering and Treating Agreement dated and effective as of May 1, 2015, between FL Rich Gas Services, LP and Frio LaSalle Pipeline, LP, and (c) that certain Master Compression Services Agreement dated as of May 7, 2015 and effective as of May 1, 2015, between FL Rich Gas Services, LP and Frio LaSalle Pipeline, L.P.

"**Shared Services Agreement**" means that certain Shared Services Agreement, dated March 31, 2019, among the Borrower, Southcross Energy GP LLC, Southcross Holdings and Southcross Holdings GP, LLC.

"**Southcross Holdings**" means Southcross Holdings LP, a Delaware limited partnership.

"**Sponsors**" means one or more funds, accounts, or other entities managed or advised by either Tailwater Capital LLC or EIG Management Company, LLC.

"**Statutory Reserve Rate**" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one *minus* the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the DIP Agent is subject for

eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"**Structuring Fee**" has the meaning assigned to such term in Section 3.05(a).

"**Subsidiary**" means: (a) any Person of which at least a majority of the outstanding Equity Interests having by the terms thereof ordinary voting power to elect a majority of the board of directors, manager or other governing body of such Person (irrespective of whether or not at the time Equity Interests of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by (i) another Person, (ii) one or more of such other Person's Subsidiaries, or (iii) collectively, such other Person and one or more of such other Person's Subsidiaries, and (b) any partnership of which such other Person or any of such other Person's Subsidiaries is a general partner. Unless otherwise indicated herein, each reference to the term "**Subsidiary**" means a Subsidiary of the Borrower.

"**Superpriority Claim**" shall mean a claim against any Loan Party in any of the Chapter 11 Cases that is a superpriority administrative expense claim having priority over any or all administrative expenses and other post-petition claims of the kind specified in, or otherwise arising or ordered under, any section of the Bankruptcy Code (including, without limitation, Sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 546(c), 726 (to the extent permitted by law), 1113 and/or 1114 thereof), whether or not such claim or expenses may become secured by a judgment lien or other non-consensual lien, levy or attachment, other than the Carve-Out.

"**Synthetic Leases**" means, in respect of any Person, all leases which shall have been, or should have been, in accordance with GAAP, treated as operating leases on the financial statements of the Person liable (whether contingently or otherwise) for the payment of rent thereunder and which were properly treated as indebtedness for borrowed money for purposes of U.S. federal income taxes, if the lessee in respect thereof is obligated to either purchase for an amount in excess of, or pay upon early termination an amount in excess of, 80% of the residual value of the Property subject to such operating lease upon expiration or early termination of such lease.

"**Taxes**" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**Term Commitment**" means (a) with respect to each Lender, the Initial Term Commitment or Delayed Term Commitment of such Lender, as the context may require, in each case, as set forth in Annex I hereto as of the date hereof, as such amount may be reduced or otherwise modified at any time or from time to time in accordance with the terms of this

Agreement and (b) the aggregate Term Commitments of all Lenders. The aggregate Term Commitments of all Lenders as of the Effective Date shall total $72,500,000.

"**Testing Period**" means (a) for each Variance Testing Date that is prior to the date that is four weeks after the Petition Date, the period from the Petition Date through the immediately preceding calendar week (ending on a Friday) and (b) for each Variance Test Date that is on or after the date that is four weeks after the Petition Date, the rolling four-week period most recently ended on the last Friday prior to the delivery thereof.

"**Transactions**" means (a) with respect to the Borrower, the execution, delivery and performance by the Borrower of this Agreement and each other Loan Document to which it is a party, the borrowing of Loans, the use of the proceeds thereof (including, without limitation, the Roll-Up), the issuance or deemed issuance of Letters of Credit hereunder, and the grant of Liens by the Borrower on Collateral pursuant to the Security Instruments, and (b) with respect to each Guarantor, the execution, delivery and performance by such Guarantor of each Loan Document to which it is a party, the guaranteeing of the Secured Obligations and the other obligations under the Guaranty and Collateral Agreement by such Guarantor and such Guarantor's grant of the security interests and provision of Collateral under the Security Instruments, and the grant of Liens by such Guarantor on Collateral pursuant to the Security Instruments.

"**Type**", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Alternate Base Rate or the Adjusted LIBO Rate.

"**UBS AG**" means UBS AG, Stamford Branch.

"**USA Patriot Act**" has the meaning assigned to such term in Section 12.16.

"**U.S. Tax Compliance Certificate**" has the meaning assigned to such term in Section 5.03(f).

"**Variance Report**" has the meaning assigned to such term in Section 8.01(q)(ii).

"**Variance Testing Date**" has the meaning assigned to such term in Section 8.01(q)(ii).

"**Wells Fargo**" means Wells Fargo Bank, N.A.

"**Wholly-Owned Subsidiary**" means any Subsidiary of which all of the outstanding Equity Interests (other than any directors' qualifying shares mandated by applicable law), on a fully-diluted basis, are owned by the Borrower and/or one or more of the Wholly-Owned Subsidiaries.

"**Wind-Down Budget**" has the meaning assigned to such term in Section 8.23(c).

"**Withdrawal**" shall mean a disbursement of funds from the Letter of Credit Account in accordance with Section 2.07(e).

"**Withdrawal Request**" shall mean a written request by an Issuing Bank for a Withdrawal, substantially in the form of Exhibit I.

"**Withholding Agent**" means any Loan Party or the DIP Agent.

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

Section 1.03 Types of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a "**Eurodollar Loan**"), and Borrowings may be classified and referred to by Type (e.g., a "**Eurodollar Borrowing**").

Section 1.04 Terms Generally; Rules of Construction. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in the Loan Documents), (b) any reference herein to any law or regulation shall be construed, unless otherwise specified, as referring to such law or regulation as amended, modified, supplemented, codified or reenacted, in whole or in part, and in effect from time to time, (c) any reference herein to any Person shall be construed to include such Person's successors and assigns (subject to the restrictions contained in the Loan Documents), (d) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) with respect to the determination of any time period, the word "from" means "from and including" and the word "to" means "to and including" and (f) any reference herein to Articles, Sections, Annexes, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Annexes, Exhibits and Schedules to, this Agreement. No provision of this Agreement or any other Loan Document shall be interpreted or construed against any Person solely because such Person or its legal representative drafted such provision.

Section 1.05 Accounting Terms and Determinations; GAAP. (a) Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all determinations with respect to accounting matters hereunder shall be made, and all financial statements and certificates and reports as to financial matters required to be furnished to the DIP Agent or the Lenders hereunder shall be prepared, in accordance with GAAP, applied on a basis consistent with the Financial Statements except for changes in which the Borrower's independent certified public accountants concur and which are disclosed to the DIP Agent on the next date on which financial statements are required to be delivered to the Lenders pursuant to Section 8.01(a); *provided* that unless the Borrower and the Required Lenders shall otherwise agree in writing, no

such change shall modify or affect the manner in which compliance with the covenants contained herein is computed such that all such computations shall be conducted utilizing financial information presented consistently with prior periods.

(b) Notwithstanding anything to the contrary contained in paragraph (a) above of the definition of "Capital Lease," all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the issuance of the Financial Accounting Standards Board on February 25, 2016 or an Accounting Standards Update ("**ASU**") shall continue to be accounted for as operating leases for purposes of this agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as capitalized Lease Obligations in the Company's financial statements.

Section 1.06 Time Periods. Unless otherwise specified, in the event any time period or any date provided in this Agreement ends or falls on a day other than a Business Day, then such time period shall be deemed to end and such date shall be deemed to fall on the immediately preceding Business Day, and performance herein may be made on such Business Day, with the same force and effect as if made on such other day.

ARTICLE II
THE CREDITS

Section 2.01 Commitments.

(a) Initial DIP Term Loan. Subject to the terms and conditions of this Agreement, each Lender having an Initial Term Commitment severally agrees to make its portion of the Initial DIP Term Loan to the Borrower on the Effective Date in a principal amount equal to such Lender's Initial Term Commitment as of the Effective Date. Notwithstanding anything to the contrary contained herein (and without affecting any other provisions hereof), the funded portion of the Initial DIP Term Loan to be made on the Effective Date (*i.e.*, the amount advanced to Borrower on the Effective Date) shall be equal to 98.5% of the principal amount of the Initial DIP Term Loan (it being agreed that the full principal amount of the Initial DIP Term Loan shall be the "initial" principal amount of such Loan and deemed outstanding on the Effective Date and the Borrower shall be obligated to repay 100% of the principal amount of each such Loan as provided hereunder). Once the Initial Term Loan has been borrowed, in any amount, the Initial Term Commitment shall be reduced to $0.

(b) Delayed Draw DIP Term Loan. Subject to the terms and conditions of this Agreement, each Lender having a Delayed Draw Term Commitment severally agrees to make its portion of the Delayed Draw DIP Term Loan to the Borrower on the Delayed Draw DIP Funding Date in a principal amount equal to such Lender's Delayed Draw Term Commitment as of such date; *provided that*, the aggregate amount of DIP Term Loans shall not exceed the amount the Borrower is authorized to borrow pursuant to the terms of the Final DIP Order. Notwithstanding anything to the contrary contained herein (and without affecting any other provisions hereof), the funded portion of the DIP Term Loan to be made on such Delayed

Draw DIP Funding Date (*i.e.*, the amount advanced to Borrower on such dates) shall be equal to 98.5% of the principal amount of the Delayed Draw DIP Term Loan (it being agreed that the full principal amount of the Delayed Draw DIP Term Loan shall be the "initial" principal amount of such Loan and deemed outstanding on such date and the Borrower shall be obligated to repay 100% of the principal amount of each such Loan as provided hereunder). The Delayed Draw Term Commitment shall be reduced to $0 upon the earlier of (a) the date the Delayed Draw Term Loan has been borrowed, in any amount, and (b) the date that is thirty (30) days after the date the Final DIP Order is entered.

(c) DIP LC Loan. Subject to the terms and conditions of this Agreement, each Lender having a DIP LC Commitment severally agrees to make its portion of the DIP LC Loan to the Borrower on the Effective Date in a principal amount equal to such Lender's DIP LC Commitment as of the Effective Date. Notwithstanding anything to the contrary contained herein (and without affecting any other provisions hereof), the funded portion of the DIP LC Loan to be made on the Effective Date (*i.e.*, the amount advanced to Borrower on the Effective Date) shall be equal to 98.5% of the principal amount of the DIP LC Loan (it being agreed that the full principal amount of the DIP LC Loan shall be the "initial" principal amount of such Loan and deemed outstanding on the Effective Date and the Borrower shall be obligated to repay 100% of the principal amount of each such Loan as provided hereunder). The Borrower hereby directs the applicable Lenders and the DIP Agent to cause the proceeds of the DIP LC Loan (net of the original issue discount set forth above) to be deposited in the Letter of Credit Account on the Effective Date. Once the DIP LC Loan has been borrowed, in any amount, the DIP LC Commitment shall be reduced to $0.

(d) Roll-Up Loans. Subject to the terms and conditions set forth herein, (i) upon entry of the Final DIP Order, Prepetition Term Loans held by Prepetition Term Lenders set forth on Schedule 2.01(d), which are also Lenders or Affiliates of Lenders hereunder, shall be automatically substituted and exchanged for (and prepaid by) loans hereunder (the "**Initial Roll-Up Loans**"), on a pro rata basis (based on the Initial DIP Term Loans and DIP LC Loans that such Prepetition Term Lender or its Affiliate funded to the Borrower pursuant to Section 2.01(a) or (c)), in a principal amount equal to $1.00 of Prepetition Term Loans of such Lender or such Affiliate of such Lender for each $1.00 of Initial DIP Term Loans and DIP LC Loan funded hereunder on the Effective Date by such Lender and (ii) on the Delayed Draw DIP Funding Date, Prepetition Term Loans held by Prepetition Term Lenders, as set forth on the Additional Roll-Up Schedule (as defined below), which are also Lenders or Affiliates of Lenders hereunder, shall be automatically substituted and exchanged for (and prepaid by) loans hereunder (together with the Initial Roll-Up Loans, the "**Roll-Up Loans**"), on a pro rata basis (based on the Delayed Draw DIP Term Loans that such Prepetition Term Lender or its Affiliate funded to the Borrower pursuant to Section 2.01(b)) in a principal amount equal to $1.00 of Prepetition Term Loans of such Lender or Affiliate of such Lender for each $1.00 of Delayed Draw DIP Term Loans funded hereunder by such Lender on the Delayed Draw DIP Funding Date (and such Roll-Up Loans shall be deemed funded on the date the Final DIP Order is entered or the Delayed Draw DIP Funding Date, as applicable, and shall constitute and shall be deemed to be Loans hereunder) (the foregoing substitution and exchange of Prepetition Term Loans into Roll-Up Loans shall be defined herein, generally, as the "**Roll-Up**"). The parties hereto hereby agree that (i) set forth on Schedule 2.01(d) is (x) the name of each Lender or Affiliate of a Lender whose

Prepetition Term Loans will be exchanged for (and prepaid by) Initial Roll-Up Loans on the date of entry of the Final DIP Order, and the amount of Initial Roll-Up Loans to be received by each Lender or Affiliate of a Lender upon entry of the Final Order and (ii) set forth on the Additional Roll-Up Schedule will be the name of each Lender or Affiliate of a Lender whose Prepetition Term Loans will be exchanged for (and prepaid by) Roll-Up Loans hereunder on the Delayed Draw DIP Funding Date, and the amount of Roll-Up Loans to be received by each Lender or Affiliate of a Lender on the Delayed Draw DIP Funding Date. No later than three (3) Business Days prior to the Delayed Draw DIP Funding Date, the Lender Financial Advisor shall deliver to the DIP Agent a schedule (the "**Additional Roll-Up Schedule**") setting forth the name of each Lender whose Prepetition Term Loans will be exchanged for (and prepaid by) Roll-Up Loans hereunder on the Delayed Draw DIP Funding Date, and the amount of Roll-Up Loans to be received by such Lender on the Delayed Draw DIP Funding Date (and the parties hereto hereby agree that the DIP Agent and the Prepetition Term Agent may each conclusively rely on such schedule in adjusting the Register and the Register (as defined in the Prepetition Term Loan Agreement) to reflect the cancellation of Prepetition Term Loans and the Roll-Up Loans to be received by the Lenders on the Delayed Draw DIP Funding Date as a result of the Roll-Up). Furthermore, the parties agree that each Affiliate of a Lender that will receive Roll-Up Loans hereunder and that is not already a Lender hereunder at the time thereof must become a Lender hereunder, by executing a joinder to this Agreement in form and substance reasonably satisfactory to the DIP Agent, on or prior to the entry of the Final DIP Order or the Delayed Draw DIP Funding Date, as applicable, in order to receive its portion of the Roll-Up.

(e) For the avoidance of doubt, solely with respect to the applicable calculations in determining the Lenders constituting "Required Lenders" hereunder, Initial DIP Term Loans, Delayed Draw DIP Term Loans, the DIP LC Loans, and the Roll-Up Loans shall constitute a single class of Loans.

Section 2.02 Loans and Borrowings.

(a) Borrowings; Several Obligations. The DIP Term Loans shall be made by the Lenders ratably in accordance with their respective applicable Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Types of Loans. Subject to Section 3.03, each Borrowing of Initial DIP Term Loans or Delayed Draw DIP Term Loans shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement. The Roll-Up Loans and the DIP LC Loans shall be deemed Borrowings entirely of ABR Loans.

(c) Minimum Amounts; Limitation on Number of Borrowings. Borrowings of more than one Type may be outstanding at the same time, provided that there shall not at any time be more than a total of four (4) Eurodollar Borrowings outstanding. Notwithstanding any

other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

(d) Notes. The Loans made by each Lender, if requested by such Lender, shall be evidenced by one or more promissory notes of the Borrower in substantially the form of Exhibit A, dated, in the case of (i) any Lender party hereto as of the date of this Agreement, as of the date of this Agreement, or (ii) any Lender that becomes a party hereto pursuant to an Assignment and Assumption, as of the effective date of such Assignment and Assumption, payable to such Lender in a principal amount equal to its Commitments (or Loans, if applicable), and otherwise duly completed. In the event that any Lender's Commitment or Loans increases or decreases for any reason (whether pursuant to Section 12.04(b) or otherwise), if requested by such Lender, the Borrower shall deliver or cause to be delivered on the effective date of such increase or decrease, a new Note payable to such Lender in a principal amount equal to its Commitment or Loans, as applicable, after giving effect to such increase or decrease, and otherwise duly completed. The date, amount, Type, interest rate and, if applicable, Interest Period of each Loan made by each Lender, and all payments made on account of the principal thereof, shall be recorded by such Lender on its books for its applicable Note, and, prior to any transfer, may be endorsed by such Lender on a schedule attached to such Note or any continuation thereof or on any separate record maintained by such Lender. Failure to make any such notation or to attach a schedule shall not affect any Lender's or the Borrower's rights or obligations in respect of such Loans or affect the validity of such transfer by any Lender of its Note.

Section 2.03 Procedure for Advance of Loans. To request a Borrowing of DIP Term Loans, the Borrower shall give the DIP Agent an irrevocable Notice of Borrowing (provided that any Notice of Borrowing may be conditioned upon the entry of the Interim DIP Order or the Final DIP Order) prior to (a) in the case of a Eurodollar Borrowing 11:00 a.m., New York City time, three (3) Business Days before (or one (1) Business Day before in the case of a Eurodollar Borrowing on the Effective Date) the proposed Borrowing (or such shorter period approved by DIP Agent prior to the date of such Borrowing) or (b) in the case of an ABR Borrowing, not later than 11:00a.m, New York City Time, one (1) Business Day before the date of the proposed Borrowing, requesting that the Lenders make the applicable DIP Term Loans on such date. The Borrowing of DIP LC Loans shall be of ABR Loans. In the case of Initial DIP Term Loans and Delayed Draw DIP Term Loans, if no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

Section 2.04 Interest Elections.

(a) Conversion and Continuance. The Borrower may elect to convert a Borrowing of Initial DIP Term Loans or Delayed Draw DIP Term Loans to a different Type or to continue a Eurodollar Borrowing of Initial DIP Term Loans or Delayed Draw DIP Term Loans as the same Type and, in the case of a Eurodollar Borrowing of Initial DIP Term Loans or Delayed Draw DIP Term Loans, may elect Interest Periods therefor, all as provided in

this Section 2.04. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. Notwithstanding anything to the contrary, the Borrower shall not be entitled to request any conversion or continuation that, if made, would result in more than four (4) Eurodollar Borrowings outstanding hereunder at any one time.

(b) Interest Election Requests. To make an election pursuant to this Section 2.04, the Borrower shall deliver to the DIP Agent an Interest Election Request by the time that a Notice of Borrowing would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Interest Election Request shall be irrevocable.

(c) Information in Interest Election Requests. Each Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to Sections 2.04(c)(iii) and (iv) shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one (1) month's duration.

(d) Notice to Lenders by the DIP Agent. Promptly following receipt of an Interest Election Request, the DIP Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) Effect of Failure to Deliver Timely Interest Election Request and Events of Default on Interest Election. If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing: (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing (and any Interest Election Request that

requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective) and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

(f) Notwithstanding anything to the contrary herein, Roll-Up Loans and DIP LC Loans shall only be borrowed as ABR Loans, and may not be converted to Eurodollar Loans.

Section 2.05 Funding of Borrowings.

(a) Funding by Lenders. Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, New York City time, to the account of the DIP Agent most recently designated by it for such purpose by notice to the Lenders. The Borrower hereby irrevocably authorizes the DIP Agent to disburse the proceeds of the DIP Term Loan in immediately available funds by wire transfer to such Person or Persons as may be designated by the Borrower in writing (or in the case of proceeds of the DIP LC Loans, to the Letter of Credit Account). Nothing herein shall be deemed to obligate any Lender to obtain the funds for its Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for its Loan in any particular place or manner.

(b) Funding by the Lenders; Presumption by the DIP Agent. Unless the DIP Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the DIP Agent such Lender's share of such Borrowing, the DIP Agent may assume that such Lender has made such share available on such date in accordance with Section 2.05(a) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the DIP Agent, then the applicable Lender and the Borrower severally agree to pay to the DIP Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the DIP Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the DIP Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of a payment to be made by the Borrower, the interest rate applicable to ABR Loans. If the Borrower and such Lender shall pay such interest to the DIP Agent for the same or an overlapping period, the DIP Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the DIP Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the DIP Agent.

Section 2.06 [Reserved].

Section 2.07 Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of dollar denominated Letters of Credit for its own account

or for the account of any of its Subsidiaries, in a form reasonably acceptable to the applicable Issuing Bank, at any time and from time to time during the Availability Period; *provided* that the Borrower may not request the issuance, amendment, renewal or extension of Letters of Credit hereunder, if, after giving effect to such issuance, amendment, renewal or extension, (i) the LC Cash Collateralization Amount would exceed the Letter of Credit Deposit Amount, (ii) the LC Exposure would exceed the LC Sublimit, or (iii) the aggregate LC Exposure for any Issuing Bank would exceed its applicable LC Commitment. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any Letter of Credit Agreement, the terms and conditions of this Agreement shall control.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. The Prepetition Letters of Credit shall be deemed to have been cancelled and re-issued hereunder as of the Effective Date. To request the issuance of any other Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall fax (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable Issuing Bank) to the applicable Issuing Bank and the DIP Agent (not less than three (3) Business Days in advance of the requested date of issuance, amendment, renewal or extension) a notice:

(i) requesting the issuance of a Letter of Credit or identifying the Letter of Credit to be amended, renewed or extended;

(ii) specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day);

(iii) specifying the date on which such Letter of Credit is to expire (which shall comply with Section 2.07(c));

(iv) specifying the amount of such Letter of Credit;

(v) specifying the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit;

(vi) specifying the current total LC Exposures (without regard to the requested Letter of Credit or the requested amendment, renewal or extension of an outstanding Letter of Credit) and the *pro forma* total LC Exposures (giving effect to the requested Letter of Credit or the requested amendment, renewal or extension of an outstanding Letter of Credit); and

(vii) specifying the current Letter of Credit Deposit Amount and calculating the *pro forma* LC Cash Collateralization Amount (giving effect to the requested Letter of Credit or the requested amendment, renewal or extension of an outstanding Letter of Credit).

Each notice shall constitute a representation and warranty with respect to the information set forth therein and that after giving effect to the requested issuance, amendment, renewal or

extension, as applicable, (x) the LC Cash Collateralization Amount shall not exceed the Letter of Credit Deposit Amount, (y) the LC Exposure shall not exceed the LC Sublimit, and (z) each condition precedent set forth in Section 6.02 has been satisfied with respect to such Letter of Credit.

If requested by the applicable Issuing Bank in connection with any request for a Letter of Credit (other than the Prepetition Letters of Credit deemed to be issued hereunder on the Effective Date), the Borrower also shall submit an appropriately completed letter of credit application on such Issuing Bank's standard form as in effect from time to time, which application may require the inclusion of draft language for such Letter of Credit that is reasonably acceptable to such Issuing Bank and may be required to be signed by a Responsible Officer of the Borrower.

No Issuing Bank will be required to: (A) issue any Letter of Credit if (1) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which such Issuing Bank in good faith deems material to it, (2) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally, (3) except as otherwise agreed by such Issuing Bank, such Letter of Credit is in an initial stated amount less than $10,000, (4) such Letter of Credit is to be denominated in a currency other than Dollars, or (5) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder; or (B) amend or extend any Letter of Credit if such Issuing Bank would not be required at such time to issue the Letter of Credit in its amended form under the terms hereof or if the beneficiary of such Letter of Credit does not accept the proposed amendment thereto.

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one (1) year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is ten (10) Business Days prior to the Maturity Date. Each Letter of Credit with a one (1) year term may provide for the renewal thereof for additional one (1) year periods; *provided* that no such period shall extend beyond the date described in clause (ii) above. Notwithstanding the foregoing, Letters of Credit may be issued with an expiration date that extends past the date set forth in clause (ii) above so long as such Letter of Credit is cash collateralized pursuant to Section 2.07(j).

(d) LC Participations. Any Issuing Bank may at any time, without the consent of, or notice to the Borrower, the DIP Agent or any other Issuing Bank, sell participations in Letters of Credit (up to the aggregate amount available to be drawn under such Letter of Credit)

or LC Disbursements that have not been reimbursed by the Borrower as provided in Section 2.07(e) to any Person (other than a natural Person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, an "**LC Participant**"); *provided* that (A) such Issuing Bank's obligations under this Agreement shall remain unchanged, (B) such Issuing Bank shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the DIP Agent, the Lenders and any other Issuing Banks shall continue to deal solely and directly with such Issuing Bank in connection with such Issuing Banks's rights and obligations under this Agreement. Notwithstanding the foregoing, any agreement or instrument pursuant to which an Issuing Bank sells such a participation may provide such LC Participant with the right to subrogate to the Issuing Bank's rights hereunder or the right to direct the Issuing Bank with respect to its rights (x) to enforce this Agreement, (y) to approve any amendment, modification or waiver of any provision of this Agreement with respect to the Issuing Bank's participated interests in a Letter of Credit or LC Disbursement, or (z) to deliver any notices or exercise any other rights of the Issuing Bank hereunder.

(e) Reimbursement. (i) If any Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the DIP Agent for the account of such Issuing Bank an amount equal to such LC Disbursement not later than 11:00 a.m., New York time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 9:00 a.m., New York time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 11:00 a.m., New York time, on (x) the Business Day that the Borrower receives such notice, if such notice is received prior to 9:00 a.m., New York time, on the day of receipt, or (y) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; *provided* that the Borrower's obligation to reimburse such Issuing Bank with respect to such LC Disbursement shall first be satisfied by funds disbursed to such Issuing Bank from the Letter of Credit Account and applied to such reimbursement obligations in accordance with clauses (ii) through (iv) of this Section 2.07(e) (and the Borrower hereby irrevocably authorizes and instructs such Issuing Bank to request such withdrawals and applications without notice of any kind or further order or action by the Bankruptcy Court) Promptly following receipt by the DIP Agent of any payment from the Borrower pursuant to this Section 2.07(e), the DIP Agent shall distribute such payment to the applicable Issuing Bank.

(ii) If any Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, such Issuing Bank may request that the DIP Agent disburse funds from the Letter of Credit Account to such Issuing Bank to reimburse such Issuing Bank for such LC Disbursement, by delivering to the DIP Agent a Withdrawal Request specifying (A) the amount of the disbursement to be made to such Issuing Bank, (B) the Letter of Credit to which such disbursement relates and (C) the wiring information of the bank account of such Issuing Bank to which such funds are to be sent. Promptly following its receipt of a Withdrawal Request, the DIP Agent shall disburse funds from the Letter of Credit Account in an aggregate amount equal to the amount specified in such Withdrawal Request to the account of the Issuing Bank specified in such Withdrawal Request. All proceeds of the DIP LC Loans shall be held in the Letter of Credit Account at all

times until such proceeds are disbursed or otherwise applied in accordance with this Agreement.

(iii) With respect to any disbursement, withdrawal, transfer, or application of funds from the Letter of Credit Account hereunder, the DIP Agent shall be entitled to conclusively rely upon, and shall be fully protected in relying upon, any Withdrawal Request submitted by an Issuing Bank as evidence that (A) an LC Disbursement has been made by such Issuing Bank in the amount specified in such Withdrawal Request and (B) such Issuing Bank is entitled to receipt funds from the Letter of Credit Account in the amount specified in such Withdrawal Request. Notwithstanding anything herein to the contrary, the DIP Agent shall have no obligation to disburse any amount from the Letter of Credit Account in excess of the amounts then held in the Letter of Credit Account. The DIP Agent shall have no duty to inquire or investigate whether any Issuing Bank is entitled to receive the funds requested in the applicable Withdrawal Request, and shall not be deemed to have any knowledge as to whether or not any such Withdrawal Request is permitted to be given.

(iv) For the avoidance of doubt, all DIP LC Loans shall be Loans for all purposes hereunder and, notwithstanding that the proceeds of such DIP LC Loans are held in the Letter of Credit Account, shall bear interest in accordance with this Agreement and shall be subject to all other terms and provisions of this Agreement and the other Loan Documents to the same extent as all other Loans. The Borrower shall pay to the DIP Agent upon demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance of the Letter of Credit Account

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in Section 2.07(e) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, any Letter of Credit Agreement or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit or any Letter of Credit Agreement, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.07(f), constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the DIP Agent, the Lenders nor any Issuing Bank, nor any of their Related Parties shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence

arising from causes beyond the control of the applicable Issuing Bank; *provided* that the foregoing shall not be construed to excuse any Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of an Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised all requisite care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, each Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. Each Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Each Issuing Bank shall promptly notify the Borrower by telephone (confirmed by facsimile (with a copy to the Agent)) of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such Issuing Bank and the Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If any Issuing Bank shall make any LC Disbursement, then, until the Borrower shall have reimbursed such Issuing Bank for such LC Disbursement (either with its own funds or funds withdrawn from the Letter of Credit Account), the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Loans. Interest accrued pursuant to this Section 2.07(h) shall be for the account of the applicable Issuing Bank.

(i) Replacement of any Issuing Bank. Any Issuing Bank may be replaced at any time by written agreement among the Borrower, the DIP Agent (acting at the direction of the Required Lenders), the replaced Issuing Bank and the successor Issuing Bank. The DIP Agent shall notify the Lenders of any such replacement of any Issuing Bank. At the time any such replacement becomes effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 3.05(a). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous or existing Issuing Bank, or to such successor and all previous and existing Issuing Banks, as the context shall require. After the replacement of any Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of

Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization.

(i) Establishment of Letter of Credit Account. The DIP Agent shall establish the Letter of Credit Account.

(ii) Deposits in Letter of Credit Account. The Letter of Credit Account shall be funded by the Borrower on the Effective Date from the proceeds of the DIP LC Loans advanced pursuant to Section 2.01(c).

(iii) Withdrawals from and Closing of Letter of Credit Account. Amounts on deposit in the Letter of Credit Account shall be withdrawn and distributed as follows:

(A) in accordance with Section 2.07(e) above;

(B) in accordance with Section 2.07(m) below;

(C) [reserved];

(D) upon the Maturity Date, unless otherwise specified by an order rendered by the Bankruptcy Court: (1) if the DIP Agent has received written notice from each Issuing Bank that all Letters of Credit issued by such Issuing Bank have expired or been cancelled (or that a "backstop" letter of credit or other cash collateralization thereof at 103% pursuant to arrangements reasonably satisfactory to such Issuing Bank has been provided to such Issuing Bank) (such written notice, an "**LC Termination Notice**"), the DIP Agent shall, unless otherwise directed by the Required Lenders, withdraw from the Letter of Credit Account the aggregate amount then on deposit therein and apply such amounts to repayment of the Secured Obligations as set forth in Section 10.02(c) or (2) if the DIP Agent has not received such LC Termination Notice, the DIP Agent shall withdraw from the Letter of Credit Account the aggregate amount then on deposit therein that is equal to 103% of the face amount of Letters of Credit then outstanding and disburse such amounts in accordance with a written direction from the Issuing Banks (or, in the absence of such written direction, the DIP Agent may request that the Bankruptcy Court make such determination).

Except as otherwise provided in clause (iii) above amounts in the Letter of Credit Account may not be withdrawn by the Borrower or used for any purpose other than the reimbursement of the Issuing Banks or repayment of the Secured Obligations hereunder.

(iv) The Borrower hereby grants to the DIP Agent, for the benefit of the Issuing Banks and the other Secured Parties, an exclusive superpriority and continuing perfected security interest in and Lien on such account and all cash, checks, drafts, certificates and instruments, if any, from time to time deposited or held in such account, all deposits or wire transfers made thereto, any and all proceeds, products, accessions, rents, profits, income and benefits therefrom, and any substitutions and replacements therefor.

(v) The Borrower's obligation to deposit amounts pursuant to this Section 2.07(j) shall be absolute and unconditional, without regard to whether any beneficiary of any Letter of Credit has attempted to draw down all or a portion of such amount under the terms of a Letter of Credit, and, to the fullest extent permitted by applicable law, shall not be subject to any defense or be affected by a right of set-off, counterclaim or recoupment which the Borrower or any of its Subsidiaries may now or hereafter have against any such beneficiary, any Issuing Bank, the DIP Agent, the Lenders or any other Person for any reason whatsoever. Such deposit shall be held as collateral securing the payment and performance of the Borrower's and the Guarantors' obligations under this Agreement and the other Loan Documents. Subject to Sections 2.07(m), the DIP Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Such deposits shall not bear interest.

(k) Applicability of ISP. Unless otherwise expressly agreed by any Issuing Bank and the Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, no Issuing Bank shall be responsible to the Borrower for, and such Issuing Bank's rights and remedies against the Borrower shall not be impaired by, any action or inaction of such Issuing Bank required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the law or any order of a jurisdiction where such Issuing Bank or the beneficiary is located, the practice stated in the ISP or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(l) Calculation of Maximum Stated Amount. For all purposes of this Agreement, the amount of a Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the stated amount thereof shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at the time of determination.

(m) Withdrawals of funds from the Letter of Credit Account by the Borrower.

(i) By delivery of a Letter of Credit Account Withdrawal Notice to the DIP Agent for delivery to each Issuing Bank at least four (4) Business Days prior

to the date of a requested withdrawal from the Letter of Credit Account, the Borrower may request that the amount set forth in such Letter of Credit Account Withdrawal Notice (which amount the Borrower agrees will not exceed in the aggregate, together with all other withdrawals made pursuant to Letter of Credit Account Withdrawal Notices, the Alternate Cash Collateral Amount) be withdrawn from the Letter of Credit Account and sent to the account of the Borrower specified in such Letter of Credit Account Withdrawal Notice; provided that in no event shall the LC Cash Collateralization Amount exceed the Letter of Credit Deposit Amount after giving effect to such withdrawal. The Borrower agrees that the proceeds of any such withdrawal from the Letter of Credit Account shall be used by the Borrower and the other Loan Parties solely to cash collateralize the obligations of the vendors and suppliers of the Loan Parties in accordance with Section 9.03(j); *provided*, *further*, that in no event shall the LC Cash Collateralization Amount exceed the Letter of Credit Deposit Amount after giving effect to such withdrawal.

(ii) The Borrower may from time to time, by delivery of a Letter of Credit Account Prepayment Notice to the DIP Agent for delivery to each Issuing Bank at least four (4) Business Days prior to the date of the requested withdrawal, request the release of cash collateral from the Letter of Credit Account to be applied in the manner set forth in such Letter of Credit Account Prepayment Notice. The Borrower agrees that (I) any prepayment pursuant to this clause shall be applied in accordance with Section 3.04(c) and (II) in no event shall the LC Cash Collateralization Amount exceed the Letter of Credit Deposit Amount after giving effect to such release.

(iii) On the date set forth in the applicable Letter of Credit Account Withdrawal Notice, the DIP Agent shall disburse funds from the Letter of Credit Account in an aggregate amount equal to the amount specified in such Letter of Credit Account Withdrawal Notice to the account of the Borrower specified in such Withdrawal Request. On the date set forth in the applicable Letter of Credit Account Prepayment Notice, the DIP Agent shall apply funds in the Letter of Credit Account to the Secured Obligations and other applicable obligations in an aggregate amount equal to the amount specified in such Letter of Credit Account Prepayment Notice and in the manner specified in such Letter of Credit Account Prepayment Notice.

(iv) With respect to any disbursement, withdrawal, transfer, or application of funds from the Letter of Credit Account under this Section 2.07(m), the DIP Agent shall be entitled to conclusively rely upon, and shall be fully protected in relying upon, any Letter of Credit Account Withdrawal Notice or Letter of Credit Account Prepayment Notice submitted by the Borrower as evidence that (i) the withdrawal requested therein is permitted to be made, (ii) all conditions or requirements to such withdrawal have been satisfied (including, if applicable, those set forth in Section 6.02) and (iii) in the case of a Letter of Credit Account Prepayment Notice, the application of funds set forth therein

complies with Section 3.04(c). Notwithstanding anything herein to the contrary, the DIP Agent shall have no obligation to disburse any amount from the Letter of Credit Account in excess of the amounts then held in the Letter of Credit Account. The DIP Agent shall have no duty to inquire or investigate whether the Borrower is entitled to receive the funds requested (or have the funds applied in the manner requested) in the applicable Letter of Credit Account Withdrawal Notice or Letter of Credit Account Prepayment Notice, as applicable, and shall not be deemed to have any knowledge as to whether or not any such Letter of Credit Account Withdrawal Notice or Letter of Credit Account Prepayment Notice is permitted to be given.

ARTICLE III
PAYMENTS OF PRINCIPAL AND INTEREST; PREPAYMENTS; FEES

Section 3.01 Repayment of Loans. If not sooner paid (pursuant to Section 3.04), the Borrower shall pay the DIP Term Loan and all other Secured Obligations, in full and in cash, together with accrued interest thereon (or, in the case of Letters of Credit, cash collateralize such Letters of Credit in accordance with Section 2.07(j)), on the Maturity Date.

Section 3.02 Interest.

(a) ABR Loans. The Loans comprising each ABR Borrowing shall bear interest at an annual rate equal to the sum of (i) the Alternate Base Rate *plus* (ii) the Applicable Margin, but in no event to exceed the Highest Lawful Rate.

(b) Eurodollar Loans. The Loans comprising each Eurodollar Borrowing shall bear interest at an annual rate equal to the sum of (i) the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing *plus* (ii) the Applicable Margin, but in no event to exceed the Highest Lawful Rate.

(c) Post-Default Rate. Notwithstanding the foregoing, if an Event of Default has occurred and is continuing, or if any principal of or interest on any Loan or any fee or other amount payable by the Borrower or any other Loan Party hereunder or under any other Loan Document is not paid when due, whether at stated maturity, upon acceleration or otherwise, then all Loans outstanding, in the case of an Event of Default, and such overdue amount, in the case of a failure to pay amounts when due, shall bear interest, after as well as before judgment, at a rate per annum equal to two percent (2.0%) *plus* (i) when used with respect to obligations other than Loans, an interest rate equal to the rate applicable to ABR Loans as provided in Section 3.02(a), and (ii) when used with respect to Loans the rate otherwise applicable to such Loans.

(d) Interest Payment Dates. Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and on the Maturity Date; *provided* that (i) interest accrued pursuant to Section 3.02(c) shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than an optional prepayment of an ABR Loan prior to the Maturity Date), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment, and (iii) in the event of any conversion of any

Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) Interest Rate Computations. All interest hereunder shall be computed on the basis of a year of 360 days, unless such computation would exceed the Highest Lawful Rate, in which case interest shall be computed on the basis of a year of 365 days (or 366 days in a leap year), except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the DIP Agent, and such determination shall be conclusive absent manifest error, and be binding upon the parties hereto.

Section 3.03 Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the DIP Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate for such Interest Period; or

(b) the DIP Agent is advised by the Required Lenders that the Adjusted LIBO Rate or LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period; then the DIP Agent shall give notice thereof to the Borrower and the Lenders as promptly as practicable thereafter and, until the DIP Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, and (ii) if any Notice of Borrowing requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing (without giving effect to clause (c) of the definition of Alternate Base Rate).

Section 3.04 Prepayments.

(a) Optional Prepayments.

(i) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, without premium or penalty (other than the Exit Fee), subject to prior notice in accordance with Section 3.04(a)(ii).

(ii) The Borrower shall notify the DIP Agent (by facsimile or e-mail) of any prepayment hereunder (A) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three (3) Business Days before the date of prepayment, or (B) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one (1) Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date (which shall be a Business Day) and the principal

amount of each Borrowing or portion thereof to be prepaid; *provided*, that a notice of prepayment may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked (by written notice to the DIP Agent on or prior to the specified effective date) if such condition is not satisfied (provided that the failure of such condition shall not relieve the Borrower from its obligations under Section 5.02 in respect thereof). Promptly following receipt of any such notice relating to a Borrowing, the DIP Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an aggregate amount that is an integral multiple of $500,000 and not less than $1,000,000. Each optional prepayment made pursuant this Section 3.04(a) shall be applied ratably to the Loans in accordance with Section 3.04(c).

(b) Mandatory Prepayments. Subject to the Carve-Out and the Wind-Down Budget (if any):

(i) On each date on or after the Effective Date upon which the Borrower or any Subsidiary receives any cash proceeds from any Extraordinary Receipt, an amount equal to 100% of the Net Cash Proceeds from such Extraordinary Receipt shall be applied on such date as a mandatory repayment in accordance with the requirements of Section 3.04(c).

(ii) On each date on or after the Effective Date upon which the Borrower or any Subsidiary receives any cash proceeds from any Asset Sale made pursuant to Section 9.11(f), Section 9.11(j) or Section 9.11(k) (after giving effect to the proviso thereto), an amount equal to 100% of the Net Sale Proceeds therefrom (and in the case of Section 9.11(k), after giving effect to the proviso thereto) shall be applied by the Borrower on such date as a mandatory repayment in accordance with Section 3.04(c).

(iii) On each date on or after the Effective Date upon which the Borrower or any Subsidiary receives any cash proceeds from any Recovery Event, an amount equal to 100% of the Net Cash Proceeds from such Recovery Event shall be applied on such date as a mandatory repayment in accordance with the requirements of Section 3.04(c).

(iv) On each date on or after the Effective Date upon which the Borrower or any Subsidiary receives any cash proceeds from any issuance of Indebtedness (other than Indebtedness permitted by Section 9.02), an amount equal to 100% of the Net Cash Proceeds from such issuance shall be applied on such date as a mandatory repayment in accordance with the requirements of Section 3.04(c).

(v) On each date on or after the Effective Date upon which the Borrower or any Subsidiary receives any Equity Issuance Proceeds, an amount equal to 100% of the Net Cash Proceeds from such issuance shall be applied on

such date as a mandatory repayment in accordance with the requirements of Section 3.04(c).

(vi) Each optional prepayment made pursuant this Section 3.04(b) shall be applied ratably to the Loans in accordance with Section 3.04(c).

(vii) If the Borrower is required to make a mandatory prepayment of Eurodollar Borrowings under this Section 3.04, the Borrower shall have the right, in lieu of making such prepayment in full, to deposit an amount equal to such mandatory prepayment with the DIP Agent in a non-interest bearing cash collateral account maintained by and in the sole dominion and control of the DIP Agent. Any amounts so deposited shall be held by the DIP Agent as collateral for the prepayment of such Eurodollar Rate Loans and shall be applied to the prepayment of the applicable Eurodollar Rate Loans at the end of the current Interest Periods applicable thereto.

(c) Prepayments Waterfall. All Prepayments pursuant to this Section 3.04 shall be accompanied by accrued interest to the extent required by Section 3.02. Subject to the Carve-Out and the Wind-Down Budget (if any), each prepayment of Borrowings pursuant to this Section 3.04 shall be applied by the Borrower, in accordance with the DIP Order, and to the extent not in contravention with the DIP Order: (i) *first*, ratably to pay the Exit Fee, if applicable, (ii) *second*, to be remitted by the Borrower to the DIP Agent and applied by the DIP Agent ratably to repay the DIP Term Loans then outstanding, (iii) *third*, to be remitted by the Borrower to each of the Prepetition Term Agent and the Prepetition Revolver Agent, to be used by such Prepetition Agent to pay any superpriority adequate protection claims of the Prepetition Secured Parties on a pro rata basis; and (iv) *thereafter*, to be remitted by the Borrower to the Prepetition Revolving Agent, the Prepetition Term Agent and the DIP Agent, in such amounts to repay ratably the Prepetition Revolving Loans then outstanding, on the one hand, and the Roll-Up Loans and Prepetition Term Loans then outstanding, on the other hand (provided that funds allocated to the Roll-Up Loans and Prepetition Term Loans shall be applied to repay the Roll-Up Loans in full prior to the Prepetition Terms Loans); *provided that*, each repayment of Borrowings made under each tranche shall be applied, *first* ratably to any ABR Borrowings then outstanding under such tranche, and, *second*, to any Eurodollar Borrowings then outstanding under such tranche; *provided further*, if more than one Eurodollar Borrowing is outstanding under such tranche, such repayments shall be made to each such Eurodollar Borrowing in order of priority beginning with the Eurodollar Borrowing with the least number of days remaining in the Interest Period applicable thereto and ending with the Eurodollar Borrowing with the most number of days remaining in the Interest Period applicable thereto.

(d) No Premium or Penalty. Prepayments permitted or required under this Section 3.04 shall be without premium or penalty (other than the Exit Fee), except as required under Section 5.02.

(e) Notice of Prepayment. The Borrower shall notify the DIP Agent by written notice of any mandatory prepayment under Section 3.04(b) not later than 11:00 a.m., New York City time, two Business Days before the date of such prepayment. Each such notice

shall specify the prepayment date (which shall be a Business Day), the principal amount of each Borrowing or portion thereof to be prepaid and a reasonably detailed calculation of the amount of such prepayment. Promptly following receipt of any such notice, the DIP Agent shall advise the Lenders of the contents thereof.

(f) No Reborrowings. Amounts prepaid pursuant to this Section 3.04 may not be reborrowed.

Section 3.05 Fees.

(a) Structuring Fees. The Borrower agrees to pay to the DIP Agent, for the benefit of each Lender, a structuring fee (the "Structuring Fee") equal to 1.00% of the aggregate amount of such Lender's Commitment in respect of DIP Term Loans, which shall be due and payable on the Effective Date either in cash, or at the option of the Required Lenders, as "original issue discount" from the funded amounts advanced to Borrower on the Effective Date.

(b) Letter of Credit Fees. The Borrower agrees to pay (i) to each Issuing Bank, for its own account, (x) a fronting fee equal to 0.125% of the stated amount of each Prepetition Letter of Credit deemed issued by it hereunder, and (y) a fronting fee equal to 0.50% of the stated amount of each other Letter of Credit issued by it, *provided* that, in each case, in no event shall such fronting fee be less than $750.00 for any Letter of Credit, and (ii) to each Issuing Bank, for its own account, its standard fees with respect to the issuance, amendment, transfer, renewal or extension of any Letter of Credit issued by it or processing of drawings thereunder payable upon the effectiveness thereof. Fronting fees shall be payable in advance (1) with respect to any Prepetition Letters of Credit deemed issued hereunder, on the Effective Date, and (2) with respect to any other Letter of Credit, on the date of issuance of such Letter of Credit. Any other fees payable to any Issuing Bank pursuant to this Section 3.05(b) shall be payable within ten (10) days after demand.

(c) Commitment Premiums. The Borrower agrees to pay to the DIP Provider Parties (as defined in the Commitment Letter), for their own account, the premiums payable in the amounts and at the times set forth in the Commitment Letter.

(d) DIP Agent Fees. The Borrower agrees to pay to the DIP Agent, for its own account, fees payable in the amounts and at the times set forth in the Agency Fee Letter.

(e) Exit Fees. The Borrower shall pay to the DIP Agent, for the ratable benefit of each Lender, an exit fee (the "**Exit Fee**") equal to 1.50% of the aggregate amount of such Lender's DIP Term Loans and unused Delayed Draw Term Commitment, if any. The Exit Fee (or portion thereof, as applicable) shall be paid in cash (i) on the date of any prepayment or repayment of DIP Term Loans pursuant to Section 3.04 or otherwise, (ii) in the case of any unused Delayed Draw Term Commitment, on the date of termination of such Commitment without funding thereunder, and (iii) on the Maturity Date. The Exit Fee, when paid, shall be paid to the DIP Agent for the benefit of each DIP Term Lender, ratably based on its Applicable Percentage.

ARTICLE IV
PAYMENTS; PRO RATA TREATMENT; SHARING OF SET-OFFS

Section 4.01 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) Payments by the Borrower. The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 5.01, Section 5.02, Section 5.03 or otherwise) prior to 11:00 a.m., New York City time, on the date when due, in immediately available funds, without defense, deduction, recoupment, set-off or counterclaim. Fees, once paid, shall be fully earned and shall not be refundable under any circumstances. Any amounts received after such time on any date may, in the discretion of the DIP Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the DIP Agent to the account of the DIP Agent specified from time to time for receipt of payments, except payments to be made directly to the applicable Issuing Bank as expressly provided herein and except that payments pursuant to Section 5.01, Section 5.02, Section 5.03 and Section 12.03 shall be made directly to the Persons entitled thereto. The DIP Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) Application of Insufficient Payments. If at any time insufficient funds are received by and available to the DIP Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of fees then due to such parties, (ii) second, towards payment of interest then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest then due to such parties and (iii) third, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of its Loans and other such obligations greater than its *pro rata* share thereof as provided herein, then the Lender receiving such greater proportion shall (i) notify the DIP Agent of such fact, and (ii) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; *provided* that (A) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (B) the provisions of this Section 4.01 shall not be construed

to apply to (1) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (2) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant. Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Loan Party in the amount of such participation.

Section 4.02 Payments by the Borrower; Presumptions by the DIP Agent. Unless the DIP Agent shall have received notice from the Borrower prior to the date on which any payment is due to the DIP Agent for the account of the Lenders or any Issuing Bank hereunder that the Borrower will not make such payment, the DIP Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or any Issuing Bank, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Banks, as the case may be, severally agrees to repay to the DIP Agent forthwith on demand the amount so distributed to such Lender or such Issuing Bank, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the DIP Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the DIP Agent in accordance with banking industry rules on interbank compensation.

Section 4.03 Certain Deductions by the DIP Agent. If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.05(a), Section 4.02, Section 12.03(c) or otherwise hereunder then the DIP Agent may, in its discretion (notwithstanding any contrary provision hereof), (a) apply any amounts thereafter received by the DIP Agent for the account of such Lender and for the benefit of the DIP Agent or the Issuing Banks to satisfy such Lender's obligations hereunder until all such unsatisfied obligations are fully paid and/or (b) hold any such amounts in a segregated account as cash collateral for, and application to, any future funding obligations of such Lender hereunder, in the case of each of (a) and (b) above, in any order as determined by the DIP Agent in its discretion. If at any time prior to the acceleration or maturity of the Loans, the DIP Agent receives any payment in respect of principal of a Loan while one or more Defaulting Lenders is a party to this Agreement, the DIP Agent shall apply such payment first to the Borrowing(s) for which any such Defaulting Lender has failed to fund its *pro rata* share until such time as such Borrowing(s) are paid in full or each Lender (including each Defaulting Lender) is owed its Applicable Percentage of all Loans then outstanding. After acceleration or maturity of the Loans, all principal will be applied ratably as provided in Section 10.02(c).

Section 4.04 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) [reserved]; and

(b) the Commitment and the Credit Exposure of such Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 12.02), *provided* that any waiver, amendment or modification requiring the consent of all Lenders or each adversely affected Lender which affects such Defaulting Lender differently than all other Lenders or all other adversely affected Lenders, as the case may be, shall require the consent of such Defaulting Lender.

ARTICLE V
INCREASED COSTS; BREAK FUNDING PAYMENTS; TAXES; ILLEGALITY

Section 5.01 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Adjusted LIBO Rate) or any Issuing Bank;

(ii) subject any Lender or any Issuing Bank to any Tax of any kind whatsoever with respect to this Agreement, any Letter of Credit , or any Eurodollar Loan made by it (except for Indemnified Taxes, Other Taxes covered by Section 5.03 or Connection Income Taxes and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or any Issuing Bank); or

(iii) impose on any Lender or any Issuing Bank or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit; and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Issuing Bank of issuing or maintaining any Letter of Credit (or of maintaining its obligation to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or such Issuing Bank hereunder (whether of principal, interest or any other amount), then, upon request of such Lender or such Issuing Bank, the Borrower will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or any Issuing Bank determines that any Change in Law regarding capital or liquidity requirements and affecting such Lender or any Issuing Bank or any lending office of such Lender or such Lender's or any Issuing Bank's holding company, if any, has or would have the effect of reducing the rate of return on such Lender's or any Issuing Bank's capital or on the capital of such Lender's or any Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender

or the Loans made by such Lender, or the Letters of Credit issued by any Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or any Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or such Issuing Bank or its holding company, as the case may be, as specified in Sections 5.01(a) or (b) and delivered to the Borrower (with a copy to the DIP Agent) shall be conclusive absent manifest error. The Borrower shall pay such Lender or such Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Effect of Failure or Delay in Requesting Compensation. Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to this Section 5.01 shall not constitute a waiver of such Lender's or such Issuing Bank's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender or such Issuing Bank pursuant to this Section 5.01 for any increased costs incurred or reductions suffered more than 365 days prior to the date that such Lender or such Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such Issuing Bank's intention to claim compensation therefor; *provided*, *further*, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 365-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 5.02 Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan into an ABR Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto, or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 5.04(b), then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market.

A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 5.02 shall be delivered to the Borrower (with a copy to the DIP Agent) and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

Section 5.03 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower or any Guarantor under any Loan Document shall be made free and clear of and without deduction or withholding for any Indemnified Taxes or Other Taxes; *provided* that if the Borrower or any Guarantor shall be required by applicable law to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 5.03(a)), the DIP Agent, Lender or Issuing Bank, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower or such Guarantor shall make such deductions and (iii) the Borrower or such Guarantor shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of Section 5.03(a), the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by the Borrower. The Borrower shall indemnify the DIP Agent, each Lender and each Issuing Bank, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 5.03) payable or paid by the DIP Agent, such Lender or such Issuing Bank, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower hereunder, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability under this Section 5.03 delivered to the Borrower by a Lender or an Issuing Bank (with a copy to the DIP Agent), or by the DIP Agent on its own behalf or on behalf of a Lender or an Issuing Bank, shall be conclusive absent manifest error.

(d) Indemnification by the Lenders. Each Lender shall severally indemnify the DIP Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified the DIP Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.04(d)(ii) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the DIP Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant

Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the DIP Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the DIP Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the DIP Agent to the Lender from any other source against any amount due to the DIP Agent under this paragraph (d).

(e) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower or a Guarantor to a Governmental Authority, the Borrower shall deliver to the DIP Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the DIP Agent.

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments made under this Agreement or any other Loan Document shall deliver to the Withholding Agent (with a copy to the DIP Agent), at the time or times prescribed by applicable law or reasonably requested by the Withholding Agent, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by the Withholding Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Withholding Agent as will enable the Withholding Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution, and submission of such documentation (other than such documentation set forth in Sections 5.03(f)(ii)(A) and 5.03(f)(ii)(B) and Section 5.03(g) below) shall not be required if in the Lender's reasonable judgment such completion, execution, or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a "United States person" as defined in section 7701(a)(30) of the Code,

(A) any Lender that is a "United States person" as defined in section 7701(a)(30) of the Code shall deliver to the Withholding Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Withholding Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from United States federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Withholding Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such

Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Withholding Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN establishing an exemption from or reduction of, United States federal withholding tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, United States federal withholding tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Foreign Lender is not a "bank" within the meaning of section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code (a "**U.S. Tax Compliance Certificate**"), and (y) executed originals of IRS Form W-8BEN; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-4 on behalf of each such direct and indirect partner; and

(5) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Withholding Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this

Agreement (and from time to time thereafter upon the reasonable request of the Withholding Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States federal withholding tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Withholding Agent to determine the withholding or deduction required to be made.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification, or promptly notify the Withholding Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If the DIP Agent, a Lender or an Issuing Bank determines, in its sole discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 5.03, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 5.03 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the DIP Agent, such Lender or such Issuing Bank, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that the Borrower, upon the request of the DIP Agent, such Lender or such Issuing Bank, agrees to repay the amount paid over to the Borrower (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to the DIP Agent, such Lender or such Issuing Bank in the event the DIP Agent, such Lender or such Issuing Bank is required to repay such refund to such Governmental Authority. This Section 5.03 shall not be construed to require the DIP Agent, any Lender or any Issuing Bank to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

(h) FATCA. If a payment made to a Lender under this Agreement would be subject to United States federal withholding tax imposed by FATCA if such Lender fails to comply with the applicable reporting requirements of FATCA (including those contained in section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Withholding Agent, at the time or times prescribed by law and at such time or times reasonably requested by the Withholding Agent, such documentation prescribed by applicable law (including as prescribed by section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Withholding Agent as may be necessary for the Withholding Agent to comply with its obligations under FATCA, to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for the purposes of this Section 5.03(h), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. For purposes of determining withholding Taxes imposed under FATCA, the Borrower and the DIP Agent shall treat (and the DIP Agent is authorized to treat) this Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

Section 5.04 Mitigation Obligations; Replacement of Lenders.

(a) Designation of Different Lending Office. If any Lender requests compensation under Section 5.01, or requires the Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.03, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 5.01 or Section 5.03, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 5.01, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.03, or if any Lender is a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the DIP Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 12.04(b)), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (i) the Borrower shall have paid to the DIP Agent the processing and recordation fee specified in Section 12.04(b)(iv), (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Credit Exposure in respect of Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.04(c) or Section 5.02), from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts), (iii) in the case of any such assignment resulting from a claim for compensation under Section 5.01 or payments required to be made pursuant to Section 5.03, such assignment will result in a reduction in such compensation or payments thereafter, and (iv) such assignment does not conflict with applicable law. A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 5.05 Illegality. Notwithstanding any other provision of this Agreement, in the event that it becomes unlawful for any Lender or its applicable lending office to honor its obligation to make or maintain Eurodollar Loans either generally or having a particular Interest Period hereunder, then (a) such Lender shall promptly notify the Borrower and the DIP Agent thereof and such Lender's obligation to make such Eurodollar Loans shall be suspended (the "**Affected Loans**") until such time as such Lender may again make and maintain such Eurodollar Loans and (b) all Affected Loans which would otherwise be made by such Lender shall be made instead as ABR Loans (without giving effect to clause (c) of the definition of Alternate Base Rate) (and, if such Lender so requests by notice to the Borrower and the DIP Agent, all Affected Loans of such Lender then outstanding shall be automatically converted into ABR Loans on the

date specified by such Lender in such notice) and, to the extent that Affected Loans are so made as (or converted into) ABR Loans, all payments of principal which would otherwise be applied to such Lender's Affected Loans shall be applied instead to its ABR Loans.

ARTICLE VI
CONDITIONS PRECEDENT

Section 6.01 Effective Date. The obligations of the Lenders to make Loans and of each Issuing Bank to issue Letters of Credit hereunder (exclusive of the Prepetition Letters of Credit) shall not become effective until the Business Day on which each of the following conditions is satisfied (or waived in accordance with Section 12.02):

(a) The Petition Date will have occurred, and each Loan Party will be a debtor and a debtor-in-possession in the Chapter 11 Cases. All "first day orders" entered by the Bankruptcy Court in connection with the commencement of the Chapter 11 Cases (other than the Cash Management Order or the Interim DIP Order), will be satisfactory in form and substance to the Required Lenders;

(b) Not later than five (5) Business Days following the Petition Date, the Bankruptcy Court shall have entered the Interim DIP Order, in form and substance satisfactory to the Required Lenders (and with respect to any provision that affects the rights or duties of the DIP Agent, the DIP Agent), which Interim DIP Order shall be in full force and effect and has not been vacated, reversed, modified, amended or stayed;

(c) All fees, costs and expenses required to be have been paid or reimbursed, as set forth herein and in the Loans Documents, the Commitment Letter and the Agency Fee Letter shall have been paid or reimbursed or will be paid or reimbursed contemporaneously with the Effective Date;

(d) The Required Lenders and the DIP Agent shall have received and the Required Lenders shall be satisfied with a cash flow forecast for the 13-week period commencing on the Effective Date dated as of a date not more than 2 Business Days prior to the Effective Date (the "**Initial Approved Budget**");

(e) One or more orders, in form and substance satisfactory to the Required Lenders in all respects, approving such cash management systems and arrangements (as the same may be amended, supplemented or modified from time to time after entry thereof in accordance with the terms hereof, the "**Cash Management Order**") (it being understood and agreed that (i) an order substantially in a form approved by Lender Counsel shall, if entered by the Bankruptcy Court, be deemed acceptable to the Required Lenders and (ii) for the avoidance of doubt, the Borrower's cash management systems and arrangements in effect on the Effective Date in accordance with the Prepetition Revolving Credit Agreement shall be deemed acceptable to the Required Lenders) shall have been entered by the Bankruptcy Court, which Cash Management Order shall be in full force and effect and shall not have been (x) stayed, vacated or reversed, or (y) amended or modified except as otherwise agreed to in writing by Lender Counsel or Required Lenders in their sole discretion;

(f) Since December 31, 2018, there shall not have occurred or there shall not exist any event, condition or circumstance that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect; and

(g) The DIP Agent and the Required Lenders shall have received a certificate of the Secretary or an Assistant Secretary of each Loan Party setting forth (i) resolutions of its board of directors (or its equivalent) with respect to the authorization of such Loan Party to execute and deliver the Loan Documents to which it is a party and to enter into the Transactions contemplated in those documents, (ii) the officers of such Loan Party (A) who are authorized to sign the Loan Documents to which such Loan Party is a party and (B) who will, until replaced by another officer or officers duly authorized for that purpose, act as its representative for the purposes of signing documents and giving notices and other communications in connection with this Agreement and the Transactions contemplated hereby, (iii) specimen signatures of such authorized officers, and (iv) the Organization Documents of such Loan Party, certified as being true and complete. The DIP Agent and the Lenders may conclusively rely on such certificate until the DIP Agent receives notice in writing from such Loan Party to the contrary.

(h) The DIP Agent and the Required Lenders shall have received certificates of the appropriate state agencies with respect to the existence, qualification and good standing of each Loan Party in its state of formation.

(i) The DIP Agent and the Required Lenders shall have received a customary closing certificate substantially in the form of Exhibit M, duly and properly executed by a Financial Officer and dated as of the Effective Date.

(j) The DIP Agent and the Required Lenders shall have received counterparts of this Agreement, the Guaranty and Collateral Agreement and the Agency Fee Letter, signed on behalf of each party thereto.

(k) The DIP Agent and the Required Lenders shall have received the Financial Statements.

(l) The DIP Agent and the Required Lenders shall have received from each party thereto duly executed counterparts of the Security Instruments. In connection with the execution and delivery of the Security Instruments, the Required Lenders shall:

(i) be satisfied that the Interim DIP Order or Security Instruments required to be executed on the Effective Date create (or will create, upon proper filing, recording or registration thereof, or upon entry of, the Interim DIP Order) perfected Liens having the priorities set forth in the Interim DIP Order (subject only to Excepted Liens on all of the tangible and intangible Property of the Loan Parties other than *de minimis* Property excluded in the DIP Agent's sole discretion); and

(ii) have received (or its bailee pursuant to the Interim DIP Order has received) certificates (if any), together with undated, blank stock powers for each

such certificate, representing all of the issued and outstanding Equity Interests of each of the Loan Parties (other than the Borrower), to the extent certificated.

(iii) The DIP Agent shall have received an opinion of Davis Polk & Wardwell LLP, special counsel to the Borrower in form and substance satisfactory to the DIP Agent, the Required Lenders and their counsel.

(m) [Reserved].

(n) Subject to Section 8.20, the DIP Agent and the Required Lenders shall have received appropriate UCC search results satisfactory to DIP Lenders or the Required Lenders reflecting no prior Liens encumbering the Properties of the Borrower and the Subsidiaries; other than those being assigned or released on or prior to the Effective Date or Liens permitted by Section 9.03.

(o) Subject to Section 8.20, each document (including any Uniform Commercial Code financing statement) required by this Agreement or under law or reasonably requested by the DIP Agent or the Required Lenders to be filed, registered or recorded in order to create in favor of the DIP Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral described therein having the priorities set forth in the DIP Orders, shall be in proper form for filing, registration or recordation.

(p) The DIP Agent and the Lenders shall have received from the Loan Parties, to the extent requested by the Lenders or the DIP Agent, all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act.

(q) The DIP Agent shall have received a Notice of Borrowing in accordance with Section 2.03.

Without limiting the generality of the provisions of Section 11.04, for purposes of determining compliance with the conditions specified in this Section 6.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required under this Section 6.01 to be consented to or approved by or acceptable or satisfactory to a Lender unless the DIP Agent shall have received notice from such Lender prior to the Effective Date specifying its objection thereto. At the request of the Required Lenders, the DIP Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of each Issuing Bank to issue Letters of Credit hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 12.02) at or prior to 5:00 p.m., New York City time, on [●], 2019 (and, in the event such conditions are not so satisfied or waived, the Commitments shall terminate at such time).

Section 6.02 Each Subsequent Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, extend the Scheduled Maturity Date in accordance with the definition thereof or allow the withdrawal of cash from the Letter of Credit Account pursuant

to a Letter of Credit Account Withdrawal Notice, and each Issuing Bank to issue, amend, renew or extend any Letter of Credit, in each case, after the Effective Date, is subject to the satisfaction of the following conditions:

(a) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit or the withdrawal from the Letter of Credit Account, as applicable, no Default shall have occurred and be continuing.

(b) The representations and warranties of the Borrower and the Guarantors set forth in this Agreement and in the other Loan Documents shall be true and correct in all material respects on and as of the date of such Borrowing, extension of the Scheduled Maturity Date, withdrawal of cash from the Letter of Credit Account or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, except that (i) to the extent any such representations and warranties are expressly limited to an earlier date, in which case, on and as of the date of such Borrowing, extension of the Scheduled Maturity Date, withdrawal of cash from the Letter of Credit Account or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, such representations and warranties shall continue to be true and correct in all material respects as of such specified earlier date, and (ii) to the extent that any such representations and warranties are qualified by materiality, such representations and warranties shall continue to be true and correct in all respects.

(c) In the case of an issuance, amendment, renewal or extension of a Letter of Credit or the withdrawal of cash from the Letter of Credit Account to fund the Alternative Cash Collateral Amount, the applicable Issuing Bank and the DIP Agent shall have received a Letter of Credit Account Withdrawal Notice in accordance with Section 2.07(m) or a request for a Letter of Credit and related Letter of Credit Agreement in accordance with Section 2.07(b), as applicable.

(d) Solely with respect to the Delayed Draw DIP Term Loan, the Bankruptcy Court shall have entered the Final DIP Order, in form and substance reasonably satisfactory to the Required Lenders (and with respect to any provision that affects the rights or duties of the DIP Agent, the DIP Agent) and the DIP Agent shall have received a signed copy of such Final Order, which Final DIP Order has not been vacated, reversed, modified, amended or stayed; *provided*, for the avoidance of doubt, no Lender holding Delayed Draw DIP Term Commitments shall be required to fund any Delayed Draw DIP Term Loans to the extent that the Final DIP Order does not approve the Roll-Up that is to be consummated on the Delayed Draw DIP Funding Date pursuant to Section 2.01(d).

(e) The Final DIP Order shall have been entered by the Bankruptcy Court no later than noon (12:00 p.m.) Eastern Time on the initial Delayed Draw DIP Funding Date.

(f) In the case of a Borrowing of Delayed Draw DIP Term Loans, the DIP Agent shall have received a Notice of Borrowing in accordance with Section 2.03.

(g) In the case of an issuance, amendment, renewal or extension of a Letter of Credit or the withdrawal of cash from the Letter of Credit Account to fund the Alternative Cash Collateral Amount, (i) the Prepetition Letters of Credit shall continue to be deemed to have been

cancelled and re-issued hereunder and no action shall have been taken in the Chapter 11 Cases to void such deemed cancellation and re-issuance and (ii) after giving effect to such issuance, amendment, renewal or extension of a Letter of Credit or such withdrawal of cash, the LC Cash Collateralization Amount shall not exceed the Letter of Credit Deposit Amount.

Each request for a Borrowing and each request for the issuance, amendment, renewal or extension of any Letter of Credit and each acceptance of the foregoing shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in Sections 6.02(a) and (b).

ARTICLE VII
REPRESENTATIONS AND WARRANTIES

The Borrower (on behalf of itself and its Subsidiaries), and each Guarantor by its execution of the Guaranty and Collateral Agreement, represents and warrants to the DIP Agent, any Issuing Banks and the Lenders that:

Section 7.01 Organization; Powers. Each of the Borrower and its Subsidiaries is a legal entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority, and has all material governmental licenses, authorizations, consents and approvals necessary, to own its assets and to carry on its business as now conducted, and is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where failure to have such power, authority, licenses, authorizations, consents, approvals and qualifications could not reasonably be expected to have a Material Adverse Effect.

Section 7.02 Authority; Enforceability. Subject to entry of the Interim DIP Order (or the Final DIP Order, where applicable) and the terms thereof, the Transactions are within each Loan Party's corporate powers and have been duly authorized by all necessary corporate and, if required, stockholder action (including, without limitation, any action required to be taken by any class of directors of the Borrower or any other Person, whether interested or disinterested, in order to ensure the due authorization of the Transactions). Each Loan Document to which a Loan Party is a party has been duly executed and delivered by such Loan Party and constitutes a legal, valid and binding obligation of such Loan Party, as applicable, enforceable in accordance with its terms, except as may be limited by the DIP Orders.

Section 7.03 Approvals; No Conflicts. Subject to entry of the Interim DIP Order (or the Final DIP Order, where applicable) and the terms thereof, the Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any other third Person (including shareholders or any class of directors, whether interested or disinterested, of the Borrower or any other Person), nor is any such consent, approval, registration, filing or other action necessary for the validity or enforceability of any Loan Document or the consummation of the transactions contemplated thereby, except such as have been obtained or made and are in full force and effect other than (i) the recording and filing of the Security Instruments as required by this Agreement and (ii) those third party approvals or consents which, if not made or obtained, would not cause a Default hereunder, could not reasonably be expected to have a Material Adverse Effect or do not have an adverse effect on the

enforceability of the Loan Documents, (b) will not violate (i) any applicable law or regulation, (ii) any Organization Documents of the Borrower or any Subsidiary, or (iii) any order of any Governmental Authority, (c) other than violations arising as a result of the commencement of the Chapter 11 Cases or where enforcement is stayed as upon commencement of the Chapter 11 Cases or as otherwise excused by the Bankruptcy Court, will not violate or result in a default under any indenture or other agreement regarding Indebtedness of the Borrower or any Subsidiary or give rise to a right thereunder to require any payment to be made by the Borrower or such Subsidiary, (d) other than violations arising as a result of the commencement of the Chapter 11 Cases or where enforcement is stayed as upon commencement of the Chapter 11 Cases or as otherwise excused by the Bankruptcy Court, will not violate or result in a default under any other agreement or other instrument binding upon the Borrower or any Subsidiary, or its Properties, or give rise to a right thereunder to require any payment to be made by the Borrower or such Subsidiary, other than such violations or defaults which would not cause a Default hereunder, could not reasonably be expected to have a Material Adverse Effect, or do not have an adverse effect on the enforceability of any Loan Documents, and (e) will not result in the creation or imposition of any Lien on any Property of the Borrower or any Subsidiary (other than the Liens created by the Loan Documents).

Section 7.04 Financial Condition; No Material Adverse Change.

(a) All financial statements relating to any Loan Party which have been or may hereafter be delivered by any Loan Party to the DIP Agent and the Lenders pursuant to the terms of the Agreement have been prepared in accordance with GAAP and present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its Consolidated Subsidiaries as of such dates and for such periods. The representations in this Section 7.04(a), as applicable, are subject, in the case of unaudited financial statements, to normal year-end audit adjustments and accruals and the absence of notes.

(b) Since December 31, 2018, there has been no event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

(c) Neither the Borrower nor any Subsidiary has, on the date hereof after giving effect to the Transactions, any Material Indebtedness (including Disqualified Capital Stock) or any contingent liabilities, off-balance sheet liabilities or partnerships, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments, except as referred to or reflected or provided for in the Financial Statements.

(d) A true and complete copy of the Initial Approved Budget, as agreed to by the Required Lenders, as of the Effective Date, is attached as Annex IV hereto.

(e) Each Proposed Budget and any other projections regarding the financial performance of the Borrower and its Consolidated Subsidiaries which have been or may hereafter be delivered to DIP Agent and the Lenders have been prepared on a reasonable basis and in good faith by the Borrower and based upon assumptions believed by the Borrower to be reasonable at the time such projections were provided (and on the Effective Date in the case of forecasts provided prior to the Effective Date) and from the best information then-available to

the Borrower after reasonable inquiry and reflect the good faith and reasonable estimates of the Loan Parties of the future financial performance of Borrower and its Consolidated Subsidiaries and of the other information projected therein for the periods set forth therein (it being recognized by the Lenders, however, that projections as to future events are not to be viewed as facts and that actual results during the period(s) covered by such projections may differ from the projected results and that such differences may be material and that neither the Borrower nor any Subsidiary makes any representation that such projections will be realized).

Section 7.05 Litigation. Other than the Chapter 11 Cases, there are no unstayed actions, suits, investigations or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened in writing against or affecting the Borrower or any Subsidiary, or any of their Properties (a) not fully covered by insurance (except for normal deductibles) as to which there is a reasonable possibility of an adverse determination that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, or (b) that involve any Loan Document or the Transactions.

Section 7.06 Environmental Matters. Except for such matters that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

(a) the Borrower and the Subsidiaries and each of their respective Properties and operations thereon are, and within all applicable statute of limitation periods have been, in compliance with all applicable Environmental Laws;

(b) the Borrower and the Subsidiaries have obtained all Environmental Permits required for their respective operations and each of their Properties, with all such Environmental Permits being currently in full force and effect, and none of the Borrower or the Subsidiaries has received any written notice or otherwise has knowledge that any such existing Environmental Permit will be revoked or that any application for any new Environmental Permit or renewal of any existing Environmental Permit will be protested or denied;

(c) there are no claims, demands, suits, orders, inquiries, investigations, requests for information or proceedings concerning any violation of, or any liability (including as a potentially responsible party) under, any applicable Environmental Law that is pending or, to the Borrower's knowledge, threatened against the Borrower or any Subsidiary or any of their respective Properties or as a result of any operations at such Properties;

(d) none of the Properties of the Borrower or any Subsidiary contain or have contained any: (i) underground storage tanks; (ii) asbestos-containing materials; (iii) landfills or dumps; (iv) hazardous waste management units as defined pursuant to RCRA or any comparable state law; or (v) sites on or nominated for the National Priority List promulgated pursuant to CERCLA or any state remedial priority list promulgated or published pursuant to any comparable state law;

(e) there has been no Release or, to the Borrower's knowledge, threatened Release of Hazardous Materials at, on, under or from the Borrower's or any Subsidiary's Properties, there are no investigations, remediations, abatements, removals, or monitorings of

Hazardous Materials required under applicable Environmental Laws at such Properties and, to the knowledge of the Borrower, none of such Properties are adversely affected by any Release or threatened Release of a Hazardous Material originating or emanating from any other real property;

(f) neither the Borrower nor any Subsidiary has received any written notice asserting an alleged liability or obligation under any applicable Environmental Laws with respect to the investigation, remediation, abatement, removal, or monitoring of any Hazardous Materials at, under, or Released or threatened to be Released from any real properties offsite the Borrower's or any Subsidiary's Properties and, to the Borrower's knowledge, there are no conditions or circumstances that could reasonably be expected to result in the receipt of such written notice;

(g) there has been no exposure of any Person or Property to any Hazardous Materials as a result of or in connection with the operations and businesses of any of the Borrower's or the Subsidiaries' Properties that could reasonably be expected to form the basis for a claim for damages or compensation, and, to the Borrower's knowledge, there are no conditions or circumstances that could reasonably be expected to result in the receipt of notice regarding such exposure; and

(h) the Borrower has provided, or has caused its Subsidiaries to provide, to the Lenders complete and correct copies of all environmental site assessment reports, investigations, studies, analyses, and correspondence on environmental matters (including matters relating to any alleged non-compliance with or liability under Environmental Laws) that are in any of the Borrower's or the Subsidiaries' possession or control and relating to their respective Properties or operations thereon.

Section 7.07 Compliance with the Laws and Agreements; No Defaults.

(a) Each of the Borrower and each Subsidiary is in compliance with all Governmental Requirements applicable to it or its Property and all agreements and other instruments binding upon it or its Property, and possesses all licenses, permits, franchises, exemptions, approvals and other governmental authorizations necessary for the ownership of its Property and the conduct of its business, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) Other than as result of the commencement of the Chapter 11 Cases, neither the Borrower nor any Subsidiary is in default nor has any event or circumstance occurred which, but for the expiration of any applicable grace period or the giving of notice, or both, would constitute a default or would require the Borrower or a Subsidiary to Redeem or make any offer to Redeem under any indenture, note, credit agreement or instrument pursuant to which any Material Indebtedness is outstanding or by which the Borrower or any Subsidiary or any of their Properties is bound, except where enforcement is stayed upon commencement of the Chapter 11 Cases.

(c) No Default has occurred and is continuing.

Section 7.08 Investment Company Act. Neither the Borrower nor any Subsidiary is an "investment company" or a company "controlled" by an "investment company," within the meaning of, or subject to regulation under, the Investment Company Act of 1940, as amended.

Section 7.09 Taxes. Except as set forth on Schedule 7.09, each of the Borrower and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed. Each of the Borrower and its Subsidiaries has paid or caused to be paid all Taxes required to have been paid by it, except Taxes for which payment is stayed or excused under the Bankruptcy Code or that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP. The charges, accruals and reserves on the books of the Borrower and its Subsidiaries in respect of Taxes and other governmental charges are, in the reasonable opinion of the Borrower, adequate. No currently outstanding Tax Lien has been filed against the Borrower, any of the Subsidiaries, or any of their respective Properties, and, to the knowledge of the Borrower, no claim is being asserted against the Borrower, any of the Subsidiaries, or any of their respective Properties with respect to any such Tax or other such governmental charge in each case, except with respect to Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP.

Section 7.10 ERISA.

(a) The Borrower, the Subsidiaries and each ERISA Affiliate have complied in all material respects with ERISA and, where applicable, the Code regarding each Plan.

(b) Each Plan is, and has been, established and maintained in compliance with its terms, ERISA and, where applicable, the Code, except where the failure to so establish and maintain such Plan could not reasonably be expected to have a Material Adverse Effect.

(c) No act, omission or transaction has occurred which could result in imposition on the Borrower, any Subsidiary or any ERISA Affiliate (whether directly or indirectly) of (i) either a civil penalty assessed pursuant to subsections (c), (i), (l) or (m) of section 502 of ERISA or a tax imposed pursuant to Chapter 43 of Subtitle D of the Code or (ii) breach of fiduciary duty liability damages under section 409 of ERISA.

(d) Full payment when due has been made of all amounts which the Borrower, the Subsidiaries or any ERISA Affiliate is required under the terms of each Plan or applicable law to have paid as contributions to such Plan as of the date hereof.

(e) Neither the Borrower, the Subsidiaries nor any ERISA Affiliate sponsors, maintains, or contributes to an employee welfare benefit plan, as defined in section 3(1) of ERISA, including, without limitation, any such plan maintained to provide benefits to former employees of such entities, with respect to which its sponsorship of, maintenance of or contribution to may not be terminated by the Borrower, a Subsidiary or any ERISA Affiliate in its sole discretion at any time without any material liability.

(f) Neither the Borrower, the Subsidiaries nor any ERISA Affiliate sponsors, maintains or contributes to, or has at any time in the six-year period preceding the date hereof sponsored, maintained or contributed to, any employee pension benefit plan, as defined in section 3(2) of ERISA, including a multiemployer plan as defined in section 3(37) or 4001(a)(3) of ERISA, that is subject to Title IV of ERISA, section 302 of ERISA or section 412 of the Code.

Section 7.11 Disclosure; No Material Misstatements. The Borrower has disclosed to the DIP Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of the Borrower or any Subsidiary to the DIP Agent or any Lender or any of their Affiliates in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or under any other Loan Document (as modified or supplemented by other information so furnished) contains any material misstatement of fact or, when taken as a whole, omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that, with respect to projected financial information, other forward-looking information and information of a general economic or general industry nature, the Borrower represents only that such information was prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time such projected financial information was made available and such projections reflect the good faith and reasonable estimates of the Borrower of the future financial performance of Borrower and its Consolidated Subsidiaries and of the other information projected therein for the periods set forth therein, it being understood that such projected financial information is not to be viewed as facts and that the actual results may vary materially from such projected financial information.

Section 7.12 Insurance. Each Loan Party has, and has caused all of its Subsidiaries to have, (a) all insurance policies sufficient for the compliance by each of them with all material Governmental Requirements and all material agreements, including, without limitation, Flood Insurance, if required, with respect to any Property subjected, or required under the Loan Documents to be subjected, to a Lien pursuant to the DIP Orders and/or Security Instruments, and (b) insurance coverage in at least amounts and against such risk (including, without limitation, public liability) that are usually insured against by companies similarly situated and of comparable size and engaged in the same or a similar business for the assets and operations of the Borrower and its Subsidiaries. Subject to Section 8.20, the DIP Agent and the Lenders have been named as additional insureds in respect of such liability insurance policies, and the DIP Agent has been named as loss payee with respect to Property loss insurance.

Section 7.13 Restriction on Liens. Neither the Borrower nor any of the Subsidiaries is a party to any material agreement or arrangement (other than (a) the "Loan Documents" under and as defined in the Prepetition Term Loan Agreement and the "Loan Documents" under and as defined in the Prepetition Revolving Loan Agreement, (b) Capital Leases creating Liens permitted by Section 9.03(c), but then only on the Property that is the subject of such Capital Lease, (c) documents evidencing or securing Purchase Money Indebtedness creating Liens

permitted by Section 9.03(c), but then only on the Property that is the subject of such Purchase Money Indebtedness, (d) documents creating Liens which are described in clauses (g) or (h)) of the definition of "Excepted Liens", but then only on the Property that is the subject of the applicable lease or license described in such clause (g) or (h), (e) customary restrictions and conditions on transfers and investments contained in any agreement relating to the sale of any asset or any Subsidiary pending the consummation of such sale, (f) [reserved], (g) in the case of any assets acquired after the Effective Date, any agreement in effect at the time of such acquisition which pertains to such assets and only such assets and is assumed in connection with such acquisition, so long as such agreement was not entered into in contemplation of such acquisition, and (h) customary provisions in joint venture agreements and other similar agreements permitted by Section 9.05 and applicable to joint ventures and Equity Interests therein)), or subject to any order, judgment, writ or decree (other than the DIP Orders), which either restricts or purports to restrict its ability to grant Liens to the DIP Agent for the benefit of the Secured Parties on or in respect of its Properties to secure the Secured Obligations and the Loan Documents.

Section 7.14 Subsidiaries. Except as set forth on Schedule 7.14, the Borrower has no Subsidiaries. Each Person on Schedule 7.14 is a Wholly-Owned Subsidiary. The Borrower has no Foreign Subsidiaries. All of the outstanding Equity Interests of each Subsidiary has been validly issued, is fully paid, is nonassessable and has not been issued in violation of any preemptive or similar rights. Schedule 7.14 also sets forth the holders (and percentages of ownership) of the Equity Interests in each of the Subsidiaries as of the Effective Date.

Section 7.15 Location of Business and Offices. The Borrower's jurisdiction of organization is Delaware; the name of the Borrower as listed in the public records of its jurisdiction of organization is Southcross Energy Partners, L.P.; and the organizational identification number of the Borrower in its jurisdiction of organization is 5138791 (or, in each case, as set forth in a notice delivered to the DIP Agent pursuant to Section 8.01(j) in accordance with Section 12.01). The Borrower's principal place of business and chief executive offices are located at the address specified in Section 12.01 (or as set forth in a notice delivered pursuant to Section 8.01(j) and Section 12.01(c)).

Section 7.16 Properties; Titles, Etc.

(a) Each of the Borrower and the Subsidiaries has good and valid title to, valid leasehold interests in, or valid easements, rights of way or other property interests in all of its real and personal Property except for defects that, individually or in the aggregate, (i) do not materially interfere with the ordinary conduct of its business and (ii) could not reasonably be expected to have a Material Adverse Effect. All such Property is free and clear of all Liens except Liens permitted by Section 9.03.

(b) All leases, easements, rights of way and other agreements necessary for the conduct of the business of the Borrower and the Subsidiaries are valid and subsisting, in full force and effect, and, other than the commencement of the Chapter 11 Cases, there exists no default or event or circumstance which with the giving of notice or the passage of time or both

would give rise to a default under any material lease or leases, the enforcement of which has not been stayed.

(c) The rights and Properties presently owned, leased or licensed by the Borrower and the Subsidiaries including, without limitation, all easements and rights of way, include all rights and Properties necessary to permit the Borrower and the Subsidiaries to conduct their business in all material respects in the same manner as its business has been conducted prior to the date hereof (subject to any changes to the business resulting from transactions permitted hereunder).

(d) The Borrower and each Subsidiary owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property rights ("**Intellectual Property**") material to its business, and, to the knowledge of the Borrower, the use of such Intellectual Property by the Borrower and such Subsidiary does not infringe upon the rights of any other Person in any material respect.

Section 7.17 Maintenance of Properties. Except for such acts or failures to act as could not be reasonably expected to have a Material Adverse Effect, the offices, plants, gas processing plants, platforms, pipelines, improvements, fixtures, equipment, and other Property owned, leased or used by the Borrower and its Subsidiaries in the conduct of their businesses are (a) being maintained in a state adequate to conduct normal operations, (b) structurally sound with no known defects, (c) in good operating condition and repair, subject to ordinary wear and tear, (d) not in need of maintenance or repair except for ordinary, routine maintenance and repair, (e) sufficient for the operation of the businesses of the Borrower and its Subsidiaries as currently conducted, and (f) in conformity with all Governmental Requirements relating thereto.

Section 7.18 Hedging Agreements. Schedule 7.18, as of the date hereof, and after the date hereof, each report required to be delivered by the Borrower pursuant to Section 8.01(e), sets forth, a true and complete list of all Hedging Agreements of the Borrower and each Subsidiary, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), all credit support agreements relating thereto (including any margin required or supplied) and the counterparty to each such agreement.

Section 7.19 Security Instruments. The Interim DIP Order and/or the Final DIP Order are effective to create, in favor of the DIP Agent for the benefit of the Secured Parties, a legal, valid and enforceable Lien on, and perfected security interest in, all of the Collateral described in the Interim DIP Order and/or Final DIP Order. Pursuant to the terms of the DIP Orders, no filings or other action (including the taking of possession or control) will be necessary to perfect or protect such Liens and security interests, and upon entry by the Bankruptcy Court, the Liens and security interests created by the Interim DIP Order and/or the Final DIP Order shall automatically constitute fully perfected first priority Liens on, and security interests in, all right, title and interest of the Loan Parties in the Collateral covered thereby, in each case free of all Liens other than Liens permitted under Section 9.03, and prior and superior to all other Liens other than as provided in the DIP Orders. Pursuant to and to the extent provided in the Interim DIP Order and/or the Final DIP Order, the Secured Obligations of the Loan Parties hereunder will constitute allowed superpriority administrative expense claims in the Chapter 11 Cases

under Section 364(c) of the Bankruptcy Code, having priority over all administrative expense claims and unsecured claims against such Loan Parties now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code and all superpriority administrative expense claims granted to any other Person, subject only to the Carve-Out.

Section 7.20 Use of Loans and Letters of Credit. The proceeds of the Loans and the Letters of Credit shall be used for the purposes specified in Section 8.22. The Borrower and its Subsidiaries are not engaged principally, or as one of its or their important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying margin stock (within the meaning of Regulation T, U or X of the Board). No part of the proceeds of any Loan will be used for any purpose which violates the provisions of (a) Regulations T, U or X or any other regulation of the Board, (b) any Sanctions, or (c) the FCPA.

Section 7.21 [Reserved.]

Section 7.22 Common Enterprise. Each of the Borrower and its Subsidiaries and their business operations are closely integrated with one another into a single, interdependent and collective, common enterprise so that any benefit received by any one of them from the financial accommodations provided under this Agreement will be to the direct benefit of the others. The Borrower and its Subsidiaries intend to render services to or for the benefit of each other, to purchase or sell and supply goods to or from or for the benefit of each other, to make loans, advances and provide other financial accommodations to or for the benefit of each other and to provide administrative, marketing, payroll and management services to or for the benefit of each other (in each case, except as may be prohibited by this Agreement).

Section 7.23 Material Contracts. Schedule 7.23 hereto contains a complete list, as of the Effective Date, of all Material Contracts of the Borrower and each Subsidiary, including all amendments thereto. All Material Contracts are in full force and effect, neither the Borrower nor any Subsidiary is in default under any Material Contract other than as result of the commencement of the Chapter 11 Cases, and to the knowledge of the Borrower and each Subsidiary after due inquiry, no other Person that is party thereto is in default under any Material Contract, except for such defaults as could not be reasonably expected to have a Material Adverse Effect or where enforcement is stayed upon commencement of the Chapter 11 Cases. None of the Material Contracts prohibits the transactions contemplated under the Loan Documents. Each of the Material Contracts is currently in the name of, or has been assigned to, a Loan Party (with the consent or acceptance of each other party thereto if and to the extent that such consent or acceptance is required thereunder), each of the Material Contracts is assignable to the DIP Agent as collateral, and each of the Material Contracts is assignable, unless waived by the DIP Agent in its reasonable discretion, by the DIP Agent to a reasonably acceptable transferee if an Event of Default were to occur. The Borrower and its Subsidiaries have delivered to the DIP Agent a complete and current copy of each of their Material Contracts existing on the Effective Date.

Section 7.24 Broker's Fees. Except as set forth in Schedule 7.24, no broker's or finder's fee, commission or similar compensation will be payable by the Borrower or any Subsidiary with respect to the Transactions.

Section 7.25 Employee Matters. As of the Effective Date, (a) neither the Borrower nor any Subsidiary, nor any of their respective employees, is subject to any collective bargaining agreement, (b) no petition for certification or union election is pending or, to the knowledge of the Borrower or any Subsidiary, contemplated with respect to the employees thereof and no union or collective bargaining unit has sought such certification or recognition with respect to the employees of the Borrower or any Subsidiary, and (c) there are no strikes, slowdowns, work stoppages or controversies pending or, to the knowledge of the Borrower or any Subsidiary after due inquiry, threatened between the Borrower or any Subsidiary and its respective employees.

Section 7.26 Anti-Terrorism Laws.

(a) The Borrower is not, and to the knowledge of the Borrower, none of the Borrower's Affiliates, officers or directors is in violation of any Governmental Requirement relating to terrorism or money laundering ("**Anti-Terrorism Laws**"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "**Executive Order**"), the USA Patriot Act, and the Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., in each case, as amended from time to time.

(b) The Borrower is not, and to the knowledge of the Borrower, no Affiliate, officer, director, broker or other agent of the Borrower acting or benefiting in any capacity in connection with the Loans is any of the following:

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(v) a Person that is named as a "specially designated national and blocked Person" on the most current list published by OFAC at its official website or any replacement website or other replacement official publication of such list.

(c) No Loan Party and, to the knowledge of the Borrower, no broker or other agent of any Loan Party acting in any capacity in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in paragraph (b) above, (ii) deals in, or otherwise engages in

any transaction relating to, any Property or interests in Property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(d) (i) Neither the Borrower nor any of its subsidiaries, nor, to the knowledge of any Loan Party, any director, officer, agent, employee or Affiliate of the Borrower or any of its subsidiaries, is currently, or is owned or controlled by Persons that are currently (A) the subject of any material United States sanctions administered or enforced by OFAC or the United States Department of State (collectively, "**Sanctions**") or (B) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions, and (ii) the Borrower will not directly or indirectly use the proceeds from the Loans or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, for the purpose of financing the activities of any Person currently the subject of Sanctions.

Section 7.27 Foreign Corrupt Practices. No Loan Party, and, to the knowledge of the Borrower, no director, officer, agent, employee or Affiliate of the Borrower or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a material violation by such Persons of the FCPA, including without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA; and, the Loan Parties and, to the knowledge of the Borrower, their Affiliates have conducted their business in material compliance with the FCPA.

Section 7.28 DIP Orders. The Loan Parties are in compliance with the terms and conditions of the DIP Orders.

ARTICLE VIII
AFFIRMATIVE COVENANTS

Until Payment in Full, the Borrower (on behalf of itself and its Subsidiaries) and each Guarantor by its execution of the Guaranty and Collateral Agreement, covenants and agrees with the DIP Agent, any Issuing Banks and the Lenders that:

Section 8.01 Financial Statements; Ratings Change; Other Information. The Borrower will furnish to the DIP Agent for, except as otherwise set forth below, delivery to each Lender:

(a) Annual Financial Statements. As soon as available, but in any event not later than ninety (90) days after the end of the fiscal year, its audited consolidated balance sheet and related statements of income or operations (and, as to balance sheets and statements of income or operations, accompanied by consolidating schedules), stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Deloitte & Touche LLP or other independent public accountants of recognized national standing (without any qualification or

exception as to the scope of such audit other than a "going concern" qualification) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied.

(b) Quarterly Financial Statements. As soon as available, but in any event not later than forty-five (45) days after the end of the fiscal quarter, commencing with the fiscal quarter ending March 31, 2019, its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes.

(c) [Reserved].

(d) Certificate of Financial Officer – Compliance. Concurrently with any delivery of financial statements required pursuant to Section 8.01(a) or Section 8.01(b), a certificate of a Financial Officer in substantially the form of Exhibit D-1 hereto (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) [reserved] and (iii) stating whether any change in GAAP or in the application thereof has occurred since December 31, 2018 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate.

(e) Certificate of Financial Officer – Hedging Agreements. Concurrently with any delivery of financial statements under Section 8.01(a) and Section 8.01(b), a certificate of a Financial Officer, in substantially the form of Schedule 7.18, setting forth as of the last Business Day of such fiscal quarter or fiscal year, a true and complete list of all Hedging Agreements of the Borrower and each Subsidiary, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), the net mark-to-market value therefor, any new credit support agreements relating thereto, any margin required or supplied under any credit support document, and the counterparty to each such agreement.

(f) [reserved].

(g) Other Accounting Reports. Promptly upon receipt thereof, a copy of each other report or letter submitted to the Borrower or any of its Subsidiaries by independent accountants in connection with any annual, interim or special audit made by them of the books of the Borrower or any such Subsidiary, and a copy of any response by the Borrower or any such Subsidiary, or the board of directors (or comparable governing body) of the Borrower or any such Subsidiary, to such letter or report.

(h) SEC and Other Filings; Reports to Shareholders. Promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other

materials filed by the Borrower or any Subsidiary with the SEC, or with any national or foreign securities exchange, or required by applicable law to be distributed by the Borrower to its equityholders generally, as the case may be.

(i) Notices Under Material Instruments. Promptly after the furnishing thereof, copies of any financial statement, report or notice furnished to or by any Person pursuant to the terms of any order of the Bankruptcy Court or any Material Indebtedness, other than the Loan Documents, and not otherwise required to be furnished to the Lenders pursuant to any other provision of this Section 8.01.

(j) Information Regarding Loan Parties. Promptly (and in any event within ten (10) Business Days (or such later time as the DIP Agent may agree) written notice of any change (i) any Loan Party's corporate name or in any trade name used to identify such Person in the conduct of its business or in the ownership of its Properties, (ii) in the location of any Loan Party's chief executive office or principal place of business, (iii) in any Loan Party's identity or corporate structure or in the jurisdiction in which such Person is incorporated or formed, (iv) in any Loan Party's jurisdiction of organization or such Person's organizational identification number in such jurisdiction of organization, and (v) in any Loan Party's federal taxpayer identification number.

(k) Notices of Certain Changes. Except in connection with Organization Documents of the Borrower and its Subsidiaries that are delivered pursuant to Section 6.01(h), promptly, but in any event within five (5) Business Days after the execution thereof, copies of any material amendment, modification or supplement to the certificate or articles of incorporation, certificate or articles of formation or organization, any preferred stock designation or any other public organic document of the Borrower or any Subsidiary.

(l) [reserved].

(m) [reserved].

(n) Other Requested Information. Promptly following any request therefor, such other information regarding the operations, business affairs, liquidity, business plan, contract negotiations, financial condition and projections of the Borrower or any Subsidiary (including, without limitation, any Plan and any reports or other information required to be filed with respect thereto under the Code or under ERISA), the status of the Chapter 11 Cases, the status of the sale process and progress in achieving the Case Milestones, or compliance with the terms of this Agreement or any other Loan Document, as the DIP Agent or any Lender may reasonably request.

(o) Monthly Financial Statements. As soon as available but in any event within thirty-five (35) calendar days after the end of each calendar month, solely with respect to the first two calendar months of each fiscal quarter, its unaudited consolidated balance sheet and related statements of income or operations and cash flows reflecting results of operations as of the end of and for such calendar month and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods (or in the case of the balance sheet, as of the end) of the previous fiscal year, all certified by one of its

Financial Officers as presenting fairly in all material respects the financial condition and the results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal quarter-end or year-end adjustments, as the case may be, and the absence of footnotes. Concurrently with any delivery of financial statements required pursuant to this Section 8.01(o), the Borrower will furnish to the DIP Agent for delivery to each Lender a certificate of a Financial Officer in substantially the form of Exhibit D-2 hereto certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto. It is understood that the materials provided to the DIP Agent and the Lenders pursuant to this clause (o), in accordance with the last sentence of this Section 8.01, will not be identified by the Borrower as "Public" information and may be treated by the DIP Agent as being suitable only for posting on a portion of the Platform not designated "Public Side Information".

(p) Ratings Updates. Any reports, information, documentation or other evidence required by and in accordance with Section 8.16.

(q) Budget Updates and Variance Reports.

(i) To the DIP Agent and the financial advisors to the Lenders, as soon as available, but in any event not later than May 1, 2019, and on the Wednesday (or next preceding Business Day if such Wednesday is not a Business Day) of every fourth week thereafter, proposed updated 13-week cash flow forecast (the "Proposed Budget"), containing items of sufficient detail with respect to the Loan Parties for the immediately succeeding consecutive 13 weeks, in the form of the Initial Approved Budget, and otherwise in form and substance acceptable to financial advisors to Lenders, acting at the direction of the Required Lenders, setting forth all anticipated sources and uses of cash and beginning and ending cash balances for such 13-week period, together with a certificate of a Responsible Officer of the Borrower stating that such 13-week cash flow forecast has been prepared on a reasonable basis and in good faith by the Borrower and based upon assumptions believed by the Borrower to be reasonable at the time such projections were provided and from the best information then-available to the Borrower after reasonable inquiry and reflect the good faith and reasonable estimates of the Loan Parties of the future financial performance of Borrower and its Consolidated Subsidiaries and of the other information projected therein for the periods set forth therein (it being recognized by the Lenders, however, that projections as to future events are not to be viewed as facts and that actual results during the period(s) covered by such projections may differ substantially from the projected results). To the extent such Proposed Budget is approved by financial advisors to the Lenders, acting at the direction of the Required Lenders, such Proposed Budget shall thereafter be the "Approved Budget" for such period contained therein and for all purposes hereunder and under the DIP Orders. No such Proposed Budget shall become an Approved Budget until so approved; *provided* that if such financial advisors have not objected to such forecast within five (5) Business Days after delivery thereof, such Proposed Budget shall be deemed to be acceptable to and approved by the financial advisors to the Lenders

acting at the direction of the Required Lenders. Approval of any Proposed Budget shall be evidenced by a writing delivered (which may be through electronic transmission) by the financial advisors to the Lenders acting at the direction of the Required Lenders (which may be made by their agent (including the DIP Agent) or its or their counsel or financial advisors) or by the Borrower in the case of deemed approvals. In the event that any Proposed Budget is not so approved, the last Approved Budget without giving effect to any update, modification or supplement shall remain in effect.

(ii) To the DIP Agent and the financial advisors to the Lenders, on the Wednesday of each calendar week or next preceding Business Day if such Wednesday is not a Business Day (each such delivery date, a "**Variance Testing Date**"), a variance report (each, a "**Variance Report**"), in form and detail reasonably satisfactory to the Required Lenders, reconciling the Approved Budget to the actual sources and uses of cash for (i) the immediately preceding full calendar week (ending on a Saturday) and (ii) the Testing Period, (A) showing, for such periods, actual results for the following items: (1) cash receipts, (2) cash disbursements, (3) net cash flow, (4) professional fees, (5) capital expenditures and (6) billings, (B) noting a line-by-line reconciliation of variances from values set forth for such periods in the relevant Approved Budget and (C) providing an explanation for all material variances, certified by a Responsible Officer of the Borrower. Each Variance Report delivered pursuant to this Section 8.01(q) shall be accompanied by such supporting documentation as reasonably requested by the DIP Agent or the Lender Financial Advisor.

(r) Real Property Report. Concurrently with the delivery of the financial statements under Section 8.01(b), but in any event not later than 45 days after the end of each fiscal quarter, (or such longer period as may be reasonably acceptable to the DIP Agent (acting at the direction of the Required Lenders) not to exceed 15 days), a certificate of a Financial Officer setting forth as of the last Business Day of such fiscal quarter, title information in form and substance acceptable to the DIP Agent (acting at the direction of the Required Lenders) with respect to any real Property acquired by the Borrower and its Subsidiaries during such fiscal quarter for consideration in excess of $1,000,000, individually or in the aggregate.

Information required to be delivered pursuant to Section 8.01(a), (b) or (n) shall be deemed to have been delivered if such information is available on the website of the SEC and the Borrower has delivered notice to the DIP Agent that such reports are so available, which notice may be provided in any certificate delivered pursuant to Section 8.01(d).

The Borrower hereby acknowledges that (a) the DIP Agent may, but shall not be obligated to, make available to the Lenders and the Issuing Banks materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on Debt Domain, IntraLinks, SyndTrak or another similar electronic system (the "**Platform**") and (b) certain of the Lenders (each, a "**Public Lender**") may have personnel who do not wish to receive material non-public information with respect to the General Partner or the Loan Parties, or the respective securities of any of the foregoing, and

who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the DIP Agent, the Issuing Banks and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (*provided*, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 12.11); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the DIP Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." Notwithstanding the foregoing, the following Borrower Materials shall be deemed "PUBLIC," unless the Borrower notifies the DIP Agent promptly that any such document contains material non-public information: (1) the Loan Documents and (2) notification of changes in the terms of the Credit Facility.

Section 8.02 Notices of Material Events. The Borrower will furnish to the DIP Agent and each Lender prompt written notice of the following:

(a) the occurrence of any Default;

(b) the filing or commencement of, or the threat in writing of, any action, suit, proceeding, investigation or arbitration by or before any arbitrator or Governmental Authority against or affecting any Loan Party not previously disclosed in writing to the Lenders or any material adverse development in any action, suit, proceeding, investigation or arbitration (whether or not previously disclosed to the Lenders) that, in either case, if adversely determined, could reasonably be expected to result in liability in excess of $1,000,000, not fully covered by insurance, subject to normal deductibles;

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding $1,000,000;

(d) any threatened action, investigation or inquiry by any Governmental Authority or any threatened demand or lawsuit by any Person against the Borrower or its Subsidiaries or their Properties of which the Borrower has knowledge in connection with any Environmental Laws if the Borrower could reasonably anticipate that such action will result in liability (whether individually or in the aggregate) in excess of $1,000,000, not fully covered by insurance, subject to normal deductibles; and

(e) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section 8.02 shall be accompanied by a statement of a Responsible Officer setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 8.03 Existence; Conduct of Business. The Borrower will, and will cause each Subsidiary to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, consents, privileges and franchises material to the conduct of its business and maintain, if necessary, its qualification to do business in each other jurisdiction in which its Properties are located or the ownership of its Properties requires such qualification, except where the failure to so qualify could not reasonably be expected to have a Material Adverse Effect; *provided* that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 9.10.

Section 8.04 Payment of Tax Obligations. The Borrower will, and will cause each Subsidiary to, pay its Tax liabilities constituting postpetition obligations that constitute administrative expenses in the Chapter 11 Cases under the Bankruptcy Code or otherwise ordered by the Bankruptcy Court, before the same shall become delinquent or in default; *provided*, that the obligations hereunder are subject to the provisions of the Bankruptcy Code and any required approvals by an applicable order of the Bankruptcy Court.

Section 8.05 Performance of Obligations under Loan Documents. The Borrower will repay the Loans according to the reading, tenor and effect thereof, and the Borrower will, and will cause each Subsidiary to, do and perform every act and discharge all of the obligations to be performed and discharged by them under the Loan Documents, including, without limitation, this Agreement, at or within the time or times and in the manner specified.

Section 8.06 Operation and Maintenance of Properties. The Borrower, at its own expense, will, and will cause each Subsidiary to:

(a) operate its Properties or cause such Properties to be operated in a careful and efficient manner in accordance with the practices of the industry and in compliance with all applicable contracts and agreements and in compliance with all Governmental Requirements, including, without limitation, applicable Environmental Laws, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect;

(b) preserve, maintain and keep in good repair, condition, working order and efficiency (ordinary wear and tear excepted) all of its Properties, including, without limitation, all equipment, machinery and facilities, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect;

(c) promptly perform or make reasonable and customary efforts to cause to be performed, in accordance with industry standards, the obligations required by each and all of the assignments, deeds, leases, sub-leases, contracts and agreements affecting its interests in its Properties, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect; and

(d) to the extent the Borrower is not the operator of any Property, the Borrower shall use commercially reasonable efforts to cause the operator of such Property to comply with this Section 8.06 in accordance with customary industry practices.

Section 8.07 Insurance. Subject to Section 8.20, the Borrower will, and will cause each Subsidiary to, maintain, with financially sound and reputable insurance companies, insurance (i) in such amounts and against such risks as are customarily maintained by companies of similar size engaged in the same or similar businesses operating in the same or similar locations (including hazard insurance), and (ii) in accordance with all Governmental Requirements, including, without limitation, Flood Insurance, if required. Subject to Section 8.20, insurance policy or policies insuring any of the Collateral for the Loans shall be endorsed in favor of and made payable to the DIP Agent (on behalf of the Lenders) as its interests may appear, and such policies shall name the DIP Agent as an "additional insured" (in the case of liability insurance) or "lender's loss payable" (in the case of property insurance) on behalf of the Lenders, and provide that the insurer will give at least thirty (30) days' prior notice of any cancellation to the DIP Agent. Each of the parties hereto acknowledges and agrees that any increase, extension or renewal of any of the Commitments or Loans (other than as contemplated in the definition of "Scheduled Maturity Date") or the making of any new, additional or incremental facilities shall be subject to (and conditioned upon) the prior delivery to the DIP Agent of all Flood Zone Documentation.

Section 8.08 Books and Records; Inspection Rights. The Borrower will, and will cause each Subsidiary to maintain financial records in accordance with GAAP. The Borrower will, and will cause each Subsidiary to, permit any representatives designated by the DIP Agent or any Lender, upon reasonable prior notice and during normal business hours (unless an Exigent Circumstance or an Event of Default then exists), at the Loan Parties' expense, to visit and inspect its Properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its Responsible Officers and independent accountants, all at such reasonable times (unless an Exigent Circumstance or Event of Default then exists) and as often as reasonably requested (*provided* that the DIP Agent shall give the Borrower reasonable advance notice of any proposed discussion with such accountants (unless an Exigent Circumstance or an Event of Default then exists) and permit the Borrower and its representatives to be present during such discussions).

Section 8.09 Compliance with Laws. The Borrower will, and will cause each Subsidiary to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its Property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 8.10 Compliance with Agreements. The Borrower will, and will cause each Subsidiary to, comply with all agreements, contracts and instruments binding on it or affecting its Properties or business, except to the extent that such noncompliance could not reasonably be expected to have a Material Adverse Effect.

Section 8.11 Environmental Matters.

(a) The Borrower shall at its sole expense: (i) comply, and shall cause its Properties and operations and each Subsidiary and each Subsidiary's Properties and operations to comply, with all applicable Environmental Laws, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect; (ii) not Release or threaten to Release, and shall cause each Subsidiary not to Release or threaten to Release, any Hazardous Material on, under, about or from any of the Borrower's or its Subsidiaries' Properties or any other property offsite the Property to the extent caused by the Borrower's or any of its Subsidiaries' operations except in compliance with applicable Environmental Laws, if the Release or threatened Release could reasonably be expected to have a Material Adverse Effect; (iii) timely obtain, file or prepare, and shall cause each Subsidiary to timely obtain, file or prepare, all Environmental Permits, if any, required under applicable Environmental Laws to be obtained or filed in connection with the operation or use of the Borrower's or its Subsidiaries' Properties, except where such failure to obtain or file could not reasonably be expected to have a Material Adverse Effect; (iv) promptly commence and diligently prosecute to completion, and shall cause each Subsidiary to promptly commence and diligently prosecute to completion, any assessment, evaluation, investigation, monitoring, containment, cleanup, removal, repair, restoration, remediation or other remedial obligations (collectively, the "**Remedial Work**") in the event any Remedial Work is required or reasonably necessary under applicable Environmental Laws because of or in connection with the actual or suspected past, present or future Release or threatened Release of any Hazardous Material on, under, about or from any of the Borrower's or its Subsidiaries' Properties, if failure to commence and diligently prosecute to completion could reasonably be expected to have a Material Adverse Effect; (v) conduct, and cause its Subsidiaries to conduct, their respective operations and businesses in a manner that will not expose any Property or Person to Hazardous Materials that could reasonably be expected to form the basis for a claim for material damages or compensation; and (vi) establish and implement, and shall cause each Subsidiary to establish and implement, such procedures as may be necessary to continuously determine and assure that the Borrower's and its Subsidiaries' obligations under this Section 8.11(a) are timely and fully satisfied, which failure to establish and implement such procedures could reasonably be expected to have a Material Adverse Effect.

(b) The Borrower will, and will cause each Subsidiary to, provide existing Phase I site assessments, to the extent they are available, upon request by the DIP Agent or the Lenders, in connection with any future acquisitions of Properties; *provided* that for the avoidance of doubt, there shall be no obligation under this Section for the Borrower to obtain such assessments.

Section 8.12 Further Assurances.

(a) The Borrower at its sole expense will, and will cause each Subsidiary to, promptly execute and deliver to the DIP Agent all such other documents, agreements and instruments reasonably requested by the DIP Agent or the Required Lenders to comply with, cure any defects or accomplish the conditions precedent, covenants and agreements of the Borrower or any Subsidiary, as the case may be, in the Loan Documents, including the Notes, or to further evidence and more fully describe the Collateral intended as security for the Secured Obligations, or to correct any omissions in this Agreement or the Security Instruments, or to state

more fully the obligations secured therein, or to perfect, protect or preserve any Liens created pursuant to this Agreement, the Interim DIP Order or the Final DIP Order or any of the Security Instruments or the priority thereof, or to make any recordings, file any notices or obtain any consents, all as may be reasonably necessary or appropriate, in the sole discretion of the DIP Agent (acting at the direction of the Required Lenders), in connection therewith.

(b) Pursuant to the terms of the DIP Orders, no filings or other action (including the taking of possession or control) will be necessary to perfect or protect the Liens and security interests created pursuant to this Agreement, the DIP Orders or any other Security Instrument. Upon entry by the Bankruptcy Court, the Liens and security interests created by the DIP Orders shall automatically constitute fully perfected first priority Liens on, and security interests in, all right, title and interest of the Loan Parties in the Collateral covered thereby (including after-acquired Collateral), in each case free of all Liens other than Liens permitted under Section 9.03, and prior and superior to all other Liens other than as provided in the DIP Orders. Notwithstanding the foregoing, upon the reasonable request of the Required Lenders, the Borrower and each of its Subsidiaries shall take any additional actions requested, with respect to any Material Real Property and any other tangible and intangible personal Property of the Borrower or any Loan Party, in each case constituting Collateral, to cause such Material Real Property and Collateral to be subject to a Lien pursuant to the Security Instruments or the DIP Order or to evidence the Lien on such Property, including to execute and deliver such Security Instruments (in proper form for filing, registration or recordation, as applicable) as are requested by the DIP Agent or the Required Lenders, and take such actions necessary or advisable to subject such Property to a Lien or evidence of the Lien on such Property pursuant to the Security Instruments.

(c) Upon the reasonable request of the Required Lenders, the Borrower and each of its Subsidiaries shall take any additional actions required, if any, to cause all of its right, title and interest in each Hedging Agreement to which it is a party to be collaterally assigned to the DIP Agent, for the benefit of the Secured Parties, and shall, if requested by the DIP Agent or the Required Lenders, use its commercially reasonable efforts to cause each such agreement or contract to (i) expressly permit such assignment and (ii) upon the occurrence of any default or event of default under such agreement or contract, (A) to permit the Lenders to cure such default or event of default and assume the obligations of such Loan Party under such agreement or contract and (B) to prohibit the termination of such agreement or contract by the counterparty thereto if the Lenders assume the obligations of such Loan Party under such agreement or contract and the Lenders take the actions required under the foregoing clause (A).

Section 8.13 Title Information. If the Borrower or any Subsidiary acquires any new pipeline and processing Properties for consideration in excess of $5,000,000, individually or in the aggregate, the Borrower shall, or shall cause such Subsidiary to, provide promptly (and in any event within 30 days (or such longer period as may be reasonably acceptable to the DIP Agent (acting at the direction of the Required Lenders))), title information regarding such new pipeline and processing Properties to the DIP Agent. The Borrower shall, within sixty (60) days of notice from the DIP Agent (or such later date as the DIP Agent may agree in its sole discretion) that title defects or exceptions exist with respect to such additional Properties, either (i) cure any such title defects or exceptions (including defects or exceptions as to priority) which

are not permitted by Section 9.03 raised by such information to the reasonable satisfaction of the DIP Agent (acting at the direction of the Required Lenders), or (ii) deliver title information in form and substance acceptable to the DIP Agent (acting at the direction of the Required Lenders) so that the DIP Agent shall have received, together with title information previously delivered to the DIP Agent, title information reasonably satisfactory to the DIP Agent (acting at the direction of the Required Lenders) relative to the pipeline and processing Properties of the Borrower and its Subsidiaries.

Section 8.14 [Reserved].

Section 8.15 [Reserved].

Section 8.16 Ratings. The Borrower shall use commercially reasonable efforts to obtain a rating for the Credit Facility from both S&P and Moody's on or prior to the hearing to consider approval of the Final DIP Order; *provided* that if the Borrower is unable to obtain both ratings for the Credit Facility on or prior to such date, the Borrower shall (i) thereafter use its commercially reasonable efforts to obtain both ratings for the Credit Facility as soon as possible, and (ii) promptly provide to the DIP Agent any other information, documentation or other evidence reasonably requested by the DIP Agent or the Required Lenders in connection with the subject matter of this Section 8.16.

Section 8.17 ERISA Compliance. The Borrower will promptly furnish and will cause the Subsidiaries and any ERISA Affiliate to promptly furnish to the DIP Agent (a) promptly after the filing thereof by the Borrower or any Subsidiary with the United States Secretary of Labor or the Internal Revenue Service (or if filed by a third party, promptly after the Borrower or a Subsidiary becomes aware of such filing), copies of each annual and other report with respect to each Plan or any trust created thereunder, and (b) promptly upon becoming aware of the occurrence of any "prohibited transaction," as described in section 406 of ERISA or in section 4975 of the Code, in connection with any Plan or any trust created thereunder, a written notice signed by the President or the principal Financial Officer, the Subsidiary or the ERISA Affiliate, as the case may be, specifying the nature thereof, what action the Borrower, the Subsidiary or the ERISA Affiliate is taking or proposes to take with respect thereto, and, when known, any action taken or proposed by the Internal Revenue Service or the Department of Labor with respect thereto.

Section 8.18 [Reserved].

Section 8.19 [Reserved].

Section 8.20 Post-Closing Obligations. The Borrower shall deliver, or cause to be delivered, as the case may be, each of the items set forth on Schedule 8.20, in each case on or prior to the date specified in such Schedule for such item or such later date as the DIP Agent (acting at the direction of the Required Lenders) may determine and agree to in writing in its sole discretion.

Section 8.21 Use of Proceeds. The Borrower shall use the proceeds from the Loans and the issuance of the Letters of Credit hereunder solely (i) to finance working capital and for

general corporate purposes of the Borrower and its Subsidiaries (including to conduct the Section 363 Sale process and including Professional Fees approved by the Bankruptcy Court), to the extent such expenses are of the kind described in and in amounts shown in the Approved Budget (subject to Permitted Variances) and including the Roll-Up of Prepetition Term Loans as provided in Section 2.01(d) and the cash collateralization of the Letters of Credit pursuant to Section 2.07(j), (ii) to deem to be cancelled and reissue the Prepetition Letters of Credit as provided in Section 2.07(b), (iii) to pay fees, costs and expenses incurred by the DIP Agent and the Lenders in connection with the Transactions and other fees, costs and expenses of the DIP Agent and the Lenders to the extent reimbursable hereunder, (iv) to make adequate protection payments as permitted or required by the DIP Orders, and (v) to fund the Carve-Out in accordance with the DIP Orders. Notwithstanding anything to the contrary contained herein, in no event shall proceeds of the Loans or the Letters of Credit hereunder be used to pay Professional Fees incurred in connection with a Prohibited Purpose (as defined in the DIP Orders). Nothing in this Section 8.22 shall be construed to waive the DIP Agent's or any Lender's right to object to any requests, motions or applications made in or filed with the Bankruptcy Court.

Section 8.22 Lender Calls. Upon request of the DIP Agent at the direction of the Required Lenders, the Borrower shall arrange for conference calls, which call shall occur not more frequently than once per calendar week, discussing and analyzing the Approved Budget (or other 13-week cash flow forecasts furnished pursuant to Section 8.01) for the prior week, the Variance Reports, the financial condition, business operations, liquidity, business plan, contract negotiations and projections of each of the Loan Parties, the status of the Chapter 11 Cases, the status of the sale process and progress in achieving the Case Milestones.

Section 8.23 Case Milestones. Each Loan Party shall ensure that each of the milestones set forth below (the "**Case Milestones**") is achieved in accordance with the applicable timing referred to below (or such later dates as approved in writing by the Required Lenders):

(a) On the Petition Date, the Loan Parties shall have filed a motion seeking approval of the DIP Orders, in form and substance acceptable to the Required Lenders in all respects.

(b) Not later than five (5) Business Days after the Petition Date (or such later date approved in writing by the Required Lenders), the Interim DIP Order shall have been entered by the Bankruptcy Court and such Interim DIP Order shall be in full force and effect and shall not have been (i) vacated, reversed, or stayed, or (ii) amended or modified except as otherwise agreed to in writing by the Required Lenders (and with respect to any provision that affects the rights or duties of the DIP Agent, the DIP Agent).

(c) Not later than the date that is forty (40) days following the Petition Date (or such later date approved in writing by the Required Lenders), the Bankruptcy Court shall have entered the Final DIP Order and such Final DIP Order shall be in full force and effect and shall not have been (A) vacated, reversed, or stayed, or (B) amended or modified except as otherwise agreed to in writing by the Required Lenders (and with respect to any provision that affects the rights or duties of the DIP Agent, the DIP Agent).

(d) Not later than fifty (50) days after the Petition Date, the Loan Parties shall have received non-binding first-round indications of interest from potential purchasers of all or substantially all of the Loan Parties' assets.

(e) If, within fifty (50) days after the Petition Date, the Loan Parties and the Required Lenders have not reached an agreement as to an Acceptable Plan, then the Loan Parties shall pursue a Section 363 Sale. In connection with a Section 363 Sale, the Loan Parties and the Required Lenders shall negotiate in good faith a reasonable wind-down budget (the "**Wind-Down Budget**") to pay all allowed (i) post-petition claims, (ii) administrative expense and priority claims, and (iii) professional fees and expenses necessary or appropriate to wind down the Loan Parties' estates on a reasonable and appropriate timeline.

(f) If, pursuant to Section 8.23(e), a Section 363 Sale is pursued:

(i) Not later than fifty five (55) days after the Petition Date, the Loan Parties shall have filed a motion in the Bankruptcy Court in form and substance acceptable to the Required Lenders, seeking approval of (a) a sale (the "**Sale Transaction**") of substantially all assets of the Loan Parties, and (b) bidding procedures (the "**Bid Procedures**") and related relief in connection with the Sale Transaction (the "**Bid Procedures and Sale Motion**").

(ii) Not later than eighty (80) days after the Petition Date, (a) the Loan Parties shall have scheduled a hearing on the Bid Procedures Motion, and (b) the Loan Parties shall have obtained entry of an order, in form and substance acceptable to the Required Lenders (the "**Bid Procedures Order**"), approving the Bid Procedures and setting a date for the hearing to approve the Sale Transaction (the "**Sale Hearing**").

(iii) Not later than one hundred (100) days after the Petition Date, the Loan Parties shall have established the final deadline to receive qualified bids, and shall have received such qualified bids (the "**Bid Deadline**").

(iv) Not later than two (2) weeks after the Bid Deadline, the Loan Parties shall have obtained entry of a Final Order by the Bankruptcy Court (the "**Sale Approval Order**"), in form and substance acceptable to the Required Lenders in all respects.

(v) Not later than the earlier of (i) thirty (30) days after entry of the Sale Approval Order and (ii) the Maturity Date, the Loan Parties shall have discharged the DIP Term Loans and Roll-Up Loans by payment of such DIP Term Loans and Roll-Up Loans in full, in cash (subject to the Wind-Down Budget).

(g) If, within fifty (50) days after the Petition Date, the Loan Parties and the Required Lenders have reached an agreement as to an Acceptable Plan, then the Loan Parties shall pursue such Acceptable Plan. If pursuant to this Section 8.23(g), an Acceptable Plan is pursued:

(i) Not later than fifty five (55) days after the Petition Date, the Loan Parties shall have filed in the Bankruptcy Court an Acceptable Plan, a corresponding disclosure statement (the "**Disclosure Statement**"), and a motion seeking approval of the Disclosure Statement, in each case, in form and substance acceptable to the Required Lenders.

(ii) Not later than ninety five (95) days after the Petition Date, the Loan Parties shall have scheduled a hearing on approval of the Disclosure Statement and obtained entry of the order by the Bankruptcy Court approving the Disclosure Statement in form and substance acceptable to the Required Lenders.

(iii) Not later than one hundred forty five (145) days after the Petition Date, the Loan Parties shall have scheduled a hearing to confirm the Acceptable Plan and obtained entry by the Bankruptcy Court of the order confirming the Acceptable Plan (the "**Confirmation Order**"), in form and substance acceptable to the Required Lenders.

(h) Not later than thirty (30) days after entry of the Confirmation Order, the Loan Parties shall have discharged the DIP Term Loans and Roll-Up Loans by (i) payment of such DIP Term Loans and Roll-Up Loans in full, in cash or (ii) such other treatment as acceptable to the Required Lenders.

Section 8.24 Certain Bankruptcy Matters; Case Documents.

(a) The Loan Parties shall, and shall cause each of their Subsidiaries to, comply (i) in all respects, after entry thereof, with all of the requirements and obligations set forth in the DIP Orders and the Cash Management Order, as each such order is amended and in effect from time to time in accordance with this Agreement, (ii) in all respects, after entry thereof, with each order of the type referred to in clause (b) of the definition of "Approved Bankruptcy Court Order", as such orders, if entered by the Bankruptcy Court, must comply with, and only be modified from time to time in accordance with, clause (b) of the definition of "Approved Bankruptcy Court Order," and (iii) in all material respects, after entry thereof, with the orders (to the extent not covered by subclause (i) or (ii) above) approving the Loan Parties' "first day" and "second day" relief obtained in the Chapter 11 Cases, as such orders, if entered by the Bankruptcy Court, must comply with, and only be modified from time to time with the approval of the DIP Agent and the Required Lenders.

(b) The Borrower shall provide at least five (5) Business Days' (or such shorter notice acceptable to the Required Lenders in their sole discretion) prior written notice to the DIP Agent or its advisors prior to any assumption or rejection of any Loan Party's Material Contracts pursuant to Section 365 of the Bankruptcy Code, and no such Material Contract shall be assumed or rejected, if such assumption or rejection adversely impacts the Collateral, any Liens thereon or any superpriority claims payable therefrom (including, without limitation, any sale or other disposition of Collateral or the priority of any such Liens or superpriority claims).

(c) As soon as practicable in advance of filing with the Bankruptcy Court of any document, motion or pleading relating to or impacting (i) any rights or remedies of the DIP

Agent or any Lender, (ii) the Credit Facility, the DIP Orders, the Cash Management Order, the Loan Documents, the "Loan Documents" as defined in the Prepetition Term Loan Agreement and the "Loan Documents" as defined in the Prepetition Revolving Loan Agreement (including the Loan Parties' (as defined therein) obligations thereunder), (iii) the Collateral, any Liens thereon or any superpriority claims (including, without limitation, any sale or other disposition of Collateral or the priority of any such Liens or superpriority claims), (iv) use of cash collateral, (v) debtor-in-possession financing, (vi) adequate protection or otherwise relating to the Prepetition Facilities, (vii) any Chapter 11 Plan, (viii) any Section 363 Sale, or (viii) any transaction outside of the ordinary course of business with any Loan Party, the Loan Parties will deliver to the DIP Agent for delivery to each applicable Lender all such documents to be filed and provide the DIP Agent and the Lenders with a reasonable opportunity to review and comment on all such documents.

(d) Promptly following receipt thereof (and in any event within one (1) Business Day after receipt thereof), the Loan Parties shall deliver to the professional advisors to the Lenders copies of all formal proposals, letters of interest, letters of intent, bids, agreements and any final proposed definitive documentation for any sale of all or any material portion of it's the Loan Parties' assets or any other investment pursuant to which additional capital is to be received by the Loan Parties.

(e) It is understood that the materials provided to the DIP Agent and the Lenders pursuant to Sections 8.23(b) and (c) will not be identified by the Borrower as "Public" information and may be treated by the DIP Agent as being suitable only for posting on a portion of the Platform not designated "Public Side Information". It is understood that the materials provided to the DIP Agent and the Lenders' professional advisors pursuant to Section 8.23(d) will be provided solely on a "professional eyes only" basis.

ARTICLE IX
NEGATIVE COVENANTS

Until Payment in Full, the Borrower (on behalf of itself and its Subsidiaries) and each Guarantor by its execution of the Guaranty and Collateral Agreement) covenants and agrees with the DIP Agent, any Issuing Banks and the Lenders that:

Section 9.01 Budget Variances. As of any Variance Testing Date, the Loan Parties shall not allow the Total Receipts or the Total Disbursements (in each case, as such terms are used in the applicable Approved Budget) to exceed the aggregate amount forecasted therefor in the Approved Budget for such Testing Period by more than the Permitted Variances for the period applicable thereto under Annex III (the "**Permitted Variances**").

Section 9.02 Indebtedness. The Borrower will not, and will not permit any Subsidiary to, incur, create, assume or suffer to exist any Indebtedness, except:

(a) the Secured Obligations arising under the DIP Orders and the Loan Documents, or with respect to any Bank Products, or any guaranty of or suretyship arrangement for the Secured Obligations arising under the Loan Documents, or with respect to any Bank Products;

(b) Indebtedness under Capital Leases or that constitutes Purchase Money Indebtedness; *provided* that the aggregate amount of all Indebtedness described in this Section 9.02(b) at any one time outstanding shall not to exceed $500,000 in the aggregate;

(c) Indebtedness associated with performance bonds, bid bonds, surety bonds, appeal bonds or customs bonds required in the ordinary course of business or in connection with the enforcement of rights or claims of the Borrower or any Subsidiary or in connection with judgments that do not result in a Default;

(d) unsecured intercompany Indebtedness between the Borrower and any Subsidiary or between Subsidiaries to the extent permitted by Section 9.05(g); *provided* that such Indebtedness is not held, assigned, transferred, negotiated or pledged to any Person other than the Borrower or one of its Wholly-Owned Subsidiaries, and, *provided*, *further*, that any such Indebtedness owed by a Loan Party shall be subordinated to the Secured Obligations on terms set forth in the Guaranty and Collateral Agreement;

(e) Indebtedness constituting a guaranty by any Loan Party of Indebtedness permitted to be incurred by any other Loan Party under this Section 9.02; provided that if the Indebtedness being guaranteed is subordinated to the Secured Obligations, such guaranty shall be subordinated to the Guarantee of the Secured Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such guaranteed Indebtedness;

(f) endorsements of negotiable instruments for deposit or collection in the ordinary course of business;

(g) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business or as otherwise approved by the Bankruptcy Court pursuant to an Approved Bankruptcy Court Order, so long as such Indebtedness shall not exceed the amount of the unpaid cost of, and shall be incurred only to defer the cost of, the underlying policy;

(h) Indebtedness (i) arising from the honoring by a bank or other financial institution of a check, draft, payment order or other debit drawn, presented or issued against insufficient funds in the ordinary course of business, *provided* that such Indebtedness is extinguished within five Business Days of its incurrence or (ii) arising under any Bank Products provided by a bank or other financial institution to the Loan Parties in the ordinary course of business and pursuant to, or in accordance with, the Cash Management Order;

(i) other unsecured Indebtedness not to exceed $1,000,000 in the aggregate at any one time outstanding;

(j) Indebtedness outstanding on the Effective Date consisting of Prepetition Term Loans incurred under the Prepetition Term Loan Facility and Prepetition Revolving Loans incurred under the Prepetition Revolving Loan Facility;

(k) Indebtedness outstanding on the Effective Date that is disclosed to the Lenders in Schedule 9.02.

Section 9.03 Liens. The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any of its Properties (now owned or hereafter acquired), except:

(a) Liens securing the payment of any Secured Obligations pursuant to the DIP Orders and other Security Instruments;

(b) Excepted Liens;

(c) Liens securing Capital Leases and Purchase Money Indebtedness permitted by Section 9.02(b) but only on the Property under lease or the Property purchased with such Purchase Money Indebtedness, as applicable;

(d) Liens on proceeds of Letters of Credit permitted to be posted in connection with Hedging Agreements permitted by Section 9.17;

(e) (i) pledges and deposits of cash in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to such Person and (ii) Liens on proceeds of insurance policies securing Indebtedness permitted under Section 9.02(g);

(f) Liens on cash earnest money or escrowed deposits in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 9.05, to be applied against the purchase price for and indemnities with respect to such Investment, solely to the extent such Investment would have been permitted on the date of the creation of such Lien;

(g) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or assets of any Person that becomes a Subsidiary after the Effective Date prior to the time such Person becomes a Subsidiary, as the case may be; *provided* that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, (ii) such Lien does not apply to any other property or assets of the Borrower or any Subsidiary and (iii) such Lien secures only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be;

(h) Liens on Collateral securing Indebtedness permitted by Section 9.02(i), including adequate protection Liens granted pursuant to the DIP Orders, which Liens, in each case, shall rank the same priorities as set forth in the DIP Orders;

(i) other Liens securing obligations arising in the ordinary course of business, other than Indebtedness for borrowed money, outstanding in an aggregate amount not to exceed $1,000,000;

(j) Liens in the form of cash collateral (withdrawn from the Letter of Credit Account pursuant to a Letter of Credit Account Withdrawal Notice) securing obligations owed to suppliers and vendors in an aggregate amount not to exceed the Alternate Cash Collateral

Amount; *provided* that the Borrower shall use commercially reasonable efforts to ensure that such cash collateral will continue to secure the Secured Obligations (other than reimbursement obligations under Letters of Credit) on a junior basis under arrangements (including security documentation and cash management) that are acceptable to the DIP Agent and the Required Lenders (it being understood and agreed that in any event the Loan Parties' interests in such cash collateral, including the residual value of such cash collateral or the remaining interests of the Loan Parties therein will continue to constitute Collateral that secures the Secured Obligations); and

(k) Liens outstanding as of the Effective Date that are disclosed to the Lenders in Schedule 9.03.

Section 9.04 Restricted Payments. The Borrower will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, return any capital to its stockholders or make any distribution of its Property to its Equity Interest holders, except Subsidiaries may declare and pay dividends to the Loan Parties.

Section 9.05 Investments, Loans and Advances. The Borrower will not, and will not permit any Subsidiary to, make or permit to remain outstanding, or enter into any agreement to make, any Investments in or to any Person, except that the foregoing restriction shall not apply to:

(a) Investments as of the Effective Date that are disclosed to the Lenders in Schedule 9.05;

(b) accounts receivable arising in the ordinary course of business consistent with past practice;

(c) direct obligations of the United States or any agency thereof, or obligations guaranteed by the United States or any agency thereof, in each case maturing within one (1) year from the date of creation thereof;

(d) commercial paper maturing within one year from the date of creation thereof rated in one of the two highest grades by S&P or Moody's;

(e) deposits maturing within one (1) year from the date of creation thereof with, including certificates of deposit issued by, any Lender or any office located in the United States of any other bank or trust company which is organized under the laws of the United States or any state thereof, has capital, surplus and undivided profits aggregating at least $100,000,000 (as of the date of such bank or trust company's most recent financial reports) and has a short term deposit rating of no lower than A2 or P2, as such rating is set forth from time to time, by S&P or Moody's, respectively;

(f) deposits in money market funds investing exclusively in Investments described in Section 9.05(c), Section 9.05(d) or Section 9.05(e);

(g) Investments (i) made by the Borrower in or to the Guarantors, and (ii) made by any Subsidiary in or to the Borrower or any Guarantor;

(h) Investments in stock, obligations or securities received in settlement of debts arising from Investments permitted under this Section 9.05 owing to the Borrower or any Subsidiary as a result of a bankruptcy or other insolvency proceeding of the obligor in respect of such debts or upon the enforcement of any Lien in favor of the Borrower or any of its Subsidiaries; *provided* that the Borrower shall give the DIP Agent prompt written notice in the event that the aggregate amount of all Investments held at any one time under this Section 9.05(h) exceeds $100,000;

(i) Investments constituting Indebtedness permitted under Section 9.02;

(j) credit provided to new or existing customers of the Loan Parties for the costs and expenses of extending service to such customers and for which such customers are contractually obligated to reimburse the Loan Party providing such credit in the ordinary course of business;

(k) Investments in Hedging Agreements permitted by Section 9.17;

(l) [reserved]; and

(m) other Investments not to exceed $100,000 in the aggregate at any time.

Section 9.06 Nature of Business; International Operations. The Borrower will not, and will not permit any Subsidiary to, engage (directly or indirectly) in any business other than those businesses in which the Borrower and its Subsidiaries are engaged on the Petition Date. From and after the date hereof, the Borrower and its Subsidiaries will not acquire or make any other expenditure (whether such expenditure is capital, operating or otherwise) in or related to, any real Property not located within the geographical boundaries of the United States.

Section 9.07 Proceeds of Loans. The Borrower will not permit the proceeds of the Loans to be used for any purpose other than those permitted by Section 8.21. Neither the Borrower nor any Person acting on behalf of the Borrower has taken or will take any action which might cause any of the Loan Documents to violate Regulations T, U or X or any other regulation of the Board, in each case as now in effect or as the same may hereinafter be in effect.

Section 9.08 ERISA Compliance. The Borrower will not, and will not permit any Subsidiary to, at any time:

(a) engage in, or permit any ERISA Affiliate to engage in, any transaction in connection with which the Borrower, a Subsidiary or any ERISA Affiliate could be subjected to either a civil penalty assessed pursuant to subsections (c), (i), (l) or (m) of section 502 of ERISA or a tax imposed by Chapter 43 of Subtitle D of the Code;

(b) fail to make, or permit any ERISA Affiliate to fail to make, full payment when due of all amounts which, under the provisions of any Plan, agreement relating thereto or

applicable law, the Borrower, a Subsidiary or any ERISA Affiliate is required to pay as contributions thereto;

(c) contribute to or assume an obligation to contribute to, or permit any ERISA Affiliate to contribute to or assume an obligation to contribute to (i) any employee welfare benefit plan, as defined in section 3(1) of ERISA, including, without limitation, any such plan maintained to provide benefits to former employees of such entities, that contributions to or the obligation to contribute to may not be terminated by such entities in their sole discretion at any time without any material liability, or (ii) any employee pension benefit plan, as defined in section 3(2) of ERISA, including a multiemployer plan as defined in section 3(37) or 4001(a)(3) of ERISA, that is subject to Title IV of ERISA, section 302 of ERISA or section 412 of the Code; and

(d) acquire, or permit any ERISA Affiliate to acquire, an interest in any Person that causes such Person to become an ERISA Affiliate with respect to the Borrower or a Subsidiary or with respect to any ERISA Affiliate of the Borrower or a Subsidiary if such Person sponsors, maintains or contributes to, or at any time in the six year period preceding such acquisition has sponsored, maintained, or contributed to, any employee pension benefit plan, as defined in section 3(2) of ERISA, (i) that is a multiemployer plan as defined in section 3(37) or 4001(a)(3) of ERISA or (ii) that is subject to Title IV of ERISA under which the actuarial present value of the benefit liabilities under such plan exceeds the current value of the assets (computed on a plan termination basis in accordance with Title IV of ERISA) of such plan allocable to such benefit liabilities.

Section 9.09 Sale or Discount of Receivables. Except (a) sales otherwise permitted pursuant to Section 9.11 and (b) for receivables obtained by the Borrower or any Subsidiary from the settlement of joint interest billing accounts in the ordinary course of business or discounts granted to settle collection of accounts receivable or the sale of defaulted accounts arising in the ordinary course of business in connection with the compromise or collection thereof and not in connection with any financing transaction, the Borrower will not, and will not permit any Subsidiary to, discount or sell (with or without recourse) any of its notes receivable or accounts receivable.

Section 9.10 Mergers, Etc. The Borrower will not, and will not permit any Subsidiary to, merge into or with or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its Property to any other Person (whether now owned or hereafter acquired) (any such transaction, a "consolidation"), or liquidate or dissolve, except (a) with the consent of the DIP Agent or the Required Lenders, or (b) that the Borrower or any Subsidiary may sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its Property to any other Person pursuant to one or more Qualified APAs, the proceeds of which are remitted to the DIP Agent concurrently with the consummation of such disposition in an amount necessary to repay all of the Secured Obligations concurrently with the consummation of such disposition, and which results in the Payment in Full of all of the Secured Obligations.

Section 9.11 Sale of Properties. The Borrower will not, and will not permit any Subsidiary to, sell, assign, farm-out, convey or otherwise transfer any Property except for:

(a) dispositions of cash and Cash Equivalents in the ordinary course of business and in connection with transactions permitted by this Agreement;

(b) the sale of inventory in the ordinary course of business;

(c) the sale or transfer of obsolete or worn out property and property no longer used or useful in the conduct of the business of the Borrower and its Subsidiaries (including allowing any registration or application for registration of any Intellectual Property that is no longer used or useful, or economically practicable to maintain, to lapse or go abandoned or be invalidated), whether now owned or hereafter acquired, in the ordinary course of business or is replaced by replacement property of at least comparable value and use;

(d) Restricted Payments permitted by Section 9.04 and Liens permitted by Section 9.03;

(e) the transfer of Property to another Loan Party;

(f) the transfer of Property occurring in connection with a transaction permitted by, and made in compliance with, the provisions of Section 9.10;

(g) dispositions of accounts receivables in connection with the collection or compromise thereof in the ordinary course of business to the extent permitted under Section 9.09;

(h) grants of Leases, subleases, licenses or sublicenses (including the provision of software under an open source license), easements, rights of way or similar rights or encumbrances in each case in the ordinary course of business and which do not materially interfere with the business of the Borrower and its Subsidiaries;

(i) transfers of Property that has suffered a Casualty Event upon receipt of the Net Cash Proceeds of such Casualty Event;

(j) other Asset Sales of the Properties listed on Schedule 9.11 for fair market value; *provided* that such Asset Sale shall have been approved by the Bankruptcy Court pursuant to an Approved Bankruptcy Court Order in form and substance satisfactory to the Required Lenders and the Net Sale Proceeds thereof shall be applied in accordance with Section 3.04(b)(ii); and

(k) other Asset Sales pursuant to a *de minimis* asset sales procedures order that is an Approved Bankruptcy Court Order; *provided* that the Net Sale Proceeds thereof in excess of $100,000 in the aggregate for all such Asset Sales shall be applied in accordance with Section 3.04(b)(ii).

(l)

Section 9.12 Environmental Matters. With respect to the Properties and any operations thereat or associated therewith, the Borrower will not, and will not permit any Subsidiary to, be in violation of Environmental Law, have any Release or threatened Release of Hazardous Materials other than those that are in compliance with Environmental Law, allow any exposure to Hazardous Materials that could reasonably be expected to form the basis for a claim for damages or compensation, or be required under Environmental Law to perform any Remedial Work.

Section 9.13 Transactions with Affiliates. The Borrower will not, and will not permit any Subsidiary to, enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property or the rendering of any service, with any Affiliate (other than the Borrower or any Guarantor), except (a) Restricted Payments permitted by Section 9.04, (b) Investments permitted by Section 9.05, and (c) transactions that are otherwise permitted under this Agreement and the Approved Bankruptcy Court Orders, and are upon fair and reasonable terms no less favorable to it, when taken as a whole, than it would obtain in a comparable arm's length transaction with a Person not an Affiliate.

Section 9.14 Subsidiaries. The Borrower will not, and will not permit any Subsidiary to, create or acquire any additional Subsidiary. The Borrower shall not, and shall not permit any Subsidiary to, sell, assign or otherwise dispose of any Equity Interests in any Subsidiary except in compliance with Section 9.11(f), Section 9.11(g) or Section 9.15. Neither the Borrower nor any Subsidiary shall have any Foreign Subsidiaries or any Subsidiaries that are not Wholly-Owned Subsidiaries.

Section 9.15 Limitation on Issuance of Equity Interests. The Borrower shall not permit any Subsidiary to issue any Equity Interest (including by way of sales of treasury stock) or any options or warrants to purchase, or securities convertible into, any Equity Interest, except for Equity Interests issued to another Loan Party. The Borrower and the Subsidiaries shall comply with Section 8.12 with respect to any such issued Equity Interests.

Section 9.16 Negative Pledge Agreements; Dividend Restrictions. The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or suffer to exist any material agreement or arrangement (other than (a) the Loan Documents, (b) the loan documents for the Prepetition Facilities (c) Capital Leases creating Liens permitted by Section 9.03(c), but then only on the Property that is the subject of such Capital Lease, (d) documents evidencing or securing Purchase Money Indebtedness creating Liens permitted by Section 9.03(c), but then only on the Property that is the subject of such Purchase Money Indebtedness, (e) documents creating Liens which are described in clauses (g) or (h) of the definition of "Excepted Liens", but then only on the Property that is the subject of the applicable lease or license described in such clause (g) or (h)), (f) customary restrictions and conditions on transfers and investments contained in any agreement relating to the sale of any asset or any subsidiary pending the consummation of such sale, (g) [reserved], (h) in the case of any assets acquired after the Effective Date, any agreement in effect at the time of such acquisition which pertains to such assets and only such assets and is assumed in connection with such acquisition, so long as such agreement was not entered into in contemplation of such acquisition, and (i) customary provisions in joint venture agreements and other similar agreements permitted by Section 9.05

and applicable to joint ventures and Equity Interests therein) that in any way prohibits or restricts the granting, conveying, creation or imposition of any Lien on any of its Property in favor of the DIP Agent and the Lenders, or that requires the consent of or notice to other Persons in connection therewith, or that restricts any Subsidiary from paying dividends or making distributions to, making Investments in, or transferring any of its Property to the Borrower or any Guarantor, or that requires the consent of or notice to other Persons in connection therewith.

Section 9.17 Hedging Agreements. The Borrower will not, and will not permit any Subsidiary to, enter into any Hedging Agreements with any Person other than Hedging Agreements in respect of commodities or interest rates (i) with an Approved Counterparty and (ii) that are entered into for the purpose of hedging exposure to interest rates or commodity prices and that are not for speculative purposes. In no event shall any Hedging Agreement contain any requirement, agreement or covenant for the Borrower or any Subsidiary to post collateral or margin to secure their obligations under such Hedging Agreement or to cover market exposures, other than Letters of Credit (and the proceeds thereof) the face amounts of which do not exceed $5,000,000 in the aggregate at any time.

Section 9.18 Holding Company. The Borrower will remain a holding company and will not own any real property, immovable property, or other assets of material value other than Equity Interests in Subsidiaries, furniture, furnishings and equipment acquired and maintained in the ordinary course of business, Investments to the extent permitted hereunder, assets acquired that are promptly, and in any event within 30 days of acquisition by the Borrower, transferred, contributed or otherwise assigned by the Borrower to one or more of the other Loan Parties, and interests in contracts customarily entered into by the Borrower in the ordinary course of its business.

Section 9.19 Sale and Leaseback. The Borrower shall not, and shall not permit any Subsidiary to, enter into any arrangement, directly or indirectly, with any Person whereby it shall sell or transfer any Property, whether now owned or hereafter acquired, and thereafter rent or lease such Property which it intends to use for substantially the same purpose or purposes as the Property being sold or transferred.

Section 9.20 Amendments to Organization Documents, Material Contracts, Fiscal Year End; Prepayments of other Indebtedness.

(a) The Borrower shall not, and shall not permit any Subsidiary to, amend, supplement or otherwise modify (or permit to be amended, supplemented or modified) its Organization Documents.

(b) The Borrower shall not, and shall not permit any Subsidiary to, amend, supplement or otherwise modify (or permit to be amended, supplemented or modified) any Material Contract in a manner that would be adverse to the Lenders in any material respect.

(c) The Borrower shall not, and shall not permit any Subsidiary to, change the last day of its fiscal year from December 31 of each year, or the last days of the first three fiscal quarters in each of its fiscal years from March 31, June 30 and September 30 of each year, respectively.

(d) The Borrower shall not, and shall not permit any Subsidiary to, make (or give any notice in respect of) any voluntary or optional payment or prepayment on or redemption or acquisition for value of, or any prepayment or redemption as a result of any asset sale, change of control or similar event of, any outstanding prepetition Indebtedness, except as otherwise permitted by this Agreement, the DIP Orders or any Approved Bankruptcy Court Order.

Section 9.21 Anti-Terrorism Law; Anti-Money Laundering.

(a) The Borrower shall not, and shall not permit any Subsidiary to, directly or indirectly, (i) knowingly conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in Section 7.26, (ii) knowingly deal in, or otherwise engage in any transaction relating to, any Property or interests in Property blocked pursuant to the Executive Order or any other Anti-Terrorism Law, or (iii) knowingly engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law (and the Borrower shall deliver to any Lender any certification or other evidence requested from time to time by such Lender confirming the Borrower's and the Subsidiaries' compliance with this Section 9.21(a)).

(b) The Borrower shall not, and shall not permit any Subsidiary to, cause or permit any of the funds of the Borrower or any Subsidiary that are used to repay the Loans to be derived from any unlawful activity with the result that the making of the Loans would be in violation of any Governmental Requirement.

Section 9.22 Embargoed Person. The Borrower shall not, and shall not permit any Subsidiary to, permit (a) any of the funds or Properties of the Borrower or any Subsidiary that are used to repay the Loans to constitute Property of, or be beneficially owned directly or indirectly by, any Person subject to sanctions or trade restrictions under United States law ("**Embargoed Person**" or "**Embargoed Persons**") that is identified on (i) the "List of Specially Designated Nationals and Blocked Persons" maintained by OFAC and/or on any other similar list maintained by OFAC pursuant to any authorizing statute including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Order or Governmental Requirement promulgated thereunder, with the result that the investment in the Borrower or any Subsidiary (whether directly or indirectly) is prohibited by a Governmental Requirement, or the Loans would be in violation of a Governmental Requirement, or (ii) the Executive Order, any related enabling legislation or any other similar Executive Orders or (b) any Embargoed Person to have any direct or indirect interest, of any nature whatsoever in the Borrower or any Subsidiary, with the result that the investment in the Borrower or any Subsidiary (whether directly or indirectly) is prohibited by a Governmental Requirement or the Loans are in violation of a Governmental Requirement.

Section 9.23 Deposit Accounts, Securities Accounts and Commodity Accounts. Subject to Section 8.20, the Borrower will not, and will not permit any Subsidiary to, deposit any funds, securities or commodities in any Deposit Account (other than payroll Deposit Accounts consistent with current practice and Deposit Accounts used solely for any healthcare program),

Securities Account or Commodity Account (each, as defined in the Uniform Commercial Code, as it may be amended, from time to time in effect in the State of New York), as applicable, unless such account is subject to a valid Lien in favor of the DIP Agent for the benefit of the Secured Parties and a control agreement in form and substance satisfactory to the DIP Agent (acting at the direction of the Required Lenders).

Section 9.24 Southcross Holdings Receivables. The Borrower will not, and will not permit any Subsidiary to, permit any account receivable owing from Southcross Holdings to the Borrower to be more than 30 days past its due date.

Section 9.25 Additional Bankruptcy Matters. Without the Required Lenders' prior written consent, the Borrower will not, and will not permit any Subsidiary to, do any of the following:

(a) assert or prosecute any claim or cause of action against any of the Secured Parties (in their capacities as such) or the Prepetition Secured Parties, unless such claim or cause of action is in connection with the enforcement of the Loan Documents against any of the Lenders;

(b) subject to the terms of the DIP Orders, object to, contest, delay, prevent or interfere with in any material manner the exercise of rights and remedies by the DIP Agent or the Lenders with respect to the Collateral following the occurrence of an Event of Default (provided that any Loan Party may contest or dispute whether an Event of Default has occurred); or

(c) except as expressly provided or permitted hereunder (including, without limitation, to the extent expressly identified in any line item in the Approved Budget) or, with the prior consent of the Required Lenders, as provided pursuant to any other Approved Bankruptcy Court Order, make any payment or distribution to any Affiliate that is not a Loan Party or to any insider of the Borrower outside of the ordinary course of business; and

(d) notwithstanding anything to the contrary in this Agreement, the DIP Orders or any of the other Loan Documents, propose, adopt, support, consummate or effect any Chapter 11 Plan, plan of liquidation, sale, structured dismissal or any other resolution of the Cases, unless such case resolution provides for the Payment in Full in cash on the effective date thereof of the Secured Obligations (including any Loans held by the Lenders).

Section 9.26 Other Superpriority Claims. The Borrower will not, and will not permit any Subsidiary to, incur, create, assume, suffer to exist or permit any other Superpriority Claim which is pari passu with or senior to the claims of the DIP Agent and the Lenders against the Loan Parties hereunder, except for the Carve-Out or as otherwise provided in the DIP Orders.

ARTICLE X
EVENTS OF DEFAULT; REMEDIES

Section 10.01 Events of Default. One or more of the following events shall constitute an "**Event of Default**":

(a) The Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement, when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof, by acceleration or otherwise.

(b) The Borrower shall fail to pay any interest on any Loan or fee or other amount (other than an amount referred to in Section 10.01(a)) payable under any Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days.

(c) Any representation or warranty made or deemed made by or on behalf of any Loan Party, any Subsidiary of the Borrower or Holdings in or in connection with any Loan Document or any amendment or modification of any Loan Document or waiver under such Loan Document, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made.

(d) The Borrower or any Subsidiary shall fail to observe or perform any covenant, condition or agreement contained in (i) Section 8.01(j), Section 8.02, Section 8.03, Section 8.07, Section 8.20, Section 8.23, Section 8.24 or in Article IX or (ii) 8.01(q) and such failure in respect of this clause (ii) shall continue unremedied for two (2) Business Days.

(e) Any Loan Party or any Subsidiary of the Borrower shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in Section 10.01(a), Section 10.01(b) or Section 10.01(d)) or any other Loan Document, and such failure shall continue unremedied for a period of fifteen (15) days after the earlier to occur of (i) notice thereof from the DIP Agent to the Borrower (which notice will be given at the request of any Lender) or (ii) a Responsible Officer, or a Responsible Officer of such Subsidiary, otherwise becoming aware of such default.

(f) The Borrower or any Subsidiary shall fail to make any payment of principal of or interest on any postpetition Material Indebtedness, when and as the same shall become due and payable, and such failure to pay shall extend beyond any applicable period of grace.

(g) Except with respect to obligations that are unenforceable as a result of the commencement of the Chapter 11 Cases and defaults that occur solely as a result of the filing of the Chapter 11 Cases, any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the Redemption thereof or any offer to Redeem to be made in respect thereof, prior to its scheduled maturity or require the Borrower or any Subsidiary to make an offer in respect thereof.

(h) The LC Cash Collateralization Amount, at any time, exceeds the Letter of Credit Deposit Amount.

(i) [Reserved]

(j) The Borrower or any Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due.

(k) (i) One or more postpetition judgments for the payment of money in an aggregate amount in excess of $1,000,000 or (ii) any one or more non-monetary postpetition judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, shall be rendered against the Borrower, any Subsidiary or any combination thereof and all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within thirty (30) days from the entry thereof.

(l) The Loan Documents after delivery thereof shall for any reason, except to the extent permitted by the terms thereof, cease to be in full force and effect and valid, binding and enforceable in accordance with their terms against any Loan Party thereto, or shall be repudiated by any of them, or cease to create a valid and perfected Lien of the priority required thereby on any of the Collateral purported to be covered thereby, except to the extent permitted by the terms of this Agreement, or any Loan Party or any of their Affiliates shall so state in writing.

(m) An ERISA Event shall have occurred that, in the opinion of the Required Lenders, when together with all other ERISA Events that have occurred, could reasonably be expected to result in the liability of the Borrower and its Subsidiaries in an aggregate amount exceeding $1,000,000 in the aggregate.

(n) A Change in Control shall occur.

(o) (i) Any Debtor shall fail to comply with any of the provisions of the DIP Orders, any order related to the Credit Facility, cash management or bank accounts, or any Chapter 11 Plan, or any other Bankruptcy Court order that affects or may reasonably be expected to affect any of the rights, remedies, powers, privileges, claims or Liens of the DIP Agent or any other Secured Party;

(ii) unless otherwise approved by the DIP Agent or the Required Lenders, an order of the Bankruptcy Court shall be entered providing for a change in venue with respect to any Chapter 11 Case, and such order shall not be reversed or vacated;

(iv) a trustee, examiner or other responsible officer shall be appointed in any of the Chapter 11 Cases with enlarged powers (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code;

(v) any of the Chapter 11 Cases shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code, or the filing by a Debtor of a motion seeking any such relief, or the failure of a Debtor to file responding materials opposing a motion by a third party seeking any such relief within the time frame provided for the filing of such response or objection by the Bankruptcy Court;

(vii) the Bankruptcy Court shall enter an order terminating the exclusive right of any Debtor to file a Chapter 11 Plan;

(ix) any or all Loan Parties shall enter into an agreement for, or any Debtor shall file (or support or fail to file responding materials opposing a motion by a third party seeking any such relief within the time frame provided for the filing of such response or objection by the respective court) a motion seeking, or the Bankruptcy Court shall enter, an order authorizing, a sale of all or substantially all of such Loan Party's assets for a cash price or other terms that will not result in Payment in Full of all of the Secured Obligations and all of the Prepetition Obligations at the closing of such sale unless the terms are otherwise acceptable to the Required Lenders;

(x) any Debtor shall file a motion seeking authority to consummate a sale of assets of such Debtor or any of its Subsidiaries (other than any such sale of assets that is permitted by the Loan Documents) outside the ordinary course of business, or any sale of any part of the Collateral pursuant to Section 363 of the Bankruptcy Code, in each case, that will not result in Payment in Full of all of the Secured Obligations and all of the Prepetition Obligations at the closing of such sale unless such sale is otherwise permitted under Section 9.11 or is otherwise acceptable to the Required Lenders;

(xi) without the prior written consent of the Required Lenders (and with respect to any provision that affects the rights or duties of the DIP Agent, the DIP Agent), any Debtor shall file a motion to alter, amend, vacate, supplement, or modify, in any respect, either of the DIP Orders or either of the DIP Orders is reversed, modified, amended, stayed, vacated or subject to a stay pending appeal, *provided* that entry of the Final DIP Order shall not be deemed to reverse, modify, amend, stay or vacate the Interim DIP Order for purposes of this clause (xii);

(xii) the Bankruptcy Court shall enter an order granting any Person, other than the DIP Agent, relief from the automatic stay under the Cases, in either case, to permit enforcement on, foreclosure on or repossession of any Collateral or other assets of any Loan Party if such relief could reasonably be expected to have a Material Adverse Effect, or to permit the commencement or continuation of prepetition litigation against any Debtor for any purpose other than to liquidate the amount of a disputed claim involving potential liability not covered by insurance, which litigation could reasonably be expected to result in net liabilities in excess of $250,000 or otherwise have a Material Adverse Effect;

(xiii) an order shall be entered for the substantive consolidation of the Estate of any Debtor with any other Person, unless such Person is another Debtor, and such order granting substantive consolidation provides that the assets of such Debtor shall remain subject to the Liens of the DIP Agent and Prepetition Agents securing the Secured Obligations and the Prepetition Obligations, respectively;

(xiv) any Debtor shall contest the validity or enforceability of the Credit Facility, any Debtor shall deny in writing that such Debtor has any further liability or obligation under the Credit Facility, or the DIP Agent or Secured Parties shall cease to have the benefit of the Liens granted by any of the DIP Orders once such orders have been made;

(xv) an order shall be entered by the Bankruptcy Court avoiding or requiring disgorgement by the DIP Agent or any other Secured Party of any amounts received in respect of the Secured Obligations or Prepetition Obligations;

(xvi) a Debtor shall file any motion or other request with the Bankruptcy Court seeking authority to use any cash proceeds of the DIP Collateral or the Prepetition Collateral or to obtain any financing under Section 364(d) of the Bankruptcy Code or other applicable law secured by a Lien upon any Collateral, in each case without the DIP Agent's prior written consent unless motion contemplates the Payment in Full of the Secured Obligations immediately upon the consummation of the transactions contemplated thereby;

(xvii) except as permitted in the DIP Orders, the Bankruptcy Court enters any order in any of the Chapter 11 Cases granting to any Person a Superpriority Claim or Lien pari passu with or senior to that granted to the DIP Agent under the DIP Orders;

(xviii) any Loan Party shall file any action, suit or other proceeding or contested matter challenging the validity, perfection or priority of any Liens of the DIP Agent securing the Secured Obligations or any Liens of any Prepetition Agent securing the Prepetition Obligations, or the validity or enforceability of any of the Loan Documents or Prepetition Loan Documents, or asserting any Avoidance Claim against any of the Prepetition Secured Parties, or seeking to recover any monetary damages from the DIP Agent, any Lender, any of the Prepetition Secured Parties;

(xix) a Challenge (as defined in the DIP Orders) shall be filed by any party in interest and shall be sustained by the Bankruptcy Court, in whole or in part; or

(xx) the Bankruptcy Court shall grant relief under any motion or other pleading filed by any Debtor that results in the occurrence of an Event of Default; *provided* that the Loan Parties hereby agree that the DIP Agent shall be entitled to request an expedited hearing on any such motion and hereby consent to such expedited hearing (and the DIP Agent is authorized to represent to the Bankruptcy

Court that the Loan Parties have consented to such expedited hearing on the motion);

(p) Any Case Milestone shall have not been met;

(q) Any Loan Party seeks to obtain Bankruptcy Court approval of a disclosure statement or Chapter 11 Plan other than a disclosure statement relating to, or a plan that is, an Acceptable Plan, or any of the Loan Parties or affiliates file, propose, support, or fail to contest in good faith the filing or confirmation of such a plan or the entry of such an order;

(r) Entry of an order approving a Section 363 Sale unless such order contemplates the Payment in Full of the DIP Facility upon consummation of such sale or such terms are otherwise acceptable to the Required Lenders; or

(s) The Interim DIP Order or Final DIP Order, as applicable, ceases to create a valid and perfected security interest and lien on the DIP Collateral.

Section 10.02 Remedies.

(a) Subject to the terms of the DIP Orders, in the case of an Event of Default, at any time thereafter during the continuance of such Event of Default, the DIP Agent may, and at the request of the Required Lenders, shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower and the Guarantors accrued hereunder and under the Loan Documents shall become due and payable immediately, without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or other notice of any kind, all of which are hereby waived by the Borrower and each Guarantor.

(b) In the case of the occurrence of an Event of Default, the DIP Agent and the Lenders will have all other rights and remedies available at law and equity.

(c) All proceeds realized from the liquidation or other disposition of Collateral or otherwise received after maturity of the Loans, whether by acceleration or otherwise, shall be applied, subject to the DIP Order (including the Remedies Notice Period (as defined therein)), the Carve-Out and, if applicable, the Wind-Down Budget:

(i) *first*, to payment or reimbursement of that portion of the Secured Obligations constituting fees, expenses and indemnities payable to the DIP Agent in its capacity as such;

(ii) *second*, *pro rata* to payment or reimbursement of that portion of the Secured Obligations constituting fees, expenses and indemnities payable to the Lenders;

(iii) *third*, *pro rata* to payment of accrued interest on the Loans;

(iv) *fourth*, *pro rata* to payment of (A) principal outstanding on the DIP Term Loans, (B) Secured Obligations referred to in clause (c) of the definition of Secured Obligations owing to a Bank Products Provider, and (C) any other Secured Obligations (other than Roll-Up Loans);

(v) *fifth, pro rata* to payment of any superpriority adequate protection claims of the Prepetition Secured Parties on a pro rata basis;

(vi) *sixth*, to repay ratably the Prepetition Revolving Loans then outstanding, on the one hand, and the Roll-Up Loans and Prepetition Term Loans then outstanding, on the other hand (provided that funds allocated to the Roll-Up Loans and Prepetition Term Loans shall be applied to repay the Roll-Up Loans in full prior to the Prepetition Terms Loans); and

(vii) *seventh*, any excess, after all of the Secured Obligations shall have been indefeasibly paid in full in cash, shall be paid to the Borrower or as otherwise required by any Governmental Requirement.

Notwithstanding the foregoing, Bank Products shall be excluded from the application described above if the DIP Agent has not received a Secured Party Designation Notice, together with such supporting documentation as the DIP Agent may request, from the applicable Bank Products Provider Each Bank Products Provider not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the DIP Agent pursuant to the terms of Article XI for itself and its Affiliates as if a "Lender" party hereto.

ARTICLE XI
THE DIP AGENT

Section 11.01 Appointment and Authority. Each of the Lenders and each Issuing Bank hereby irrevocably appoints Wilmington Trust, National Association, to act on its behalf as the DIP Agent hereunder and under the other Loan Documents and authorizes the DIP Agent to take such actions on its behalf and to exercise such powers as are delegated to the DIP Agent by the terms hereof and thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article XI are solely for the benefit of the DIP Agent, the Lenders and each Issuing Bank, and neither the Borrower nor any Subsidiary shall have any rights as a third party beneficiary of any such provisions. Without limiting the generality of the foregoing, the DIP Agent is hereby expressly authorized to (a) execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Security Instruments and (b) negotiate, enforce or settle any claim, action or proceeding affecting the Lenders in their capacity as such, at the written direction of the Required Lenders, which negotiation, enforcement or settlement will be binding upon each Secured Party.

Section 11.02

Section 11.03 Rights as a Lender. The Person serving as the DIP Agent hereunder shall, if applicable, have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the DIP Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include, if applicable, the Person serving as the DIP Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the DIP Agent hereunder and without any duty to account therefor to the Lenders.

Section 11.04 Exculpatory Provisions.

(a) The DIP Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the DIP Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing (it being understood that the term "agent" used herein and in the other Loan Documents with reference to the DIP Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine or any other applicable law; rather, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties);

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the DIP Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.02 or 12.02); *provided* that the DIP Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the DIP Agent to liability, if the DIP Agent is not indemnified to its satisfaction, or that is contrary to any Loan Document or applicable law including, for the avoidance of doubt any action that may be in violation of the automatic stay under any Bankruptcy Law;

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the DIP Agent or any of its Affiliates in any capacity; and

(iv) shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other

Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

(b) The DIP Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the DIP Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 12.02 and Section 10.02) or (ii) otherwise hereunder or under any other Loan Document or under any other document or instrument referred to or provided for herein or therein or in connection herewith or therewith INCLUDING ITS OWN ORDINARY NEGLIGENCE, except for its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by a final and nonappealable judgment. The DIP Agent shall be deemed not to have knowledge of any Default unless and until written notice describing such Default is given to the DIP Agent by the Borrower, a Lender or an Issuing Bank.

(c) The DIP Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article VI or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the DIP Agent or as to those conditions precedent expressly required to be to the DIP Agent's satisfaction, (vi) the existence, value, perfection, or priority of any collateral security or the financial or other condition of the Loan Parties and the Subsidiaries or any other obligor or guarantor, or (vii) any failure by any Loan Party or any other Person (other than itself) to perform any of its obligations hereunder or under any other Loan Document or the performance or observance of any covenants, agreements, or other terms or conditions set forth herein or therein.

Section 11.05 Reliance by DIP Agent. The DIP Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The DIP Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, the DIP Agent may presume that such condition is satisfactory to such Lender or such Issuing Bank unless the DIP Agent shall have received notice to the contrary from such Lender or such Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. The DIP Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other

experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 11.06 Delegation of Duties. The DIP Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by the DIP Agent. The DIP Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article XI and Section 12.03(b) and (c) shall apply to any such sub agent and to the Related Parties of the DIP Agent and any such sub agent, and shall apply to their respective as DIP Agent. The DIP Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the DIP Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 11.07 Resignation of DIP Agent. The DIP Agent may at any time give notice of its resignation to the Lenders, each Issuing Bank and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a bank as a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring DIP Agent gives notice of its resignation, then the retiring DIP Agent may on behalf of the Lenders and each Issuing Bank, appoint a successor DIP Agent meeting the qualifications set forth above, *provided* that if no such successor DIP Agent has been appointed by the 30th day after the resigning DIP Agent gave notice of its resignation, the retiring DIP Agent's resignation shall nevertheless thereupon become effective in accordance with such notice and (a) the retiring DIP Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the DIP Agent on behalf of the Lenders or any Issuing Bank under any of the Loan Documents, the retiring DIP Agent shall continue to hold such collateral security until such time as a successor DIP Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the DIP Agent shall instead be made by or to each Lender and each Issuing Bank directly, until such time as the Required Lenders appoint a successor DIP Agent as provided for above in this Section 11.06. Upon the acceptance of a successor's appointment as DIP Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) DIP Agent, and the retiring DIP Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by the Borrower to a successor DIP Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring DIP Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article XI and Section 12.03 shall continue in effect for the benefit of such retiring DIP Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring DIP Agent was acting as DIP Agent.

Section 11.08 Non-Reliance on DIP Agent and Other Lenders. Each Lender and each Issuing Bank acknowledges that it has, independently and without reliance upon the DIP Agent or any other Lender or any of their Related Parties and based on such documents and information

as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the DIP Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. The DIP Agent shall not be required to keep itself informed as to the performance or observance by the Borrower or any of its Subsidiaries of this Agreement, the Loan Documents, or any other document referred to or provided for herein or to inspect the Properties or books of the Loan Parties or the Subsidiaries. Except for notices, reports, and other documents and information expressly required to be furnished to the Lenders by the DIP Agent hereunder, the DIP Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition, or business of the Loan Parties (or any of their Affiliates) which may come into possession of the DIP Agent or any of its Affiliates. Each other party hereto will consult with its own legal counsel to the extent that it deems necessary in connection with the Loan Documents and the matters contemplated therein.

Section 11.09 [Reserved.]

Section 11.10 Authority of DIP Agent to Release Collateral and Liens. Each Lender and each Issuing Bank hereby authorizes, and each other Person accepting the benefit of the Liens created by the Security Instruments shall be deemed to have authorized, the DIP Agent to release (a) any Collateral that is permitted to be sold or released pursuant to the terms of the Loan Documents, and (b) any Mortgaged Property that does not constitute Material Real Property if any Building (as defined in the applicable Flood Insurance Law) or Manufactured (Mobile) Home (as defined in the applicable Flood Insurance Law) is situated on such Mortgaged Property and the DIP Agent, in its sole discretion, determines that the costs, financial and otherwise, of obtaining or maintaining a Lien or complying with all Governmental Requirements with respect to such Lien outweigh the benefit to the Secured Parties of the security afforded thereby. Each Lender and each Issuing Bank hereby authorizes, and each other Person accepting the benefit of the Liens created by the Security Instruments shall be deemed to have authorized, the DIP Agent to execute and deliver to the Borrower (or file, if appropriate), at the Borrower's sole cost and expense, any and all releases of Liens, termination statements, assignments or other documents reasonably requested by the Borrower in connection with any sale or other disposition of Property to the extent such sale or other disposition is permitted by the terms of Section 9.11 or is otherwise authorized by the terms of the Loan Documents. To the extent any Property is sold, assigned, conveyed or otherwise transferred as expressly permitted by Section 9.11 to any Person other than a Loan Party, such Collateral shall be sold, assigned, conveyed or otherwise transferred free and clear of all Liens created by the Loan Documents.

Section 11.11 Action by the DIP Agent. The DIP Agent shall have no duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the DIP Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders or Issuing Banks, as applicable, as shall be necessary under the circumstances as

provided in Section 10.02 or Section 12.02) and in all cases the DIP Agent shall be fully justified in failing or refusing to act hereunder or under any other Loan Documents unless it shall (a) receive written instructions from the Required Lenders (or such other number or percentage of the Lenders or Issuing Banks, as applicable, as shall be necessary under the circumstances as provided in Section 12.02) specifying the action to be taken and (b) be indemnified to its satisfaction by the Lenders or Issuing Banks, as applicable, against any and all liability and expenses which may be incurred by it by reason of taking or continuing to take any such action. The instructions as aforesaid and any action taken or failure to act pursuant thereto by the DIP Agent shall be binding on all of the Lenders and Issuing Banks. If a Default has occurred and is continuing, then the DIP Agent shall take such action with respect to such Default as shall be directed by the requisite Lenders in the written instructions (with indemnities) described in this Section, *provided* that, unless and until the DIP Agent shall have received such directions, the DIP Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable in the best interests of the Lenders. In no event, however, shall the DIP Agent be required to take any action which exposes the DIP Agent to personal liability or which is contrary to this Agreement, the Loan Documents or applicable law.

Section 11.12 Certain Secured Parties. No Bank Products Provider that obtains the benefit of Section 10.02(c) or any Collateral by virtue of the provisions hereof or any Security Instrument or DIP Order shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof, any DIP Order or of any Security Instrument) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article XI to the contrary, the DIP Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations consisting of Bank Products except to the extent expressly provided herein and unless the DIP Agent has received a Secured Party Designation Notice of such Secured Obligations, together with such supporting documentation as the DIP Agent may request, from the applicable Bank Products Provider. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations consisting of Bank Products in the case of a Maturity Date.

ARTICLE XII
MISCELLANEOUS

Section 12.01 Notices.

(a) Notices Generally. Subject to Section 12.01(b), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:

(i) if to the Borrower, to it at the following:

Southcross Energy Partners, L.P.
1717 Main Street, Suite 5200
Dallas, TX 75201
Attn: Michael B. Howe
Fax: (214) 979-3710
Email: michael.howe@southcrossenergy.com

with a copy to (which shall not constitute notice):

Davis Polk & Wardwell LLP
450 Lexington Ave
New York, NY 10017
Attn: Jinsoo H. Kim
Fax: (212) 701-5217
Email: jinsoo.kim@davispolk.com

(ii) if to the DIP Agent, to it at the following:

Wilmington Trust, National Association.
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402
Attn: Nikki Kroll
Fax: (612) 217-5651
Email: nkroll@wilmingtontrust.com

with copies to (which shall not constitute notice):

Arnold & Porter Kaye Scholer LLP
250 West 55th Street
New York, NY 10019-9710
Attn: Alan Glantz
Fax: (212) 836-6763
Email: alan.glantz@arnoldporter.com

and

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
Attn: Leonard Klingbaum
Fax: (212) 728-9290
Email: LKlingbaum@willkie.com

(iii) if to Wells Fargo, as Issuing Bank, to it at the following:

[____][1]

(iv) if to RBC, as Issuing Bank, to it at the following:

[____][2]

(v) if to UBS AG, as Issuing Bank, to it at the following:

[____][3]

(vi) if to any other Lender, to it at its address (or facsimile number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in Section 12.01(b) below, shall be effective as provided in Section 12.01(b).

(b) Electronic Communications.

(i) Notices and other communications to the Lenders and the Issuing Banks hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the DIP Agent; *provided* that the foregoing shall not apply to notices to any Lender or any Issuing Bank pursuant to Article II, Article III, Article IV and Article V if such Lender or such Issuing Bank, as applicable, has notified the DIP Agent that it is incapable of receiving notices under such Article(s) by electronic communication. The DIP Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

(ii) Unless the DIP Agent otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (B) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed

[1] NTD: V&E to provide.
[2] NTD: V&E to provide.
[3] NTD: V&E to provide.

receipt by the intended recipient at its e-mail address as described in the foregoing clause (B) of notification that such notice or communication is available and identifying the website address therefore.

(c) Change of Address, Etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

Section 12.02 Waivers; Amendments.

(a) No failure on the part of the DIP Agent, any Issuing Bank or any Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege, or any abandonment or discontinuance of steps to enforce such right, power or privilege, under any of the Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any of the Loan Documents preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the DIP Agent, any Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by Section 12.02(b), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the DIP Agent, any Lender or any Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any provision hereof nor any Security Instrument nor any provision thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders, and acknowledged by the DIP Agent, or by the Borrower and the DIP Agent with the consent of the Required Lenders; *provided* that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or reduce the rate of interest thereon, or reduce any fees payable hereunder, or reduce any other Secured Obligations hereunder or under any other Loan Document, without the written consent of each Lender adversely affected thereby, *provided, however,* that only the consent of the Required Lenders shall be necessary (A) to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate or (B) [reserved], (iii) except as provided in the definition of "Scheduled Maturity Date", postpone the scheduled date of payment or prepayment of the principal amount of any Loan (excluding mandatory prepayments), or any interest thereon, or any fees payable hereunder, or any other Secured Obligations hereunder or under any other Loan Document, or reduce the amount of, waive or excuse any such payment, or postpone or extend the Maturity Date or Maturity Date without the written consent of each Lender adversely affected thereby, (iv) change Section 4.01(b) or Section 4.01(c) in a manner that would alter the *pro rata* sharing of payments required thereby, without the written consent of

each Lender, (v) waive or amend Section 3.04(c), Section 6.01, Section 10.02(c) or Section 12.14 or change the definition of the terms "Domestic Subsidiary", "Foreign Subsidiary" or "Subsidiary", without the written consent of each Lender (other than any Defaulting Lender), (vi) release any Guarantor (except as permitted pursuant to the Guaranty and Collateral Agreement or in connection with a sale of such Guarantor permitted under Section 9.11) or release all or substantially all of the Collateral, without the written consent of each Lender (other than any Defaulting Lender), (vii) change any of the provisions of this Section 12.02(b), Section 10.02(c), or the definitions of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or under any other Loan Documents or make any determination or grant any consent hereunder or any other Loan Documents, without the written consent of each Lender other than any Defaulting Lender, (viii) change the application of prepayments under Section 3.04(c), without the written consent of the Required Lenders (it being understood that the Required Lenders may waive, in whole or in part, any prepayment so long as the application of any such prepayment that is still required to be made is not changed), or (ix) modify Section 2.07 (or any definitions related thereto) in any manner that is adverse to the Issuing Banks that have Letters of Credit outstanding without the consent of each such Issuing Bank*; provided*, *further*, that (x) no such agreement shall amend, modify or otherwise affect the rights or duties of the DIP Agent or any Issuing Bank hereunder or under any other Loan Document without the prior written consent of the DIP Agent or any Issuing Bank, as the case may be, and (y) the Agency Fee Letter may be amended, or rights or privileged thereunder waived in a writing executed only by the parties thereto (without the need for the consent of any other party thereto). Notwithstanding the foregoing, (x) any supplement to Schedule 7.14 (Subsidiaries) shall be effective simply by delivering to the DIP Agent a supplemental schedule clearly marked as such and, upon receipt, the DIP Agent will promptly deliver a copy thereof to the Lenders, (y) the Borrower (or other applicable Loan Party) and the DIP Agent may amend this Agreement or any other Loan Document without the consent of the Lenders in order to correct, amend or cure any ambiguity, inconsistency or defect or correct any typographical error or other manifest error in any Loan Document if the same is not objected to in writing by Lenders constituting the Required Lenders within 5 Business Days after the DIP Agent delivers written notice thereof to the Lenders, and (z) the DIP Agent and the Borrower (or other applicable Loan Party) may enter into any amendment, modification or waiver of this Agreement or any other Loan Document or enter into any agreement or instrument to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Mortgaged Property or Property to become Mortgaged Property to secure the Secured Obligations for the benefit of the Lenders or as required by any Governmental Requirement to give effect to, protect or otherwise enhance the rights or benefits of any Lender under the Loan Documents without the consent of any Lender.

Section 12.03 Expenses, Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the DIP Agent and its Affiliates and by the Lenders (including the reasonable fees, charges and disbursements of counsel and other outside consultants for the DIP Agent and the Lenders) in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration (both before and after the execution hereof and including advice of counsel to the DIP Agent as to the rights and duties

of the DIP Agent and the Lenders with respect thereto) of this Agreement and the other Loan Documents and any amendments, modifications or waivers of or consents related to the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) (limited, in the case of legal fees, disbursements and charges, to the reasonable and documented fees, disbursements and other charges of Arnold & Porter Kaye Scholer LLP, as counsel to the DIP Agent, Willkie Farr & Gallagher LLP, as counsel for the Lenders, a single counsel for the Issuing Banks, and local counsel in each material jurisdiction), (ii) all costs, expenses, Taxes, assessments and other charges incurred by the DIP Agent or any Lender in connection with any filing, registration, recording or perfection of any security interest contemplated by this Agreement or any Security Instrument or any other document referred to therein, (iii) all reasonable out-of-pocket expenses incurred by any Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder (limited, in the case of legal fees, disbursements and charges, to the reasonable and documented fees, disbursements and other charges of Arnold & Porter Kaye Scholer LLP, as counsel to the DIP Agent, Willkie Farr & Gallagher LLP, as counsel for the Lenders, a single counsel for the Issuing Banks, and local counsel in each material jurisdiction), and (iv) all out-of-pocket expenses incurred by the DIP Agent, any Issuing Bank or any Lender (including the fees, charges and disbursements of any counsel for the DIP Agent, any Issuing Bank or any Lender) in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section 12.03 or in connection with the Loans made or Letters of Credit issued hereunder, including, without limitation, all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit (limited, in the case of legal fees, disbursements and charges, to the reasonable and documented fees, disbursements and other charges of Arnold & Porter Kaye Scholer LLP, as counsel to the DIP Agent, Willkie Farr & Gallagher LLP, as counsel for the Lenders, a single counsel for the Issuing Banks, and local counsel in each material jurisdiction). Notwithstanding anything to the contrary contained in this Section 12.03(a) or elsewhere in any of the Loan Documents, neither the Borrower nor any Subsidiary shall be obligated to pay or reimburse any Person for any costs, expenses, fees, taxes or other charges of any nature whatsoever that are incurred or payable by any Person in connection with any assignment referred to in Section 12.04(b), any participation referred to in Section 12.04(d) or any pledge or security interest referred to in Section 12.04(f).

(b) INDEMNIFICATION BY THE BORROWER. THE BORROWER SHALL INDEMNIFY EACH AGENT (AND ANY SUB-AGENT THEREOF), ANY ISSUING BANK AND EACH LENDER, AND EACH RELATED PARTY OF ANY OF THE FOREGOING PERSONS (EACH SUCH PERSON BEING CALLED AN "**INDEMNITEE**") AGAINST, AND DEFEND AND HOLD EACH INDEMNITEE HARMLESS FROM, ANY AND ALL LOSSES, CLAIMS, DAMAGES, PENALTIES, LIABILITIES AND RELATED EXPENSES, INCLUDING THE FEES, CHARGES AND DISBURSEMENTS OF ANY COUNSEL FOR ANY INDEMNITEE (LIMITED, IN THE CASE OF LEGAL FEES, DISBURSEMENTS AND CHARGES, TO THE REASONABLE AND DOCUMENTED FEES, DISBURSEMENTS AND OTHER CHARGES OF ARNOLD & PORTER KAYE SCHOLER LLP, AS COUNSEL TO THE DIP AGENT, WILLKIE FARR & GALLAGHER LLP, AS COUNSEL FOR THE LENDERS, A SINGLE COUNSEL FOR THE ISSUING BANKS, AND LOCAL COUNSEL IN EACH MATERIAL JURISDICTION), INCURRED BY ANY

INDEMNITEE OR ASSERTED AGAINST ANY INDEMNITEE BY A THIRD PARTY OR BY THE BORROWER OR ANY SUBSIDIARY ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF (i) THE EXECUTION OR DELIVERY OF THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY OR THEREBY, THE PERFORMANCE BY THE PARTIES HERETO OR THE PARTIES TO ANY OTHER LOAN DOCUMENT OF THEIR RESPECTIVE OBLIGATIONS HEREUNDER OR THEREUNDER OR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, (ii) THE FAILURE OF THE BORROWER OR ANY SUBSIDIARY TO COMPLY WITH THE TERMS OF ANY LOAN DOCUMENT, INCLUDING THIS AGREEMENT, OR WITH ANY GOVERNMENTAL REQUIREMENT, (iii) ANY INACCURACY OF ANY REPRESENTATION OR ANY BREACH OF ANY WARRANTY OR COVENANT OF THE BORROWER OR ANY GUARANTOR SET FORTH IN ANY OF THE LOAN DOCUMENTS OR ANY INSTRUMENTS, DOCUMENTS OR CERTIFICATIONS DELIVERED IN CONNECTION THEREWITH, (iv) ANY LOAN OR LETTER OF CREDIT OR THE USE OF THE PROCEEDS THEREFROM, INCLUDING, WITHOUT LIMITATION, (A) ANY REFUSAL BY ANY ISSUING BANK TO HONOR A DEMAND FOR PAYMENT UNDER A LETTER OF CREDIT IF THE DOCUMENTS PRESENTED IN CONNECTION WITH SUCH DEMAND DO NOT STRICTLY COMPLY WITH THE TERMS OF SUCH LETTER OF CREDIT, OR (B) THE PAYMENT OF A DRAWING UNDER ANY LETTER OF CREDIT NOTWITHSTANDING THE NON-COMPLIANCE, NON-DELIVERY OR OTHER IMPROPER PRESENTATION OF THE DOCUMENTS PRESENTED IN CONNECTION THEREWITH, (v) ANY OTHER ASPECT OF THE LOAN DOCUMENTS, (vi) THE OPERATIONS OF THE BUSINESS OF THE BORROWER AND ITS SUBSIDIARIES BY THE BORROWER AND ITS SUBSIDIARIES, (vii) ANY ASSERTION THAT THE SECURED PARTIES WERE NOT ENTITLED TO RECEIVE THE PROCEEDS RECEIVED PURSUANT TO THE SECURITY INSTRUMENTS, (viii) ANY ENVIRONMENTAL LAW APPLICABLE TO THE BORROWER OR ANY SUBSIDIARY OR ANY OF THEIR PROPERTIES OR OPERATIONS, INCLUDING, THE PRESENCE, GENERATION, STORAGE, RELEASE, THREATENED RELEASE, USE, TRANSPORT, DISPOSAL, ARRANGEMENT OF DISPOSAL OR TREATMENT OF HAZARDOUS MATERIALS ON OR AT ANY OF THEIR PROPERTIES, (ix) THE BREACH OR NON-COMPLIANCE BY THE BORROWER OR ANY SUBSIDIARY WITH ANY ENVIRONMENTAL LAW APPLICABLE TO THE BORROWER OR ANY SUBSIDIARY, (x) THE PAST OWNERSHIP BY THE BORROWER OR ANY SUBSIDIARY OF ANY OF THEIR PROPERTIES OR PAST ACTIVITY ON ANY OF THEIR PROPERTIES WHICH, THOUGH LAWFUL AND FULLY PERMISSIBLE AT THE TIME, COULD RESULT IN PRESENT LIABILITY, (xi) THE PRESENCE, USE, RELEASE, STORAGE, TREATMENT, DISPOSAL, GENERATION, THREATENED RELEASE, TRANSPORT, ARRANGEMENT FOR TRANSPORT OR ARRANGEMENT FOR DISPOSAL OF HAZARDOUS MATERIALS ON OR AT ANY OF THE PROPERTIES OWNED OR OPERATED BY THE BORROWER OR ANY SUBSIDIARY OR ANY ACTUAL OR ALLEGED PRESENCE OR RELEASE OF HAZARDOUS MATERIALS ON OR FROM ANY PROPERTY OWNED OR OPERATED BY THE BORROWER OR ANY OF ITS SUBSIDIARIES, (xii) ANY ENVIRONMENTAL LIABILITY RELATED IN ANY WAY TO THE BORROWER OR ANY OF ITS SUBSIDIARIES, OR (xiii) ANY OTHER ENVIRONMENTAL, HEALTH OR SAFETY

CONDITION IN CONNECTION WITH THE LOAN DOCUMENTS, OR (xiv) ANY ACTUAL OR PROSPECTIVE CLAIM, LITIGATION, INVESTIGATION OR PROCEEDING RELATING TO ANY OF THE FOREGOING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY, WHETHER BROUGHT BY A THIRD PARTY OR BY THE BORROWER OR ANY SUBSIDIARY, AND REGARDLESS OF WHETHER ANY INDEMNITEE IS A PARTY THERETO, AND SUCH INDEMNITY SHALL EXTEND TO EACH INDEMNITEE NOTWITHSTANDING THE SOLE OR CONCURRENT NEGLIGENCE OF EVERY KIND OR CHARACTER WHATSOEVER, WHETHER ACTIVE OR PASSIVE, WHETHER AN AFFIRMATIVE ACT OR AN OMISSION, INCLUDING WITHOUT LIMITATION, ALL TYPES OF NEGLIGENT CONDUCT IDENTIFIED IN THE RESTATEMENT (SECOND) OF TORTS OF ONE OR MORE OF THE INDEMNITEES OR BY REASON OF STRICT LIABILITY IMPOSED WITHOUT FAULT ON ANY ONE OR MORE OF THE INDEMNITEES; *PROVIDED* THAT SUCH INDEMNITY SHALL NOT, AS TO ANY INDEMNITEE, BE AVAILABLE TO THE EXTENT THAT SUCH LOSSES, CLAIMS, DAMAGES, LIABILITIES OR RELATED EXPENSES (x) ARE DETERMINED BY A COURT OF COMPETENT JURISDICTION BY FINAL AND NONAPPEALABLE JUDGMENT TO HAVE RESULTED FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE, (y) OTHER THAN IN THE CASE OF THE DIP AGENT AND ITS RELATED PARTIES, RESULT FROM A CLAIM BROUGHT BY THE BORROWER OR ANY SUBSIDIARY AGAINST ANY INDEMNITEE FOR BREACH IN BAD FAITH OF SUCH INDEMNITEE'S OBLIGATIONS HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT, IF THE BORROWER OR SUCH SUBSIDIARY HAS OBTAINED A FINAL AND NONAPPEALABLE JUDGMENT IN ITS FAVOR ON SUCH CLAIM AS DETERMINED BY A COURT OF COMPETENT JURISDICTION OR (z) RESULT FROM ANY DISPUTE SOLELY AMONG INDEMNITEES, OTHER THAN ANY CLAIMS AGAINST ANY INDEMNITEE IN ITS CAPACITY OR IN FULFILLING ITS ROLE AS AN AGENT, OR ANY SIMILAR ROLE UNDER THIS AGREEMENT, AND OTHER THAN ANY CLAIMS ARISING OUT OF ANY ACT OR OMISSION ON THE PART OF THE BORROWER OR ANY OF ITS SUBSIDIARIES OR AFFILIATES.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to pay indefeasibly any amount required under Sections 12.03(a) or (b) to be paid by it to the DIP Agent (or any sub-agent thereof), any Issuing Bank or any Related Party of any of the foregoing, each Lender severally agrees to pay to such Agent (or any such sub-agent), such Issuing Bank or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought (or, if such indemnity or reimbursement is sought after the date upon which the Loans shall have been paid in full and the Commitments have been terminated, in accordance with such Lenders' Applicable Share as in effect immediately prior to such date))) of such unpaid amount; *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the DIP Agent (or any such sub-agent) or such Issuing Bank in its capacity as such, or against any Related Party of any of the foregoing acting for the DIP Agent (or any such sub-agent) or such Issuing Bank in connection with such capacity. Each Lender hereby authorizes the DIP Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable

by the DIP Agent to the Lender from any source against any amount due to the DIP Agent under this paragraph (c).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, no party shall assert, and hereby waives, any claim against any other party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof (other than to the extent any such damages are asserted pursuant to a third-party claim that would otherwise be required to be indemnified or reimbursed pursuant to any Loan Document). No Indemnitee referred to in Section 12.03(b) shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the Transactions.

(e) Payments. All amounts due under this Section 12.03 shall be payable promptly after written demand therefor.

Section 12.04 Assignments and Participations.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of any Issuing Bank that issues a Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the DIP Agent and each Lender, and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except (A) to an assignee in accordance with the provisions of Section 12.04(b), (B) by way of participation in accordance with the provisions of Section 12.04(d), or (C) by way of pledge or assignment of a security interest subject to the restrictions of Section 12.04(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of any Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in Section 12.04(d)) and, to the extent expressly contemplated hereby, the Related Parties of each of the DIP Agent, any Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); *provided* that any such assignments shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to

it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in Section 12.04(b)(i)(A), the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the DIP Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than $5,000,000, unless each of the DIP Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all of the assigning Lender's rights and obligations under this Agreement and with respect to the Loan or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights on a non- *pro rata* basis.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by Section 12.04(b)(i)(B) and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the DIP Agent within five (5) Business Days after having received notice thereof; and

(B) the consent of the DIP Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of a Commitment or Credit Exposure if such assignment is to a Person that is not a Lender with a Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the DIP Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500 (which may be waived or reduced in the sole discretion of the DIP Agent), and the assignee, if it is not a Lender, shall deliver to the DIP Agent an Administrative Questionnaire and any tax forms required under Section 5.03.

(v) No Assignment to Borrower. No such assignment shall be made to the Borrower, any Sponsor, or any of the Borrower's or any Sponsor's Affiliates or Subsidiaries.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

(vii) No Assignments to Defaulting Lenders. No such assignment shall be made to a Defaulting Lender.

Subject to acceptance and recording thereof by the DIP Agent pursuant to Section 12.04(c), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Section 5.01, Section 5.02, Section 5.03 and Section 12.03 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 12.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 12.04(d).

(c) Register. The DIP Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Upon the DIP Agent's receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire and applicable tax forms (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 12.04(b) and any written consent to such assignment required by Section 12.04(b), the DIP Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 12.04(c). The entries in the Register shall be conclusive, and the Borrower, the DIP Agent, any Issuing Bank and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Banks and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations.

(i) Any Lender may at any time, without the consent of, or notice to the Borrower, the DIP Agent or any Issuing Bank, sell participations to any

Person (other than a natural Person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); *provided* that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the DIP Agent, any Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

(ii) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the proviso to Section 12.02 that affects such Participant. In addition such agreement must provide that the Participant be bound by the provisions of Section 12.03. Subject to Section 12.04(e), the Borrower agrees that each Participant shall be entitled to the benefits of Section 5.01, Section 5.02 and Section 5.03 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 12.04(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.08 as though it were a Lender, *provided* that such Participant agrees to be subject to Section 4.01(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the DIP Agent (in its capacity as DIP Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 5.01 or Section 5.03 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant,

unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 5.03 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 5.03(f) as though it were a Lender

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including, without limitation, any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank having jurisdiction over such Lender, and Section 12.04(e) shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Restrictions if Registration Required. Notwithstanding any other provisions of this Section 12.04, no transfer or assignment of the interests or obligations of any Lender or any grant of participations therein shall be permitted if such transfer, assignment or grant would require the Borrower and the Guarantors to file a registration statement with the SEC or to qualify the Loans under the "Blue Sky" laws of any state.

Section 12.05 Survival; Revival; Reinstatement.

(a) All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the DIP Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Section 5.01, Section 5.02, Section 5.03 and Section 12.03 and Article XI shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement, any other Loan Document or any provision hereof or thereof.

(b) To the extent that any payments on the Secured Obligations or proceeds of any Collateral are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver or other Person under any bankruptcy law, common law or equitable cause, then to such extent, the Secured Obligations so satisfied shall be revived and continue as if such payment or proceeds had not been received and the DIP Agent's and the Lenders' Liens, security interests, rights, powers and remedies under this Agreement and each Loan Document shall continue in full force and effect. In such event,

each Loan Document shall be automatically reinstated and the Borrower shall take such action as may be reasonably requested by the DIP Agent or the Lenders to effect such reinstatement.

Section 12.06 Counterparts; Integration; Effectiveness; Electronic Execution.

(a) Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract.

(b) Integration. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the DIP Agent constitute the entire contract among the parties relating to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES HERETO AND THERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

(c) Effectiveness. Except as provided in Section 6.01, this Agreement shall become effective when it shall have been executed by the DIP Agent and when the DIP Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

(d) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 12.07 Severability. Any provision of this Agreement or any other Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof or thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 12.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, each Issuing Bank and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in

whatever currency) at any time held and other obligations (of whatsoever kind, including, without limitations obligations under Hedging Agreements, and in whatever currency) at any time owing by such Lender, such Issuing Bank or any such Affiliate to or for the credit or the account of the Borrower or any Subsidiary against any and all of the obligations of the Borrower or any Subsidiary now or hereafter existing under this Agreement or any other Loan Document to such Lender or such Issuing Bank, irrespective of whether or not such Lender or such Issuing Bank shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Subsidiary may be contingent or unmatured or are owed to a branch or office of such Lender or such Issuing Bank different from the branch or office holding such deposit or obligated on such Indebtedness. The rights of each Lender, each Issuing Bank and their respective Affiliates under this Section 12.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender, such Issuing Bank or their respective Affiliates may have. Each Lender and each Issuing Bank agrees to notify the Borrower and the DIP Agent promptly after any such setoff and application; *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

Section 12.09 Governing Law; Jurisdiction; Consent to Service of Process.

(a) THIS AGREEMENT AND, EXCEPT AS OTHERWISE SET FORTH THEREIN, THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THE LOAN DOCUMENTS SHALL, EXCEPT AS OTHERWISE SET FORTH THEREIN, BE BROUGHT EXCLUSIVELY IN THE BANKRUPTCY COURT AND IF THE BANKRUPTCY COURT DOES NOT HAVE OR ABSTAINS FROM JURISDICTION, THE COURTS OF THE COUNTY AND STATE OF NEW YORK OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HEREBY ACCEPTS FOR ITSELF AND (TO THE EXTENT PERMITTED BY LAW) IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS.

(c) EACH PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO IT AT THE ADDRESS SPECIFIED IN SECTION 12.01 OR SUCH OTHER ADDRESS AS IS SPECIFIED PURSUANT TO SECTION 12.01 (OR ITS ASSIGNMENT AND ASSUMPTION), SUCH SERVICE TO BECOME EFFECTIVE THIRTY (30) DAYS AFTER SUCH MAILING. NOTHING HEREIN SHALL AFFECT THE RIGHT OF A PARTY OR ANY HOLDER OF A NOTE TO SERVE

PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANOTHER PARTY IN ANY OTHER JURISDICTION.

(d) EACH PARTY HEREBY (i) IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) AND FOR ANY COUNTERCLAIM THEREIN; (ii) IRREVOCABLY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY SUCH LITIGATION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES; (iii) CERTIFIES THAT NO OTHER PARTY HERETO NOR ANY REPRESENTATIVE, AGENT OR ATTORNEY FOR ANY OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, OR IMPLIED, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS, AND (iv) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT, THE LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION 12.09.

Section 12.10 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 12.11 Confidentiality. Each of the DIP Agent, any Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors (including accountants and legal counsel) and other representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement or any other Loan Document, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 12.11, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any Hedging Agreement relating to the Borrower and its obligations, (g) with the consent of

the Borrower, (h) to any other party to this Agreement, or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 12.11 or (ii) becomes available to the DIP Agent, any Issuing Bank, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. For purposes of this Section 12.11, "**Information**" means all information received from any Sponsor, Southcross Holdings, the Borrower or any Subsidiary relating to any Sponsor, Southcross Holdings, the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the DIP Agent, any Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by any Sponsor, Southcross Holdings, the Borrower or a Subsidiary; *provided* that, in the case of information received from any Sponsor, Southcross Holdings, the Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 12.11 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 12.12 Interest Rate Limitation. It is the intention of the parties hereto that each Lender shall conform strictly to usury laws applicable to it. Accordingly, if the Transactions contemplated hereby would be usurious as to any Lender under laws applicable to it (including the laws of the United States of America and the State of Texas or any other jurisdiction whose laws may be mandatorily applicable to such Lender notwithstanding the other provisions of this Agreement), then, in that event, notwithstanding anything to the contrary in any of the Loan Documents or any agreement entered into in connection with or as security for the Secured Obligations, it is agreed as follows: (a) the aggregate of all consideration which constitutes interest under law applicable to any Lender that is contracted for, taken, reserved, charged or received by such Lender under any of the Loan Documents or agreements or otherwise in connection with the Loans shall under no circumstances exceed the maximum amount allowed by such applicable law, and any excess shall be canceled automatically and if theretofore paid shall be credited by such Lender on the principal amount of the Secured Obligations (or, to the extent that the principal amount of the Secured Obligations shall have been or would thereby be paid in full, refunded by such Lender to the Borrower); and (b) in the event that the maturity of the Loans is accelerated by reason of an election of the holder thereof resulting from any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to any Lender may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall be canceled automatically by such Lender as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by such Lender on the principal amount of the Secured Obligations (or, to the extent that the principal amount of the Secured Obligations shall have been or would thereby be paid in full, refunded by such Lender to the Borrower). All sums paid or agreed to be paid to any Lender for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law applicable to such Lender, be amortized, prorated, allocated and spread throughout the stated term of the Loans until Payment in Full so that the rate or amount of interest on account of any Loans hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time (i) the amount of interest payable to any Lender on any date shall be computed at the Highest Lawful Rate applicable to such Lender pursuant to this Section 12.12

and (ii) in respect of any subsequent interest computation period the amount of interest otherwise payable to such Lender would be less than the amount of interest payable to such Lender computed at the Highest Lawful Rate applicable to such Lender, then the amount of interest payable to such Lender in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to such Lender until the total amount of interest payable to such Lender shall equal the total amount of interest which would have been payable to such Lender if the total amount of interest had been computed without giving effect to this Section 12.12. To the extent that Chapter 303 of the Texas Finance Code is relevant for the purpose of determining the Highest Lawful Rate applicable to a Lender, such Lender elects to determine the applicable rate ceiling under such Chapter by the weekly ceiling from time to time in effect. Chapter 346 of the Texas Finance Code does not apply to the Borrower's obligations hereunder.

Section 12.13 Exculpation Provisions. EACH OF THE PARTIES HERETO SPECIFICALLY AGREES THAT IT HAS A DUTY TO READ THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND AGREES THAT IT IS CHARGED WITH NOTICE AND KNOWLEDGE OF THE TERMS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; THAT IT HAS IN FACT READ THIS AGREEMENT AND IS FULLY INFORMED AND HAS FULL NOTICE AND KNOWLEDGE OF THE TERMS, CONDITIONS AND EFFECTS OF THIS AGREEMENT; THAT IT HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL OF ITS CHOICE THROUGHOUT THE NEGOTIATIONS PRECEDING ITS EXECUTION OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; AND HAS RECEIVED THE ADVICE OF ITS ATTORNEY IN ENTERING INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; AND THAT IT RECOGNIZES THAT CERTAIN OF THE TERMS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS RESULT IN ONE PARTY ASSUMING THE LIABILITY INHERENT IN SOME ASPECTS OF THE TRANSACTION AND RELIEVING THE OTHER PARTY OF ITS RESPONSIBILITY FOR SUCH LIABILITY. EACH PARTY HERETO AGREES AND COVENANTS THAT IT WILL NOT CONTEST THE VALIDITY OR ENFORCEABILITY OF ANY EXCULPATORY PROVISION OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS ON THE BASIS THAT THE PARTY HAD NO NOTICE OR KNOWLEDGE OF SUCH PROVISION OR THAT THE PROVISION IS NOT "CONSPICUOUS."

Section 12.14 [Reserved].

Section 12.15 No Third Party Beneficiaries. This Agreement, the other Loan Documents, and the agreement of the Lenders to make Loans and each Issuing Bank to issue, amend, renew or extend Letters of Credit hereunder are solely for the benefit of the Borrower, and no other Person (including, without limitation, any Subsidiary of the Borrower, any obligor, contractor, subcontractor, supplier or materialman) shall have any rights, claims, remedies or privileges hereunder or under any other Loan Document against the DIP Agent, any Issuing Bank or any Lender for any reason whatsoever. There are no third party beneficiaries.

Section 12.16 USA Patriot Act Notice. The DIP Agent and each Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-

56 (signed into law October 26, 2001)) (the "**USA Patriot Act**"), it is required to obtain, verify and record information that identifies the Borrower and its Subsidiaries, which information includes the name and address of the Borrower and its Subsidiaries and other information that will allow the DIP Agent and such Lender to identify the Borrower and its Subsidiaries in accordance with the USA Patriot Act.

Section 12.17 [Reserved].

Section 12.18 Non-Recourse to the General Partner. This Agreement and the other Loan Documents do not and will not in any way constitute a direct or indirect guaranty by the General Partner of the obligations of the Borrower or any Subsidiary hereunder or thereunder. If any provision of this Agreement or any other Loan Document is held by any authority to constitute a direct or indirect guaranty by the General Partner of the obligations of the Borrower or any Subsidiary, such provision shall be deemed ineffective to the extent such provision constitutes a direct or indirect guaranty by the General Partner of the obligations of the Borrower or any Subsidiary. Neither this Agreement nor any Loan Document is intended to create any liability of the General Partner for the performance of any obligation of the Borrower or any Subsidiary thereunder or hereunder. NEITHER THE DIP AGENT NOR ANY LENDER SHALL HAVE ANY RECOURSE AGAINST THE GENERAL PARTNER (INCLUDING ANY RECOURSE FOR ANY DEFICIENCY REMAINING UNDER THIS AGREEMENT OR ANY LOAN DOCUMENT AFTER THE DISPOSITION OF COLLATERAL PLEDGED BY THE BORROWER OR ANY SUBSIDIARY AND THE DISPOSITION OF THE GP COLLATERAL PLEDGED BY THE GENERAL PARTNER); *PROVIDED*, THAT, NOTWITHSTANDING THE FOREGOING TO THE CONTRARY, IN NO EVENT SHALL THIS SECTION 12.18 RELIEVE THE GENERAL PARTNER FROM ANY LIABILITY IT MAY HAVE AS A RESULT OF ITS FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, OR THAT OF ANY OF ITS OFFICERS, IN CONNECTION WITH THE EXECUTION, DELIVERY OR PERFORMANCE OF ANY LOAN DOCUMENTS OR ANY CERTIFICATES OR DOCUMENTS DELIVERED IN CONNECTION THEREWITH BY THE GENERAL PARTNER ON BEHALF OF THE BORROWER IN ITS CAPACITY AS THE BORROWER'S GENERAL PARTNER.

Section 12.19 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that: (a) (i) no fiduciary, advisory or agency relationship between the Borrower and its Subsidiaries and the DIP Agent or any Lender is intended to be or has been created in respect of the transactions contemplated hereby or by the other Loan Documents, irrespective of whether the DIP Agent or any Lender has advised or is advising the Borrower or any Subsidiary on other matters; (ii) the arranging and other services regarding this Agreement provided by the DIP Agent and the Lenders are arm's-length commercial transactions between the Borrower and its Subsidiaries, on the one hand, and the DIP Agent and the Lenders, on the other hand; (iii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent that it has deemed appropriate; and (iv) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; and (b) (i) the DIP

Agent and the Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Subsidiaries, or any other Person; (ii) neither the DIP Agent or the Lenders has any obligation to the Borrower or any of its Subsidiaries with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the DIP Agent and the Lenders and their respective Affiliates may be engaged, for their own accounts or the accounts of customers, in a broad range of transactions that involve interests that differ from those of the Borrower and its Subsidiaries, and neither the DIP Agent nor any of the Lenders has any obligation to disclose any of such interests to the Borrower or its Subsidiaries. To the fullest extent permitted by Law, the Borrower hereby waives and releases any claims that it may have against the DIP Agent and the Lenders and their respective Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 12.20 [Reserved].

Section 12.21 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

[SIGNATURES BEGIN NEXT PAGE]

The parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

BORROWER:

SOUTHCROSS ENERGY PARTNERS, L.P.

By: Southcross Energy Partners GP, LLC, its general partner

By: _____
Name:
Title:

Each of the undersigned (i) consents and agrees to this Agreement, and (ii) agrees that the Loan Documents to which it is a party (including, without limitation, the Debtor-in-Possession Guaranty and Collateral Agreement dated as of [●], as applicable) shall remain in full force and effect and shall continue to be the legal, valid and binding obligation of the undersigned, enforceable against it in accordance with its terms.

CONSENTED, ACKNOWLEDGED AND AGREED TO BY:

SOUTHCROSS ENERGY OPERATING, LLC
SOUTHCROSS ENERGY LP LLC
SOUTHCROSS ENERGY GP LLC
SOUTHCROSS DELTA PIPELINE LLC
SOUTHCROSS PROCESSING LLC
SOUTHCROSS ALABAMA PIPELINE LLC
SOUTHCROSS NUECES PIPELINES LLC
SOUTHCROSS ENERGY FINANCE CORP.
FL RICH GAS SERVICES GP, LLC
T2 EF COGENERATION HOLDINGS, LLC
T2 EF COGENERATION LLC

By: _____
Name:
Title

SOUTHCROSS CCNG GATHERING LTD.
SOUTHCROSS CCNG TRANSMISSION LTD.
SOUTHCROSS GULF COAST TRANSMISSION LTD.
SOUTHCROSS MISSISSIPPI PIPELINE, L.P.
SOUTHCROSS MISSISSIPPI GATHERING, L.P.
SOUTHCROSS ALABAMA GATHERING SYSTEM, L.P.
SOUTHCROSS MIDSTREAM SERVICES, L.P.
SOUTHCROSS MARKETING COMPANY LTD.
SOUTHCROSS NGL PIPELINE LTD.
SOUTHCROSS GATHERING LTD.
SOUTHCROSS MISSISSIPPI INDUSTRIAL GAS SALES, L.P.

By: Southcross Energy GP LLC,
as general partner

By:_____
Name:
Title:

FL RICH GAS SERVICES, LP

By: FL Rich Gas Services GP, LLC,
its general partner

By:_____
Name:
Title:

FL RICH GAS UTILITY GP, LLC

By:_____
Name:
Title:

FL RICH GAS UTILITY, LP
SOUTHCROSS TRANSMISSION, LP

By: FL Rich Gas Utility GP, LLC, its general partner

By:_____
Name:
Title:

DIP AGENT:

WILMINGTON TRUST, NATIONAL ASSOCIATION, as the DIP Agent

By:_____
Name:_____
Title:_____

ISSUING BANK:

[●], as an Issuing Bank

By:_____
Name:_____
Title:_____

By:_____
Name:_____
Title:_____

LENDER:

[●], as a Lender

By:_____
Name:_____
Title:_____

By:_____
Name:_____
Title:_____

ANNEX I
LIST OF COMMITMENTS

Name of Lender	DIP LC Commitment	Initial Term Commitment	Delayed Draw Term Commitment	Commitment
TOTAL	**$55,000,000.00**	**$30,000,000.00**	**$42,500,000.00**	**$127,500,000.00**

Name of Issuing Bank	LC Commitment
Wells Fargo Bank, N.A.	
UBS AG, Stamford Branch	
Royal Bank of Canada - New York Branch	
TOTAL	**$52,597,087.38**

ANNEX II
PREPETITION LETTERS OF CREDIT

Issuing Bank	Beneficiary	Applicant	Amount	Issue Date

ANNEX III
PERMITTED VARIANCES

Forecast Line Item	Testing Period	Permitted Variance
Total Cash Receipts	First two-week period following the Petition Date	Total cash receipts not less than 80% of those shown on the Approved Budget for the applicable period
	First three-week period following the Petition Date	Total cash receipts not less than 80% of those shown on the Approved Budget for the applicable period
	From the fourth week and thereafter, the rolling four-week period	Total cash receipts not less than 85% of those shown on the Approved Budget for the applicable period
Total Cash Expenditures	First two-week period following the Petition Date	Total cash expenditures not to exceed 120% of those shown on the Approved Budget for the applicable period
	First three-week period following the Petition Date	Total cash expenditures not to exceed 120% of those shown on the Approved Budget for the applicable period
	From the fourth week and thereafter, the rolling four-week period	Total cash expenditures not to exceed 115% of those shown on the Approved Budget for the applicable period

ANNEX IV
INITIAL APPROVED BUDGET

4

[4] NTD: Schedules to be negotiated separately.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
SOUTHCROSS ENERGY PARTNERS, L.P., *et al.*,	)	Case No. 19-10702 (MFW)
Debtors.[1]	)	(Jointly Administered)
	)	**RE: D.I. 14 & 59**

FINAL ORDER, PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, AND 507, (I) AUTHORIZING THE DEBTORS TO OBTAIN SENIOR SECURED SUPERPRIORITY POST-PETITION FINANCING, (II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) AUTHORIZING THE USE OF CASH COLLATERAL, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, AND (VI) GRANTING RELATED RELIEF

Upon the motion (the "**Motion**")[2] of Southcross Energy Partners, L.P. ("**Southcross**" or the "**Borrower**"), Southcross Energy Partners GP, LLC ("**Southcross GP**"), and Southcross's direct and indirect subsidiaries, each of which is a debtor and debtor in possession (collectively, the "**Debtors**") in the above-captioned cases (the "**Chapter 11 Cases**"), pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506(c), and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq*. (the "**Bankruptcy**

[1] The debtors and debtors in possession in these Chapter 11 Cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southcross Energy Partners, L.P. (5230); Southcross Energy Partners GP, LLC (5141); Southcross Energy Finance Corp. (2225); Southcross Energy Operating, LLC (9605); Southcross Energy GP LLC (4246); Southcross Energy LP LLC (4304); Southcross Gathering Ltd. (7233); Southcross CCNG Gathering Ltd. (9553); Southcross CCNG Transmission Ltd. (4531); Southcross Marketing Company Ltd. (3313); Southcross NGL Pipeline Ltd. (3214); Southcross Midstream Services, L.P. (5932); Southcross Mississippi Industrial Gas Sales, L.P. (7519); Southcross Mississippi Pipeline, L.P. (7499); Southcross Gulf Coast Transmission Ltd. (0546); Southcross Mississippi Gathering, L.P. (2994); Southcross Delta Pipeline LLC (6804); Southcross Alabama Pipeline LLC (7180); Southcross Nueces Pipelines LLC (7034); Southcross Processing LLC (0672); FL Rich Gas Services GP, LLC (5172); FL Rich Gas Services, LP (0219); FL Rich Gas Utility GP, LLC (3280); FL Rich Gas Utility, LP (3644); Southcross Transmission, LP (6432); T2 EF Cogeneration Holdings LLC (0613); and T2 EF Cogeneration LLC (4976). The debtors' mailing address is 1717 Main Street, Suite 5300, Dallas, TX 75201.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms further below in this Final Order, the Interim Order, the DIP Documents, or the Motion, as applicable.

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Code"), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), for entry of an interim order and a final order (this "**Final Order**"), among other things:

(i) authorizing the Borrower to obtain, and the Borrower's Debtor subsidiaries (collectively, in their capacity as such, the "**Guarantors**" and, together with the Borrower, the "**Loan Parties**") to guaranty, debtor-in-possession credit financing in an aggregate principal amount of up to $255 million (the "**DIP Financing**") to be funded by certain of the Prepetition Term Lenders (in their capacity as lenders under the DIP Facilities, the "**DIP Lenders**") under a secured term loan and letter of credit facility (the "**DIP Facility**"), and pursuant to the terms and conditions of the *Interim Order, Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, and 507, (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Post-Petition Financing, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling Final Hearing, and (VII) Granting Related Relief* entered on April 2, 2019 [D.I. 59] (the "**Interim Orde**r"), consisting of (A) new money term loans (the "**DIP Term Loans**")) in an aggregate principal amount of up to $72.5 million, (B) letter of credit term loans (the "**DIP LC Loans**") in an aggregate principal amount of up to $55 million, the proceeds of which were all used to cash collateralize letters issued (or deemed issued) under a letter of credit sub-facility in an aggregate principal amount of up to $55 million (the "**DIP L/C Sub-Facility**"), and (C) roll-up term loans (the "**DIP Roll-Up Loans**" and, together with the DIP Term Loans and the DIP LC Loans, the "**DIP Loans**"), which shall be subject and subordinate to the DIP Term Loans and DIP LC Loans, to refinance dollar-for-dollar Prepetition Term Loans held by the DIP Lenders in the aggregate amount of $127.5 million;

(ii) authorizing the Loan Parties, in connection with the DIP Facility, to (A) execute and enter into the Superpriority Secured Debtor-in-Possession Credit Agreement, among the Loan Parties, the DIP Lenders, certain Prepetition Revolving Lenders, as issuers of DIP Letters of Credit (the "**DIP L/C Issuers**"), and Wilmington Trust, National Association, as administrative and collateral agent (collectively, solely in such capacities, the "**DIP Agent**" and, together with the DIP Lenders, the "**DIP Secured Parties**"), substantially in the form attached as Exhibit A to the Interim Order (as amended, supplemented, or otherwise modified from time to time in accordance with the terms hereof and thereof, the "**DIP Credit Agreement**" and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments, and amendments executed

and delivered in connection therewith, including the Approved Budget (including any permitted variances), the "**DIP Documents**") and (B) to perform all such other and further acts as may be required in connection with the DIP Documents;

(iii) granting to the DIP Agent, for the benefit of the DIP Lenders, valid, enforceable, non-avoidable, and automatically and fully perfected liens and security interests, subject only to the Carve-Out and the Permitted Senior Liens, to secure the DIP Obligations, which liens and security interests shall have the rankings and priorities set forth herein;

(iv) granting superpriority administrative claims to the DIP Secured Parties payable from, and having recourse to, all prepetition and post-petition property of the Loan Parties' estates and all proceeds thereof (other than Avoidance Actions, but including Avoidance Proceeds), subject to the Carve-Out and the Permitted Senior Liens;

(v) authorizing the Loan Parties (A) upon entry of the Interim Order, to incur in a single draw on the Closing Date, DIP Term Loans in an aggregate principal amount of up to $30 million (the "**Initial DIP Term Loans**") and DIP LC Loans in an aggregate principal amount of up to $55 million (the incurrence of such loans upon entry of the Interim Order, the "**Interim Financing**") and (B) to incur in a single draw on or within 30 days after the entry of this Final Order, DIP Term Loans in an aggregate principal amount of $42.5 million (the "**Delayed Draw DIP Loans**"), in each case subject to the terms and conditions set forth in the DIP Documents, the Interim Order, and this Final Order;

(vi) authorizing the Debtors (A) upon entry of the Interim Order, to use proceeds of the DIP LC Loans to cash collateralize (in the amount of 103% of the face amount) the DIP Letters of Credit and to deem the Prepetition Letters of Credit to be cancelled and reissued under the DIP L/C Sub-Facility (the "**Prepetition L/C Refinancing**") and (B) to use the DIP Roll-Up Loans to refinance and discharge dollar-for-dollar Prepetition Term Loans held by the DIP Lenders in the aggregate amount of $127.5 million (the "**Prepetition Term Loan Refinancing**" and, together with the Prepetition L/C Refinancing, the "**Prepetition Debt Refinancing**"), in each case subject to the terms and conditions set forth in the DIP Documents, the Interim Order, and this Final Order;

(vii) authorizing the Debtors' use of the proceeds of the DIP Facility pursuant to the DIP Credit Agreement and other the DIP Documents, including the Approved Budget (subject to permitted variances);

(viii) authorizing the Debtors to continue to use the Cash Collateral (subject to the Approved Budget and permitted variances thereunder) and all other Prepetition Collateral, and the granting of the Adequate Protection

Obligations to the Prepetition Secured Parties with respect to, *inter alia*, such use of their Cash Collateral to the extent of diminution in the value of the Prepetition Collateral (including Cash Collateral);

(ix) approving certain stipulations by the Debtors with respect to the Prepetition Loan Documents and the Prepetition Collateral as set forth in the Interim Order and herein;

(x) modifying the automatic stay as set forth in the Interim Order, herein, and in the DIP Documents, to the extent necessary, to implement and effectuate the foregoing and the other terms and provisions of the DIP Documents, the Interim Order, and this Final Order; and

the Court having jurisdiction to consider the matters raised in the Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having authority to hear the matters raised in the Motion pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the requested relief being a core proceeding that the Court can determine pursuant to 28 U.S.C. § 157(b)(2); and due and proper notice of the Motion and opportunity for a hearing on the Motion having been given to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion, the D'Souza Declaration, and the Howe Declaration; and the Court having held an interim hearing on the Motion on April 2, 2019 (the "**Interim Hearing**") and a final hearing on the Motion having been scheduled and noticed for May 7, 2019 (the "**Final Hearing**"); and the Court having determined that the legal and factual bases set forth in the Motion, the D'Souza Declaration, and the Howe Declaration and at the Interim Hearing and Final Hearing establish just cause for the relief granted herein; and all objections, if any, to the relief requested in the Motion for the entry of this Final Order having been withdrawn, resolved, or overruled by the Court; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors, their creditors,

their estates, and all other parties in interest; and the Court having determined that the relief requested in the Motion is necessary to avoid irreparable harm to the Debtors and their estates; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[3]

A. *Petition Date*. On April 1, 2019 (the "**Petition Date**"), each of the Debtors filed a separate voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (this "**Court**") commencing the Chapter 11 Cases.

B. *Debtors in Possession*. The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. *Joint Administration*. The Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* [D.I. 48] entered by the Court on April 2, 2019, in each of the Chapter 11 Cases.

D. *Interim Order*. On April 2, 2019, the Court entered the Interim Order [D.I. 59].

E. *Committee Formation*. As of the date hereof, the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**") has not appointed an official committee in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (if appointed, a "**Committee**").

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

F. *Jurisdiction and Venue*. The Court has core jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and, pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order by the Court in connection with the Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution. Venue of the Chapter 11 Cases and related proceedings is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

G. *Notice*. The Final Hearing was scheduled and noticed pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). Adequate and sufficient notice of the Motion has been provided in accordance with the Interim Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and under the circumstances, no other or further notice of the Motion or the entry of this Final Order shall be required. The interim relief granted pursuant to the Interim Order was necessary to avoid immediate and irreparable harm to the Debtors and their estates and the final relief granted pursuant to this Final Order is necessary to avoid significant and irreparable harm to the Debtors and their estates.

H. *Debtors' Stipulations*. After consultation with their attorneys and financial advisors, and without prejudice to the rights of a Committee or any other party in interest (subject to the limitations thereon contained in paragraphs 19 and 20 below), the Debtors acknowledge, admit, stipulate, and agree that:

(i) Prepetition Revolving Credit Facility. Pursuant to that certain Third Amended & Restated Revolving Credit Agreement, dated as of August 4, 2014 and

amended six times through August 10, 2018 (as amended, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the "**Prepetition Revolving Credit Agreement**" and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments, and amendments executed and delivered in connection therewith, the "**Prepetition Revolving Facility Documents**"), among Southcross, as borrower, Wells Fargo Bank, National Association, as administrative agent (in such capacity, the "**Prepetition Revolving Agent**"), and the lenders party thereto (the "**Prepetition Revolving Lenders**" and, together with the Prepetition Revolving Agent, the "**Prepetition Revolving Secured Parties**"), the Prepetition Revolving Lenders provided revolving credit and other financial accommodations to, and issued letters of credit for the account of, Southcross (the "**Prepetition Revolving Facility**"), which Prepetition Revolving Facility has been guaranteed on a joint and several basis by each of the Guarantors.

(ii) Prepetition Revolving Debt. As of the Petition Date, the Borrower and the Guarantors were justly and lawfully indebted and liable to the Prepetition Revolving Secured Parties, without defense, counterclaim, or offset of any kind, in respect of (a) outstanding loans in the aggregate principal amount of not less than $81.1 million, (b) undrawn Letters of Credit (as defined in the Prepetition Revolving Credit Agreement) (the "**Prepetition Letters of Credit**") in the amount of not less than $25.9 million, and (c) three Secured Hedging Agreements (as defined in the Prepetition Revolving Credit Agreement) with a notional value of not less than $275 million, pursuant to and in accordance with the terms of, the Prepetition Revolving Facility Documents (collectively, such indebtedness together with accrued and unpaid interest thereon and fees, expenses,

charges, indemnities, and other obligations incurred in connection therewith as provided in the Prepetition Revolving Facility Documents, the "**Prepetition Revolving Debt**").

(iii) Prepetition Term Facility. Pursuant to that certain Term Loan Credit Agreement, dated as of August 4, 2014 (as amended, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the "**Prepetition Term Loan Credit Agreement**" and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments, and amendments executed and delivered in connection therewith, the "**Prepetition Term Facility Documents**"), among Southcross, as borrower, Wilmington Trust, N.A., as successor administrative agent (in such capacity, the "**Prepetition Term Agent**" and, together with the Prepetition Revolving Agent, the "**Prepetition Agents**"), and the lenders party thereto (the "**Prepetition Term Lenders**" and, together with the Prepetition Term Agent, the "**Prepetition Term Secured Parties**" and, together with the Prepetition Revolving Secured Parties, the "**Prepetition Secured Parties**"), the Prepetition Term Lenders provided term loans to Southcross (the "**Prepetition Term Facility**" and, together with the Prepetition Revolving Facility, the "**Prepetition Secured Credit Facilities**"), which Prepetition Term Facility has been guaranteed on a joint and several basis by each of the Guarantors.

(iv) Prepetition Term Debt. As of the Petition Date, the Borrower and the Guarantors were justly and lawfully indebted and liable to the Prepetition Term Secured Parties, without defense, counterclaim, or offset of any kind, in respect of loans (the "**Prepetition Term Loans**") in the aggregate principal amount of not less than $429,140,515.29, pursuant to and in accordance with the terms of the Prepetition Term Facility Documents (collectively, such indebtedness together with accrued and unpaid

interest thereon and fees, expenses, charges, indemnities, and other obligations incurred in connection therewith as provided therein, the "**Prepetition Term Debt**" and, together with the Prepetition Revolving Debt, the "**Prepetition Secured Debt**").

(v) Validity of Prepetition Secured Debt. (a) The Prepetition Secured Debt constitutes legal, valid, binding, and non-avoidable obligations of the Borrower and the Guarantors, enforceable in accordance with the terms of the Prepetition Secured Debt Documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code) and (b) no portion of the Prepetition Secured Debt, or any payments made to the Prepetition Secured Parties or applied to or paid on account of the obligations owing under the Prepetition Secured Debt Documents prior to the Petition Date, is subject to any contest, attack, rejection, recovery, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action, or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law.

(vi) Prepetition Liens. The liens and security interests granted to the Prepetition Secured Parties (the "**Prepetition Liens**"), pursuant to and in connection with the Prepetition Secured Debt Documents, are (a) valid, binding, perfected, enforceable liens and security interests in the Shared Collateral (as defined in the Intercreditor Agreement) (the "**Prepetition Collateral**"), (b) not subject to avoidance, recharacterization, subordination, recovery, attack, effect, counterclaim, defense, or claim under the Bankruptcy Code or applicable non-bankruptcy law, and (c) as of the Petition Date, subject only to Permitted Senior Liens permitted under the Prepetition Secured Debt Documents.

(vii) No Control. None of the Prepetition Secured Parties control the Debtors or their properties or operations, have authority to determine the manner in which any Debtor's operations are conducted, or are control persons or insiders of the Debtors by virtue of any of the actions taken with respect to, in connection with, related to, or arising from the Prepetition Secured Debt Documents.

(viii) No Claims or Causes of Action. No claims, counterclaims, or causes of action of any kind or nature exist against, or with respect to, the Prepetition Secured Parties under any agreements by and among the Debtors and any such party that is in existence as of the Petition Date, whether related to the Prepetition Secured Debt Documents, any other agreement, the Debtors, or otherwise.

I. *Findings Regarding the DIP Financing and Use of Cash Collateral.*

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

(ii) The Loan Parties have a critical need for the DIP Financing and to continue to use the Prepetition Collateral (including "cash collateral" within the meaning of section 363(a) of the Bankruptcy Code ("**Cash Collateral**")) in order to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers, and customers, to make payroll, to make capital expenditures, to administer the Chapter 11 Cases, to cash collateralize the Prepetition Letters of Credit (in the amount of 103% of the face amount of issued and outstanding Prepetition Letters of Credit), and to satisfy other working capital and operational needs. The access of the Loan Parties to sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition Collateral, incurrence of

new indebtedness under the DIP Documents, and other financial accommodations provided under the DIP Documents are necessary and vital to the preservation and maintenance of the going concern values of the Loan Parties and to a successful reorganization of the Loan Parties.

(iii) The Loan Parties are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Loan Parties are also unable to obtain secured credit allowable under section 364(c)(1), 364(c)(2), or 364(c)(3) of the Bankruptcy Code without (A) granting to the DIP Secured Parties the DIP Liens and the DIP Superpriority Claims and (B) incurring the Adequate Protection Obligations, in each case subject to the Carve-Out and the terms and conditions set forth in the Interim Order, this Final Order, and in the DIP Documents.

(iv) Based on the Motion, the Howe Declaration, the D'Souza Declaration, and the record presented to the Court at the Interim Hearing and the Final Hearing, the terms of the DIP Financing and the terms on which the Loan Parties may continue to use the Prepetition Collateral (including Cash Collateral) pursuant to the Interim Order, this Final Order, and the DIP Documents are fair and reasonable, reflect the Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties, and constitute reasonably equivalent value and fair consideration.

(v) Absent order of the Court and the provision of adequate protection, consent of the Prepetition Secured Parties is required for the Loan Parties' use of Cash Collateral and the other Prepetition Collateral. The Prepetition Secured Parties have

consented, are deemed, pursuant to that certain Intercreditor Agreement, dated as of August 4, 2014, by and among Southcross, the Prepetition Agents, and the other grantors party thereto (the "**Intercreditor Agreement**" and, together with the Prepetition Revolving Facility Documents and the Prepetition Term Facility Documents, the "**Prepetition Secured Debt Documents**"), to have consented, or have not objected to the Loan Parties' use of Cash Collateral and the other Prepetition Collateral, and the Loan Parties' entry into the DIP Documents solely in accordance with and subject to the terms and conditions in the Interim Order, this Final Order, and the DIP Documents.

(vi) The DIP Financing and the use of the Prepetition Collateral have been negotiated in good faith and at arm's length among the Loan Parties and the DIP Secured Parties, and all of the Loan Parties' obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing and the DIP Documents, including, without limitation, all "Obligations" (as defined in the DIP Documents), in each case owing to the DIP Secured Parties or any of their respective banking affiliates (collectively, the "**DIP Obligations**"), shall be deemed to have been extended by the DIP Secured Parties and their respective affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Final Order or any other order (including, without limitation, the Interim Order) or any provision hereof or thereof is vacated, reversed, or modified on appeal or otherwise.

(vii) The Prepetition Secured Parties have acted in good faith regarding the DIP Financing and the Loan Parties' continued use of the Prepetition Collateral (including Cash Collateral) to fund the administration of the Loan Parties' estates and continued operation of their businesses (including the incurrence and payment of the Adequate Protection Obligations and the granting of the Adequate Protection Liens), in accordance with the terms hereof, and the Prepetition Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of sections 363(m) and 364(e) of the Bankruptcy Code, as may be applicable, in the event that this Final Order or any order (including, without limitation, the Interim Order) or any provision hereof or thereof is vacated, reversed, or modified on appeal or otherwise.

(viii) The Prepetition Secured Parties are entitled to the adequate protection provided in the Interim Order and this Final Order as and to the extent set forth herein and therein pursuant to sections 361, 362, 363, and 364 of the Bankruptcy Code. Based on the Motion and on the record presented to the Court in connection with the Motion, the Interim Order, and this Final Order, the terms of the proposed adequate protection arrangements and the use of the Prepetition Collateral are fair and reasonable, reflect the Loan Parties' prudent exercise of business judgment, and constitute reasonably equivalent value and fair consideration for the use of the Prepetition Collateral; *provided* that nothing in the Interim Order, this Final Order, or the other DIP Documents shall (a) be construed as the affirmative consent by any of the Prepetition Secured Parties for the use of Cash Collateral other than on the terms set forth in the Interim Order and this Final Order and in the context of the DIP Financing authorized by the Interim Order and this Final Order, (b) be construed as a consent by any party to the terms of any other

financing or any other lien encumbering the Prepetition Collateral (whether senior or junior), or (c) prejudice, limit, or otherwise impair the rights of any of the Prepetition Secured Parties, subject to any applicable provisions of the Intercreditor Agreement, to seek new, different, or additional adequate protection for any diminution in value of their interests in the Prepetition Collateral from and after the Petition Date or assert the interests of any of the Prepetition Secured Parties and the rights of any other party in interest to object to such relief are hereby preserved.

(ix) Use of the DIP LC Loans, upon entry of the Interim Order, to cash collateralize all Letters of Credit (in the amount of 103% of the face amount) and use of the DIP Roll-Up Loans, upon the funding of the Delayed Draw DIP Term Loans, to refinance and discharge the DIP Lenders' Prepetition Term Loans (in an amount equal to the DIP Term Loans and DIP LC Loans provided by such DIP Lenders under the DIP Facility) reflects the Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties.

(x) Absent granting the relief set forth in this Final Order, the Loan Parties' estates will be significantly and irreparably harmed. Consummation of the DIP Financing and the use of the Prepetition Collateral (including Cash Collateral) in accordance with the Interim Order, this Final Order, and the DIP Documents are, therefore, in the best interests of the Loan Parties' estates and consistent with the Loan Parties' exercise of their fiduciary duties.

J. *Permitted Senior Liens; Continuation of Prepetition Liens.* Nothing in the Interim Order or this Final Order shall constitute a finding or ruling by this Court that any alleged Permitted Senior Lien is valid, senior, enforceable, prior, perfected, or non-avoidable.

Notwithstanding anything contained herein or in the Interim Order, nothing herein shall prejudice the rights of any party-in-interest, including, but not limited to, the Debtors, the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, or a Committee (if appointed), to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Permitted Senior Lien and/or security interests. The right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Permitted Senior Lien and is expressly subject to the DIP Liens. The Prepetition Liens, and the DIP Liens that prime the Prepetition Liens, are continuing liens and the DIP Collateral is and will continue to be encumbered by such liens in light of the integrated nature of the DIP Facilities, the DIP Documents, and the Prepetition Secured Debt Documents.

IT IS HEREBY ORDERED THAT:

1. *Financing Approved.* The relief requested in the Motion is granted and the use of Cash Collateral on a final basis, the Delayed Draw DIP Loans and the Prepetition Term Loan Refinancing (in addition to the Interim Financing and the Prepetition L/C Refinancing authorized by the Interim Order) are authorized and approved, in each case in accordance with the terms and conditions set forth in the DIP Documents, the Approved Budget (including any permitted variances), the Interim Order, and this Final Order. Any objections to the Motion with respect to the entry of this Final Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby denied and overruled on the merits.

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

(a) The Loan Parties are hereby authorized to execute, deliver, enter into, and, as applicable, perform all of their obligations under the DIP Documents and such other and further acts as may be necessary, appropriate, or desirable in connection therewith, in

each case in accordance with and subject to the terms of the Interim Order, this Final Order, and the DIP Documents. The Borrower is hereby authorized to borrow money and obtain letters of credit pursuant to the DIP Credit Agreement, subject to any limitations on borrowing under the DIP Documents, which shall be used for all purposes permitted under the DIP Documents, including, without limitation, to pay certain costs, fees, and expenses related to the Chapter 11 Cases, to pay the Adequate Protection Payments, to cash collateralize the Prepetition Letters of Credit (in the amount of 103% of the face amount of issued and outstanding Prepetition Letters of Credit), and to fund working capital and for general corporate purposes of the Loan Parties during the Chapter 11 Cases, in each case, subject to the Approved Budget (including any permitted variances) and in accordance with the Interim Order, this Final Order, and the DIP Documents, and the Guarantors are hereby authorized to guaranty the DIP Obligations.

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

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

(ii) the execution and delivery of, and performance under, one or more amendments, waivers, consents, or other modifications to and under the DIP Documents, in each case, in such form as the Loan Parties, the DIP Agent, the requisite DIP Lenders, and (if required under the DIP Documents) the DIP L/C Issuers may agree, it being understood that no further approval of the Court shall be required for any authorizations, amendments, waivers, consents, or other modifications to and under the DIP Documents (and any fees and other expenses, amounts, charges, costs, indemnities, and other obligations paid in connection therewith) that do not (A) shorten the maturity of the extensions of credit thereunder or increase the aggregate commitments or the rate of interest payable thereunder, (B) increase existing fees or add new fees thereunder (excluding, for the avoidance of doubt, any amendment, consent, or waiver fee), or (C) shorten the case milestones set forth in Section 8.23 of the DIP Credit Agreement. The foregoing shall be without prejudice to the Loan Parties' right to seek approval from the Court of any material modification or amendment on an expedited basis;

(iii) the non-refundable payment to the DIP Agent and/or the DIP Lenders, as the case may be, of all reasonable and documented fees (which fees have been and are deemed to have been approved upon entry of the Interim Order and upon payment thereof, shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action, or other challenge of any nature under the Bankruptcy Code, applicable non-bankruptcy law, or otherwise) and any amounts due (or that may become due) in respect of the

indemnification obligations, in each case referred to in the DIP Documents (and in any separate letter agreements between any or all of the Loan Parties, on the one hand, and any of the DIP Secured Parties, on the other, in connection with the DIP Financing), and the costs and expenses as may be due from time to time, including, without limitation, reasonable and documented fees and expenses of the professionals retained by any of the DIP Agent and DIP Lenders, in each case, as provided for in the DIP Documents, whether or not such fees or expenses arose prior to or after the Petition Date without the need to file retention motions or fee applications or to provide notice to any party; and

(iv) the performance of all other acts necessary, appropriate, or desirable under or in connection with the DIP Documents.

3. *Prepetition Debt Refinancing*. Pursuant to the terms and conditions of the Interim Order and this Final Order, and in accordance with paragraph 9 below, the Debtors are hereby authorized to use the proceeds of the DIP LC Loan to cash collateralize the Prepetition Letters of Credit (in the amount of 103% of the face amount of issued and outstanding Prepetition Letters of Credit) and the Prepetition Letters of Credit will be deemed to have been cancelled and reissued as DIP Letters of Credit in their full amounts and without modification of the terms of the Prepetition Letters of Credit other than their deemed issuance as DIP Letters of Credit under the DIP L/C Sub-Facility. The Debtors shall use the DIP Roll-Up Loans to refinance and discharge the DIP Lenders' Prepetition Term Loans (in an amount equal to the DIP Term Loans and DIP LC Loans provided and/or committed to under the DIP New Money Facility), in each case subject to the terms and conditions set forth in the DIP Documents and the reservation of rights of parties in interest in paragraph 19 below. Upon expiration of the Challenge Period

without a successful Challenge having been brought with respect thereto, the DIP Roll-Up Loans issued under this paragraph 3 shall be deemed indefeasible and the Prepetition Secured Debt refinanced thereby shall be discharged. Notwithstanding anything to the contrary in the Interim Order, this Final Order, or in the Intercreditor Agreement (as may be amended and/or modified from time to time after the Petition Date), (a) the claims and liens in respect of the DIP Roll-Up Loans shall be subject and subordinate to the claims and liens in respect of the DIP LC Loans and the DIP Term Loans in all respects and (b) the claims and liens in respect of the DIP Roll-Up Loans shall be *pari passu* with the Prepetition Revolving Debt in all respects such that distributions on the Prepetition Revolving Debt are pro rata with the sum of the DIP Roll-Up Loans and the Prepetition Term Loans; *provided* that any proceeds allocated on account of the DIP Roll-Up Loans and the Prepetition Term Loans shall be applied first to the repayment of the DIP Roll-Up Loans before any Prepetition Term Loan.

4. *DIP Obligations*. Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid, binding, and non-avoidable obligations of the Loan Parties enforceable against each Loan Party thereto in accordance with the terms of the DIP Documents, the Interim Order, and this Final Order as of the date of the entry of the Interim Order. No obligation, payment, transfer, or grant of security to the DIP Secured Parties under the DIP Documents, the Interim Order, or this Final Order shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under section 502(d), 544, 548, or 549 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any defense, reduction, setoff, recoupment, claim, or counterclaim.

5. *Carve-Out*.

(a) As used in this Final Order, the "**Carve-Out**" shall mean a carve-out from the DIP Superpriority Claims, the DIP Liens (other than DIP Liens in the Cash Collateral, held in the Cash Collateral Account, securing DIP Letters of Credit), the 507(b) Claims, and the Adequate Protection Liens, in an amount equal to the sum of (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the Carve-Out Trigger Notice), (ii) all reasonable fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code in an aggregate amount not to exceed $50,000 (without regard to the Carve-Out Trigger Notice), (iii) to the extent allowed by the Court at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the "**Professional Fees**") incurred by persons or firms retained by the Debtors, pursuant to section 327, 328, or 363 of the Bankruptcy Code, or by a Committee, if any, pursuant to section 328 and 1103 of the Bankruptcy Code (collectively, the "**Professional Persons**"), at any time on or before the first business day following the earlier of (A) delivery by the DIP Agent (acting upon the express prior written direction of the Required Lenders (as defined in the DIP Credit Agreement)) of a Carve-Out Trigger Notice and (B) the Maturity Date (as defined in the DIP Credit Agreement) (such day, the "**Carve-Out Trigger Date**"), whether allowed by the Court prior to or after the Carve-Out Trigger Date, and (iv) Professional Fees incurred after the Carve-Out Trigger Date in an amount not to exceed $4,000,000 (the "**Post Trigger Date Carve-Out Amount**"); *provided* that any success, completion, or similar fees payable from the Post-Trigger Date Carve-Out Amount shall be subject and subordinate, and

junior in right of payment, to all other Professional Fees payable from the Post-Trigger Date Carve-Out (collectively, the "**Carve-Out Amount**"), in each case subject to the limits imposed by the Interim Order or this Final Order. For purposes of the foregoing, "**Carve-Out Trigger Notice**" shall mean a written notice delivered by email by the DIP Agent (acting upon the express prior written direction of the Required Lenders (as defined in the DIP Credit Agreement)) to the Debtors' lead restructuring counsel, the U.S. Trustee, and counsel to a Committee, if any, which notice may be delivered following the occurrence and during the continuation of an "Event of Default" under the DIP Documents (an "**Event of Default**"), stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

(b) Prior to the occurrence of the Carve-Out Trigger Date, the Debtors are authorized (subject to the Approved Budget) to pay Professional Fees that are authorized to be paid in accordance with the provisions of the Bankruptcy Code and any order entered by the Court establishing procedures for the payment of compensation to Professional Persons in the Chapter 11 Cases, as the same may be due and payable, and such payments shall not reduce the Carve-Out Amount. Any payment or reimbursement made after the Carve-Out Trigger Date on account of Professional Fees incurred after the Carve-Out Trigger Date shall permanently reduce the Carve-Out on a dollar-for-dollar basis, *provided* that the Carve-Out shall not include, apply to, or be available for any fees or expenses incurred by any party in connection with the restricted uses thereof set forth in paragraph 20.

(c) Immediately upon the Carve-Out Trigger Date, and prior to the payment of any DIP Secured Party or Prepetition Secured Party on account of adequate protection,

the Debtors shall fund a reserve in an amount equal to the Carve-Out Amount (the "**Carve-Out Reserve**") from all cash on hand (including Cash Collateral, but excluding all Cash Collateral in the Cash Collateral Account that secures the DIP Letters of Credit as of such date, and, including any available cash thereafter held by any Debtor (exclusive of any cash utilized to cash collateralize the Prepetition Letters of Credit in connection with the Prepetition L/C Refinancing)). The Carve-Out Reserve shall be held for the benefit of the Debtors in a segregated non-interest bearing account at the DIP Agent or another financial institution agreed to by the Borrower and the Required Lenders (as defined in the DIP Credit Agreement) in trust to pay the Professional Fees and other obligations benefiting from the Carve-Out and the Carve-Out Reserve shall be available only to satisfy such obligations benefiting from the Carve-Out until paid in full; *provided* that the DIP Agent shall follow the instructions of the Debtors with respect to the disbursement of the Carve-Out Reserve consistent with the provisions of this Final Order; *provided further* that the DIP Agent shall not be liable to any Professional Person or any other person or entity with respect to the Carve-Out Reserve held at the DIP Agent, and all actions (or inactions) by the DIP Agent related thereto shall be exculpated by all such parties, except in the event a court of competent jurisdiction determines that the DIP Agent breached its obligations under this Final Order by not following an instruction of the Debtors that was consistent with the provisions of this Final Order with respect to the Carve-Out Reserve; *provided further* that, to the extent the Carve-Out Reserve has not been reduced to zero after the payment in full of such obligations, it shall be used to pay the DIP Agent for the benefit of the DIP Secured Parties until the DIP Obligations have been indefeasibly paid in full in cash and all DIP Commitments have

been terminated. Notwithstanding anything to the contrary herein, the Prepetition Agents and the DIP Agent, each on behalf of itself and the relevant secured parties, (i) shall not sweep or foreclose on the Carve-Out Reserve and (ii) shall have a security interest upon any residual interest in the Carve-Out Reserve, available following satisfaction in cash in full of all obligations benefitting from the Carve-Out, and the priority of such lien on the residual shall be consistent with this Final Order. Further, notwithstanding anything to the contrary herein, (i) the failure of the Carve-Out Reserve to satisfy in full the Professional Fees shall not affect the priority of the Carve-Out and (ii) in no way shall the Carve-Out, the Post-Trigger Date Carve-Out Amount, the Carve-Out Reserve, or any of the foregoing be construed as a cap or limitation on the amount of the Professional Fees due and payable by the Debtors.

(d) Notwithstanding anything to the contrary herein or in the DIP Documents, the Carve-Out shall be senior to the DIP Obligations, the DIP Superpriority Claims, the DIP Liens (other than the DIP Liens in the Cash Collateral in the Cash Collateral Account that secures the DIP Letters of Credit), the Adequate Protection Obligations, the 507(b) Claims, the Adequate Protection Liens, and all other liens and claims granted under the Interim Order, this Final Order, the DIP Documents, or otherwise securing or in respect of the DIP Obligations or the Adequate Protection Obligations.

6. *No Direct Obligation to Pay Allowed Professional Fees*. None of the Prepetition Secured Parties or DIP Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in the Interim Order, this Final Order, or otherwise shall be construed to obligate the Prepetition Secured

Parties or the DIP Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

7. *DIP Superpriority Claims.* Pursuant to section 364(c)(1) of the Bankruptcy Code, and effective as of the Petition Date, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against the Loan Parties (without the need to file any proof of claim) with priority over any and all claims against the Loan Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses or other claims arising under section 105, 326, 328, 330, 331, 365, 503(b), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code (including the Adequate Protection Obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment, which allowed claims (the "**DIP Superpriority Claims**") shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which DIP Superpriority Claims shall be payable from and have recourse to all prepetition and post-petition property of the Loan Parties and all proceeds thereof (excluding the Loan Parties' claims and causes of action under sections 502(d), 506(c), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and similar statutes or common law (collectively, the "**Avoidance Actions**"), but including any proceeds or property recovered, unencumbered or otherwise from Avoidance Actions, whether by judgment, settlement, or otherwise ("**Avoidance Proceeds**"), subject only to the liens on such property and the Carve-Out. The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the

Bankruptcy Code in the event that the Interim Order, this Final Order, or any provision hereof or thereof is vacated, reversed, or modified on appeal or otherwise. The DIP Superpriority Claims shall be *pari passu* in right of payment with one another and senior to the Adequate Protection Claims; *provided* that the DIP Superpriority Claims in respect of the DIP Roll-Up Loans shall be subject and subordinate to the DIP Superpriority Claims in respect of the DIP Term Loans and the DIP LC Loans.

8. *DIP Liens*. As security for the DIP Obligations, effective and perfected upon the Petition Date and without the necessity of the execution, recordation, or filing of mortgages, security agreements, control agreements, pledge agreements, financing statements, notations on certificates of title for titled goods or other similar documents, or the possession or control by the DIP Agent of, or over, any DIP Collateral, the following security interests and liens are hereby granted to the DIP Agent for its own benefit and the benefit of the DIP Lenders (all property identified in clauses (a) through (c) below being collectively referred to as the "**DIP Collateral**", subject to the Carve-Out and in each case in accordance with the priorities set forth below (all such liens and security interests granted to the DIP Agent, for its benefit and for the benefit of the DIP Lenders, pursuant to the Interim Order, this Final Order, and the DIP Documents, the "**DIP Liens**"):

(a) First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected first priority senior security interest in and lien upon all tangible and intangible prepetition and post-petition property of the Loan Parties, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date, is not subject to a valid, perfected, and non-avoidable lien (collectively, "**Unencumbered Property**"), including, without

limitation, any and all unencumbered cash of the Loan Parties (whether maintained with the DIP Agent or otherwise) and any investment of such cash, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, letter-of-credit rights, investment property and support obligations, commercial tort claims, all books and records pertaining to the property described in this paragraph, all property of the Loan Parties held by any DIP Secured Party, all other goods (including but not limited to fixtures) and personal property of the Loan Parties, whether tangible or intangible and wherever located, Avoidance Proceeds, capital stock of subsidiaries, wherever located, and, to the extent not covered by the foregoing, all other assets or property of the Debtors, whether tangible, intangible, real, personal or mixed, and the proceeds, products, rents, and profits of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise, of all the foregoing, in each case other than the Excluded Property (as defined in the DIP Documents) and Avoidance Actions, but including any proceeds of Excluded Property that do not otherwise constitute Excluded Property.

(b) Liens Priming Prepetition Secured Parties' Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected first priority priming security interest in and lien upon all Prepetition Collateral and DIP Collateral (wherever located and the proceeds, products, rents and profits thereof), subject and subordinate only to the Permitted Senior Liens, but senior in all

respects to the Prepetition Liens and the Adequate Protection Liens (any such liens primed pursuant to this clause (b), the "**Primed Liens**"); *provided* that the DIP Liens in respect of the DIP Roll-Up Loans shall remain subject to the Intercreditor Agreement except that any proceeds allocated thereunder on account of the DIP Roll-Up Loans or the Prepetition Term Debt shall be applied first to the repayment in full of the DIP Roll-Up Loans before being applied to any Prepetition Term Debt.

(c) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected security interest in and lien upon all prepetition and post-petition property of the Loan Parties (wherever located, and the proceeds, products, rents, and profits thereof) immediately junior to (i) valid, perfected, and non-avoidable liens (other than Primed Liens) in existence immediately prior to the Petition Date, (ii) valid non-avoidable liens (other than Primed Liens) that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, and (iii) the liens in favor of the DIP L/C Issuers in respect of the Cash Collateral Accounts, securing the Loan Parties' obligations under the DIP Letters of Credit (the liens described in the foregoing clause (i) through (iii), the "**Permitted Senior Liens**"); *provided* that nothing in this paragraph (c) shall limit the rights of the DIP Secured Parties under the DIP Documents to the extent the liens described in the foregoing clause (i) or (ii) are not permitted thereunder.

(d) Liens Senior to Certain Other Liens. The DIP Liens shall not be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Loan Parties and their estates under section 551 of the Bankruptcy Code, (B) unless otherwise provided for in the DIP Documents, in the Interim Order or

this Final Order, any liens or security interests arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal, or other governmental unit (including any regulatory body), commission, board, or court for any liability of the Loan Parties, or (C) any intercompany or affiliate liens or security interests of the Loan Parties or (ii) subordinated to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code granted after the date hereof.

(e) Relative Priority of DIP Liens. Notwithstanding anything to the contrary in the Interim Order or this Final Order, the DIP Liens in respect of the DIP Roll-Up Loans shall be subject and subordinate to the DIP Liens in respect of the DIP Term Loans and the DIP LC Loans in all respects.

(f) Local Texas Tax Authorities. Notwithstanding any provision of this Final Order, any valid, perfected, and unavoidable statutory liens held by Local Texas Tax Authorities[4] that are senior to the Prepetition Liens held by the Prepetition Secured Parties shall neither be primed by nor subordinated to any liens granted pursuant to this Final Order. Furthermore, the claims and liens of the Local Texas Tax Authorities shall remain subject to any objections any party would otherwise be entitled to raise as to the priority, validity, or extent of such liens.

(g) For the avoidance of doubt, any DIP Liens on DIP Collateral relating to real property of the Debtors granted pursuant to this paragraph 8 shall include, for the ratable benefit of the related DIP Secured Parties, in each case to the extent constituting DIP Collateral, all of each Debtor's right, title, and interest now or hereafter acquired in

[4] For purposes of this Final Order, the term "**Local Texas Tax Authorities**" shall refer to local governmental entities that are (a) authorized by the State of Texas to assess and collect taxes and (b) represented by either the law firms of Linebarger Goggan Blair & Sampson, LLP or McCreary, Veselka, Bragg & Allen, P.C.

and to all land, together with the buildings, structure, parking areas, and other improvements thereon, now or hereafter owned by any Debtor, including all easements, rights-of-way, and similar rights relating thereto and all leases, tenancies, and occupancies thereof, and (a) all goods, accounts, inventory, general intangibles, instruments, documents, contract rights, and chattel paper, (b) all reserves, escrows, or impounds and all deposit accounts maintained by each Debtor with respect to such real estate, (c) all leases, licenses, concessions, occupancy agreements, or other agreements (written or oral, now or at any time in effect) which grant to any person a possessory interest in, or the right to use, all or any part of such real estate, together with all related security and other deposits, (d) all of the rents, revenues, royalties, income proceeds, profits, accounts receivable, security and other types of deposits, and other benefits paid or payable by parties to the leases for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying such real estate, (e) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment, or ownership of such real estate, (f) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages, and appurtenances appertaining to the foregoing, (g) all property tax refunds payable with respect to such real estate, (h) all accessions, replacements, and substitutions for any of the foregoing and all proceeds thereof, (i) all insurance policies, unearned premiums therefor, and proceeds from such policies covering any of the above property now or hereafter acquired by each Debtor as an

insured party, and (j) all awards, damages, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made to any Debtor by any governmental authority pertaining to any condemnation or other taking (or any purchase in lieu thereof) of all or any such real estate.

9. *Establishment of Cash Collateral Accounts; Maintenance of Letters of Credit.*

(a) In order to cash collateralize the new letters of credit issued and the Prepetition Letters of Credit deemed issued (the "**DIP Letters of Credit**") under the DIP L/C Sub-Facility, in accordance with the DIP Documents, and pursuant to the terms and conditions of the Interim Order and this Final Order, the Loan Parties shall (to the extent not done heretofore pursuant to the Interim Order), and are hereby authorized to, deposit as a single installment in cash into one or more non-interest-bearing cash collateral accounts established with the DIP Agent (the "**Cash Collateral Accounts**") the proceeds of the DIP LC Loans, which shall cash collateralize the DIP Letters of Credit in the amount of 103% of the face amount of issued and outstanding DIP Letters of Credit. The amounts on deposit in the Cash Collateral Accounts shall be subject to (i) a first-priority security interest and lien in favor of the DIP Agent for the benefit of the DIP L/C Issuers, securing the obligations of the Loan Parties under the DIP Letters of Credit, and (ii) subject to the Carve-Out, a second-priority security interest and lien in favor of the DIP Agent for the benefit of the DIP Secured Parties, securing the other DIP Obligations.

(b) Pursuant to the terms and conditions of the Interim Order and this Final Order (to the extent not done heretofore pursuant to the Interim Order), the Loan Parties are authorized to renew DIP Letters of Credit issued under the DIP L/C Sub-Facility on an uninterrupted basis and to take all actions reasonably appropriate with respect thereto

on an uninterrupted basis. Without limitation of the foregoing, upon entry of the Interim Order, the Prepetition Letters of Credit were deemed to have been cancelled and reissued as DIP Letters of Credit in their full amounts and without modification of the terms of the Prepetition Letters of Credit other than their deemed issuance as DIP Letters of Credit issued under the DIP L/C Sub-Facility. The DIP L/C Issuers shall be authorized to apply any Cash Collateral held against the amount of any draw on any DIP Letter of Credit, and reducing the DIP L/C Sub-Facility by such amount so applied, without notice of any kind or further order or action by the Court and the automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified to the extent necessary to permit the DIP L/C Issuers to so apply any such Cash Collateral in the Cash Collateral Accounts. All issued and outstanding DIP Letters of Credit shall be cash collateralized at 103% of the face amount thereof and shall be deemed to be secured by Priority DIP Financing Liens (as defined in the Intercreditor Agreement) and the Cash Collateral advanced as DIP LC Loans under the DIP Facility. The DIP Letters of Credit shall remain cash collateralized as set forth in the Interim Order and herein at all times, and except as provided below with respect to Alternate Cash Collateral (as defined below), the Debtors shall have no right to use the Cash Collateral Accounts securing the DIP Letters of Credit, and such cash collateralization shall not be subject to any reduction by any chapter 11 plan, order of the Court, or otherwise; *provided* that, subject to the terms and conditions (including in section 9.03(j) of the DIP Credit Agreement) of the DIP Documents, the Borrower shall have the right to withdraw proceeds on deposit in the Cash Collateral Accounts (which shall be accompanied by corresponding reduction in the DIP L/C Sub-Facility by such amount so withdrawn) in an amount up to the "Alternate Cash Collateral Amount" (as

defined in the DIP Credit Agreement) to cash collateralize customer and/or supplier obligations (such cash collateral, the "**Alternate Cash Collateral**") in lieu of issuing Letters of Credit.

(c) To the extent there exists or comes to exist any cash of the Debtors' estates that is not Cash Collateral, wherever located and however held, such cash shall be deemed to have been used first by the Debtors' estates and such cash, to the extent applicable, shall be subject to the DIP Liens and DIP Superpriority Claims granted to the DIP Lenders under the Interim Order and this Final Order.

10. *Protection of DIP Lenders' Rights*.

(a) So long as there are any DIP Obligations outstanding or the DIP Lenders have any outstanding Commitments (as defined in the DIP Documents) (the "**DIP Commitments**") under the DIP Documents, the Prepetition Secured Parties shall (i) have no right to and shall take no action to foreclose upon, or recover in connection with, the liens granted thereto pursuant to the Prepetition Secured Debt Documents, the Interim Order, or this Final Order, or otherwise seek to exercise or enforce any rights or remedies against such DIP Collateral, including in connection with the Adequate Protection Liens, (ii) be deemed to have consented to any transfer, disposition, or sale of, or release of liens on, such DIP Collateral (but not any proceeds of such transfer, disposition, or sale to the extent remaining after payment in cash in full of the DIP Obligations and termination of the DIP Commitments), to the extent such transfer, disposition, sale, or release is authorized under the DIP Documents, and (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in such DIP Collateral unless,

solely as to this clause (iii), the DIP Agent or the DIP Lenders file financing statements or other documents to perfect the liens granted pursuant to the Interim Order or this Final Order, or as may be required by applicable state law to continue the perfection of valid and non-avoidable liens or security interests as of the Petition Date.

(b) To the extent any Prepetition Secured Party has possession of any Prepetition Collateral or DIP Collateral, or has control with respect to any Prepetition Collateral or DIP Collateral that is subject to a DIP Lien, then such Prepetition Secured Party shall be deemed to maintain such possession or exercise such control as gratuitous bailee and/or gratuitous agent for perfection for the benefit of the DIP Secured Parties and shall comply with the instructions of the DIP Agent (acting upon the express prior written direction of the Required Lenders (as defined in the DIP Credit Agreement)) with respect to the exercise of such control.

(c) Any proceeds of Prepetition Collateral subject to the Primed Liens received by any Prepetition Secured Parties, whether in connection with the exercise of any right or remedy (including setoff) relating to the Prepetition Collateral or otherwise received by either of the Prepetition Agents, shall be segregated and held in trust for the benefit of and forthwith paid over to the DIP Agent for the benefit of the DIP Secured Parties in the same form as received, with any necessary endorsements; *provided* that, as part of any sale of all or substantially all of the Prepetition Collateral (i) located in a Local Texas Tax Authority's jurisdiction and (ii) subject to the Primed Liens and the liens of such Local Texas Tax Authority, the Debtors shall deposit into a segregated account held by the Debtors as adequate protection for the secured claims of the Local Texas Tax Authorities an amount either (i) agreed to by the DIP Secured Parties, the

Local Texas Tax Authorities, and the Debtors or (ii) as otherwise determined by the Court. The DIP Liens, the Prepetition Liens, and any valid, senior, perfected, and unavoidable liens (if any) of the Local Texas Tax Authorities shall attach to these segregated proceeds to the same extent and with the same priority as such liens are now held against the property of the Debtors. These segregated funds shall neither constitute the allowance of the claims of the Local Texas Tax Authorities nor a cap on the amounts that they may be entitled to receive. Furthermore, the claims and liens of the Local Texas Tax Authorities shall remain subject to any objections any party would otherwise be entitled to raise as to the priority, validity, or extent of such liens. These segregated funds may be distributed upon agreement between the Local Texas Tax Authorities, the DIP Secured Parties, and the Debtors or by subsequent order of the Court (duly noticed to the Local Texas Tax Authorities). Notwithstanding the foregoing, the rights of setoff and first priority security interests of the financial institutions providing cash management services (solely to the extent related to cash management obligations and as governed by the cash management order entered in these Chapter 11 Cases) are preserved.

(d) The automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified to the extent necessary to permit the DIP Secured Parties to enforce all of their rights under the DIP Documents and (i) immediately upon the occurrence of an Event of Default, to declare (A) the termination, reduction, or restriction of any further DIP Commitment to the extent any such DIP Commitment remains and (B) all applicable DIP Obligations to be immediately due and payable, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Loan Parties, and (ii) unless the Court orders otherwise during the Remedies Notice Period,

upon the occurrence of an Event of Default and the giving by the DIP Agent of five business days' prior written notice (which shall run concurrently with any notice required to be provided under the DIP Documents) (the "**Remedies Notice Period**") delivered by email to the Debtors' lead restructuring counsel (with a copy to the Committee, if any, and the U.S. Trustee), (A) to withdraw consent to the Loan Parties' continued use of any Cash Collateral or (B) to exercise all other rights and remedies provided for in the DIP Documents and under applicable law; *provided* that, during the Remedies Notice Period, the Loan Parties shall be permitted to continue to use Cash Collateral in the ordinary course of business (subject to the Approved Budget and any permitted variance) and may request an expedited hearing before the Court to determine whether an Event of Default has occurred and is continuing and/or seek nonconsensual use of Cash Collateral. In no event shall (i) the DIP Secured Parties or the Prepetition Secured Parties be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral or (ii) the "equities of the case" exception in section 552(b) of the Bankruptcy Code apply with respect to the secured claims of the Prepetition Secured Parties or the Prepetition Liens.

(e) No rights, protections, or remedies of the DIP Secured Parties granted by the provisions of the Interim Order, this Final Order, or the DIP Documents shall be limited, modified, or impaired in any way by (i) any actual or purported withdrawal of the consent of any party to the Loan Parties' authority to continue to use Cash Collateral, (ii) any actual or purported termination of the Loan Parties' authority to continue to use Cash Collateral, or (iii) the terms of any other order or stipulation related to the Loan

Parties' continued use of Cash Collateral or the provision of adequate protection to any party.

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

12. *Payments Free and Clear*. Subject to the Carve-Out, any and all payments or proceeds remitted to the DIP Agent on behalf of the DIP Secured Parties pursuant to the provisions of the Interim Order, this Final Order, or the DIP Documents shall be received free and clear of any claim, charge, assessment, or other liability, including, without limitation, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) of the

Bankruptcy Code (whether asserted or assessed by, through, or on behalf of the Debtors) or section 552(b) of the Bankruptcy Code.

13. *Use of Cash Collateral*. The Debtors are hereby authorized, subject to the Approved Budget (including any permitted variances) and the terms and conditions of this Final Order, to use all Cash Collateral.

14. *Adequate Protection of Prepetition Secured Parties*. The Prepetition Secured Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1), and 507 of the Bankruptcy Code, to adequate protection of their respective interests in the Prepetition Collateral, for and equal in amount to the aggregate diminution in the value of the Prepetition Secured Parties' prepetition security interests in the Prepetition Collateral from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including, but not limited to, the Debtors' use, sale, or lease of Cash Collateral and other Prepetition Collateral, the imposition of the automatic stay, and/or the Carve-Out (the "**Adequate Protection Claims**"); *provided* that the avoidance of any Prepetition Secured Party's interests in Prepetition Collateral shall not constitute diminution in the value of such Prepetition Secured Party's interests in Prepetition Collateral. In consideration of the foregoing, the Prepetition Secured Parties are hereby granted the following (collectively, the "**Adequate Protection Obligations**"):

(a) Adequate Protection Liens. Each of the Prepetition Revolving Agent (for itself and for the benefit of the Prepetition Revolving Lenders) and the Prepetition Term Agent (for itself and for the benefit of the Prepetition Term Lenders) is hereby granted (effective and perfected upon the Petition Date and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements, or other agreements), in the amount of its respective Adequate Protection Claim, a valid,

perfected replacement security interest in and lien upon (the "**Adequate Protection Liens**") the DIP Collateral (including, without limitation, the Avoidance Proceeds), which Adequate Protection Liens shall secure the respective Adequate Protection Claims, and in each case shall be (i) *pari passu* with each other Adequate Protection Lien granted hereunder, subject to the Intercreditor Agreement, and (ii) subject and subordinate only to the Carve-Out, the DIP Liens, and the Permitted Senior Liens; *provided* that the DIP Roll-Up Loans shall be *pari passu* with the Prepetition Revolving Debt in all respects such that distributions on the Prepetition Revolving Debt are pro rata with the sum of the DIP Roll-Up Loans and the Prepetition Term Loans; *provided further* that any proceeds allocated on account of the DIP Roll-Up Loans and the Prepetition Term Loans (including in respect of the Adequate Protection Obligations) shall be applied first to the repayment of the DIP Roll-Up Loans before any Prepetition Term Loan.

(b) 507(b) Claims. Each of the Prepetition Agents (on behalf of the applicable Prepetition Secured Parties) are granted, as of the Petition Date, an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of their respective Adequate Protection Claims with, except as set forth in the Interim Order or this Final Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code (the "**507(b) Claims**"), which 507(b) Claims (subject to DIP Liens and DIP Superpriority Claims) shall have recourse to and be payable from all of the DIP Collateral (including, without limitation, the Avoidance Proceeds). The 507(b) Claims shall be (i) *pari passu* with each other 507(b) Claim granted hereunder, subject to the Intercreditor Agreement, and (ii) subject and subordinate only to the Carve-Out, the

DIP Superpriority Claims, the DIP Liens, and the Permitted Senior Liens. Except to the extent expressly set forth in the Interim Order, this Final Order, or the DIP Credit Agreement, the Prepetition Secured Parties shall not receive or retain any payments, property, or other amounts in respect of the 507(b) Claims unless and until the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and the DIP Superpriority Claims have indefeasibly been paid in cash in full and all DIP Commitments have been terminated.

(c) Adequate Protection Cash Payments. In each case subject to reallocation or recharacterization as payment of principal under section 506(a) and (b) of the Bankruptcy Code as may be ordered by the Court in connection with a timely and successful Challenge pursuant to paragraph 19 or 20 below, until the indefeasible discharge of the Prepetition Secured Debt, the Prepetition Agents, for the benefit of the applicable Prepetition Secured Parties, shall receive current payment in cash on the last business day of each month in an amount equal to the sum of all post-petition unpaid interest accruing on all outstanding principal, interest, fees, and other amounts owing under the applicable Prepetition Secured Debt (as of the Petition Date), in each case at the applicable default rate (the payments in this subparagraph (c), the "**Adequate Protection Payments**"). For the avoidance of doubt, participation fees accrued under the Prepetition Revolving Facility Documents with respect to the Prepetition Letters of Credit outstanding as of the Petition Date and unpaid as of the Petition Date shall (i) be due and owing by the Debtors and (ii) be paid by the Debtors in accordance with the Prepetition Revolving Facility Documents in the ordinary course of business from cash of the Debtors other than the cash collateral in the Cash Collateral Accounts.

(d) Prepetition Secured Parties Fees and Expenses. The Loan Parties shall make current cash payments of the reasonable and documented prepetition and post-petition fees and expenses incurred by the Prepetition Agents or the Ad Hoc Group in connection with the Chapter 11 Cases (limited, in the case of the advisors to the Prepetition Term Lenders that are members of the Ad Hoc Group, to Houlihan Lokey, Inc., Willkie Farr & Gallagher LLP, Young Conaway Stargatt & Taylor, LLP, and one local counsel in each material jurisdiction; in the case of the advisors to the Prepetition Revolving Agent and the Prepetition Revolving Lenders, to RPA Advisors, LLC, Vinson & Elkins LLP, and one local counsel in each material jurisdiction; and, in the case of the advisors to the Prepetition Term Agent, to Arnold & Porter Kaye Scholer LLP and one local counsel in each relevant jurisdiction), promptly upon receipt of invoices therefor, which payments (to the extent for fees, expenses, and disbursements incurred after the Petition Date) shall be made within ten days (which time period may be extended by the applicable professional) after the receipt by the Debtors, the Committee, if any, and the U.S. Trustee (the "**Review Period**") of invoices therefor (the "**Invoiced Fees**") and without the necessity of filing formal fee applications, including such amounts arising before or after the Petition Date. The invoices for such Invoiced Fees shall include the number of hours billed (except for financial advisors compensated on other than an hourly basis) and a summary description of services provided and the aggregate expenses incurred by the applicable professional firm; *provided*, *however*, that any such invoice (i) may be limited and/or redacted to protect privileged, confidential, or proprietary information and (ii) shall not be required to contain individual time detail (*provided* that such invoice shall contain (except for financial advisors compensated on other than an

hourly basis) summary data regarding hours worked by each timekeeper for the applicable professional and such timekeepers' hourly rates). The Debtors, the Committee, if any, and the U.S. Trustee may object to any portion of the Invoiced Fees (the "**Disputed Invoiced Fees**") within the Review Period by filing with the Court a motion or other pleading, on at least ten days' prior written notice (but no more than 30 days' notice) of any hearing on such motion or other pleading, setting forth the specific objections to the Disputed Invoiced Fees in reasonable narrative detail and the bases for such objections; *provided* that payment of any undisputed portion of Invoiced Fees shall not be delayed based on any objections thereto.

(e) Financial Reporting. The Debtors shall provide the Prepetition Agents with financial and other reporting substantially in compliance with the reports and notices provided for in the DIP Documents, in each case when and as required under the DIP Documents.

(f) DIP Roll-Up Facility. The Debtors shall use the DIP Roll-Up Loans to refinance and discharge dollar-for-dollar Prepetition Term Loans held by the DIP Lenders in the aggregate amount equal to the DIP Term Loans and the DIP LC Loans funded under the DIP Facility.

15. *Reservation of Rights of Prepetition Secured Parties*. Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, including section 506(b) thereof, the Court finds that the adequate protection provided in the Interim Order and herein is reasonable and sufficient to protect the interests of the Prepetition Secured Parties; *provided* that any of the Prepetition Secured Parties may request further or different adequate protection, and the Debtors or any other party may contest any such request.

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

(a) The DIP Agent, the DIP Lenders, and the Prepetition Secured Parties are hereby authorized, but not required, to file or record (and to execute in the name of the Loan Parties, as their true and lawful attorneys, with full power of substitution, to the maximum extent permitted by law) financing statements, trademark filings, copyright filings, mortgages, notices of lien, or similar instruments in any jurisdiction, or take possession of or control over cash or securities, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Agent, on behalf of the DIP Secured Parties, or the Prepetition Secured Parties shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien, or similar instruments, or take possession of or control over any cash or securities, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable, and not subject to challenge, dispute, or subordination, from April 2, 2019. Upon the request of the DIP Agent (acting upon the express prior written direction of the Required Lenders (as defined in the DIP Credit Agreement)), each of the Prepetition Secured Parties and the Loan Parties, without any further consent of any party, is authorized (in the case of the Loan Parties) and directed (in the case of the Prepetition Secured Parties) to take, execute, deliver, and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Agent to further validate, perfect, preserve, and enforce the DIP Liens. All such documents shall be deemed to have been recorded and filed as of the Petition Date.

(b) The Interim Order and this Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of all liens granted in such orders, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording financing statements, intellectual property filings, mortgages, notices of lien, or similar instruments in any jurisdiction, taking possession of or control over cash, deposit accounts, securities, or other assets, or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement, customs broker agreement, or freight forwarding agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens, or to entitle the DIP Secured Parties to the priorities granted herein. Notwithstanding the foregoing, certified copies of the Interim Order and this Final Order may, in the discretion of the DIP Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien, or similar instruments, and all filing offices are hereby authorized and directed to accept such certified copies of the Interim Order and this Final Order for filing and/or recording, as applicable. The automatic stay of section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit the DIP Agent to take all actions, as applicable, referenced in this subparagraph (b) and the immediately preceding subparagraph (a).

17. *Milestones*. It is a condition to the DIP Facilities that the Debtors shall comply with the Case Milestones (as defined in the DIP Credit Agreement). Any Case Milestone that would otherwise fall on a Saturday, Sunday, or federal holiday will be treated in accordance with

Bankruptcy Rule 9006. The failure to comply with any Milestone shall constitute an Event of Default in accordance with the terms of the DIP Credit Agreement.

18. *Preservation of Rights Granted Under the Interim Order and this Final Order*.

(a) Other than the Carve-Out, Permitted Senior Liens, and other claims and liens expressly granted by the Interim Order and this Final Order, no claim or lien having a priority superior to or that is *pari passu* with those granted by the Interim Order or this Final Order to the DIP Secured Parties or the Prepetition Secured Parties, respectively, shall be permitted while any of the DIP Obligations or the Adequate Protection Obligations remain outstanding, and, except as otherwise expressly provided in the Interim Order or this Final Order, the DIP Liens and the Adequate Protection Liens shall not be (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Loan Parties' estates under section 551 of the Bankruptcy Code, (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise, (iii) subordinated to or made *pari passu* with any liens arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal, or other domestic or foreign governmental unit (including any regulatory body), commission, board, or court for any liability of the Loan Parties, or (iv) subject or junior to any intercompany or affiliate liens or security interests of the Loan Parties.

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

priorities as provided in the Interim Order or this Final Order until all DIP Obligations and Adequate Protection Obligations shall have been indefeasibly paid in full in cash (and that such DIP Superpriority Claims, 507(b) Claims, DIP Liens, and Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest), (ii) the other rights granted by the Interim Order or this Final Order shall not be affected, and (iii) the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens, and security interests referred to in this paragraph 18 and otherwise in the Interim Order or this Final Order.

(c) If any or all of the provisions of the Interim Order (except such provisions of the Interim Order modified by this Final Order) or this Final Order are hereafter reversed, modified, vacated, or stayed, such reversal, modification, vacatur, or stay shall not affect (i) the validity, priority, or enforceability of any DIP Obligations or Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Agent, the Prepetition Revolving Agent, or the Prepetition Term Agent, as applicable, of the effective date of such reversal, modification, vacatur, or stay or (ii) the validity, priority, or enforceability of the DIP Liens or the Adequate Protection Liens. Notwithstanding any such reversal, modification, vacatur, or stay of any use of Cash Collateral, any DIP Obligations or any Adequate Protection Obligations incurred by the Loan Parties to the DIP Secured Parties or the Prepetition Secured Parties, as the case may be, prior to the actual receipt of written notice by the DIP Agent, the Prepetition Revolving Agent, or the Prepetition Term Agent, as applicable, of the effective date of such reversal, modification, vacatur, or stay shall be governed in all respects by the original provisions of the Interim Order or this Final Order, and the DIP Secured Parties

and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges, and benefits granted in section 364(e) of the Bankruptcy Code, the Interim Order, this Final Order, and the DIP Documents.

(d) Except as expressly provided in the Interim Order, this Final Order, or in the DIP Documents, (i) the DIP Obligations, the DIP Liens, the DIP Superpriority Claims, the 507(b) Claims, the Adequate Protection Liens, and the Adequate Protection Obligations, and all other rights and remedies of the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties granted by the provisions of the Interim Order, this Final Order, and the DIP Documents shall survive, and shall not be modified, impaired, or discharged by the entry of an order (A) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, dismissing any of the Chapter 11 Cases, terminating the joint administration of the Chapter 11 Cases, or by any other act or omission, (B) approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents), or (C) confirming a chapter 11 plan in any of the Chapter 11 Cases, and (ii) pursuant to section 1141(d)(4) of the Bankruptcy Code, the Loan Parties have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of the Interim Order, this Final Order, and the DIP Documents shall continue in the Chapter 11 Cases, in any successor cases if the Chapter 11 Cases cease to be jointly administered, and in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Obligations, the DIP Liens, the DIP Superpriority Claims, the 507(b) Claims, the Adequate Protection Liens, the Adequate Protection Obligations, and all other rights and remedies of the DIP Secured Parties and the Prepetition Secured Parties granted by the

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

19. *Effect of Stipulations on Third Parties*.

(a) The Debtors' stipulations, admissions, agreements, and releases contained in the Interim Order and this Final Order shall be binding upon (i) the Debtors and their estates, in all circumstances and for all purposes and (ii) all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors, in all circumstances and for all purposes unless (A) such committee or any other party in interest (subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so), in each case, with standing granted by the Court, has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, *inter alia*, in this paragraph 19) (1) objecting to or challenging the amount, validity, perfection, enforceability, priority, or extent of the Prepetition Secured Debt or the Prepetition Liens or (2) otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims, or any other claims, counterclaims or causes of action, objections, contests, or defenses (collectively, a "**Challenge**") against the Prepetition Secured Parties or their respective subsidiaries, affiliates, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other

professionals and their respective successors and assigns thereof, in each case in their respective capacity as such (each, a "**Representative**" and, collectively, the "**Representatives**") in connection with matters related to any claims of the Debtors against the Prepetition Secured Parties, the Prepetition Secured Debt Documents, the Prepetition Secured Debt, the Prepetition Liens, the Prepetition Collateral, or otherwise, *provided* that all pleadings filed in connection with a Challenge shall set forth the basis for such challenge or claim, (B) such Challenge has been filed prior to the latest of (1) (Y) with respect to parties in interest with standing (other than a Committee), June 17, 2019 and (Z) with respect to a Committee, if any, 60 calendar days after the appointment of the Committee, (2) any such later date as has been agreed to, in writing, by the Prepetition Revolving Agent or the Prepetition Term Agent (acting upon the express prior written direction of the Required Lenders (as defined in the DIP Credit Agreement)) (as applicable), and (3) any such later date as has been ordered by the Court for cause upon a motion filed and served within any applicable time period set forth in this paragraph 19 (the time period established by the foregoing clauses (1) through (3), the "**Challenge Period**") (for the avoidance of doubt, if a Committee is appointed after June 17, 2019, the Challenge Period shall have expired), and (C) there is a final non-appealable order sustaining such Challenge in favor of the plaintiff in such timely filed adversary proceeding or contested matter. Any Challenge not so specified prior to the expiration of the Challenge Period shall be deemed forever, waived, released, and barred.

(b) If no such Challenge is filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such proceeding, then (i) the Debtors' stipulations, admissions, agreements, and releases contained in the Interim Order and this Final Order

shall be binding on all parties in interest, including, without limitation, a Committee, if any, (ii) the obligations of the Loan Parties under the Prepetition Secured Debt Documents, including the Prepetition Secured Debt, shall constitute allowed claims not subject to defense, claim, counterclaim, recharacterization, subordination, offset, or avoidance, for all purposes in the Chapter 11 Cases, and any subsequent chapter 7 case(s), (iii) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens, not subject to recharacterization, subordination, avoidance, or other defense, (iv) the Prepetition Secured Debt and the Prepetition Liens shall not be subject to any other or further claim or challenge by any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases or any other party in interest acting or seeking to act on behalf of the Debtors' estates, and (v) any defenses, claims, causes of action, counterclaims, and offsets by any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, or any other party acting or seeking to act on behalf of the Debtors' estates, whether arising under the Bankruptcy Code or otherwise, against any of the Prepetition Secured Parties and their Representatives arising out of or relating to the any claims of the Debtors against the Prepetition Secured Parties, the Prepetition Secured Debt Documents, or otherwise shall be deemed forever waived, released, and barred. If any such Challenge is filed during the Challenge Period, the stipulations, admissions, agreements, and releases contained in the Interim Order and this Final Order shall nonetheless remain binding and preclusive (as provided in this subparagraph (b)) on any statutory or non-statutory committee appointed or formed in the Chapter 11 Cases, and on any other person or entity, except to the extent that such stipulations, admissions,

agreements, and releases were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in the Interim Order or this Final Order vests or confers on any Person (as defined in the Bankruptcy Code), including any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, Challenges with respect to the Prepetition Secured Debt Documents, the Prepetition Secured Debt, or the Prepetition Liens, or claims, counterclaims, or causes of action of the Debtors against any Prepetition Secured Party.

20. *Limitation on Use of DIP Financing Proceeds and Collateral*. Notwithstanding anything herein, in the Interim Order, or in any other order entered by the Court to the contrary, no proceeds of the DIP Facilities, DIP Collateral, Prepetition Collateral (including Cash Collateral), or the Carve-Out may be used (a) for Professional Fees incurred for (i) any litigation or threatened litigation (whether by contested matter, adversary proceeding, or otherwise, including any investigation in connection with litigation or threatened litigation) against any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties or for the purpose of objecting to or challenging the validity, perfection, enforceability, extent, amount or priority of any claim, lien, or security interest held or asserted by any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties or (ii) asserting any defense, claim, cause of action, counterclaim, or offset with respect to the DIP Obligations, the Prepetition Secured Debt (including, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise), the DIP Liens, or the Prepetition Liens or against any of the Prepetition Secured Parties or their respective

Representatives, (b) to prevent, hinder, or otherwise delay any of the DIP Agent's or the Prepetition Secured Parties' assertion, enforcement, or realization on the Prepetition Collateral or the DIP Collateral in accordance with the DIP Documents, the Prepetition Secured Debt Documents, the Interim Order, or this Final Order other than to seek a determination that an Event of Default has not occurred or is not continuing, or in connection with a Remedies Hearing, (c) to seek to modify any of the rights granted to the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties under the Interim Order, this Final Order, or under the DIP Documents or the Prepetition Loan Documents, in each of the foregoing cases without such parties' prior written consent, which may be given or withheld by such party in the exercise of its respective sole discretion, or (d) to pay any amount on account of any claims arising prior to the Petition Date unless such payments are approved by an order of the Court (including, without limitation, hereunder); *provided* that, notwithstanding anything to the contrary in the Interim Order or this Final Order, the Committee, if any, may use the proceeds of the DIP Facilities, DIP Collateral (including Cash Collateral), and/or the Carve-Out to investigate (but not prosecute or initiate the prosecution of, including the preparation of any complaint or motion on account of) prior to (but not after) the delivery of a Carve-Out Trigger Notice, (i) the claims and liens of the Prepetition Secured Parties and (ii) potential claims, counterclaims, causes of action, or defenses against the Prepetition Secured Parties; *provided further* that no more than an aggregate of $50,000 of the proceeds of the DIP Facilities, DIP Collateral (including Cash Collateral, but excluding all Cash Collateral in the Cash Collateral Account that secures the DIP Letters of Credit), and/or the Carve-Out may be used by the Committee, if any, in respect of the investigations set forth in the preceding proviso (the "**Investigation Budget**").

21. *Release*. Subject to paragraph 19 hereof, and as further set forth in the DIP Documents, the Debtors, on behalf of themselves and their estates (including any successor trustee or other estate representative in the Chapter 11 Cases or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases) and any party acting by, through, or under any of the Debtors or any of their estates, hereby stipulate and agree that they forever and irrevocably (a) release, discharge, waive, and acquit the current or future DIP Agent and other current or future DIP Secured Parties, the Prepetition Revolving Secured Parties, and the Prepetition Term Secured Parties, and each of their respective participants and each of their respective affiliates, and each of their respective former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, successors, assigns, and predecessors in interest (collectively, "**Released Parties**"), from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute, or regulation or by contract, of every nature and description, arising out of, in connection with, or relating to the DIP Facilities, the DIP Documents, the Prepetition Loan Documents, or the transactions and relationships contemplated hereunder or thereunder, including, without limitation, (i) any so-called "lender liability" or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code (including, without limitation, Avoidance Actions), and (iii) any and all claims and causes

of action regarding the validity, priority, perfection, or avoidability of the liens or secured claims of the DIP Agent, the other DIP Secured Parties, the Prepetition Revolving Secured Parties, and the Prepetition Term Secured Parties, and (b) waive any and all defenses (including, without limitation, offsets, and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability, and nonavoidability of the DIP Loans, the DIP Liens, the DIP Superpriority Claims, the Prepetition Secured Debt, the Prepetition Liens, the Adequate Protection Claims, the Adequate Protection Liens, and any adequate protection payment obligations pursuant to the Interim Order or this Final Order. For the avoidance of doubt, the foregoing release shall not constitute a release of any rights arising under the DIP Documents. Notwithstanding the releases and covenants contained above in this paragraph, such releases and covenants in favor of the Released Parties shall be deemed acknowledged and reaffirmed by the Debtors each time there is an advance of funds, extension of credit, or financial accommodation under the Interim Order, this Final Order and the DIP Documents.

22. *Exculpation*. Nothing in the Interim Order, this Final Order, the DIP Documents, or any other documents related to these transactions shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent or any DIP Lender of any liability for any claims arising from the prepetition or post-petition activities of the Debtors in the operation of their businesses, or in connection with their restructuring efforts. So long as the DIP Agent and the DIP Lenders comply with their obligations under the DIP Documents and their obligations, if any, under applicable law (including the Bankruptcy Code), (a) the DIP Agent and the DIP Lenders shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral or any reserves established pursuant to the Interim Order or this Final Order, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause,

(iii) any diminution in the value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency, or other person and (b) all risk of loss, damage, or destruction of the DIP Collateral shall be borne by the Loan Parties.

23. *Final Order Governs*. In the event of any inconsistency between the provisions of this Final Order, the Interim Order, the DIP Documents, or any other order entered by the Court, the provisions of this Final Order shall govern. Notwithstanding anything to the contrary in any other order entered by the Court, any payment made, or authorization contained in, any other order entered by the Court shall be consistent with and subject to the requirements set forth in this Final Order and the DIP Documents, including, without limitation, the Approved Budget (including any permitted variances); *provided* that the Approved Budget (including any permitted variances) shall not constitute a cap or limitation on any Professional Fees and shall not affect the Carve-Out.

24. *Binding Effect; Successors and Assigns*. The DIP Documents and the provisions of the Interim Order and this Final Order, including all findings therein and herein, shall be binding upon all parties in interest in the Chapter 11 Cases, including, without limitation, the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, the Committee, if any, any non-statutory committees appointed or formed in the Chapter 11 Cases, the Debtors, and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, the Debtors, and their respective successors and assigns; *provided* that the DIP Agent, the DIP

Lenders, and the Prepetition Secured Parties shall have no obligation to permit the use of the DIP Collateral (including Cash Collateral) or to extend any financing to any chapter 7 trustee, chapter 11 trustee, or similar responsible person appointed for the estates of the Debtors.

25. *Limitation of Liability*. In determining to make any loan or other extension of credit under the DIP Credit Agreement, to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to the Interim Order, this Final Order, or the DIP Documents, the DIP Agent and the DIP Lenders (and the Prepetition Secured Parties in respect of the use of Cash Collateral) shall not (a) be deemed to be in "control" of the operations of the Debtors, (b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates, or (c) be deemed to be acting as a "Responsible Person," "Owner," or "Operator" with respect to the operation or management of the Debtors, so long as the DIP Agent's and the DIP Lenders' actions do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a vessel or facility owned or operated by a Debtor, or otherwise cause liability to arise to the federal or state government or the status of "responsible person" or "managing agent" to exist under applicable law (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute).

26. *Inapplicability of Bar Date; Master Proof of Claim*. Any order entered by the Court establishing a bar date for any claims (including, without limitation, administrative claims) in any of the Chapter 11 Cases or any subsequent chapter 7 case of any of the Debtors shall not apply to any DIP Secured Party, any Prepetition Term Secured Party, or any Prepetition Revolving Secured Party. The DIP Secured Parties, Prepetition Secured Parties, and the

Prepetition Revolving Secured Parties shall not be required to file proofs of claim or requests for approval of administrative expenses authorized by the Interim Order or this Final Order in any of the Chapter 11 Cases or any subsequent chapter 7 case of any of the Debtors. The provisions of the Interim Order and this Final Order relating to the amount and/or priority of the DIP Loans, the Prepetition Term Debt, the Prepetition Revolving Debt, the Adequate Protection Claims, the Adequate Protection Liens, any adequate protection payments pursuant to the Interim Order or this Final Order, the Prepetition Liens, the DIP Liens, and the DIP Superpriority Claims shall constitute a sufficient and timely filed proof of claim and/or administrative expense request in respect of such obligations and such secured status. However, in order to facilitate the processing of claims, to ease the burden upon the Court, and to reduce an unnecessary expense to the Debtors' estates, each of the Prepetition Revolving Agent and the Prepetition Term Agent is authorized to file in the Debtors' lead Chapter 11 Case *In re Southcross., et al.,* Case No. 19-10702 (MFW), a single, master proof of claim on behalf of the Prepetition Revolving Secured Parties and the Prepetition Term Secured Parties, as applicable, on account of any and all of their respective claims arising under the applicable Prepetition Secured Debt Documents and hereunder (each, a "**Master Proof of Claim**") applicable against each of the Debtors. Upon the filing of a Master Proof of Claim, (a) the Prepetition Revolving Agent and the Prepetition Revolving Secured Parties and (b) the Prepetition Term Agent and the Prepetition Term Secured Parties, as applicable, and each of their respective successors and assigns, shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against each of the Debtors of any type or nature whatsoever with respect to the applicable Prepetition Secured Debt Documents, and the claim of each Prepetition Secured Party (and each of its respective successors and assigns), named in a Master Proof of Claim shall be

treated as if such entity had filed a separate proof of claim in each of the Chapter 11 Cases. The Master Proofs of Claim shall not be required to identify whether any Prepetition Secured Party acquired its claim from another party and the identity of any such party or to be amended to reflect a change in the holders of the claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from the transfer of all or any portion of such claims. Nothing in the Interim Order or this Final Order shall waive the right of any DIP Secured Party or any Prepetition Secured Party to file its own proof of claim against any of the Debtors. The provisions of this paragraph 26 and each Master Proof of Claim are intended solely for the purpose of administrative convenience and shall not affect the right of each Prepetition Secured Party (or its successors in interest) to vote separately on any plan proposed in the Chapter 11 Cases. The Master Proofs of Claim shall not be required to attach any instruments, agreements, or other documents evidencing the obligations owing by each of the Debtors to the applicable Prepetition Secured Parties, which instruments, agreements, or other documents will be provided upon reasonable written request to counsel to the Prepetition Revolving Agent and Prepetition Term Agent, as applicable.

27. *Secured Party Consents.* No approval, agreement, or consent requested of the DIP Secured Parties and/or the Prepetition Secured Parties by the Debtors pursuant to the terms of the Interim Order, this Final Order, or otherwise shall be inferred from any action, inaction, or acquiescence of the DIP Secured Parties or the Prepetition Secured Parties, as applicable, other than a writing acceptable to the DIP Secured Parties or the Prepetition Secured Parties, as applicable, that is signed by such person(s) and expressly shows such approval, agreement, or consent, without limitation. Nothing in the Interim Order or herein shall in any way affect the rights of the DIP Secured Parties or the Prepetition Secured Parties as to any non-Debtor entity,

without limitation. Unless expressly required otherwise hereunder, any determination, agreement, decision, consent, election, approval, acceptance, waiver, designation, authorization, or other similar circumstance or matter of any of the DIP Secured Parties or the Prepetition Secured Parties, as applicable, hereunder or related hereto, shall be in the such person(s)' sole and absolute discretion.

28. *Insurance*. To the extent that any of the Prepetition Revolving Agent or Prepetition Term Agent is listed as loss payee or additional insured under any of the Borrower's or Guarantors' insurance policies, the DIP Agent is also deemed to be the loss payee or additional insured, as applicable, under such insurance policies and shall act in that capacity and distribute any proceeds recovered or received in respect of any such insurance policies, *first*, to the payment in full of the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted), and *second*, to the payment of the applicable Prepetition Secured Debt.

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

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

31. *Payments Held in Trust for the DIP Agent and DIP Lenders*. Except as expressly permitted in the Interim Order, this Final Order, or the DIP Documents, in the event that any

person or entity receives any payment on account of a security interest in DIP Collateral, receives any DIP Collateral or any proceeds of DIP Collateral, or receives any other payment with respect thereto from any other source prior to indefeasible payment in full in cash of all DIP Obligations under the DIP Documents, and termination of the Commitments in accordance with the DIP Documents, such person or entity shall be deemed to have received, and shall hold, such payment or proceeds of DIP Collateral in trust for the benefit of the DIP Agent and the DIP Lenders and shall immediately turn over such proceeds to the DIP Agent, or as otherwise instructed by the Court, for application in accordance with the DIP Documents and this Final Order.

32. *Credit Bidding*. The DIP Secured Parties shall have the right to credit bid, in accordance with the DIP Documents, up to the full amount of the DIP Obligations other than the amount of the DIP Roll-Up Loans, in any sale of the DIP Collateral. Subject to paragraph 19 hereof and the Intercreditor Agreement, the DIP Secured Parties shall have the right to credit bid, in accordance with the DIP Documents, the amount of the DIP Roll-Up Loans in any sale of the DIP Collateral. Subject to paragraph 19 hereof, each of the Prepetition Secured Parties shall have the right to credit bid, subject to the Intercreditor Agreement, up to the full amount of the applicable Prepetition Secured Debt in any sale of the Prepetition Collateral, in each case pursuant to section 363(k) of the Bankruptcy Code and subject to any successful Challenge, without the need for further Court order authorizing the same and whether any such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

33. *Wind Down Budget*. In the event that the Debtors pursue a "Section 363 Sale" (as defined in the DIP Credit Agreement) of all or substantially all of the Debtors' assets, then in

connection with such Section 363 Sale, the Debtors and the Required DIP Lenders will negotiate in good faith a reasonable wind-down budget (the "**Wind-Down Budget**") to pay all allowed (a) post-petition claims, (b) administrative expense and priority claims, and (c) professional fees and expenses necessary to wind-down the Debtors' estates in a reasonable and appropriate timeline. Notwithstanding anything else to the contrary in the Interim Order or this Final Order, subject and subordinate to the Carve Out (y) the net proceeds of any Section 363 Sale shall first satisfy the Wind-Down Budget before repayment of any DIP Obligations, Adequate Protection Obligations, 507(b) Claims, Prepetition Secured Debt, or any other claims against the Debtors and (z) any credit bid shall be subject to the Debtors having sufficient cash at the consummation of the Section 363 Sale to satisfy the Wind-Down Budget. For the avoidance of doubt, the Cash Collateral Accounts that secure the DIP Letters of Credit shall not be used as part of the Wind Down Budget or the Carve-Out.

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

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

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

37. The Debtors shall promptly serve copies of this Final Order on the parties having been given notice of the Final Hearing and on any party that has filed a request for notices with the Court in accordance with Bankruptcy Rule 2002.

Dated: May 7th, 2019
Wilmington, Delaware

MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

#91937572v14

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
EDGEMARC ENERGY HOLDINGS, LLC, *et al.*,	Case No. 19-11104 (BLS)
Debtors.[1]	(Jointly Administered) Re:
	Docket Nos. 13, 62 & 219

FINAL ORDER, PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, AND 507, (I) AUTHORIZING THE DEBTORS TO OBTAIN SENIOR SECURED SUPERPRIORITY POST-PETITION FINANCING, (II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) AUTHORIZING THE USE OF CASH COLLATERAL, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY AND (VI) GRANTING RELATED RELIEF

Upon the motion (the "**Motion**")[2] of EdgeMarc Energy Holdings, LLC and its subsidiaries that are debtors and debtors in possession (the "**Debtors**") in the above-captioned cases (the "**Chapter 11 Cases**"), pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506(c), and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**"), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), for entry of an interim order and a final order (this "**Final Order**"), among other things:

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, where applicable, are: EdgeMarc Energy Holdings, LLC (80-0766900), EM Energy Manager, LLC (30-0745334), EM Energy Employer, LLC (80-0838026), EM Energy Ohio, LLC (80-0846935), EM Energy Pennsylvania, LLC (38-3881541), EM Energy West Virginia, LLC (90-0883771), EM Energy Keystone, LLC (82-0857506), EM Energy Midstream Ohio, LLC (46-3841268), EM Energy Midstream Pennsylvania, LLC (46-3843963). The Debtors' corporate headquarters and mailing address is 1800 Main Street, Suite 220, Canonsburg, PA 15317.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the DIP Documents or the Motion, as applicable.

(i) Authorizing EM Energy Employer, LLC (the "**Borrower**") to obtain, and the other Debtors (collectively, in their capacity as such, the "**Guarantors**" and, together with the Borrower, the "**Loan Parties**") to guaranty, debtor-in-possession credit financing in an aggregate principal amount of up to $107,793,041 million (the "**DIP Financing**") to be funded by the Prepetition Lenders (in their capacity as lenders under the DIP Facilities, the "**DIP Lenders**") under a secured term loan and letter of credit facility (the "**DIP Facility**"), and pursuant to the terms and conditions of the *Interim Order, Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, and 507, (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Post-petition Financing, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling Final Hearing, and (VII) Granting Related Relief* entered on May 17, 2019 [D.I. 62] (the "**Interim Order**") and this Final Order, consisting of (A) new money term loans (the "**DIP Term Loans**") in an aggregate principal amount of up to $30 million, and (B) roll-up term loans (the "**DIP Roll-Up Loans**" and, together with the DIP Term Loans, the "**DIP Loans**"), which shall be subject and subordinate to the DIP Term Loans, to refinance dollar-for-dollar the Prepetition Secured Debt held by the DIP Lenders in the aggregate principal amount up to $77,793,041.00 million, with such amount depending upon the Letters of Credit Outstanding;

(ii) deeming all Prepetition Letters of Credit (as defined below) issued and outstanding under the Prepetition Credit Agreement (as defined below) as cancelled and reissued under the DIP Credit Agreement (as defined below) in their full amounts and without modification of their terms (such reissued letters of credit, the "**DIP Letters of Credit**");

(iii) authorizing the Loan Parties, in connection with the DIP Facility, to (A) execute and enter into the Superpriority Secured Debtor-in-Possession Credit Agreement, among the Loan Parties, the DIP Lenders, and KeyBank National Association ("**KeyBank**"), as administrative agent (solely in such capacity, the "**DIP Agent**") and as the Letter of Credit Issuer (as defined in the DIP Credit Agreement), together with the DIP Agent and DIP Lenders, the "**DIP Secured Parties**") (as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof, the "**DIP Credit Agreement**" a copy of which is attached hereto as Exhibit A, and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments and amendments executed and delivered in connection therewith, including the Approved Budget, the "**DIP Documents**") and (B) to perform all such other and further acts as may be required in connection with the DIP Documents;

(iv) granting to the DIP Agent, for the benefit of the DIP Lenders, valid, enforceable, non-avoidable and automatically and fully perfected liens and security interests, subject only to the (a) the Carve-Out, and (b) valid, enforceable and non-avoidable Liens or security interests that are (i) in existence on the Petition Date (as defined below), (ii) either perfected as of the Petition Date or perfected subsequent to the Petition Date solely to the extent permitted by section 546(b) of the Bankruptcy Code, and (iii) senior in priority to the Prepetition Liens granted the Prepetition Secured Parties under and in connection with the Prepetition Loan in accordance with applicable law (the "**Permitted Prior Liens**"), to secure the DIP Obligations, which liens and security interests shall have the rankings and priorities set forth in this Final Order;

(v) granting superpriority administrative claims to the DIP Secured Parties payable from, and having recourse to, all prepetition and post-petition property of the Loan Parties' estates and all proceeds thereof (other than Avoidance Actions, but including Avoidance Proceeds), subject to the Carve-Out and the Permitted Prior Liens;

(vi) authorizing the Loan Parties (A) upon entry of the Interim Order, to incur in multiple draws on and after the Closing Date, DIP Term Loans in an aggregate principal amount of up to $15 million (the "**Initial DIP Term Loans**") (the incurrence of such loans upon entry of the Interim Order, the "**Interim Financing**") and (B) to incur in multiple draws, additional DIP Term Loans in an aggregate principal amount of $30 million, in each case subject to the terms and conditions set forth in the DIP Documents and this Final Order;

(vii) to use the DIP Roll-Up Loans to refinance and discharge dollar-for-dollar Prepetition Secured Debt held by the DIP Lenders in the aggregate principal amount of up to $77,793,041.00 million;

(viii) authorizing the Debtors' use of the proceeds of the DIP Facility pursuant to the DIP Credit Agreement and the other DIP Documents, including the "Approved Budget" (as defined in the DIP Credit Agreement and including any permitted variances and carry forward amounts, the "**Approved Budget**");

(ix) authorizing the Debtors to continue to use the Cash Collateral (subject to the Approved Budget) and all other Prepetition Collateral, and the granting of the Adequate Protection Obligations to the Prepetition Secured Parties with respect to, *inter alia*, such use of their Cash Collateral to the extent of diminution in the value of the Prepetition Collateral (including Cash Collateral);

(x) approving certain stipulations by the Debtors with respect to the Prepetition Loan Documents and the Prepetition Collateral as set forth in the Interim Order and in this Final Order; and

(xi) modifying the automatic stay as set forth herein and the DIP Documents, to the extent necessary, to implement and effectuate the foregoing and the other terms and provisions of the DIP Documents, the Interim Order and this Final Order.

the Court having jurisdiction to consider the matters raised in the Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having authority to hear the matters raised in the Motion pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the requested relief being a core proceeding that the Court can determine pursuant to 28 U.S.C. § 157(b)(2); and due and proper notice of the Motion and opportunity for a hearing on the Motion having been given to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion, the Streeter Declaration and the Ross Declaration; and the Court having held an interim hearing on the Motion on May 16, 2019 (the "**Interim Hearing**") and a final hearing on the Motion having been scheduled and noticed for June 17, 2019 (the "**Final Hearing**"); and the Court having determined that the legal and factual bases set forth in the Motion, the First Day Declaration and the Ross Declaration and the record presented to the Court at the Interim Hearing and Final Hearing establish just cause for the relief granted herein; and all objections, if any, to the relief requested in the Motion for entry of this Final Order having been withdrawn, resolved, or overruled by the Court; and the Court having determined that there is good and sufficient cause for the relief set forth herein, which is necessary to avoid irreparable harm to the Debtors and

their estates as contemplated by Bankruptcy Rule 4001; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[3]

A. *Petition Date*. On May 15, 2019 (the "**Petition Date**"), each of the Debtors filed a separate voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (this "**Court**") commencing the Chapter 11 Cases.

B. *Debtors in Possession*. The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. *Joint Administration*. The Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* [D.I. 42] entered by the Court on May 16, 2019, in each of the Chapter 11 Cases.

D. *Interim Order*. On May 17, 2019, the Court entered the Interim Order [D.I. 62].

E. *Committee Formation*. The Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**") appointed a statutory committee in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code on May 29, 2019 (the "**Committee**").

F. *Jurisdiction and Venue*. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This matter is a core proceeding

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

within the meaning of 28 U.S.C. § 157(b)(2) and, pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order by the Court in connection with the Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution. Venue of the Chapter 11 Cases and related proceedings is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

G. *Notice*. The Final Hearing was scheduled and noticed pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). Adequate and sufficient notice of the Motion has been provided in accordance with the Interim Order, the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, and under the circumstances, no other or further notice of the Motion or the entry of this Final Order shall be required. The final relief granted pursuant to this Final Order is necessary to avoid significant and irreparable harm to the Debtors and their estates.

H. *Debtors' Stipulations Regarding the DIP Facility.* The Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree (the "**Debtors' DIP Stipulations**") as follows:

(i) Release of Claims. Upon entry of the Interim Order, each Debtor and its estate shall be deemed to have forever waived, discharged, and released each of KeyBank, National Association and its respective affiliates, assigns, or successors and the respective members, managers, equity holders, affiliates, agents, attorneys, financial advisors, consultants, officers, directors, employees, and other representatives of the foregoing (each solely in its capacity as such and all of the foregoing, collectively, the "**DIP Secured Party Releasees**") from any and all "claims" (as defined in the Bankruptcy Code), counterclaims, causes of action (including causes of action in the

nature of "lender liability"), defenses, setoff, recoupment, other offset rights, and other rights of disgorgement or recovery against any and all of the DIP Secured Party Releasees, whether arising at law or in equity, relating to and/or otherwise in connection with entering into and consummating the DIP Term Loans; *provided* that, nothing herein shall relieve the DIP Secured Party Releasees from fulfilling their obligations or commitments under the DIP Facility or the rights of parties in interest with respect to the Prepetition Secured Parties set forth in paragraphs 20 and 21.

I. *Debtors' Stipulations Regarding the Prepetition Credit Agreement.* After consultation with their attorneys and financial advisors, and without prejudice to the rights of the Committee or any other party in interest (subject to the limitations thereon contained in paragraphs 20 and 21 below), the Debtors acknowledge, admit, stipulate and agree that:

(i) Prepetition Credit Facility. Pursuant to that certain Amended and Restated Credit Agreement, dated as of December 19, 2017 (as amended, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the "**Prepetition Credit Agreement**" and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments, and amendments executed and delivered in connection therewith, the "**Prepetition Loan Documents**"), among the Borrower, KeyBank, as administrative agent and collateral agent (in such capacity, the "**Prepetition Agent**"), and as the Letter of Credit Issuer (as defined in the Prepetition Credit Agreement) and the lenders party thereto (the "**Prepetition Lenders**" and, together with the Prepetition Agent and the Letter of Credit Issuer, the "**Prepetition Secured Parties**"), the Prepetition Lenders provided revolving credit and other financial accommodations to, and issued letters of credit for the account of, the Borrower (the

"**Prepetition Credit Facility**"), which Prepetition Credit Facility has been guaranteed on a joint and several basis by certain of the Debtors (the "**Prepetition Guarantors**").

(ii) Prepetition Secured Debt. As of the Petition Date, the Borrower and the Prepetition Guarantors were justly and lawfully indebted and liable to the Prepetition Secured Parties, without defense, counterclaim, or offset of any kind, in respect of (a) outstanding loans in the aggregate principal amount of not less than $41 million, (b) L/C Obligations (as defined in the Prepetition Credit Agreement) (the "**Prepetition Letters of Credit**") in the amount of not less than $37 million, and (c) Hedging Obligations (as defined in the Prepetition Credit Agreement), pursuant to and in accordance with the terms of, the Prepetition Loan Documents (collectively, such indebtedness together with accrued and unpaid interest thereon and fees, expenses, charges, indemnities, and other obligations incurred in connection therewith as provided in the Prepetition Loan Documents, the "**Prepetition Secured Debt**").

(iii) Validity of Prepetition Secured Debt. (a) The Prepetition Secured Debt constitutes legal, valid, binding, and non-avoidable obligations of the Borrower and the Prepetition Guarantors, enforceable in accordance with the terms of the Prepetition Loan Documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code) and (b) no portion of the Prepetition Secured Debt or any payments made to the Prepetition Secured Parties or applied to or paid on account of the Prepetition Secured Debt prior to the Petition Date is subject to any contest, attack, rejection, recovery, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action, or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law.

(iv) Prepetition Liens. The liens and security interests granted to the Prepetition Secured Parties (the "**Prepetition Liens**"), pursuant to and in connection with the Prepetition Loan Documents, are (a) valid, binding, perfected, enforceable liens and security interests in the Collateral (as defined in the Prepetition Credit Agreement) (the "**Prepetition Collateral**"), (b) not subject to avoidance, recharacterization, subordination, recovery, attack, effect, counterclaim, defense, or claim under the Bankruptcy Code or applicable non-bankruptcy law, and (c) as of the Petition Date, subject only to Permitted Prior Liens.

(v) No Control. To the extent set forth in paragraph 23, none of the Prepetition Secured Parties controls the Debtors or their properties or operations, have authority to determine the manner in which any Debtor's operations are conducted or are control persons or insiders of the Debtors by virtue of any of the actions taken with respect to, in connection with, related to, or arising from the Prepetition Loan Documents.

(vi) No Claims or Causes of Action. No claims, counterclaims or causes of action of any kind or nature exist against, or with respect to, the Prepetition Secured Parties under any agreements by and among the Debtors and any of the Prepetition Secured Parties that is in existence as of the Petition Date, whether related to the Prepetition Loan Documents or any other agreement with the Debtors.

J. *Findings Regarding the DIP Financing and Use of Cash Collateral.*

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

(ii) The Loan Parties have a critical need for the DIP Financing and to continue to use the Prepetition Collateral (including "cash collateral" within the meaning of section 363(a) of the Bankruptcy Code ("**Cash Collateral**")) in order to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures, to administer these Chapter 11 Cases, and to satisfy other working capital and operational needs. The access of the Loan Parties to sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition Collateral, incurrence of new indebtedness under the DIP Documents and other financial accommodations provided under the DIP Documents are necessary and vital to the preservation and maintenance of the going concern values of the Loan Parties and to a successful sale process.

(iii) The Loan Parties are unable to obtain financing on more favorable terms from sources other than the DIP Lenders and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Loan Parties are also unable to obtain secured credit allowable under section 364(c)(1), 364(c)(2), or 364(c)(3) of the Bankruptcy Code without granting to the DIP Secured Parties the DIP Liens and the DIP Superpriority Claims and incurring the Adequate Protection Obligations, in each case subject to the Carve-Out and the terms and conditions set forth in the Interim Order, this Final Order and in the DIP Documents.

(iv) Based on the Motion, the Streeter Declaration, the Ross Declaration, and the record presented to the Court at the Interim Hearing and the Final Hearing, the terms of the DIP Financing and the terms on which the Loan Parties may continue to use the

Prepetition Collateral (including Cash Collateral) pursuant to the Interim Order, this Final Order and the DIP Documents are fair and reasonable, reflect the Loan Parties' exercise of prudent business judgment and constitute reasonably equivalent value and fair consideration.

(v) Absent an order of the Court and the provision of adequate protection (if the Court determined there were grounds for adequate protection under the Bankruptcy Code), consent of the Prepetition Secured Parties is required for the Loan Parties' use of Cash Collateral and the other Prepetition Collateral. The Prepetition Secured Parties have consented to the Loan Parties' use of Cash Collateral and the other Prepetition Collateral, and the Loan Parties' entry into the DIP Documents in accordance with and subject to the terms and conditions in the Interim Order, this Final Order and the DIP Documents.

(vi) The DIP Financing and the use of the Prepetition Collateral have been negotiated in good faith and at arm's length among the Loan Parties and the DIP Secured Parties, and all of the Loan Parties' obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing and the DIP Documents, including, without limitation, all "Obligations" (as defined in the DIP Documents), in each case owing to the DIP Secured Parties or any of their respective banking affiliates (collectively, the "**DIP Obligations**"), shall be deemed to have been extended by the DIP Secured Parties and their respective affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code

in the event that this Final Order or any provision hereof or thereof is vacated, reversed, or modified, on appeal or otherwise.

(vii) The Prepetition Secured Parties have acted in good faith regarding the DIP Financing and the Loan Parties' continued use of the Prepetition Collateral (including Cash Collateral) to fund the administration of the Loan Parties' estates and continued operation of their businesses (including the incurrence and payment of the Adequate Protection Obligations and the granting of the Adequate Protection Liens), in accordance with the terms hereof, and the Prepetition Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of sections 363(m) and 364(e) of the Bankruptcy Code, as may be applicable, in the event that this Final Order, the Interim Order or any provision hereof is vacated, reversed or modified on appeal or otherwise.

(viii) The Prepetition Secured Parties are entitled to the adequate protection provided in the Interim Order and this Final Order as and to the extent set forth herein and therein pursuant to sections 361, 362, 363, 364 and 507(b) of the Bankruptcy Code. Based on the Motion and on the record presented to the Court in connection with the Motion, the Interim Order, and this Final Order, the terms of the proposed adequate protection arrangements and of the use of the Prepetition Collateral are fair and reasonable, reflect the Loan Parties' prudent exercise of business judgment, and constitute reasonably equivalent value and fair consideration for the use of the Prepetition Collateral; *provided* that nothing in the Interim Order, this Final Order or the other DIP Documents shall (a) be construed as the affirmative consent by any of the Prepetition Secured Parties for the use of Cash Collateral other than on the terms set forth in the Interim Order and this Final Order, (b) be construed as a consent by any party to the

terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior or junior), or (c) prejudice, limit, or otherwise impair the rights of any of the Prepetition Secured Parties to seek new, different, or additional adequate protection for any diminution in value of their interests in the Prepetition Collateral from and after the Petition Date or assert the interests of any of the Prepetition Secured Parties and the rights of any other party in interest to object to such relief are hereby preserved.

(ix) Absent granting the relief set forth in this Final Order, the Loan Parties' estates will be significantly and irreparably harmed. Consummation of the DIP Financing and the use of the Prepetition Collateral (including Cash Collateral) in accordance with the Interim Order, this Final Order and the DIP Documents are, therefore, in the best interests of the Loan Parties' estates.

K. *Permitted Prior Liens; Continuation of Prepetition Liens.* Nothing in the Interim Order or this Final Order shall constitute a finding or ruling by this Court that any alleged Permitted Prior Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Nothing herein or in the Interim Order shall prejudice the rights of any party-in-interest, including, but not limited to, the Debtors, the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, or the Committee, to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Permitted Prior Lien. The right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Permitted Prior Lien and is expressly subject to the DIP Liens. The Prepetition Liens, and the DIP Liens that prime the Prepetition Liens, are continuing liens and the DIP Collateral is and will continue to be encumbered by such liens in light of the integrated nature of the DIP Facilities, the DIP Documents, and the Prepetition Loan Documents.

IT IS HEREBY ORDERED THAT:

1. *Financing Approved.* The relief requested in the Motion is granted, and the use of Cash Collateral on a final basis and the DIP Roll-Up Loans and additional DIP Term Loans (in addition to the Interim Financing authorized by the Interim Order) are authorized and approved, in each case in accordance with the terms and conditions set forth in the DIP Documents, the Approved Budget, the Interim Order and this Final Order. Any objections to the Motion with respect to the entry of this Final Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled on the merits.

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

(a) The Loan Parties are hereby authorized to execute, deliver, enter into and, as applicable, perform all of their obligations under the Interim Order, this Final Order and the DIP Documents and such other and further acts as may be necessary, appropriate, or desirable in connection therewith, in each case in accordance with and subject to the terms of the Interim Order, this Final Order and the DIP Documents. The Borrower is hereby authorized to borrow money and obtain DIP Letters of Credit pursuant to the DIP Credit Agreement, subject to any limitations on borrowing under the DIP Documents, which shall be used for all purposes permitted under the DIP Documents, including, without limitation, to pay certain costs, fees, and expenses related to the Chapter 11 Cases, to pay the Adequate Protection Payments, and to fund working capital and for general corporate purposes of the Loan Parties during the Chapter 11 Cases, in each case, subject to the Approved Budget (except as to Statutory Fees, as that term is defined in paragraph 6 below, which shall not be subject to any budget) and in accordance with the Interim Order, this Final Order and the DIP Documents, and the Guarantors are hereby

authorized to guaranty the DIP Obligations. Notwithstanding anything in the DIP Credit Agreement, the Borrower may only make Borrowings of DIP Term Loans that are consistent with and limited to the draws set forth in the Approved Budget.

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

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

(ii) the execution and delivery of, and performance under, one or more amendments, waivers, consents, or other modifications to and under the DIP Documents, in each case, in such form as the Loan Parties, the DIP Agent and the requisite DIP Lenders may agree, it being understood that no further approval of the Court shall be required for any authorizations, amendments, waivers, consents, or other modifications to and under the DIP Documents (and any fees and other expenses, amounts, charges, costs, indemnities, and other obligations paid in connection therewith) that the Debtors represent are not material or adverse to the Debtors and that do not (A) shorten the maturity of the extensions of credit thereunder or increase the aggregate commitments or the rate of interest payable thereunder, (B) increase existing fees or add new fees thereunder

(excluding, for the avoidance of doubt, any amendment, consent or waiver fee), or (C) shorten the case Milestones set forth in the DIP Credit Agreement; *provided*, however, that advance copies of such amendments, waivers, consents, or other modifications will be provided to the U.S. Trustee and the Committee, both of which shall have three business days to object on grounds that the proposed amendments, waivers, consents, or other modification are material and should be subject to court approval, upon notice to parties in interest. Notwithstanding the foregoing as of the date hereof, the term Milestone in the DIP Credit Agreement shall be amended to extend the deadline for entry of the Final Order to 35 days after the Petition Date and shall be deemed satisfied by entry of this Final Order. The foregoing shall be without prejudice to the Loan Parties' right to seek approval from the Court of any modification or amendment to the DIP Credit Agreement or this Final Order on an expedited basis; and

(iii) the performance of all other acts necessary, appropriate, or desirable under or in connection with the DIP Documents.

3. *Roll-Up*. Upon entry of this Final Order, all of the Prepetition Secured Debt was immediately, automatically and irrevocably deemed to have been converted into DIP Roll-Up Loans and is entitled to all the priorities, privileges, rights, and other benefits afforded to the other DIP Obligations under the Interim Order, this Final Order and the DIP Documents, in each case subject to the terms and conditions set forth in the Interim Order, this Final Order, the DIP Documents and the reservation of rights of parties in interest in paragraph 20 below. The DIP Roll-Up Loans shall be subject to the Challenge in paragraph 20 below and the effect of any successful Challenge of the DIP Roll-Up Loans shall be determined by the Court.

4. *Release of DIP Secured Party Releasees.* The release set forth in paragraph H hereof in favor of the DIP Secured Party Releasees is hereby approved on a final basis.

5. *DIP Obligations.* Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid, binding and non-avoidable obligations of the Loan Parties, enforceable against each Loan Party thereto in accordance with the terms of the DIP Documents, the Interim Order and this Final Order as of the date of the entry of the Interim Order. No obligation, payment, transfer or grant of security to the DIP Secured Parties under the DIP Documents, the Interim Order or this Final Order shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under section 502(d), 544, 548, 549 or 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any defense, reduction, setoff, recoupment, claim, or counterclaim.

6. *Carve-Out.*

(a) As used in this Final Order, the "**Carve-Out**" shall mean a carve-out from the DIP Superpriority Claims, the DIP Liens, the 507(b) Claims, the Adequate Protection Liens and the Prepetition Liens, in an amount equal to the sum of (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the Carve-Out Trigger Notice, without being subject to any budget (collectively, the "**Statutory Fees**"); (ii) all reasonable fees and expenses incurred by a trustee and payable under section 726(b) of the Bankruptcy Code, in an aggregate amount not to exceed $50,000 (without regard to the Carve-Out Trigger Notice); (iii) to the extent allowed by final order

of the Court at any time and provided for in the Approved Budget, for the Debtors' professionals and the Committee's professionals, respectively, all unpaid fees and expenses (the "**Professional Fees**") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code or by the Committee, pursuant to section 328 and 1103 of the Bankruptcy Code (collectively, the "**Professional Persons**") at any time on or before (a) the date of delivery by the DIP Agent of a Carve-Out Trigger Notice and (b) the Termination Date (as defined in the DIP Credit Agreement) (such day, the "**Carve-Out Trigger Date**"), whether allowed by the Court prior to or after the Carve-Out Trigger Date; (iv) to the extent allowed by final order of the Court, (a) Professional Fees incurred after the Carve-Out Trigger Date in an amount not to exceed $1,500,000, of which $500,000 shall be expressly allocated to the Professional Fees of the Committee incurred after the Carve-Out Trigger Date (the "**Post Trigger Date Carve-Out Amount**"), *provided that* such Professional Fees of the Committee shall be first paid from such $500,000 until such amount is exhausted prior to being paid from the remaining Post Trigger Date Carve-Out Amount; *plus* (b) any completion or sales fee and any divestiture fee (including, in each case, pursuant to credit bid) that is earned and payable by the Debtors' pursuant to an engagement letter between the Debtors and the Debtors' investment banker, Evercore, that is approved by the Court (the "**Evercore Fees**"); *provided* that, other than in the event of a credit bid, such fees shall be payable from the proceeds of the applicable asset sale or other transaction (the "**Completion Fee Carve-Out Reserve**"); and (v) amounts held as of the Petition Date as a retainer by the Professional Persons retained by the Debtors to be used to pay Professional Fees allowed by final order of the Court (clauses (i) through (v),

collectively, the "**Carve-Out Amount**"), in each case subject to the limits imposed this Final Order. For purposes of the foregoing, "**Carve-Out Trigger Notice**" shall mean a written notice delivered by email by the DIP Agent to the Debtors' lead restructuring counsel, the U.S. Trustee, and counsel to any Committee, which notice may be delivered following the occurrence and during the continuation of an "Event of Default" under the DIP Documents and the acceleration of the DIP Obligations (an "**Event of Default**"), stating that the Post Trigger Date Carve-Out Amount has been invoked.

(b) Prior to the occurrence of the Carve-Out Trigger Date, the Debtors are authorized (subject to the Approved Budget), for the Debtors' Professional Persons and the Committee's Professional Persons, respectively, to pay Professional Fees that are authorized to be paid in accordance with the provisions of the Bankruptcy Code and any order entered by the Court establishing procedures for the payment of compensation to Professional Persons in these Chapter 11 Cases, as the same may be due and payable, and such payments shall not reduce the Carve-Out Amount.

(c) Upon the closing of the DIP Facility (the "**Closing**"), the Debtors shall deposit in a segregated non-interest bearing account (the "**Carve-Out Reserve**") the following amounts: (i) $1 million of the Post Trigger Date Carve-Out Amount; and (ii) an additional $1,000,000 for payment of pre-Carve-Out Trigger Date fees and expenses of Professional Persons as set forth in paragraph 6(a)(iii). Upon the closing of any sale or other transaction (i) upon which the Evercore Fees are earned and payable, the Debtors shall deposit or segregate cash in an amount equal to the Evercore Fees in the Completion Fee Carve-Out Reserve and (ii) the Debtors shall segregate cash into the Carve-Out Reserve in an amount equal to the Carve-Out Amount at the time of such closing *less* any

amounts already in the Carve-Out Reserve. No fees shall be paid to Evercore or any other professional retained in these cases by the Debtors or the Committee absent order of this Court approving a fee application on notice, except as otherwise expressly provided in any order this Court may enter regarding interim compensation procedures.

(d) The Carve-Out Reserve and Completion Fee Carve-Out Reserve shall be held in a segregated non-interest bearing account maintained by the DIP Agent in trust to pay the Professional Fees and other obligations included in the Carve-Out, and the Carve-Out Reserve and Completion Fee Carve-Out Reserve shall be available only to satisfy such obligations benefiting from the Carve-Out until paid in full; *provided* that payment of any Evercore Fees or any other completion, sale or divestiture fees from the Carve-Out Reserve (other than from the Completion Fee Carve-Out Reserve) shall be subject and subordinate, and junior to payment of all other Professional Fees from the Carve-Out Reserve. The DIP Agent shall allow funds in the Carve-Out Reserve and Completion Fee Carve-Out Reserve to be released to pay obligations payable from the Carve-Out Reserve and Completion Fee Carve-Out Reserve, respectively, upon written instruction from the Debtors.

(e) To the extent the Carve-Out Reserve and/or Completion Fee Carve-Out Reserve have not been reduced to zero after the payment in full of all obligations payable from the Carve-Out Reserve or Completion Fee Carve-Out Reserve, respectively, they shall be used to pay the DIP Agent for the benefit of the DIP Secured Parties until the DIP Obligations have been indefeasibly paid in full in cash and all DIP Commitments have been terminated. Notwithstanding anything to the contrary herein, the Prepetition Agent and the DIP Agent, each on behalf of itself and the relevant secured parties,

(y) shall not sweep or foreclose on the Carve-Out Reserve or Completion Fee Carve-Out Reserve prior to satisfaction in cash in full of all obligations included in the Carve-Out and (z) shall have a security interest upon any residual interests in the Carve-Out Reserve and/or Completion Fee Carve-Out Reserve, respectively, available following satisfaction in cash in full of all obligations included in the Carve-Out, and the priority of such liens on the residuals shall be consistent with this Final Order. Further, notwithstanding anything to the contrary herein, (A) the failure of the Carve-Out Reserve to satisfy in full the allowed Professional Fees shall not affect the priority of the Carve-Out and (B) in no way shall the Carve-Out, the Post Trigger Date Carve-Out Amount, the Carve-Out Reserve or Completion Fee Carve-Out Reserve, or any of the foregoing be construed as a cap or limitation on the amount of the allowed Professional Fees due and payable by the Debtors.

(f) Notwithstanding anything to the contrary herein or in the DIP Documents, the Carve-Out shall be senior to, the DIP Superpriority Claims, the DIP Liens, the 507(b) Claims, the Adequate Protection Liens, the Prepetition Liens, and all other liens and claims granted under the Interim Order, this Final Order, the DIP Documents, or otherwise securing or in respect of the DIP Obligations or the Adequate Protection Obligations.

7. *No Direct Obligation to Pay Allowed Professional Fees.* Nothing in the Interim Order, this Final Order or otherwise shall be construed to obligate the Prepetition Secured Parties or the DIP Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

8. *DIP Superpriority Claims.* Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against the Loan Parties (without the need to file any proof of claim) with priority over any and all administrative expense claims, priority claims and unsecured claims against the Loan Parties, now existing or hereafter arising, of any kind whatsoever specified in sections 503(b) and/or 507(b) of the Bankruptcy Code, including, without limitation, all administrative expenses or other claims arising under section 105, 328, 330, 331, 365, 503(b), 507(a) (other than 507(a)(1)), 507(b), 1113, or 1114 of the Bankruptcy Code (including the Adequate Protection Obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment, which allowed claims (the "**DIP Superpriority Claims**") shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which DIP Superpriority Claims shall be payable from and have recourse to all prepetition and post-petition property of the Loan Parties and all proceeds thereof (excluding the Loan Parties' claims and causes of action under sections 502(d), 506(c), 544, 545, 547, 548, 550, and 553 of the Bankruptcy Code and under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and similar statutes or common law (collectively, the "**Avoidance Actions**", which, for the avoidance of doubt, excludes Debtors' claims and causes of action under section 549 of the Bankruptcy Code or similar state or other applicable law and the proceeds of each of the foregoing), but including any proceeds or property recovered, unencumbered or otherwise from Avoidance Actions, whether by judgment, settlement, or otherwise ("**Avoidance Proceeds**"), subject to the Carve-Out. The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that

the Interim Order, this Final Order, or any provision hereof or thereof is vacated, reversed, or modified, on appeal or otherwise. The DIP Superpriority Claims shall be *pari passu* in right of payment with one another and senior to the Adequate Protection Claims; *provided* that the DIP Superpriority Claims in respect of the DIP Roll-Up Loans shall be subject and subordinate to the DIP Superpriority Claims in respect of the DIP Term Loans.

9. *DIP Liens*. As security for the DIP Obligations, effective and perfected upon the Petition Date and without the necessity of the execution, recordation or filing of mortgages, security agreements, control agreements, pledge agreements, financing statements, notations on certificates of title for titled goods or other similar documents, or the possession or control by the DIP Agent of, or over, any and all tangible and intangible prepetition and post-petition property of the Loan Parties, whether existing on the Petition Date or thereafter acquired including, without limitation, any and all cash of the Loan Parties (whether maintained with the DIP Agent or otherwise, except for the Carve-Out Reserve) and any investment of such cash, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, patents, copyrights, trademarks, trade names, the proceeds of any and all commercial tort claims of the Debtors of any kind or nature, including, but not limited to, proceeds of claims and commercial tort claims against ETC Northeast Pipeline LLC and its affiliates, any claim or rights under section 549 of the Bankruptcy Code, rights under license agreements and other intellectual property, letter-of-credit rights, investment property and support obligations, all books and records pertaining to the property described in this paragraph, all property of the Loan Parties held by any DIP Secured Party, all other goods (including but not limited to fixtures) and

personal property of the Loan Parties, whether tangible or intangible and wherever located, Avoidance Proceeds, capital stock of subsidiaries, wherever located, and, to the extent not covered by the foregoing, all other assets or property of the Debtors, whether tangible, intangible, real, personal or mixed, and the proceeds, products, rents, and profits of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise, of all the foregoing, in each case other than the Avoidance Actions, but including any Avoidance Proceeds (collectively, the "**DIP Collateral**"), the following security interests and liens are hereby granted to the DIP Agent for its own benefit and the benefit of the DIP Lenders (all such liens and security interests granted to the DIP Agent, for its benefit and for the benefit of the DIP Lenders, pursuant to the Interim Order, this Final Order and the DIP Documents, the "**DIP Liens**"):

(a) First Priority Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected first priority senior security interest in and lien upon DIP Collateral, that, on or as of the Petition Date, is not subject to a valid, perfected, and non-avoidable lien as of the Petition Date or perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code (collectively, "**Unencumbered Property**"), including, but not limited to Avoidance Proceeds.

(b) Priming Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected first priority priming security interest in and lien upon all DIP Collateral (wherever located and the proceeds, products, rents and profits thereof), subject and subordinate only to the Permitted Prior Liens, but senior in all respects to the Prepetition Liens, Adequate Protection Liens and all other

liens that are not Permitted Prior Liens (any such liens primed pursuant to this clause (b), the "**Primed Liens**");

(c) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected security interest in and lien upon all DIP Collateral immediately junior to Permitted Prior Liens.

(d) Liens Senior to Certain Other Liens. The DIP Liens shall not be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Loan Parties and their estates under section 551 of the Bankruptcy Code, (B) unless otherwise provided for in the DIP Documents, in the Interim Order or this Final Order, any liens or security interests arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal, or other governmental unit (including any regulatory body), commission, board, or court for any liability of the Loan Parties, or (C) any intercompany or affiliate liens or security interests of the Loan Parties or (ii) subordinated to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code granted after the date hereof.

(e) Relative Priority of DIP Liens. Notwithstanding anything to the contrary in the Interim Order or this Final Order, the DIP Liens in respect of the DIP Roll-Up Loans shall be subject and subordinate to the DIP Liens in respect of the DIP Term Loans in all respects. The DIP Liens in respect of the DIP Roll-Up Loan shall only attach to the DIP Collateral to the extent that DIP Collateral constitutes Prepetition Collateral. The DIP Liens in respect of the DIP Term Loans shall attach to all DIP Collateral, including, but not limited to, all Unencumbered Property.

(f) For the avoidance of doubt, any DIP Liens on DIP Collateral relating to real property of the Debtors granted pursuant to this paragraph 9 shall include, for the ratable benefit of the related DIP Secured Parties, in each case to the extent constituting DIP Collateral, all of each Debtor's right, title and interest now or hereafter acquired in and to all land, together with the buildings, structure, and other improvements thereon, now or hereafter owned by any Debtor, including all easements, rights-of-way, and similar rights relating thereto and all leases, tenancies, and occupancies thereof, and (i) all goods, accounts, inventory, general intangibles, instruments, documents, contract rights and chattel paper, (ii) all reserves, escrows or impounds and all deposit accounts maintained by each Debtor with respect to such real estate, (iii) other than Permitted Prior Liens, all leases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any person a possessory interest in, or the right to use, all or any part of such real estate, together with all related security and other deposits, (iv) all of the rents, revenues, royalties, income proceeds, profits, accounts receivable, security and other types of deposits, and other benefits paid or payable by parties to the leases for using, leasing, licensing possessing, operating from, residing in, selling or otherwise enjoying such real estate, (v) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of such real estate, (vi) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages, and appurtenances appertaining to the foregoing, (vii) all

property tax refunds payable with respect to such real estate, (viii) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof, (ix) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by each Debtor as an insured party, and (x) all awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made to any Debtor by any governmental authority pertaining to any condemnation or other taking (or any purchase in lieu thereof) of all or any such real estate.

10. *Maintenance of Letters of Credit.* The Prepetition Letters of Credit shall be deemed to have been cancelled and reissued as DIP Letters of Credit in their full undrawn amounts and without modification of the terms of the Prepetition Letters of Credit other than their deemed issuance as DIP Letters of Credit.

11. *Automatic Stay.*

(a) The automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified to the extent necessary to permit the DIP Secured Parties to enforce all of their rights under the DIP Documents and (i) immediately upon the occurrence of an Event of Default, to declare (A) the termination, reduction, or restriction of any further DIP Commitment to the extent any such DIP Commitment remains and (B) all applicable DIP Obligations to be immediately due and payable, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Loan Parties, and (ii) unless the Court orders otherwise during the Remedies Notice Period (as defined below), upon the occurrence of an Event of Default and the giving by the DIP Agent of five business days' prior written notice (which shall run concurrently with any

notice required to be provided under the DIP Documents) (the "**Remedies Notice Period**") delivered by email to the Debtors' lead restructuring counsel (with a copy by email to counsel to the Committee, and the U.S. Trustee) (the "**Remedies Notice**"), (A) to withdraw consent to the Loan Parties' continued use of any Cash Collateral and/or (B) to exercise all other rights and remedies provided for in the DIP Documents and under applicable law; *provided* that, during the Remedies Notice Period, the Loan Parties shall be permitted to continue to use Cash Collateral in the ordinary course of business (subject to the Approved Budget) and the Loan Parties or Committee may request an expedited hearing before the Court. After delivery of the Remedies Notice and during and after the Remedies Notice Period, any payments proposed to be made by the Debtors in accordance with the Approved Budget shall be subject to prior review by the DIP Agent and its professionals and the DIP Agent may object to any proposed payment solely on the grounds that such payment is not in the ordinary course of business and is not included in the Approved Budget.

(b) No rights, protections, or remedies of the DIP Secured Parties granted by the provisions of the Interim Order, this Final Order or the DIP Documents shall be limited, modified, or impaired in any way by (i) any actual or purported withdrawal of the consent of any party to the Loan Parties' authority to continue to use Cash Collateral, (ii) any actual or purported termination of the Loan Parties' authority to continue to use Cash Collateral, or (iii) the terms of any other order or stipulation related to the Loan Parties' continued use of Cash Collateral or the provision of adequate protection to any party.

12. *Payment of DIP Agent Fees and Expenses.* The Loan Parties shall make current cash payments of the reasonable and documented prepetition and post-petition fees and expenses incurred by the DIP Agent in connection with the Chapter 11 Cases in any manner (limited, in the case of the advisors to the DIP Agent, to Huron Consulting Group Inc., Hunton Andrews Kurth LLP, and Connolly Gallagher LLP and including the allocated costs (with no profit margin) of the DIP Agent's internal counsel in connection with the Chapter 11 Cases) promptly upon receipt of invoices therefor, which payments shall be made within 10 days (which time period may be extended by the applicable professional) after the receipt by the Debtors, the Committee, and the U.S. Trustee (the "**Review Period**") of invoices therefor (the "**Invoiced Fees**") and without the necessity of filing formal fee applications, including such amounts arising before or after the Petition Date. The invoices for such Invoiced Fees shall include a list of professionals who worked on the matter, their hourly rate (if such professionals bill at an hourly rate), the number of hours each professional billed (except for financial advisors compensated on other than an hourly basis) and, with respect to the invoices of law firms, the year of law school graduation for each attorney, as well as a summary description of services provided and a list of expenses incurred by the applicable professional firm. Such Invoiced Fees shall not be required to contain detailed time entries of any professional, provided, however, that the U.S. Trustee reserves the right to seek copies of invoices containing such detailed time entries; *provided further*, *however*, that any Invoiced Fees may be redacted to protect privileged, confidential, or proprietary information, provided that the U.S. Trustee reserves his right to seek to obtain unredacted copies of such invoices. The Debtors, the Committee, and the U.S. Trustee may object to any portion of the Invoiced Fees (the "**Disputed Invoiced Fees**") within the Review Period by filing with the Court a motion or other pleading setting forth the specific objections to

the Disputed Invoiced Fees in reasonable narrative detail and the bases for such objections; *provided* that payment of any undisputed portion of Invoiced Fees shall not be delayed based on any objections thereto.

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

14. *Payments Free and Clear.* Any and all payments or proceeds remitted to the DIP Agent on behalf of the DIP Secured Parties pursuant to the provisions of the Interim Order, this Final Order or the DIP Documents shall be received free and clear of any claim, charge, assessment, or other liability, including, without limitation, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) of the Bankruptcy Code (whether asserted or assessed by, through, or on behalf of the Debtors) or section 552(b) of the Bankruptcy Code.

15. *Use of Cash Collateral.* The Debtors are hereby authorized, subject to the Approved Budget and the terms and conditions of this Final Order, to use all Cash Collateral.

16. *Adequate Protection of Prepetition Secured Parties*. The Prepetition Secured Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1), and 507(b) of the Bankruptcy Code, to adequate protection of their respective interests in the Prepetition Collateral, for and equal in amount to the aggregate diminution in the value of the Prepetition Secured Parties' prepetition security interests in the Prepetition Collateral from and after the Petition Date, excluding diminution in value caused solely as a result of the Prepetition Secured Debt being primed by the DIP Obligations, if any, for any reason provided for under the Bankruptcy Code, including, but not limited to, the Debtors' use, sale or lease of Cash Collateral and other Prepetition Collateral, the imposition of the automatic stay and/or the Carve-Out (the "**Adequate Protection Claims**"). In consideration of the foregoing, the Prepetition Secured Parties are hereby granted the following (collectively, the "**Adequate Protection Obligations**"):

(a) Adequate Protection Liens. The Prepetition Agent (for itself and for the benefit of the Prepetition Lenders) is hereby granted (effective and perfected upon the Petition Date and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements, or other agreements), in the amount of its respective Adequate Protection Claim, a valid, perfected replacement security interest in and lien upon (the "**Adequate Protection Liens**") the DIP Collateral (including, without limitation, the Avoidance Proceeds), which Adequate Protection Liens shall secure the Adequate Protection Claims, and subject and subordinate only to the Carve-Out, the DIP Liens, and the Permitted Prior Liens.

(b) 507(b) Claims. The Prepetition Agent is granted, as of the Petition Date, an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of its Adequate Protection Claims with, except as

set forth in the Interim Order or this Final Order, priority in payment over any and all administrative expense claims, priority claims and unsecured claims against the Debtors and their estates, now existing or hereafter arising, of the kind specified in section 507(b) of the Bankruptcy Code, including but not limited to claims specified in sections 105, 328, 330, 331, 365, 503(b), 507(a)(other than section 507(a)(1)), 507(b), 1113 and 1114 (the "**507(b) Claims**"), which 507(b) Claims (subject to DIP Liens and DIP Superpriority Claims) shall have recourse to and be payable from all of the DIP Collateral (including, without limitation, the Avoidance Proceeds). The 507(b) Claims shall be subject and subordinate to the Carve-Out, the DIP Superpriority Claims, the DIP Liens, and the Permitted Prior Liens. Except to the extent expressly set forth in the Interim Order, this Final Order or the DIP Credit Agreement, the Prepetition Secured Parties shall not receive or retain any payments, property or other amounts in respect of the 507(b) Claims unless and until the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and the DIP Superpriority Claims have indefeasibly been paid in cash in full and all DIP Commitments have been terminated.

(c) Adequate Protection Cash Payments. Until entry of a Final Order approving the DIP Roll-Up Loans, and in each case subject to reallocation or recharacterization as payment of principal under section 506(a) and (b) of the Bankruptcy Code as may be ordered by the Court in connection with a timely and successful Challenge pursuant to paragraph 20 or 21 below, until the indefeasible discharge of the Prepetition Secured Debt, the Prepetition Agent, for the benefit of the Prepetition Secured Parties, shall receive current payment in cash on the last business day of each month in an amount equal to the sum of all post-petition unpaid interest accruing on all outstanding

principal, interest, fees, and other amounts owing under the applicable Prepetition Secured Debt (as of the Petition Date), in each case at the applicable default rate (the payments in this subparagraph (c), the "**Adequate Protection Payments**").

(d) Prepetition Secured Parties Fees and Expenses. The Loan Parties shall make current cash payments of the reasonable and documented prepetition and post-petition fees and expenses incurred by the Prepetition Agent in connection with the Chapter 11 Cases in any manner (limited, in the case of the advisors to the Prepetition Secured Parties, to Huron Consulting Group Inc., Hunton Andrews Kurth LLP, and Connolly Gallagher LLP, and including the allocated costs (with no profit margin) of the Prepetition Lenders' internal counsel in connection with the Chapter 11 Cases) promptly upon receipt of invoices therefor, which payments shall be made in accordance with the procedures set forth in paragraph 12 hereof with respect to payment of the fees and expenses of the DIP Agent.

(e) All Adequate Protection Liens and 507(b) Claims granted by the Interim Order are subject to any appropriate remedy ordered by the Court, if and to the extent that the underlying Prepetition Liens or Prepetition Claims of the Prepetition Secured Parties are successfully challenged pursuant to paragraph 20 of the Interim Order.

17. *Reservation of Rights of Prepetition Secured Parties.* Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, including section 506(b) thereof, the Court finds that the adequate protection provided in the Interim Order and herein is reasonable and sufficient to protect the interests of the Prepetition Secured Parties; *provided* that any of the Prepetition Secured Parties may request further or different adequate protection, and the Debtors or any other party may contest any such request.

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

(a) The DIP Agent, the DIP Lenders and the Prepetition Secured Parties are hereby authorized, but not required, to file or record (and to execute in the name of the Loan Parties, as their true and lawful attorneys, with full power of substitution, to the maximum extent permitted by law) financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over cash or securities, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Agent, on behalf of the DIP Secured Parties, or the Prepetition Secured Parties shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over any cash or securities, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable, and not subject to challenge, dispute, or subordination as of May 17, 2019. Upon the request of the DIP Agent, each of the Prepetition Secured Parties and the Loan Parties, without any further consent of any party, is authorized (in the case of the Loan Parties) and directed (in the case of the Prepetition Secured Parties) to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Agent to further validate, perfect, preserve, and enforce the DIP Liens. All such documents shall be deemed to have been recorded and filed as of the Petition Date.

(b) The Interim Order and this Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of all liens granted in such orders,

including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction, taking possession of or control over cash, deposit accounts, securities, or other assets, or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement, customs broker agreement or freight forwarding agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens, or to entitle the DIP Secured Parties to the priorities granted herein. Notwithstanding the foregoing, certified copies of the Interim Order and this Final Order may, in the discretion of the DIP Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copies of the Interim Order and this Final Order for filing and/or recording, as applicable. The automatic stay of section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit the DIP Agent and Prepetition Secured Parties to take all actions, as applicable, referenced in this subparagraph (b) and the immediately preceding subparagraph (a).

19. *Preservation of Rights Granted Under the Interim Order and this Final Order.*

(a) Other than the Carve-Out, Permitted Prior Liens and other claims and liens expressly granted by the Interim Order and this Final Order, no claim or lien having a priority superior to or that is *pari passu* with those granted by the Interim Order or this Final Order to the DIP Secured Parties or the Prepetition Secured Parties, respectively, shall be permitted while any of the DIP Obligations or the Adequate Protection

Obligations remain outstanding, and, except as otherwise expressly provided in the Interim Order or this Final Order, the DIP Liens and the Adequate Protection Liens shall not be (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Loan Parties' estates under section 551 of the Bankruptcy Code, (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise, (iii) subordinated to or made *pari passu* with any liens arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal, or other domestic or foreign governmental unit (including any regulatory body), commission, board, or court for any liability of the Loan Parties, or (iv) subject or junior to any intercompany or affiliate liens or security interests of the Loan Parties.

(b) Notwithstanding any order that may be entered converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code or dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or that otherwise is at any time entered, (i) the DIP Superpriority Claims, the 507(b) Claims, the DIP Liens, and the Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities as provided in the Interim Order or this Final Order until all DIP Obligations and Adequate Protection Obligations shall have been indefeasibly paid in full in cash (and such DIP Superpriority Claims, 507(b) Claims, DIP Liens, and Adequate Protection Liens shall, notwithstanding such dismissal or conversion, remain binding on all parties in interest), (ii) the other rights granted by the Interim Order or this Final Order shall not be affected, and (iii) the Court shall retain jurisdiction, for the purposes of

enforcing the claims, liens and security interests referred to in this paragraph 19 and otherwise in the Interim Order or this Final Order.

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

(d) Except as expressly provided in the Interim Order, this Final Order or in the DIP Documents, the DIP Obligations, the DIP Liens, the DIP Superpriority Claims, the 507(b) Claims, the Adequate Protection Liens, and the Adequate Protection Obligations and all other rights and remedies of the DIP Agent, the DIP Lenders and the

Prepetition Secured Parties granted by the provisions of the Interim Order, this Final Order and the DIP Documents shall survive, and shall not be modified, impaired, or discharged by the entry of an order (i) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, dismissing any of the Chapter 11 Cases, terminating the joint administration of the Chapter 11 Cases or by any other act or omission, (ii) approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents), or (iii) confirming a chapter 11 plan in any of the Chapter 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Loan Parties have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of the Interim Order, this Final Order and the DIP Documents shall continue in the Chapter 11 Cases, in any successor cases if the Chapter 11 Cases cease to be jointly administered and in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Obligations, the DIP Liens, the DIP Superpriority Claims, the 507(b) Claims, the Adequate Protection Liens, and the Adequate Protection Obligations and all other rights and remedies of the DIP Secured Parties and the Prepetition Secured Parties granted by the provisions of the Interim Order, this Final Order and the DIP Documents shall continue in full force and effect until the DIP Obligations are indefeasibly paid in full in cash, as set forth herein and in the DIP Documents, and the Commitments have been terminated.

20. *Effect of Stipulations on Third Parties.*

(a) The Debtors' stipulations, admissions, agreements and releases contained in the Interim Order (other than releases with respect to the DIP Secured Party Releasees,

which releases are binding upon all parties upon entry of the Interim Order) and this Final Order shall be binding upon (i) the Debtors and their estates, in all circumstances and for all purposes and (ii) all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases (including the Committee) and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors, in all circumstances and for all purposes unless (A) such committee or any other party in interest (subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so), in each case, with standing granted by the Court, has timely filed an adversary proceeding (subject to the limitations contained herein, including, *inter alia*, in this paragraph 20) (1) objecting to or challenging the amount, validity, perfection, enforceability, priority, or extent of the Prepetition Secured Debt or the Prepetition Liens or (2) otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests, or defenses (collectively, a "**Challenge**") against the Prepetition Secured Parties or their respective subsidiaries, affiliates, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals and their respective successors and assigns thereof, in each case in their respective capacity as such (each, a "**Representative**" and, collectively, the "**Representatives**") in connection with matters related to any claims of the Debtors against the Prepetition Secured Parties, the Prepetition Loan Documents, the Prepetition Secured Debt, the Prepetition Liens, the

Prepetition Collateral, or otherwise, *provided* that all pleadings filed in connection with a Challenge shall set forth the basis for such challenge or claim, (B) such Challenge has been filed prior to the latest of (1) (Y) with respect to parties in interest (other than the Committee), July 31, 2019 and (Z) with respect to the Committee, August 14, 2019, (2) any such later date as has been agreed to, in writing, by the Prepetition Agent, and (3) any such later date as has been ordered by the Court for cause upon a motion filed and served within any applicable time period set forth in this paragraph 20 (the time period established by the foregoing clauses (1) through (3), the "**Challenge Period**"), provided, however, that if any of the Debtors' cases convert to a Chapter 7, or if a Chapter 11 trustee is appointed, *prior to* the expiration of the Challenge Period, the Challenge Period shall be extended for the Chapter 7 or Chapter 11 trustee to 40 days after their appointment; and (C) there is a final non-appealable order sustaining such Challenge in favor of the plaintiff in such timely filed adversary proceeding or contested matter. Any Challenge not so specified and filed prior to the expiration of the Challenge Period shall be deemed forever, waived, released, and barred.

(b) If no such Challenge is filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such proceeding, then (i) the Debtors' stipulations, admissions, agreements, and releases contained in the Interim Order and this Final Order shall be binding on all parties in interest, including, without limitation, the Committee, (ii) the obligations of the Loan Parties under the Prepetition Loan Documents, including the Prepetition Secured Debt, shall constitute allowed claims not subject to defense, claim, counterclaim, recharacterization, subordination, offset, or avoidance, for all purposes in the Chapter 11 Cases, and any subsequent chapter 7 case(s), (iii) the

Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens, not subject to recharacterization, subordination, avoidance, or other defense, (iv) the Prepetition Secured Debt and the Prepetition Liens shall not be subject to any other or further claim or challenge by the Committee, any non-statutory committees appointed or formed in the Chapter 11 Cases, any trustee or examiner with enlarged powers appointed or elected in any of the Chapter 11 Cases or any subsequent chapter 7 case of the Debtors or any other party in interest acting or seeking to act on behalf of the Debtors' estates, and (v) any defenses, claims, causes of action, counterclaims, and offsets by the Committee, any non-statutory committees appointed or formed in the Chapter 11 Cases, or any other party acting or seeking to act on behalf of the Debtors' estates, whether arising under the Bankruptcy Code or otherwise, against any of the Prepetition Secured Parties and their Representatives arising out of or relating to the any claims of the Debtors against the Prepetition Secured Parties, the Prepetition Loan Documents or otherwise shall be deemed forever waived, released, and barred. If any such Challenge is filed during the Challenge Period, the stipulations, admissions, agreements, and releases contained in the Interim Order and this Final Order shall nonetheless remain binding and preclusive (as provided in this subparagraph (b)) on the Committee, and on any other person or entity, except to the extent that such stipulations, admissions, agreements, and releases were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of the Court or any other court of competent jurisdiction. Nothing in the Interim Order or this Final Order vests or confers on any Person (as defined in the Bankruptcy Code), including the Committee, or any non-statutory committees appointed

or formed in the Chapter 11 Cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, Challenges with respect to the Prepetition Loan Documents, the Prepetition Secured Debt or the Prepetition Liens, or claims, counterclaims or causes of action of the Debtors against any Prepetition Secured Party.

(c) With respect to the Committee only, the filing by the Committee of a standing motion or other application (collectively, a "**Standing Motion**") for authority and/or standing to commence a Challenge accompanied with a copy of the proposed complaint (the "**Proposed Complaint**") which details the alleged Challenge which the Committee seeks to pursue shall automatically extend the Challenge Period for the Committee only (provided such Standing Motion and Proposed Complaint are filed on or before expiration of the Challenge Period for the Committee), solely with respect to the Challenges subject to such Standing Motion and Proposed Complaint. The timely filing by the Committee of a Standing Motion before expiration of the Challenge Period for the Committee shall automatically extend the Challenge Period for the Committee solely for the matters raised in the Proposed Complaint until the date that is the third business day after the Court issues a ruling on such Standing Motion. The Committee agrees that any hearing on the Standing Motion shall be held within fourteen (14) days of filing of the Standing Motion unless otherwise agreed in writing by the Debtors and the DIP Agent. The Committee shall not use the pendency of its Challenge Period or any Standing Motion as a basis for objecting to the Milestones with respect to the sale process set forth in the DIP Credit Agreement.

21. *Limitation on Use of DIP Financing Proceeds and Collateral.* Notwithstanding anything herein, in the Interim Order or in any other order entered by the Court to the contrary, no proceeds of the DIP Facility, DIP Collateral, Prepetition Collateral (including Cash Collateral), or the Carve-Out may be used (a) for Professional Fees incurred for (i) any litigation or threatened litigation (whether by contested matter, adversary proceeding, or otherwise, including any investigation in connection with litigation or threatened litigation) against any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties or for the purpose of objecting to or challenging the validity, perfection, enforceability, extent, amount or priority of any claim, lien, or security interest held or asserted by any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties or (ii) asserting any defense, claim, cause of action, counterclaim, or offset with respect to the DIP Obligations, the Prepetition Secured Debt (including, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise), the DIP Liens, or the Prepetition Liens or against any of the Prepetition Secured Parties or their respective Representatives, (b) to prevent, hinder, or otherwise delay any of the DIP Agent's or the Prepetition Secured Parties' assertion, enforcement, or realization on the Prepetition Collateral or the DIP Collateral in accordance with the DIP Documents, the Prepetition Loan Documents, the Interim Order or this Final Order other than to seek a determination that an Event of Default has not occurred or is not continuing, or in connection with a remedies hearing, (c) to seek to modify any of the rights granted to the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties under the Interim Order, this Final Order or under the DIP Documents or the Prepetition Loan Documents, in each of the foregoing cases without such parties' prior written consent, which may be given or withheld by such party in the exercise of its respective sole discretion, or (d) to

pay any amount on account of any claims arising prior to the Petition Date unless such payments are approved by an order of the Court (including, without limitation, hereunder); *provided* that notwithstanding anything to the contrary in the Interim Order or this Final Order, the Committee, may use the proceeds of the DIP Collateral (including Cash Collateral), and/or the Carve-Out to investigate (but not prosecute or initiate the prosecution of, including the preparation of any complaint or motion on account of) prior to (but not after) the delivery of a Carve-Out Trigger Notice, (y) the claims and liens of the Prepetition Secured Parties, and (z) potential claims, counterclaims, causes of action, or defenses against the Prepetition Secured Parties; *provided further* that no more than an aggregate of $300,000 of the proceeds of the DIP Collateral (including Cash Collateral) and/or the Carve-Out may be used by the Committee, in respect of the investigations set forth in the preceding proviso (the "**Investigation Budget**").

22. *Binding Effect; Successors and Assigns*. The DIP Documents and the provisions of the Interim Order and this Final Order, including all findings therein and herein, shall be binding upon all parties in interest in the Chapter 11 Cases, including, without limitation, the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, the Committee, any non-statutory committees appointed or formed in the Chapter 11 Cases, the Debtors, and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, the Debtors, and their respective successors and assigns; *provided* that the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties shall have no obligation to permit the use of the DIP Collateral or

Prepetition Collateral (including Cash Collateral) or to extend any financing to any chapter 7 trustee, chapter 11 trustee, or similar responsible person appointed for the estates of the Debtors.

23. *Limitation of Liability.* In determining to make any loan or other extension of credit under the DIP Credit Agreement, to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to the Interim Order, this Final Order or the DIP Documents, the DIP Agent and the DIP Lenders (and the Prepetition Secured Parties in respect of the use of Cash Collateral) shall not (a) be deemed to be in "control" of the operations of the Debtors, (b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates, or (c) be deemed to be acting as a "Responsible Person," "Owner," or "Operator" with respect to the operation or management of the Debtors, so long as the DIP Agent's and the DIP Lenders' actions do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a vessel or facility owned or operated by a Debtor, or otherwise cause liability to arise to the federal or state government or the status of "responsible person" or "managing agent" to exist under applicable law (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute).

24. *Inapplicability of Bar Date; Master Proof of Claim.* Any order entered by the Court establishing a bar date for any claims (including, without limitation, administrative claims) in any of the Chapter 11 Cases or any subsequent chapter 7 case of any of the Debtors shall not apply to any DIP Secured Party or any Prepetition Secured Party. The DIP Secured Parties and the Prepetition Secured Parties shall not be required to file proofs of claim or requests for allowance and payment of administrative expenses authorized by the Interim Order or this Final

Order in any of the Chapter 11 Cases or any subsequent chapter 7 case of any of the Debtors. The provisions of the Interim Order or this Final Order relating to the amount and/or priority of the DIP Loans, the Prepetition Secured Debt, the Adequate Protection Claims, the Adequate Protection Liens, any Adequate Protection Obligations pursuant to the Interim Order or this Final Order, the Prepetition Liens, the DIP Liens, the DIP Superpriority Claims and the Adequate Protection Liens shall constitute a sufficient and timely filed proof of claim and/or administrative expense request in respect of such obligations and such secured status. However, in order to facilitate the processing of claims, to ease the burden upon the Court, and to reduce an unnecessary expense to the Debtors' estates, the Prepetition Agent is authorized to, but not required to, file in the Debtors' lead Chapter 11 Case *In re EdgeMarc Energy Holdings, LLC, et al.,* Case No. 19-11104 (BLS), a single, master proof of claim on behalf of the Prepetition Secured Parties, on account of any and all of their respective claims arising under the applicable Prepetition Loan Documents and hereunder (each, a "**Master Proof of Claim**") applicable against each of the Debtors. Upon the filing of a Master Proof of Claim, the Prepetition Agent and the Prepetition Secured Parties, and each of their respective successors and assigns, shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against each of the Debtors of any type or nature whatsoever with respect to the applicable Prepetition Loan Documents, and the claim of each Prepetition Secured Party (and each of its respective successors and assigns), named in a Master Proof of Claim shall be treated as if such entity had filed a separate proof of claim in each of the Chapter 11 Cases. The Master Proofs of Claim shall not be required to identify whether any Prepetition Secured Party acquired its claim from another party and the identity of any such party or to be amended to reflect a change in the holders of the claims set forth therein or a reallocation among such holders of the

claims asserted therein resulting from the transfer of all or any portion of such claims. Nothing in the Interim Order or this Final Order shall waive the right of any DIP Secured Party or any Prepetition Secured Party to file its own proof of claim against any of the Debtors. The provisions of this paragraph 24 and each Master Proof of Claim are intended solely for the purpose of administrative convenience and shall not affect the right of each Prepetition Secured Party (or its successors in interest) to vote separately on any plan proposed in the Chapter 11 Cases. The Master Proofs of Claim shall not be required to attach any instruments, agreements, or other documents evidencing the obligations owing by each of the Debtors to the applicable Prepetition Secured Parties, which instruments, agreements, or other documents will be provided upon reasonable written request to counsel to the Prepetition Agent.

25. *Insurance*. To the extent that the Prepetition Agent or any Prepetition Lender is listed as loss payee or additional insured under any of the Borrower's or Guarantors' insurance policies, the DIP Agent is also deemed to be the loss payee or additional insured, as applicable, under such insurance policies and shall act in that capacity and distribute any proceeds recovered or received in respect of any such insurance policies, *first*, to the payment in full of the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted), and *second*, to the payment of the applicable Prepetition Secured Debt.

26. *Approved Budget Reservation of Rights*. The Court may change the allocation of the fees and expenses of the Debtors' professionals, the Committee's professionals and the DIP Lenders' professionals provided for in the Approved Budget (and as stated on the record at the Final Hearing), either sua sponte or at the request of the Debtors and/or the Committee, and the rights of the DIP Agent, Debtors and Committee with respect to any change or any requested change to such allocation of fees and expenses are reserved.

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

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

29. *Payments Held in Trust for the DIP Agent and DIP Lenders*. Except as expressly permitted in the Interim Order, this Final Order or the DIP Documents, in the event that any person or entity receives any payment on account of a security interest in DIP Collateral, receives any DIP Collateral or any proceeds of DIP Collateral, or receives any other payment with respect thereto from any other source prior to indefeasible payment in full in cash of all DIP Obligations under the DIP Documents, and termination of the Commitments in accordance with the DIP Documents, such person, or entity shall be deemed to have received, and shall hold, such payment or proceeds of DIP Collateral in trust for the benefit of the DIP Agent and the DIP Lenders and shall immediately turn over such proceeds to the DIP Agent, or as otherwise instructed by the Court, for application in accordance with the DIP Documents and this Final Order.

30. *Disposition of DIP Collateral.* Unless the DIP Obligations and the Prepetition Secured Debt are indefeasibly paid in full, in cash, upon the closing of a sale or other disposition of the DIP Collateral or Prepetition Collateral, the Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral or any Prepetition Collateral

(or enter into any binding agreement to do so) (other than (x) the sale of crude oil, natural gas, or other hydrocarbons in the ordinary course of business, (y) other transactions permitted under the DIP Documents or (z) transactions for an aggregate consideration of less than $500,000) without the prior written consent of the DIP Agent and, solely with respect to the Prepetition Collateral, the Prepetition Agent, in each case such consent not to be unreasonably withheld (and no such consent shall be implied from any other action, inaction, or acquiescence by any DIP Secured Party or Prepetition Secured Party or any order of this Court), except as permitted in the DIP Documents and/or the Prepetition Loan Documents, as applicable, and/or the Interim Order. Except to the extent otherwise expressly provided in the DIP Documents or the Interim Order and subject to the Carve-Out, all proceeds from the sale, transfer, lease, encumbrance, or other disposition of any DIP Collateral (other than the sale of crude oil, natural gas, or other hydrocarbons in the ordinary course of business) shall be remitted to the DIP Agent for application to the DIP Obligations and then to the Prepetition Secured Debt, in each case, in accordance with the terms of the Interim Order and the DIP Documents or the Prepetition Loan Documents, as the case may be.

31. *Credit Bidding.* The DIP Secured Parties shall have the right to credit bid, in accordance with the DIP Documents and subject to the Carve-Out, up to the full amount of the DIP Obligations in any sale of the Prepetition Collateral, in each case pursuant to section 363(k) of the Bankruptcy Code and subject to any successful Challenge regarding the DIP Roll-Up Loans, without the need for further Court order authorizing the same and whether any such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code or otherwise. Subject to paragraph 20 hereof and section 363(k) of the Bankruptcy Code, each of the Prepetition Secured Parties shall have the

right to credit bid up to the full amount of the applicable Prepetition Secured Debt. The Debtors shall pay the fees and expenses of the DIP Secured Parties and Prepetition Secured Parties in connection with any such credit bid, subject to the procedures set forth in paragraph 12 hereof.

32. *No Marshalling.* In no event shall the DIP Secured Parties or the Prepetition Secured Parties be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral or Prepetition Collateral, *provided* that the DIP Secured Parties shall first satisfy the DIP Obligations from the Proceeds of DIP Collateral other than Avoidance Proceeds and the proceeds of estate claims (including, but not limited to claims against ETC Northeast Pipeline LLC and its affiliates) (the "**Potential Estate Claims**") before satisfying the DIP Obligations from Avoidance Proceeds and the proceeds of Potential Estate Claims, *provided further* the foregoing limited marshalling in this sentence shall not apply to the Potential Estate Claims if such Potential Estate Claims are determined to be Prepetition Collateral . For the avoidance of doubt, whether or not a Potential Estate Claim constitutes Prepetition Collateral is not an issue subject to the Challenge provisions contained in this Final Order. The DIP Secured Parties and the Prepetition Secured Parties are entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the "equities of the case" exception shall not apply.

33. *Reporting.* The Committee shall be entitled to receive copies of any financial or other reports required to be prepared by the Debtors pursuant to the DIP Credit Agreement within one (1) business day of delivery by the Debtors of such reports to the DIP Agent.

34. *Reservation of rights for Anchor Drilling Fluids USA, LLC and B&L Pipeco Services, Inc., and Phoenix Technology Services USA, Inc.* Nothing in this Final Order is intended to change or otherwise modify the prepetition priority of the statutory liens and all other rights and/or claims of Anchor Drilling Fluids USA, LLC ("**Anchor**"), B&L Pipeco Services,

Inc. ("**B&L Pipeco**") or Phoenix Technology Services USA, Inc. ("**Phoenix**"), all of which rights are hereby expressly preserved. To the extent Anchor, B&L Pipeco or Phoenix has a valid, enforceable, nonavoidable and perfected, including as permitted by section 546(b) of the Bankruptcy Code, prepetition Lien on any DIP Collateral and such Lien is junior in priority to the Prepetition Liens, Anchor, B&L Pipeco and Phoenix reserve their rights and nothing in this Final Order limits their rights, to request adequate protection equal to the diminution in value (if any) of Anchor, B&L Pipeco or Phoenix's interest in such collateral and without prejudice to the right of the Debtors or any other party in interest to contest such request; *provided, however*, that in connection with any such request and any determination of whether adequate protection should be awarded, Anchor, B&L Pipeco and Phoenix shall not be prejudiced by anything in this Final Order nor shall this Final Order prevent or otherwise prejudice Anchor, B&L Pipeco or Phoenix's rights to seek the equitable remedy of "marshalling" or any similar remedy or doctrine with respect to the DIP Collateral or the Prepetition Collateral, with the Debtors, DIP Agent and any other party in interest reserving their rights regarding same. For the avoidance of doubt, any lien of Anchor, B&L Pipeco or Phoenix that is not a Permitted Prior Lien is being primed pursuant to this Final Order.

35. *Reservation of Rights for U.S. Specialty Insurance Company.* Notwithstanding anything in the Interim Order or this Final Order to the contrary, nothing in this Final Order shall in any way affect the rights of U.S. Specialty Insurance Company or its past, present or future parents, subsidiaries or affiliates (the "Surety") as to (a) any funds it is holding and/or being held for it, whether in trust, as security or otherwise; (b) any substitutions or replacements of said funds including accretions to and interest earned on said funds; and (c) any letters of credit related to any indemnity, collateral trust, bond or related agreements between the Surety and any

of the Debtors (collectively, (a) to (c), the "Surety Assets") and all rights of the Debtors, the DIP Agent, and the Prepetition Agent and Committee are expressly reserved and preserved regarding same. Nothing in the Interim Order or this Final Order shall affect the rights of the Surety under any current and future indemnity, collateral trust, or related agreements between or involving any of the Debtors as to the Surety Assets or otherwise and the Debtors, Prepetition Agent, DIP Agent and Committee reserve all rights regarding same. In addition, nothing in the Interim Order or this Final Order shall prime or otherwise impact: (x) current or future setoff and/or recoupment rights and/or the lien rights of the Surety (to the extent the Surety is a holder of Permitted Prior Lien) or of any party to whose rights the Surety has or may become subrogated (to the extent such rights would qualify as a Permitted Prior Lien, including if and to the extent such rights are granted priming lien status or other priming status under applicable law); and/or (y) any existing or future subrogation or other common law rights of the Surety, and the Debtors, Prepetition Agent, DIP Agent and Committee reserve all of their rights. In addition, notwithstanding anything in this Final Order to the contrary, the rights, claims and defenses of the Debtors and of the Surety, including, but not limited to, the Surety's rights under any properly perfected liens and claims and/or claim for equitable rights of subrogration, and the rights of the Debtors, the DIP Agent, the Prepetition Agent and the Committee to object to any such liens, claims and/or equitable subrogation or other rights are fully preserved. Nothing herein is an admission by the Surety or the Debtors, or a determination by the Bankruptcy Court, regarding any claims under any bonds, and the Surety, Debtors, the Prepetition Agent, the DIP Agent and the Committee reserve any and all rights, remedies and defenses in connection therewith.

36. *Reservation of Rights of Eureka Midstream, LLC f/k/a Eureka Hunter Pipeline, LLC and EQM Gathering OPCO, LLC.* Nothing in this Final Order or the DIP Documents is intended to, or shall have the effect of voiding, changing or otherwise modifying (i) the terms of the contract provisions of the GGSA (as defined below) or (ii) the rights of any parties-in-interest with respect to a dedication interest or covenants created by or arising under a gas gathering contract or other real property interest under applicable law, and all parties' rights shall be reserved with respect to the foregoing. Nothing included in the DIP Documents or this Final Order shall be deemed to be a determination of the validity, nature, extent, perfection, priority, avoidability, enforceability or effectiveness of any right, including contractual rights and rights of set-off and recoupment, covenants, claims, liens, interest or benefits that Eureka Midstream, LLC f/k/a Eureka Hunter Pipeline, LLC and EQM Gathering OPCO, LLC or any of their affiliates (collectively, "Eureka"), including, but not limited to, those (if any) that were granted to Eureka pursuant to (a) that certain Gas Gathering Services Agreement between EM Energy Ohio, LLC and Eureka Hunter Pipeline, LLC, dated March 27, 2015 (the "GGSA") (b) any other agreement or contract between or among Eureka and any Debtor or (c) any state or federal law, and all parties' claims, defenses and rights shall be reserved with respect to the foregoing.

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

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

39. *Retention of Jurisdiction.* The Court shall retain jurisdiction to implement, interpret and enforce the provisions of the Interim Order, and this retention of jurisdiction shall

survive the confirmation and consummation of any chapter 11 plan for any one or more of the Debtors.

40. *Inconsistency.* In the event of any inconsistency between the terms and conditions of the DIP Documents, the Interim Order or this Final Order, the provisions of this Final Order shall govern and control.

41. The Debtors shall promptly serve copies of this Final Order on the parties having been given notice of the Final Hearing, including the Debtors' largest 20 unsecured creditors on a consolidated basis, as well as all parties known to the Debtors to be asserting liens against or security interest in, any of the Prepetition Collateral, DIP Collateral or reclamation claims; the Internal Revenue Service; all state taxing authorities in the states in which the Debtors have any tax liabilities; the Environmental Protection Agency and state environmental regulatory authorities in the states in which the Debtors operate, and any other federal or state regulatory authorities governing the Debtors' industry; the U.S. Attorney's Office; the Delaware Attorney General; the United States Trustee; to any party that has filed a request for notices with the Court; and to the Committee after the same has been appointed, or such Committee's counsel, if the same shall have been appointed.

Dated: June 18, 2019
Wilmington, Delaware

JUDGE BRENDAN LINEHAN SHANNON
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Conformed version including
First Amendment dated ____ , 2019

SENIOR SECURED SUPERPRIORITY
DEBTOR-IN-POSSESSION CREDIT AGREEMENT

Dated as of May 15, 2019

among

EM ENERGY EMPLOYER, LLC
as the Borrower,

The Several Lenders
from Time to Time Parties Hereto,

and

KEYBANK, NATIONAL ASSOCIATION,
as Administrative Agent and Letter of Credit Issuer,

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THIS SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT, dated as of May 15, 2019, among EM Energy Employer, LLC, a Delaware limited liability company (the "Borrower") (such terms and each other capitalized term used but not defined in this preamble having the meaning provided in Section 1), the financial institutions and other lending institutions from time to time parties as lenders hereto (each a "Lender" and, collectively, the "Lenders"), KeyBank, National Association, as Administrative Agent.

WHEREAS, the Borrower, KeyBank, National Association, as arranger and administrative agent (the "Existing Administrative Agent") and the lenders party thereto have heretofore entered into that certain Amended and Restated Credit Agreement dated as of December 19, 2017 (as amended from time to time, the "Existing Credit Agreement");

WHEREAS, on May 15, 2019 (the "Petition Date"), the Borrower and the Guarantors commenced Chapter 11 case numbers [___] through [___], as jointly administered for procedural purposes at Chapter 11 case number [__] (each a "Case" and collectively, the "Cases") by filing with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C.§§ 101 et seq., and have continued to operate their business as debtors-in-possession pursuant to Sections 1107 and 1108 thereof[1];

WHEREAS, the Borrower has requested and the Lenders have agreed to make secured term loans to the Borrower consisting of a priming, super-priority debtor-in-possession secured delayed draw credit facility in the aggregate principal amount not to exceed $107,793,041 which shall consist of (x) $30,000,000 of New-Money Loans and (y) subject to entry of the Final DIP Order, $77,793,041 of Roll-Up Loans, subject to this Agreement and, when entered, the Interim DIP Order, or the Final DIP Order (each as defined herein), as applicable; and

WHEREAS, the Lenders are willing to extend such credit to the Borrower under this Agreement upon the terms and subject to the conditions set forth in this Agreement and the Interim DIP Order or the Final DIP Order, as applicable.

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

SECTION 1.
DEFINITIONS

1.1 Defined Terms.

(a) As used herein, the following terms shall have the meanings specified in this Section 1.1 unless the context otherwise requires (it being understood that defined terms in this Agreement shall include in the singular number the plural and in the plural the singular):

"ABR" shall mean for any day a fluctuating rate per annum equal to the rate of interest in effect for such day as publicly announced from time to time by the Administrative Agent as its "prime rate". The "prime rate" is a rate set by the Administrative Agent based upon various factors, including the Administrative Agent's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in the ABR due to a change in such rate announced by the Administrative Agent in the

[1] Case numbers to be confirmed.

Federal Funds Effective Rate shall take effect at the opening of business on the day specified in the public announcement of such change.

"ABR Loan" shall mean each Loan bearing interest based on the ABR.

"Acceptable Bid Procedures" means bid procedures consistent with the Milestones and otherwise in form and substance reasonably satisfactory to the Administrative Agent, it being understood and agreed that the form of bid procedures attached to the "stalking horse" asset purchase agreement and provided to the Administrative Agent prior to the date hereof are Acceptable Bid Procedures.

"Acceptable Bid Procedures Order" means an order of the Bankruptcy Court approving the Acceptable Bid Procedures in form and substance reasonably satisfactory to the Administrative Agent, including the designation of a stalking horse bidder (or a designee thereof) as the "stalking horse" purchaser with a cash bid sufficient to satisfy the Minimum Repayment Condition, it being understood and agreed that the form of bid procedures order attached to the "stalking horse" asset purchase agreement and provided to the Administrative Agent prior to the date hereof is an Acceptable Bid Procedures Order.

"Acceptable Plan" means a Chapter 11 Plan in form and substance satisfactory to the Administrative Agent as to the treatment of claims arising under this Agreement and under the Existing Credit Agreement, and otherwise in form and substance satisfactory to the Administrative Agent, it being understood and agreed that to the extent Chapter 11 Plan proposes to indefeasibly pay in full, in cash the Existing Obligations and the Obligations, the consent rights of Administrative Agent shall be limited to reasonable satisfaction with customary release provisions.

"Acceptable Sale Order" means an order approving the Sale Transaction in form and substance reasonably satisfactory to the Administrative Agent that provides for the payment of (i) allowed post-petition claims related to the operation of the Credit Parties' assets through the closing of any proposed sale; and (ii) any post-closing adjustments required to be paid by the Credit Parties with respect to the sale approved by such order, it being understood and agreed that (x) any such Sale Transaction (including, if assets are to be sold in multiple packages, all proposed sales consistent with the Bidding Procedures) must provide for the payment to the Administrative Agent at closing of the Sale Transaction in cash in an amount that satisfies the Minimum Repayment Condition to be an "Acceptable Sale Order" and (y) the form of sale order attached to the "stalking horse" asset purchase agreement and provided to the Administrative Agent prior to the date hereof is an Acceptable Sale Order.

"Additional New-Money Loans" means the total amount remaining of the New-Money Commitment less the amount of the Initial New-Money Loan prior to the Availability Period

"Adequate Protection Liens" means the Liens granted to the Existing Administrative Agent, and the Existing Lenders, as further set forth in the DIP Orders.

"Adequate Protection Payments" means (i) payment or reimbursement on a monthly basis of the Professional Fees (including legal and financial adviser (if any) fees and expenses) of the Existing Administrative Agent, the Existing Lenders, the Administrative Agent and the Lenders to the extent set forth in this Agreement and in the Existing Credit Agreement, as applicable, including any unpaid amounts incurred prior to the Petition Date and (ii) any amounts paid to the Existing Administrative Agent and the Existing Lenders as adequate protection, including any periodic cash payments consistent with the Approved Budget.

"Administrative Agent" shall mean KeyBank, National Association, as the administrative agent for the Lenders under this Agreement and the other Credit Documents, or any successor administrative agent appointed in accordance with the provisions of Section 12.9.

"Administrative Agent's Office" shall mean the Administrative Agent's address and, as appropriate, account as set forth on Schedule 13.2, or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

"Administrative Questionnaire" shall mean, for each Lender, an administrative questionnaire in a form approved by the Administrative Agent.

"Affiliate" shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with such Person. A Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise. "Controlling" ("controlling") and "controlled" shall have meanings correlative thereto.

"Agreement" shall mean this Senior Secured Superpriority Debtor In Possession Credit Agreement, as the same may be amended, amended and restated, supplemented or modified from time to time.

"Anti-Corruption Laws" shall mean all laws, rules, and regulations of any jurisdiction applicable to the Credit Parties from time to time concerning or relating to bribery or corruption.

"Applicable Margin" shall mean, for any day, with respect to any (a) Roll-Up Loan, the rate *per annum* equal to (i) five and one-half percent (5.50%) prior to the Availability Period, and (ii) five and one-quarter of one percent (5.25%) during the Availability Period, and (b) New-Money Loan, the rate *per annum* equal to (i) five and three-quarters percent (5.75%) prior to the Availability Period, and (ii) five and one-quarter of one percent (5.25%) during the Availability Period.

"Approved Budget" means, initially, the 13 week rolling cash flow forecast attached hereto as Exhibit F and, subsequently, each budget delivered and approved in accordance with Section 9.1(n) hereof. The Approved Budget shall have been certified by a Financial Officer of the Borrower, which certifications, shall among other things, certify that the projections contained therein have been prepared in good faith based upon assumptions believed by the Credit Parties to be reasonable at the time made, and that such projections contain no statements or conclusions which are based upon or include information known to the Credit Parties to be misleading in any material respect or which fail to take into account material information known to the Credit Parties regarding the matters reported therein.

"Approved Counterparty" means (a) any Hedge Bank and (b) any other Person that engages in the ordinary course of its operations in the business of offering Hedge Agreements if, at the time such Person enters into a Hedge Agreement with any Credit Party, such Person or its credit support provider has a long term senior unsecured debt rating of at least "BBB-" by S&P, and at least "Baa3" by Moody's.

"Approved Fund" shall mean any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Approved Petroleum Engineers" shall mean (a) Netherland, Sewell & Associates, Inc., (b) Ryder Scott Company Petroleum Consultants, L.P., and (c) at the Borrower's option, any other independent petroleum engineers selected by the Borrower and reasonably acceptable to the Administrative Agent.

"Approved Purposes" shall have the meaning provided in Section 9.12.

"Assignment and Acceptance" shall mean an assignment and acceptance substantially in the form of Exhibit D or such other form as may be approved by the Administrative Agent.

"Auction" means an auction in connection with the Sale Transaction if there is more than one qualified bidder in accordance with the Acceptable Bid Procedures.

"Authorized Officer" shall mean as to the Borrower or any other Credit Party, the Chairman of the Board, the President, the Chief Executive Officer, the Chief Financial Officer, the Chief Operations Officer, the Treasurer, any manager, managing member or general partner of such Person and, solely for purposes of notices given pursuant to Section 2, Section 3, Section 4 and Section 5, any other officer of the applicable Person so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Person designated in or pursuant to an agreement between the applicable Person and the Administrative Agent. Any document delivered hereunder that is signed by an Authorized Officer shall be conclusively presumed to have been authorized by all necessary corporate, limited liability company, partnership and/or other action on the part of the Borrower or any other Credit Party and such Authorized Officer shall be conclusively presumed to have acted on behalf of such Person.

"Availability Period" means the period from and including initial date on which the conditions specified in Section 7 are satisfied or waived in accordance with Section 7 to the earlier of the Termination Date and the draw schedule set forth under the Approved Budget.

"Avoidance Action" shall have the meaning provided in Section 6.2(b).

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

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

"Bank Price Deck" shall mean the Administrative Agent's forward curve for each of oil, natural gas and other Hydrocarbons, as applicable, furnished to the Borrower by the Administrative Agent from time to time in accordance with the terms of this Agreement.

"Bankruptcy Code" shall mean Title 11 of the United States Code, as previously and hereafter amended, and codified as 11 U.S.C. Section 101, et seq.

"Bankruptcy Court" has the meaning set forth in the Recitals.

"Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure and local rules of the Bankruptcy Court, each as amended, and applicable to the Cases.

"Benefit Plan" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in Section 4975 of the Code, or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"Benefited Lender" shall have the meaning provided in Section 13.8.

"Board" shall mean the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Board of Directors" shall mean, with respect to any Credit Party, its board of directors or similar governing body.

"Borrower" shall have the meaning provided in the introductory paragraph hereto.

"Borrowing" shall mean the incurrence of one Class of Loan on a given date.

"Business Day" shall mean any day excluding Saturday, Sunday and any other day on which banking institutions in New York City are authorized by law or other governmental actions to close.

"Capital Expenditures" shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capital Leases) by the Borrower and the Guarantors during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on a consolidated statement of cash flows of the Borrower and its Subsidiaries.

"Capital Lease" shall mean, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is, or is required to be, accounted for as a capital lease on the balance sheet of that Person; provided that leases that are re-characterized as Capital Leases due to a change in GAAP after the Closing Date shall not be treated as Capital Leases for any purpose under this Agreement but shall instead be treated as they would have been in accordance with GAAP in effect on the Closing Date.

"Capitalized Lease Obligations" shall mean, as applied to any Person, all obligations under Capital Leases of such Person or any of its Subsidiaries, in each case taken at the amount thereof accounted for as liabilities in accordance with GAAP; provided that obligations that are re-characterized as Capital Lease Obligations due to a change in GAAP after the Closing Date shall not be treated as Capital Lease Obligations for any purpose under this Agreement but shall instead be treated as they would have been in accordance with GAAP as in effect on the Closing Date.

"Carve-Out" has the meaning assigned to such term in the DIP Orders.

"Carve-Out Reserve" has the meaning assigned to such term in the DIP Orders.

"Carve-Out Trigger Notice" has the meaning assigned to such term in the DIP Orders.

"Cases" has the meaning set forth in the Recitals.

"Cash Collateral" means all cash and cash equivalents of the Credit Parties, including, but not limited to, all cash and cash equivalents in the Cash Collateral Account and all other "cash collateral" as defined in Section 363(a) of the Bankruptcy Code, but excluding any cash in the Carve-Out Reserve (as set forth in the DIP Orders).

"Cash Collateral Account" means, in respect of the Credit Parties one or more deposit accounts maintained with KeyBank National Association in accordance with this Agreement (including, for the avoidance of doubt, any lockboxes or similar accounts, any related securities accounts and any accounts

holding cash equivalents), and with respect to which the Secured Parties shall have a perfected DIP Lien as security for the payment and performance of the Obligations by virtue of, and having priority set forth in, the DIP Orders.

"Cash Collateralize" shall have the meaning provided in Section 3.8(c).

"Cash Management Agreement" shall mean the Existing Cash Management Agreements and any other agreement entered into from time to time by the Borrower or any of the Borrower's Subsidiaries in connection with Cash Management Services for collections, other Cash Management Services and for operating, payroll and trust accounts of such Person, including automatic clearing house services, controlled disbursement services, electronic funds transfer services, lockbox services, stop payment services and wire transfer services.

"Cash Management Bank" shall mean any Person that either (a) at the time it provides Cash Management Services, (b) on the Closing Date or (c) at any time after it has provided any Cash Management Services, is the Administrative Agent, a Lender or an Affiliate of a the Administrative Agent or Lender.

"Cash Management Obligations" shall mean obligations owed by a Credit Party to any Cash Management Bank in connection with, or in respect of, any Cash Management Services.

"Cash Management Services" shall mean (a) commercial credit cards, merchant card services, purchase or debit cards, including non-card e-payables services, (b) treasury management services (including controlled disbursement, overdraft, automated clearing house fund transfer services, return items and interstate depository network services) and (c) any other demand deposit or operating account relationships or other cash management services, including any Cash Management Agreement.

"Casualty Event" shall mean, with respect to any Collateral, (a) any damage to, destruction of, or other casualty or loss involving, any property or asset or (b) any seizure, condemnation, confiscation or taking under the power of eminent domain of, or any requisition of title or use of, or relating to, or any similar event in respect of, any property or asset.

"CFC" shall mean a "controlled foreign corporation" within the meaning of Section 957 of the Code.

"Change in Law" shall mean the occurrence after the date of this Agreement of any of the following: (a) the adoption of any law, treaty, order, policy, rule or regulation after the Closing Date, (b) any change in any law, treaty, order, policy, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c) compliance by any Lender or a Letter of Credit Issuer (or, for purposes of Section 2.10, by any lending office of such Lender or by such Lender's or the Letter of Credit Issuer's holding company, if any) with any guideline, request, directive or order enacted or promulgated after the Closing Date by any central bank or other Governmental Authority (whether or not having the force of law); provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines, directives, orders, rules and regulations adopted, enacted or promulgated by the Bank for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to have gone into effect after the Closing Date regardless of the date adopted, enacted or promulgated and shall be included as a Change in Law only to the extent a Lender is imposing applicable increased costs or costs in connection with capital adequacy and liquidity requirements similar to those

described in Section 2.10(c) generally on other borrowers of loans under United States reserve-based credit facilities.

"Change of Control" shall mean that any one or more of the following has occurred: (a) the Permitted Investors cease to (i) own or control, directly or indirectly, more than 50% of aggregate issued and outstanding Voting Stock or limited liability company membership interests in the Borrower and (ii) control, directly or indirectly, at least a majority of the voting power on the Board of Directors of the Borrower, or (b) the Borrower ceases to be directly or indirectly wholly-owned by EdgeMarc Energy Holdings, LLC and EM Energy Manager, LLC.

"Chapter 11 Plan" means a plan of reorganization or liquidation with respect to any of the Credit Parties.

"Class" refers to whether such Loan, or the Loans comprising such Borrowing are New-Money Loans or Roll-Up Loans and when used in reference to any Commitment, refers to whether such Commitment is a New-Money Commitment or a Roll-Up Loan Commitment, and when used in reference to any Lender, refers to whether such Lender has a Loan or Commitment of such Class.

"Closing Date" shall mean May 15, 2019.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated thereunder. Section references to the Code are to the Code, as in effect at the Closing Date.

"Collateral" shall mean all property pledged or purported to be pledged pursuant to this Agreement, the other Credit Documents, the Existing Credit Documents and the DIP Orders. The term "Collateral" shall include, but not be limited to, Oil and Gas Properties and any other property or asset of any kind whether real, personal or mixed, tangible or intangible.

"Commitment" means, with respect to each Lender (to the extent applicable), such Lender's New-Money Commitment, Roll-Up Loan Commitment or any combination thereof (as the context requires). As of the Closing Date, the aggregate amount of the Commitments is $107,793,041.

"Commitment Percentage" shall mean, at any time, for each Lender, the percentage obtained by dividing (a) such Lender's Commitment at such time by (b) the amount of the Total Commitment at such time; provided that at any time when the Total Commitment shall have been terminated, each Lender's Commitment Percentage shall be the percentage obtained by dividing (i) such Lender's Total Exposure at such time by (ii) the aggregate Total Exposures of all Lenders at such time.

"Committee" means an official creditors' committee of creditors holding unsecured claims appointed by the Office of the United States Trustee for the District of Delaware in respect of the Cases pursuant to Section 1102(a) of the Bankruptcy Code.

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

"Confidential Information" shall have the meaning provided in Section 13.16.

"Confirmation Order" means an order of the Bankruptcy Court, in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders, confirming an Acceptable Plan.

"Contractual Requirement" shall have the meaning provided in Section 8.3.

"Credit Documents" shall mean this Agreement, the Guarantee, the Security Documents and any promissory notes issued by the Borrower under this Agreement and, on and after the Final Order Entry Date, each Letter of Credit.

"Credit Event" shall mean and include the making of a Loan and the issuance of a Letter of Credit.

"Credit Party" shall mean each of the Borrower and each Guarantor.

"Default" shall mean any event, act or condition that with notice or lapse of time, or both, would constitute an Event of Default.

"Default Rate" shall have the meaning provided in Section 2.8(b).

"Defaulting Lender" shall mean any Lender whose acts or failure to act, whether directly or indirectly, causes it to meet any part of the definition of "Lender Default".

"Deposit Account" shall have the meaning ascribed thereto in the UCC.

"DIP Default Notice Period" shall have the meaning provided in Section 11.2.

"DIP Liens" means all Liens on and security interests in the Collateral granted to the Administrative Agent and each of the Lenders pursuant to this Agreement, the other Credit Documents and the DIP Orders.

"DIP Orders" means the Final DIP Order and/or the Interim DIP Order, as the context requires.

"Disposition" shall have the meaning provided in Section 10.4. "Dispose" shall have a correlative meaning.

"Disqualified Institution" shall mean (i) those Persons that have been specified in writing by the Borrower to the Administrative Agent prior to the Closing Date and (ii) any competitor of the Borrower and its Subsidiaries and any Affiliates of such competitor subsequently identified after the Closing Date in writing to the Administrative Agent by the Borrower, in each case other than any such Affiliate that is a bona fide debt fund that extends credit or buys loans in the ordinary course of business, which designations shall not apply retroactively to disqualify any Persons that have previously acquired an assignment or participation interest in the Loans.

"Disqualified Stock" shall mean, with respect to any Person, any Stock or Stock Equivalents of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is putable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than solely for Stock or Stock Equivalents that is not Disqualified Stock), pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than as a result of a change of control or asset sale to the extent the terms of such Stock or Stock Equivalents provide that such Stock or Stock Equivalents shall not be required to be repurchased or redeemed until the Maturity Date has occurred or such repurchase or redemption is otherwise permitted by this Agreement (including as a result of a waiver hereunder)), in whole or in part, in each case prior to the date that is 91 days after the Maturity Date hereunder; provided that, if such Stock or Stock Equivalents are issued to any plan for the benefit of employees of a Credit Party or by any such plan to such employees, such Stock or Stock

Equivalents shall not constitute Disqualified Stock solely because it may be required to be repurchased by a Credit Party in order to satisfy applicable statutory or regulatory obligations; provided, further, that any Stock or Stock Equivalents held by any future, present or former employee, director, manager or consultant of the Borrower, any of its Subsidiaries or any of its direct or indirect parent companies or any other entity in which the Borrower or a Guarantor has an Investment and is designated in good faith as an "affiliate" by the Board of Directors of the Borrower, in each case pursuant to any equity holders' agreement, management equity plan or stock incentive plan or any other management or employee benefit plan or agreement shall not constitute Disqualified Stock solely because it may be required to be repurchased by a Credit Party.

"Distressed Person" shall have the meaning provided in the definition of the term "Lender-Related Distress Event" below.

"Dividends" shall have the meaning provided in Section 10.6.

"Dollars" and "$" shall mean dollars in lawful currency of the United States of America.

"Domestic Subsidiary" shall mean each Subsidiary of the Borrower that is organized under the laws of the United States or any state thereof or the District of Columbia.

"Drawing" shall have the meaning provided in Section 3.4.

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

"EEA Member Country" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

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

"EM Pennsylvania" shall mean EM Energy Pennsylvania, LLC.

"Environmental Claims" shall mean any and all actions, suits, orders, decrees, demands, demand letters, claims, Liens, notices of noncompliance, violation or potential responsibility or investigation (other than internal reports prepared by or on behalf of the Borrower or any of the Subsidiaries (a) in the ordinary course of such Person's business or (b) as required in connection with a financing transaction or an acquisition, lease or disposition of real estate) or proceedings arising under or based upon any Environmental Law or any permit issued, or any approval given, under any such Environmental Law (hereinafter, "Claims"), including, without limitation, (i) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief relating to the presence, release or threatened release of Hazardous Materials or arising from alleged injury or threat of injury to health or safety (to the extent relating to human exposure to Hazardous Materials), or the environment including, without limitation, ambient air, surface water, groundwater, land surface and subsurface strata and natural resources such as wetlands.

"Environmental Law" shall mean any applicable Federal, state or local statute, law, rule, regulation, ordinance, code and rule of common law now or hereafter in effect and in each case as amended, and any binding judicial or administrative interpretation thereof, including any binding judicial or administrative order, consent decree or judgment, relating to the protection of the environment, including, without limitation, ambient air, surface water, groundwater, land surface and subsurface strata and natural resources such as wetlands, or human health or safety (to the extent relating to human exposure to Hazardous Materials), or relating to the emission, release, discharge, management, handling, presence, disposal or human exposure to Hazardous Materials.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time. Section references to ERISA are to ERISA as in effect on the Closing Date and any subsequent provisions of ERISA amendatory thereof, supplemental thereto or substituted therefor.

"ERISA Affiliate" shall mean each person (as defined in Section 3(9) of ERISA) that together with the Borrower would be deemed to be a "single employer" within the meaning of Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" shall have the meaning provided in Section 8.11(a).

"ETC" shall mean ETC Northeast Pipeline, LLC.

"ETC Agreements" shall mean, collectively, (i) that certain Amended and Restated Gathering and Processing Agreement dated as of November 13, 2017, by and between EM Pennsylvania and ETC, (ii) that certain Amended and Restated Individual Transaction Confirmation (Gatherer's Contract No. 9532-101) dated as of November 13, 2017 (as supplemented by the Memorandum of Individual Transaction Confirmation to Gathering and Processing Agreement dated as of November 13, 2017), by and between EM Pennsylvania and ETC and (iii) that certain Amended and Restated Individual Transaction Confirmation (Gatherer's Contract No. 9532-102) dated as of November 13, 2017 (as supplemented by the Memorandum of Individual Transaction Confirmation to Gathering and Processing Agreement dated as of November 13, 2017), by and between EM Pennsylvania and ETC, in each case whether or not such agreement has been terminated and as the same may be amended, restated, supplemented or otherwise modified from time to time in a manner not materially adverse to the Lenders (for the avoidance of doubt, any amendment (a) further restricting the amount of indebtedness (as such term is used therein) or liens (as such term is used therein) permitted to be incurred under any such ETC Agreement as in effect on the date hereof or (b) increasing the amount of Indebtedness or Liens incurred pursuant to the ETC Agreements as in effect on the date hereof would be materially adverse to the Lenders).

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

"Event of Default" shall have the meaning provided in Section 11.

"Excluded Stock" shall mean (a) any Stock or Stock Equivalents that is Voting Stock of any Foreign Subsidiary that is a CFC in excess of 66% of the outstanding Voting Stock of such Foreign Subsidiary, (b) Stock or Stock Equivalents that is Voting Stock of a FSHCO in excess of 66% of the outstanding Voting Stock of such FSHCO, (c) any Stock or Stock Equivalents of a CFC that is not a first-tier CFC of the Borrower, (d) Stock or Stock Equivalents that is Voting Stock of a Domestic Subsidiary that is disregarded as separate from a CFC for U.S. federal income tax purposes in excess of 66% of the

outstanding Voting Stock of such Domestic Subsidiary or (e) any Stock or Stock Equivalents to the extent the pledge thereof would be prohibited by any Requirement of Law.

"Excluded Swap Obligation" means, with respect to a Credit Party, any Swap Obligation, if and to the extent that, all or a portion of the guarantee of such Credit Party of, or the grant by such Credit Party of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act, or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Credit Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to Section 9.16 and any other "keepwell, support or other agreement for the benefit of such Credit Party and any and all guarantees of such Credit Party's Swap Obligations by other Credit Parties) at the time such Credit Party's guarantee or such Credit Party's grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

"Excluded Taxes" shall mean, with respect to the Administrative Agent or any Lender, (a) net income Taxes and franchise and excise Taxes (imposed in lieu of net income Taxes) imposed on the Administrative Agent or Lender as a result of any current or former connection between the Administrative Agent or Lender and the jurisdiction of the Governmental Authority imposing such tax (other than any such connection arising from the Administrative Agent or Lender having executed, delivered or performed its obligations or received a payment under, received or perfected a security interest under, engaged in any other transaction pursuant to, or having been a party to or having enforced, this Agreement or any other Credit Document, or sold or assigned an interest in any Loan or Credit Document), (b) any U.S. federal withholding Tax that is imposed on amounts payable to any Lender under the law in effect at the time (i) such Lender becomes a party to this Agreement (or, in the case of a Participant, on the date such Participant became a Participant hereunder) (other than pursuant to an assignment (participation or other transfer) request by the Borrower under Section 13.7)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 5.4, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) any Tax to the extent attributable to such Lender's failure to comply with Section 5.4(d), Section 5.4(e) and Section 5.4(f), as applicable (in the case of any Non-U.S. Lender) or Section 5.4(g) (in the case of a U.S. Lender), (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

"Existing Administrative Agent" has the meaning set forth in the Recitals.

"Existing Cash Management Agreements" means the Cash Management Agreements described on Schedule 1.1(b) which, on and after entry of the Final DIP Order, shall be secured pursuant to this Agreement and the DIP Orders.

"Existing Credit Agreement" shall have the meaning provided in the Recitals.

"Existing Credit Documents" means the "Credit Documents" as defined in the Existing Credit Agreement.

"Existing Hedge Agreements" means the Hedge Agreements described on Schedule 1.1(c) which, on and after the Final DIP Order Entry Date, shall be secured pursuant to this Agreement and the DIP Orders.

"Existing Lenders" means the lenders under the Existing Credit Agreement.

"Existing Letters of Credit" means the letters of credit described on Schedule 1.1(d) that were issued under the Existing Credit Agreement and that shall be deemed refunded, refinanced, replaced and issued under this Agreement upon entry of the Interim DIP Order.

"Existing Liens" means the Liens securing the Existing Obligations for the benefit of the Existing Secured Parties.

"Existing Loans" means the Loans under, and as defined in, the Existing Credit Agreement that shall be deemed refunded, refinanced, replaced and made under this Agreement and pursuant to the terms of the Interim DIP Order.

"Existing Obligations" means the "Obligations" as defined in the Existing Credit Agreement.

"Existing Secured Parties" means the "Secured Parties" as defined in the Existing Credit Agreement.

"Exit Fee" means the fee payable pursuant to Section 4.1(f). For the avoidance of any doubt, the Exit Fee shall not be assessed on the portion of Loans which constitute the Roll-Up Loans.

"Extraordinary Proceeds" means any cash or cash equivalents received by a Credit Party (a) not in the ordinary course of business, and/or (b) from or in respect of (ii) pension plan reversions, (iii) any insurance provider, (iv) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, and (v) a Casualty Event.

"Fair Market Value" shall mean, with respect to any asset or group of assets on any date of determination, the value of the consideration obtainable in a Disposition of such asset at such date of determination assuming a Disposition by a willing seller to a willing purchaser dealing at arm's length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset, as reasonably determined by the Borrower.

"FATCA" shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future Treasury regulations promulgated thereunder or official administrative interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Code, any intergovernmental agreement entered into in connection with the implementation of such sections of the Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any such intergovernmental agreement.

"Federal Funds Effective Rate" shall mean, for any day, the weighted average of the per annum rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published on the next succeeding Business Day by the Federal Reserve Bank of New York or, if such rate is not so published for any date that is a Business Day, the Federal Funds Effective Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal Funds brokers of recognized standing selected by it; provided that if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

"Final DIP Order" means the order of the Bankruptcy Court in form and substance acceptable to the Administrative Agent and the Lenders in their sole discretion and as may otherwise be agreed in writing or on the record by the Administrative Agent and the Lenders at the final hearing with respect to such order in the Cases, entered in the Cases after notice and final hearing pursuant to the Bankruptcy Rules or such other procedures as approved by the Bankruptcy Court which, among other matters (but not by way of limitation), authorizes the Borrower to obtain credit and the Credit Parties to incur (or guaranty) the Obligations and grant DIP Liens under the Credit Documents, as the case may be, and provides for the superpriority of the Administrative Agent's and the Lenders' claims, grants adequate protection to the Secured Parties and authorizes the use of Cash Collateral, as the same may be modified or supplemented from time to time after the Final Order Entry Date with the written consent of the Required Lenders.

"Final Order Entry Date" means the date on which the Final DIP Order was entered on the docket of the Bankruptcy Court.

"Financial Officer" means the chief financial officer or treasurer of the Borrower, or any other officer having substantially the same authority and responsibility.

"Financial Performance Covenants" shall mean the covenants of the Borrower set forth in Section 10.12.

"First Variance Report" shall have the meaning provided in Section 9.1(n)(ii).

"Flood Insurance Laws" shall mean the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994, the Biggert-Waters Flood Insurance Reform Act of 2012 and the regulations issued in connection therewith by the Office of the Controller of the Currency, the Federal Reserve Board and other Governmental Authorities, each as it may be amended, reformed or otherwise modified from time to time.

"Foreign Corporate Subsidiary" shall mean a Foreign Subsidiary that is treated as a corporation for U.S. federal income tax purposes.

"Foreign Plan" shall mean any employee benefit plan, program, policy, arrangement or agreement providing pension or retirement benefits that is maintained or contributed to by the Credit Parties with respect to employees employed outside the United States that is required to be funded through a trust or other funding vehicle other than a trust or funding vehicle maintained exclusively by a Governmental Authority.

"Foreign Subsidiary" shall mean each Subsidiary of the Borrower that is not a Domestic Subsidiary.

"Fronting Fee" shall have the meaning provided in Section 4.1(c).

"FSHCO" shall mean any direct or indirect Subsidiary (including a disregarded entity for U.S. federal income tax purposes) substantially all of whose assets consist of Stock or Stock Equivalents of one or more direct or indirect Foreign Corporate Subsidiaries.

"Fund" shall mean any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

"G&A Expenses" means, for any period, the aggregate of all general and administrative expenses of the Credit Parties paid in cash, determined on a consolidated basis in accordance with GAAP, excluding legal fees and other non-recurring items acceptable to the Administrative Agent.

"GAAP" shall mean generally accepted accounting principles in the United States of America, as in effect from time to time; provided, however, that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

"Goldman Sachs" shall mean Goldman Sachs Lending Partners LLC and its Affiliates (other than GS Private Equity).

"Governmental Authority" shall mean any nation, sovereign or government, any state, province, territory or other political subdivision thereof, and any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including a central bank or stock exchange.

"Granting Lender" shall have the meaning provided in Section 13.6(g).

"GS Private Equity" shall mean Goldman Sachs Merchant Banking Division (including its affiliated entities and funds, investments, Persons, vehicles or accounts that are managed or sponsored by Goldman, Sachs & Co. or its Affiliates (other than Goldman Sachs) or for which Goldman, Sachs & Co. or its Affiliates (other than Goldman Sachs) acts as investment advisor), and their respective successors, in each case to the extent Goldman Sachs Merchant Banking Division has voting discretion with respect to the direct or indirect investment in the Parent Company by such entities, funds, investments, Persons, vehicles or accounts.

"Guarantee" shall mean the Guarantee made by any Guarantor in favor of the Administrative Agent for the benefit of the Secured Parties substantially in the form of Exhibit H.

"Guarantee Obligations" shall mean, as to any Person, any obligation of such Person guaranteeing or intended to guarantee any Indebtedness of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent, (a) to purchase any such Indebtedness or any property constituting direct or indirect security therefor, (b) to advance or supply funds (i) for the purchase or payment of any such Indebtedness or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such Indebtedness of the ability of the primary obligor to make payment of such Indebtedness or (d) otherwise to assure or hold harmless the owner of such Indebtedness against loss in respect thereof; provided, however, that the term "Guarantee Obligations" shall not include endorsements of instruments for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or Disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee Obligation shall be deemed to be an amount equal to the stated or determinable amount of the Indebtedness in respect of which such Guarantee Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in

respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

"Guarantors" shall mean (a) EM Energy Manager, LLC, (b) Parent Company, and (c) each Subsidiary of the Borrower listed on Schedule 1.1(a) and each other Subsidiary that becomes a party to the Guarantee after the Closing Date pursuant to Section 9.11 or otherwise.

"Hazardous Materials" shall mean (a) any petroleum or petroleum products, radioactive materials, friable asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing regulated levels of polychlorinated biphenyls, and radon gas, (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances", "hazardous waste", "hazardous materials", "extremely hazardous waste", "restricted hazardous waste", "toxic substances", "toxic pollutants", "contaminants", or "pollutants", or words of similar import, under any applicable Environmental Law and (c) any other chemical, material or substance, which is prohibited, limited or regulated by any Environmental Law.

"Hedge Agreements" shall mean (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, put transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, fixed-price physical delivery contracts, whether or not exchange traded, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement. Notwithstanding the foregoing, agreements or obligations to physically sell any commodity at any index-based price shall not be considered Hedge Agreements.

"Hedge Bank" shall mean (a) any Person (other than the Borrower or any of its Subsidiaries) that (x) at the time it enters into a Hedge Agreement with the Borrower or a Guarantor is the Administrative Agent or a Lender or an Affiliate of the Administrative Agent or a Lender, or (y) at any time after it enters into a Hedge Agreement with the Borrower or a Guarantor it becomes the Administrative Agent or a Lender or an Affiliate of the Administrative Agent or a Lender or (b) with respect to any Hedge Agreement with the Borrower or a Guarantor that is in effect on the Closing Date, any Person (other a Credit Party) that is the Administrative Agent or a Lender or an Affiliate of the Administrative Agent or a Lender.

"Hedge Liquidation" means, with respect to any Hedge Agreement, the sale, assignment, novation, unwind or termination of all or any part of such Hedge Agreement or the creation of any off-setting positions in respect thereof; provided that for purposes of this definition, a Hedge Agreement shall not be deemed to have been liquidated if, (a) such Hedge Agreement is novated from the existing counterparty to an Approved Counterparty, with the Borrower or a Guarantor being the "remaining party" for purposes of such novation, or (b) upon its termination, it is replaced, in a substantially contemporaneous transaction, with one or more Hedge Agreements with approximately the same mark-to-market value and without cash payments to a Credit Party in connection therewith.

"Hedge PV" shall mean, with respect to any commodity Hedge Agreement, the present value, discounted at 9% *per annum*, of the future receipts expected to be paid to the Borrower or the Guarantors under such Hedge Agreement netted against the most recent Bank Price Deck provided to the Borrower by the Administrative Agent; provided, however, that the "Hedge PV" shall never be less than $0.00.

"Hedging Obligations" shall mean, with respect to any Person, the obligations of such Person under Hedge Agreements and the Existing Hedge Agreements.

"Highest Lawful Rate" shall mean, with respect to each Lender, the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Loans under laws applicable to such Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws allow as of the date hereof.

"Historical Financial Statements" shall mean the unaudited consolidated financial statements of the Borrower as of December 31, 2018, and the unaudited consolidated financial statements of the Borrower as of March 31, 2019.

"Hydrocarbon Interests" shall mean all rights, titles, interests and estates now or hereafter acquired in and to oil and gas leases, oil, gas and mineral leases, or other liquid or gaseous hydrocarbon leases, mineral fee interests, overriding royalty and royalty interests, net profit interests and production payment interests, including any reserved or residual interests of whatever nature.

"Hydrocarbons" shall mean oil, gas, casinghead gas, drip gasoline, natural gasoline, condensate, distillate, liquid hydrocarbons, gaseous hydrocarbons and all products refined or separated therefrom.

"Indebtedness" of any Person shall mean (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (c) the deferred purchase price of assets or services that in accordance with GAAP would be included as a liability on the balance sheet of such Person (other than (i) any earn-out obligation until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and (ii) obligations resulting under firm transportation contracts or take or pay contracts entered into in the ordinary course of business), (d) the face amount of all letters of credit issued and outstanding for the account of such Person and, without duplication, all drafts drawn thereunder, (e) all indebtedness (excluding prepaid interest thereon) of any other Person secured by any Lien on any property owned by such Person, whether or not such Indebtedness has been assumed by such Person, (f) the principal component of all Capitalized Lease Obligations of such Person, (g) net Hedging Obligations of such Person, (h) all obligations of such Person in respect of Disqualified Stock, (i) the undischarged balance of any Production Payment and Reserve Sales created by such Person or for the creation of which such Person directly or indirectly received payment, and (j) without duplication, all Guarantee Obligations of such Person; provided that Indebtedness shall not include (i) trade and other ordinary course payables and accrued expenses arising in the ordinary course of business, (ii) deferred or prepaid revenue, and (iii) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. For purposes hereof, the amount of any net Hedging Obligations on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of Indebtedness of any Person for purposes of clause (e) above shall be deemed to be equal to the

least of (i) the aggregate unpaid amount of such Indebtedness, (ii) the Fair Market Value of the property encumbered thereby as determined by such Person in good faith and (iii) the maximum amount for which such Person may be liable in respect of such Indebtedness.

"Indemnified Liabilities" shall have the meaning provided in Section 13.5.

"Indemnified Taxes" shall mean all Taxes (including Other Taxes) other than (a) Excluded Taxes and (b) any interest, penalties, or expenses caused by an Agent's or Lender's gross negligence or willful misconduct.

"Initial New-Money Loan" shall mean an amount up to $15,000,000.

"Initial Reserve Report" shall mean that certain report prepared by Netherland Sewell & Associates and received by the Administrative Agent on April 15, 2019.

"Interim DIP Order" means the order of the Bankruptcy Court substantially in the form of Exhibit I (except as may otherwise be agreed in writing or on the record by the Administrative Agent and the Lenders at the interim hearing with respect to such order in the Cases) entered in the Cases after an interim hearing pursuant to the Bankruptcy Rules, which, among other matters (but not by way of limitation), authorizes, on an interim basis, the Borrower to obtain credit and the Credit Parties to incur (or guaranty) the Obligations and grant DIP Liens under the Credit Documents, as the case may be, and provides for the superpriority of the Administrative Agent's and the Lenders' claims, grants adequate protection to the Secured Parties and authorizes the use of Cash Collateral, as the same may be modified or supplemented from time to time after the Interim Order Entry Date, and before the Final Order Entry Date, with the written consent of the Required Lenders.

"Interim Order Entry Date" means the date on which the Interim DIP Order is entered on the docket of the Bankruptcy Court.

"Investment" shall mean, for any Person: (a) the acquisition (whether for cash, property, services or securities or otherwise) of Stock, Stock Equivalents, bonds, notes, debentures, partnership or other ownership interests or other securities of any other Person (including any "short sale" or any sale of any securities at a time when such securities are not owned by the Person entering into such sale), (b) the making of any deposit with, or advance, loan or capital contribution to, assumption of Indebtedness of, purchase or other acquisition of any other Indebtedness or equity participation or interest in, or other extension of credit to, any other Person (including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such Person) (including any partnership or joint venture), (c) the entering into of any guarantee of, or other contingent obligation with respect to, Indebtedness or (d) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person.

"ISP" shall mean, with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

"Issuer Documents" shall mean, with respect to any Letter of Credit and any other document, agreement and instrument entered into by the Letter of Credit Issuer and the Borrower (or any Guarantor) or in favor of the Letter of Credit Issuer and relating to such Letter of Credit.

"L/C Maturity Date" shall mean the date that is three Business Days prior to the Maturity Date.

"L/C Obligations" shall mean, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unpaid Drawings. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"Lender" shall have the meaning provided in the preamble to this Agreement.

"Lender Default" shall mean (i) the refusal or failure of any Lender to make available its portion of any incurrence of Loans or participations in Letters of Credit, which refusal or failure is not cured within two Business Day after the date of such refusal or failure, unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied; (ii) any Lender notifying the Borrower, the Administrative Agent or the Letter of Credit Issuer in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied, (iii) the failure of any Lender to pay over to the Administrative Agent, any Letter of Credit Issuer or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, unless the subject of a good faith dispute; (iv) a Lender has notified the Borrower or the Administrative Agent that it does not intend or expect to comply with any of its funding obligations or has made a public statement to that effect with respect to its funding obligations under this Agreement; (v) the failure by a Lender to confirm in a manner reasonably satisfactory to the Administrative Agent that it will comply with its obligations under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (vi) upon receipt of such written confirmation by the Administrative Agent and the Borrower; (vii) a Distressed Person has admitted in writing that it is insolvent or such Distressed Person becomes subject to a Lender-Related Distress Event; or (viii) a Lender or any Person that directly or indirectly controls such Lender, as the case may be, is or becomes the subject of a Bail-In Action.

"Lender-Related Distress Event" shall mean, with respect to any Lender, that such Lender or any Person that directly or indirectly controls such Lender (each, a "Distressed Person"), as the case may be, is or becomes subject to a voluntary or involuntary case with respect to such Distressed Person under any debt relief law, or a custodian, conservator, receiver or similar official (including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such capacity) is appointed for such Distressed Person or any substantial part of such Distressed Person's assets, or such Distressed Person or any Person that directly or indirectly controls such Distressed Person is subject to a forced liquidation, or such Distressed Person makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Person or its assets to be, insolvent or bankrupt; provided that a Lender-Related Distress Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any equity interests in any Lender or any Person that directly or indirectly controls such Lender by a Governmental Authority or an instrumentality thereof so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

"Letter of Credit" shall have the meaning provided in Section 3.1.

"Letter of Credit Exposure" shall mean, with respect to any Lender, at any time, the sum of (a) the principal amount of any Unpaid Drawings in respect of which such Lender has made (or is required to have made) payments to the Letter of Credit Issuer pursuant to Section 3.4(a) at such time and (b) such Lender's Commitment Percentage of the Letters of Credit Outstanding at such time (excluding the portion thereof consisting of Unpaid Drawings in respect of which the Lenders have made (or are required to have made) payments to the Letter of Credit Issuer pursuant to Section 3.4(a)) minus the amount of cash or deposit account balances held by the Administrative Agent to Cash Collateralize outstanding Letters of Credit and Unpaid Drawings under Section 3.8.

"Letter of Credit Issuer" shall mean the Administrative Agent, any of its Affiliates or any replacement or successor appointed pursuant to Section 3.6.

"Letters of Credit Outstanding" shall mean, at any time, the sum of, without duplication, (a) the aggregate Stated Amount of all outstanding Letters of Credit and (b) the aggregate principal amount of all Unpaid Drawings in respect of all Letters of Credit.

"Lien" shall mean any interest in property securing an obligation owed to, or a claim by, a Person other than the owner of the property, whether such interest is based on the common law, statute or contract, and whether such obligation or claim is fixed or contingent, and including (a) the lien or security interest arising from a mortgage, encumbrance, pledge, security agreement or a financing lease, consignment or bailment for security purposes or (b) production payments and the like payable out of Oil and Gas Properties; provided that in no event shall an operating lease be deemed to be a Lien.

"Liquidity" shall mean, as of any date, the sum, without duplication of the aggregate Dollar equivalent of all unrestricted cash and Permitted Investments held by the Credit Parties at such time. As used herein, the term "unrestricted" as it relates to such cash or Permitted Investments would exclude any such amounts representing deposits, escrows, sinking fund payments or other amounts that are otherwise encumbered (other than pursuant to the Credit Documents) or dedicated for a particular use and/or which would not be characterized as "unrestricted cash" on the financial statements of such entities in accordance with GAAP, and in any event, shall not include the unfunded New-Money Commitments.

"LLC Agreement" shall mean the Limited Liability Company Agreement of the Borrower dated as of July 25, 2012, as amended from time to time.

"Loans" means each New-Money Loan and each Roll-Up Loan.

"Material Adverse Effect" shall mean a material adverse effect on (a) the business, assets, operations or condition, financial or otherwise, of the Borrower and the other Credit Parties, taken as a whole (excluding the filing of the Cases, the events and conditions related and/or leading up thereto and the effects thereof and any action required to be taken under the Credit Documents or under the DIP Orders), (b) the ability of any Credit Party to perform any of its obligations under the Credit Documents to which it is a party, (c) the Collateral, or the Administrative Agent's Liens (on behalf of itself and the other Secured Parties) on the Collateral or other validity or priority of any such Lien, or (d) the rights of or benefits available to the Administrative Agent or the Lenders under any of the Credit Documents.

"Maturity Date" means 180 days after the Final Order Entry Date.

"Milestone" means the following milestones to be completed in each case in accordance with the applicable timing referred to below (or such later dates as may be approved by the Administrative Agent in its sole discretion):

(a) the approval by the Bankruptcy Court of this Agreement and the facility described herein, in form and substance satisfactory to the Administrative Agent and the Lenders on an interim basis, pursuant to the Interim DIP Order as entered by the Bankruptcy Court in the Cases within fifteen (15) days of the Petition Date and/or on a final basis pursuant to the Final DIP Order within thirty (35) days of the Petition Date;

(b) within 15 days after the Petition Date, the Credit Parties shall file a motion with the Bankruptcy Court seeking approval of the Acceptable Bid Procedures and the Sale Transaction;

(c) within 45 days after the Petition Date, the Acceptable Bid Procedures Order shall have been entered in the Cases;

(d) within 70 days after the Petition Date, the Credit Parties shall have executed an asset purchase agreement that satisfies the Minimum Repayment Condition, on terms and conditions acceptable to the Administrative Agent and the Existing Administrative Agent in their sole discretion;

(e) within 85 days after the Petition Date, the Bankruptcy Court shall have entered an order approving a stalking horse bidder that satisfies the Minimum Repayment Condition and is otherwise on terms and conditions acceptable to the Administrative Agent and the Existing Administrative Agent in their sole discretion;

(f) in the event that the Milestones describes in clause (d) and (e) above have not been completed in accordance with the applicable deadlines set forth therein, within 91 days after the Petition Date, the Credit Parties shall have received a Qualified Bid (as defined in the Acceptable Bid Procedures) that is sufficient to satisfy in cash the Minimum Repayment Condition and is otherwise on terms and conditions acceptable to the Administrative Agent and the Existing Agent in their sole discretion;

(g) within 100 days after the Petition Date, an Auction shall have commenced if there is more than one qualified bidder in accordance with the Acceptable Bid Procedures;

(h) within 110 days after the Petition Date, the Acceptable Sale Order shall have been entered in the Cases;

(i) within 15 days following the events set forth in clause (h) above, the Sale Transaction shall have been closed or otherwise consummated and all of the Obligations and Existing Obligations shall have been indefeasibly paid in full, in cash.

"Minimum Borrowing Amount" shall mean $500,000 (or, if less, the entire remaining New-Money Commitment at the time of such Borrowing).

"Minimum Repayment Condition" means with respect to a Sale Transaction, the purchase agreement and sale order provide that on the Closing Date all of the outstanding Obligations and Existing Obligations in respect of this Agreement and the Existing Credit Agreement shall be indefeasibly paid in full in cash, and all L/C Obligations and Hedging Obligations shall be cash collateralized in accordance with the terms of Section 3.8(a).

"Moody's" shall mean Moody's Investors Service, Inc. or any successor by merger or consolidation to its business.

"Mortgage" shall mean a mortgage or a deed of trust, deed to secure debt, trust deed, assignment of as-extracted collateral, fixture filing or other security document entered into by the owner of a

Mortgaged Property and the Administrative Agent for the benefit of the Secured Parties in respect of that Mortgaged Property, in such form as agreed between the Borrower and the Administrative Agent.

"Mortgaged Property" shall mean, initially, each parcel of real property and improvements thereto owned by the Borrower or a Guarantor and identified on Schedule 1.1(e), and each other parcel of real property and improvements thereto with respect to which a Mortgage is required to be granted pursuant to Section 9.11.

"Multiemployer Plan" shall mean a Plan that is a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"New-Money Commitment" means as to each Lender, its obligation to make a Loan or Loans to the Borrower pursuant to Section 2.1 in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name on Schedule 2.1 under the caption "New-Money Commitment" or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"New-Money Loan" shall mean a Loan pursuant to Section 2.1(a).

"Non-Consenting Lender" shall have the meaning provided in Section 13.7(b).

"Non-Defaulting Lender" shall mean and include each Lender other than a Defaulting Lender.

"Non-Professional Fee Carry Forward Amount" means, the amount (if any) by which the budgeted total disbursements (excluding debt service and Professional Fees) as stated in the Approved Budget for the immediately preceding week exceeded the actual total disbursements (excluding debt service and Professional Fees) for such immediately preceding week. The Non-Professional Fee Carry Forward Amounts shall be offset or accrue a negative balance by the amount (if any) by which the actual total disbursements (excluding debt service and Professional Fees) exceeded the budgeted total disbursements (excluding debt service and Professional Fees) as stated in the Approved Budget for the immediately preceding week. The Non-Professional Fee Carry Forward Amounts shall accrue on a cumulative basis from the four week period then ending or until a new proposed DIP Budget is approved (which proposed DIP Budget, for the avoidance of doubt, will incorporate in the current line item the amount of remaining Non-Professional Fee Carry Forward Amounts, if any), from which point such Non-Professional Fee Carry Forward Amounts from periods preceding the new Approved Budget shall be disregarded.

"Non-U.S. Lender" shall mean any Lender that is not a U.S. Lender.

"Notice of Borrowing" shall mean a written request of the Borrower in accordance with the terms of Section 2.3 and substantially in the form of Exhibit B or such other form as shall be approved by the Administrative Agent (acting reasonably) , including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent.

"Obligations" shall mean all advances to, and debts, liabilities, obligations, covenants and duties of, any Credit Party arising under any Credit Document, the DIP Orders or otherwise with respect to any Loan or Letter of Credit or under any Secured Cash Management Agreement or Secured Hedge Agreement, in each case, entered into with the Credit Parties, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees (including, without limitation, the Exit Fee) that accrue after the commencement by or against any Credit Party or any Affiliate thereof (other than Goldman Sachs) in any

proceeding under any bankruptcy or insolvency law naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. Without limiting the generality of the foregoing, the Obligations of the Credit Parties under the Credit Documents (and any of their Subsidiaries to the extent they have obligations under the Credit Documents) include the obligation (including Guarantee Obligations) to pay principal, interest, charges, expenses, fees, attorney costs, indemnities and other amounts payable by any Credit Party under any Credit Document. Notwithstanding the foregoing, (a) the obligations of a Credit Party under any Secured Hedge Agreement and under any Secured Cash Management Agreement shall be secured and guaranteed pursuant to the Security Documents and the Guarantee only to the extent that, and for so long as, the other Obligations are so secured and guaranteed and (b) any release of Collateral or Guarantors effected in the manner permitted by this Agreement and the other Credit Documents shall not require the consent of the holders of Hedging Obligations under Secured Hedge Agreements or of the holders of Cash Management Obligations under Secured Cash Management Agreements. Notwithstanding the foregoing, Excluded Swap Obligations shall not be an Obligation of any Guarantor that is not a Qualified ECP Guarantor.

"Oil and Gas Properties" shall mean (a) Hydrocarbon Interests, (b) the properties now or hereafter pooled or unitized with Hydrocarbon Interests, (c) all presently existing or future unitization, pooling agreements and declarations of pooled units and the units created thereby (including all units created under orders, regulations and rules of any Governmental Authority) which may affect all or any portion of the Hydrocarbon Interests, (d) all operating agreements, contracts and other agreements, including production sharing contracts and agreements, which relate to any of the Hydrocarbon Interests or the production, sale, purchase, exchange or processing of Hydrocarbons from or attributable to such Hydrocarbon Interests, (e) all Hydrocarbons in and under and which may be produced and saved or attributable to the Hydrocarbon Interests, including all oil in tanks, and all rents, issues, profits, proceeds, products, revenues and other incomes from or attributable to the Hydrocarbon Interests, (f) all tenements, hereditaments, appurtenances and properties in any manner appertaining, belonging, affixed or incidental to the Hydrocarbon Interests and (g) all properties, rights, titles, interests and estates described or referred to above, including any and all property, real or personal, now owned or hereafter acquired and situated upon, used, held for use or useful in connection with the operating, working or development of any of such Hydrocarbon Interests or property (excluding drilling rigs, automotive equipment, rental equipment or other personal property which may be on such premises for the purpose of drilling a well or for other similar temporary uses) and including any and all oil wells, gas wells, injection wells or other wells, structures, fuel separators, liquid extraction plants, plant compressors, pumps, pumping units, field gathering systems, gas processing plants and pipeline systems and any related infrastructure to any thereof, tanks and tank batteries, fixtures, valves, fittings, machinery and parts, engines, boilers, meters, apparatus, equipment, appliances, tools, implements, cables, wires, towers, casing, tubing and rods, surface leases, rights-of-way, easements and servitudes together with all additions, substitutions, replacements, accessions and attachments to any and all of the foregoing; provided that the Oil and Gas Properties shall not include any "building" or "mobile home" (each as defined in Regulation H as promulgated by the Federal Reserve Board under the Flood Insurance Laws).

"Ongoing Hedges" shall have the meaning assigned to such term in Section 10.11(a)

"Other Taxes" shall mean any and all present or future stamp, registration, court or documentary, intangible, recording, or any other excise, property or similar Taxes (including interest, fines, penalties, additions to Tax and related expenses with regard thereto) arising from any payment made or required to be made under this Agreement or any other Credit Document or from the execution or delivery of, registration or enforcement of, consummation or administration of, or otherwise with respect to, this Agreement or any other Credit Document.

"OTPP" shall mean Ontario Teachers' Pension Plan Board and its controlled Affiliates and associated funds, and their related successors.

"Overnight Rate" shall mean, for any day, the greater of (a) the Federal Funds Effective Rate and (b) an overnight rate determined by the Administrative Agent or the Letter of Credit Issuer, as the case may be, in accordance with banking industry rules on interbank compensation.

"Parent Company" shall mean EdgeMarc Energy Holdings, LLC.

"Participant" shall have the meaning provided in Section 13.6(c).

"Participant Register" shall have the meaning provided in Section 13.6(c).

"Patriot Act" shall have the meaning provided in Section 13.18.

"PBGC" shall mean the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

"Permitted Investments" shall mean:

(a) United States dollars;

(b) securities issued or unconditionally guaranteed by the United States government or any agency or instrumentality thereof, in each case having maturities and/or reset dates of not more than 24 months from the date of acquisition thereof;

(c) securities or readily marketable direct obligations issued or fully guaranteed by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof or any political subdivision of such state or any public instrumentality thereof having maturities of not more than 24 months from the date of acquisition thereof and, at the time of acquisition, having an investment grade rating generally obtainable from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, then from another nationally recognized rating service);

(d) commercial paper maturing no more than 12 months after the date of creation thereof and, at the time of acquisition, having a rating of at least A-2 or P-2 from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized rating service) and corporate notes or bonds maturing no more than 12 months after the date of acquisition thereof and, at the time of acquisition, having a rating of at least A- or A3 from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized rating service);

(e) certificates of deposit, time deposits with, or domestic and LIBOR certificates of deposit or bankers' acceptances maturing no more than two years after the date of acquisition thereof issued by any Lender or any other bank having combined capital and surplus of not less than $250,000,000 in the case of domestic banks and $100,000,000 (or the Dollar equivalent thereof) in the case of foreign banks;

(f) repurchase agreements with a term of not more than 90 days for underlying securities of the type described in clauses (b), (c), (e) and (g) entered into with any bank meeting the qualifications specified in clause (e) above or securities dealers of recognized national standing;

(g) marketable short-term money market and similar funds (i) either having assets in excess of $500,000,000 or (ii) having a rating of at least A-2 or P-2 from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized rating service);

(h) Investments with average maturities of 36 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Borrower); and

(i) investment funds investing substantially all their assets in securities of one or more of the types of securities described in clauses (a) through (h) above.

"Permitted Investors" shall mean (a) GS Private Equity, and (b) OTPP, provided however, notwithstanding anything herein to the contrary, neither the Parent Company, the Borrower nor any of their respective Subsidiaries shall be a "Permitted Investor".

"Permitted Liens" shall mean:

(a) Liens for Taxes, assessments or governmental charges or claims not yet overdue for a period of more than 30 days or that are being contested in good faith and by appropriate proceedings for which appropriate reserves have been established to the extent required by and in accordance with GAAP;

(b) Liens in respect of property or assets of the Borrower or any of the Guarantors imposed by law, such as landlords', vendors', suppliers', carriers', warehousemen's, repairmens', construction contractors', workers' and mechanics' Liens and other similar Liens arising in the ordinary course of business or incident to the exploration, development, operation or maintenance of Oil and Gas Properties, in each case so long as such Liens arise in the ordinary course of business and do not individually or in the aggregate have a Material Adverse Effect;

(c) Liens incurred or pledges or deposits made in connection with workers' compensation, unemployment insurance and other types of social security, old age pension, public liability obligations or similar legislation and deposits securing liabilities to insurance carriers under insurance or self-insurance arrangements in respect of such obligations, or incurred to secure the performance of tenders, statutory obligations, plugging and abandonment obligations, surety, stay, customs and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (including letters of credit issued in lieu of such bonds or to support the issuance thereof) incurred in the ordinary course of business or otherwise constituting Investments permitted by Section 10.5;

(d) ground leases, subleases, licenses or sublicenses in respect of real property on which facilities owned or leased by the Credit Parties are located;

(e) easements, rights-of-way, restrictive covenants, licenses, restrictions (including zoning restrictions), title defects, exceptions, deficiencies or irregularities in title, encroachments, protrusions, servitudes, permits, conditions and covenants (including, for the avoidance of doubt, the dedication of committed reserves under the ETC Agreements) and other similar charges or encumbrances (including in any rights of way or other property of a Credit Party for the purpose of roads, pipelines, transmission lines, transportation lines, distribution lines for the removal of gas, oil or other minerals or timber, and other like purposes, or for joint or common use of real estate, rights of way, facilities and equipment) not

interfering in any material respect with the business of the Borrower and its Subsidiaries, taken as a whole and, to the extent reasonably agreed by the Administrative Agent, any exception on the title reports issued in connection with any Oil and Gas Property;

(f) any interest or title of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under any lease, sublease, license or sublicense permitted by this Agreement and covering only the assets so leased or licensed;

(g) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(h) Liens on goods or inventory the purchase, shipment or storage price of which is financed by a documentary letter of credit issued for the account of the Credit Parties; provided that such Lien secures only the obligations of the Borrower or such Guarantors in respect of such letter of credit to the extent permitted under Section 10.1;

(i) leases, licenses, subleases or sublicenses granted to others not interfering in any material respect with the business of the Borrower and its Subsidiaries, taken as a whole;

(j) Liens arising from precautionary Uniform Commercial Code financing statement or similar filings made in respect of operating leases entered into by the Credit Parties;

(k) Liens created in the ordinary course of business in favor of banks and other financial institutions over credit balances of any bank accounts commodity trading accounts or other brokerage accounts of the Borrower and the Guarantors held at such banks or financial institutions, as the case may be;

(l) Liens which arise in the ordinary course of business under operating agreements, joint venture agreements, oil and gas partnership agreements, oil and gas leases, farm-out agreements, farm-in agreements, division orders, contracts for the sale, transportation or exchange of oil and natural gas, unitization and pooling declarations and agreements, area of mutual interest agreements, overriding royalty agreements, marketing agreements, processing agreements, net profits agreements, development agreements, gas balancing or deferred production agreements, injection, repressuring and recycling agreements, salt water or other disposal agreements, seismic or other geophysical permits or agreements, and other agreements that are usual and customary in the oil and gas business and are for claims which are not delinquent or that are being contested in good faith and by appropriate proceedings for which appropriate reserves have been established to the extent required by and in accordance with GAAP; provided (i) that any such Lien referred to in this clause is limited to the assets that are the subject of the relevant agreement and does not materially impair the use of the property covered by such Lien for the purposes for which such property is held by a Credit Party or materially impair the value of such property subject thereto, (ii) no such Lien secures Indebtedness and (iii) such Liens are taken into account in computing the net revenue interests and working interests of the Credit Parties;

(m) Existing Liens; and

(n) any zoning, building, entitlement or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Borrower and its Subsidiaries, taken as a whole.

The parties acknowledge and agree that no intention to subordinate the priority afforded the Liens granted in favor of the Administrative Agent, for the benefit of the Secured Parties, under the Security Documents is to be hereby implied or expressed by the permitted existence of such Permitted Liens.

"Person" shall mean any individual, partnership, joint venture, firm, corporation, limited liability company, association, trust or other enterprise or any Governmental Authority.

"Petition Date" has the meaning set forth in the Recitals.

"Petroleum Industry Standards" shall mean the Definitions for Oil and Gas Reserves promulgated by the Society of Petroleum Engineers (or any generally recognized successor) as in effect at the time in question.

"Plan" shall mean any multiemployer or single-employer plan, as defined in Section 4001 of ERISA and subject to Title IV of ERISA, that is or was within any of the preceding six plan years maintained or contributed to by (or to which there is or was an obligation to contribute or to make payments to) the Borrower or an ERISA Affiliate.

"Pledge Agreements" shall mean, collectively, (i) the Pledge Agreement entered into by the Borrower, the other pledgors party thereto and the Administrative Agent, for the benefit of the Secured Parties in such form as agreed between the Borrower and the Administrative Agent, and (ii) the Pledge Agreement entered into by EM Energy Manager, LLC, EdgeMarc Energy Holdings, LLC and the Administrative Agent, for the benefit of the Secured Parties in such form as agreed between the Borrower and the Administrative Agent.

"Pledgors" shall mean the Borrower and each other Person party to a Pledge Agreement, other than the Administrative Agent.

"Prepetition Payment" means a payment on account of any (a) "critical vendor payments" or (b) trade payables (including, without limitation, in respect of reclamation claims) or any other claim that would constitute a prepetition claim against a Credit Party.

"Production Payments and Reserve Sales" shall mean the grant or transfer by a Credit Party to any Person of the right to receive all or a portion of the production or the proceeds from the sale of production attributable to such properties where the holder of such interest has recourse solely to such production or proceeds of production.

"Professional Fee Carry Forward Amount" means, the amount (if any) by which the budgeted total Professional Fees of the Credit Parties as stated in the Approved Budget for the immediately preceding week exceeded the actual total Professional Fees of the Credit Parties for such immediately preceding week. The Professional Fee Carry Forward Amounts shall be offset or accrue a negative balance the amount (if any) by which the actual total Professional Fees of the Credit Parties exceeded the budgeted total Professional Fees of the Credit Parties as stated in the Approved Budget for the immediately preceding week. The Professional Fee Carry Forward Amounts shall accrue on a cumulative basis until a new Proposed DIP Budget is approved (which proposed DIP Budget, for the avoidance of doubt, will incorporate in the current line item the amount of remaining Professional Fee Carry Forward Amounts, if any), from which point such Professional Fee Carry Forward Amounts from periods preceding the new Approved Budget shall be disregarded.

"Professional Fees" means attorneys' fees and the fees of any other professionals.

"Proposed DIP Budget" shall have the meaning provided in Section 9.1(n)(i).

"Proved Developed Non-Producing Reserves" shall mean oil and gas reserves that, in accordance with Petroleum Industry Standards, are classified as both "Proved Reserves" and "Developed Non-Producing Reserves".

"Proved Developed Producing Reserves" shall mean oil and gas reserves that, in accordance with Petroleum Industry Standards, are classified as both "Proved Reserves" and "Developed Producing Reserves".

"Proved Reserves" shall mean oil and gas reserves that, in accordance with Petroleum Industry Standards, are classified as both "Proved Reserves" and one of the following: (a) "Developed Producing Reserves", (b) "Developed Non-Producing Reserves" or (c) "Undeveloped Reserves".

"PTEs" shall have the meaning provided in Section 12.14.

"PV-9" shall mean, with respect to any Proved Reserves expected to be produced from any Oil and Gas Properties, the net present value, discounted at 9% *per annum*, of the future net revenues expected to accrue to the Borrower's and the Guarantors' collective interests in such reserves during the remaining expected economic lives of such reserves, calculated in accordance with the most recent Bank Price Deck provided to the Borrower by the Administrative Agent.

"Qualified ECP Guarantor" means, in respect of any Swap Obligation, (i) each Credit Party that has total assets exceeding $10,000,000 at the time the relevant guarantee of obligations under, or grant of a security interest to secure, such Swap Obligation or (ii) such other Person that constitutes an "eligible contract participant" under the Commodity Exchange Act, or any regulation promulgated thereunder, and can cause another Person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Register" shall have the meaning provided in Section 13.6(b)(iv).

"Regulation T" shall mean Regulation T of the Board as from time to time in effect and any successor to all or a portion thereof establishing margin requirements.

"Regulation U" shall mean Regulation U of the Board as from time to time in effect and any successor to all or a portion thereof establishing margin requirements.

"Regulation X" shall mean Regulation X of the Board as from time to time in effect and any successor to all or a portion thereof establishing margin requirements.

"Reimbursement Date" shall have the meaning provided in Section 3.4(a).

"Related Parties" shall mean, with respect to any specified Person, such Person's Affiliates and the directors, officers, managers, employees, agents, trustees and advisors of such Person or such Person's Affiliates and any Person that possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract or otherwise.

"Reportable Event" shall mean an event described in Section 4043 of ERISA and the regulations thereunder, other than any event as to which the 30-day notice period has been waived.

"Required Lenders" shall mean, at any date, (a) Non-Defaulting Lenders having or holding at least 50% of the Total Commitment at such date or (b) if the Total Commitment has been terminated, Non-Defaulting Lenders having or holding at least 50% of the outstanding principal amount of the Loans and Letter of Credit Exposure (excluding the Loans and Letter of Credit Exposure of Defaulting Lenders) in the aggregate at such date.

"Requirement of Law" shall mean, as to any Person, any law, treaty, rule, regulation statute, order, ordinance, decree, judgment, consent decree, writ, injunction, settlement agreement or governmental requirement enacted, promulgated or imposed or entered into or agreed by any Governmental Authority, in each case applicable to or binding upon such Person or any of its property or assets or to which such Person or any of its property or assets is subject.

"Reserve Report" shall mean the Initial Reserve Report and any other subsequent report, in form and substance reasonably satisfactory to the Administrative Agent, setting forth, as of each June 30th or December 31st, in reasonable detail for each Oil and Gas Property or interest of a Credit Party located within the geographic boundaries of the United States of America that the Borrower desires to have included in the calculation of the Borrowing Base the reserves attributable to such property or interest (and presented for each such property or interest by separate category (in accordance with Petroleum Industry Standards) as Proved Developed Producing Reserves, Proved Developed Non-Producing Reserves, Proved Developed Behind Pipe Reserves, Proved Developed Shut-in Reserves, and Undeveloped Reserves), which report shall (i) contain a projection of the rate of production and future net revenues, operating expenses (including production Taxes and ad valorem expenses) and Capital Expenditures with respect thereto as of such date, based upon the PV-9, (ii) take into account any "over-produced" status under gas balancing arrangements and (iii) otherwise contain information and analysis comparable in scope to that contained in the Initial Reserve Report, and (iv) contain any other engineering data reasonably requested by the Administrative Agent.

"Reserve Report Certificate" shall mean a certificate of an Authorized Officer in substantially the form of Exhibit A certifying as to the matters set forth in Section 9.14(c).

"Roll-Up Loan Commitment" shall mean, (i) as to all Lenders, the aggregate amount of the Roll-Up Loan Commitments of each Lender, which, as of the date the Final DIP Order is entered shall be $77,793,041, which amount shall be comprised of a roll-up and refinancing of the Existing Loans and reissuance of the Existing Letters of Credit, plus any and all fees and costs associated with any funding under Letters of Credit, and shall be deemed fully funded and reissued by the Lenders upon entry of the Final DIP Order, and (ii) as to each Lender, such Lender's Commitment Percentage of the aggregate Roll-Up Loan Commitment.

"Roll-Up Loans" shall mean any Loans pursuant to Section 2.1(b) and Unpaid Drawings pursuant to Section 3.4(a).

"Rolling Variance Report" shall have the meaning provided in Section 9.1(n)(v).

"S&P" shall mean Standard & Poor's Ratings Services or any successor by merger or consolidation to its business.

"Sale Transaction" means the sale of all or substantially all of the assets of the Credit Parties pursuant to Section 363 or Section 1129 of the Bankruptcy Code pursuant to the Acceptable Bid Procedures and the Acceptable Sale Order.

"Sanctioned Country" shall mean, at any time, a country, region or territory that is itself the subject or target of any Sanctions (at the time of the Closing Date, Crimea, Cuba, Iran, North Korea and Syria).

"Sanctioned Person" shall mean, at any time, (a) any Person listed in any Sanctions-related list maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the United Nations Security Council, the European Union or Her Majesty's Treasury of the United Kingdom, (b) any Person located, organized or resident in a Sanctioned Country or (c) any Person owned 50 percent or more or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

"Sanctions" shall mean all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union or Her Majesty's Treasury of the United Kingdom.

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

"Second Variance Report" shall have the meaning provided in Section 9.1(n)(iii).

"Secured Cash Management Agreement" means (a) any Existing Cash Management Agreement that as of the Final DIP Order Entry Date has not expired or been terminated in accordance with its terms and (b) any Cash Management Agreement by and between the Borrower or any of its Subsidiaries and any Cash Management Bank.

"Secured Hedge Agreement" shall mean (a) any Existing Hedge Agreement that as of the Final DIP Order has not expired or been terminated in accordance with its terms and (b) any Hedge Agreement by and between the Credit Parties and any Hedge Bank.

"Secured Parties" shall mean, collectively, the Administrative Agent, the Letter of Credit Issuer, each Lender, each Hedge Bank that is party to any Secured Hedge Agreement, each Cash Management Bank that is a party to any Secured Cash Management Agreement and each sub-agent pursuant to Section 12 appointed by the Administrative Agent with respect to matters relating to the Credit Documents or by the Administrative Agent with respect to matters relating to any Security Document.

"Securities Act" shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Security Agreement" shall mean the Security Agreement entered into by the Borrower, the other grantors party thereto and the Administrative Agent, for the benefit of the Secured Parties, substantially in the form of Exhibit J.

"Security Documents" shall mean, collectively, the Security Agreement, the Pledge Agreements, the Mortgages and each other security agreement or other instrument or document executed and delivered pursuant to Section 9.11 or 9.13 or pursuant to any other such Security Documents or otherwise to secure or perfect the security interest in any or all of the Obligations.

"SPV" shall have the meaning provided in Section 13.6(g).

"Stated Amount" of any Letter of Credit shall mean the maximum amount from time to time available to be drawn thereunder, determined without regard to whether any conditions to drawing could then be met.

"Stock" shall mean any and all shares of capital stock or shares in the capital, as the case may be (whether denominated as common stock or preferred stock or ordinary shares or preferred shares, as the case may be), beneficial, partnership or membership interests, participations or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity, whether voting or non-voting.

"Stock Equivalents" shall mean all securities convertible into or exchangeable for Stock and all warrants, options or other rights to purchase or subscribe for any Stock, whether or not presently convertible, exchangeable or exercisable.

"Subsidiary" of any Person shall mean and include (a) any corporation more than 50% of whose Stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time Stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person directly or indirectly through Subsidiaries and (b) any limited liability company, partnership, association, joint venture or other entity of which such Person directly or indirectly through Subsidiaries has more than a 50% equity interest at the time. Unless otherwise expressly provided, all references herein to a "Subsidiary" shall mean a Subsidiary of the Borrower.

"Superpriority Claim" means a claim against a Credit Party in any of the Cases that is a superpriority administrative expense claim having priority over any or all administrative expenses and other claims of the kind specified in, or otherwise arising or ordered under, any sections of the Bankruptcy Code (including, without limitation, sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 546(c) and/or 726 thereof (to the extent permitted by law)), whether or not such claim or expenses may become secured by a judgment Lien or other non-consensual Lien, levy or attachment.

"Swap Obligation" means, with respect to any Credit Party, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

"Swap Termination Value" shall mean, in respect of any one or more Hedge Agreements, (a) for any date on or after the date such Hedge Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedge Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Agreements (which may include a Lender or any Affiliate of a Lender).

"Syndication Agent" shall have the meaning provided in the preamble to this Agreement.

"Taxes" shall mean any and all present or future taxes, duties, levies, imposts, assessments, deductions, withholdings (including backup withholding) or other similar charges imposed by any Governmental Authority whether computed on a separate, consolidated, unitary, combined or other basis and any interest, fines, penalties or additions to Tax with respect to the foregoing.

"Termination Date" means the earliest to occur of (a) the Maturity Date, (b) a determination by the Bankruptcy Court not to enter the Interim DIP Order or the Final DIP Order in form and substance

satisfactory to the Lenders in their sole discretion by the applicable time periods set forth in clause (a) of the definition of "Milestone", (c) acceleration of the Obligations by the Lenders after the occurrence of any Event of Default, (d) if a plan of reorganization or liquidation has been confirmed by order of the Bankruptcy Court, the effective date of such plan of reorganization or liquidation, which provides for (i) the indefeasible payment in full, in cash of all of the Obligations owing under this Agreement and the Existing Credit Documents or (ii) is otherwise acceptable to the Administrative Agent and Lenders in their sole discretion, (e) the effective date of the Sale Transaction, (f) the appointment of a Chapter 11 trustee or other disinterested person with expanded powers pursuant to Section 1104(c) of the Bankruptcy Code or the dismissal of any of the Cases, (g) the conversion of any of the Cases under Chapter 11 of the Bankruptcy Code to cases under Chapter 7 of the Bankruptcy Code, and (h) the filing or support by any Credit Party of a plan of reorganization that is not an Acceptable Plan.

"Test Date" shall have the meaning provided in Section 10.12(b).

"Third Variance Report" shall have the meaning provided in Section 9.1(n)(iv).

"Total Commitment" shall mean the sum of the New-Money Commitments and Roll-Up Loan Commitments of the Lenders.

"Total Exposure" shall mean, with respect to any Lender at any time, the sum of (a) the aggregate principal amount of the Loans of such Lender then outstanding and (b) such Lender's Letter of Credit Exposure at such time.

"Transactions" shall mean, collectively, the entering into of the Credit Documents and the funding of the Loans under this Agreement on the Closing Date, the payment of transaction expenses on the Closing Date and the other transactions contemplated by this Agreement and the Credit Documents.

"Transferee" shall have the meaning provided in Section 13.6(e).

"UCC" shall mean the Uniform Commercial Code of the State of New York or of any other state the laws of which are required to be applied in connection with the perfection of security interests in any Collateral.

"Unfunded Current Liability" shall mean, with respect to any Plan at any time, the amount of any of its unfunded benefit liabilities as defined in Section 4001(a)(18) of ERISA, determined in accordance with the assumptions used for funding the Plan pursuant to Section 412 of the Code for its most recent fiscal year.

"United States Trustee" means the trustee appointed by the Bankruptcy Court to supervise the administration of the Cases.

"Unpaid Drawing" shall have the meaning provided in Section 3.4(a).

"U.S. Lender" shall have the meaning provided in Section 5.4(g).

"U.S. Tax Compliance Certificate" shall have the meaning provided in Section 5.4(e)(i).

"Variance Report" shall mean, collectively, the First Variance Report, Second Variance Report, Third Variance Report and the Rolling Variance Reports.

"Voting Stock" shall mean, with respect to any Person, such Person's Stock or Stock Equivalents having the right to vote for the election of directors of such Person under ordinary circumstances.

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

1.2 Other Interpretive Provisions. With reference to this Agreement and each other Credit Document, unless otherwise specified herein or in such other Credit Document:

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words "herein", "hereto", "hereof" and "hereunder" and words of similar import when used in any Credit Document shall refer to such Credit Document as a whole and not to any particular provision thereof.

(c) Article, Section, Exhibit and Schedule references are to the Credit Document in which such reference appears.

(d) The term "including" is by way of example and not limitation.

(e) The term "documents" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(f) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding"; and the word "through" means "to and including".

(g) Section headings herein and in the other Credit Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Credit Document.

(h) Any reference to any Person shall be constructed to include such Person's successors or assigns (subject to any restrictions on assignment set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all of the functions thereof.

(i) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

(j) The word "will" shall be construed to have the same meaning as the word "shall".

(k) The words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(l) No provision of any Credit Document shall be interpreted or construed against any Person solely because such Person or its legal counsel drafted such provision.

1.3 Accounting Terms. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, applied in a manner consistent with that used in preparing the Historical Financial Statements, except as otherwise specifically prescribed herein.

1.4 References to Agreements, Laws, Etc. Unless otherwise expressly provided herein, (a) references to organizational documents, agreements (including the Credit Documents) and other Contractual Requirements shall be deemed to include all subsequent amendments, restatements, amendment and restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, amendment and restatements, extensions, supplements and other modifications are permitted by any Credit Document and (b) references to any Requirement of Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Requirement of Law.

1.5 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to New York City (daylight or standard, as applicable).

1.6 Timing of Payment or Performance. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day.

1.7 Intentionally Reserved.

1.8 Intentionally Reserved.

1.9 Intentionally Reserved.

1.10 Uniform Commercial Code. Terms not otherwise defined in this Agreement and defined in the UCC shall have the meanings attributed to such terms in the UCC.

SECTION 2.
AMOUNT AND TERMS OF CREDIT.

2.1 Commitments.

(a) Subject to the terms and conditions set forth herein and in the DIP Orders, each Lender severally, not jointly, agrees to make to the Borrower, on and after the Closing Date (and in each case, subject to the conditions set forth in Article 7), New-Money Loans in an aggregate amount not to exceed such Lender's Commitment Percentage of the New-Money Commitment and the sum of all outstanding New-Money Loans not to exceed the New-Money Commitment.

(b) The Administrative Agent, the Lenders and the Credit Parties each acknowledges and agrees that the Roll-Up Loans shall be deemed fully funded and the Existing Letters of Credit shall be deemed reissued hereunder concurrently with the entry of the Final DIP Order (without any notice of request by the Borrower) in accordance with the terms of the DIP Orders, and the Roll-Up Loan

Commitment of each Existing Lender shall expire upon the deemed funding of the Roll-Up Loans and the reissuance of the Existing Letters of Credit hereunder on such date.

(c) Each Lender's New-Money Commitment shall be automatically reduced by such Lender's Commitment Percentage of the funded amount of each Borrowing and shall expire and automatically terminate on the Termination Date (if not earlier terminated), and all Loans and all other Obligations owed under the Credit Documents or with respect to the Loans shall be paid in full not later than the Termination Date. Amounts borrowed under this Section 2.1(a) and repaid or prepaid may not be reborrowed.

2.2 Minimum Amount of Each Borrowing. The aggregate principal amount of each Borrowing requested after the Initial New-Money Loan shall be in a minimum amount of at least the Minimum Borrowing Amount for such Loans and in a multiple of $100,000 in excess thereof.

2.3 Notice of Borrowing. Whenever the Borrower desires to incur New-Money Loans, the Borrower shall give the Administrative Agent at the Administrative Agent's Office, prior to 5:00 p.m. on the Business Day prior to the requested date of each such Borrowing (a "Notice of Borrowing") which shall specify (i) the aggregate principal amount of the New-Money Loans to be made, (ii) the date of the Borrowing (which shall be a Business Day), and (iii) the current aggregate Total Exposures (without regard to the requested Borrowing) of all Lenders and the *pro forma* aggregate Total Exposures (giving effect to the requested Borrowing) of all Lenders. The Administrative Agent shall promptly give each Lender written notice (or telephonic notice promptly confirmed in writing) of each proposed Borrowing of New-Money Loans, of such Lender's Commitment Percentage thereof and of the other matters covered by the related Notice of Borrowing. Notwithstanding anything to the contrary hereunder, with respect to the New-Money Commitment, (x) the Borrower may make Borrowings from the Lenders prior to the Availability Period up to the Initial New-Money Loan upon entry of the Interim DIP Order; provided, each Borrowing shall be in an amount or amounts equal to the budgeted amounts set forth in the Approved Budget and (x) up to one (1) Borrowing per calendar week from the Lenders from time to time during the Availability Period in the aggregate amount up to the Additional New-Money Loans.

2.4 Disbursement of Funds.

(a) No later than 2:00 p.m. on the date specified in each Notice of Borrowing, each Lender will make available its Commitment Percentage of each Borrowing requested to be made on such date in the manner provided below.

(b) Each Lender shall make available all amounts it is to fund to the Borrower under any Borrowing in immediately available funds to the Administrative Agent at the Administrative Agent's Office in Dollars, and the Administrative Agent will make available to the Borrower, by depositing to a Cash Collateral Account the aggregate of the amounts so made available in Dollars. Unless the Administrative Agent shall have been notified by any Lender prior to the 2:00 p.m. on the date of any such Borrowing that such Lender does not intend to make available to the Administrative Agent its portion of the Borrowing or Borrowings to be made on such date, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date of Borrowing, and the Administrative Agent, in reliance upon such assumption, may (in its sole discretion and without any obligation to do so) make available to the Borrower a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender and the Administrative Agent has made available such amount to the Borrower, the Administrative Agent shall be entitled to recover such corresponding amount from such Lender. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor the Administrative Agent shall promptly notify the Borrower and the Borrower shall pay such corresponding amount to the

Administrative Agent in Dollars with one (1) Business Day of such demand. The Administrative Agent shall also be entitled to recover from such Lender or the Borrower, as the case may be, interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to the Borrower to the date such corresponding amount is recovered by the Administrative Agent, at a rate *per annum* equal to (i) if paid by such Lender, the Overnight Rate or (ii) if paid by the Borrower, the then-applicable rate of interest or fees, calculated in accordance with Section 2.8, for the respective Loans.

(c) Nothing in this Section 2.4 shall be deemed to relieve any Lender from its obligation to fulfill its commitments hereunder or to prejudice any rights that the Borrower may have against any Lender as a result of any default by such Lender hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to fulfill its commitments hereunder).

2.5 Repayment of Loans; Evidence of Debt.

(a) The Borrower promises and agrees to repay to the Administrative Agent, for the benefit of the applicable Lenders, on the Maturity Date, all Loans outstanding on such date together with all other amounts due under this Agreement or the other Credit Documents, including the Exit Fee.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to the appropriate lending office of such Lender resulting from each Loan made by such lending office from time to time, including the amounts of principal and interest payable and paid to such lending office from time to time under this Agreement.

(c) The Administrative Agent, on behalf of the Borrower, shall maintain the Register pursuant to Section 13.5(b), and a subaccount for each Lender, in which Register and subaccounts (taken together) shall be recorded (i) the amount of each Loan made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof.

(d) The entries made in the Register and accounts and subaccounts maintained pursuant to clauses (b) and (c) of this Section 2.5 shall, to the extent permitted by applicable Requirements of Law, be prima facie evidence of the existence and amounts of the obligations of the Borrower therein recorded; provided, however, that the failure of any Lender or the Administrative Agent to maintain such account, such Register or such subaccount, as applicable, or any error therein, shall not in any manner affect the obligation of the Borrower to repay (with applicable interest) the Loans made to the Borrower by such Lender in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note substantially in the form of Exhibit E. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its permitted assigns). Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 13.6(c)) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if applicable, to such payee and its permitted assigns).

2.6 Intentionally Reserved.

2.7 Pro Rata Borrowings. Each Borrowing of Loans under this Agreement shall be made by each Lender on the basis of its Commitment Percentage of the New-Money Commitment. It is understood that (a) no Lender shall be responsible for any default by any other Lender in its obligation to make Loans hereunder and that each Lender severally but not jointly shall be obligated to make the Loans provided to be made by it hereunder, regardless of the failure of any other Lender to fulfill its commitments hereunder and (b) failure by a Lender to perform any of its obligations under any of the Credit Documents shall not release any Person from performance of its obligation under any Credit Document.

2.8 Interest.

(a) The unpaid principal amount of each Loan shall bear interest from the date of the Borrowing thereof until maturity (whether by acceleration or otherwise) at a rate *per annum* that shall at all times be the Applicable Margin plus the ABR, in each case, in effect from time to time; provided that if the interest rate so determined from time to time is less than (x) eleven percent (11%) prior to the Availability Period, the interest rate shall be deemed to be eleven percent (11%), and (y) ten and one-half percent (10.5%) during the Availability Period, the interest rate shall be deemed to be ten and one-half percent (10.5%).

(b) If all or a portion of (i) the principal amount of any Loan or (ii) any amounts (including interest) payable hereunder with respect thereto shall not be paid when due (whether at stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate *per annum* that is (the "Default Rate") to the extent permitted by applicable Requirements of Law, the rate described in Section 2.8(a) plus (x) three percent (3%) prior to the Availability Period, and (y) two and one-half percent (2.5%) during the Availability Period, in each case, from the date of such non-payment to the date on which such amount is paid in full (after as well as before judgment).

(c) Interest on each Loan shall accrue from and including the date of any Borrowing to but excluding the date of any repayment thereof and shall be payable in Dollars; provided that any Loan that is repaid on the same date on which it is made shall bear interest for one day. Except as provided below, interest shall be payable in respect of each Loan, (i) monthly in arrears on the last Business Day of each calendar month, and (ii) (A) on any prepayment (on the amount prepaid), (B) at maturity (whether by acceleration or otherwise) and (C) after such maturity, on demand.

(d) All computations of interest hereunder shall be made in accordance with Section 5.5.

2.9 Intentionally Reserved.

2.10 Increased Costs, Illegality, Etc.

(a) Intentionally Reserved.

(b) Intentionally Reserved.

(c) If, after the Closing Date, any Change in Law relating to capital adequacy or liquidity of any Lender or compliance by any Lender or its parent with any Change in Law relating to capital adequacy or liquidity occurring after the Closing Date, has or would have the effect of reducing the rate of return on such Lender's or its parent's capital or assets as a consequence of such Lender's commitments or obligations hereunder to a level below that which such Lender or its parent could have achieved but for such Change in Law (taking into consideration such Lender's or its parent's policies with

respect to capital adequacy or liquidity), then from time to time, promptly (but in any event no later than fifteen days) after written demand by such Lender (with a copy to the Administrative Agent), the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or its parent for such reduction, it being understood and agreed, however, that a Lender shall not be entitled to such compensation as a result of such Lender's compliance with, or pursuant to any request or directive to comply with, any applicable Requirement of Law as in effect on the Closing Date (except as otherwise set forth in the definition of Change in Law). Each Lender, upon determining in good faith that any additional amounts will be payable pursuant to this Section 2.10(c), will give prompt written notice thereof to the Borrower, which notice shall set forth in reasonable detail the basis of the calculation of such additional amounts, although the failure to give any such notice shall not, subject to Section 2.13, release or diminish the Borrower's obligations to pay additional amounts pursuant to this Section 2.10(c) upon receipt of such notice.

(d) Notwithstanding the foregoing, it is understood that this Section 2.10 shall not apply to (i) Taxes indemnifiable under Section 5.4, (ii) net income, franchise, branch profits and excise Taxes (imposed in lieu of net income Taxes) imposed on the Administrative Agent or Lender as a result of a present or former connection between the Administrative Agent or Lender and the jurisdiction imposing such Tax, and (iii) Taxes included under clauses (b), (c) or (d) of the definition of Excluded Taxes.

2.11 Intentionally Reserved.

2.12 Change of Lending Office. Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 2.10(c), or Section 5.4 with respect to such Lender, it will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Loans affected by such event; provided that such designation is made on such terms that such Lender and its lending office suffer no economic, legal or regulatory disadvantage, with the object of avoiding the consequence of the event giving rise to the operation of any such Section. Nothing in this Section 2.12 shall affect or postpone any of the obligations of the Borrower or the right of any Lender provided in Section 2.10.

2.13 Notice of Certain Costs. Notwithstanding anything in this Agreement to the contrary, to the extent any notice required by Section 2.10 or Section 5.4 is given by any Lender more than 180 days after such Lender has knowledge (or should have had knowledge) of the occurrence of the event giving rise to the additional cost, reduction in amounts, loss, tax or other additional amounts described in such Sections, such Lender shall not be entitled to compensation under Section 2.10 or Section 5.4, as the case may be, for any such amounts incurred or accruing prior to the 181st day prior to the giving of such notice to the Borrower; provided that if the circumstance giving rise to such claim is retroactive, then such 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

2.14 Intentionally Reserved.

2.15 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) Unused Fees shall cease to accrue on the unfunded portion of the New-Money Commitment of such Defaulting Lender pursuant to Section 4.1(b); and

(b) the Commitment and Total Exposure of such Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action

hereunder (including any consent to any amendment or waiver pursuant to Section 13.1); provided that any waiver, amendment or modification requiring the consent of all Lenders pursuant to Section 13.1 (other than Section 13.1(b)(vii)) or requiring the consent of each affected Lender pursuant to Section 13.1(a)(i), shall require the consent of such Defaulting Lender (which for the avoidance of doubt would include any change to the Maturity Date applicable to such Defaulting Lender, decreasing or forgiving any principal or interest due to such Defaulting Lender, any decrease of any interest rate applicable to Loans made by such Defaulting Lender (other than the waiving of the Default Rate) and any increase in such Defaulting Lender's Commitment).

2.16 Priority and Liens. The Credit Parties hereby covenant, represent and warrant, upon entry of the DIP Order, the Obligations of the Credit Parties hereunder and under the other Credit Documents and under the Secured Hedge Agreements and the Secured Cash Management Agreements shall have the priority and Liens set forth in the DIP Order, in each case, subject to the Carve-Out and as further described in the DIP Order.

2.17 Payment of Obligations. Subject to the DIP Orders, upon the occurrence of the Termination Date (whether at maturity, by acceleration or otherwise), the Lenders shall be entitled to immediate payment of the Obligations without further application to or order of the Bankruptcy Court.

2.18 No Discharge; Survival of Claims. Each Credit Party agrees that (a) any Chapter 11 Plan or any related Confirmation Order entered in the Cases shall not discharge or otherwise affect in any way any of the Obligations of the Credit Parties to the Secured Parties under this Agreement and the related Credit Documents, other than after the payment in full in cash to the Secured Parties of all of the Obligations under this Agreement, the Related Credit Documents, and the Existing Credit Documents (and the Cash Collateralization of all outstanding Letters of Credit in the amount required hereunder and subject to documentation reasonably satisfactory to the Letter of Credit Issuer and the related Credit Documents on or before the effective date of a Chapter 11 Plan and termination of the Commitments and (B) to the extent its Obligations under this Agreement, the other Credit Documents, and the Existing Credit documents are not satisfied in full, unless otherwise agreed to the Administrative Agent and the Existing Administrative Agent, (i) its Obligations arising under this Agreement, the related Credit Documents, and the Existing Credit Documents shall not be discharged by the entry of such Confirmation Order (and each Credit Party pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (ii) the Superpriority Claim granted to the Administrative Agent, the Lenders, the Letter of Credit Issuer, the Hedge Bank, and the Cash Management Bank pursuant to the DIP Orders and the Liens granted to the Administrative Agent pursuant to the DIP Orders shall not be affected in any manner by the entry of such confirmation order.

SECTION 3.
LETTERS OF CREDIT

3.1 Letters of Credit. Subject to the terms and conditions set forth herein, including entry of the Final DIP Order, the Existing Letters of Credit under the Existing Credit Agreement shall be deemed to have been issued and to be outstanding hereunder and, on and after the date of entry of the Final DIP Order, shall constitute Letters of Credit for all purposes hereunder and under the Credit Documents and shall no longer be deemed to be outstanding under the Existing Credit Agreement. All Unpaid Drawings occurring after entry of the Interim DIP Order and prior to entry of the Final DIP Order approving the Roll-Up Loans shall automatically and irrevocably be deemed converted into Roll-Up Loans upon the entry of the Final Order. Any Unpaid Drawing occurring after the entry of the Final DIP Order approving the Roll-Up Loans shall immediately, automatically and irrevocably be deemed to constitute a Roll-Up Loan.

3.2 Notice of Amendment.

(a) To request the amendment of a Letter of Credit the Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Letter of Credit Issuer requested date of amendment, renewal or extension) a notice:

(i) identifying the Letter of Credit to be amended;

(ii) specifying the date of amendment (which shall be a Business Day);

(iii) specifying the date on which such Letter of Credit shall be amended or extended to expire; provided that no Letter of Credit shall be renewed or extended except for automatic renewals as described in paragraph (b) below;

(iv) specifying the outstanding amount of such Letter of Credit;

(v) specifying the name and address of the beneficiary thereof and such other information as shall be necessary to amend, renew or extend such Letter of Credit; and

(vi) specifying the current total Letter of Credit Exposures (without regard to the requested amendment) and the pro forma total Letter of Credit Exposures (after giving effect the requested amendment).

(b) In no event shall the Borrower be permitted to request an increase in the Stated Amount, or a renewal or extension, of any Letter of Credit pursuant to this Section 3.2 except pursuant to the automatic renewal provisions of any such Letter of Credit.

(c) For all purposes of this Agreement, the amount of a Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the Stated Amount thereof shall be deemed to be the maximum Stated Amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum Stated Amount is in effect at the time of determination; provided, however, that this provision does not constitute Letter of Credit Issuer's acceptance of such automatic increases.

3.3 Intentionally Reserved.

3.4 Agreement to Repay Letter of Credit Drawings.

(a) The Borrower hereby agrees to reimburse the Letter of Credit Issuer, by making payment in Dollars to the Administrative Agent in immediately available funds, for any payment or disbursement made by the Letter of Credit Issuer under any Letter of Credit (each such amount so paid until reimbursed, an "Unpaid Drawing"), within one Business Day after the date on which such payment or disbursement is made, if the Letter of Credit Issuer provides notice to the Borrower of such payment or disbursement prior to 11:00 a.m. on the next succeeding Business Day of such payment or disbursement (such date for reimbursement, the "Reimbursement Date"), with interest on the amount so paid or disbursed by the Letter of Credit Issuer, to the extent not reimbursed prior to 5:00 p.m. on the Reimbursement Date, from the Reimbursement Date to the date the Letter of Credit Issuer is reimbursed therefor at a rate *per annum* that shall at all times be the Default Rate plus the ABR as in effect from time to time; provided that, notwithstanding anything contained in this Agreement to the contrary, unless the Borrower shall have notified the Administrative Agent and the relevant Letter of Credit Issuer prior to 10:00 a.m. on the Reimbursement Date that the Borrower intends to reimburse the relevant Letter of

Credit Issuer for the amount of such drawing with funds other than the proceeds of Loans, the Borrower shall be deemed to have given a Notice of Borrowing requesting that, with respect to Letters of Credit, the Lenders make Loans (which shall be Roll-Up Loans) on the Reimbursement Date in the amount of such drawing. Such Loans shall be made without regard to the Minimum Borrowing Amount. The Administrative Agent shall use the proceeds of such Loans solely for purpose of reimbursing the Letter of Credit Issuer for the related Unpaid Drawing. In the event that the Borrower fails to Cash Collateralize any Letter of Credit that is outstanding on the Maturity Date, the full amount of the Letters of Credit Outstanding in respect of such Letter of Credit shall be deemed to be an Unpaid Drawing subject to the provisions of this Section 3.4 except that the Letter of Credit Issuer shall hold the proceeds received from the Lenders as contemplated above as cash collateral for such Letter of Credit to reimburse any Drawing under such Letter of Credit and shall use such proceeds first, to reimburse itself for any Drawings made in respect of such Letter of Credit following the L/C Maturity Date, second, to the extent such Letter of Credit expires or is returned undrawn while any such cash collateral remains, to the repayment of obligations in respect of any Loans that have not paid at such time and third, to the Borrower or as otherwise directed by a court of competent jurisdiction. Nothing in this Section 3.4(a) shall affect the Borrower's obligation to repay all outstanding Loans when due in accordance with the terms of this Agreement.

(b) The obligations of the Borrower under this Section 3.4 to reimburse the Letter of Credit Issuer with respect to Unpaid Drawings (including, in each case, interest thereon) shall be absolute and unconditional under any and all circumstances and irrespective of any set-off, counterclaim or defense to payment that the Borrower or any other Person may have or have had against the Letter of Credit Issuer, the Administrative Agent or any Lender, including, without limitation, the following:

(i) any defense based upon the failure of any drawing under a Letter of Credit (each a "Drawing") to conform to the terms of the Letter of Credit or any non-application or misapplication by the beneficiary of the proceeds of such Drawing;

(ii) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Credit Document;

(iii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the Letter of Credit Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iv) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(v) waiver by the Letter of Credit Issuer of any requirement that exists for the Letter of Credit Issuer's protection and not the protection of the Borrower or any waiver by the Letter of Credit Issuer which does not in fact materially prejudice the Borrower;

(vi) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vii) any payment made by the Letter of Credit Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(viii) any payment by the Letter of Credit Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the Letter of Credit Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any debtor relief law; or

(ix) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower or any Subsidiary.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the Letter of Credit Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the Letter of Credit Issuer and its correspondents unless such notice is given as aforesaid.

3.5 Intentionally Reserved.

3.6 Intentionally Reserved.

3.7 Role of Letter of Credit Issuer. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the Letter of Credit Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the Letter of Credit Issuer, the Administrative Agent, any of their respective Affiliates nor any correspondent, participant or assignee of the Letter of Credit Issuer shall be liable to any Lender for (a) any action taken or omitted in connection herewith at the request or with the approval of the Required Lenders, (b) any action taken or omitted in the absence of gross negligence or willful misconduct or (c) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the Letter of Credit Issuer, the Administrative Agent, any of their respective Affiliates nor any correspondent, participant or assignee of the Letter of Credit Issuer shall be liable or responsible for any of the matters described in this Section 3; provided that anything in such Section to the contrary notwithstanding, the Borrower may have a claim against the Letter of Credit Issuer, and the Letter of Credit Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by the Letter of Credit Issuer's willful misconduct or gross negligence or the Letter of Credit Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the Letter of Credit Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation,

regardless of any notice or information to the contrary, and the Letter of Credit Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

3.8 Cash Collateral.

(a) Upon the request of the Required Lenders if, as of the L/C Maturity Date, there are any Letters of Credit Outstanding, the Borrower shall immediately Cash Collateralize the then Letters of Credit Outstanding. Concurrently with the closing of the Sale Transaction, the Credit Parties shall pay to the Administrative Agent cash in an amount equal to (i) one hundred five percent (105%) of any Letters of Credit Outstanding and (ii) the total amount of all Hedging Obligations, and the cash so paid to the Administrative Agent shall be used either to reimburse (x) the Letter of Credit Issuer for any Drawing on the Letters of Credit Outstanding or (y) the Hedge Banks on the Hedging Obligations, and any amounts in excess of the amounts reimbursed to the Letter of Credit Issuer and/or Hedge Banks shall be returned to the Credit Parties after there are no longer any Letters of Credit Outstanding or Hedging Obligations outstanding.

(b) Intentionally Reserved.

(c) For purposes of this Agreement, "Cash Collateralize" shall mean to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Letter of Credit Issuer and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances in an amount equal to the amount of the Letters of Credit Outstanding required to be Cash Collateralized pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the Letter of Credit Issuer (which documents are hereby consented to by the Lenders). Derivatives of such term have corresponding meanings. The Borrower hereby grants to the Administrative Agent, for the benefit of the Letter of Credit Issuer, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Such cash Collateral shall be maintained in blocked, interest bearing deposit accounts established by and in the name of the Borrower, but under the "control" (as defined in Section 9-104 of the UCC) of the Administrative Agent.

3.9 Applicability of ISP and UCP. Unless otherwise expressly agreed by the Letter of Credit Issuer and the Borrower when a Letter of Credit is issued, (a) the rules of the ISP shall apply to each standby Letter of Credit and (b) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance, shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, the Letter of Credit Issuer shall not be responsible to the Borrower for, and the Letter of Credit Issuer's rights and remedies against the Borrower shall not be impaired by, any action or inaction of the Letter of Credit Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including any Requirement of Law or any order of a jurisdiction where the Letter of Credit Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

3.10 Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

3.11 Letters of Credit Issued for Guarantors. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Guarantor, the Borrower shall be obligated to reimburse the Letter of Credit Issuer hereunder for any and all Drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Guarantors inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Guarantors.

SECTION 4.
FEES; COMMITMENTS.

4.1 Fees.

(a) Intentionally Reserved.

(b) The Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Commitment Percentage, a commitment fee (the "Unused Fee") for each day from the Closing Date until the Termination Date. Each Unused Fee shall be payable by the Borrower (i) quarterly in arrears on the last Business Day of each March, June, September and December (for the three-month period (or portion thereof) ended on such day for which no payment has been received) and (ii) on the Termination Date (for the period ended on such date for which no payment has been received pursuant to clause (i) above), and shall be computed for each day during such period at a rate per annum equal to (x) 3.0% prior to the Availability Period, and (y) 2.5% during the Availability Period, in each case, on the New-Money Commitments.

(c) The Borrower agrees to pay to each Letter of Credit Issuer a fee in respect of each Letter of Credit issued by it (the "Fronting Fee"), for the period from the date of issuance of such Letter of Credit to the termination or expiration date of such Letter of Credit, computed at the rate for each day equal to 0.125% *per annum* on the daily Stated Amount of such Letter of Credit (or at such other rate *per annum* as agreed in writing between the Borrower and the Letter of Credit Issuer). Such Fronting Fees shall be due and payable by the Borrower (i) quarterly in arrears on the last Business Day of each March, June, September and December and (ii) on the Termination Date (for the period for which no payment has been received pursuant to clause (i) above).

(d) The Borrower agrees to pay directly to the Letter of Credit Issuer upon each issuance of, drawing under, and/or amendment of, a Letter of Credit issued by it such amount as the Letters of Credit Issuer and the Borrower shall have agreed upon for issuances of, drawings under or amendments of, letters of credit issued by it.

(e) The Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Commitment Percentage an upfront fee (the "Upfront Fee") equal to 3.0% of the aggregate principal amount of the New-Money Commitments provided hereunder (such may take the form of original issue discount at the election of the Required Lenders), which such Upfront Fee shall be earned, due and payable on the Closing Date. Notwithstanding the foregoing, no applicable original issue discount shall reduce the amount of Obligations.

(f) The Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Commitment Percentage an exit fee (the "Exit Fee") in an amount equal to (x) 3.0 % prior to the Availability Period, and (y) 2.5% during the Availability Period, in each case, of (i) the amount of the reduction in New-Money Commitments (other than by reason of a Borrowing, but including any reduction resulting from a termination of the New-Money Commitment as contemplated in the definition of "Termination Date") and (ii) the principal amount of the New-Money Commitments

prepaid or repaid, including, for the avoidance of doubt, any repayment following the Maturity Date or following any acceleration thereof. The Exit Fee shall be payable on the date of each such reduction of New-Money Commitments and/or payment or prepayment of New-Money Commitments, as applicable.

4.2 Voluntary Reduction of Commitments.

(a) Upon at least two Business Days' prior written notice (or telephonic notice promptly confirmed in writing) to the Administrative Agent at the Administrative Agent's Office (which notice the Administrative Agent shall promptly transmit to each of the Lenders), the Borrower shall have the right, without premium or penalty, on any day, permanently to terminate or reduce the Commitments, as determined by the Borrower, in whole or in part; provided that (i) any such termination or reduction shall apply proportionately and permanently to reduce the Commitments of each of the Lenders, (ii) any partial reduction pursuant to this Section 4.2 shall be in the amount of at least $500,000 and in multiples of $100,000 in excess thereof, and (iii) after giving effect to such termination or reduction and to any prepayments of the Loans made on the date thereof in accordance with this Agreement (including pursuant to Section 5.2(a)), the aggregate amount of all Lenders' Total Exposures shall not exceed the Total Commitment.

(b) The Borrower may at any time terminate the Total Commitment upon (i) the payment in full of all outstanding Loans, together with accrued and unpaid interest thereon, (ii) the payment in full of the accrued and unpaid fees, and (iii) the payment in full of all reimbursable expenses and other Obligations (other than Hedge Obligations under Secured Hedge Agreements, Cash Management Obligations under Secured Cash Management Agreements and contingent indemnification obligations not then due and payable) together with accrued and unpaid interest thereon, as applicable.

4.3 Mandatory Termination of Commitments. The Total Commitment shall terminate at 5:00 p.m. on the Termination Date.

SECTION 5.
PAYMENTS

5.1 Voluntary Prepayments. The Borrower shall have the right to prepay Loans, without premium or penalty (other than, for the avoidance of doubt, the Exit Fee, if applicable), in whole or in part from time to time on the following terms and conditions:

(a) the Borrower shall give the Administrative Agent at the Administrative Agent's Office at least three (3) Business Days' written notice (or telephonic notice promptly confirmed in writing) of its intent to make such prepayment, the amount of such prepayment and the specific Borrowing(s) being prepaid, which notice shall be given by the Borrower no later than 1:00 p.m. on the date of such prepayment and shall promptly be transmitted by the Administrative Agent to each of the Lenders; and

(b) each partial prepayment shall be in a minimum amount of $500,000 and in multiples of $100,000 in excess thereof.

Each such notice shall specify the date and amount of such prepayment. At the Borrower's election in connection with any prepayment pursuant to this Section 5.1, such prepayment shall not be applied to any Loans of a Defaulting Lender.

5.2 Mandatory Prepayments.

(a) Repayment Following Optional Reduction of Commitments. If, after giving effect to any termination or reduction of the Commitments pursuant to Section 4.2(a), the aggregate Total Exposures of all Lenders exceeds the Total Commitment (as reduced), then the Borrower shall on the same Business Day (i) prepay the Loans on the date of such termination or reduction in an aggregate principal amount equal to such excess and (ii) if any excess remains after prepaying all of the Loans as a result of any Letter of Credit Exposure, pay to the Administrative Agent on behalf of the Letter of Credit Issuer an amount in cash equal to such excess to be held as Cash Collateral as provided in Section 3.8.

(b) Dispositions; Net Cash Proceeds and Extraordinary Proceeds. Subject to the Carve-Out, and the funding in full of the Carve-Out Reserve in accordance with the DIP Orders, unless waived by the Administrative Agent in its sole discretion (i) immediately upon any Disposition (other than a Disposition permitted by Section 10.4(a)) by the Credit Parties of any property, the Borrower shall immediately prepay the outstanding Loans in accordance with Section 5.2(c) in an amount equal to 100% of the net cash proceeds received by such Person in connection with such Disposition; provided, the Borrower shall only be required to prepay the outstanding Loans for net cash proceeds received in excess of $100,000 individually and $200,000 in the aggregate; provided, further, nothing contained in this Section 5.2(b) shall permit a Credit Party to sell or otherwise Dispose of any property other than in accordance with this Agreement, and (ii) immediately upon the receipt by a Credit Party of any Extraordinary Proceeds in any one or series of related events, the Borrower shall immediately prepay the outstanding Loans in accordance with Section 5.2(c) in an amount equal to 100% of such Extraordinary Proceeds, net of any reasonable expenses incurred in collecting such Extraordinary Proceeds; provided, the Borrower shall only be required to prepay the outstanding Loans for Extraordinary Proceeds received in excess of $100,000 individually and $200,000 in the aggregate.

(c) Application to Loans. With respect to each prepayment of Loans elected under Section 5.1 or required by Section 5.2, the Borrower may designate the Loans to be prepaid; provided that (A) each prepayment of any Loans made pursuant to a Borrowing shall be first applied *pro rata* among the New-Money Loans, and second to the Roll-Up Loans and (B) notwithstanding the provisions of the preceding clause (A), no prepayment of Loans shall be applied to the Loans of any Defaulting Lender unless otherwise agreed in writing by the Borrower. In the absence of a designation by the Borrower as described in the preceding sentence, the Administrative Agent shall, subject to the above, make such designation in its reasonable discretion.

(d) Application of Proceeds. The application of proceeds pursuant to this Section 5.2 shall reduce the aggregate amount of Lenders' New-Money Commitments hereunder and amounts prepaid may not be reborrowed. Each prepayment under this Section 5.2 shall include a portion of the Exit Fee payable to each Lender in accordance with such Lender's Commitment Percentage of the New-Money Commitments.

5.3 Method and Place of Payment.

(a) All payments under this Agreement shall be made by the Borrower without condition, set-off, counterclaim, recoupment or deduction of any kind, to the Administrative Agent for the ratable account of the Lenders entitled thereto not later than 2:00 p.m., in each case, on the date when due and shall be made in immediately available funds at the Administrative Agent's Office or at such other office as the Administrative Agent shall specify for such purpose by notice to the Borrower; it being understood that written or facsimile notice by the Borrower to the Administrative Agent to make a payment from the funds in the Borrower's account at the Administrative Agent's Office shall constitute the making of such payment to the extent of such funds held in such account. All repayments or prepayments of any Loans (whether of principal, interest or otherwise) hereunder and all other payments under each Credit Document shall be made in Dollars. The Administrative Agent will thereafter cause to

be distributed on the same day (if payment was actually received by the Administrative Agent prior to 2:00 p.m. or, otherwise, on the next Business Day in the sole discretion of the Administrative Agent) like funds relating to the payment of principal or interest or fees ratably to the Lenders entitled thereto.

(b) For purposes of computing interest or fees, any payments under this Agreement that are made later than 2:00 p.m. shall be deemed to have been made on the next succeeding Business Day in the sole discretion of the Administrative Agent. Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest shall be payable during such extension at the applicable rate in effect immediately prior to such extension.

(c) Unless the Administrative Agent shall have received notice from the Borrower by 2:00 p.m. on the day prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (c) shall be conclusive, absent manifest error.

5.4 Net Payments.

(a) Any and all payments made by or on behalf of any Credit Party shall be made free and clear of, and without deduction or withholding for or on account of, any Taxes; provided that if any withholding agent shall be required by applicable Requirements of Law to deduct or withhold any Taxes from such payments, then (i) if the amounts so withheld are Indemnified Taxes, the sum payable by the applicable Credit Party shall be increased as necessary so that after making all required deductions and withholdings (including deductions or withholdings applicable to additional sums payable under this Section 5.4) the Administrative Agent or any Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the withholding agent shall make such deductions or withholdings and (iii) the withholding agent shall timely pay the full amount deducted or withheld to the relevant Governmental Authority within the time allowed and in accordance with applicable Requirements of Law. Whenever any Indemnified Taxes are payable by any Credit Party, as promptly as possible thereafter, such Credit Party shall send to the Administrative Agent for its own account or for the account of the Letter of Credit Issuer or Lender, as the case may be, a certified copy of an original official receipt (or other evidence acceptable to such Lender, acting reasonably) received by such Credit Party showing payment thereof.

(b) The Credit Parties shall jointly and severally timely pay and shall indemnify and hold harmless the Administrative Agent and each Lender (whether or not such Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority) with regard to any Other Taxes.

(c) The Credit Parties shall indemnify and hold harmless the Administrative Agent and each Lender within 15 Business Days after written demand therefor, for the full amount of any Indemnified Taxes imposed on the Administrative Agent or such Lender as the case may be, on or with respect to any payment by or on account of any obligation of any Credit Party (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 5.4) and any

reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate setting forth reasonable detail as to the amount of such payment or liability delivered to the Borrower by a Lender or the Administrative Agent on its own behalf or on behalf of a Lender shall be conclusive absent manifest error.

(d) Any Lender that is entitled to an exemption from or reduction of any applicable withholding Tax with respect to payments under this Agreement or any other Credit Document shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

(e) Without limiting the generality of the foregoing, each Non-U.S. Lender with respect to any Loan made to the Borrower shall, to the extent it is legally entitled to do so:

(i) deliver to the Borrower and the Administrative Agent, prior to the date on which the first payment to the Non-U.S. Lender is due hereunder, two copies of (A) in the case of a Non-U.S. Lender claiming exemption from U.S. federal withholding Tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest", United States Internal Revenue Service Form W-8BEN or Form W-8BEN-E (or any applicable successor form) (together with a certificate representing that such Non-U.S. Lender is not a bank for purposes of Section 881(c)(3)(A) of the Code, is not a 10% shareholder (within the meaning of Section 881(c)(3)(B) of the Code) of the Borrower, is not a controlled foreign corporation related to the Borrower (within the meaning of Section 881(c)(3)(C) of the Code) and the interest payments in question are not effectively connected with the United States trade or business conducted by such Lender (a "U.S. Tax Compliance Certificate") substantially in the form of Exhibit K-1), (B) Internal Revenue Service Form W-8BEN, Form W-8BEN-E or Form W-8ECI (or any applicable successor form), as applicable, in each case properly completed and duly executed by such Non-U.S. Lender claiming complete exemption from, or reduced rate of, U.S. Federal withholding Tax on payments by the Borrower under this Agreement, (C) to the extent a non-U.S. Lender is not the beneficial owner, Internal Revenue Service Form W-8IMY (or any applicable successor form), a U.S. Tax Compliance Certificate substantially in the form of Exhibit K-2 or Exhibit K-3 (provided that if the non-U.S. Lender is a partnership and one or more direct or indirect partners of such non-U.S. Lender are claiming the portfolio interest exemption, such non-U.S. Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit K-4 on behalf of each direct and indirect partner) and all necessary attachments (including the forms described in clauses (A) and (B) above, as required) or (D) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made; and

(ii) deliver to the Borrower and the Administrative Agent two further copies of any such form or certification (or any applicable successor form) on or before the date that any such form or certification expires or becomes obsolete and after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Borrower;

(f) unless in any such case any Change in Law has occurred prior to the date on which any such delivery would otherwise be required that renders any such form inapplicable or would prevent such Non-U.S. Lender from duly completing and delivering any such form with respect to it and such Non-U.S. Lender promptly so advises the Borrower and the Administrative Agent. Each Person that shall become a Participant pursuant to Section 13.6 or a Lender pursuant to Section 13.6 shall, upon the effectiveness of the related transfer, be required to provide all the forms and statements required pursuant to Section 5.4; provided that in the case of a Participant such Participant shall furnish all such required forms and statements to the Lender from which the related participation shall have been purchased. If any Lender or the Administrative Agent determines, in its sole discretion, exercised in good faith, that it has received a refund of an Indemnified Tax (including an Other Tax) for which a payment has been made by a Credit Party pursuant to this Agreement, then the Lender or the Administrative Agent shall reimburse such Credit Party for such amount (net of all out-of-pocket expenses of such Lender or the Administrative Agent, and without interest other than any interest received thereon from the relevant Governmental Authority with respect to such refund. Such Credit Party, upon the request of the Lender or the Administrative Agent, agrees to repay the amount paid over to such Credit Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Lender or the Administrative Agent in the event the Lender or the Administrative Agent is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. Neither the Lenders nor the Administrative Agent shall be obliged to disclose any information regarding its tax returns or tax affairs to any Credit Party in connection with this clause (f) or any other provision of this Section 5.4.

(g) Each Lender and Agent with respect to the Loan and any other Loan made to the Borrower that is a United States person under Section 7701(a)(30) of the Code (each, a "U.S. Lender") shall deliver to the Borrower and the Administrative Agent two United States Internal Revenue Service Forms W-9 (or substitute or successor form), properly completed and duly executed, certifying that such Lender or Agent is exempt from United States backup withholding (i) on or prior to the Closing Date (or on or prior to the date it becomes a party to this Agreement), (ii) on or before the date that such form expires or becomes obsolete, (iii) after the occurrence of a change in the Agent's or Lender's circumstances requiring a change in the most recent form previously delivered by it to the Borrower and the Administrative Agent, and (iv) from time to time thereafter if reasonably requested by the Borrower or the Administrative Agent.

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

(i) The agreements in this Section 5.4 shall survive the termination of this Agreement, the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, and the payment, satisfaction, or discharge of the Loans and all other amounts payable hereunder.

5.5 Computations of Interest and Fees. Except as provided in the next succeeding sentence, Interest on the outstanding principal amount of Loans shall be calculated on the basis of a 360-day year for the actual days elapsed. Interest on ABR Loans in respect of which the rate of interest is calculated on the basis of the Administrative Agent's prime rate and interest on overdue interest shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed.

5.6 Limit on Rate of Interest.

(a) No Payment Shall Exceed Lawful Rate. Notwithstanding any other term of this Agreement, the Borrower shall not be obligated to pay any interest or other amounts under or in connection with this Agreement or otherwise in respect to any of the Obligations in excess of the amount or rate permitted under or consistent with any applicable law, rule or regulation.

(b) Payment at Highest Lawful Rate. If the Borrower is not obliged to make a payment that it would otherwise be required to make, as a result of Section 5.6(a), the Borrower shall make such payment to the maximum extent permitted by or consistent with applicable laws, rules and regulations.

(c) Adjustment if Any Payment Exceeds Lawful Rate. If any provision of this Agreement or any of the other Credit Documents would obligate any Credit Party to make any payment of interest or other amount payable to the Administrative Agent or any Lender in an amount or calculated at a rate that would be prohibited by any applicable Requirement of Law, then notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable Requirements of Law, such adjustment to be effected, to the extent necessary, by reducing the amount or rate of interest required to be paid by the Borrower to the affected Lender under Section 2.8.

(d) Rebate of Excess Interest. Notwithstanding the foregoing, and after giving effect to all adjustments contemplated thereby, if the Administrative Agent or any Lender shall have received from any Credit Party an amount in excess of the maximum permitted by any applicable Requirement of Law, then such Credit Party shall be entitled, by notice in writing to the Administrative Agent to obtain reimbursement from the Administrative Agent, such Lender, as the case may be, in an amount equal to such excess, and pending such reimbursement, such amount shall be deemed to be an amount payable by the Administrative Agent or such Lender to the Borrower.

SECTION 6.
CONDITIONS PRECEDENT TO INITIAL CREDIT EVENT.

The effectiveness of this Agreement, and the obligations of the Lenders to make the Initial New-Money Loan, is subject to the satisfaction of the following conditions precedent, except as otherwise agreed or waived pursuant to Section 13.1.

6.1 Approved Budget. The Lenders shall have received the certified Approved Budget, which shall be in form and substance satisfactory to the Lenders.

6.2 DIP Orders. The Administrative Agent (with copy to the Lenders) shall have received a certified copy of the Interim DIP Order, which Interim DIP Order (i) shall have been entered on the docket of the Bankruptcy Court on or before the Closing Date and within the time period set forth in clause (a) of the definition of "Milestone", and (ii) shall be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated (in the case of a modification or amendment, in a manner that is adverse to the interests of the Administrative Agent or the Lenders in any respect). Additionally, (a) the Interim DIP Order shall include provisions that create Liens upon the Collateral in favor of the Administrative Agent and the Lenders securing all of the Obligations, which shall be deemed valid and perfected as of the Petition Date by entry of the Interim DIP Order with respect to each Credit Party and which shall constitute continuing Liens on the Collateral in favor of the Administrative Agent. The Administrative Agent and the Lenders shall not be required to file or record (but shall have the option and each of the Credit Parties hereby grants the Administrative Agent the authority to file or record) any financing statements, mortgages, notices of Lien or similar instruments, in any jurisdiction or filing office or to take any other action in order to validate, perfect or establish the priority of the Liens and security interest granted by or pursuant to this Agreement, the DIP Orders or any other Credit Document.

(b) Pursuant to Section 364(c)(1) of the Bankruptcy Code, the Obligations of the Credit Parties shall at all times constitute allowed Superpriority Claims against each of the Credit Parties in the Cases (without the need to file any proof of claim), with priority over any and all claims against the Credit Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses or other claims arising under Sections 105, 326, 328, 330, 331, 365, 503(b), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code (including Adequate Protection Payments), whether or not such expenses or claims may become secured by a judgment Lien or other non-consensual Lien, levy or attachment, which Superpriority Claims shall for purposes of Section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under Section 503(b) of the Bankruptcy Code, and which Superpriority Claims shall be payable from and have recourse to all pre- and post-petition property of the Credit Parties and all proceeds thereof (excluding the Credit Parties' claims and causes of action under Sections 502(d), 506(c), 544, 545, 547, 550 and 553 of the Bankruptcy Code and under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and similar statutes or common law, and any commercial tort claims (collectively, the "Avoidance Actions"), which for the avoidance of doubt, excludes each Credit Party's claims and causes of action under Section 549 of the Bankruptcy Code or similar state or other applicable law and the proceeds of each of the foregoing), but including, upon entry of the Final DIP Order, any proceeds or property recovered, unencumbered or otherwise from Avoidance Actions, whether by judgment, settlement or otherwise (the "Avoidance Proceeds"), subject to the Carve-Out. The Superpriority Claims shall be entitled to the full protection of Section 364(e) of the Bankruptcy Code in the event that the Interim DIP Order or any provision thereof is vacated, reversed or modified, on appeal or otherwise. The Superpriority Claims shall be *pari passu* in right of payment with one another and senior to the Adequate Protection Payments; provided, that the Superpriority Claims in respect of the Roll-Up Loans shall be subject and subordinate to the Superpriority Claims in respect of the New-Money Loans.

6.3 Credit Documents. The Administrative Agent shall have received:

(a) this Agreement, executed and delivered by a duly Authorized Officer of each of the Borrower, the Administrative Agent and each Lender;

(b) the Guarantee, executed and delivered by a duly Authorized Officer of each Person that is a Guarantor as of the Closing Date;

(c) the Security Agreement, executed and delivered by a duly Authorized Officer of the Borrower, all other grantors party thereto, the Administrative Agent and each Person that is a Guarantor as of the Closing Date; and

(d) the Pledge Agreements, each executed and delivered by a duly Authorized Officer of the Administrative Agent and each Pledgor party thereto as of the Closing Date.

6.4 Representations. On the Closing Date, the representations and warranties of the Credit Parties in the Credit Documents shall be true and correct in all material respects.

6.5 Closing Certificates. The Administrative Agent shall have received a certificate of the Credit Parties, dated the Closing Date, in form and substance reasonably satisfactory to the Administrative Agent, with appropriate insertions, executed by the Chief Operations Officer or Chief Financial Officer of each Credit Party, and attaching the documents referred to in Section 6.6 and such other closing certificates as it may reasonably request.

6.6 Authorization of Proceedings of Each Credit Party; Organizational Documents. The Administrative Agent shall have received (a) a copy of the resolutions, in form and substance reasonably satisfactory to the Administrative Agent, of the Board of Directors of each Credit Party (or a duly authorized committee thereof) authorizing (i) the execution, delivery and performance of the Credit Documents (and any agreements relating thereto) to which it is a party and (ii) in the case of the Borrower, the extensions of credit contemplated hereunder, (b) true and complete copies of each of the organizational documents of each Person that is a Credit Party as of the Closing Date and (c) a copy of a good standing certificate of each Person that is a Credit Party as of the Closing Date, dated a date reasonably close to the Closing Date.

6.7 Cash Collateral. The Credit Parties shall have expended all available Cash Collateral of the Lenders in excess of $5,000,000 prior to (or contemporaneously with) making any requests for Loans hereunder.

6.8 Perfected Security Interest. The Administrative Agent for the benefit of the Secured Parties shall be satisfied in their sole discretion that the Interim DIP Order or Security Documents required to be executed on the Closing Date create (or will create, upon proper filing, recording or registration thereof, or upon entry of, the Interim DIP Order) a valid and perfected security interest in the Collateral.

6.9 Fees. The Existing Agent, the Administrative Agent, the Existing Lenders, and the Lenders shall have received the reasonable and documented prepetition and post-petition fees and expenses incurred by them in connection with the Chapter 11 Cases as required by the Interim DIP Order, including, without limitation, the Professional Fees of the Existing Agent, the Administrative Agent, the Existing Lenders, and the Lenders and the reasonable fees, disbursements and other charges of counsel to the Arranger, Administrative Agent and Lenders) payable by the Credit Parties.

6.10 Reserve Report. The Lenders shall have received the Initial Reserve Report, and any supplementary information reasonably requested by the Administrative Agent necessary to determine the existence and location of all Proved Reserves of the Borrower and the Guarantors included in the Initial Reserve Report as of the Closing Date.

6.11 No Default; Representations and Warranties. At the time of the Initial New-Money Loan, and also after giving effect thereto (i) no material adverse change has occurred in the Credit Parties' operations, performance or properties (in each case, with respect to the financial condition, environmental

matters, or otherwise) since April 12, 2019 that in the reasonable judgment of the Administrative Agent and the Lenders, has or can reasonably be expected to have a Material Adverse Effect on the (A) rights and remedies of the Administrative Agent or the Lenders or (B) the ability of the Credit Parties to perform their obligations under this Agreement, (ii) satisfaction of all conditions precedent set forth in Section 6 and (iii) all representations and warranties made by any Credit Party contained herein or in the other Credit Documents shall be true and correct in all material respects (or, to the extent that a particular representation or warranty is qualified as to materiality, such representation or warranty shall be true and correct) with the same effect as though such representations and warranties had been made on and as of the date of such Credit Event (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (or, to the extent that a particular representation or warranty is qualified as to materiality, such representation or warranty shall be true and correct) as of such earlier date).

6.12 Notice of Borrowing.

(a) Prior to the making of the Initial New-Money Loan, the Administrative Agent shall have received a written Notice of Borrowing meeting the requirements of Section 2.3.

(b) The acceptance of the benefits of the Initial New-Money Loan shall constitute a representation and warranty by each Credit Party to each of the Lenders that all the applicable conditions specified in Section 7 have been satisfied as of that time.

Without limiting the generality of the provisions of Section 12.3, for purposes of determining compliance with the conditions specified in this Section 6, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

SECTION 7.
CONDITIONS PRECEDENT TO CREDIT EVENTS.

The agreement of each Lender to make the Additional New-Money Loans requested to be made by it from time to time on any date during the Availability Period is subject to the satisfaction of the following conditions precedent, except as otherwise agreed or waived pursuant to Section 13.1:

7.1 Additional New-Money Loans. The Administrative Agent (with copy to the Lenders) shall have received (a) a certified copy of the Final DIP Order, which Final DIP Order (i) shall have been entered on the docket of the Bankruptcy Court on or before the date any Additional New-Money Loans are requested and within the time period set forth in clause (a) of the definition of "Milestone", and (ii) shall be in full force and effect and shall not have been reversed, modified, amended, stayed, vacated or subject to a stay pending appeal, in the case of any modification, amendment or stay pending appeal, in a manner, or relating to a matter, that is adverse to the interests of the Administrative Agent or the Lenders, and (b) an order approving the stalking horse bidder shall have been entered on the docket of the Bankruptcy Court on or before the date set forth in clause (f) of the definition of "Milestone", which shall provide for, among other things, the satisfaction of the Minimum Repayment Condition, on terms and conditions acceptable to the Administrative Agent and the Existing Administrative Agent in their sole discretion.

7.2 No Default; Representations and Warranties. At the time of each Credit Event and also after giving effect thereto (i) no material adverse change has occurred in the Credit Parties' operations,

performance or properties (in each case, with respect to the financial condition, environmental matters, or otherwise) since April 12, 2019 that in the reasonable judgment of the Administrative Agent and the Lenders, has or can reasonably be expected to have a Material Adverse Effect on the (A) rights and remedies of the Administrative Agent or the Lenders or (B) the ability of the Credit Parties to perform their obligations under this Agreement, (ii) satisfaction of all conditions precedent set forth in Section 6 and (iii) all representations and warranties made by any Credit Party contained herein or in the other Credit Documents shall be true and correct in all material respects (or, to the extent that a particular representation or warranty is qualified as to materiality, such representation or warranty shall be true and correct) with the same effect as though such representations and warranties had been made on and as of the date of such Credit Event (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (or, to the extent that a particular representation or warranty is qualified as to materiality, such representation or warranty shall be true and correct) as of such earlier date).

7.3 Notice of Borrowing.

(a) Prior to the making of each Loan, the Administrative Agent shall have received a written Notice of Borrowing meeting the requirements of Section 2.3.

(b) The acceptance of the benefits of each Credit Event shall constitute a representation and warranty by each Credit Party to each of the Lenders that all the applicable conditions specified in Section 7 have been satisfied as of that time.

SECTION 8.
REPRESENTATIONS, WARRANTIES AND AGREEMENTS.

In order to induce the Lenders to enter into this Agreement, to make the Loans and issue or participate in Letters of Credit as provided for herein, the Borrower makes (on the Closing Date and on each other date as required or otherwise set forth in this Agreement) the following representations and warranties to, and agreements with, the Lenders, all of which shall survive the execution and delivery of this Agreement and the making of the Loans and the issuance of the Letters of Credit:

8.1 Corporate Status. Each Credit Party (a) is a duly organized and validly existing corporation or other entity in good standing under the laws of the jurisdiction of its organization and has the corporate or other organizational power and authority to own its property and assets and to transact the business in which it is engaged and (b) has duly qualified and is authorized to do business and is in good standing (if applicable) in all jurisdictions where it is required to be so qualified, except where the failure to have such power and authority or to be so qualified would not reasonably be expected to result in a Material Adverse Effect.

8.2 Corporate Power and Authority; Enforceability. Each Credit Party has the corporate or other organizational power and authority to execute, deliver and carry out the terms and provisions of the Credit Documents to which it is a party and has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the Credit Documents to which it is a party. Each Credit Party has duly executed and delivered each Credit Document to which it is a party and each such Credit Document constitutes the legal, valid and binding obligation of such Credit Party enforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization and other similar laws relating to or affecting creditors' rights generally and general principles of equity whether considered in a proceeding in equity or law).

8.3 No Violation. None of the execution, delivery or performance by any Credit Party of the Credit Documents to which it is a party, the compliance with the terms and provisions thereof or the consummation of the transactions contemplated hereby or thereby will (a) contravene any applicable provision of any material Requirement of Law, (b) result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien upon any of the property or assets of such Credit Party (other than DIP Liens created under the Credit Documents) pursuant to the terms of any material indenture, loan agreement, lease agreement, mortgage, deed of trust, agreement or other material instrument to which such Credit Party is a party or by which it or any of its property or assets is bound (any such term, covenant, condition or provision, a "Contractual Requirement") except to the extent such contravention breach, default or Lien that would not reasonably be expected to result in a Material Adverse Effect or (c) violate any provision of the certificate of incorporation, by-laws or other organizational documents of such Credit Party.

8.4 Litigation. Except as set forth on Schedule 8.4, there are no actions, suits or proceedings (including Environmental Claims) pending or, to the knowledge of the Borrower, threatened with respect to the Credit Parties that would reasonably be expected to result in a Material Adverse Effect.

8.5 Margin Regulations. Neither the making of any Loan hereunder nor the use of the proceeds thereof will violate the provisions of Regulation T, Regulation U or Regulation X of the Board. No part of the proceeds of any Borrowing will be used for purchasing or carrying directly or indirectly "margin stock" (as such term is defined or used, directly or indirectly, in Regulation U of the Board).

8.6 Approvals. The execution, delivery and performance of each Credit Document do not require any consent or approval of, registration or filing with, or other action by, any Governmental Authority or any other Person, except for (a) such as have been obtained or made and are in full force and effect, (b) filings and recordings in respect of the Liens created pursuant to the Security Documents and (c) such licenses, approvals, authorizations or consents the failure of which to obtain or make would not reasonably be expected to have a Material Adverse Effect.

8.7 Investment Company Act. No Credit Party is an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

8.8 True and Complete Disclosure.

(a) None of the written factual information and written data (taken as a whole) furnished by or on behalf of the Borrower, any of the Subsidiaries or any of their respective authorized representatives to the Administrative Agent and/or any Lender heretofore or hereafter (including all such information and data contained in the Credit Documents) for purposes of or in connection with this Agreement or any transaction contemplated herein contained any untrue statement of any material fact or omitted to state any material fact necessary to make such information and data (taken as a whole) not materially misleading at such time (after giving effect to all supplements so furnished prior to such time) in light of the circumstances under which such information or data was furnished; it being understood and agreed that for purposes of this Section 8.8(a), except for the Approved Budget, such factual information and data shall not include *pro forma* financial information, projections or estimates (including financial estimates, forecasts and other forward-looking information) and information of a general economic or general industry nature (collectively, "Pro Forma Projections").

(b) The projections (including financial estimates, forecasts and other forward-looking information) contained in the information and data referred to in Section 8.8(a) were based on good faith estimates and assumptions believed by the Borrower to be reasonable at the time made; it

being recognized by the Administrative Agent and the Lenders that such projections are as to future events and are not to be viewed as facts, the projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrower and the Subsidiaries, that no assurance can be given that any particular projections will be realized and that actual results during the period or periods covered by any such projections may differ from the projected results and such differences may be material.

8.9 Financial Condition; Financial Statements.

(a) The Historical Financial Statements present fairly in all material respects the consolidated financial position of the Borrower and its consolidated Subsidiaries at the date of such information and for the period covered thereby and have been prepared in accordance with GAAP consistently applied except to the extent provided in the notes thereto, if any. The Borrower has heretofore furnished to the Lenders a *pro forma* unaudited consolidated balance sheet of the Borrower and its consolidated Subsidiaries as of the Closing Date, after giving effect to the making of the initial extensions of credit hereunder, the application of the proceeds thereof and to the Transactions contemplated to occur on the Closing Date, certified by an Authorized Officer of the Borrower. The *pro forma* financial statement described above presents fairly, in all material respects, the financial position of the Borrower and its consolidated Subsidiaries as of the Closing Date. After the Closing Date, there has been no Material Adverse Effect.

(b) As of the Closing Date, neither the Borrower nor any Guarantor has any material Indebtedness (including Disqualified Stock) or any material contingent liabilities, off balance sheet liabilities or partnerships, liabilities for Taxes or unusual forward or long-term commitments that, in each such case, are not reflected or provided for in the Historical Financial Statements.

8.10 Tax Matters. Except where the failure of which would not be reasonably expected to have a Material Adverse Effect, (a) each of the Borrower and the Subsidiaries has filed all federal income Tax returns and all other Tax returns, domestic and foreign, required to be filed by it and has paid all material Taxes payable by it that have become due, other than those (i) not yet delinquent or (ii) contested in good faith as to which adequate reserves have been provided to the extent required by law and in accordance with GAAP and (b) the Borrower and each of the Subsidiaries have paid, or have provided adequate reserves in accordance with GAAP for the payment of, all federal, state, provincial and foreign Taxes applicable for the current fiscal year.

8.11 Compliance with ERISA.

(a) An "ERISA Event" means any of the following: (i) the failure of any Plan (other than a Multiemployer Plan) or any Multiemployer Plan to comply with ERISA, the Code, and any applicable Requirement of Law; (ii) a Reportable Event has occurred (or is reasonably likely to occur) with respect to any Plan; (iii) a determination that a Multiemployer Plan is "insolvent" (within the meaning of Section 4245 of ERISA) or in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 305 of ERISA), or a written notice of any such insolvency or status has been given to the Borrower or any ERISA Affiliate; (iv) the failure of any Plan (other than a Multiemployer Plan) to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Plan (or the filing of an application for a waiver of the minimum funding standards with respect to any Plan pursuant to Section 412(c) of the Code or Section 302(c) of ERISA), or a determination that any such Plan is, or is expected to be, in "at risk" status (within the meaning of Section 430 of the Code or Section 303 of ERISA); (v) the Borrower or any ERISA Affiliate has incurred (or is reasonably likely to incur) any liability to or on account of a Plan pursuant to Section 409, 502(i), 502(l), 515, 4062, 4063, 4064, 4069, 4201, 4203, 4204, or 4205 of ERISA or Section

4971 or 4975 of the Code or receipt by the Borrower or any ERISA Affiliate of notice in writing that it will incur any liability under any of the foregoing Sections with respect to any Plan; (vi) a proceeding has been instituted (or is reasonably likely to be instituted) to terminate any Plan or to appoint a trustee to administer any Plan, or written notice of any such proceedings has been given to the Borrower or any ERISA Affiliate; and (vii) a Lien has been imposed under Section 430(k) of the Code or Section 303(k) or Section 4068 of ERISA on the assets of the Borrower or any ERISA Affiliate (or is reasonably likely to be imposed), or the Borrower or any ERISA Affiliate has been notified in writing that such a Lien will be imposed on the assets of the Borrower or any ERISA Affiliate on account of any Plan. Except as would not result, individually or in the aggregate, in a Material Adverse Effect, no ERISA Event has occurred or is reasonably likely to occur. No Plan (other than a Multiemployer Plan) has an Unfunded Current Liability that would, individually or when taken together with any other liabilities referenced in this Section 8.11(a), be reasonably likely to have a Material Adverse Effect.

(b) There are no Foreign Plans.

8.12 Subsidiaries. Schedule 8.12 lists each Subsidiary of the Borrower (and the direct and indirect ownership interest of the Borrower therein), in each case existing on the Closing Date.

8.13 Parent Company Ownership. Schedule 8.13 lists each direct ownership interest in the Parent Company existing on the Closing Date, including the percentage of ownership.

8.14 Environmental Laws.

(a) Except as would not reasonably be expected to have a Material Adverse Effect: (i) the Borrower and each of the Subsidiaries and all Oil and Gas Properties, are in compliance with all Environmental Laws; (ii) neither the Borrower nor any Subsidiary has received written notice of any Environmental Claim or any other liability under any Environmental Law; (iii) neither the Borrower nor any Subsidiary is conducting any investigation, removal, remedial or other corrective action pursuant to any Environmental Law at any location; and (iv) no underground storage tank or related piping, or any impoundment or disposal area containing Hazardous Materials has been used by the Credit Parties or, to the knowledge of the Borrower, is located at, on or under any Oil and Gas Properties currently owned or leased by the Credit Parties.

(b) Except as would not reasonably be expected to have a Material Adverse Effect, neither the Borrower nor any of the Subsidiaries has treated, stored, transported, released or disposed or arranged for disposal or transport for disposal of Hazardous Materials at, on, under or from any currently or formerly owned or leased Oil and Gas Properties or facility in a manner that could reasonably be expected to give rise to liability of the Borrower or any Subsidiary under Environmental Law.

8.15 Properties.

(a) Except as set forth on Schedule 8.15, the Borrower and each Guarantor has good and defensible title to the Oil and Gas Properties evaluated in the most recently delivered Reserve Report (other than those (i) disposed of in compliance with Section 10.4 since delivery of such Reserve Report, (ii) leases that have expired in accordance with their terms and (iii) with title defects disclosed in writing to the Administrative Agent), and good title to all its material personal properties, in each case, free and clear of all Liens other than Liens permitted by Section 10.2. After giving full effect to the Liens permitted by Section 10.2, the Borrower or the Guarantor specified as the owner owns the working interests and net revenue interests in production attributable to the Hydrocarbon Interests as reflected in the most recently delivered Reserve Report, and the ownership of such properties shall not in any material respect obligate the Borrower or such Guarantor to bear the costs and expenses relating to the

maintenance, development and operations of each such property in an amount in excess of the working interest of each property set forth in the most recently delivered Reserve Report that is not offset by a corresponding proportionate increase in the Borrower's or such Guarantor's net revenue interest in such property.

(b) All material leases and agreements necessary for the conduct of the business of the Borrower and the Guarantors are valid and subsisting, in full force and effect, except to the extent that any such failure to be valid or subsisting would not reasonably be expected to have a Material Adverse Effect.

(c) The rights and properties presently owned, leased or licensed by the Borrower and the Guarantors including all easements and rights of way, include all rights and properties necessary to permit such Credit Parties to conduct their respective businesses as currently conducted, except to the extent any failure to have any such rights or properties would not reasonably be expected to have a Material Adverse Effect.

(d) All of the properties of the Borrower and the Guarantors that are reasonably necessary for the operation of their businesses are in good working condition and are maintained in accordance with prudent business standards, except to the extent any failure to satisfy the foregoing would reasonably be expected to have a Material Adverse Effect.

(e) Except for those as could not be reasonably expected to have a Material Adverse Effect, the wells comprising a part of the Oil and Gas Properties (or properties unitized therewith) of a Credit Party are bottomed under and are producing from, and the well bores are wholly within, the relevant Oil and Gas Properties or appropriate zones (or in the case of wells located on properties unitized therewith, such unitized properties) of a Credit Party.

8.16 Insurance. The properties of the Borrower and the Guarantors are insured in the manner contemplated by Section 9.3.

8.17 Violations of Law. No Credit Party is in violation of any applicable Requirement of Law except for such violations that could not reasonably be expected to have a Material Adverse Effect.

8.18 Gas Imbalances, Prepayments. On the Closing Date, except as set forth on Schedule 8.19, on a net basis, there are no gas imbalances, take or pay or other prepayments exceeding 5% of Hydrocarbon volumes (stated on a gas equivalent basis) in the aggregate, with respect to the Oil and Gas Properties of Borrower and the Guarantors that would require any such Credit Party to deliver Hydrocarbons either generally or produced from their Oil and Gas Properties at some future time without then or thereafter receiving full payment therefor.

8.19 Marketing of Production. On the Closing Date, except as set forth on Schedule 8.20, no agreements exist (which are not cancelable on 60 days' notice or less without penalty or detriment) for the sale of production of Hydrocarbons of the Borrower and the Guarantors at a fixed price (including calls on, or other rights to purchase, production, whether or not the same are currently being exercised) that have (a) represent in respect of such agreements 2.5% or more of the Credit Parties' average monthly production of Hydrocarbon volumes or (b) have a maturity or expiry date of longer than six (6) months from the Closing Date.

8.20 Hedge Agreements. Schedule 8.21 sets forth, as of the Closing Date, a true and complete list of all commodity Hedge Agreements of Borrower and each Guarantor, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), the net mark

to market value thereof (as of the last Business Day of the most recent fiscal quarter preceding the Closing Date and for which a mark to market value is reasonably available), all credit support agreements relating thereto (including any margin required or supplied) and the counterparty to each such agreement.

8.21 Use of Proceeds. The Borrower's uses of the proceeds of the Loans and of Letters of Credit are consistent with Section 9.12.

8.22 Primary Business. The Borrower and its Subsidiaries are engaged primarily in the business of acquiring, Disposing, owning, exploring, developing and operating Oil and Gas Properties and the gathering, marketing, processing and transporting of Hydrocarbons produced therefrom and businesses incidental or related thereto.

8.23 Patriot Act. On the Closing Date, each Credit Party is in compliance in all material respects with the material provisions of the Patriot Act, and the Borrower has provided to the Administrative Agent all information related to the Credit Parties (including but not limited to names, addresses and tax identification numbers (if applicable)) reasonably requested in writing by the Administrative Agent and mutually agreed to be required by the Patriot Act to be obtained by the Administrative Agent or any Lender.

8.24 Sanctions Laws and Regulations. The Borrower has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, members, officers, managers, employees and agents with Anti-Corruption Laws and Sanctions applicable to the Borrower and its Subsidiaries, and the Borrower, its Subsidiaries and their respective officers and directors, and to the knowledge of the Borrower, their respective employees and agents are in compliance with Anti-Corruption Laws and Sanctions applicable to the Borrower and its Subsidiaries in all material respects. None of (a) the Borrower, any Subsidiary or, to the knowledge of the Borrower or such Subsidiary, any of their respective directors, members, officers, managers or employees, or (b) to the knowledge of the Borrower, any agent of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby is a Sanctioned Person.

8.25 EEA Financial Institutions. No Credit Party is an EEA Financial Institution.

SECTION 9.
AFFIRMATIVE COVENANTS.

The Borrower hereby covenants and agrees that on the Closing Date and thereafter, until the Termination Date:

9.1 Information Covenants. The Borrower will furnish to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(a) Annual Financial Statements. As soon as available and in any event within five (5) days after the date on which such financial statements are required to be filed with the SEC (after giving effect to any permitted extensions) (or, if such financial statements are not required to be filed with the SEC, on or before the date that is 120 days after the end of each such fiscal year), beginning with the financial statements for the fiscal year ending December 31, 2018, the audited consolidated balance sheets of the Parent Company and the Subsidiaries and the related consolidated statements of operations, shareholders' equity and cash flows for such fiscal year, setting forth comparative consolidated figures for the preceding fiscal years, all in reasonable detail and prepared in accordance with GAAP.

(b) Quarterly Financial Statements. As soon as available and in any event within five (5) days after the date on which such financial statements are required to be filed with the SEC (after giving effect to any permitted extensions) with respect to each of the first three quarterly accounting periods in each fiscal year of the Parent Company (or, if such financial statements are not required to be filed with the SEC, on or before the date that is 60 days after the end of each such quarterly accounting period), beginning with the financial statements for the fiscal quarter ending March 31, 2019, the consolidated balance sheets of the Parent Company and the its Subsidiaries as at the end of such quarterly period and the related consolidated statements of operations for such quarterly accounting period and for the elapsed portion of the fiscal year ended with the last day of such quarterly period, shareholders' equity and the related consolidated statement of cash flows for such quarterly accounting period and for the elapsed portion of the fiscal year ended with the last day of such quarterly period, and setting forth comparative consolidated figures for the related periods in the prior fiscal year or, in the case of such consolidated balance sheet, for the last day of the prior fiscal year, all of which shall be certified by an Authorized Officer of the Parent Company as fairly presenting in all material respects the financial condition, results of operations, equity holders' equity and cash flows, of the Parent Company and its consolidated Subsidiaries in accordance with GAAP.

(c) Officer's Certificates. At the time of the delivery of the financial statements provided for in Section 9.1(a) and 9.1(b), a certificate of a Financial Officer of the Borrower to the effect that no Default or Event of Default exists or, if any Default or Event of Default does exist, specifying the nature and extent thereof, which certificate shall set forth beginning with the fiscal period ending March 31, 2019, the calculations required to establish whether the Borrower and its Subsidiaries were in compliance with the Financial Performance Covenants as at the end of such fiscal year or period, as the case may be.

(d) Monthly Operating Reports. Substantially concurrently with the filing thereof with the Bankruptcy Court, the monthly operating report of the Credit Parties required to be filed with the Bankruptcy Court and (i) a financial forecast model including an income statement, balance sheet and statement of cash flows, in each case in form and substance acceptable to the Administrative Agent, (ii) all required Reserve Reports prepared and delivered in accordance with this Agreement, and (iii) a Variance Report on a weekly roll forward basis on the days set forth under Section 9.1(n).

(e) Weekly Cash Balance Report. On the first Business Day of each week, a report detailing the amount of, without duplication, unrestricted cash available to the Borrower, in form and substance acceptable to the Administrative Agent in its sole discretion.

(f) Motions, etc. As soon as reasonably practicable in advance of filing or distribution, copies of all pleadings and motions to be filed by or on behalf of the Credit Parties with the Bankruptcy Court in the Cases relating to this Agreement, the Existing Credit Agreement, the Sale Transaction or a Chapter 11 Plan, or otherwise seeking any form of relief that impacts or affects any of the rights of the Administrative Agent, the Lenders the Existing Administrative Agent or the Existing Lenders.

(g) Notice of Default; Litigation. Promptly after an Authorized Officer of the Borrower or any of the Guarantors obtains actual knowledge thereof, notice of:

(i) the occurrence of any event that constitutes a Default or Event of Default, which notice shall specify the nature thereof, the period of existence thereof and what action the Borrower proposes to take with respect thereto;

(ii) any litigation or governmental proceeding pending against the Borrower or any of the Guarantors that could reasonably be expected to be determined adversely and, if so determined, to result in a Material Adverse Effect; and

(iii) any other event that could reasonably be expected to result in a Material Adverse Effect.

(h) Environmental Matters. Promptly after obtaining actual knowledge of any one or more of the following environmental matters, unless such environmental matters would not, individually, or when aggregated with all other such matters, be reasonably expected to result in a Material Adverse Effect, notice of:

(i) any pending or threatened Environmental Claim against any Credit Party or any Oil and Gas Properties;

(ii) any condition or occurrence on any Oil and Gas Properties that (A) could reasonably be expected to result in noncompliance by any Credit Party with any applicable Environmental Law or (B) could reasonably be anticipated to form the basis of an Environmental Claim against any Credit Party or any Oil and Gas Properties;

(iii) any condition or occurrence on any Oil and Gas Properties that (A) would reasonably be expected to result in material noncompliance by any Credit Party with any applicable Environmental Law or (B) would reasonably be anticipated to cause such Oil and Gas Properties to be subject to any restrictions on the ownership, occupancy, use or transferability of such Oil and Gas Properties under any Environmental Law; and

(iv) the conduct of any investigation, or any removal, remedial or other corrective action in response to the actual or alleged presence, release or threatened release of any Hazardous Material on, at, under or from any Oil and Gas Properties.

All such notices shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence or removal or remedial action and the response thereto.

(i) Other Information. Promptly upon filing thereof, copies of any filings (including on Form 10-K, 10-Q or 8-K) or registration statements with, and reports to, the SEC or any analogous Governmental Authority in any relevant jurisdiction by the Borrower or any of the Subsidiaries (other than amendments to any registration statement (to the extent such registration statement, in the form it becomes effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statements on Form S-8) and copies of all financial statements, proxy statements, notices and reports that the Borrower or any of the Subsidiaries shall send to the holders of any publicly issued debt of the Borrower and/or any of the Subsidiaries, in each case in their capacity as such holders, lenders or agents (in each case to the extent not theretofore delivered to the Administrative Agent pursuant to this Agreement) and, with reasonable promptness, such other information (financial or otherwise) as the Administrative Agent on its own behalf or on behalf of any Lender (acting through the Administrative Agent) may reasonably request in writing from time to time.

(j) Certificate of Authorized Officer - Hedge Agreements. Concurrently with the delivery of each Reserve Report (including the Initial Reserve Report), a certificate of an Authorized Officer of the Borrower, setting forth as of the last Business Day of the most recently ended fiscal year or period, as applicable, a true and complete list of all commodity Hedge Agreements of the Borrower and each Guarantor, the material terms thereof (including the type, term, effective date, termination date and

notional amounts or volumes), the net mark-to-market value thereof (as of the last Business Day of such fiscal year or period, as applicable and for which a mark to-market value is reasonably available), any new credit support agreements relating thereto not listed on Schedule 8.21 or on any previously delivered certificate delivered pursuant to this Section 9.1(j), any margin required or supplied under any credit support document and the counterparty to each such agreement, and supporting calculations to confirm compliance with Section 9.18.

(k) Certificate of Authorized Officer - Gas Imbalances. Concurrently with the delivery of each Reserve Report, a certificate of an Authorized Officer of the Borrower, certifying that as of the last Business Day of the most recently ended fiscal year or period, as applicable, except as specified in such certificate, on a net basis, there are no gas imbalances, take or pay obligations or other prepayment obligations exceeding 5% of Hydrocarbon volumes (stated on a gas equivalent basis) in the aggregate, with respect to the Oil and Gas Properties of the Borrower and Guarantors that would require any such Credit Party to deliver Hydrocarbons either generally or produced from their Oil and Gas Properties at some future time without then or thereafter receiving full payment therefor.

(l) Certificate of Authorized Officer - Production Report and Lease Operating Statement. Concurrently with the delivery of each Reserve Report, a certificate of an Authorized Officer of the Borrower, setting forth, for each calendar month during the then current fiscal year to date, the volume of production of Hydrocarbons and sales attributable to production of Hydrocarbons (and the prices at which such sales were made and the revenues derived from such sales) for each such calendar month from the Oil and Gas Properties, and setting forth the related ad valorem, severance and production Taxes and lease operating expenses attributable thereto for each such calendar month.

(m) Lists of Purchasers. At the time of the delivery of the financial statements provided for in Section 9.1(a), a certificate of an Authorized Officer of the Borrower setting forth a list of Persons purchasing Hydrocarbons from a Credit Party who collectively account for at least 85% of the revenues resulting from the sale of all Hydrocarbons from the Borrower and such Guarantors during the fiscal year for which such financial statements relate.

(n) Budget; Variance Reports.

(i) Budget. No later than 12:00 a.m. on Wednesday of each week starting with the first full calendar week following the Petition Date, the Borrower may propose an updated budget (the "Proposed DIP Budget") to the Administrative Agent, (i) which such report, certified in accordance with Section 10.12, shall set forth in comparative form the projected cash receipts and disbursements of the Credit Parties for the succeeding thirteen-week period, for all collections and disbursements, consistent in form and substance (other than Dollar amounts) with the Approved Budget delivered pursuant to Section 6.1. Each Proposed DIP Budget and the Approved Budget delivered pursuant to Section 6.1 shall be accompanied by a certificate from a Financial Officer of the Borrower certifying that such projections were prepared in good faith on the basis of the assumptions stated herein, which assumptions were believed by the preparer thereof to be reasonable at the time prepared. The Administrative Agent and the Required Lenders may approve such Proposed DIP Budget, which will then become the "Approved Budget" then in effect in their sole and absolute discretion; provided that if the Proposed DIP Budget is not approved by the Administrative Agent and the Lenders, the Approved Budget that was last approved by the Administrative Agent and the Lenders shall continue to be in effect. Notwithstanding the foregoing, the Borrower may not modify allocations between line items within the Approved Budget without the prior written authorization of the Administrative Agent and the Lenders. The budget shall report Professional Fees of the Credit Parties on an accrual basis without regard to allowance by the Bankruptcy Court or any required holdback.

(ii) First Variance Report. No later than 12:00 a.m. on the first Tuesday following the Closing Date, including on an interim basis, the Credit Parties shall deliver to the Administrative Agent an initial variance report (the "First Variance Report"). The First Variance Report shall measure performance against the first week of the Approved Budget and shall include calculations that demonstrate that the Credit Parties are in compliance with Section 10.12(b) for the preceding week.

(iii) Second Variance Report. No later than 12:00 a.m. on the second Tuesday following the Closing Date, the Credit Parties shall deliver to the Administrative Agent a second variance report (the "Second Variance Report"). The Second Variance Report shall measure performance against the first and second week of the Approved Budget (provided, however, that the second week may be revised relative to the Approved Budget as provided hereunder and as approved by the Administrative Agent and the Required Lenders in their sole discretion) and shall include calculations that demonstrate that the Credit Parties are in compliance with Section 10.12(b) in aggregate for the prior two weeks.

(iv) Third Variance Report. No later than 12:00 a.m. on the third Tuesday following the Closing Date, the Credit Parties shall deliver to the Administrative Agent a third variance report (the "Third Variance Report"). The Third Variance Report shall measure performance against the first, second and third week of the Approved Budget (provided, however, that the second and third weeks may be revised relative to the Approved Budget as provided hereunder and as approved by the Administrative Agent and the Required Lenders in their sole discretion) and shall include calculations that demonstrate that the Credit Parties are in compliance with Section 10.12(b) in aggregate for the prior three weeks.

(v) Rolling Variance Reports. Following the delivery of the Third Variance Report, and in any event no later than each successive Tuesday of each week thereof, the Credit Parties shall deliver to the Administrative Agent a variance report (the "Rolling Variance Report"). The Rolling Variance Report shall include calculations that demonstrate that the Credit Parties are in compliance with Section 10.12(b).

(o) Certificate of Authorized Officer - Marketing Agreements. Concurrently with any delivery of each Reserve Report, a certificate of an Authorized Officer of the Borrower, setting forth as of the last Business Day of the most recently ended fiscal year or period, as applicable, a true and complete list of all material marketing agreements (which are not cancellable on 60 days' notice or less without penalty or detriment) for the sale of production of the Hydrocarbons of the Borrower and the Guarantors at a fixed price (including calls on, or other parties rights to purchase, production, whether or not the same are currently being exercised) that have a maturity date or expiry date of longer than six months from the last day of such fiscal year or period, as applicable.

(p) Notice of Waiver, Default, Amendment, Modification or Termination of LLC Agreement. Promptly after an Authorized Officer of the Borrower or any of the Guarantors obtains actual knowledge thereof, notice of any waiver, amendment, default, modification or termination of the LLC Agreement.

(q) Notice of Hedge Liquidations. In the event that the Borrower or any Subsidiary receives any notice of early termination of any Hedging Agreement to which it is a party from any of its counterparties, or any Hedging Agreement to which a Credit Party is a party is subject to a Hedge Liquidation, prompt written notice of the receipt of such early termination notice or such Hedge Liquidation (and in the case of a voluntary Hedge Liquidation of any Hedging Agreement, prompt written notice thereof), as the case may be, setting forth in reasonable detail, (i) the effect of such Hedge

Liquidation on the aggregate notional volume of crude oil, natural gas and natural gas liquids, subject to the Borrower's and its Subsidiaries' Hedge Agreements and (ii) the amount of net cash proceeds received by such Credit Party as a result of such Hedge Liquidation.

(r) Intentionally Reserved.

(s) Notice of Hedge Agreement Modifications. Prompt written notice of any amendment to or other modification of any Hedge Agreement or the terms thereof since the delivery of the last certificate pursuant to Section 9.1(j) (including a summary of the terms of such amendment or modification and the net mark-to-market value therefor).

(t) Update Calls. Host regular conference calls (which shall occur no less than once during each week, and more frequently as requested by the advisors to the Administrative Agent and the Lenders), for the Credit Parties to provide updates as to the Credit Parties' liquidity and other developments and information regarding the Cases, business, operations, business affairs and financial condition.

It is understood that documents required to be delivered pursuant to Sections 9.1(a) through (l) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto to the Administrative Agent and the Lenders on the Borrower's website on the Internet at the website address listed on Schedule 13.2, (ii) on which such documents are posted on the Borrower's behalf on IntraLinks, Debtdomain or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent) and on which the Administrative Agent and the Lenders have been notified of such or (iii) on which such documents are transmitted by electronic mail to the Administrative Agent; provided that: (A) upon written request by the Administrative Agent, the Borrower shall deliver paper copies of such documents delivered pursuant to Section 9.1 to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (B) the Borrower shall, contemporaneously with the posting and/or delivery of such documents set forth in this paragraph, notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents.

9.2 Books, Records and Inspections.

(a) The Borrower will, and will cause each Guarantor to, permit officers and designated representatives of the Administrative Agent or the Required Lenders (as accompanied by the Administrative Agent), in each case who agree to be subject to the customary safety policies and procedures of the Borrower, to visit and inspect any of the properties or assets of the Borrower or such Guarantor in whomsoever' s possession to the extent that it is within such party's control to permit such inspection (and shall use commercially reasonable efforts to cause such inspection to be permitted to the extent that it is not within such party's control to permit such inspection), and to examine the books and records of the Borrower and any such Guarantor and discuss the affairs, finances and accounts of the Borrower and of any such Guarantor with, and be advised as to the same by, its and their officers and independent accountants, upon reasonable advance notice to the Borrower, all at such reasonable times and intervals during normal business hours and to such reasonable extent as the Administrative Agent or the Required Lenders may desire (and subject, in the case of any such meetings or advice from such independent accountants, to such accountants' customary policies and procedures). The Administrative

Agent and the Required Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. Notwithstanding anything to the contrary in this Section 9.2(a), none of the Borrower nor any Subsidiary shall be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by any Requirement of Law or (iii) is subject to attorney-client or similar privilege or constitutes attorney work-product.

(b) The Borrower will, and will cause each of the Subsidiaries to, maintain proper books of record and account, in which entries that are full, true and correct in all material respects and in conformity with GAAP consistently applied.

9.3 Maintenance of Insurance. The Borrower will, and will cause each Guarantor to, at all times maintain in full force and effect, pursuant to self-insurance arrangements or with insurance companies that the Borrower believes (in the good faith judgment of the management of the Borrower) are financially sound and responsible at the time the relevant coverage is placed or renewed, insurance in at least such amounts (after giving effect to any self-insurance which the Borrower believes (in the good faith judgment of management of the Borrower) is reasonable and prudent in light of the size and nature of its business) and against at least such risks (and with such risk retentions) as the Borrower believes (in the good faith judgment of management of the Borrower) is reasonable and prudent in light of the size and nature of its business; and will furnish to the Administrative Agent, upon written request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried. The Secured Parties shall be the additional insureds on any such liability insurance as their interests may appear and, if property insurance is obtained, the Administrative Agent shall be the loss payee under any such property insurance; provided that, so long as no Event of Default has occurred and is then continuing, the Secured Parties will provide any proceeds of such property insurance to the Borrower.

9.4 Payment of Taxes. The Borrower will pay and discharge, and will cause each of the Subsidiaries to pay and discharge, all material Taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, or upon any properties belonging to it, prior to the date on which material penalties attach thereto, and all lawful material claims in respect of any Taxes imposed, assessed or levied that, if unpaid, could reasonably be expected to become a Lien upon any properties of the Borrower or any of the Subsidiaries; provided that neither the Borrower nor any of the Subsidiaries shall be required to pay any such Tax, assessment, charge, levy or claim that is being contested in good faith and by proper proceedings if it has maintained adequate reserves with respect thereto in accordance with, GAAP and the failure to pay would not reasonably be expected to result in a Material Adverse Effect.

9.5 Consolidated Corporate Franchises. The Borrower will do, and will cause each Guarantor to do, or cause to be done, all things necessary to preserve and keep in full force and effect its existence, corporate rights and authority, except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect; provided, however, that the Borrower and its Subsidiaries may consummate any transaction permitted under Section 10.3, Section 10.4 or Section 10.5.

9.6 Compliance with Statutes, Regulations, Etc. The Borrower will, and will cause each Guarantor to, comply with all Requirements of Law applicable to it or its property, including all governmental approvals or authorizations required to conduct its business, and to maintain all such governmental approvals or authorizations in full force and effect, in each case except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. The Borrower will maintain in effect policies and procedures reasonably designed to ensure compliance by the Borrower, its

Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and Sanctions applicable to the Borrower and its Subsidiaries.

9.7 ERISA.

(a) Promptly after the Borrower or any ERISA Affiliate knows or has reason to know of the occurrence of any ERISA Event that, individually or in the aggregate (including in the aggregate such events previously disclosed or exempt from disclosure hereunder, to the extent the liability therefor remains outstanding), would be reasonably likely to have a Material Adverse Effect, the Borrower will deliver to the Administrative Agent a certificate of an Authorized Officer or any other senior officer of the Borrower setting forth details as to such occurrence and the action, if any, that the Borrower or such ERISA Affiliate is required or proposes to take, together with any notices (required, proposed or otherwise) given to or filed with or by the Borrower or such ERISA Affiliate the PBGC, a Plan participant (other than notices relating to an individual participant's benefits) or the Plan administrator with respect thereto.

(b) Promptly following any request therefor, the Borrower will deliver to the Administrative Agent copies of (i) any documents described in Section 101(k) of ERISA that the Borrower and any of its Subsidiaries or any ERISA Affiliate may request with respect to any Multiemployer Plan and (ii) any notices described in Section 101(l) of ERISA that the Borrower and any of its Subsidiaries or any ERISA Affiliate may request with respect to any Multiemployer Plan; provided, that if the Borrower, any of its Subsidiaries or any ERISA Affiliate has not requested such documents or notices from the administrator or sponsor of the applicable Multiemployer Plan, the Borrower, the applicable Subsidiary(ies) or the ERISA Affiliate(s) shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices to the Administrative Agent promptly after receipt thereof.

9.8 Maintenance of Properties. The Borrower will, and will cause each of the Guarantors to:

(a) operate its Oil and Gas Properties and other material properties or cause such Oil and Gas Properties and other material properties to be operated in accordance with the practices of the industry and in compliance with all applicable Contractual Requirements and all applicable Requirements of Law, including applicable proration requirements and Environmental Laws, and all applicable Requirements of Law of every other Governmental Authority from time to time constituted to regulate the development and operation of its Oil and Gas Properties and the production and sale of Hydrocarbons and other minerals therefrom, except, in each case, where the failure to so comply would not reasonably be expected to result in a Material Adverse Effect;

(b) keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, and preserve, maintain and keep in good repair, working order and efficiency (ordinary wear and tear excepted) all of its material Oil and Gas Properties and other material properties, including all equipment, machinery and facilities; and

(c) to the extent a Credit Party is not the operator of any property, the Borrower shall use reasonable efforts to cause the operator to comply with this Section 9.8.

9.9 Intentionally Reserved.

9.10 End of Fiscal Years; Fiscal Quarters. The Borrower will, for financial reporting purposes, cause (a) each of its, and each of its Subsidiaries', fiscal years to end on December 31 of each year and (b) each of its, and each of its Subsidiaries', fiscal quarters to end on dates consistent with such

fiscal year-end; provided, however, that the Borrower may, upon written notice to the Administrative Agent, change the financial reporting convention specified above to any other financial reporting convention reasonably acceptable to the Administrative Agent, in which case the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary in order to reflect such change in financial reporting.

9.11 Additional Guarantors, Grantors and Collateral.

(a) Subject to any applicable limitations set forth in the Guarantee or the Security Documents, the Borrower will cause any direct or indirect Subsidiary formed or otherwise purchased or acquired after the Closing Date, in each case, within 10 Business Days from the date of such formation, acquisition or cessation, as applicable (or such longer period as the Administrative Agent may agree in its sole discretion), to execute a supplement to each of the Guarantee, the Security Agreement and the Pledge Agreement, substantially in the form of Annex A or Exhibit H, as applicable to the respective agreement in order to become a Guarantor under the Guarantee, a grantor under the Security Agreement, and/or a pledgor under such Pledge Agreement, as applicable.

(b) Subject to any applicable limitations set forth in the Pledge Agreement to which it is a party, the Borrower will pledge, and, if applicable, will cause each other Guarantor (or Person required to become a Guarantor pursuant to Section 9.11(a)) to pledge, to the Administrative Agent, for the benefit of the Secured Parties, (i) all of the Stock (other than any Excluded Stock) of each Subsidiary directly owned by a Credit Party (or Person required to become a Guarantor pursuant to Section 9.11(a)), in each case, formed or otherwise purchased or acquired after the Closing Date, pursuant to a supplement to such Pledge Agreement substantially in the form of Annex A thereto and, (ii) all evidences of Indebtedness for borrowed money (other than intercompany Indebtedness of a Credit Party) in a principal amount in excess of $5,000,000 (individually) that is owing to a Credit Party (or Person required to become a Guarantor pursuant to Section 9.11(a)) (which shall be evidenced by a promissory note), in each case pursuant to a supplement to such Pledge Agreement substantially in the form of Annex A thereto.

(c) The Borrower agrees that all Indebtedness of the Borrower and each of its Subsidiaries that is owing to any Credit Party (or a Person required to become a Guarantor pursuant to Section 9.11(a)) shall be evidenced by an intercompany promissory note, which promissory note shall be required to be pledged to the Administrative Agent, for the benefit of the Secured Parties, pursuant to the Pledge Agreements.

(d) Intentionally Reserved.

(e) Concurrently with delivery of the documents described in Section 9.11(a) above (or such longer period of time as the Administrative Agent may agree in its sole discretion), the Borrower agrees to deliver, if requested by the Administrative Agent, favorable opinions from legal counsel reasonably acceptable to the Administrative Agent with respect to (i) any new Guarantor covering the matters covered by the opinions on the Closing Date with respect to the original Guarantors and (ii) any mortgages filed in jurisdictions other than jurisdictions in which opinions have been delivered with respect to such Person's Oil and Gas Properties, confirming that such Collateral is subject to Mortgages securing Obligations that constitute and create legal, valid and duly perfected Liens in such properties, and covering such other matters as the Administrative Agent may reasonably request.

(f) The Borrower will at all times cause the other material tangible and intangible assets of the Borrower and each Subsidiary, including all Oil and Gas Properties to be subject to a DIP Lien pursuant to the Security Documents and the DIP Orders.

9.12 Use of Proceeds. On and after the Closing Date, the Borrower will use the Loans solely for the following, in each case subject to the terms, conditions and amounts herein and the agreed Approved Budget (collectively, the "Approved Purposes"):

(a) Adequate Protection Payments;

(b) working capital and general corporate purposes approved in the Approved Budget; provided that up to $50,000 shall be made available to the Committee for investigation costs in respect of any Existing Obligations and Liens in accordance with the DIP Orders;

(c) Bankruptcy Court approved administrative expenses for estate professionals; and

(d) such other expenses to which all the Lenders may consent in writing in their sole discretion.

As between Loans hereunder and the Cash Collateral, the Cash Collateral shall be used first for Approved Purposes unless otherwise agreed by all of the Lenders in writing in their sole discretion. As set forth in the DIP Orders, no portion of the Loans or the Collateral (including any Cash Collateral) shall be used (i) to challenge the amount, validity, perfection, priority, extent or enforceability of the Obligations or the Existing Obligations, (ii) to investigate or assert any other claims or causes of action against the any Lender, any Existing Lender or their respective agents, Affiliates, Subsidiaries, directors, officers, representatives, attorneys or advisors or (iii) fund acquisitions, Capital Expenditures or any other expenditure other than as set forth in the Approved Budget. The Borrower and its Subsidiaries are not engaged principally, or as one of its or their important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying margin stock (within the meaning of Regulation T, U or X of the Board). No part of the proceeds of any Loan or Letter of Credit will be used for any purpose which violates the provisions of Regulations T, U or X of the Board.

9.13 Further Assurances. Subject to the applicable limitations set forth in the Security Documents, the Borrower will, and will cause each other Credit Party to, execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture, filings, assignments of as-extracted collateral, mortgages, deeds of trust and other documents) that may be required under any applicable Requirements of Law, or that the Administrative Agent or the Required Lenders may reasonably request, in order to grant, preserve, protect and perfect the validity and priority of the DIP Liens and security interests created or intended to be created by the applicable Security Documents, all at the expense of the Borrower and the Guarantors.

9.14 Reserve Reports.

(a) On or before March 15th and September 15th of each year, commencing March 15, 2018, the Borrower shall furnish to the Administrative Agent a Reserve Report, as of the immediately preceding December 31st and June 30th. The Reserve Report as of December 31 of each year shall be prepared by one or more Approved Petroleum Engineers, and the Reserve Report as of June 30 of each year shall be prepared, at the option of the Borrower, (i) by the Borrower, any Subsidiary of the Borrower or the Parent Company and, in each case, under the supervision of the chief engineer of the Parent Company and an Authorized Officer of the Borrower shall certify such Reserve Report to be true and accurate in all material respects and, except as otherwise specified therein, to have been prepared in all material respects in accordance with the procedures used in the immediately preceding December 31 Reserve Report or the Initial Reserve Report, if no December 31 Reserve Report has been delivered or (ii) by one or more Approved Petroleum Engineers.

(b) The Borrower shall furnish to the Administrative Agent a Reserve Report prepared by or under the supervision of the chief engineer of the Parent Company and an Authorized Officer of the Borrower shall certify such Reserve Report to be true and accurate in all material respects and to have been prepared, except as otherwise specified therein, in all material respects in accordance with the procedures used in the immediately preceding December 31 Reserve Report or the Initial Reserve Report, if no December 31 Reserve Report has been delivered.

(c) With the delivery of each Reserve Report, the Borrower shall provide to the Administrative Agent a Reserve Report Certificate from an Authorized Officer of the Borrower certifying that in all material respects:

(i) in the case of Reserve Reports prepared by or under the supervision of the chief engineer of the Parent Company, such Reserve Report has been prepared, except as otherwise specified therein, in accordance with the procedures used in the immediately preceding December 31 Reserve Report or the Initial Reserve Report, if no December 31 Reserve Report has been delivered;

(ii) other than with respect to Pro Forma Projections, the information contained in the Reserve Report and any other information delivered in connection therewith is true and correct in all material respects; with respect to Pro Forma Projections, such Pro Forma Projections were based on good faith estimates and assumptions believed by the Borrower or any Approved Petroleum Engineer, as applicable, to be reasonable at the time made; it being recognized by the Administrative Agent and the Lenders that such projections are as to future events and are not to be viewed as facts, the projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrower and the Subsidiaries, that no assurance can be given that any particular projections will be realized and that actual results during the period or periods covered by any such projections may differ from the projected results and such differences may be material;

(iii) except as set forth in an exhibit to such certificate, the Borrower or another Credit Party has good and defensible title to the Oil and Gas Properties evaluated in such Reserve Report (other than those (A) Disposed of in compliance with Section 10.4 since the date of such Reserve Report, (B) leases that have expired in accordance with their terms and (C) with title defects disclosed in writing to the Administrative Agent) and such Oil and Gas Properties are free of all Liens except for Liens permitted by Section 10.2;

(iv) except as set forth on an exhibit to such certificate or previously disclosed to the Administrative Agent in writing, as of the date of such Reserve Report, on a net basis there are no gas imbalances, take or pay or other prepayments in excess of the volume specified in Section 8.18 with respect to the Credit Parties' Oil and Gas Properties evaluated in such Reserve Report that would require the Borrower or any other Credit Party to deliver Hydrocarbons either generally or produced from such Oil and Gas Properties at some future time without then or thereafter receiving full payment therefor;

(v) none of the Oil and Gas Properties have been Disposed since the date of the immediately preceding Reserve Report to the date of the Reserve Report being delivered, except those Oil and Gas Properties listed on such certificate as having been Disposed; and

(vi) the certificate shall also attach, as schedules thereto, a list of as of the last Business Day of the most recently ended fiscal year or period, as applicable, all material marketing agreements entered into subsequent to the later of the Closing Date and the most

recently delivered Reserve Report for the sale of production of the Credit Parties' Hydrocarbons at a fixed non-index price (including calls on, or other parties rights to purchase, production, whether or not the same are currently being exercised) that (1) represent in respect of such agreements 2.5% or more of the Credit Parties' average monthly production of Hydrocarbon volumes and (2) have a maturity date or expiry date of longer than six (6) months from the last day of such fiscal year or period, as applicable, and are not cancellable on 60 days' notice or less without penalty or detriment.

9.15 Title Information.

(a) On or before the delivery to the Administrative Agent of each Reserve Report required by Section 9.14(a), the Borrower will use commercially reasonably effort to deliver title information in form and substance reasonably acceptable to the Administrative Agent and consistent with usual and customary standards for the geographic regions in which the Oil and Gas Properties are located covering enough of the Oil and Gas Properties evaluated by such Reserve Report that were not included in the immediately preceding Reserve Report, so that the Administrative Agent shall have received together with title information previously delivered to the Administrative Agent, reasonably satisfactory title information on 85% of the total value of the Oil and Gas Properties evaluated by such Reserve Report.

(b) If title information for additional properties has been provided under Section 9.15(a) and the Administrative Agent shall provide written notice to the Borrower that title defects or exceptions exist with respect to such additional properties (to the extent that such title defects or exceptions are not otherwise permitted under this agreement), then the Borrower shall, within 60 days of its receipt of such notice (or such longer period as the Administrative Agent may agree in its sole discretion) cure any such title defects or exceptions raised by such information.

9.16 Commodity Exchange Act Keepwell Provisions. Each Qualified ECP Guarantor hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Credit Party to honor all of its obligations under the Credit Documents in respect of Swap Obligations (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under any Guarantee voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section 9.16 shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full and the Commitments are terminated. Each Credit Party intends this Section 9.16 to constitute, and this Section 9.16 shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each other Credit Party for all purposes of the Commodity Exchange Act.

9.17 Intentionally Reserved.

9.18 Minimum Hedge Agreements. Within thirty (30) days after the Closing Date (or such later date as may be reasonably agreed by the Administrative Agent) the Borrower shall enter into and maintain at all times thereafter Hedge Agreements (other than for speculative purposes) in respect of commodities the net notional volumes for which (when aggregated with other commodity Hedge Agreements then in effect, other than puts, floors and basis differential swaps on volumes already hedged pursuant to other Hedge Agreements) equal at least as of the date of the date of the latest hedging transaction is entered into under a Hedge Agreement, 75% of the reasonably anticipated Hydrocarbon production for oil from the Credit Parties' total Proved Developed Producing Reserves as forecast based

upon the most recent Reserve Report delivered pursuant to Section 9.14 for each month during the 24 month period from the date such Hedging Agreement is entered into.

SECTION 10.
NEGATIVE COVENANTS.

The Borrower hereby covenants and agrees that on the Closing Date and thereafter, until the Termination Date:

10.1 Limitation on Indebtedness. The Borrower will not, and will not permit any of the Guarantors to, create, incur, assume or suffer to exist any Indebtedness other than the following:

(a) Indebtedness arising under the Credit Documents and the Existing Credit Documents;

(b) Indebtedness of a Credit Party owing to a Credit Party;

(c) Indebtedness in respect of any bankers' acceptance, bank guarantees, letter of credit, warehouse receipt or similar facilities entered into in the ordinary course of business or consistent with past practice or industry practice (including (i) in respect of workers' compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims and (ii) letters of credit provided as Credit Support under, and as defined in, the ETC Agreements);

(d) Intentionally Reserved;

(e) Guarantee Obligations (i) incurred in the ordinary course of business or consistent with past practice or industry practice in respect of obligations (excluding Indebtedness) of (or to) suppliers, customers, franchisees, lessors, licensees or sublicensees, or (ii) any guarantee by an Affiliate of the Borrower required by the ETC Agreements;

(f) Indebtedness (including Indebtedness arising under Capital Leases) incurred to finance the acquisition, construction, lease, repair, replacement expansion, or improvement of such fixed or capital assets; provided that the aggregate amount of Indebtedness incurred at any time outstanding shall not exceed $1,000,000;

(g) Indebtedness outstanding on the date hereof listed on Schedule 10.1;

(h) Indebtedness in respect of Hedge Agreements, subject to the limitations set forth in Section 10.11;

(i) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations not in connection with money borrowed (including, for the avoidance of doubt, any Credit Support required by, and as defined in, the ETC Agreements), in each case provided in the ordinary course of business or consistent with past practice or industry practice, including those incurred to secure health, safety and environmental (including plugging and abandonment) obligations in the ordinary course of business or consistent with past practice or industry practice;

(j) Cash Management Services and other Indebtedness in respect of netting services, automatic clearing house arrangements, employees' credit or purchase cards, overdraft protections and

similar arrangements, in each case incurred in the ordinary course of business or consistent with past practice or industry practice;

(k) Indebtedness incurred in the ordinary course of business or consistent with past practice or industry practice in respect of obligations of a Credit Party to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services;

(l) Indebtedness of a Credit Party consisting of (i) obligations to pay insurance premiums or (ii) obligations contained in firm transportation or supply agreements, in each case arising in the ordinary course of business or consistent with past practice or industry practice;

(m) Indebtedness representing deferred compensation to employees, consultants or independent contractors of the Borrower (or, to the extent such work is done for a Credit Party, any direct or indirect parent thereof) and the Guarantors incurred in the ordinary course of business or consistent with past practice or industry practice;

(n) Indebtedness associated with bonds or surety obligations required by Requirements of Law or by Governmental Authorities in connection with the operation of Oil and Gas Properties in the ordinary course of business or consistent with past practice or industry practice;

(o) Indebtedness of a Credit Party to any joint venture (regardless of the form of legal entity) that is not a Subsidiary arising in the ordinary course of business or consistent with past practice or industry practice in connection with the Cash Management Services (including with respect to intercompany self-insurance arrangements) of the Borrower and its Subsidiaries;

(p) Indebtedness consisting of the undischarged balance of any Production Payments and Reserve Sales; and

(q) all premiums (if any), interest (including post-petition interest), fees, expenses, charges, and additional or contingent interest on obligations described in clauses (a) through (p) above

10.2 Limitation on Liens. The Borrower will not, and will not permit any of the Guarantors to, create, incur, assume or suffer to exist any Lien upon any property or assets of any kind (real or personal, tangible or intangible) of a Credit Party, whether now owned or hereafter acquired, except:

(a) DIP Liens arising under the Credit Documents to secure the Obligations (including Liens contemplated by Section 3.8);

(b) Permitted Liens;

(c) Liens securing Indebtedness permitted pursuant to Section 10.1(f); provided that (A) such Liens attach concurrently with or within 270 days after completion of the acquisition, construction, repair, replacement, expansion or improvement (as applicable) of the property subject to such Liens and (B) such Liens attach at all times only to the assets so financed except (1) for accessions to the property financed with the proceeds of such Indebtedness and the proceeds and the products thereof and (2) that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(d) Liens existing on the date hereof to the extent such Lien is listed on Schedule 10.2; provided that (i) such Lien shall not apply to any property or asset of a Credit Party other than the property subject to such Lien on the date hereof and (ii) such Lien shall secure only those obligations of a

Credit Party which it secures on the date hereof and extensions, renewals and replacements of such obligations that do not increase the outstanding principal amount thereof;

(e) Liens (i) of a collecting bank arising under Section 4-210 of the UCC on items in the course of collection, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business or consistent with past practice or industry practice and (iii) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of set-off);

(f) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale or purchase of goods entered into by the Borrower or any of the Guarantors in the ordinary course of business or consistent with past practice or industry practice permitted by this Agreement;

(g) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to brokerage accounts incurred in the ordinary course of business or consistent with past practice or industry practice and not for speculative purposes;

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

(i) the prior right of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;

(j) Liens securing Indebtedness or other obligations of the Borrower or a Guarantor in favor of a Credit Party;

(k) agreements to subordinate any interest of a Credit Party in any accounts receivable or other proceeds arising from inventory consigned by a Credit Party pursuant to an agreement entered into in the ordinary course of business;

(l) Liens securing any Indebtedness permitted by Section 10.1(j) (as long as such Liens attach only to cash and securities and securities held by the relevant Cash Management Bank); and

(m) Liens on Stock in a joint venture securing obligations of such joint venture so long as the assets of such joint venture do not constitute Collateral.

10.3 Limitation on Fundamental Changes. Except as permitted by Section 10.4 or Section 10.5, the Borrower will not, and will not permit any of the Guarantors to, enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of, in one transaction or a series of related transactions, all or substantially all its business units, assets or other properties, except that:

(a) Intentionally Reserved;

(b) Intentionally Reserved;

(c) Intentionally Reserved;

(d) Subject to the approval of the Bankruptcy Court, the Credit Parties may enter into the Sale Transactions;

(e) any Guarantor may liquidate or dissolve if (i) the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders and (ii) any assets or business of such Guarantor not otherwise Disposed of or transferred in accordance with Section 10.4 or 10.5, in the case of any such business, discontinued, shall be transferred to, or otherwise owned or conducted by, the Borrower or a Guarantor after giving effect to such liquidation or dissolution; and

(f) the Borrower and the Guarantors may consummate a merger, dissolution, liquidation, amalgamation, consolidation or Disposition, the purpose of which is to effect a Disposition permitted pursuant to Section 10.4 or an Investment permitted by Section 10.5.

10.4 Limitation on Sale of Assets. The Borrower will not, and will not permit any of the Guarantors to, (w) convey, sell, lease, sell and leaseback, assign, farm-out, transfer or otherwise dispose (each of the foregoing a "Disposition") of any of its property, business or assets (including receivables and leasehold interests), whether now owned or hereafter acquired or (x) sell to any Person (other than the Borrower or a Guarantor) any shares owned by it of any Guarantor's Stock and Stock Equivalents, or (y) in the case of any Guarantor, issue any Stock or Stock Equivalents (excluding Disqualified Stock issued pursuant to Section 10.1, other than preferred securities) of such Guarantor to any other Person (other than to the Borrower or a Guarantor) or (z) enter into or permit to exist any Hedge Liquidation except that:

(a) the Borrower and the Guarantors may Dispose of (i) equipment that is obsolete, worn out, used or surplus, in the ordinary course of business or consistent with past practice or industry practice, that is no longer necessary for the business of the Borrower or such Guarantor and is replaced by equipment of at least comparable value and use) and (ii) sales of Hydrocarbons inventory and other goods for sale in the ordinary course of business;

(b) the Borrower and the Guarantors may make Dispositions to the Borrower or any other Guarantor;

(c) to the extent constituting a Disposition, the Borrower and any Guarantor may effect any transaction permitted by Sections 10.3, 10.4, 10.5, or 10.6; and

(d) Dispositions of accounts receivable in connection with the collection or compromise thereof in the ordinary course of business.

Notwithstanding anything to the contrary herein contained, 100% of the consideration received in respect of such Disposition shall be cash or Permitted Investments. Neither the Borrower nor any Guarantor will discount, sell, pledge or assign any notes payable to it, accounts receivable or future income except for Dispositions permitted by Section 10.4(d).

10.5 Limitation on Investments. The Borrower will not, and will not permit any of the Guarantors, to make any Investment except:

(a) extensions of trade credit and purchases of assets and services (including purchases of inventory, supplies and materials) in the ordinary course of business or consistent with past practice or industry practice;

(b) Investments that were Permitted Investments when such Investments were made;

(c) loans and advances to officers, directors, managers, employees and consultants of the Borrower (or any direct or indirect parent thereof) or any of its Subsidiaries (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes (including employee payroll advances), (ii) in connection with such Person's purchase of Stock or Stock Equivalents of the Borrower (or any direct or indirect parent thereof; provided that, to the extent such loans and advances are made in cash, the amount of such loans and advances used to acquire such Stock or Stock Equivalents shall be contributed to the Borrower in cash) and (iii) for purposes not described in the foregoing subclauses (i) and (ii); provided that the aggregate principal amount outstanding pursuant to subclause (iii) shall not exceed $20,000;

(d) Investments existing on the date hereof as set forth on Schedule 10.5;

(e) Intentionally Reserved;

(f) Investments received in connection with the bankruptcy or reorganization of suppliers or customers and in settlement of delinquent obligations of, and other disputes with, customers arising in the ordinary course of business or upon foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(g) Investments by the Borrower in any Guarantor or by any Guarantor in the Borrower or any other Guarantor;

(h) Investments constituting non-cash proceeds of Dispositions of assets to the extent permitted by Section 10.4;

(i) Investments made to repurchase or retire Stock or Stock Equivalents of the Borrower or any direct or indirect parent thereof owned by any current or former employee, officer, director, member, manager or consultant or any stock ownership plan or employee stock ownership plan of the Borrower (or any direct or indirect parent thereof) permitted by Section 10.6;

(j) Investments consisting of Dividends permitted under Section 10.6;

(k) Investments in the ordinary course of business consisting of endorsements for collection or deposit and customary trade arrangements with customers consistent with past practices;

(l) guarantee obligations of a Credit Party of leases (other than Capital Leases) or of other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business or consistent with past practice or industry practice;

(m) Investments (in whole or in part) in direct ownership interests in additional Oil and Gas Properties of the Borrower and the Guarantors and gas gathering systems related thereto or Investments related to farm-out, farm-in, joint operating, joint development, or other area of mutual interest agreements, gathering systems, pipelines or other similar arrangements to be owned or leased by a Credit Party, in each case located in the United States of America;

(n) Investments in Hedge Agreements permitted by Section 10.1 and Section 10.11;

(o) Intentionally Reserved;

(p) Investments consisting of fundamental changes under Section 10.3; and

(q) Investments resulting from pledges and deposits under clause (d) of the definition of "Permitted Liens".

10.6 Limitation on Dividends. The Borrower will not pay any dividends (other than Dividends payable solely in its Stock that is not Disqualified Stock) or return any capital to its equity holders or make any other distribution, payment or delivery of property or cash to its equity holders as such, or redeem, retire, purchase or otherwise acquire, directly or indirectly, for consideration, any shares of any class of its Stock or Stock Equivalents or the Stock or Stock Equivalents of any direct or indirect parent now or hereafter outstanding, or set aside any funds for any of the foregoing purposes, or permit any of the Guarantors to purchase or otherwise acquire for consideration any Stock or Stock Equivalents of the Borrower (or any direct or indirect parent thereof), now or hereafter outstanding (all of the foregoing, "Dividends"); except that the Borrower may (or may pay Dividends to permit any direct or indirect parent thereof to) redeem, acquire, retire or repurchase shares of its (or such parent's) Stock or Stock Equivalents held by any present or former officer, manager, consultant, director or employee (or their respective Affiliates, estates, spouses, former spouses, successors, executors, administrators, heirs, legatees, distributees or immediate family members) of the Borrower and its Subsidiaries or any parent thereof, in accordance with any equity option or equity appreciation rights plan, any management, director, consultant and/or employee equity ownership, benefit or incentive plan or agreement, equity subscription plan, employment termination agreement or any other employment or consultancy agreements or equity holders' agreement.

10.7 Transaction with Affiliates. The Borrower will not, and will not permit any Subsidiary to, enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property or the rendering of any service, with any Affiliate; provided, however, that the foregoing restrictions will not apply to (a) transactions that are not otherwise prohibited under this Agreement and are upon fair and reasonable terms no less favorable to it than it would obtain in a comparable arm's length transaction with a Person not an Affiliate, (b) reasonable and customary fees paid to members of the board of directors (or similar governing body) of the Borrower and its Subsidiaries, (c) reasonable and customary indemnification, benefit, compensation and other employment arrangements and agreements for directors, officers and other employees of the Borrower and its Subsidiaries entered into in the ordinary course of business and (d) transactions between or among Credit Parties.

10.8 Case Matters. (a) All Professional Fees at any time paid by the Credit Parties, or any of them, shall be paid by the Credit Parties pursuant to procedures established by an order of the Bankruptcy Court and pursuant to the Approved Budget.

(b) Unless all Obligations have been indefeasibly paid in full in cash on terms and conditions acceptable to the Administrative Agent and the Lenders, no Credit Party shall assert, file or seek, or consent to the filing or the assertion of or joinder in, or use any portion of the proceeds of the Loans, Obligations, the Collateral, the Carve-Out or Cash Collateral to compensate services rendered or expenses incurred in connection with, any claim, counterclaim, action, proceeding, order, application, pleading, motion, objection, any other papers or documents, defense (including offsets and counterclaims of any nature or kind), or other contested matter (including any of the foregoing the purpose of which is to seek or the result of which would be to obtain any order, judgment, determination, declaration, or similar relief):

(i) avoiding, re-characterizing, recovering, reducing, subordinating, disallowing, impairing or otherwise challenging (under Sections 105, 506(c), 542, 543, 544, 545, 547, 548, 549, 550, 551, 552(b), or 553 of the Bankruptcy Code or applicable nonbankruptcy law), in each case, in whole or in part, of the Obligations, the Liens, the Existing Credit Agreement, the Existing Credit Documents, or the Existing Liens;

(ii) reversing, modifying, amending, staying or vacating the DIP Orders, without the prior written consent of the Administrative Agent and the Lenders;

(iii) granting priority for any administrative expense, secured claim or unsecured claim against the Credit Parties (now existing or hereafter arising of any kind or nature whatsoever, including without limitation any administrative expenses of the kind specified in, or arising or ordered under, Sections 105, 326, 327, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 and 1114 of the Bankruptcy Code) equal or superior to the priority of the Administrative Agent and the Lenders' claims, Superpriority Claims, Adequate Protection Liens and DIP Liens in respect of the Obligations and the Existing Obligations, except as provided under the Carve-Out;

(iv) granting or imposing under Sections 364(c) or 364(d) of the Bankruptcy Code or otherwise, any additional financing under such sections or any Lien equal or superior to the priority of the Adequate Protection Liens or DIP Liens, as permitted to have priority under Section 10.2 (to the extent, and only to the extent, set forth in the Final DIP Order);

(v) permitting the use of Cash Collateral, except as expressly permitted by the DIP Orders or this Agreement; or

(vi) modifying, altering, or impairing in any manner any of the DIP Liens or any of the Administrative Agent's, the Existing Agent's, the Lenders', the Existing Lenders' or the Secured Parties' rights or remedies under the DIP Orders, this Agreement, or any of the Credit Documents or any documents related thereto (including the right to demand payment of all Obligations and to enforce their respective Liens and security interests in the Collateral), whether by a Chapter 11 Plan, order of confirmation, or any financings of, extensions of credit to, or incurring of debt by any Credit Party or otherwise, whether pursuant to Section 364 of the Bankruptcy Code or otherwise

(c) Without the prior written consent of the Lenders, no Credit Party shall seek or consent to any order (i) dismissing any of the Cases under Sections 105, 305 or 1112 of the Bankruptcy Code or otherwise; (ii) converting any of the Cases to cases under Chapter 7 of the Bankruptcy Code; (iii) appointing a Chapter 11 trustee in any of the Cases; (iv) appointing an examiner with enlarged powers beyond those set forth in Sections 1104(d) and 1106(a)(3) and (4) of the Bankruptcy Code in any of the Cases; or (v) granting a change of venue with respect to any of the Cases or any related, contested matter or adversary proceeding.

(d) The Credit Parties will not make any payments or transfer any property on account of claims asserted by any vendors of any Credit Parties for reclamation in accordance with Section 2-702 of any applicable UCC and Section 546(c) of the Bankruptcy Code, unless otherwise ordered by the Bankruptcy Court upon prior notice to the Administrative Agent or unless otherwise consented to by the Lenders.

(e) The Credit Parties will not return any inventory or other property to any vendor pursuant to Section 546(g) of the Bankruptcy Code, unless otherwise ordered by the Bankruptcy Court in accordance with Section 546(g) of the Bankruptcy Code upon prior notice to the Administrative Agent or unless otherwise consented to by the Lenders.

No Credit Party shall submit a Chapter 11 Plan to the Bankruptcy Court (other than an Acceptable Plan), without the prior written consent of the Lenders.

10.9 Changes in Business. The Borrower and the Subsidiaries will not materially alter the character of their business from the business of oil and gas exploration and production and other business activities incidental or reasonably related to any of the foregoing. The Borrower and its Subsidiaries will not acquire or make any other expenditures (whether such expenditure is capital, operating or otherwise) in or related to, any Oil and Gas Properties not located within the geographical boundaries of the United States, nor create, acquire or permit to exist any Foreign Subsidiary.

10.10 Negative Pledge Agreements. The Borrower will not, and will not permit any of the Guarantors to, enter into or permit to exist any Contractual Requirement (other than this Agreement or any other Credit Document) that limits the ability of a Credit Party to create, incur, assume or suffer to exist DIP Liens on property of such Person for the benefit of the Secured Parties with respect to the Obligations or under the Credit Documents or restricts any Guarantor from paying Dividends to a Credit Party, or restricts any Guarantor from repaying loans or advances to a Credit Party, or to Guarantee the Obligations, or to transfer any of its property to any Credit Party, or the ability to amend or otherwise modify this Agreement or any other Credit Document, or which requires the consent of or notice to other Persons in connection therewith.

10.11 Hedge Agreements. The Borrower will not, and will not permit any Guarantor to, enter into any Hedge Agreements with any Person other than:

(a) Hedge Agreements specifically permitted by Sections 8.21 and 9.18.

(b) Hedge Agreements in respect of commodities entered into not for speculative purposes the net notional volumes for which (when aggregated with other commodity Hedge Agreements then in effect, other than puts, floors and basis differential swaps on volumes already hedged pursuant to other Hedge Agreements) do not exceed, as of the date the latest hedging transaction is entered into under a Hedge Agreement, 75% of the reasonably anticipated Hydrocarbon production from the total Proved Reserves of the Borrower and the Guarantors as forecast based upon the most recent Reserve Report delivered pursuant to Section 9.14(a) for the 60-month period from the date such hedging arrangement is created (the "Ongoing Hedges").

(c) Intentionally Reserved.

(d) If, after the end of any calendar month, commencing with the calendar month ending May 31, 2019, the Borrower determines that the aggregate volume of all commodity hedging transactions for which settlement payments were calculated in such calendar month (other than puts, floors and basis differential swaps on volumes already hedged pursuant to other Hedge Agreements) exceeded 100% of actual production of Hydrocarbons in such calendar month, then the Borrower shall terminate, create off-setting positions, allocate volumes to other production for which a Credit Party is marketing, or otherwise unwind existing Hedge Agreements such that, at such time, future hedging volumes will not exceed 100% of reasonably anticipated projected production for the then-current and any succeeding calendar months.

(e) In addition to the foregoing, all permitted Hedge Agreements that may require a payment be made to a Credit Party must be entered into with an Approved Counterparty.

(f) It is understood that for purposes of this Section 10.11, the following Hedge Agreements shall not be deemed speculative or entered into for speculative purposes: (i) any commodity Hedging Agreement intended, at inception of execution, to hedge or manage any of the risks related to existing and or forecasted Hydrocarbon production (based upon the most recently delivered Reserve Report) of a Credit Party (whether or not contracted) and (ii) any Hedge Agreement intended, at inception

of execution, (A) to hedge or manage the interest rate exposure associated with any debt securities, debt facilities or leases (existing or forecasted) of a Credit Party, (B) for foreign exchange or currency exchange management, (C) to manage commodity portfolio exposure associated with changes in interest rates or (D) to hedge any exposure that a Credit Party may have to counterparties under other Hedge Agreements such that the combination of such Hedge Agreements is not speculative taken as a whole.

(g) For purposes of entering into or maintaining Ongoing Hedges, forecasts of reasonably anticipated Hydrocarbon production from the total Proved Reserves of the Borrower and the Guarantors based upon the most recent Reserve Report delivered pursuant to Section 9.14(a) shall be revised to account for any increase or decrease therein anticipated because of information obtained by Borrower or any Guarantor subsequent to the publication of such Reserve Report including the Borrower's or any Guarantor's internal forecasts of production decline rates for existing wells and additions to or deletions from anticipated future production from new wells and acquisitions coming on stream or failing to come on stream.

10.12 Financial Covenants.

(a) Minimum Liquidity. The Credit Parties shall, at all times during the term of this Agreement, maintain liquidity of not less than $3,000,000 (of which, $2,000,000 may be held in the Carve-Out Reserve), as determined at the close of each Business Day.

(b) Budget and Permitted Variance. On the delivery of each Variance Report following the Petition Date (each a "Test Date"), the Credit Parties shall demonstrate in each such Variance Report that, in the period covered by such Variance Report, the aggregate actual disbursements, excluding debt service and non-Credit Party Professional Fees, shall not exceed the sum of the aggregate amount budgeted therefor in the Approved Budget for such period plus the aggregate of the Professional Fee Carry Forward Amounts and the Non-Professional Fee Carry Forward Amounts, by more than ten percent (10%) of the budgeted amount. Certification of compliance with this Section 10.12(b) shall be provided on such Test Date, concurrently with delivery of each Variance Report and shall have been certified by a Financial Officer of the Borrower and be in a form satisfactory to the Administrative Agent in its sole discretion.

10.13 Intentionally Deleted

10.14 Amendment to LLC Agreement. The Borrower will not, without the consent of the Administrative Agent waive, amend, modify or terminate the LLC Agreement.

10.15 Sanctions; Use of Proceeds. The Borrower will not request any Borrowing or amendment to any Letter of Credit, and the Borrower shall not directly or knowingly indirectly use, and shall not permit any Subsidiary to directly or knowingly indirectly use, the proceeds of any Borrowing or Letter of Credit (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws applicable to the Borrower and its Subsidiaries, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, to the extent such activities, business or transaction would be prohibited by Sanctions applicable to the Borrower and its Subsidiaries or any other party hereto if conducted by a corporation incorporated in the United States or in a European Union member state, or (c) in any manner that would result in the violation of any Sanctions applicable to the Borrower and its Subsidiaries or any other party hereto.

10.16 Superpriority Claims. The Borrower will not, and will not permit any Subsidiary to, incur, create, assume, suffer to exist or permit any other Superpriority Claim pari passu with or senior to the claims of the Secured Parties against the Credit Parties except with respect to the Carve-Out.

10.17 Cash Collateral. The Borrower will not, and will not permit any Subsidiary to, fail to deposit and/or maintain with the Administrative Agent the Cash Collateral in the Cash Collateral Account from and after entry of the Final DIP Order and the approval of the deemed issuance of the Existing Letters of Credit pursuant to this Agreement.

SECTION 11.
EVENTS OF DEFAULT.

11.1 Events of Default. Upon the occurrence of any of the following specified events (each an "Event of Default"):

(a) Any Credit Party fails timely and fully to perform its payment obligations under this Agreement, the Credit Documents or the DIP Orders, including, without limitation the failure of the Borrower to indefeasibly repay in full in cash on the Termination Date all Obligations or any Credit Party to pay or make any payment of principal, interest, or fees under this Agreement, the Credit Documents or the DIP Orders or make any Adequate Protection Payment, as and when due.

(b) (i) The breach of any of the representations and warranties in this Agreement or any other Credit Documents or (ii) the breach of any of the stipulations in the DIP Orders in any material respect.

(c) Any noncompliance by a Credit Party of any other covenant in this Agreement, the Credit Documents or in the DIP Orders, including, without limitation failure of the Credit Parties to achieve any Milestone on the dates as required (other than the Milestones described in clause (d) or (e)); provided that, no failure to achieve any Milestone described in clause (f), (g) or (h) of the definition of "Milestone" shall result in an Event of Default until such noncompliance shall have continued uncured for a period of fourteen (14) days provided further that, notwithstanding the forgoing fourteen (14) day period, the Milestone described in clause (h) of the definition of Milestone must be achieved by no later than September 16, 2019.

(d) Any default shall occur with respect to any post-petition Indebtedness of any Credit Party (in each case, other than the Obligations), or under any agreement or instrument under or pursuant to which any such Indebtedness may have been issued, created, assumed or guaranteed by any Credit Party.

(e) Any Credit Document, including any guaranty of the Obligations, shall be (i) terminated other than in accordance with its terms, (ii) revoked by a Credit Party, (iii) declared void, invalid, or unenforceable, or (iv) challenged in writing by any Credit Party.

(f) An ERISA Event shall occur with respect to a Plan or Multiemployer Plan which, together with all other ERISA Events, has resulted or could reasonably be expected to result in a Material Adverse Effect.

(g) Any Lien with respect to any material portion of the Collateral intended to be secured thereby ceases to be, or is not, valid, perfected and prior to all other Liens (other than the Carve-Out) or is terminated, revoked or declared void (other than in accordance with its terms).

(h) The termination of the exclusivity period of Section 1121(b) of the Bankruptcy Code for any Credit Party.

(i) The Credit Parties or the Committee commence, or support any person, in any litigation challenging or seeking to challenge the DIP Liens of the Lenders, or file a proposed Chapter 11 Plan that contemplates the commencement of any such litigation after confirmation of such plan.

(j) Any Credit Party files, or any person other than any of the Credit Parties solicits, acceptances of, a Chapter 11 Plan that does not propose to indefeasibly repay the Obligations and Existing Obligations in full, in cash as a condition to the confirmation of such plan, unless the Lenders consent to such plan in their sole discretion.

(k) There is a filing of any motion by any Credit Party requesting, or entry of an order granting, any new Lien or new Superpriority Claim which is senior or pari passu with the Superpriority Claims or DIP Liens of the Secured Parties.

(l) An order with respect to any of the Cases shall be entered appointing, or any Credit Party shall file an application for an order with respect to any of the Cases seeking the appointment of, in either case without the prior written consent of the Lenders (i) a trustee under Section 1104 of the Bankruptcy Code, or (ii) an examiner or any other Person with enlarged powers relating to the operation of the business (i.e., powers beyond those set forth in Sections 1104(d) and 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code.

(m) An order shall be entered dismissing any of the Cases or converting any of the Cases to a case under Chapter 7 of the Bankruptcy Code.

(n) Any Credit Party or any Person with the support of any Credit Party, shall file any pleading, or any order is entered with respect to the Cases, without the prior written consent of the Lenders and the Existing Secured Parties, (i) to permit any administrative expense or any claim (now existing or hereafter arising, or of any kind of nature whatsoever) to have administrative priority equal or superior to the priority of the Superpriority Claims or the Administrative Agent and the Lenders in respect of the Obligations other than the Carve-Out, (ii) to grant or permit the grant of a Lien on any of the Collateral other than the DIP Liens and the Adequate Protection Liens, (iii) to permit any Credit Party to use proceeds of Collateral other than in accordance with the terms of the Credit Documents and the DIP Orders, (iv) to invalidate or otherwise challenge any of the DIP Liens of the Existing Liens, or otherwise object to, or raise defenses to, the extent, amount, validity, perfection priority or enforceability of any of the Existing Obligations, the Obligations, the Existing Liens or the DIP Liens, (v) to surcharge under Section 506(c) or 552 of the Bankruptcy Code any Collateral, or (vi) permit the use of Cash Collateral except as permitted by this Agreement and the DIP Orders.

(o) An order shall be entered that is not stayed pending appeal granting relief from the automatic stay to any creditor of a Credit Party, with respect to any claim against any property that, when taken together with all other orders entered on the docket of the Bankruptcy Court that are not stayed pending appeal granting relief from the automatic stay with respect to the Collateral, could reasonably be expected to have a Material Adverse Effect.

(p) The violation by any Credit Party of any of the provisions of the DIP Orders.

(q) The bringing of a motion by any Credit Party, or the entry of an order or ruling: (i) to obtain additional financing under Sections 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement that is senior or pari passu with the Obligations hereunder or in the

DIP Orders, (ii) to grant any Lien other than Permitted Liens and the Carve-Out upon or affecting any Collateral without the prior written consent of the Administrative Agent and the Lenders; (iii) except as provided in the DIP Orders, to use the Cash Collateral of the Existing Secured Parties under Section 363(c) of the Bankruptcy Code without the prior written consent of the Administrative Agent and the Lenders, or (iv) any other action or actions adverse to the Administrative Agent or the Lenders, or their rights and remedies hereunder of the interests in the Collateral.

(r) As of any date during the terms of this Agreement, the absence of an Approved Budget agreed between the Lenders and the Borrower that covers at least four full weeks immediately following such date.

(s) Any change or alteration that is adverse in any material respect to the Lenders to (i) the cash management system of the Credit Parties, as such system existed on the Petition Date, or (ii) any order entered by the Bankruptcy Court in the Cases approving such management system.

(t) (i) The Bankruptcy Court shall grant relief that is inconsistent with the Sale Transaction or the Acceptable Bid Procedures and that is adverse to the Administrative Agent's or the Secured Parties' interests or inconsistent with the Credit Documents and (ii) any of the Credit Parties or any Affiliate thereof controlled by the Credit Parties shall file any motion or pleading with the Bankruptcy Court that is inconsistent in any material respect with the Sale Transaction or the Acceptable Bid Procedures and such motion or pleading has not been withdrawn prior to the earlier of (A) three (3) Business Days of the Borrower receiving notice from the Administrative Agent and (B) entry of an order of the Bankruptcy Court approving such motion or pleading.

(u) The entry of an order requiring the inclusion in the Carve-Out of any Professional Fees for any professionals for any official or ad hoc committee other than the Committee.

(v) The entry of an order without the prior written consent of the Administrative Agent, amended or supplementing or otherwise modifying (each in the sole judgment of the Administrative Agent) either the Interim DIP Order or Final DIP Order.

(w) The entry of an order seeking to reduce, set-off or subordinate the Adequate Protection Liens, the Obligations or related DIP Liens.

(x) There is a reversal, vacation or stay of the effectiveness of either the Interim DIP Order or Final DIP Order.

(y) A Change of Control.

(z) Any Credit Party shall make any Prepetition Payment or Capital Expenditure, as the case may be, other than (a) in connection with the assumption of executory contracts and unexpired leases in connection with the Sale Transaction approved by the Bankruptcy Court; (b) in respect of accrued payroll and related expenses and employee benefits as of the Petition Date approved by the Bankruptcy Court and provided for in the Approved Budget; (c) as otherwise set forth in the Approved Budget and expressly agreed to in writing by the Administrative Agent before such Prepetition Payment or Capital Expenditure is made or (d) as otherwise ordered by the Bankruptcy Court and agreed to in writing by the Administrative Agent before such Prepetition Payment or Capital Expenditure is made.

(aa) The entry of an order granting relief from the automatic stay to allow a third party to proceed against assets of any Credit Party.

11.2 Remedies. (a) Then, and in any such event, and at any time thereafter, if any Event of Default shall then be continuing, the Administrative Agent shall, upon the written request of the Required Lenders, by written notice to the Borrower, take any or all of the following actions, without prejudice to the rights of the Administrative Agent or any Lender to enforce its claims against the Borrower or any other Credit Party, except as otherwise specifically provided for in this Agreement: (a) declare the Total Commitment terminated, whereupon the Commitments of each Lender shall forthwith terminate immediately and any fees theretofore accrued shall forthwith become due and payable without any other notice of any kind; (b) declare the principal of and any accrued interest and fees in respect of any or all Loans and any or all Obligations owing hereunder and thereunder to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; (c) terminate any Letter of Credit that may be terminated in accordance with its terms; (d) direct the Borrower to pay to the Administrative Agent at the Administrative Agent's Office such additional amounts of cash, to be held as security for the Borrower's respective reimbursement obligations for Drawings that may subsequently occur thereunder, equal to the aggregate Stated Amount of all Letters of Credit issued and then outstanding, (e) exercise the right (after providing five (5) Business Days' notice to the Credit Parties, the United States Trustee, and the Committee and any other official committee (but this shall not serve as a consent to the use of Cash Collateral or the Loans hereunder to pay Professional Fees incurred by any other such official committee)) to realize on all Collateral without necessity of obtaining any further relief or order from the Bankruptcy Court, subject to the right of the Credit Parties to seek relief from the Bankruptcy Court during such five (5) Business Days' period (such period referred to in this Section 11.2 as the "DIP Default Notice Period") solely on the basis that no Event of Default has occurred; and (f) pursue its rights and remedies under the Credit Documents, the DIP Orders and/or applicable law. Except as otherwise provided in the DIP Orders, the foregoing remedies may be exercised without demand and without further application to or order of the Bankruptcy Court. In any hearing regarding any exercise of remedies under this Section 11.2 (which hearing must take place within the DIP Default Notice Period), the only issue that may be raised by any party in opposition thereto shall be whether, in face, an Event of Default has occurred and is continuing, and the Credit Parties, the Committee and all other parties in interest shall not be entitled to seek relief, including, without limitation, under Section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the Administrative Agent or the Lenders set forth in the DIP Orders, this Agreement or the Credit Documents, as applicable. If no such order is entered during the DIP Default Notice Period, all use of the Collateral (including Cash Collateral) shall cease immediately and automatically and the Administrative Agent and the Lenders shall be entitled to enforce the remedies hereunder. In addition, after the occurrence and during the continuance of an Event of Default, the Administrative Agent and the Lenders will have all other rights and remedies available at law and equity.

(b) Each Credit Party recognizes that the Administrative Agent may be unable to effect a public sale of any or all of the Collateral that constitutes securities to be sold by reason of certain prohibitions contained in the laws of any jurisdiction outside the United States or in applicable federal or state securities laws but may be compelled to resort to one or more private sales thereof to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such Collateral to be sold for their own account for investment and not with a view to the distribution or resale thereof. Each Credit Party acknowledges and agrees that any such private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall, to the extent permitted by law, be deemed to have been made in a commercially reasonable manner. Unless required by a Requirement of Law, the Administrative Agent shall not be under any obligation to delay a sale of any of such Collateral to be sold for the period of time necessary to permit the issuer of such securities to register such securities under the laws of any jurisdiction outside the United States or under any applicable federal or state securities laws, even if such issuer would agree to do so. Each Credit Party further agrees to do or cause to be done, to the extent that

such Credit Party may do so under a Requirement of Law, all such other acts and things as may be necessary to make such sales or resales of any portion or all of such Collateral or other property to be sold valid and binding and in compliance with any and all requirements of law at the Credit Parties' expense. Each Credit Party further agrees that a breach of any of the covenants contained in this Section 11.2(b) will cause irreparable injury to the Administrative Agent and the other Secured Parties for which there is no adequate remedy at law and, as a consequence, agrees that each covenant contained in this Section 11.2(b) shall be specifically enforceable against such Credit Party, and each Credit Party hereby waives and agrees, to the fullest extent permitted by law, not to assert as a defense against an action for specific performance of such covenants that (i) such Credit Party's failure to perform such covenants will not cause irreparable injury to the Administrative Agent and the Secured Parties or (ii) the Administrative Agent or the Secured Parties have an adequate remedy at law in respect of such breach. Each Credit Party further acknowledges the impossibility of ascertaining the amount of damages which would be suffered by the Administrative Agent and the Secured Parties by reason of a breach of any of the covenants contained in this Section 11.2(b) and, consequently, agrees that, if such Credit Party shall breach any of such covenants and the Administrative Agent or the Secured Parties shall sue for damages for such breach, such Credit Party shall pay to the Administrative Agent, for the benefit of the Administrative Agent and the Secured Parties, as liquidated damages and not as a penalty, an aggregate amount equal to the lesser of (x) the value of the Collateral or other property to be sold on the date the Administrative Agent shall demand compliance with this Section 11.2(b) and (y) the aggregate amount of Obligations outstanding at such time.

(c) Any amount received by the Administrative Agent from any Credit Party (or from proceeds of any Collateral) following any acceleration of the Obligations under this Agreement or any Event of Default with respect to the Credit Parties shall be applied:

(i) first, to payment or reimbursement of that portion of the Obligations constituting fees, expenses and indemnities payable to the Administrative Agent its capacity as such, or to the Lenders;

(ii) second, to the Secured Parties, an amount equal to all Obligations due and owing to them on the date of distribution and, if such moneys shall be insufficient to pay such amounts in full, then ratably (without priority of any one over any other) to such Secured Parties in proportion to the unpaid amount thereof; provided that such monies will first be applied to the interest and principal relating to the New-Money Loans until paid in full, and then be applied to the interest and principal relating to Roll-Up Loans;

(iii) third, *pro rata* to any other Obligations then due and owing; and

(iv) fourth, any surplus then remaining, after all of the Obligations then due shall have been indefeasibly paid in full in cash, shall be paid to the Borrower or its successors or assigns or to whomever may be lawfully entitled to receive the same or as a court of competent jurisdiction may award.

Notwithstanding the foregoing, no amounts received from any Credit Party shall be applied to any Excluded Swap Obligation of such Credit Party.

SECTION 12.
THE ADMINISTRATIVE AGENT.

12.1 Appointment.

(a) Each Lender hereby irrevocably designates and appoints the Administrative Agent as the agent of such Lender under this Agreement and the other Credit Documents and irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Credit Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Credit Documents, together with such other powers as are reasonably incidental thereto. The provisions of this Section 12 (other than Section 12.9 with respect to the Borrower) are solely for the benefit of the Administrative Agent and the Lenders, and the Borrower shall not have rights as third party beneficiary of any such provision. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Credit Document or otherwise exist against the Administrative Agent.

(b) Each Lender and the Letter of Credit Issuer hereby irrevocably designate and appoint the Administrative Agent as the agent with respect to the Collateral, and each Lender and the Letter of Credit Issuer irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Credit Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Credit Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities except those expressly set forth herein, or any fiduciary relationship with any of the Lenders or the Letter of Credit Issuers, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Credit Document or otherwise exist against the Administrative Agent.

12.2 Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement and the other Credit Documents by or through agents, sub-agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents, sub-agents or attorneys-in-fact selected by it in the absence of gross negligence or willful misconduct (as determined in the final judgment of a court of competent jurisdiction).

12.3 Exculpatory Provisions. Neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by any of them under or in connection with this Agreement or any other Credit Document (except for its or such Person's own gross negligence or willful misconduct, as determined in the final judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein) or (b) responsible in any manner to any of the Lenders or any participant for any recitals, statements, representations or warranties made by any of the Borrower, any other Credit Party or any officer thereof contained in this Agreement or any other Credit Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Credit Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Credit Document, or the perfection or priority of any Lien or security interest created or purported to be created under the Security Documents, or for any failure of the Borrower or any other Credit Party to perform its obligations hereunder or thereunder. No Agent shall be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Credit Document, or to inspect the properties, books or records of any Credit Party or any Affiliate thereof. The Administrative Agent shall not be under any obligation to any Lender or Letter of Credit Issuer to ascertain or to inquire as to the observance or performance of any of the

agreements contained in, or conditions of, this Agreement or any other Credit Document, or to inspect the properties, books or records of any Credit Party.

12.4 Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, telex, electronic mail message or teletype message, statement, order or other document or instruction believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including counsel to the Borrower), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent may deem and treat the Lender specified in the Register with respect to any amount owing hereunder as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Credit Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Credit Documents in accordance with a request of the Required Lenders, and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans; provided that the Administrative Agent shall not be required to take any action that, in its opinion or in the opinion of its counsel, may expose it to liability or that is contrary to any Credit Document or applicable Requirements of Law. For purposes of determining compliance with the conditions specified in Section 6 and Section 7.2 on the Closing Date, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

12.5 Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless the Administrative Agent has received written or electronic notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Administrative Agent receives such a notice, it shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders; provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

12.6 Non-Reliance on Administrative Agent and Other Lenders. Each Lender expressly acknowledges that neither the Administrative Agent nor any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representations or warranties to it and that no act by the Administrative Agent hereinafter taken, including any review of the affairs of the Borrower or any other Credit Party, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender or Letter of Credit Issuer. Each Lender and Letter of Credit Issuer represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, operations, property, financial and other condition and creditworthiness of the Borrower and each other Credit Party and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent or any other Lender, and

based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Credit Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Borrower and any other Credit Party. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, assets, operations, properties, financial condition, prospects or creditworthiness of the Borrower or any other Credit Party that may come into the possession of the Administrative Agent any of its respective officers, directors, employees, agents, attorneys-in-fact or Affiliates.

12.7 Indemnification. The Lenders agree to indemnify the Administrative Agent, in its capacity as such (to the extent not reimbursed by the Credit Parties and without limiting the obligation of the Credit Parties to do so), ratably according to their respective Commitment Percentage of Loans, as applicable, outstanding in effect on the date on which indemnification is sought (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with their respective Commitment Percentage of the Total Exposure in effect immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time occur (including at any time following the payment of the Loans) be imposed on, incurred by or asserted against the Administrative Agent in any way relating to or arising out of the Commitments, this Agreement, any of the other Credit Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Administrative Agent under or in connection with any of the foregoing in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Administrative Agent; provided that no Lender shall be liable to the Administrative Agent for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Administrative Agent's gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction; provided, further, that no action taken in accordance with the directions of the Required Lenders (or such other number or percentage of the Lenders as shall be required by the Credit Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 12.7. In the case of any investigation, litigation or proceeding giving rise to any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time occur (including at any time following the payment of the Loans), this Section 12.7 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including attorneys' fees) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice rendered in respect of rights or responsibilities under, this Agreement, any other Credit Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of the Borrower; provided that such reimbursement by the Lenders shall not affect the Borrower's continuing reimbursement obligations with respect thereto. If any indemnity furnished to the Administrative Agent for any purpose shall, in the opinion of the Administrative Agent, be insufficient or become impaired, the Administrative Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify the Administrative Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's *pro rata* portion thereof; and provided further, this sentence shall not be deemed to require any Lender to indemnify the Administrative

Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement resulting from the Administrative Agent's gross negligence or willful misconduct. The agreements in this Section 12.7 shall survive the payment of the Loans and all other amounts payable hereunder.

12.8 The Administrative Agent in Its Individual Capacity. The Administrative Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Borrower and any other Credit Party as though the Administrative Agent was not the Administrative Agent hereunder and under the other Credit Documents. With respect to the Loans made by it, the Administrative Agent shall have the same rights and powers under this Agreement and the other Credit Documents as any Lender and may exercise the same as though it were not an Agent, and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

12.9 Successor Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders, the Letter of Credit Issuer and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, subject to the consent of the Borrower (not to be unreasonably withheld or delayed) so long as no Event of Default is continuing, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders and the Letter of Credit Issuer, appoint a successor Agent meeting the qualifications set forth above. Upon the acceptance of a successor's appointment as the Administrative Agent, hereunder, and upon the execution and filing or recording of such financing statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as the Required Lenders may request, in order to continue the perfection of the Liens granted or purported to be granted by the Security Documents, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower (following the effectiveness of such appointment) to the Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Credit Documents, the provisions of this Section 12 (including Section 12.7) and Section 13.5 shall continue in effect for the benefit of such retiring Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as an Agent.

Any resignation of any Person as Administrative Agent pursuant to this Section shall also constitute its resignation as Letter of Credit Issuer. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Letter of Credit Issuer, (b) the retiring Letter of Credit Issuer shall be discharged from all of their respective duties and obligations hereunder or under the other Credit Documents, and (c) the successor Letter of Credit Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Letter of Credit Issuer to effectively assume the obligations of the retiring Letter of Credit Issuer with respect to such Letters of Credit.

12.10 Withholding Tax. To the extent required by any applicable Requirements of Law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered, was not

properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstances that rendered the exemption from, or reduction of, withholding Tax ineffective, or for any other reason) or if the Administrative Agent reasonably determines that a payment was made to a Lender pursuant to this Agreement without deduction of applicable withholding Tax from such payment, such Lender shall indemnify the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrower and without limiting the obligation of the Borrower to do so) fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including penalties and interest, together with all expenses incurred, including legal expenses, allocated staff costs and any out of pocket expenses. A certificate as to the amount of any such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Credit Document against any amount due to the Administrative Agent under this Section 12.10. The agreements in Section 12.10 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Agreement and the repayment, satisfaction or discharge of all the Loans. For the avoidance of doubt, for purposes of this Section 12.10, the term Lender includes the Letter of Credit Issuer. Each Lender and Letter of Credit Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or Letter of Credit Issuer, as applicable, under this Agreement or any other Credit Document against any amounts due to the Administrative Agent under this Section 12.10.

12.11 Security Documents and Administrative Agent under Security Documents and Guarantee. Each Secured Party hereby further authorizes the Administrative Agent, on behalf of and for the benefit of Secured Parties, to be the agent for and representative of the Secured Parties with respect to Security Documents and the Guarantee. Subject to Section 13.1, without further written consent or authorization from any Secured Party, the Administrative Agent, may (a) execute any documents or instruments necessary in connection with a Disposition of assets permitted by this Agreement, (b) release any Lien encumbering any item of Collateral that is the subject of such Disposition of assets or with respect to which Required Lenders (or such other Lenders as may be required to give such consent under Section 13.1) have otherwise consented or (c) release any Guarantor from the Guarantee or with respect to which Required Lenders (or such other Lenders as may be required to give such consent under Section 13.1) have otherwise consented.

12.12 Right to Realize on Collateral and Enforce Guarantee. Anything contained in any of the Credit Documents to the contrary notwithstanding, the Borrower, the Administrative Agent and each other Secured Party hereby agree that (a) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guarantee; it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by the Administrative Agent, on behalf of the Secured Parties in accordance with the terms hereof and all powers, rights and remedies under the Security Documents may be exercised solely by the Administrative Agent, and (b) in the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Administrative Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Administrative Agent, as agent for and representative of the Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent at such sale or other disposition.

12.13 Administrative Agent May File Proofs of Claim. In connection with the cases or the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement,

adjustment, composition or other judicial proceeding involving any of the Credit Parties, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in the Cases or any such other proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Indebtedness that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel, to the extent due under Section 13.5) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, to the extent due under Section 13.5.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Indebtedness or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

12.14 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of 29 CFR §2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more prohibited transaction class exemptions ("PTEs"), such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfy the requirements of subsections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless subclause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in subclause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that:

(i) none of the Administrative Agent or any of its respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Credit Document or any documents related to hereto or thereto),

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least $50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the obligations),

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Letters of Credit, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to the Administrative Agent or any its respective Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Letters of Credit, the Commitments or this Agreement.

(c) The Administrative Agent hereby informs the Lenders that such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Credit Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

SECTION 13.
MISCELLANEOUS.

13.1 Amendments, Waivers and Releases. Except as expressly set forth in this Agreement (including for the avoidance of doubt Sections 13.6(b) and 13.6(c)), neither this Agreement nor any other Credit Document, nor any terms hereof or thereof, may be amended, supplemented or modified except in accordance with the provisions of this Section 13.1.

(a) The Required Lenders may, or, with the written consent of the Required Lenders, the Administrative Agent shall, from time to time:

(i) enter into with the relevant Credit Party or Credit Parties written amendments, supplements or modifications hereto and to the other Credit Documents for the purpose of adding any provisions to this Agreement or the other Credit Documents or changing in any manner the rights of the Lenders or of the Credit Parties hereunder or thereunder or

(ii) waive in writing, on such terms and conditions as the Required Lenders or the Administrative Agent, may specify in such instrument, any of the requirements of this Agreement or the other Credit Documents or any Default or Event of Default and its consequences;

provided, however, that each such waiver and each such amendment, supplement or modification shall be effective only in the specific instance and for the specific purpose for which given;

(b) provided, further, that no such waiver and no such amendment, supplement or modification shall:

(i) forgive or reduce any portion of any Loan or reduce the stated rate (it being understood that any change to the definition of Commitment or in the component definitions thereof shall not constitute a reduction in the rate and only the consent of the Required Lenders shall be necessary to waive any obligation of the Borrower to pay interest at the Default Rate or amend Section 2.8(d)), or forgive any portion, or extend the date for the payment, of any principal (including but not limited to the Maturity Date), interest or fee payable hereunder (other than as a result of waiving the applicability of any post-default increase in interest rates), or extend the final expiration date of any Lender's Commitment (provided that any Lender, upon the request of the Borrower, may extend the final expiration date of its Commitment without the consent of any other Lender, including the Required Lenders) or extend the final expiration date

of any Letter of Credit beyond the L/C Maturity Date, or increase the amount of the Commitment of any Lender (provided that, any Lender, upon the request of the Borrower, may increase the amount of its Commitment without the consent of any other Lender, including the Required Lenders), or make any Loan, interest, fee or other amount payable in any currency other than Dollars, in each case without the written consent of each Lender directly and adversely affected thereby,

(ii) amend, modify or waive any provision of Section 6, this Section 13.1, or amend or modify any of the provisions of Section 13.8(a) to the extent it would alter the ratable allocation of payments thereunder, or reduce the percentages specified in the definitions of the terms "Required Lenders", or "Required Lenders", consent to the assignment or transfer by the Borrower of its rights and obligations under any Credit Document to which it is a party (except as permitted pursuant to Section 10.3) or alter the order of application set forth Section 7 or modify any definition used in such final paragraph if the effect thereof would be to alter the order of payment specified therein, in each case without the written consent of each Lender,

(iii) amend, modify or waive any provision of Section 11.2(c)(iv) without the written consent of the then-current Administrative Agent, or any other former or current Agent to whom Section 12 then applies in a manner that directly and adversely affects such Person,

(iv) amend, modify or waive any provision of Section 3 with respect to any Letter of Credit without the written consent of each Letter of Credit Issuer to whom Section 3 then applies in a manner that directly and adversely affects such Person,

(v) release all or substantially all of the Guarantors under the Guarantee (except as expressly permitted by the Guarantee or this Agreement) without the prior written consent of each Lender,

(vi) release all or substantially all of the Collateral under the Security Documents (except as expressly permitted by the Security Documents or this Agreement) without the prior written consent of each Lender, and

(vii) affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Credit Document without the prior written consent of the Administrative Agent;

(c) provided, further, that any provision of this Agreement or any other Credit Document may be amended by an agreement in writing entered into by the Borrower and the Administrative Agent to (i) cure any ambiguity, omission, defect, typographical error, inconsistency or other manifest error, (ii) make administrative or operational changes not adverse to any Lender or make changes favorable to the Lenders, or (iii) adhere to any local Requirement of Law or advice of local counsel so long as, in each case, the Lenders shall have received at least five Business Days' prior written notice thereof and the Administrative Agent shall not have received, within five Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment. Any such waiver and any such amendment, supplement or modification shall apply equally to each of the affected Lenders and shall be binding upon the Borrower, such Lenders, the Administrative Agent and all future holders of the affected Loans. In the case of any waiver, the Borrower, the Lenders and the Administrative Agent shall be restored to their former positions and rights hereunder after giving effect to such waiver, and under the other Credit Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing; it being understood that no such waiver shall extend to any subsequent or other Default or Event of Default or

impair any right consequent thereon. In connection with the foregoing provisions, the Administrative Agent may, but shall have no obligations to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender.

(d) Notwithstanding anything to the contrary herein, no Lender consent is required to affect any subordination agreement or other intercreditor agreement or arrangement permitted under this Agreement or in any document pertaining to any Indebtedness permitted hereby that is permitted to be secured by the Collateral (i) that is for the purpose of adding the holders of such secured or subordinated Indebtedness permitted to be incurred under this Agreement (or, in each case, a representative with respect thereto), as parties thereto, as expressly contemplated by the terms of such intercreditor agreement, such subordination agreement or such other intercreditor agreement or arrangement permitted under this Agreement, as applicable (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing and provided that such other changes are not adverse, in any material respect (taken as a whole), to the interests of the Lenders) or (ii) that is expressly contemplated by any intercreditor agreement, any subordination agreement or other intercreditor agreement or arrangement permitted under this Agreement or in any document pertaining to any Indebtedness permitted hereby that is permitted to be secured by the Collateral or (iii) otherwise, with respect to any material amendments, modifications or supplements, to the extent such amendment, modification or supplement is reasonably satisfactory to the Administrative Agent; provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder or under any other Credit Document without the prior written consent of the Administrative Agent.

(e) Notwithstanding anything to the contrary contained in the Credit Documents, the Administrative Agent and the Borrower may enter into any amendment, modification or waiver of this Agreement or any other Credit Document or enter into any agreement or instrument to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or property to become Collateral for the benefit of the Secured Parties or as required by any Requirement of Law to give effect to, protect or otherwise enhance the rights or benefits of any Secured Party under the Credit Documents without the consent of the Letter of Credit Issuer or any Lender.

(f) Notwithstanding anything to the contrary contained herein, in connection with any Required Lender or all Lender, votes, Goldman Sachs shall not be permitted, in the aggregate, to account for more than 32% of the amounts includable in determining whether the Required Lenders or all Lenders have consented to any amendment, modification, waiver, consent or other action that is subject to such vote. The voting power of Goldman Sachs shall be reduced, pro rata, to the extent necessary in order to comply with the immediately preceding sentence.

13.2 Notices. Unless otherwise expressly provided herein, all notices and other communications provided for hereunder or under any other Credit Document shall be in writing (including by facsimile transmission). All such written notices shall be mailed, faxed or delivered to the applicable address, facsimile number or electronic mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(a) if to the Borrower, the Administrative Agent or the Letter of Credit Issuer, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 13.2 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties; and

(b) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the Borrower, the Administrative Agent and the Letter of Credit Issuer.

All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt by the relevant party hereto and (ii) (A) if delivered by hand or by courier, when signed for by or on behalf of the relevant party hereto; (B) if delivered by mail, three Business Days after deposit in the mails, postage prepaid; (C) if delivered by facsimile, when sent and receipt has been confirmed by telephone; and (D) if delivered by electronic mail, when delivered; provided that notices and other communications to the Administrative Agent or the Lenders pursuant to Sections 2.3, 4.2 and 5.1 shall not be effective until received.

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

13.4 Survival of Representations and Warranties. All representations and warranties made hereunder, in the other Credit Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans hereunder.

13.5 Payment of Expenses; Indemnification.

(a) The Borrower agrees (i) to pay or reimburse the Administrative Agent and the Lenders for all reasonable and documented out of pocket costs and expenses incurred in connection with the preparation, negotiation, syndication and execution of this Agreement, and the other Credit Documents, and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, or otherwise incurred with respect to the Cases in any manner or for any reason, including all reasonable and documented fees, expenses and disbursements of legal counsel (which amount shall include the allocated cost of the Administrative Agent's internal legal counsel incurred with respect to the Cases in any manner or for any reason), which shall be limited to Hunton Andrews Kurth LLP and one local counsel as reasonably necessary in any relevant jurisdiction material to the interests of the Lenders taken as a whole (and solely in the case of a conflict of interest, one additional counsel and (if reasonably necessary) one local counsel in each relevant jurisdiction to the affected Indemnitees similarly situated) and financial advisors and (ii) to pay or reimburse the Administrative Agent for all reasonable and documented out of pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Credit Documents (including all such costs and expenses incurred during any legal proceeding, including any bankruptcy or insolvency proceeding, and including all respective all reasonable and documented fees, expenses and disbursements of legal counsel (which amount shall include the allocated cost of the Administrative Agent's internal legal counsel), which shall be limited to one counsel to the Administrative Agent and the Lenders, taken as a whole and one local counsel as reasonably necessary in any relevant jurisdiction material to the interests of the Lenders taken as a whole and solely in the case of a conflict of interest, one additional counsel and (if reasonably necessary) one local counsel in each relevant jurisdiction to the affected Indemnitees similarly situated). The agreements in this Section 13.5

shall survive the repayment of all other Obligations. All amounts due under this Section 13.5 shall be paid in accordance with the terms of the DIP Orders. If any Credit Party fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Credit Document, such amount may be paid on behalf of such Credit Party by the Administrative Agent in its discretion.

(b) THE BORROWER SHALL INDEMNIFY AND HOLD HARMLESS THE ADMINISTRATIVE AGENT, THE LENDER, RELATED PERSON AND THEIR AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, PARTNERS, AGENTS, ADVISORS AND OTHER REPRESENTATIVES OF THE FOREGOING (COLLECTIVELY THE "INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITIES, LOSSES, DAMAGES, CLAIMS, OR OUT-OF-POCKET EXPENSES (INCLUDING ALL REASONABLE AND DOCUMENTED FEES, EXPENSES AND DISBURSEMENTS OF LEGAL COUNSEL (WHICH AMOUNT SHALL INCLUDE THE ALLOCATED COST OF THE ADMINISTRATIVE AGENT'S INTERNAL LEGAL COUNSEL) BUT LIMITED IN THE CASE OF LEGAL FEES AND EXPENSES TO THE REASONABLE AND DOCUMENTED OUT-OF-POCKET FEES, DISBURSEMENTS AND OTHER CHARGES OF ONE COUNSEL TO ALL INDEMNITEES TAKEN AS A WHOLE AND, IF REASONABLY NECESSARY, ONE LOCAL COUNSEL FOR ALL INDEMNITEES TAKEN AS A WHOLE IN EACH RELEVANT JURISDICTION, AND SOLELY IN THE CASE OF A CONFLICT OF INTEREST, ONE ADDITIONAL COUNSEL AND (IF REASONABLY NECESSARY) ONE LOCAL COUNSEL IN EACH RELEVANT JURISDICTION TO THE AFFECTED INDEMNITEES SIMILARLY SITUATED) OF ANY KIND OR NATURE WHATSOEVER WHICH MAY AT ANY TIME BE IMPOSED ON, INCURRED BY OR ASSERTED AGAINST ANY SUCH INDEMNITEE IN ANY WAY RELATING TO OR ARISING OUT OF OR IN CONNECTION WITH (I) THE EXECUTION, DELIVERY, ENFORCEMENT, PERFORMANCE OR ADMINISTRATION OF ANY CREDIT DOCUMENT OR ANY OTHER AGREEMENT, LETTER OR INSTRUMENT DELIVERED IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED THEREBY OR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED THEREBY, (II) ANY COMMITMENT OR LOAN OR THE USE OR PROPOSED USE OF THE PROCEEDS THEREFROM, (III) ANY ACTUAL OR ALLEGED ENVIRONMENTAL CLAIM REGARDING, OR LIABILITY OR OBLIGATION UNDER ENVIRONMENTAL LAW OF, THE CREDIT PARTIES OR ANY SUBSIDIARY OR (IV) ANY ACTUAL OR PROSPECTIVE CLAIM, LITIGATION, INVESTIGATION OR PROCEEDING RELATING TO ANY OF THE FOREGOING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY (INCLUDING ANY INVESTIGATION OF, PREPARATION FOR, OR DEFENSE OF ANY PENDING OR THREATENED CLAIM, INVESTIGATION, LITIGATION OR PROCEEDING) (A "PROCEEDING") AND REGARDLESS OF WHETHER ANY INDEMNITEE IS A PARTY THERETO OR WHETHER OR NOT SUCH PROCEEDING IS BROUGHT BY THE BORROWER OR ANY OTHER PERSON AND, IN EACH CASE, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE NEGLIGENCE OF THE INDEMNITEE (ALL OF THE FOREGOING, COLLECTIVELY, THE "INDEMNIFIED LIABILITIES"); PROVIDED THAT SUCH INDEMNITY SHALL NOT, AS TO ANY INDEMNITEE, BE AVAILABLE TO THE EXTENT THAT SUCH LIABILITIES, LOSSES, DAMAGES, CLAIMS OR OUT-OF-POCKET EXPENSES RESULTED FROM (X) THE GROSS NEGLIGENCE, BAD FAITH OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE OR OF ANY OF ITS RELATED PARTIES, AS DETERMINED BY A FINAL NON-APPEALABLE JUDGMENT OF A COURT OF COMPETENT JURISDICTION, (Y) A MATERIAL BREACH OF ANY OBLIGATIONS UNDER ANY CREDIT DOCUMENT BY SUCH INDEMNITEE OR OF ANY OF ITS RELATED PARTIES, AS DETERMINED BY A FINAL NON-APPEALABLE JUDGMENT OF A COURT OF COMPETENT JURISDICTION OR (Z) ANY DISPUTE SOLELY AMONG INDEMNITEES OTHER THAN ANY CLAIMS AGAINST AN INDEMNITEE IN ITS CAPACITY OR IN FULFILLING ITS ROLE AS AN ADMINISTRATIVE AGENT OR ANY SIMILAR ROLE UNDER THIS AGREEMENT AND OTHER THAN ANY CLAIMS ARISING OUT OF ANY ACT OR OMISSION OF THE BORROWER OR ANY OF ITS AFFILIATES. NO INDEMNITEE SHALL BE LIABLE FOR ANY DAMAGES ARISING FROM THE USE BY OTHERS OF ANY INFORMATION OR OTHER MATERIALS OBTAINED THROUGH INTRALINKS OR OTHER SIMILAR INFORMATION TRANSMISSION SYSTEMS IN CONNECTION WITH THIS AGREEMENT (EXCEPT FOR DIRECT (AS OPPOSED TO INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL) DAMAGES RESULTING FROM THE GROSS NEGLIGENCE, BAD FAITH OR WILLFUL MISCONDUCT, AS DETERMINED BY A COURT OF COMPETENT JURISDICTION IN A

FINAL AND NON-APPEALABLE JUDGMENT, OF SUCH INDEMNITEE), NOR SHALL ANY INDEMNITEE, RELATED PARTIES, CREDIT PARTY OR ANY SUBSIDIARY HAVE ANY LIABILITY FOR ANY SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR ARISING OUT OF ITS ACTIVITIES IN CONNECTION HEREWITH OR THEREWITH (WHETHER BEFORE OR AFTER THE CLOSING DATE) (OTHER THAN, IN THE CASE OF ANY CREDIT PARTY, IN RESPECT OF ANY SUCH DAMAGES INCURRED OR PAID BY AN INDEMNITEE TO A THIRD PARTY, OR WHICH ARE INCLUDED IN A THIRD-PARTY CLAIM). IN THE CASE OF AN INVESTIGATION, LITIGATION OR OTHER PROCEEDING TO WHICH THE INDEMNITY IN THIS SECTION 13.5 APPLIES, SUCH INDEMNITY SHALL BE EFFECTIVE WHETHER OR NOT SUCH INVESTIGATION, LITIGATION OR PROCEEDING IS BROUGHT BY ANY CREDIT PARTY, ANY SUBSIDIARY OF ANY CREDIT PARTY, ITS DIRECTORS, STOCKHOLDERS OR CREDITORS OR AN INDEMNITEE OR ANY OTHER PERSON, WHETHER OR NOT ANY INDEMNITEE IS OTHERWISE A PARTY THERETO AND WHETHER OR NOT ANY OF THE TRANSACTIONS CONTEMPLATED HEREUNDER OR UNDER ANY OF THE OTHER CREDIT DOCUMENTS ARE CONSUMMATED. ALL AMOUNTS DUE UNDER THIS SECTION 13.5 SHALL BE PAID WITHIN THIRTY (30) DAYS AFTER WRITTEN DEMAND THEREFOR (TOGETHER WITH BACKUP DOCUMENTATION SUPPORTING SUCH REIMBURSEMENT REQUEST); PROVIDED, HOWEVER, THAT SUCH INDEMNITEE SHALL PROMPTLY REFUND SUCH AMOUNT TO THE EXTENT THAT THERE IS A FINAL JUDICIAL OR ARBITRAL DETERMINATION THAT SUCH INDEMNITEE WAS NOT ENTITLED TO INDEMNIFICATION RIGHTS WITH RESPECT TO SUCH PAYMENT PURSUANT TO THE EXPRESS TERMS OF THIS SECTION 13.5. THE AGREEMENTS IN THIS SECTION 13.5 SHALL SURVIVE THE RESIGNATION OF THE ADMINISTRATIVE AGENT, THE REPLACEMENT OF ANY LENDER AND THE REPAYMENT, SATISFACTION OR DISCHARGE OF ALL THE OTHER OBLIGATIONS. FOR THE AVOIDANCE OF DOUBT, THIS SECTION 13.5(B) SHALL NOT APPLY TO TAXES, EXCEPT ANY TAXES THAT REPRESENT LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, CLAIMS, DEMANDS, ACTIONS, PREPAYMENTS, SUITS, COSTS, EXPENSES AND DISBURSEMENTS ARISING FROM ANY NON-TAX CLAIMS.

13.6 Successors and Assigns; Participations and Assignments.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Letter of Credit Issuer that issues any Letter of Credit), except that (i) except as expressly permitted by Section 10.3, the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 13.6. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Letter of Credit Issuer that issues any Letter of Credit), Participants (to the extent provided in this Section 13.6(b)(v)) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Letter of Credit Issuer and the Lenders and each other Person entitled to indemnification under Section 13.5) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in Section 13.6(b)(ii) below, any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans (including participations in L/C Obligations) at the time owing to it) with the prior written consent of the Administrative Agent or the applicable Letter of Credit Issuer.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than $250,000 and increments of $50,000 in excess thereof, or, each Letter of Credit Issuer and the Administrative Agent otherwise consents (which consents shall not be unreasonably withheld or delayed); provided, that contemporaneous assignments to a single assignee made by Affiliates of Lenders and related Approved Funds shall be aggregated for purposes of meeting the minimum assignment amount requirements stated above;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee in the amount of $3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(iii) Subject to acceptance and recording thereof pursuant to Section 13.6(b)(iv), from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Section 2.10, Section 5.4 and Section 13.5). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 13.6 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 13.6(c).

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount (and stated interest) of the Loans and L/C Obligations and any payment made by the Letter of Credit Issuer under any Letter of Credit owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). Further, the Register shall contain the name and address of the Administrative Agent and the lending office through which each such Person acts under this Agreement. The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent, the Letter of Credit Issuer and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Letter of Credit Issuer and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the assignee's completed Administrative

Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in this Section 13.6(b) (unless waived) and any written consent to such assignment required by this Section 13.6(b), the Administrative Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register.

(c) (i) Any Lender may, without the consent of the Borrower, the Administrative Agent or any Letter of Credit Issuer, sell participations to one or more banks or other entities other than to a natural person, the Borrower or any Affiliate of the Borrower (other than Goldman Sachs, provided that if such participant is Goldman Sachs it shall not be entitled to vote on any matter), any Defaulting Lender, or any Disqualified Institution (to the extent that the list of Disqualified Institutions has been made available to all Lenders, it being agreed that as of the date hereof, the Administrative Agent has made the list of Disqualified Institutions available to all Lenders), (each, a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, the Letter of Credit Issuer and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement or any other Credit Document; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in Section 13.6(b), Section 13.1(b)(ii) or Section 13.1(b)(v) that affects such Participant. Subject to Section 13.6(b)(ii), the Borrower agrees that each Participant shall be entitled to the benefits of (and the limitations of) Section 2.10 and Section 5.4 to the same extent as if it were a Lender; provided that such Participant agrees to be subject to the requirements of those Sections as though it were a Lender and had acquired its interest by assignment pursuant to Section 13.6(b). To the extent permitted by Requirements of Law, each Participant also shall be entitled to the benefits of Section 13.8(b) as though it were a Lender; provided such Participant agrees to be subject to Section 13.8(a) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Credit Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.10 or Section 5.4 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent; provided that the Participant shall be subject to the provisions in Section 2.12 as if it were an assignee under Section 13.6(a) and Section 13.6(b).

(d) Any Lender may, without the consent of the Borrower or the Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central bank having jurisdiction over such Lender, and this Section 13.6 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto. In order to facilitate such pledge or assignment or for any other reason, the Borrower hereby agrees that, upon request of any Lender at any time and from time to time after the Borrower has made its initial borrowing hereunder, the Borrower shall provide to such Lender, at the Borrower's own expense, a promissory note, substantially in the form of Exhibit E, evidencing the Loans owing to such Lender.

(e) Subject to Section 13.16, the Borrower authorizes each Lender to disclose to any Participant, secured creditor of such Lender or permitted assignee (each, a "Transferee") and any prospective Transferee any and all financial information in such Lender's possession concerning the Borrower and its Affiliates that has been delivered to such Lender by or on behalf of the Borrower and its Affiliates pursuant to this Agreement or that has been delivered to such Lender by or on behalf of the Borrower and its Affiliates in connection with such Lender's credit evaluation of the Borrower and its Affiliates prior to becoming a party to this Agreement.

(f) The words "execute," "execution," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Acceptances, amendments or other modifications, Notice of Borrowing, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

(g) Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle (a "SPV"), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make the Borrower pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPV to make any Loan and (ii) if an SPV elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPV hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPV shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior Indebtedness of any SPV, it shall not institute against, or join any other person in instituting against, such SPV any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this Section 13.6, any SPV

may (A) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefore, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and Administrative Agent) providing liquidity and/or credit support to or for the account of such SPV to support the funding or maintenance of Loans and (B) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPV. This Section 13.6(g) may not be amended without the written consent of the SPV. Notwithstanding anything to the contrary in this Agreement, (I) no SPV shall be entitled to any greater rights under Section 2.10 and Section 5.4 than its Granting Lender would have been entitled to absent the use of such SPV and (II) each SPV agrees to be subject to the requirements of Section 2.10 and Section 5.4 as though it were a Lender and has acquired its interest by assignment pursuant to Section 13.6(b).

13.7 Replacements of Lenders under Certain Circumstances.

(a) In the event that any Lender (i) requests reimbursement for amounts owing pursuant to Section 2.10 or Section 5.4, or (ii) becomes a Defaulting Lender, the Borrower shall be entitled to replace such Lender with a bank, lending institution or other financial institution or terminate the Commitment of such Lender; provided that (x) in the case of a replacement, (A) such replacement does not conflict with any Requirement of Law, (B) the replacement bank or institution shall purchase, at par, all Loans and the Borrower shall pay all other amounts (other than any disputed amounts), pursuant to Section 2.10 or Section 5.4, as the case may be) owing to such replaced Lender prior to the date of replacement, (C) the replacement bank or institution, if not already a Lender, and the terms and conditions of such replacement, shall be reasonably satisfactory to the Administrative Agent, (D) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 13.6(b) (provided that the Borrower shall be obligated to pay the registration and processing fee referred to therein) and (E) any such replacement shall not be deemed to be a waiver of any rights that the Borrower, the Administrative Agent or any other Lender shall have against the replaced Lender and (y) in the case of a termination, repay all Obligations (including amounts (other than any disputed amounts), owing pursuant to Section 2.10 or Section 5.4, as the case may be) owing to such Lender as of such termination date (and in the case of a Letter of Credit Issuer, Cash Collateralize, cancel or backstop on terms satisfactorily to such Letter of Credit Issuer any Letters of Credit issued by it).

(b) If any Lender (such Lender, a "Non-Consenting Lender") has failed to consent to a proposed amendment, waiver, discharge or termination that, pursuant to the terms of Section 13.1, requires the consent of all of the Lenders affected or the Required Lenders and with respect to which the Required Lenders shall have granted their consent, then the Borrower shall have the right (unless such Non-Consenting Lender grants such consent) to replace such Non-Consenting Lender by requiring such Non-Consenting Lender to assign its Loans and its Commitments hereunder to one or more assignees reasonably acceptable to the Administrative Agent; provided that: (i) all Obligations of the Borrower owing to such Non-Consenting Lender being replaced (other than principal and interest) shall be paid in full to such Non-Consenting Lender concurrently with such assignment, and (ii) the replacement Lender shall purchase the foregoing by paying to such Non-Consenting Lender a price equal to the principal amount thereof plus accrued and unpaid interest thereon. In connection with any such assignment, the Borrower, Administrative Agent, such Non-Consenting Lender and the replacement Lender shall otherwise comply with Section 13.6.

13.8 Adjustments; Set-off.

(a) If any Lender (a "Benefited Lender") shall at any time receive any payment in respect of any principal of or interest on all or part of the Loans made by it, or the participations in Letter

of Credit Obligations held by it, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of such other Lender's Loans, or interest thereon, such Benefited Lender shall (i) notify the Administrative Agent of such fact, and (ii) purchase for cash at face value from the other Lenders a participating interest in such portion of each such other Lender's Loans, or shall provide such other Lenders with the benefits of any such collateral, or the proceeds thereof, as shall be necessary to cause such Benefited Lender to share the excess payment or benefits of such collateral or proceeds ratably in accordance with the aggregate principal of and accrued interest on their respective Loans and other amounts owing them; provided, however, that, (A) if all or any portion of such excess payment or benefits is thereafter recovered from such Benefited Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest and (B) the provisions of this paragraph shall not be construed to apply to (1) any payment made by the Borrower or any other Credit Party pursuant to and in accordance with the express terms of this Agreement and the other Credit Documents, (2) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans, Commitments or participations in Drawings to any assignee or participant or (3) any disproportionate payment obtained by a Lender as a result of the extension by Lenders of the maturity date or expiration date of some but not all Loans or Commitments or any increase in the Applicable Margin in respect of Loans or Commitments of Lenders that have consented to any such extension. Each Credit Party consents to the foregoing and agrees, to the extent it may effectively do so under Requirements of Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Credit Party rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Credit Party in the amount of such participation.

(b) After the occurrence and during the continuance of an Event of Default, in addition to any rights and remedies of the Lenders provided by Requirements of Law, each Lender shall have the right, without prior notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable Requirements of Law, upon any amount becoming due and payable by the Borrower hereunder or under any Credit Document (whether at the stated maturity, by acceleration or otherwise) to set-off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, Indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch or agency thereof to or for the credit or the account of the Borrower. Each Lender agrees promptly to notify the Borrower (and the Credit Parties, if applicable) and the Administrative Agent after any such set-off and application made by such Lender; provided that the failure to give such notice shall not affect the validity of such set-off and application.

13.9 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by facsimile or other electronic transmission, *i.e.* a "pdf" or a "tif"), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

13.10 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

13.11 Integration. This Agreement and the other Credit Documents represent the agreement of the Borrower, the Guarantors, the Administrative Agent and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Borrower, the Guarantors, the Administrative Agent nor any Lender relative to subject matter hereof not expressly set forth or referred to herein or in the other Credit Documents. This Agreement and the other Credit Documents may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements among the parties.

13.12 GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

13.13 Submission to Jurisdiction; Waivers. Each party hereto hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Credit Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the courts of the State of New York, the courts of the United States of America for the Southern District of New York and appellate courts from any thereof;

(b) consents that any such action or proceeding shall be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Person at its address set forth on Schedule 13.2 at such other address of which the Administrative Agent shall have been notified pursuant to Section 13.2;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by Requirements of Law or shall limit the right to sue in any other jurisdiction;

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section 13.13 any special, exemplary, punitive or consequential damages; and

(f) agrees that a final judgment in any action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

13.14 Acknowledgments. The Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Credit Documents;

(b) (i) the credit facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Credit Document) are an arm's-length commercial transaction between the Borrower and the other Credit Parties, on the one hand, and the Administrative Agent and the Lenders on the other hand, and the Borrower and the other Credit Parties are capable of evaluating and

understanding and understand and accept the terms, risks and conditions of the transactions contemplated hereby and by the other Credit Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, each of the Administrative Agent and the Lenders, is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary for any of the Borrower, any other Credit Parties or any of their respective Affiliates, equity holders, creditors or employees or any other Person; (iii) neither the Administrative Agent, any other Agent nor any Lender has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrower or any other Credit Party with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Credit Document (irrespective of whether the Administrative Agent or any other Agent or any Lender has advised or is currently advising any of the Borrower, the other Credit Parties or their respective Affiliates on other matters) and none of the Administrative Agent or any Lender has any obligation to any of the Borrower, the other Credit Parties or their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Credit Documents; (iv) the Administrative Agent and its Affiliates, each other Agent and each of its Affiliates and each Lender and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its respective Affiliates, and none of the Administrative Agent, any other Agent or any Lender has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) none of the Administrative Agent or any Lender has provided and none will provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Credit Document) and the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. The Borrower hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against the Administrative Agent and each Agent with respect to any breach or alleged breach of agency or fiduciary duty; and

(c) no joint venture is created hereby or by the other Credit Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Borrower, on the one hand, and any Lender, on the other hand.

13.15 WAIVERS OF JURY TRIAL. THE BORROWER, THE ADMINISTRATIVE AGENT, EACH LETTER OF CREDIT ISSUER AND EACH LENDER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

13.16 Confidentiality. The Administrative Agent, each other Agent, any Letter of Credit Issuer and each Lender shall hold all non-public information furnished by or on behalf of the Credit Parties in connection with such Lender's evaluation of whether to become a Lender hereunder or obtained by such Lender, the Administrative Agent, any Letter of Credit Issuer or such other Agent pursuant to the requirements of this Agreement ("Confidential Information"), confidential in accordance with its customary procedure for handling confidential information of this nature and in any event may make disclosure (a) as required or requested by any Governmental Authority, self-regulatory agency or representative thereof or pursuant to legal process or applicable Requirements of Law, (b) to such Lender's or the Administrative Agent's, any Letter of Credit Issuer's or such other Agent's attorneys, professional advisors, independent auditors, trustees or Affiliates, in each case who need to know such information in connection with the administration of the Credit Documents and are informed of the confidential nature of such information (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential), (c) to an investor or prospective investor in a securitization that agrees its

access to information regarding the Credit Parties, the Loans and the Credit Documents is solely for purposes of evaluating an investment in a securitization and who agrees to treat such information as confidential, (d) to a trustee, collateral manager, servicer, backup servicer, noteholder or secured party in connection with the administration, servicing and reporting on the assets serving as collateral for a securitization and who agrees to treat such information as confidential, (e) to a nationally recognized ratings agency that requires access to information regarding the Credit Parties, the Loans and Credit Documents in connection with ratings issued with respect to a securitization, (f) to any other party hereto, (g) in connection with the exercise of any remedy hereunder or under any other Credit Document or any action or proceeding related to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder, or (h) with the consent of the Borrower; provided that unless specifically prohibited by applicable Requirements of Law, each Lender, the Administrative Agent, any Letter of Credit Issuer and each other Agent shall endeavor to notify the Borrower (without any liability for a failure to so notify the Borrower) of any request made to such Lender, the Administrative Agent, any Letter of Credit Issuer or such other Agent, as applicable, by any governmental, regulatory or self-regulatory agency or representative thereof (other than any such request in connection with an examination of the financial condition of such Lender by such governmental agency) for disclosure of any such non-public information prior to disclosure of such information; provided further that in no event shall any Lender, the Administrative Agent, any Letter of Credit Issuer or any other Agent be obligated or required to return any materials furnished by the Borrower or any Subsidiary. In addition, each Lender, the Administrative Agent and each other Agent may provide Confidential Information to prospective Transferees (for the avoidance of doubt, other than any Disqualified Institution) or to any pledgee referred to in Section 13.6 or to prospective direct or indirect contractual counterparties in Hedge Agreements to be entered into in connection with Loans made hereunder solely for purposes of evaluating whether to become a Lender hereunder and as long as such Person is advised of and agrees to be bound by the provisions of this Section 13.16 or confidentiality provisions at least as restrictive as those set forth in this Section 13.17.

13.17 Release of Collateral and Guarantee Obligations.

(a) The Lenders hereby irrevocably agree that the DIP Liens granted to the Administrative Agent by the Credit Parties on any Collateral shall be automatically released (i) in full, as set forth in Section 13.17(b) below, (ii) upon the Disposition of such Collateral (including as part of or in connection with any other Disposition permitted hereunder) to any Person other than another Credit Party, to the extent such Disposition is made in compliance with the terms of this Agreement (and the Administrative Agent may rely conclusively on a certificate to that effect provided to it by any Credit Party upon its reasonable request without further inquiry), (iii) to the extent such Collateral is comprised of property leased to a Credit Party, upon termination or expiration of such lease, (iv) if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders (or such other percentage of the Lenders whose consent may be required in accordance with Section 13.1), (v) to the extent the property constituting such Collateral is owned by any Guarantor, upon the release of such Guarantor from its obligations under the Guarantee (in accordance with the second succeeding sentence and Section 5.14(b) of the Guarantee), (vi) as required by the Administrative Agent to affect any Disposition of Collateral in connection with any exercise of remedies of the Administrative Agent pursuant to the Security Documents, and (vii) upon such Collateral no longer constituting Collateral pursuant to the terms of the Credit Documents. Any such release shall not in any manner discharge, affect, or impair the Obligations or any DIP Liens (other than those being released) upon (or obligations (other than those being released) of the Credit Parties in respect of) all interests retained by the Credit Parties, including the proceeds of any Disposition, all of which shall continue to constitute part of the Collateral except to the extent otherwise released in accordance with the provisions of the Credit Documents. The Lenders hereby authorize the Administrative Agent to execute and deliver any instruments, documents, and agreements necessary or desirable to evidence and confirm the release of any Guarantor or Collateral

pursuant to the foregoing provisions of this paragraph, all without the further consent or joinder of any Lender. Any representation, warranty or covenant contained in any Credit Document relating to any such Collateral or Guarantor shall no longer be deemed to be repeated.

(b) Notwithstanding anything to the contrary contained herein or any other Credit Document, upon the Termination Date, and at the request of the Borrower, the Administrative Agent shall (without notice to, or vote or consent of, any Secured Party) take such actions as shall be required to release its security interest in all Collateral, and to release all obligations under any Credit Document, whether or not on the date of such release there may be any (i) Hedging Obligations in respect of any Secured Hedge Agreements, (ii) Cash Management Obligations in respect of any Secured Cash Management Agreements and (iii) any contingent or indemnification obligations not then due. Any such release of Obligations shall be deemed subject to the provision that such Obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of a Credit Party, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, a Credit Party or any substantial part of its property, or otherwise, all as though such payment had not been made.

13.18 USA PATRIOT Act. The Administrative Agent and each Lender hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001) the "Patriot Act"), it is required to obtain, verify and record information that identifies each Credit Party, which information includes the name and address of each Credit Party and other information that will allow the Administrative Agent and such Lender to identify each Credit Party in accordance with the Patriot Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

13.19 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate *per annum* equal to the applicable Overnight Rate from time to time in effect.

13.20 Reinstatement. This Agreement shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored or returned by the Administrative Agent or any other Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any substantial part of its property, or otherwise, all as though such payments had not been made.

13.21 Disposition of Proceeds. The Security Documents contain an assignment by the Borrower and/or the Guarantors unto and in favor of the Administrative Agent for the benefit of the Lenders of all of the Borrower's or each Guarantor's interest in and to their as-extracted collateral in the form of production and all proceeds attributable thereto which may be produced from or allocated to the Mortgaged Property. The Security Documents further provide in general for the application of such proceeds to the satisfaction of the Obligations described therein and secured thereby. Notwithstanding the assignment contained in such Security Documents, until the occurrence of an Event of Default, (a) the Administrative Agent and the Lenders agree that they will neither notify the purchaser or purchasers of such production nor take any other action to cause such proceeds to be remitted to the Administrative Agent or the Lenders, but the Lenders will instead permit such proceeds to be paid to the Borrower and its Subsidiaries and (b) the Lenders hereby authorize the Administrative Agent to take such actions as may be necessary to cause such proceeds to be paid to the Borrower and/or such Subsidiaries.

13.22 Collateral Matters; Hedge Agreements. The benefit of the Security Documents and of the provisions of this Agreement relating to any Collateral securing the Obligations shall also extend to and be available on a *pro rata* basis to any Person (a) under any Secured Hedge Agreement, in each case, after giving effect to all netting arrangements relating to such Hedge Agreements or (b) under any Secured Cash Management Agreement. No Person shall have any voting rights under any Credit Document as a result of the existence of obligations owed to it under any such Secured Hedge Agreement or Secured Cash Management Agreement.

13.23 Limitation of Recourse. There shall be full recourse to the Credit Parties and to all of their assets for the liabilities of the Credit Parties under this Agreement and the other Credit Documents and their other Obligations, but in no event shall the Permitted Investors, or any officer, director or holder of any Stock in the Borrower, be personally liable or obligated for such liabilities and Obligations of the Credit Parties, except as expressly provided in the Security Documents or in any other Credit Document to which such Person is a party. Nothing contained herein shall (a) limit or be construed to limit the obligations and liabilities of the Permitted Investors in any Credit Document creating such liabilities or (b) affect or diminish any rights of any Secured Party against such Permitted Investor for such Permitted Investor's fraud, willful misrepresentation, gross negligence, willful misconduct or misappropriation of funds.

13.24 Interest Rate Limitation. It is the intention of the parties hereto that each Lender shall conform strictly to usury laws applicable to it. Accordingly, if the transactions contemplated hereby would be usurious as to any Lender under laws applicable to it (including the laws of the United States of America, the State of Texas or any other jurisdiction whose laws may be mandatorily applicable to such Lender notwithstanding the other provisions of this Agreement), then, in that event, notwithstanding anything to the contrary in any of the Credit Documents or any agreement entered into in connection with or as security for the Loans, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under law applicable to any Lender that is contracted for, taken, reserved, charged or received by such Lender under any of the Credit Documents or agreements or otherwise in connection with the Loans shall under no circumstances exceed the maximum amount allowed by such applicable law, and any excess shall be canceled automatically and if theretofore paid shall be credited by such Lender on the principal amount of the Loans (or, to the extent that the principal amount of the Loans shall have been or would thereby be paid in full, refunded by such Lender to the Borrower); and (ii) in the event that the maturity of the Loans is accelerated by reason of an election of the holder thereof resulting from any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to any Lender may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall be canceled automatically by such Lender as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by such Lender on the

principal amount of the Loans (or, to the extent that the principal amount of the Loans shall have been or would thereby be paid in full, refunded by such Lender to the Borrower). All sums paid or agreed to be paid to any Lender for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law applicable to such Lender, be amortized, prorated, allocated and spread throughout the stated term of the Loans until payment in full so that the rate or amount of interest on account of any Loans hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time (i) the amount of interest payable to any Lender on any date shall be computed at the Highest Lawful Rate applicable to such Lender pursuant to this Section 13.24 and (ii) in respect of any subsequent interest computation period the amount of interest otherwise payable to such Lender would be less than the amount of interest payable to such Lender computed at the Highest Lawful Rate applicable to such Lender, then the amount of interest payable to such Lender in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to such Lender until the total amount of interest payable to such Lender shall equal the total amount of interest which would have been payable to such Lender if the total amount of interest had been computed without giving effect to this Section 13.24.

13.25 Incorporation of DIP Orders by Reference. Each of the Credit Parties, the Administrative Agent, and the Lenders agrees that any reference contained herein to (a) the Interim DIP Order shall include all terms, conditions, and provisions of such Interim DIP Order and that the Interim DIP Order is incorporated herein for all purposes, and (b) the Final DIP Order shall include all terms, conditions, and provisions of such Final DIP Order and that the Final DIP Order is incorporated herein for all purposes. To the extent there is any inconsistency between the terms of this Agreement and the terms of either the Interim DIP Order or the Final DIP Order, the terms of the Interim DIP Order and the Final DIP Order, as applicable, shall govern.

13.26 Flood Insurance Provisions. Notwithstanding anything in this Agreement or any other Credit Document to the contrary, in no event is any "Building" (as defined in the applicable Flood Insurance Laws) or "Manufactured (Mobile) Home" (as defined in the applicable Flood Insurance Laws) included in the definition of "Mortgaged Property" (as defined in any Credit Document) and no "Building" or "Manufactured (Mobile) Home" is hereby encumbered by this Agreement or any other Credit Document.

13.27 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Credit Document may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder that may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other

instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow.]

IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this Agreement to be duly executed and delivered as of the date first above written.

EM ENERGY EMPLOYER, LLC, as Borrower

By:_____
Name: _____
Title: _____

KEYBANK, NATIONAL ASSOCIATION, as Administrative Agent and Letter of Credit Issuer and a Lender

By:_____
Name:
Title:

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
CLOUD PEAK ENERGY INC., *et al.*,	Case No. 19 – 11047 (KG)
Debtors.[1]	(Jointly Administered)
	Re: Docket Nos. 31, 106, 117, & 368

FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING SECURED BY SENIOR PRIMING LIENS AND (B) USE CASH COLLATERAL, (II) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (III) GRANTING ADEQUATE PROTECTION, (IV) MODIFYING THE AUTOMATIC STAY, AND (V) GRANTING RELATED RELIEF

Upon the Motion[2] filed by the above-referenced debtors and debtors in possession (collectively, the "***Debtors***") for entry of a final order (this "***Final Order***") pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 364(e), and 507 of title 11 of the United States Code (the "***Bankruptcy Code***") and Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***"), *inter alia*:

[1] The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers are: Antelope Coal LLC (8952); Arrowhead I LLC (3024); Arrowhead II LLC (2098); Arrowhead III LLC (9696); Big Metal Coal Co. LLC (0200); Caballo Rojo LLC (9409); Caballo Rojo Holdings LLC (4824); Cloud Peak Energy Finance Corp. (4674); Cloud Peak Energy Inc. (8162); Cloud Peak Energy Logistics LLC (7973); Cloud Peak Energy Logistics I LLC (3370); Cloud Peak Energy Resources LLC (3917); Cloud Peak Energy Services Company (9797); Cordero Mining LLC (6991); Cordero Mining Holdings LLC (4837); Cordero Oil and Gas LLC (5726); Kennecott Coal Sales LLC (0466); NERCO LLC (3907); NERCO Coal LLC (7859); NERCO Coal Sales LLC (7134); Prospect Land and Development LLC (6404); Resource Development LLC (7027); Sequatchie Valley Coal Corporation (9113); Spring Creek Coal LLC (8948); Western Minerals LLC (3201); Youngs Creek Holdings I LLC (3481); Youngs Creek Holdings II LLC (9722); Youngs Creek Mining Company, LLC (5734). The location of the Debtors' service address is: 385 Interlocken Crescent, Suite 400, Broomfield, Colorado 80021.

[2] Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

i. authorizing the Debtors to obtain senior secured priming and superpriority postpetition financing to be funded by certain of the Prepetition Secured Noteholders (as defined below, in their capacity as lenders under the DIP Facility, the "***DIP Lenders***") under a secured term loan (the "***DIP Facility***") consisting of (A) (1) new money term loans (the "***DIP Term Loans***") in an aggregate principal amount of up to $35 million of initial secured term loans (the "***Initial DIP Term Loans***"), including $10 million of "Initial Borrowing" (as defined in the DIP Credit Agreement (as defined below), the "***Initial Borrowing***") and up to an additional $25 million being available on or after entry of the Final Order in one or two additional draws, and (2) an option to draw up to an additional $10 million of Incremental Loans (as defined in the DIP Credit Agreement, the "***Incremental Facility***"), and (B) roll-up term loans (the "***DIP Roll-Up Loans***" and, together with the DIP Term Loans, the "***DIP Loans***"), which shall be subject and subordinate to the DIP Term Loans, to refinance $0.80 of the Secured Notes Debt (as defined below) held by the DIP Lenders for every dollar of DIP Term Loans, in the aggregate amount of up to $28 million, plus an additional aggregate amount of up to $8 million in the event of the incurrence of debt under the Incremental Facility;

ii. confirming the Court's grant of authority to the Debtors, as Borrowers (as defined in the DIP Credit Agreement, in such capacity, the "***DIP Loan Parties***") under the Interim Order (as defined below) to execute, enter into, and perform under that certain *Superpriority Senior Secured Debtor-in-Possession Credit Agreement* dated as of May 15, 2019, by and among the DIP Loan Parties, the DIP Lenders, and Ankura Trust Company, LLC, as administrative and collateral agent (collectively, solely in such capacities, the "***DIP Agent***" and, together with the DIP Lenders, the "***DIP Secured Parties***"), substantially in the form attached as Exhibit A to the Interim Order, and authorizing the DIP Loan Parties to execute, enter into, and perform under that certain *Superpriority Senior Secured Debtor-in-Possession Credit Agreement* (as amended), by and among the DIP Loan Parties and the DIP Secured Parties substantially in the form attached hereto as **Exhibit A** (as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof, the "***DIP Credit Agreement***") on a final basis, and any other related documentation, including security agreements, pledge agreements, mortgages, guaranties, promissory notes, certificates, instruments, and such other documentation that may be reasonably necessary, desirable or required to implement the DIP Facility and perform thereunder and/or that may be reasonably requested by the DIP Agent, in each case, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof (collectively, the "***DIP Facility Documents***"), each of which shall be in form and substance reasonably satisfactory to the DIP Secured Parties and the DIP Loan Parties; and to perform such other acts as may be reasonably necessary, desirable, or appropriate in connection with the DIP Facility Documents;

iii. granting to the DIP Agent, for the benefit of itself and the other DIP Secured Parties (a) DIP Liens (as defined below) on all of the DIP Collateral (as defined below) pursuant to sections 364(c)(2), (c)(3) and (d) of the Bankruptcy Code, which DIP Liens shall be senior to all liens, security interests, and pledges on the DIP Collateral, except that such DIP Liens shall be junior, subordinate, and subject in all respects solely to (i) the Carve-Out (as defined below), (ii) the valid, perfected, and non-avoidable liens of the Purchasers (as defined below) under the Debtors' accounts receivable securitization facility (the "***Securitization Facility***") in the equity interests of non-debtor Cloud Peak Energy Receivables LLC pursuant to the Amended Purchase Agreements,[3] (iii) valid, non-avoidable liens perfected in the Debtors' property subsequent to the Petition Date (as defined below) as permitted by section 546(b) of the Bankruptcy Code, and (iv) other valid, perfected, and non-avoidable liens in favor of third parties that were in existence immediately prior to the Petition Date and identified as such on a schedule to the DIP Credit Agreement; (b) valid, perfected second liens on other collateral as described herein and in the DIP Credit Agreement; and (c) to the DIP Agent, for the benefit of itself and the other DIP Secured Parties, pursuant to section 364(c)(1) of the Bankruptcy Code, a superpriority administrative claim, subject and subordinate to the Carve-Out;

iv. authorizing and directing the Debtors to pay all principal, interest, fees, costs, expenses, and other amounts payable under the DIP Facility Documents as such become due and payable, as provided and in accordance therewith;

v. modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Facility Documents, the *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing Secured by Senior Priming Liens and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Status, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [Docket No. 106] (the "***Interim Order***"), and this Final Order;

vi. authorizing the Debtors to continue to use Cash Collateral (as defined below) and all other Secured Notes Collateral (as defined below), and the

[3] The "***Amended Purchase Agreements***", together with all related amendments, instruments and agreements, are: (i) that certain *Amended and Restated Purchase and Sale Agreement* among the various Originators from time to time party thereto, Cloud Peak Energy Resources LLC as Servicer, and Cloud Peak Energy Receivables LLC as Buyer; and (ii) that certain *Second Amended and Restated Receivables Purchase Agreement* (the "***RPA***") among Cloud Peak Energy Receivables LLC as Seller, Cloud Peak Energy Resources LLC as initial Servicer, certain Purchasers, PNC Bank as Administrator and LC Bank, and PNC Capital Markets LLC as Structuring Agent, each of (i) and (ii) as may be amended, amended and restated, and/or modified from time to time, as the case may be, approved by the Court, and entered into by the respective parties thereto after the Petition Date.

granting of adequate protection to the Prepetition Secured Noteholders as provided in the Interim Order and this Final Order;

vii. authorizing (A) the DIP Loan Parties upon entry of the Interim Order, to incur in a single draw on the Effective Date (as defined in the DIP Credit Agreement) the Initial Borrowing in an aggregate principal amount of $10 million (the incurrence of such Initial Borrowing upon entry of the Interim Order, the "***Interim Financing***") with $10 million of such Interim Financing to be deposited into the Segregated Account (as defined in the DIP Credit Agreement) and request funds in respect of such Interim Financing from the Segregated Account, (B) upon entry of this Final Order, and subject to the terms of the DIP Credit Agreement, (x) the funding into the Segregated Account in one or two additional draws of up to an additional $25 million as may become available upon entry of the Final Order (the "***Final Financing***"), and (y) the DIP Loan Parties to request funds from the Segregated Account in an aggregate principal amount of up to such amount so approved to be funded (pursuant to one or more withdrawals subject to the terms and conditions of the DIP Credit Agreement), including for purposes of funding the Carve-Out Reserve (as defined below) in accordance with the terms hereof, and (C) the incurrence of debt under the Incremental Facility (the "***Incremental Financing***", and together with the Interim Financing and the Final Financing, the "***DIP Financing***"), in each case subject to the terms and conditions set forth in the DIP Facility Documents (including, among others, satisfaction or waiver of the Specified Tax Condition (as defined in the DIP Credit Agreement), to the extent applicable), the Interim Order, and this Final Order; and

viii. authorizing the Debtors (A) upon entry of this Final Order, to use the DIP Roll-Up Loans to refinance and discharge $0.80 of Secured Notes Debt held by the DIP Lenders for every dollar of DIP Term Loans in the aggregate amount of up to $28 million, and (B) in the event of the incurrence of debt under the Incremental Facility, to also use DIP Roll-Up Loans to refinance and discharge $0.80 of Secured Notes Debt held by the DIP Lenders for every dollar of Incremental Loans in the aggregate amount equal to the total debt funded under the Incremental Facility in the aggregate amount of up to an additional $8 million (collectively, the "***Secured Notes Refinancing***");

all as more fully set forth in the Motion, the First Day Declaration and the Puntus Declaration in support thereof, and the *Supplement to Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing Secured by Senior Priming Liens and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Status, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and*

(V) Granting Related Relief] [Docket No. 368] (the "***Supplement***"); and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having considered the Motion, the First Day Declaration and the Puntus Declaration in support thereof, the Supplement, the DIP Facility Documents, and the pleadings submitted and arguments made by the Debtors at the interim hearing held on May 14, 2019 (the "***Interim Hearing***") and final hearing held on July 18, 2019 (the "***Final Hearing***"); and the Court having entered the Interim Order approving the relief requested in the Motion on an interim basis; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion, the Supplement, and the Final Hearing has been given under the circumstances and that no other or further notice is necessary for the relief requested in the Motion (as supplemented by the Supplement); and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion (as supplemented by the Supplement) after having given due deliberation upon the Motion, the Supplement, and all of the proceedings had before the Court in connection with the Motion and the Supplement, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW[4]:

[4] Where appropriate in this Final Order, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact pursuant to Bankruptcy Rule 7052.

A. *Petition Date*. On May 10, 2019 (the "***Petition Date***"), the Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "***Court***"), commencing these chapter 11 cases.

B. *Debtors in Possession*. The Debtors are continuing in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases.

C. *Joint Administration*. These chapter 11 cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the *Order (I) Directing Joint Administration of the Debtors' Chapter 11 Cases and (II) Waiving the Requirements of Bankruptcy Code Section 342(c)(1) and Bankruptcy Rules 1005 and 2002(b)* [Docket No. 89], entered by the Court on May 14, 2019 in each of these chapter 11 cases.

D. *Interim Order*. On May 15, 2019, the Court entered the Interim Order.

E. *Jurisdiction and Venue*. This Court has jurisdiction over the persons and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue of these chapter 11 cases and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

F. *Committee Formation*. The Office of the United States Trustee for the District of Delaware (the "***U.S. Trustee***") appointed an official committee of unsecured creditors (the "***Committee***") in these chapter 11 cases pursuant to section 1102 of the Bankruptcy Code on May 22, 2019.

G. *Findings Regarding Postpetition Financing and the Use of Cash Collateral*.

(i) Request for Postpetition Financing. The Debtors seek final authority to enter into the DIP Facility on the terms described herein and in the DIP Facility Documents to administer their chapter 11 cases and fund their operations.

(ii) Priming of the Prepetition Liens. The priming of liens to the extent provided herein under section 364(d) of the Bankruptcy Code, as contemplated by the DIP Facility and as further described below, will enable the Debtors to obtain the DIP Loans under the DIP Facility and to continue to operate their businesses for the benefit of their estates and creditors. The Notes Secured Parties (as defined below) have consented to such priming of liens and the Debtors' use of Cash Collateral subject to the terms and conditions of this Final Order.

(iii) Need for Postpetition Financing. The Debtors have a need to obtain postpetition financing pursuant to the DIP Facility and to use the Secured Notes Collateral (including cash collateral within the meaning of section 363(a) of the Bankruptcy Code (the "***Cash Collateral***")) in order to, among other things, permit the orderly continuation of the operation of their businesses, to maintain business relationships, to make capital expenditures, to satisfy other working capital and operational needs, and to conduct an orderly and value-maximizing process for the sale of the Debtors' assets as a going concern for the benefit of the Debtors' stakeholders. The ability of the Debtors to maintain business relationships with their vendors, suppliers, and customers requires the availability of working capital from the DIP Facility and the use of Cash Collateral. The Debtors do not have sufficient available sources of working capital and financing to preserve the value of their businesses without the ability to borrow under the DIP Facility and access the Cash Collateral.

(iv) No Credit Available on More Favorable Terms. As set forth in the Motion, the First Day Declaration and the Puntus Declaration in support thereof, and the Supplement, and the record presented to the Court at the Interim Hearing and the Final Hearing, the DIP Facility is the best source of debtor-in-possession financing available to the Debtors. Given their current financial condition, financing arrangements, and capital structure, the Debtors have been and continue to be unable to obtain financing from sources other than the DIP Lenders on terms more favorable than the terms of the DIP Facility. The Debtors are unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors have also been unable to obtain: (a) unsecured credit having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; (b) credit secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) credit secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Financing on a postpetition basis is not otherwise available without granting the DIP Agent, for the benefit of itself and the DIP Lenders: (a) perfected security interests in and DIP Liens on (each as provided herein) the Debtors' existing and after-acquired assets with the priorities (but subject to the exclusions) as set forth herein, (b) superpriority claims with the priorities set forth herein, (c) the refinancing of a portion of the Secured Notes Debt with the DIP Roll-Up Loans, and (d) the other protections set forth in this Final Order.

(v) Use of Proceeds of the DIP Facility and Use of Cash Collateral. As a condition to the Debtors' entry into the DIP Facility Documents and the extension of credit under the DIP Facility, the DIP Secured Parties require, and the Debtors have agreed, that proceeds of the DIP Facility shall be used solely in a manner consistent with the terms and conditions of this Final Order and the DIP Facility Documents. As a condition to their consent to the use of Cash Collateral,

the Prepetition Secured Noteholders also require, and the Debtors herein agree, that the Cash Collateral shall be used solely in a manner consistent with the terms and conditions of this Final Order.

(vi) Use of the DIP Roll-Up Loans. Use of the DIP Roll-Up Loans to refinance and discharge the DIP Lenders' Secured Notes (in an amount equal to 80% the DIP Term Loans provided by such DIP Lenders under the DIP Facility) reflects the DIP Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties.

(vii) Notes Secured Parties' Entitlement to Adequate Protection. The Notes Secured Parties are entitled to the adequate protection provided in the Interim Order and this Final Order as and to the extent set forth herein pursuant to sections 361, 362, 363, and 364 of the Bankruptcy Code. Based on the Motion, the First Day Declaration and the Puntus Declaration in support thereof, and the Supplement, and on the record presented to the Court at the Interim Hearing and the Final Hearing, the terms of the proposed adequate protection arrangements and of the use of the Secured Notes Collateral are fair and reasonable, reflect the Debtors' prudent exercise of business judgment, and constitute reasonably equivalent value and fair consideration for the use of the Secured Notes Collateral; *provided* that nothing in the Interim Order, this Final Order or the DIP Facility Documents shall (i) be construed as the affirmative consent by any of the Notes Secured Parties for the use of Cash Collateral other than on the terms set forth in this Final Order and in the context of the DIP Facility authorized by this Final Order, or (ii) be construed as a consent by any party to the terms of any other financing or any other lien encumbering the Secured Notes Collateral (whether senior or junior thereto), or (iii) prejudice, limit, or otherwise impair the rights of any of the Notes Secured Parties to seek new, different, or additional adequate protection for any diminution in value from and after the Petition Date of their interests in any Secured Notes Collateral (*provided,*

however, that any such additional adequate protection granted, if any, shall be junior to the Carve-Out, the DIP Liens, the DIP Superpriority Claim, the lien on the Securitization Facility Collateral (as defined below), and the Securitization Superpriority Claim (as defined below), as applicable), or assert the interests of any of the Notes Secured Parties to the extent not inconsistent with that certain *Amended and Restated Sale and Plan Support Agreement* dated as of May 9, 2019 (the "***Support Agreement***") among Cloud Peak Energy Inc., Cloud Peak Energy Resources LLC, Cloud Peak Energy Finance Corp., and the other direct and indirect subsidiaries of Cloud Peak Energy Inc. that are or become a party thereto, together with the Prepetition Secured Noteholders that are party thereto and each holder of 2024 Notes Claims (as defined in the Support Agreement) that are or become a party thereto, to the extent the same is still in effect, and the rights of any other party in interest (including, without limitation, the Debtors) to object to such relief are hereby preserved.

H. *Section 506(c)*. In light of the DIP Secured Parties' agreement to extend credit to the Debtors on the terms described herein and the Notes Secured Parties' consent to the Debtors' use of the Secured Notes Collateral, including Cash Collateral, upon entry of the Final Order, each of the DIP Secured Parties and the Notes Secured Parties is entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code, subject to the Carve-Out.

I. *Good Faith*.

(i) Willingness to Provide Financing. The DIP Lenders have indicated a willingness to provide financing to the Debtors subject to: (a) for the Initial Borrowing, entry of the Interim Order and, for the subsequent borrowing of DIP Loans, this Final Order; (b) Court approval of the terms and conditions of the DIP Facility and the DIP Facility Documents; (c) satisfaction or waiver of the closing conditions set forth in the DIP Facility Documents; and (d) findings by this Court that the DIP Facility is essential to the Debtors' estates, that the DIP Secured Parties are

extending credit to the Debtors pursuant to the DIP Facility Documents in good faith, and that the DIP Secured Parties' claims, superpriority claims, security interests and liens and other protections granted pursuant to the Interim Order, this Final Order and the DIP Facility Documents will have the protections provided by section 364(e) of the Bankruptcy Code.

(ii) Business Judgment and Good Faith Pursuant to Section 364(e). The terms and conditions of the DIP Facility, the DIP Facility Documents, and the fees paid and to be paid thereunder to the DIP Secured Parties, are fair, reasonable, and the best available to the Debtors under the circumstances, are ordinary and appropriate for secured postpetition financing to debtors in possession, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration. Entry of this Final Order is in the best interests of the Debtors and their estates, creditors, and equity holders. The terms and conditions of the DIP Facility were negotiated in good faith and at arms' length among the Debtors and the DIP Secured Parties, with the assistance and counsel of their respective advisors. Credit to be extended under the DIP Facility shall be deemed to have been allowed, advanced, made, or extended in good faith by the DIP Secured Parties, within the meaning of section 364(e) of the Bankruptcy Code and will not be affected by any subsequent reversal, modification, vacatur, amendment, reargument or reconsideration of this Final Order or any other order.

J. *Debtors' Stipulations*. After consultation with their attorneys and financial advisors, and without prejudice to the rights of a Committee or any other party in interest (subject to the limitations thereon contained in Paragraphs 29 and 31 below), the Debtors acknowledge, admit, stipulate and agree that:

i. Prepetition Secured Notes. Pursuant to that certain Indenture dated as of October 17, 2016 (as amended, supplemented or otherwise modified prior to the date hereof, the "***Secured Notes Indenture***", and collectively with any other agreements and documents executed or delivered in connection therewith, each as may be

amended, restated, amended and restated, supplemented, waived, and/or otherwise modified from time to time, the "***Secured Notes Documents***"), by and among, *inter alia*, Cloud Peak Energy Inc., Cloud Peak Energy Resources LLC, Cloud Peak Energy Finance Corp. (together with Cloud Peak Energy Resources LLC, the "***Secured Notes Issuers***"), the other subsidiaries of Cloud Peak Energy Inc. party thereto (collectively, the "***Secured Notes Loan Parties***") and Wilmington Trust, National Association, in its capacity as trustee and collateral agent (in such capacity, together with its successors in such capacity, the "***Secured Notes Trustee***" and, together with the Holders (as defined in the Secured 2021 Notes Indenture, the "***Prepetition Secured Noteholders***"), the "***Notes Secured Parties***"), the Secured Notes Issuers incurred indebtedness to the Prepetition Secured Noteholders consisting of 12.00% Second Lien Senior Secured Notes due 2021 (collectively, the "***Secured Notes***").

ii. Secured Notes Debt. As of the Petition Date, each of the Debtors was justly and lawfully indebted and liable to the Notes Secured Parties, without defense, counterclaim, or offset of any kind, in respect of the Secured Notes in the aggregate principal amount of $290,366,000 (collectively, such indebtedness together with accrued and unpaid interest thereon and fees, expenses, charges, indemnities, and other obligations incurred in connection therewith as provided in the Secured Notes Documents, the "***Secured Notes Debt***").

iii. Validity of Secured Notes. (a) The Secured Notes Debt constitutes legal, valid, binding, unreleased and non-avoidable obligations of each of the Debtors and (b) no portion of the Secured Notes Debt or any payments made to the Notes Secured Parties or applied to or paid on account of the obligations owing under the Secured Notes Documents prior to the Petition Date is subject to any contest, attack, rejection, recovery, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action, or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law.

iv. Prepetition Liens. The liens granted to the Notes Secured Parties by each of the Debtors (the "***Secured Notes Liens***") are (a) valid, binding, perfected, enforceable, unreleased liens and security interests in the Collateral (as defined in the Secured Notes Indenture) (such Collateral, the "***Secured Notes Collateral***"), (b) not subject to avoidance, recharacterization, subordination, recovery, attack, effect, counterclaim, defense, or claim under the Bankruptcy Code or applicable non-bankruptcy law, and (c) as of the Petition Date, subject only to Permitted Liens (as defined in the Secured Notes Indenture).

v. Cash Collateral. All of the Debtors' cash in deposit accounts (other than in the Segregated Account or in an Excluded Account (as defined in the DIP Credit Agreement)) constitutes Cash Collateral of the Notes Secured Parties.

vi. No Control. None of the Notes Secured Parties controls the Debtors or their properties or operations, has authority to determine the manner in which any Debtors' operations are conducted or are control persons or insiders of the Debtors by virtue

of any of the actions taken with respect to, in connection with, related to, or arising from the Secured Notes Documents.

vii. No Claims or Causes of Action. No claims, counterclaims or causes of action of any kind or nature exist against, or with respect to, the Notes Secured Parties under any agreements by and among the Debtors and any such party that is in existence as of the Petition Date, whether related to the Secured Notes Documents, any other agreement, the Debtors or otherwise.

K. Based on the Motion, the First Day Declaration and the Puntus Declaration in support thereof, the Supplement, and the record presented to the Court at the Interim Hearing and the Final Hearing, and the Court having entered the Interim Order, approving the relief requested in the Motion on an interim basis, the terms of the DIP Facility contemplated hereby are fair and reasonable, reflect the Debtors' prudent exercise of business judgment, and constitute reasonably equivalent value and fair consideration.

L. *Secured Notes Collateral*. After consultation with its attorneys and financial advisors, the Committee (as defined below) acknowledges, admits, stipulates and agrees that:

(i) Notwithstanding anything to the contrary herein, including Paragraph 31, the liens granted to the Notes Secured Parties by Cloud Peak Energy, Inc. and the Secured Notes Issuers (the "***Parent-Issuer Liens***") are (a) valid, binding, perfected, enforceable, unreleased liens and security interests in the Secured Notes Collateral, (b) not subject to avoidance, recharacterization, subordination, recovery, attack, effect, counterclaim, defense, or claim under the Bankruptcy Code or applicable non-bankruptcy law, and (c) as of the Petition Date, subject only to Permitted Liens (as defined in the Secured Notes Indenture), except solely with respect to those assets of Cloud Peak Energy, Inc. and the Secured Notes Issuers set forth on Schedule I hereto (the "***Reserved Challenge Assets***").

(ii) Upon the Entry of this Final Order, the Committee agrees that it will not accrue or incur any additional professional fees in connection with the investigation of the Parent-Issuer Liens, including, but not limited to, professional fees incurred in connection with the production or review of documents, depositions, interrogatories, examinations or other discovery or in connection with the analysis of claims or causes of action, except solely with respect to the Reserved Challenge Assets.

M. *Notice*. Notice of the Interim Hearing and the Final Hearing has been provided by delivery to: (a) the United States Trustee; (b) Nixon Peabody LLP, as counsel to the Secured Notes Trustee; (c) counsel to the ad hoc group of Prepetition Secured Noteholders (the "***Ad Hoc Group***"), the DIP Agent, and the DIP Lenders, (d) the indenture trustee under the Debtors' unsecured notes; (e) the Debtors' 50 largest unsecured creditors (on a consolidated basis); (f) those parties entitled to notice pursuant to Local Rule 9013-1(m); (g) those persons who have formally appeared in these chapter 11 cases and requested service pursuant to Bankruptcy Rule 2002; (h) the Securities and Exchange Commission; (i) the Internal Revenue Service; (j) all other applicable government agencies to the extent required by the Bankruptcy Rules or the Local Rules; (k) counsel to PNC Bank; (l) the United States Environmental Protection Agency; and (m) the United States Department of the Interior. A copy of the Motion, the Interim Order, and the Supplement were also served on the Campbell County, Wyoming Assessor, the Converse County, Wyoming Assessor, and the Wyoming Attorney General's Office. Proper, timely, adequate and sufficient notice of the Motion and the Supplement has been provided in accordance with the Bankruptcy Code, the Bankruptcy

Rules and the Local Rules, and no other or further notice of the Motion or the Supplement or the entry of the Interim Order or this Final Order shall be required.

N. As of the date hereof, the amount of the Borrowing Base (as defined in the DIP Credit Agreement) is $35,155,925.

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

IT IS HEREBY ORDERED that:

1. Financing Approved. The Motion is **GRANTED** on a final basis as set forth herein.

2. Objections Overruled. Any objections to the Motion not resolved or otherwise withdrawn are **OVERRULED**.

3. [Reserved]

4. Authorization of the DIP Facility. The DIP Facility, and the borrowing of the DIP Financing, is hereby approved. The Debtors were authorized by the Interim Order, and are hereby expressly and immediately authorized and empowered on a final basis to execute and deliver the DIP Facility Documents, and to incur and to perform the DIP Obligations (as defined below) in accordance with, and subject to, the terms of this Final Order and the DIP Facility Documents, including to deliver all DIP Facility Documents which may be reasonably required or necessary for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens described in and provided for by this Final Order and the DIP Facility Documents. The Debtors are hereby authorized and directed to pay, in accordance with the DIP Facility Documents and this Final Order, the principal, interest, fees, expenses, and other amounts described in the DIP Facility Documents as such become due and payable and without need to obtain further Court approval, including, without limitation, the DIP Agent's fees, the reasonable and documented fees,

costs, disbursements and expenses of the DIP Secured Parties in accordance with the DIP Facility Documents (including the reasonable and documented fees and expenses of Davis Polk and one local counsel in each material jurisdiction), whether or not such fees arose before or after the Petition Date (the "***DIP Professional Fees***"), all to the extent provided in this Final Order or the DIP Facility Documents, including without limitation delivery of invoices to the Fee Notice Parties (as defined below) as provided for in Paragraph 27 herein. Upon execution and delivery, the DIP Facility Documents shall represent valid and binding obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms. For the purposes hereof, the term "***DIP Obligations***" means all "Obligations" or "DIP Obligations" as defined in the DIP Credit Agreement, and shall include, without limitation, principal, interest, all loans, advances, extensions of credit, financial accommodations, reimbursement obligations, fees and any administrative agent fees, costs, expenses and other liabilities, all other obligations (including indemnities and similar obligations, whether contingent or absolute) and all other amounts due or payable under the DIP Facility Documents, but shall exclude Contingent Roll-Up Loans (as defined below) unless and until such Contingent Roll-Up Loans are converted into DIP Roll-Up Loans.

5. Authorization of the DIP Financing and the Use of the Prepetition Collateral.

(a) From the entry of this Final Order through and including the earliest to occur of (i) entry of the Final Order, or (ii) the Termination Declaration (as defined below), and subject to the terms, conditions, limitations on availability and reserves set forth in the DIP Facility Documents and this Final Order, the Debtors are hereby authorized, on a final basis, to borrow all amounts available under the DIP Facility incurred pursuant to, and in accordance with, this Final Order and the DIP Facility Documents.

(b) The full principal amount of the DIP Financing shall be deemed the aggregate principal amount of such DIP Loans and shall be deemed outstanding upon the drawing of such DIP Loans.

(c) The Debtors' use of advances of credit under the DIP Facility and the Secured Notes Collateral (including Cash Collateral) is hereby approved in accordance with the budget attached hereto as **Exhibit B** (as modified from time to time in accordance with Paragraph 17, the "***Budget***") and subject to the other terms and conditions of this Final Order and the DIP Facility Documents.

(d) Cash constituting Cash Collateral of the Notes Secured Parties shall be deemed to have been used first by the Debtors, and all such Cash Collateral shall be used and deemed to be used prior to the Debtors' use of any of the Interim Financing, the Final Financing, or any postpetition cash or postpetition proceeds of the DIP Collateral.

6. Secured Notes Refinancing.

(a) The Debtors shall use the DIP Roll-Up Loans to: (A) concurrently with the Second Borrowing (as defined in the DIP Credit Agreement), which shall occur within 10 business days following the entry of this Final DIP Order (unless such requirement is waived by the Required

Lenders (as defined in the DIP Credit Agreement) (but only to the extent that the applicable conditions to the Second Borrowing as set forth in DIP Credit Agreement are otherwise satisfied or waived by the Required Lenders at such time), (i) refinance and discharge Secured Notes Debt held by the DIP Lenders in an amount equal to 80% of the Initial Borrowing (as defined in the DIP Credit Agreement, the "***Initial Roll-Up Loans***"); (ii) refinance and discharge Secured Notes Debt held by the DIP Lenders in an amount equal to 80% of the Second Borrowing, and (iii) refinance and discharge Secured Notes Debt held by the DIP Lenders in an amount equal to 80% of the amount of any remaining unused commitments, if any, under the DIP Credit Agreement at the time of the Second Borrowing (the "***Contingent Roll-Up Loans***"); and (B) concurrently with the incurrence of debt under the Incremental Facility, refinance and discharge Secured Notes Debt of the Incremental Term Lenders (as defined in the DIP Credit Agreement) in an amount equal to 80% of the Incremental Financing, in each case subject to the terms and conditions set forth in the DIP Facility Documents and the reservation of rights of parties in interest in Paragraph 31 below.

(b) Notwithstanding anything to the contrary herein, upon the entry of this Final Order, an amount of the Secured Notes Debt claims held by the DIP Lenders, such amount to equal 80% of the Initial Borrowing, shall be granted superpriority administrative expense priority under section 364(c)(1) of the Bankruptcy Code (the "***Initial Roll-Up Superpriority Claims***").

(c) Notwithstanding anything to the contrary herein, (x) upon the occurrence of the Third Borrowing, without any application, motion or notice to, hearing before, or order from the Court, or any further action by any party, the Contingent Roll-Up Loans shall, simultaneously with the occurrence of the Third Borrowing, automatically convert into DIP Roll-Up Loans under the DIP Credit Agreement on a dollar-for-dollar basis and (y) unless and until the incurrence of the Third Borrowing, the Contingent Roll-Up Loans: (i) shall have identical substantive rights (including with

respect to economic rights, guarantees, collateral and lien priorities) to those of, and recover on a *pro rata* and *pari passu* basis with, the Secured Notes and (ii) may be classified together with the Secured Notes in any chapter 11 plan and receive the same voting rights and distributions as the Secured Notes under any chapter 11 plan.

(d) Upon expiration of the Challenge Period without a successful Challenge having been brought with respect thereto, the DIP Roll-Up Loans issued under this Paragraph 6 shall be deemed indefeasible and that portion of the Secured Notes Debt so refinanced thereby shall be discharged. To the extent that a Challenge is successful, the roll-up of the Secured Notes Debt into DIP Roll-Up Loans shall not in any way impact such Challenge, and the rights of the party that mounted such successful Challenge are reserved to seek an appropriate remedy.

(e) Notwithstanding anything to the contrary herein, the claims and liens in respect of the DIP Roll-Up Loans and the Contingent Roll-Up Loans, if any, shall be subject and subordinate to the claims and liens in respect of the DIP Term Loans in all respects; *provided* that any proceeds allocated on account of the DIP Roll-Up Loans and the Secured Notes Debt shall be applied first to the repayment of the DIP Roll-Up Loans (excluding the Contingent Roll-Up Loans, if any) before (i) any Secured Notes Debt that is not subject to the Secured Notes Refinancing and (ii) any Contingent Roll-Up Loans. For the avoidance of doubt and notwithstanding anything to the contrary contained in this Final Order, so long as the Termination Date (as defined in the Support Agreement) has not occurred under the Support Agreement, the DIP Roll-Up Loans shall be paid in accordance with the distribution protocol set forth in Section 4(c) of the Support Agreement.

7. DIP Obligations. The DIP Facility Documents and this Final Order shall constitute and evidence the validity and binding effect of the DIP Obligations, which DIP Obligations shall be enforceable against the Debtors, their estates and any successors thereto, including without

limitation, any trustee appointed in these chapter 11 cases, or in any case under chapter 7 of the Bankruptcy Code upon the conversion of any of these chapter 11 cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "***Successor Cases***"). Upon entry of this Final Order, the DIP Obligations will include all loans, obligations, and any other indebtedness or obligations, contingent or absolute, which may now or from time to time hereafter be owing by any of the Debtors to the DIP Secured Parties under the DIP Facility Documents or this Final Order, including, without limitation, all principal, accrued interest, costs, fees, expenses, and other amounts under the DIP Facility Documents. The DIP Loan Parties shall be jointly and severally liable for the DIP Obligations. The DIP Obligations shall be due and payable on the DIP Termination Date (as defined below). No obligation, payment, transfer, or grant of collateral security hereunder to any of the DIP Secured Parties or under the DIP Facility Documents (including any DIP Obligation or DIP Liens) shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

8. DIP Liens.

(a) To secure the DIP Obligations, upon entry of this Final Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP Agent, for the benefit of itself and the DIP Lenders, is hereby granted, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens

(collectively, the "***DIP Liens***") on all DIP Collateral as collateral security for the prompt and complete performance and payment when due (whether at the stated maturity, by acceleration or otherwise) of the DIP Obligations.

(b) The term "***DIP Collateral***" shall mean all prepetition and postpetition assets and properties (real and personal) of the DIP Loan Parties, whether now owned by or owing to, or hereafter acquired by, or arising in favor of, the DIP Loan Parties (including under any trade names, styles, or derivations thereof), whether owned or consigned by or to, or leased from or to, the DIP Loan Parties, and wherever located including, without limitation, all cash and cash equivalents of the DIP Loan Parties wherever located, including in any segregated deposit account subject to a control agreement in favor of the DIP Agent, money, inventory, accounts and accounts receivable, other rights to payment, deposit accounts, franchise rights, contracts, contract rights, instruments, documents and chattel paper, all securities (whether or not marketable), documents of title, letters of credit, letter of credit rights, goods, machinery, equipment, inventory, fixtures, real and leasehold property interests, plants, general intangibles, payment intangibles, patents, copyrights, trademarks, trade names and all other intellectual property, membership interests and capital stock owned by the DIP Loan Parties, investment property, intercompany loans or claims, all books and records, commercial tort claims, tax and other refunds, insurance proceeds, and all other "property of the estate" (as defined in section 541 of the Bankruptcy Code) of any kind or nature, real or personal, tangible, intangible, or mixed, now existing or hereafter acquired or created, and all rents, products, substitutions, accessions, profits, replacements, and cash and non-cash proceeds of all of the foregoing; *provided, however*, that, notwithstanding the foregoing, the DIP Collateral shall not include any Excluded Accounts, the Securitization Facility Collateral,[5] or any other assets or

[5] "***Securitization Facility Collateral***" shall mean all Pool Assets (as defined in the Amended Purchase Agreements) sold or otherwise transferred from any of the Debtors to Cloud Peak Energy Receivables LLC; *provided* that any

property expressly excluded from DIP Collateral under the DIP Credit Agreement; *provided further, however*, that DIP Collateral shall include all proceeds and products of such excluded assets or property (other than the proceeds or products of the Securitization Facility Collateral) to the extent not constituting excluded assets in their own right received by the Debtors (including the proceeds of all claims and causes of action arising under chapter 5 of the Bankruptcy Code (the "***Avoidance Proceeds***"); *provided, however, that* the Notes Secured Parties, DIP Agent and the DIP Lenders shall use commercially reasonable efforts to first use all DIP Collateral or Secured Notes Collateral other than any Avoidance Proceeds to repay the DIP Superpriority Claims or the Adequate Protection Superpriority Claims, as applicable.

(c) To the fullest extent permitted by the Bankruptcy Code or applicable law, any provision of any lease, loan document, easement, use agreement, proffer, covenant, license, contract, organizational document, or other instrument or agreement that requires the consent or the payment of any fees or obligations to any governmental entity or non-governmental entity in order for the Debtors to pledge, grant, mortgage, sell, assign, or otherwise transfer any fee or leasehold interest or the proceeds thereof to the extent comprising DIP Collateral, shall have no force or effect with respect to the DIP Liens on such leasehold interests or other applicable DIP Collateral or the proceeds of any assignment and/or sale thereof by any Debtor, in favor of the DIP Secured Parties in accordance with the terms of the DIP Facility Documents and this Final Order.

such assets that are not acquired from (or otherwise transferred, assigned, or pledged (to the extent of any recharacterization as other than a sale)) or reconveyed (or released from any lien) to, the DIP Loan Parties, shall not be Securitization Facility Collateral. No party, other than the Administrator (for the benefit of the Purchasers), shall have a security interest in or lien on the Securitization Facility Collateral.

9. DIP Lien Priority.

(a) The DIP Liens securing the DIP Obligations are valid, automatically and properly perfected, non-avoidable, liens on all DIP Collateral (subject to the exclusions therefrom set forth herein and in the DIP Credit Agreement), and shall have the following priorities:

(i) subject and subordinate to the Carve-Out, the DIP Permitted Prior Liens (as defined below), and the first-priority perfected continuing security interests and liens of the Administrator (as defined in the RPA) (for the benefit of the other purchasers under the Securitization Facility (collectively, the "***Purchasers***")) in the equity interests of non-debtor Cloud Peak Energy Receivables LLC (the "***Securitization SPV Equity Collateral***"), pursuant to section 364(d)(1) of the Bankruptcy Code, a first-priority perfected senior priming lien on, and security interest in, the Secured Notes Collateral to the extent comprising DIP Collateral that may be subject to the Secured Notes Liens or other prepetition liens, which shall all be primed by and made subject and subordinate to the perfected, first-priority senior priming liens and security interests to be granted to the DIP Agent for the benefit of the DIP Lenders, which senior priming liens and security interests in favor of the DIP Agent, for the benefit of the DIP Lenders, shall also be senior to the Adequate Protection Liens (as defined below) granted to the Notes Secured Parties; *provided, however*, that the DIP Secured Parties' DIP Liens in cash held in accounts as adequate assurance of future performance for the Debtors' utility providers shall be subject to the rights of such utilities providers in accordance with any order of the Court governing such accounts;

(ii) subject and subordinate to the Carve-Out, utilities providers as provided in (i) above, and the liens of the Administrator (for the benefit of the Purchasers) in the Securitization SPV Equity Collateral, pursuant to section 364(c)(2) of the Bankruptcy Code, a first-

priority perfected lien on, and security interest in, all DIP Collateral that is not subject to a lien or security interest on the Petition Date;

(iii) subject and subordinate to the Carve-Out and utilities providers as provided in (i) above, pursuant to section 364(c)(3) of the Bankruptcy Code, a junior perfected lien on, and security interest in all DIP Collateral, with such junior lien and security interest being subject and subordinate to (A) any valid, perfected, and non-avoidable liens in the Debtors' property solely to the extent permitted by section 546(b) of the Bankruptcy Code, and (B) any other valid, perfected, and non-avoidable liens in favor of third parties that were in existence immediately prior to the Petition Date and identified as such on a schedule to the DIP Credit Agreement (including, for the avoidance of doubt, the Comerica Lien[6]) (all such liens described in (A) and (B), collectively, the "***DIP Permitted Prior Liens***"), and (C) the liens of the Administrator (for the benefit of the Purchasers) in the Securitization SPV Equity Collateral.

(b) Neither (x) Campbell County, Wyoming nor (y) Converse County, Wyoming ((x) and (y) together, the "***Counties***") holds any lien, interest or claim on and in respect of *ad valorem* taxes, gross proceeds taxes, or any other amounts owed by any of the Debtors to either of the Counties that constitutes a DIP Permitted Prior Lien.

(c) The DIP Liens, the DIP Superpriority Claim (as defined below), the Adequate Protection Liens, and the Adequate Protection Claims (as defined below): (A) shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code or the "equities of the case" exception of section 552 of the Bankruptcy Code, (B) shall not be subordinate to, or *pari passu* with, (x) any postpetition lien or security interest hereinafter granted by order of the Court in any of the chapter 11

[6] "**Comerica Lien**" shall mean that certain lien perfected by a UCC-1 financing statement filed with the Delaware Secretary of State (File No. 20140603928) on February 14, 2014, with Comerica Leasing, a Division of Comerica Bank, as secured party, as such financing statement has been amended and/or continued from time to time, which lien is listed as a Prior Permitted Lien on Schedule 1.01(B) to the DIP Credit Agreement.

cases or any Successor Cases, (y) any lien that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or otherwise or (z) any intercompany or affiliate liens of the Debtors, and (C) shall be valid and enforceable against any trustee or any other estate representative appointed or elected in the chapter 11 cases or any Successor Cases, and/or upon the dismissal of any of the chapter 11 cases.

(d) If there exists a DIP Permitted Prior Lien that is junior in priority to the Secured Notes Liens, any recovery that the Notes Secured Parties would have received on account of a claim secured by such Secured Notes Lien shall be turned over to the DIP Agent for the benefit of the DIP Lenders until the DIP Obligations shall have been indefeasibly paid in full in cash.

(e) Notwithstanding anything to the contrary herein, no liens granted hereby on any of the Debtors' Bank Accounts[7] shall take priority over the prepetition and postpetition service and other fees, costs, charges, and expenses to which the Banks are entitled under the terms of and in accordance with the respective contractual arrangements with the Debtors governing such Bank Accounts.

10. DIP Superpriority Claim. Upon entry of this Final Order, the DIP Secured Parties are hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, subject and subordinate to the Carve-Out, allowed superpriority administrative expense claims (collectively, the "***DIP Superpriority Claim***"), which shall rank *pari passu* to the allowed superpriority administrative expense claims granted to the Administrator (for the benefit of the Purchasers) pursuant to the Court's *Interim Order (I) Authorizing Certain Debtors to Continue Selling Receivables and Related*

[7] Capitalized terms used in this Paragraph 9(d) but not otherwise defined herein shall have the meanings ascribed to them in the in the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Maintain the Cash Management System, (B) Continue Using Existing Checks and Business Forms, and (C) Continue Intercompany Arrangements, (II) Providing Administrative Expense Priority Status for Postpetition Intercompany Claims, and (III) Granting Related Relief*.

Rights Pursuant to a Securitization Facility, (II) Modifying the Automatic Stay, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief (the "***Securitization Superpriority Claim***") in each of the chapter 11 cases and any Successor Cases for all DIP Obligations; *provided* that the DIP Superpriority Claims in respect of the DIP Roll-Up Loans shall be subject and subordinate to the DIP Superpriority Claims in respect of the DIP Term Loans and the Securitization Superpriority Claim: (a) except as set forth herein, with priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of the chapter 11 cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114, and any other provision of the Bankruptcy Code, as provided under section 364(c)(1) of the Bankruptcy Code; and (b) except as set forth herein, which shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative to the extent permitted by law. The DIP Superpriority Claim shall, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code, be considered an administrative expense allowed under section 503(b) of the Bankruptcy Code, shall be against each Debtor on a joint and several basis, shall be payable from and have recourse to all DIP Collateral (including all Avoidance Proceeds), and shall be subject and subordinate to the Carve-Out.

11. Adequate Protection. The Notes Secured Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1), and 507 of the Bankruptcy Code, to adequate protection of their respective interests in the Secured Notes Collateral, for and equal in amount to the aggregate diminution in the value as provided in the Bankruptcy Code, if any, as of the Petition Date, of the Notes Secured Parties' security interests in the Secured Notes Collateral from and after the Petition

Date, for any reason provided for under the Bankruptcy Code, including but not limited to, the Debtors' use, sale, or lease of Cash Collateral and other Secured Notes Collateral, the imposition of the automatic stay of section 362 of the Bankruptcy Code, and/or the Carve-Out. In consideration of the foregoing, the Notes Secured Parties are hereby granted the following (collectively, the "***Adequate Protection Obligations***"):

(a) *Adequate Protection Liens*. Pursuant to sections 361, 363 and 364(d) of the Bankruptcy Code, and effective as of the Petition Date, the Secured Notes Trustee, for the benefit of the Prepetition Secured Noteholders, were granted pursuant to the Interim Order, and are hereby granted, continuing, valid, binding, enforceable and automatically perfected replacement liens and additional security interests (the "***Adequate Protection Liens***") on the DIP Collateral[8] junior to: (A) the Carve-Out, (B) the DIP Permitted Prior Liens and the liens of the Administrator (for the benefit of the Purchasers) in the SPV Equity Collateral, (C) the DIP Liens, and (D) any valid, perfected, and non-avoidable liens that are permitted under the Secured Notes Indenture and are senior to the Secured Notes Liens.

(b) *Priority of Liens*. The priority of the DIP Liens, the Secured Notes Liens, any liens securing Contingent Roll-Up Loans, the liens of the Administrator (for the benefit of the Purchasers) in the SPV Equity Collateral, the Adequate Protection Liens, the DIP Permitted Prior Liens and the Carve-Out shall be as follows: (i) the Carve-Out, (ii) the DIP Permitted Prior Liens and the liens of the Administrator (for the benefit of the Purchasers) in the SPV Equity Collateral, (iv) the DIP Liens in respect of the DIP Term Loans, (v) the DIP Liens in respect of the DIP Roll-Up Loans (excluding any Contingent Roll-Up Loans), (vi) the Adequate Protection Liens granted

[8] For the avoidance of doubt, the DIP Collateral excludes Securitization Facility Collateral.

to the Notes Secured Parties, (vii) the Secured Notes Liens and any liens securing Contingent Roll-Up Loans.

(c) *Superpriority Claims of Notes Secured Parties.* As further adequate protection of the interests of the Secured Notes Liens and the Notes Secured Parties, and effective as of the Petition Date, the Notes Secured Parties (including, if applicable, the holders of Contingent Roll-Up Loans) were granted pursuant to the Interim Order, and are hereby granted, subject and subordinate to the Carve-Out, the Securitization Superpriority Claim, and the DIP Superpriority Claim, allowed superpriority administrative expense claims against the Debtors' estates under sections 503(b) and 507(b) of the Bankruptcy Code (the "***Adequate Protection Superpriority Claims***") to the extent of any diminution in value of the Secured Notes Parties' respective interests in the Secured Notes Collateral, including as a result of the imposition of the automatic stay, the Debtors' use, sale or lease of the Secured Notes Collateral, and the subordination of the Secured Notes Liens to the Carve-Out.

(d) *DIP Roll-Up Facility*. The Debtors shall use the DIP Roll-Up Loans to (A) concurrently with the Second Borrowing: (i) refinance and discharge Secured Notes Debt held by the DIP Lenders in an amount equal to 80% of the Initial Borrowing, (ii) refinance and discharge Secured Notes Debt held by the DIP Lenders in an amount equal to 80% of the Second Borrowing, and (iii) except as provided in Paragraph 6(c), refinance and discharge Secured Notes Debt held by the DIP Lenders in an amount equal to 80% of the amount of any remaining unused commitments, if any, under the DIP Credit Agreement at the time of the Second Borrowing; and (B) concurrently with the incurrence of debt under the Incremental Facility, refinance and discharge Secured Notes Debt of the Incremental Term Lenders (as defined in the DIP Credit Agreement) in an amount equal

to 80% of the Incremental Financing, in each case subject to the terms and conditions set forth in the DIP Facility Documents and the reservation of rights of parties in interest in Paragraph 31 below.

(e) *Initial Roll-Up Superpriority Claims.* Effective as of the entry of this Final Order, the Initial Roll-Up Superpriority Claims shall be deemed granted.

(f) *Notes Secured Parties' Fees and Expenses.* The DIP Loan Parties shall make current cash payments of the reasonable and documented prepetition and postpetition fees and expenses incurred by certain of the Notes Secured Parties in accordance with Paragraph 27 of this Final Order, which payments shall be subject to recharacterization as principal payments (solely upon a motion by the Debtors, the Committee or any other party in interest and only upon entry of a final, non-appealable order ordering as such).

12. Priority of Superpriority Claims. The priority of the DIP Superpriority Claim, the Securitization Superpriority Claim, the Adequate Protection Superpriority Claims, and the Carve-Out shall be as follows: (1) the Carve-Out, (2) the DIP Superpriority Claim on account of the DIP Term Loans and the Securitization Superpriority Claim, (3) the DIP Superpriority Claim on account of the DIP Roll-Up Loans (excluding, prior to the incurrence of the Third Borrowing, the Contingent Roll-Up Loans) or the Initial Roll-Up Superpriority Claims, as applicable, and (4) the Adequate Protection Superpriority Claims on account of the Secured Notes (including, prior to the incurrence of the Third Borrowing, the Contingent Roll-Up Loans).

13. Financial Reporting. The Debtors shall provide counsel to the Secured Notes Trustee, counsel to the Ad Hoc Group and counsel to the Committee with financial and all other reporting substantially in compliance with the reports and notices provided for in the DIP Facility Documents, in each case when and as required under the DIP Facility Documents; *provided however*, that such

reporting to counsel to the Ad Hoc Group, counsel to the Secured Notes Trustee, and counsel to the Committee shall continue after repayment in full in cash of the DIP Obligations.

14. No Obligation to Extend Credit. The DIP Secured Parties shall have no obligation to make any loan or advance under the DIP Facility Documents, unless all of the conditions precedent to the making of such extension of credit under the DIP Facility Documents and this Final Order have been satisfied in full or waived by the DIP Agent, as applicable, and in accordance with the terms of the DIP Credit Agreement.

15. Use of Proceeds of DIP Facility, Budget, Variance Reports.

(a) From and after the Petition Date, the Debtors shall use advances of credit and cash collateral under the DIP Facility and Cash Collateral of the Notes Secured Parties only for the purposes specifically set forth in this Final Order and, as applicable, the DIP Facility Documents, and in compliance with the terms and conditions in this Final Order and the DIP Facility Documents, and in accordance with the Budget, subject to any variances thereto permitted under the terms and conditions of the DIP Facility Documents and this Final Order (the "***Permitted Use***").

16. Amendment of the DIP Facility Documents. The DIP Facility Documents may from time to time be amended, modified or supplemented by the parties thereto without further order of the Court if: (a) the amendment, modification, or supplement is in accordance with the DIP Facility Documents; (b) a copy (which may be provided through electronic mail or facsimile) of the amendment, modification or supplement is provided to counsel to the Ad Hoc Group, counsel to PNC Bank, counsel to the Secured Notes Trustee, counsel to the Committee, and the U.S. Trustee (together, the "***Notice Parties***"); and (c) the amendment, modification or supplement is filed with the Court; *provided, however*, that neither consent of the Required Consenting Noteholders or the Notice Parties, nor approval of the Court, will be necessary to effectuate any non-material

amendment, modification or supplement and *provided further* that such amendment, modification or supplement shall be without prejudice to the right of any party in interest to be heard.

17. Budget Modification. The Budget and any modification to, or amendment or update of, the Budget shall be as set forth in the DIP Facility Documents. Subject to the written consent of the Debtors and the DIP Agent, the DIP Lenders and the Debtors are hereby authorized to modify, amend, or update the Budget from time to time without further notice or order of the Court, *provided* that the Notice Parties shall receive notice of such modification, amendment or update. Upon repayment in full and in cash of all DIP Obligations, the Budget shall continue to be updated in accordance with the terms and conditions of the DIP Facility Documents, except that the consent of the holders of a majority in principal amount of the Secured Notes Debt shall be substituted for the consent of the DIP Agent and/or the DIP Lenders.

18. Modification of Automatic Stay. The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Final Order, including, without limitation, to: (a) permit the Debtors to grant the DIP Liens and the DIP Superpriority Claim; (b) permit the Debtors to perform such acts as the DIP Agent or the DIP Lenders each may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Secured Parties under the DIP Facility Documents, the DIP Facility and this Final Order; and (d) authorize the Debtors to pay, and the DIP Secured Parties to retain and apply, payments made in accordance with the terms of this Final Order.

19. Automatic Perfection of DIP Liens and Adequate Protection Liens. This Final Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of the DIP Liens and the Adequate Protection Liens without the necessity of filing or recording any

financing statement, mortgage, notice, or other instrument or document that may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, filing of Uniform Commercial Code financing statements, mortgages, assignments, notices of lien and similar documents, and entering into any deposit account control agreement, customs broker agreement or freight forwarding agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens or the Adequate Protection Liens, or to entitle the DIP Secured Parties and other secured parties to the priorities granted herein. Notwithstanding the foregoing, the DIP Agent and the Secured Notes Trustee, as applicable, are authorized to file, as it in their sole discretion deems necessary or advisable, such financing statements, security agreements, mortgages, notices of liens and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP Liens or the Adequate Protection Liens, as applicable, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date; *provided, however*, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens or the Adequate Protection Liens. The Debtors are authorized to execute and deliver promptly upon demand to the DIP Agent and the Secured Notes Trustee all such financing statements, mortgages, notices and other documents as the DIP Agent may reasonably request. The DIP Agent and/or the Secured Notes Trustee, in their sole respective discretion, may file a photocopy of this Final Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or similar instrument.

20. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in these chapter 11 cases or any

Successor Cases shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c) or 364(d) or in violation of the DIP Facility Documents at any time prior to the indefeasible repayment in full and in cash of all DIP Obligations and the termination of the DIP Secured Parties' obligation to extend credit under the DIP Facility, including subsequent to the confirmation of any plan with respect to any or all of the Debtors and the Debtors' estates, and such facilities are secured by any DIP Collateral, then all the cash proceeds derived from such credit or indebtedness shall immediately be turned over to the DIP Agent to be applied in accordance with this Final Order and the DIP Facility Documents.

21. Maintenance of DIP Collateral. Until the indefeasible repayment in full and in cash of all DIP Obligations and the termination of the DIP Secured Parties' obligation to extend credit under the DIP Facility, the Debtors shall: (a) insure the DIP Collateral as required under the DIP Facility Documents; and (b) maintain the cash management system in effect as of the Petition Date, as modified by any order that may be entered by the Court which has first been agreed to by the DIP Agent (such agreement not to be unreasonably withheld), or as otherwise required by the DIP Facility Documents.

22. DIP Termination Events. Each of the following occurrences or events, unless waived by the DIP Agent in writing and in accordance with the terms of the DIP Credit Agreement, shall constitute a termination event under this Final Order (each, a "***DIP Termination Event***", and the date upon which such DIP Termination Event occurs, the "***DIP Termination Date***"), notice of which will promptly be provided to counsel to the Debtors, the Ad Hoc Group, counsel to the Secured Notes Trustee, the Committee, and the U.S. Trustee: (i) the occurrence of the DIP Facility becoming due on February 15, 2020; (ii) the date of the conversion of any of these chapter 11 cases to a case under chapter 7 of the Bankruptcy Code without the consent of the Required Lenders (as defined in

the DIP Credit Agreement), (iii) the date of dismissal of any of these chapter 11 cases without the consent of the Required Lenders, (iv) the appointment in any of these chapter 11 cases of a trustee, (v) the appointment of an examiner with expanded powers, (vi) the consummation of a sale of all or substantially all of the Debtors' assets, whether under section 363 of the Bankruptcy Code or otherwise without the consent of the Required Lenders, (vii) the effective date of any chapter 11 plan, or (viii) the occurrence of an "Event of Default" as defined in and under the DIP Credit Agreement.

23. Rights and Remedies Upon a DIP Termination Event. Subject to the limitations set forth herein, immediately upon the occurrence and during the continuation of a DIP Termination Event, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from the Court, but subject to the terms of this Final Order and the Support Agreement, the DIP Agent may declare (any such declaration shall be referred to herein as a "***Termination Declaration***"): (1) all DIP Obligations owing under the respective DIP Facility Documents to be immediately due and payable, (2) the termination, reduction or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the DIP Facility, (3) termination of the DIP Facility and the respective DIP Facility Documents as to any future liability or obligation of the DIP Secured Parties, but without affecting any of the DIP Liens or the DIP Obligations. The Termination Declaration shall be given by electronic mail (or other electronic means) to counsel to the Debtors, counsel to the Committee, counsel to the Secured Notes Trustee, and the U.S. Trustee. The automatic stay in the chapter 11 cases otherwise applicable to the DIP Agent and the DIP Lenders is hereby modified so that five (5) business days after the date a Termination Declaration is delivered (such period, the "***Remedies Notice Period***"): the DIP Secured Parties shall be entitled to exercise their rights and

remedies, in accordance with the respective DIP Facility Documents and this Final Order (subject to the funding in full of the Carve-Out Reserve), including without limitation, exercising rights of setoff or foreclosing on all or a portion of the DIP Collateral, occupying the Debtors' premises, or a sale or disposition of the DIP Collateral, and shall be permitted to satisfy the relevant DIP Obligations, DIP Superpriority Claim, and DIP Liens. During the Remedies Notice Period, the only basis on which the Debtors and/or the Committee shall be entitled to seek an emergency hearing within the Remedies Notice Period with the Court shall be to contest whether a DIP Termination Event has occurred and/or is continuing and the DIP Secured Parties shall consent to such emergency hearing. Unless during the Remedies Notice Period, the Court determines that a DIP Termination Event has not occurred, or the Debtors cure the DIP Termination Event (to the extent curable under the DIP Facility Documents) that was the basis for the delivery of a Termination Declaration in accordance with the terms and conditions of the DIP Facility Documents, automatic stay imposed under section 105 or 362(a) of the Bankruptcy Code or otherwise, as to the DIP Secured Parties, shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period, the DIP Secured Parties shall be permitted to exercise all remedies set forth herein, in the DIP Facility Documents, and as otherwise available at law without further order of or application or motion to the Court. The Debtors shall reasonably cooperate with the DIP Agent in its exercise of rights and remedies against the DIP Collateral. Notwithstanding the foregoing or anything contained in any DIP Facility Document, no party (including, without limitation, the DIP Agent, any DIP Lender, the Secured Notes Trustee, and any Prepetition Secured Noteholder, but excluding, however, the Administrator or any Purchaser) shall exercise any rights or remedies (or take any enforcement action with respect to) the Securitization SPV Equity Collateral, until such time as the obligations under the Securitization Facility have been

indefeasibly paid in full in cash. For the avoidance of doubt, the remedies set forth in this Paragraph 23 shall be cumulative and non-exclusive.

24. Cash Collateral Termination Events. Unless otherwise ordered by the Court or waived or otherwise agreed to in writing by the holders of a majority in principal amount of Secured Notes Debt, the Debtors' authority to use Cash Collateral shall terminate without further order of the Court upon the occurrence of the "***Cash Collateral Termination Date***", which shall also constitute a DIP Termination Event (notice of which shall automatically constitute a Termination Declaration, and shall promptly be provided to the Debtors, counsel to the Debtors, counsel to the DIP Agent, the U.S. Trustee, and the Committee), which Cash Collateral Termination Date shall occur five (5) business days following written notice (including via email) from the Required Consenting Noteholders to the Debtors and the Secured Notes Trustee of the occurrence of any of the following events, *provided* that the Cash Collateral Termination Date shall occur immediately upon the occurrence of any event set forth in subsections 24(a), 24(i), 24(j), 24(k), 24(m), or 24(n) below, and notice of termination of the Support Agreement in accordance with the terms thereof shall be sufficient notice of the occurrence of the event set forth in subsection 24(b) hereof (collectively, the "***Cash Collateral Termination Events***"):

(a) the occurrence of any DIP Termination Event, unless waived in accordance with the DIP Facility Documents;

(b) the Support Agreement (as may be hereafter modified or amended in accordance with the terms thereof) shall have terminated as to all parties thereto in accordance with its terms;

(c) the failure of the Debtors to distribute the Net Sale Proceeds (as defined in the Support Agreement) of any asset sale to the Secured Notes Trustee in accordance with the Support Agreement, irrespective of whether such Support Agreement has been assumed by the Debtors or has been terminated;

(d) any Debtor files or publicly announces that it will file (or fails to timely object to) or joins in or supports any plan (or disclosure statement related thereto) in these chapter 11 cases that is inconsistent with the Support Agreement;

(e) any Debtor seeks approval or publicly announces that it will seek approval of any sale in these chapter 11 cases that is inconsistent with the Support Agreement;

(f) any Debtor shall grant, create, incur or suffer to exist any post-petition liens or security interests other than (i) those granted pursuant to the Interim Order or this Final Order, (ii) carriers' mechanics', operator's, warehousemen's, repairmen's or other similar liens arising in the ordinary course of business, (iii) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation arising in the ordinary course of business, and (iv) deposits to secure the performance of any post-petition statutory obligations and other obligations of a like nature incurred in the ordinary course of business, *provided* that the Debtors shall have 10 business days from receipt of notice thereof to cure any of the foregoing which were involuntarily imposed or created;

(g) any Debtor shall create, incur, or suffer to exist any other claim that is *pari passu* with or senior to the Adequate Protection Superpriority Claims, except as provided in the Interim Order or this Final Order;

(h) the failure of the Debtors to make any payment provided for under this Final Order to the Prepetition Secured Noteholders within five (5) business days after the date such payment is due;

(i) this Final Order ceases, for any reason (other than with the express written agreement of the Required Consenting Noteholders in their sole discretion), to be in full force and effect in any material respect, or any Debtor so asserts in writing, or the Adequate Protection Liens or Adequate Protection Superpriority Claims created by this Final Order cease in any material respect to be enforceable and of the same effect and priority purported to be created hereby or any Debtor so asserts in writing;

(j) the Court shall have entered an order amending, supplementing, or otherwise modifying this Final Order that materially and adversely affects the adequate protection provided to the Notes Secured Parties or is otherwise materially and directly adverse to the Notes Secured Parties, without the consent of the holders of a majority in principal amount of Secured Notes Debt;

(k) any Debtor supports or takes any steps in furtherance of any Challenge (as defined below) or any other action commenced by any other person against any of the Notes Secured Parties, with respect to any of the Secured Notes Documents or the Court shall have ruled in favor of the plaintiff or moving party in any such Challenge or other action; *provided* that compliance with discovery requests by the Debtors brought by third parties in connection with any of the foregoing shall not constitute a Cash Collateral Termination Event under this Paragraph 24;

(l) the Court shall have entered an order disallowing or subordinating any claim, lien, or interest held by any Notes Secured Party;

(m) the Court shall have entered an order appointing a chapter 11 trustee, responsible officer or any examiner with enlarged powers relating to the operation of the businesses in these chapter 11 cases; and

(n) an order shall have been entered dismissing any of these chapter 11 cases or converting any of these chapter 11 cases to a case under chapter 7 of the Bankruptcy Code.

25. Rights and Remedies Upon a Cash Collateral Termination Event. Upon the occurrence of the Cash Collateral Termination Date, (a) consensual use of Cash Collateral shall terminate immediately; (b) Adequate Protection Superpriority Claims, if any, shall become due and payable; and (c) following the funding in full of the Carve-Out Reserve and subsequently the repayment in full and in cash of the DIP Obligations, the Secured Notes Trustee may, upon five (5) business days' written notice to counsel to the Debtors, the U.S. Trustee and the Committee, (i) set off amounts in any account of the Debtors with respect to which the Secured Notes Trustee exercises control pursuant to a deposit account control agreement to the extent necessary for payment of the Adequate Protection Obligations due to the Notes Secured Parties, and/or (ii) exercise any other rights and remedies available under the Secured Notes Documents, this Final Order or applicable law. The remedies set forth in this Paragraph 25 shall be cumulative and non-exclusive. The automatic stay of section 362 of the Bankruptcy Code is hereby modified and vacated to the extent necessary to permit such actions upon the occurrence of the Cash Collateral Termination Date and pursuant to the terms set forth herein. Notwithstanding anything to the contrary herein or the occurrence of the Cash Collateral Termination Date, all of the rights, remedies, benefits and protections provided to the Secured Notes Trustee and/or the Notes Secured Parties under this Final Order shall survive the occurrence of the Cash Collateral Termination Date. The Debtors and all parties in interest shall be entitled to seek an emergency hearing before this Court to contest whether

the Cash Collateral Termination Date has occurred under Paragraph 24 of this Final Order and at which hearing the Debtors shall reserve the right to seek Court approval of a new order approving the use of Cash Collateral, *provided* that pending such hearing, the Debtors may only use Cash Collateral to make necessary ordinary course operating expenditures.

26. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Final Order. The DIP Secured Parties have acted in good faith in connection with this Final Order and are entitled to rely upon the protections granted herein and by section 364(e) of the Bankruptcy Code. Based on the findings set forth in this Final Order and the record made during the Interim Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Final Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court, the DIP Secured Parties are entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such modification, amendment or vacatur shall not affect the validity and enforceability of any advances previously made or made hereunder, or lien, claim or priority authorized or created hereby.

27. DIP and Other Expenses. The Debtors are authorized and directed to pay all reasonable and documented prepetition and postpetition fees, costs, disbursements and expenses of the DIP Secured Parties in connection with the DIP Facility and the chapter 11 cases, as provided in the DIP Facility Documents, whether or not the transactions contemplated hereby are consummated, as set forth herein, in each case, including, without limitation, the DIP Professional Fees, and all reasonable and documented prepetition and postpetition fees and expenses incurred by the Notes Secured Parties in connection with the chapter 11 cases (the "***Notes Secured Parties' Fees***") (without duplication of the DIP Professional fees and limited, in the case of the advisors to the Prepetition Secured Noteholders, to Houlihan Lokey, Inc., Davis Polk, and one local counsel in each

material jurisdiction, and limited, in the case of the advisors to the Secured Notes Trustee, to Nixon Peabody LLP and Cross & Simon, LLC, as local counsel). Payment of the DIP Professional Fees and the Notes Secured Parties' Fees shall not be subject to the Budget and shall not be subject to allowance by the Court. Professionals for the DIP Secured Parties and the Notes Secured Parties shall not be required to comply with the U.S. Trustee fee guidelines and no attorney or advisor to the DIP Agent, the DIP Lenders, or the Notes Secured Parties shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. Notwithstanding the foregoing, the professionals for the DIP Secured Parties and the Notes Secured Parties shall deliver reasonably detailed statements (redacted if necessary for privileged, confidential, or otherwise sensitive information, as to those statements provided to any party other than the U.S. Trustee) for fees and expenses incurred after entry of the Interim Order to the U.S. Trustee, the Committee, and the Debtors and their respective counsel (the "***Fee Notice Parties***"), *provided* that any such invoice shall not be required to contain time entry detail. If no objection is raised by any of the Fee Notice Parties with respect to such summaries within ten (10) days of the receipt thereof (the "***Professional Fee Objection Period***") then, without further order of, or application to, the Court or notice to any other party, such fees and expenses shall be promptly paid by the Debtors. If an objection (solely as to reasonableness) is made by any of the Fee Notice Parties within the Professional Fee Objection Period to payment of the requested fees and expenses, then only the disputed portion of such fees and expenses shall not be paid until the objection is resolved by the applicable parties in good faith or by order of the Court, and the undisputed portion shall be promptly paid by the Debtors. Any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors to the DIP Agent, the DIP Lenders, or the Notes Secured Parties in connection with or with respect to the DIP Facility or the chapter 11 cases, as applicable, are hereby approved in full.

Notwithstanding the foregoing, the Debtors are authorized and directed to pay upon the Initial Borrowing, all reasonable and documented fees, costs, and out-of-pocket expenses of the DIP Secured Parties incurred on or prior to such date to the extent payable in accordance with the terms of the DIP Facility Documents.

28. Indemnification. The Debtors shall indemnify and hold harmless the DIP Secured Parties in accordance with the terms and conditions of the DIP Credit Agreement.

29. Limitations on Use of DIP Proceeds, Secured Notes Collateral, and Carve-Out. No DIP Collateral, DIP Loans, Secured Notes Collateral (including, for the avoidance of doubt in all instances, Cash Collateral) or the proceeds of the foregoing or any portion of the Carve-Out may be used directly or indirectly by any of the Debtors, the Committee, or any trustee or other estate representative appointed in the chapter 11 cases or any Successor Cases or any other person or entity (or to pay any professional fees, disbursements, costs or expenses incurred in connection therewith) in connection with: (a) preventing, hindering, or delaying (i) the DIP Agent's or the DIP Lenders' enforcement or realization upon any of the DIP Collateral, or (ii) the Secured Notes Trustee's enforcement upon the Secured Notes Collateral; (b) using or selling or otherwise disposing of (i) the DIP Collateral without the consent of the DIP Agent (other than pursuant to an Acceptable 363 Sale (as defined in the DIP Credit Agreement)), or (ii) the Secured Notes Collateral without the consent of the Secured Notes Trustee (other than pursuant to the Debtors' sale process as presented to the Court); (c) using or seeking to use any insurance proceeds (i) constituting DIP Collateral without the consent of the DIP Agent and the DIP Lenders except to the extent permitted under the DIP Credit Agreement, or (ii) constituting Secured Notes Collateral except to the extent permitted under the Secured Notes Indenture and consistent with the Support Agreement; (d) incurring indebtedness without the prior consent of the DIP Agent, the DIP Lenders, and the holders of a

majority in principal amount of Secured Notes Debt, except to the extent permitted under the DIP Credit Agreement; (e) seeking authorization to obtain liens or security interests that are senior to, or on a parity with, the Carve-Out, the DIP Liens, the DIP Superpriority Claim, the Secured Notes Liens, the Adequate Protection Liens, or the Adequate Protection Superpriority Claims (except as otherwise provided herein); (f) seeking to amend or modify any of the rights granted to (i) the DIP Agent or the DIP Lenders, including seeking to use DIP Collateral on a contested basis, or (ii) the Secured Notes Trustee or the Prepetition Secured Noteholders or seeking to use the Secured Notes Collateral on a contested basis; (g) objecting to or challenging in any way (i) the DIP Liens, the DIP Obligations, and/or the DIP Collateral, or any other claims or liens, held by or on behalf of any of the DIP Agent or the DIP Lenders, or (ii) the Secured Notes Liens, Adequate Protection Obligations, and/or Secured Notes Collateral or any other claims or liens, held by or on behalf of any of the Secured Notes Trustee or the Prepetition Secured Noteholders; (h) asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, any actions under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions to recover or disgorge payments, against the DIP Agent, the DIP Lenders, the Secured Notes Trustee, or the Prepetition Secured Noteholders, with respect to any of the foregoing, any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees; (i) litigating, objecting to, challenging, investigating (including by way of examination or discovery), contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of (i) the DIP Obligations, DIP Liens, or any other rights or interests of the DIP Agent, or the DIP Lenders or (ii) the Secured Notes, Secured Notes Debt, Adequate Protection Obligations, or any other rights and interests of the Secured Notes Trustee or the Prepetition Secured Noteholders; (j) seeking to subordinate, recharacterize, disallow or avoid (i) the DIP Liens or the

DIP Obligations or (ii) the Secured Notes Liens or Adequate Protection Obligations; or (k) to pay any amount on account of any claims arising prior to the Petition Date unless such payments are approved by an order of the Court (including, without limitation, hereunder); *provided* that notwithstanding anything to the contrary herein, the Committee may use the proceeds of the DIP Facility and Cash Collateral, to investigate (but not prosecute or initiate the prosecution of, including the preparation of any complaint, objection, or motion on account of), (y) the claims and liens of the Notes Secured Parties, and (z) potential claims, counterclaims, causes of action, or defenses against the Notes Secured Parties; *provided further*, that no more than an aggregate of $150,000 of the proceeds of the DIP Facility and Cash Collateral may be used by the Committee in respect of the investigations set forth in the preceding proviso (the "***Investigation Budget***"); *provided further*, that to the extent the Committee incurs fees and expenses in an amount in excess of the Investigation Budget, the Debtors, the Notes Secured Parties and the DIP Lenders agree that the Committee may seek payment of such fees as an administrative expense as part of its professionals' fee applications.

30. Carve-Out.

(a) As used in this Final Order, and notwithstanding anything to the contrary contained in this Final Order, the Interim Order, the DIP Facility Documents, the Secured Notes Indenture, or any other documents or instruments evidencing indebtedness of or claims against the Debtors, the "***Carve-Out***" shall mean a carve-out from the DIP Liens, the DIP Superpriority Claim, the Adequate Protection Liens, all administrative expense claims granted under this Final Order including the DIP Superpriority Claim, the Adequate Protection Superpriority Claim, any and all other forms of adequate protection granted hereunder, the applicable Debtors' obligations under the Securitization Facility, and any other obligations of the Debtors, including any postpetition intercompany claims among the Debtors, in an amount equal to the sum of: (i) all fees required to

be paid to the Clerk of the Court and all statutory fees payable to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses in an aggregate amount not to exceed $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, final order, or otherwise, all unpaid fees, costs, and expenses (the "***Allowed Professional Fees***") of persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "***Debtor Professionals***") and the Committee (the "***Committee Professionals***" and, together with the Debtor Professionals, the "***Professional Persons***") appointed in the chapter 11 cases pursuant to section 1103 of the Bankruptcy Code incurred at any time on or before the first business day following delivery by the DIP Agent (or, following the repayment in full of the DIP Obligations, the Required Consenting Noteholders) of a Carve-Out Trigger Notice (as defined below), whether allowed by the Court prior to or after such date (the amounts set forth in clauses (i)-(iii) being the "***Pre-Carve-Out Trigger Notice Cap***"); and (iv) Allowed Professional Fees of the Debtor Professionals (including all success, incentive, or similar fees or bonuses not earned prior to the Carve-Out Trigger Date (as defined below)) and Committee Professionals in an aggregate amount not to exceed $1,000,000 incurred after the first business day following delivery by the DIP Agent of a Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, final order, or otherwise (the amounts set forth in this clause (iv) being the "***Post-Carve-Out Trigger Notice Cap***").

(b) For purposes of the foregoing, "***Carve-Out Trigger Notice***" means a written notice delivered by email (or other electronic means) by the DIP Agent (or, following the repayment in full and in cash of the DIP Obligations, the Required Consenting Noteholders) to the Debtors,

Vinson & Elkins LLP as lead restructuring counsel to the Debtors, counsel to the Committee, the Secured Notes Trustee, and the U.S. Trustee, which notice may be delivered following the occurrence and during the continuation of a Termination Event under the Final Order or the DIP Credit Agreement, stating that the Post-Carve-Out Trigger Notice Cap has been invoked. Notwithstanding the foregoing, so long as a Carve-Out Trigger Notice has not been delivered, the Debtors shall be permitted to pay and/or reimburse, as applicable, Allowed Professional Fees that are allowed by the Court and payable under sections 328, 330, and 331 of the Bankruptcy Code and compensation procedures approved by the Court, and the payment and/or reimbursement of same shall not reduce the Carve-Out.

(c) On the date of delivery by the DIP Agent of a Carve-Out Trigger Notice in accordance with the terms of this Final Order (the "***Carve-Out Trigger Date***"), the Carve-Out Trigger Notice shall constitute a demand to the Debtors as of such date to fund, in accordance with the other terms hereof, a reserve from all cash on hand (including Cash Collateral and cash in the Segregated Account) as of such date and any available cash thereafter held by any Debtors in an amount equal to the sum of: (i) the Pre-Carve-Out Trigger Notice Cap (including all then-unpaid Allowed Professional Fees incurred through the first business day following the Carve-Out Trigger Date, whether allowed by the Court prior to or after the Carve-Out Trigger Date), and (ii) the Post-Carve-Out Trigger Notice Cap. The Carve-Out Reserve (as defined below) shall be funded (i) first, from cash on hand as of the Carve-Out Trigger Date other than cash in the Segregated Account; and (ii) second, proceeds of DIP Collateral other than cash in the Segregated Account; and (iii) only to the extent such other cash is insufficient to fund the Carve-Out Reserve in full, from cash in the Segregated Account until the Carve-Out Reserve is fully funded in the amount set forth herein. The

Debtors shall deposit and hold all such amounts in a segregated account in trust to pay the amounts set forth in the preceding sentence (the "***Carve-Out Reserve***").

(d) The Debtors shall deposit the amounts in the Carve-Out Reserve in full prior to the payment of any DIP Collateral to the DIP Secured Parties, the disbursement of any proceeds held in the Segregated Account, or the payment of any amount to any DIP Secured Party or any Notes Secured Party, and no DIP Secured Party or Notes Secured Party shall sweep or foreclose on cash or Cash Collateral (including (i) cash received as a result of the disposition of any assets or property of the estate or the DIP Collateral, and (ii) cash held in the Segregated Account) of the Debtors' estates until the Carve-Out Reserve has been fully funded.

(e) The Carve-Out Reserve shall be held for the benefit of the U.S. Trustee, the Chapter 7 Trustee (if any), and the Professional Persons to pay the Allowed Professional Fees benefiting from the Carve-Out Reserve, and shall be available only to satisfy such obligations until paid in full. The failure of the Carve-Out Reserve to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve-Out, and none of the Carve-Out, the Post-Carve-Out Trigger Notice Cap, the Carve-Out Reserve, the Budget, nor any of the foregoing shall be construed as a cap or limitation on the amount of the Professional Fees due and payable by the Debtors.

31. Effect of Stipulations on Third Parties.

(a) The Debtors' stipulations, admissions, agreements and releases contained in this Final Order shall be binding upon (i) the Debtors and their estates, in all circumstances and for all purposes and (ii) all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in the chapter 11 cases (including the Committee) and any other person or entity acting or seeking to act on behalf of the Debtors' estates including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors, in all circumstances

and for all purposes unless (1) such committee or any other party in interest (subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so), in each case, with standing granted by the Court, has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, *inter alia*, in this Paragraph 31 and Paragraph 29) (x) objecting to or challenging the amount, validity, perfection, enforceability, priority, or extent of the Secured Notes Debt or the Secured Notes Liens or (y otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests, or defenses (collectively, a "***Challenge***") against the Notes Secured Parties or their respective subsidiaries, affiliates, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals and their respective successors and assigns thereof, in each case in their respective capacity as such (each, a "***Representative***" and, collectively, the "***Representatives***") in connection with matters related to any claims of the Debtors against the Notes Secured Parties, the Secured Notes Documents, the Secured Notes Debt, the Secured Notes Collateral, or otherwise, provided that all pleadings filed in connection with a Challenge shall set forth the basis for such challenge or claim, (2) such Challenge has been filed prior to the latest of (a) (Y) with respect to parties in interest with standing (other than the Committee), Monday, July 29, 2019 and (Z) with respect to the Committee, the date that is the earlier of (i) the effective date of a chapter 11 plan that is consistent with the Support Agreement or (ii) fourteen (14) days following termination of the Support Agreement in accordance with its terms, (b) any such later date as has been agreed to in writing by the holders of a majority in principal amount of Secured Notes Debt, and (c) any such later date as has been ordered by the Court for cause upon a motion filed and served within any applicable time period set forth in this Paragraph 31 (the

time period established by the foregoing clauses (1) through (2), the " ***Initial Challenge Period***"), and (3) there is a final non-appealable order sustaining such Challenge in favor of the plaintiff in such timely filed adversary proceeding or contested matter; *provided* that nothing in this Paragraph 31 shall limit (or be deemed to limit) any of the Debtors' or any other party in interest's rights to seek recharacterization of adequate protection as being applied to principal, as applicable. If during the Initial Challenge Period, the Committee or other third party files a motion for standing with a draft complaint identifying and describing all Challenges such party seeks leave to assert, the Initial Challenge Period will be tolled for the Committee or other third party solely with respect to the matter(s) asserted in the draft complaint until three (3) business days from the entry of an order granting the motion for standing to prosecute such Challenges described in the draft complaint and permitted by the Court (the "***Extended Challenge Period***", together with the Initial Challenge Period, the "***Challenge Period***"). If standing is denied by the Court, the Challenge Period shall be deemed to have expired. Any Challenge that is not timely commenced prior to the expiration of the Challenge Period shall be deemed forever, waived, released, and barred. For the avoidance of doubt, any trustee appointed or elected in these chapter 11 cases shall, until the expiration of the period provided herein for asserting a Challenge, and thereafter for the duration of any adversary proceeding or contested matter commenced pursuant to this Paragraph 31 (whether commenced by such trustee or commenced by any other party in interest on behalf of the Debtors' estates), be deemed to be a party other than the Debtors and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations and stipulations of the Debtors in this Final Order. For the avoidance of any doubt, the Committee shall not be permitted to bring a Challenge with respect to the Parent-Issuer Liens except solely with respect to the Reserved Challenge Assets.

(b) Notwithstanding anything herein to the contrary, following entry of an order authorizing the Debtors to assume the Support Agreement and approving the settlement contained in Section 9 thereof pursuant to Bankruptcy Rule 9019, no Challenge may be brought by any party, including, without limitation the Committee, that would contravene or if successful have the effect of undoing such settlement in whole or in part.

32. If no such Challenge is filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such proceeding, then (i) the Debtors' stipulations, admissions, agreements, and releases contained in this Final Order shall be binding on all parties in interest, including, without limitation, the Committee, (ii) the obligations of the Secured Notes Loan Parties under the Secured Notes Documents, including the Secured Notes Debt, shall constitute allowed claims not subject to defense, claim, counterclaim, recharacterization, subordination, offset, or avoidance, for all purposes in the chapter 11 cases, and any subsequent chapter 7 case(s), (iii) the Secured Notes Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens, not subject to recharacterization, subordination, avoidance, or other defense, (iv) the Secured Notes Debt and the Secured Notes Liens shall not be subject to any other or further claim or challenge by the Committee, any non-statutory committees appointed or formed in the chapter 11 cases or any other party in interest acting or seeking to act on behalf of the Debtors' estates including any successor thereto (including, without limitation, any chapter 7 or 11 trustee appointed or elected for any of the Debtors) and (v) any defenses, claims, causes of action, counterclaims, and offsets by the Committee, any non-statutory committees appointed or formed in the chapter 11 cases, or any other party acting or seeking to act on behalf of the Debtors' estates, whether arising under the Bankruptcy Code or otherwise, against any of the Notes Secured Parties and their Representatives arising out of or relating to the any claims of the Debtors against the Notes

Secured Parties, the Secured Notes Documents or otherwise shall be deemed forever waived, released, and barred. If any such Challenge is filed during the Challenge Period, the stipulations, admissions, agreements, and releases contained in this Final Order shall nonetheless remain binding and preclusive (as provided in this Paragraph 32 on the Committee and on any other person or entity, except to the extent that such stipulations, admissions, agreements, and releases were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in this Final Order vests or confers on any Person (as defined in the Bankruptcy Code), including the Committee or any non-statutory committees appointed or formed in the chapter 11 cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, Challenges with respect to the Secured Notes Documents, the Secured Notes Debt or the Secured Notes Liens, or claims, counterclaims or causes of action of the Debtors against any Notes Secured Parties.

33. Payment of Professional Fees. Nothing contained herein shall be construed as a consent to the allowance of any professional fees or expenses of any Professional Persons or shall affect the rights of the DIP Secured Parties or the Notes Secured Parties to object to the allowance and payment of such fees and expenses. Neither the DIP Secured Parties nor the Notes Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Persons incurred in connection with the chapter 11 cases or any Successor Cases under any chapter of the Bankruptcy Code. Nothing in this Final Order or otherwise shall be construed to obligate the DIP Secured Parties or the Notes Secured Parties in any way to pay compensation to or to reimburse expenses of any Professional Persons or to guarantee that the Debtors have sufficient funds to pay compensation or to so reimburse.

34. Financial Information and Reporting Requests.

(a) In addition to the provisions of the DIP Facility Documents, and the Secured Notes Documents, the Debtors shall allow the DIP Agent, the Ad Hoc Group, the Committee, and the Secured Notes Trustee, respectively, to visit and inspect any of the properties of Debtors and their subsidiaries to, at the Debtors' expense, (i) conduct field examinations of any or all of the DIP Collateral, (ii) conduct evaluations, environmental assessments, environmental audits and ongoing maintenance and monitoring of the assets and properties of the Borrowers and the Subsidiaries, and (iii) inspect, copy and take extracts from its and their respective financial and accounting records; *provided*, *however*, that, so long as no DIP Termination Event or Cash Collateral Termination Date has occurred and is continuing, not more than two each of any such examinations, evaluations, assessments and audits may be conducted at the Debtors' expense in each fiscal year. The Debtors shall furnish to the DIP Agent, the Ad Hoc Group, the Secured Notes Trustee and the Committee, respectively, such financial and other information as the DIP Agent, the Ad Hoc Group, and the Secured Notes Trustee and the Committee, respectively, shall reasonably request.

(b) The Debtors, as and when required under the DIP Facility Documents, shall furnish to the DIP Agent, the Ad Hoc Group, the Committee, and the Secured Notes Trustee, respectively, each of the financial reports provided for under the DIP Facility Documents; *provided* that such reporting to the Ad Hoc Group, the Secured Notes Trustee, and the Committee shall continue after repayment in full and in cash of the DIP Obligations.

35. Disposition of DIP Collateral; Rights of Notes Secured Parties. Unless otherwise authorized by the Court, the Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral other than in the ordinary course of business without the prior written consent of the DIP Agent and the holders of a majority in principal amount of Secured Notes Debt (and no such consent shall be implied, from any other action, inaction or acquiescence by the

DIP Agent, DIP Lenders, or the holders of a majority in principal amount of Secured Notes Debt), except as otherwise provided for in the DIP Facility Documents or this Final Order. Nothing provided herein shall limit the rights of the DIP Agent, the DIP Lenders, the Secured Notes Trustee, or the Prepetition Secured Noteholders to object to any proposed disposition of DIP Collateral, including, without limitation, pursuant to a sale under section 363 of the Bankruptcy Code, subject, however, in the case of the Consenting 2021 Notes Holders (as defined in the Support Agreement), to the terms of the Support Agreement.

36. Release. Subject to Paragraph 31 hereof, and as further set forth in the Support Agreement, the Debtors, on behalf of themselves and their estates (including any successor trustee or other estate representative in these chapter 11 cases or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the chapter 11 cases) and any party acting by, through, or under any of the Debtors or any of their estates, hereby stipulate and agree that they forever and irrevocably (a) release, discharge, waive, and acquit the Notes Secured Parties, and each of their respective participants and each of their respective affiliates, and each of their respective former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, successors, assigns and predecessors in interest (collectively, "***Released Parties***"), from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description,

arising out of, in connection with, or relating to the Secured Notes Documents, or the transactions and relationships contemplated hereunder or thereunder, including, without limitation, (i) any so-called "lender liability" or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code (including, without limitation, claims and causes of action arising under chapter 5 of the Bankruptcy Code), and (iii) any and all claims and causes of action regarding the validity, priority, perfection, or avoidability of the liens or secured claims of the Notes Secured Parties; and (b) waive any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability, and nonavoidability of the Secured Notes Debt, the Secured Notes Liens, the Adequate Protection Superpriority Claims, the Adequate Protection Liens, and any adequate protection payment obligations pursuant to this Final Order. For the avoidance of doubt, the foregoing release shall not constitute a release of any rights or obligations arising under the Secured Notes Documents or any rights or obligations of the Released Parties under the Support Agreement, the DIP Facility Documents, the Interim Order, or this Final Order. Notwithstanding the releases and covenants contained above in this Paragraph 36, such releases and covenants in favor of the Released Parties shall be deemed acknowledged and reaffirmed by the Debtors each time there is a use of Cash Collateral under this Final Order.

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

38. Section 506(c) Claims. Save and except for the Carve-Out, no costs or expenses of administration which have been or may be incurred in the chapter 11 cases at any time shall be charged against the DIP Secured Parties or the Notes Secured Parties, or the DIP Collateral or the

Secured Notes Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of each of the DIP Secured Parties and the holders of a majority in principal amount of Secured Notes Debt, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agent, trustee, or lenders.

39. No Marshaling/Applications of Proceeds. Neither the DIP Secured Parties nor the Notes Secured Parties shall be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral or the Secured Notes Collateral.

40. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly (but subject in all respects to the Support Agreement with respect to the Consenting 2021 Notes Holders): (a) the DIP Secured Parties' or the Notes Secured Parties' rights to seek any other or supplemental relief in respect of the Debtors; (b) any of the rights of the DIP Secured Parties or the Notes Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of the chapter 11 cases or any Successor Case, conversion of the chapter 11 cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans. Other than as expressly set forth in this Final Order, and, with respect to the Consenting 2021 Notes Holders, as provided in the Support Agreement, any other rights, claims or privileges (whether legal, equitable or otherwise) of the DIP Secured Parties and the Notes Secured Parties are preserved.

41. No Waiver by Failure to Seek Relief. The failure of the DIP Secured Parties or the Notes Secured Parties to seek relief or otherwise exercise their rights and remedies under this Final

Order, the DIP Facility Documents, the Secured Notes Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of such parties.

42. Binding Effect of Final Order. Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Final Order shall become valid and binding upon and inure to the benefit of the Debtors, the DIP Secured Parties, the Notes Secured Parties, all other creditors of the Debtors, the Committee or any other court appointed committee appointed in the chapter 11 cases, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in the chapter 11 cases, any Successor Case, or upon dismissal of the chapter 11 cases or any Successor Case.

43. No Modification of Final Order. Except as otherwise ordered by the Court, until and unless the DIP Obligations have been indefeasibly paid in full in cash in accordance with the terms thereof (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms), and all commitments to extend credit under the DIP Facility have been terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the DIP Secured Parties (and to the extent that it directly, materially, and adversely affects the adequate protection provided herein to the Notes Secured Parties or is otherwise directly and materially adverse to the Notes Secured Parties, the prior written consent of the holders of a majority in principal amount of Secured Notes Debt): (i) any modification, stay, vacatur or amendment to this Final Order; or (ii) save and except for the Carve-Out, a priority claim for any administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever,

including, without limitation any administrative expense of the kind specified in sections 503(b), 507(a) or 507(b) of the Bankruptcy Code) in the chapter 11 cases or any Successor Case, equal or superior to the DIP Superpriority Claim or the Adequate Protection Superpriority Claims; or (b) without the prior written consent of the DIP Agent or the Secured Notes Trustee, save and except for the Carve-Out, any lien on any of the DIP Collateral with priority equal or superior to the DIP Liens or the Adequate Protection Liens. Unless otherwise ordered by the Court, the Debtors irrevocably waive any right to seek any material amendment, modification, or extension of this Final Order without the prior written consent, as provided in the foregoing, of the DIP Agent (and to the extent that it directly, materially, and adversely affects the adequate protection provided herein to the Notes Secured Parties or is otherwise directly and materially adverse to the Notes Secured Parties, the prior written consent of the holders of a majority in principal amount of Secured Notes Debt) and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Agent, the Secured Notes Trustee, or any other party.

44. Access to Secured Notes Collateral and DIP Collateral. Notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the DIP Agent, exercisable on behalf of the DIP Lenders contained in this Final Order, the DIP Facility Documents, or otherwise available at law or in equity, subject to the Remedies Notice Period, upon written notice to the landlord of any leased premises that a DIP Termination Event or the DIP Termination Date has occurred and is continuing, the DIP Agent may, subject to the applicable notice provisions, if any, in this Final Order and any separate applicable agreement by and between such landlord and the DIP Agent, enter upon any leased premises of the Debtors or any other party for the purpose of exercising any remedy with respect to DIP Collateral located thereon and shall be entitled to all of the Debtors' rights and privileges as lessee under such lease without interference from the landlords

thereunder, *provided* that the DIP Agent shall be obligated only to pay rent of the Debtors that first accrues after the written notice referenced above and that is payable during the period of such occupancy by the DIP Agent calculated on a daily per diem basis. Nothing herein shall require the DIP Agent to assume any lease as a condition to the rights afforded in this Paragraph 44. For the avoidance of doubt, subject to (and without waiver of) the rights of the DIP Secured Parties under applicable nonbankruptcy law, the DIP Secured Parties can only enter upon a leased premises after a DIP Termination Event or the DIP Termination Date, and in any case subject to the Remedies Notice Period, in accordance with (i) a separate agreement with the landlord at the applicable leased premises, or (ii) upon entry of an order of this Court obtained by motion of any of the DIP Secured Parties on such notice to the landlord as shall be required by this Court. Upon repayment in full and in cash of all DIP Obligations, the Secured Notes Trustee shall replace the DIP Agent with respect to the rights described above in this Paragraph 44.

45. Limits on Lender Liability. Nothing in this Final Order or in any of the DIP Facility Documents, the Secured Notes Documents, or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, the Secured Notes Trustee, or the Prepetition Secured Noteholders of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of these chapter 11 cases. The DIP Agent, the DIP Lenders, and the Notes Secured Parties shall not be deemed in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or state statute). Nothing in this Final Order or the DIP Facility Documents

or in the Secured Notes Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, the Secured Notes Trustee, or the Prepetition Secured Noteholders of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors.

46. Insurance Proceeds and Policies. Upon entry of this Final Order and to the fullest extent provided by applicable law, the DIP Agent (on behalf of the DIP Lenders) shall be, and shall be deemed to be, without any further action or notice, named as additional insured on each liability insurance policy and loss payee on each property coverage insurance policy maintained by the Debtors that in any way relates to the DIP Collateral.

47. Joint and Several Liability. Nothing in this Final Order shall be construed to constitute a substantive consolidation of any of the Debtors' estates or a substantive consolidation with any non-Debtor guarantor, it being understood, however, that the DIP Loan Parties shall be jointly and severally liable for the obligations hereunder and all DIP Obligations in accordance with the terms hereof and of the DIP Facility and the DIP Facility Documents.

48. Non-Debtor Subsidiaries. Any direct or indirect subsidiary of the Debtors that hereafter becomes a debtor in a case under chapter 11 of the Bankruptcy Code in the Court and is or is required to be a Borrower (as defined in the DIP Credit Agreement) under the DIP Credit Agreement automatically and immediately, upon the filing of a petition for relief for such subsidiary, shall be deemed to be one of the "Debtors" hereunder in all respects, and all the terms and provisions of this Final Order and the Final Order, including, those provisions granting security interests in, and liens on, the DIP Collateral, DIP Superpriority Claim, the Secured Notes Collateral, and the Adequate Protection Superpriority Claim in each of the chapter 11 cases, shall, to the extent not already, immediately be applicable in all respects to such subsidiary and its chapter 11 estate, subject

to the terms and conditions of this Final Order. Within two (2) Business Days of the filing of a petition for relief for any such Subsidiary, the Debtors shall file a notice with the Court indicating that the subsidiary is a Borrower under the DIP Credit Agreement.

49. Waiver of Requirement to File Proofs of Claim. Neither the DIP Secured Parties nor the Notes Secured Parties will be required to file proofs of claim in any of the chapter 11 cases or Successor Cases for any claim allowed herein. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the chapter 11 cases or Successor Cases to the contrary, the DIP Agent on behalf of itself and the DIP Lenders, and the Secured Notes Trustee, on behalf of itself and the Prepetition Secured Noteholders, is hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim and/or aggregate proofs of claim in each of the chapter 11 cases or Successor Cases for any claim allowed herein. Any proof of claim filed by the DIP Agent or the Secured Notes Trustee shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the DIP Lenders or the Prepetition Secured Noteholders, respectively. Any order entered by the Court in relation to the establishment of a bar date in any of the chapter 11 cases or Successor Cases shall not apply to any claim of the DIP Agent, the DIP Lenders, the Secured Notes Trustee, or the Prepetition Secured Noteholders.

50. Credit Bidding. Subject to Section 4 of the Support Agreement, and the Carve-Out, and the Committee's right to seek entry of an order for cause pursuant to section 363(k) of the Bankruptcy Code, the DIP Secured Parties and the Notes Secured Parties shall have the right to credit bid for the assets and property of the Debtors up to the full amount of the DIP Obligations (including for the avoidance of doubt the DIP Roll-Up Loans (excluding, prior to the incurrence of the Third Borrowing, any Contingent Roll-Up Loans)) and the outstanding Secured Notes Debt,

respectively, as provided for in section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing the same and whether any such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

51. Authorization for Phillips 66 Deposit. Notwithstanding anything in this Final Order to the contrary, including, without limitation, anything in Paragraph 24 hereof, the Debtors are authorized to provide a postpetition reserve deposit to Phillips 66, consistent with the practices between the Debtors and Phillips 66 prior to the Petition Date.

52. Surety Collateral. Notwithstanding any provision herein to the contrary, nothing in this Final Order or in any amendment thereto shall affect the rights of the sureties in any cash, letter of credit, letter of credit rights, or other collateral delivered to, in possession of, or controlled by any surety as of the Petition Date or the proceeds thereof (collectively, "***Surety Collateral***"), and nothing herein shall be deemed to alter, limit, modify or impair any rights of any surety in any Surety Collateral, and the definition of "DIP Collateral" shall not include any Surety Collateral. To the extent any Surety Collateral is deemed to be subject to the Motion, such Surety Collateral shall be deemed to be included in the DIP Permitted Prior Liens.

53. Zurich Credit Support. For the avoidance of doubt (i) the DIP Secured Parties shall not have a security interest or lien on (x) that certain trust account with Wilmington Trust, National Association for the benefit of Zurich American Insurance Company (together with its affiliates and successors, "***Zurich***") and (y) that certain letter of credit number 18128983-00-000 in the amount of $125,000.00 issued by PNC Bank, National Association (together, and with any proceeds thereof, the "***Zurich Credit Support***"), (ii) the Debtors may not grant liens and/or security interests in the

Zurich Credit Support to any party other than Zurich, and (iii) this Final Order does not grant the Debtors any right to use the Zurich Credit Support.

54. Environmental and Related Matters.

(a) Notwithstanding anything to the contrary in the Interim Order, this Final Order or the DIP Facility Documents, nothing in the Interim Order, this Final Order, or the DIP Facility Documents shall limit, expand, or otherwise modify any of the Debtors' obligations under 28 U.S.C. § 959(b).

(b) Notwithstanding anything to the contrary in the Interim Order, this Final Order or the DIP Facility Documents, nothing in the Interim Order, this Final Order or the DIP Facility Documents shall, as to the United States of America or any state, or any of the foregoing's respective agencies, departments or agents, impair, adversely affect or expand any valid right, claim, or defense of setoff or recoupment that any such entity may have.

(c) Paragraphs H(vi) and 45 of the Interim Order, and Paragraphs K(vi) and 45 of this Final Order, shall apply to environmental liabilities to governmental units only so long as (i) the actions of the DIP Agent, the DIP Lenders, the Secured Notes Trustee, or the Prepetition Secured Noteholders have not constituted and do not constitute, within the meaning of 42 U.S.C. § 601(20)(F), actual participation in the management or operational affairs of a vessel or facility owned or operated by the Debtors, and (ii) the DIP Agent, the DIP Lenders, the Secured Notes Trustee or the Prepetition Secured Noteholders are not otherwise liable under applicable law as a "controlling person," "responsible person," or "owner" or "operator" with respect to a facility owned or operated by the Debtors.

(d) Notwithstanding anything to the contrary in the Interim Order, this Final Order, or the DIP Documents, nothing in the Interim Order, this Final Order, or the DIP Facility

Documents shall: (i) impair, adversely affect or expand any right under applicable law of any governmental unit with respect to any financial assurance, letter of credit, trust, surety bond, or insurance proceeds; (ii) waive, impair, adversely affect or expand the United States' rights (if any), states' rights (if any), or the rights of an Indian tribe (if any), under applicable law, to refuse to provide its consent to the proposed assumption and/or assignment of any lease or executory contract to which it is a party; or (iii) limit any governmental unit in the exercise of its police powers in accordance with 11 U.S.C. § 362(b)(4).

55. Final Order Controls. In the event of any inconsistency between the terms and conditions of the Interim Order, the DIP Facility Documents and/or this Final Order, the provisions of this Final Order shall govern and control.

56. Discharge. Subject to the terms of the Support Agreement, unless paid in full and in cash, the DIP Obligations shall not be discharged by the entry of an order confirming any plan of reorganization or approving a sale of substantially all of the Debtors' assets pursuant to section 363 of the Bankruptcy Code in any of the chapter 11 cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless (i) such obligations have been indefeasibly paid in full in cash, on or before the effective date of such confirmed plan of reorganization or the closing of any sale of substantially all of the Debtors' assets pursuant to section 363 of the Bankruptcy Code, or (ii) each of the DIP Secured Parties has otherwise agreed in writing. Subject to the terms of the Support Agreement, none of the Debtors shall propose or support any plan of reorganization or sale of all or substantially all of the Debtors' assets, or order confirming such plan or approving such sale, that is not conditioned upon the indefeasible payment of the obligations on account of the DIP Term Loans or, without the written consent of Required Lenders, any other DIP Obligation, in full in cash within a commercially reasonable period of time (and in no event later than the effective date

of such plan of reorganization or sale) or is otherwise reasonably acceptable to the DIP Lenders (a "***Prohibited Plan or Sale***"), without the written consent of the Supermajority Lenders (as defined in the DIP Credit Agreement). For the avoidance of doubt, the Debtors' proposal or support of a Prohibited Plan or Sale, or the entry of an order with respect thereto, shall constitute a DIP Termination Event hereunder and under the DIP Facility Documents.

57. Big Horn County. Notwithstanding any other provisions included in the Interim Order or this Final Order, or any agreement of any Debtor expressly approved hereby, any statutory liens of Big Horn County with respect to unpaid ad valorem taxes or gross proceeds (such liens, collectively, the "***Tax Liens***") shall not be primed nor made subordinate to any liens granted to any party hereby to the extent such Tax Liens are Permitted Prior Liens; provided that all parties in interests' rights to object to and contest the priority, validity, amount and extent of the claims and liens asserted by any of Big Horn County are fully preserved.

58. Survival. The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization or liquidation in the chapter 11 cases; (b) converting the chapter 11 cases to cases under chapter 7 of the Bankruptcy Code; (c) dismissing the chapter 11 cases or any Successor Case; or (d) pursuant to which this Court abstains from hearing the chapter 11 cases or any Successor Case, provided however that the various superpriority claims or other administrative expenses shall survive only to the extent permitted by applicable law. The terms and provisions of this Final Order, including the claims, liens, security interests and other protections granted to the DIP Secured Parties pursuant to this Final Order or the DIP Facility Documents, notwithstanding the entry of any such order, shall continue in the chapter 11 cases, in any Successor Case, or following dismissal of the chapter 11

cases or any Successor Case, and shall maintain their priority as provided by this Final Order until all DIP Obligations have been paid in full.

59. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.

60. Bankruptcy Rule 6003(b) has been satisfied.

61. The requirements of Bankruptcy Rule 6004(a) are waived.

62. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be immediately effective and enforceable upon entry of this Final Order.

63. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.

Dated: July 18th, 2019
Wilmington, Delaware

KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

US 6474966

Exhibit A

DIP Credit Agreement

CONFORMED

Conformed to:

Amendment No. 1
Dated as of June 19, 2019

Amendment No. 2
Dated as of June 25, 2019

and

Limited Waiver and Amendment No. 3
Dated as of July 16, 2019

Disclaimer: This Conformed Execution Copy was prepared only for the convenience of the parties and is not itself a legally binding agreement. In the event of any inconsistencies between (a) the executed Credit Agreement and the subsequently executed amendments thereto, and (b) this Conformed Execution Copy, the executed Credit Agreement and amendments shall control.

SUPERPRIORITY SENIOR SECURED PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT

Dated as of May 15, 2019

among

CLOUD PEAK ENERGY INC.

and

THE SUBSIDIARIES OF CLOUD PEAK ENERGY INC. PARTY HERETO,
each a Debtor and Debtor-in-Possession under Chapter 11
of the Bankruptcy Code, as Borrowers,

THE LENDERS PARTY HERETO,

and

ANKURA TRUST COMPANY, LLC,
as Administrative Agent and as Collateral Agent

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SUPERPRIORITY SENIOR SECURED PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT dated as of May 15, 2019 (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement"), among CLOUD PEAK ENERGY INC., a Delaware corporation and a Debtor and Debtor-in-Possession under Chapter 11 of the Bankruptcy Code ("CPE"), the other Persons party hereto from time to time as a "Borrower", the Persons party hereto from time to time as "Lenders", and Ankura Trust Company, LLC, as administrative agent (in such capacity, including any sub-agent or any successor or assignee of any of the foregoing, the "Administrative Agent") and as collateral agent (in such capacity, including any sub-agent or any successor or assignee of any of the foregoing, the "Collateral Agent") for the Lenders.

W I T N E S S E T H:

WHEREAS, on May 10, 2019 (the "Petition Date"), the Borrowers (collectively, and together with any other Affiliates that become debtors in the Cases, the "Debtors") filed voluntary petitions with the Bankruptcy Court initiating their respective cases that are pending under Chapter 11 of the Bankruptcy Code (the cases of the Borrowers, each a "Case" and collectively, the "Cases") and have continued in the possession of their assets and in the management of their business pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

WHEREAS, the Borrowers have requested that the Lenders provide them with a term loan facility under this Agreement in an aggregate principal amount not to exceed (i) $35,000,000 (as may be increased to give effect to any fees or interest that are paid in kind as contemplated herein and to give effect to any Incremental Loans provided as set forth herein), subject to the limitations on borrowing set forth herein and (ii) subject to the entry of the Final DIP Order, Roll-Up Loans and Contingent Roll-Up Loans consisting of the roll-up of certain Indebtedness. The Lenders are willing to extend such credit to the Borrowers on the terms and subject to the conditions set forth herein.

NOW THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I.

DEFINITIONS

SECTION 1.01. Defined Terms.

As used in this Agreement, the following terms shall have the meanings specified below:

"2021 Indenture" shall mean that certain Indenture, dated as of October 17, 2016, among the Specified Borrowers, the Subsidiaries named therein as Subsidiary Guarantors, and the 2021 Indenture Trustee, as in effect on the Effective Date and as may be amended or modified in accordance with this Agreement.

"2021 Indenture Documents" shall mean, collectively, the 2021 Indenture, the 2021 Notes and any other agreement, document or instrument entered into in connection therewith, in each case, as in effect on the Effective Date and as may be amended or modified in accordance with this Agreement.

"2021 Indenture Trustee" shall mean Wilmington Trust, National Association, in its capacity as trustee and collateral agent under the 2021 Indenture.

"2021 Noteholders" means, collectively, the holders of the 2021 Notes.

"2021 Notes" means, collectively, the 12% second lien senior secured notes due 2021 issued pursuant to the 2021 Indenture, as in effect on the Effective Date and as may be amended or modified in accordance with this Agreement.

"2024 Indenture" shall mean that certain First Supplemental Indenture, dated as of March 11, 2014, among the Specified Borrowers, the Subsidiaries named therein as Subsidiary Guarantors, and the 2024 Indenture Trustee, as in effect on the Effective Date and as may be amended or modified in accordance with this Agreement.

"2024 Indenture Documents" shall mean, collectively, the 2024 Indenture, the 2024 Notes and any other agreement, document or instrument entered into in connection therewith, in each case, as in effect on the Effective Date and as may be amended or modified in accordance with this Agreement.

"2024 Indenture Trustee" shall mean Wilmington Trust, NA (as successor to Wells Fargo Bank, National Association), in its capacity as trustee and collateral agent under the 2021 Indenture.

"2024 Noteholders" means, collectively, the holders of the 2024 Notes.

"2024 Notes" means, collectively, the 6.375% senior unsecured notes due 2024 issued pursuant to the 2024 Indenture, as in effect on the Effective Date and as may be amended or modified in accordance with this Agreement.

"363 Sale" shall mean a sale of any portion of the Collateral or the assets of any Borrower under Section 363 of the Bankruptcy Code.

"363 Sale Order" shall mean a Final Order entered by the Bankruptcy Court in the Cases approving a 363 Sale.

"A/R Refund" shall mean any and all amounts representing collections on the A/R Securitization Facility Collateral that are payable to the A/R Securitization Seller pursuant to Sections 1.4(b)(ii), 1.4(b)(iv) and 1.4(d) of the A/R Securitization Facility Agreement.

"A/R Securitization Facility" shall mean the accounts receivable securitization facility provided pursuant to the terms of the A/R Securitization Facility Agreement.

"A/R Securitization Facility Agreement" means that certain Second Amended and Restated Receivables Purchase Agreement, dated as of on or about the Effective Date (as may be amended or modified in accordance with this Agreement) among the non-debtor A/R Securitization Seller, as seller, CPER, as servicer, and PNC Bank, National Association, as administrator and LC Bank and various conduit purchasers and other parties thereto.

"A/R Securitization Facility Collateral" shall mean all "Pool Assets" (as defined in the A/R Securitization Agreement), including "Receivables" and "Related Rights" (each as defined in the A/R Securitization Documents) sold, contributed or otherwise transferred to the A/R Securitization Seller; provided, that any such assets referred to above that are not acquired from (or otherwise transferred, assigned or pledged (to the extent of any re-characterization as other than a sale)), or are reconveyed (or released from any Lien) to, any Borrower shall not constitute "A/R Securitization Facility Collateral". For the avoidance of doubt, no party, other than the administrator under the A/R Securitization Facility Agreement (for the benefit of the Purchasers), shall have a security interest in or lien on the A/R Securitization Facility Collateral.

"A/R Securitization Facility Documents" means, collectively, the A/R Securitization Facility Agreement and any other agreement, document or instrument entered into in connection therewith, in each case, as in effect on the Effective Date and as may be amended in accordance with this Agreement.

"A/R Securitization Facility Superpriority Claim" shall mean superpriority administrative expense claims granted pursuant to (i) an interim order and/or a Final Order approving the motion seeking approval of the Borrowers' continuation of the A/R Securitization Facility, A/R Securitization Facility Documents, and the applicable Borrowers' entry into same and/or (ii) the DIP Orders.

"A/R Securitization Seller" shall mean Cloud Peak Energy Receivables LLC.

"ABR Borrowing" shall mean a Borrowing comprised of ABR Loans.

"ABR Loan" shall mean any Loan bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Article II.

"Acceptable 363 Sale" shall mean a 363 Sale that is consented to (such consent not to be unreasonably withheld) by the Supermajority Lenders and is subject to and consistent with the terms of the SAPSA; provided, that, in no event shall a Prohibited Plan or Sale constitute an "Acceptable 363 Sale".

"Acceptable Chapter 11 Plan" shall mean a Chapter 11 Plan (which Chapter 11 Plan may include a sale of all or substantially all of the Borrowers' assets) that, subject to the SAPSA, (a)(i) provides for the termination of the Commitments and (A) to the extent not otherwise previously paid in full in cash, the payment in full in cash of the Obligations on account of the New Money Loans under the Loan Documents (other than contingent indemnification obligations as to which no claim has been asserted), and (B) the payment of the Obligations on account of the Roll-Up Loans in accordance with the terms of the SAPSA, each of (A) and (B) on the Consummation Date of such Chapter 11 Plan, and (ii) provides for releases of the Released Parties from any and all claims against Agents, the Lenders, the Existing

Trustees and the Existing Noteholders in connection with or related to this Agreement to the fullest extent permitted by the Bankruptcy Code and applicable law or (b) is otherwise acceptable to the Required Lenders in its/their reasonable discretion; provided, that, in no event shall a Chapter 11 Plan that is a Prohibited Plan or Sale constitute an "Acceptable Chapter 11 Plan".

"Adequate Protection" shall mean the Adequate Protection Liens, the Adequate Protection Superpriority Claim, and other adequate protection that is provided to the 2021 Noteholders and other secured parties under the 2021 Indenture Documents pursuant to the DIP Orders; provided that (i) such Adequate Protection Liens are junior to the Liens granted to the Collateral Agent (for the benefit of the Secured Parties) under the Loan Documents, and (ii) such Adequate Protection Superpriority Claim is junior to the Superpriority Claim granted to the Agents and the Lenders.

"Adequate Protection Liens" shall mean valid, binding, enforceable and automatically perfected replacement liens on the Collateral granted pursuant to any DIP Order, which such liens are junior to the Liens granted to the Collateral Agent (for the benefit of the Secured Parties) under the Loan Documents and the DIP Orders.

"Adequate Protection Superpriority Claim" shall mean a claim against any Debtor in any of the Cases which is an administrative expense claim having priority over any or all administrative expenses of the kind that are specified in, or contemplated by, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 546(c), 726, 1114 or any other provisions of the Bankruptcy Code to the extent of any diminution in value of the respective interests of the 2021 Noteholders and other secured parties under the 2021 Indenture Documents in the Collateral granted pursuant to the DIP Orders.

"Advance Rate" means (a) as of the Effective Date, 66.323% and (b) upon effectiveness of any Incremental Amendment, the "Advance Rate" as amended thereby.

"Adjusted LIBO Rate" shall mean, with respect to any Eurocurrency Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the product of (a) the LIBO Rate in effect for such Interest Period and (b) Statutory Reserves applicable to such Eurocurrency Borrowing, if any; provided that the Adjusted LIBO Rate shall be deemed to not be less than 1.00% per annum.

"Administrative Agent" shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

"Administrative Agent Fee" shall have the meaning assigned to such term in Section 2.10(a).

"Administrative Agent Fee Letter" shall mean the letter agreement by and among the Borrowers and the Administrative Agent, dated as of the date hereof.

"Administrative Borrower" means CPER (or its successor) or any other Person appointed and authorized by the Borrowers pursuant to Section 1.03.

"Affiliate" shall mean, when used with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the person specified.

"Agent Parties" shall have the meaning assigned to such term in Section 10.17(c).

"Agents" shall mean the Administrative Agent and the Collateral Agent.

"Agreement" shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

"Alternate Base Rate" shall mean, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1% and (c) the LIBO Rate as determined on such day, plus 1.0%; provided that, the Alternate Base Rate shall be deemed to not be less than 2.00% per annum. If for any reason the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate, including the failure of the Federal Reserve Bank of New York to publish rates or the inability of the Administrative Agent to obtain quotations in accordance with the terms thereof, the Alternate Base Rate shall be determined without regard to clause (b) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the LIBO Rate or the Federal Funds Effective Rate shall be effective on the effective date of such change in the LIBO Rate or the Federal Funds Effective Rate, respectively.

"Anti-Terrorism Laws" shall have the meaning assigned to such term in Section 3.21(a).

"Applicable Margin" shall mean (i) 9.00% per annum, in the case of Eurocurrency Loans and (ii) 8.00% per annum, in the case of ABR Loans.

"Applicable Subsidiary" shall have the meaning assigned to such term in Section 8.01(h).

"Appraisal" shall have the meaning assigned to such term in Section 5.04(k).

"Appraisal Certificate" shall have the meaning assigned to such term in Section 5.04(k).

"Appraisers" shall have the meaning assigned to such term in Section 5.04(k).

"Approved Budget" means the Initial Budget; provided, that, upon the written approval (or deemed approval pursuant to Section 5.04(h), as applicable) of the Required Lenders of an Updated Budget in accordance with Section 5.04(h), "Approved Budget" shall mean such Updated Budget.

"Approved Fund" shall mean any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in loans and similar extensions of credit in

the ordinary course and that is administered or managed by a Lender, an Affiliate of a Lender or an entity or an Affiliate of an entity that administers or manages a Lender.

"Asset Disposition" shall mean any sale, transfer or other disposition by any Borrower or any of its or their Subsidiaries to any person other than a Borrower of any asset or group of related assets (including, without limitation, any contractual rights, whether with respect to any Material Contract or otherwise), in each case, in one or a series of related transactions, including but not limited to (a) Equity Interests of any Borrower or any Subsidiary, (b) any sale, transfer or other disposition of any Real Property, or (c) any Sale and Lease-Back Transaction; provided that in no event shall any sale, contribution, transfer or other disposition of any receivables or other property to the A/R Securitization Seller pursuant to and in accordance with the Purchase and Sale Agreement (as defined in the A/R Securitization Facility Agreement) constitute an "Asset Disposition".

"Assignment and Acceptance" shall mean (i) with respect to assignments not occurring in connection with the Specified Tender Offer, an assignment and acceptance entered into by a Lender and an assignee, and accepted by the Administrative Agent and the Administrative Borrower (if required by such assignment and acceptance), in the form of Exhibit A to this Agreement or such other form as shall be approved by the Administrative Agent and (ii) with respect to assignments occurring in connection with the Specified Tender Offer, a Master Assignment and Acceptance.

"Automatic Rejection Date" shall mean, with respect to any particular nonresidential real property lease, the final day of the 120-day period (or, if extended by the Bankruptcy Court, 210-day period or such other date as the Bankruptcy Court may order) provided for in Section 365(d)(4) of the Bankruptcy Code for the Borrowers to assume leases in the Cases.

"Avoidance Action" shall mean the Debtors' claims and causes of action under Sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other avoidance actions under the Bankruptcy Code and the proceeds thereof and property received thereby whether by judgment, settlement or otherwise.

"Backstop Commitment Fee" shall have the meaning set forth in Section 2.10(b).

"Bankruptcy Code" means The Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, and codified as 11 U.S.C. Section 101 et seq.

"Bankruptcy Court" means the United States Bankruptcy Court for the District of Delaware or any other court having jurisdiction over the Cases from time to time.

"Board" shall mean the Board of Governors of the Federal Reserve System of the United States of America.

"Board of Directors" shall mean, with respect to any Person, (i) in the case of any corporation, the board of directors of such Person or any authorized committee thereof, (ii) in the case of any limited liability company, the board of managers of such Person or any authorized committee thereof, or if there is none, the Board of Directors of the managing member of such

Person (iii) in the case of any partnership, the general partner and the Board of Directors of the general partner of such Person or any authorized committee thereof and (iv) in any other case, the functional equivalent of the foregoing.

"Borrowers" shall mean, collectively, CPE and each Subsidiary of CPE other than the Excluded Subsidiaries.

"Borrowing" shall mean a group of Loans of a single Type and made on a single date.

"Borrowing Base" shall mean, on any date, (1) the product of (a) the Advance Rate multiplied by (b) the sum of (i) the net orderly liquidation value of the Borrowers' inventory in which the Collateral Agent, for the benefit of the Secured Parties, has a valid, first and super-priority perfected Lien, as such net orderly liquidation value is set forth in the then most recent Inventory Appraisal delivered to the Agents and the Lenders (which may be the Inventory Appraisal delivered to the Lenders on or prior to the Effective Date) *plus* (ii) the net orderly liquidation value of the Borrowers' machinery and equipment in which the Collateral Agent, for the benefit of the Secured Parties, has a valid, first and super-priority perfected Lien, as such net orderly liquidation value is set forth in the then most recent M&E Appraisal delivered to the Lenders (which may be the M&E Appraisal delivered to the Lenders on or prior to the Effective Date) minus (2) Reserves.

"Borrowing Base Certificate" shall have the meaning assigned to such term in Section 5.04(l).

"Borrowing Base Deficiency" shall mean, at any time, the amount, if any, by which the principal amount of the New Money Loans (excluding any amounts added to the principal balance of the Loans as a result of fees or interest being paid in kind hereunder) exceeds the Borrowing Base.

"Borrowing Request" shall mean a request by a Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit B to this Agreement.

"Business Day" shall mean any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that, when used in connection with a Eurocurrency Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in deposits in the applicable currency in the London interbank market.

"Capital Expenditures" shall mean, with respect to any Person for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital asset that are or are required to be included as capital expenditures on a consolidated statement of cash flows of such Person (excluding normal replacements and maintenance which are properly charged to current operations). For purposes of this definition, the purchase price of equipment that is purchased substantially concurrently with the trade-in of existing equipment or with insurance proceeds shall be included in the calculation of Capital Expenditures only to the extent of the gross amount by which such purchase price exceeds the credit granted by the seller of such

equipment in respect of the equipment being traded in at such time, the proceeds of such asset sale or the amount of such insurance proceeds, as the case may be.

"Capital Lease Obligations" of any person shall mean the obligations of such person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such person under GAAP and, for purposes hereof, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

"Carve-Out" shall have the meaning specified in the Interim DIP Order, prior to entry of the Final DIP Order, and the Final DIP Order thereafter.

"Carve-Out Reserve" shall mean a cash reserve in an amount equal to, on any date (i) the Pre-Carve-Out Trigger Notice Cap (as defined in the Interim DIP Order, prior to entry of the Final DIP Order, and the Final DIP Order thereafter), plus (ii) the Post-Carve-Out Trigger Notice Cap (as defined in the Interim DIP Order, prior to entry of the Final DIP Order, and the Final DIP Order thereafter).

"Case" or "Cases" shall have the meaning specified in the recitals hereof.

"Casualty and Condemnation Award" shall mean casualty insurance settlements and condemnation awards resulting from any Casualty Event.

"Casualty Event" shall mean any loss, destruction or damage with respect to any property or asset of any Borrower or any Subsidiary, or any actual or threatened condemnation, confiscation, requisition, seizure or taking of such property or asset.

A "Change in Control" shall be deemed to occur if, in each case, other than in connection with a transaction permitted under this Agreement:

(a) CPE does not own 100% of the Equity Interests of CPER;

(b) CPER does not, directly or indirectly, own 100% of the Equity Interests of each other Borrower; or

(c) any "person" or "group" (each as used in Sections 13(d) and 14(d) of the Exchange Act as in effect on Effective Date) is or becomes the beneficial owner (as defined in Rule 13d-3 of the Exchange Act as in effect on Effective Date), directly or indirectly, in the aggregate Equity Interests representing 35% or more of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of a Borrower.

"Change in Law" shall mean (a) the adoption of any law, treaty, rule or regulation after Effective Date, (b) any change in law, treaty, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Effective Date or (c) compliance by any Lender (or, for purposes of Section 2.13(b), by any lending office of such Lender or by such Lender's holding company, if any) with any written request, guideline or directive (whether or

not having the force of law) of any Governmental Authority made or issued after the Effective Date; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Chapter 11 Plan" shall mean a chapter 11 plan in any or all of the Cases of the Debtors.

"Charges" shall have the meaning assigned to such term in Section 10.09.

"Coal" shall mean all coal and all types of solid naturally occurring hydrocarbons, including without limitation, bituminous and sub-bituminous coal, and lignite; provided, that in the case of any raw coal, such raw coal shall be converted to the "clean coal equivalent" quantity thereof.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Collateral" shall mean all the "Collateral" as defined in any Security Document or in the Interim DIP Order or the Final DIP Order and all other assets that become subject to the Liens created by the Security Documents from time to time, the Interim DIP Order or the Final DIP Order; provided, that, notwithstanding the foregoing, the Collateral shall not include the A/R Securitization Facility Collateral or the proceeds and/or products thereof, provided, further, that to the extent of any conflict with respect to the Liens created by the Security Documents, the Interim DIP Order or the Final DIP Order, then the Interim DIP Order (and, when entered, the Final DIP Order) shall control.

"Collateral Agent" shall have the meaning given such term in the introductory paragraph of this Agreement.

"Commitment" shall mean with respect to each Lender, the commitment of such Lender to make Loans hereunder. The initial amount of each Lender's Commitment is set forth on Schedule 1.01(A) to this Agreement under the heading "Commitment" opposite such Lender's name, or in the Assignment and Acceptance, subject to any adjustment pursuant to the terms and conditions thereof. As of the Effective Date, the aggregate amount of the Commitments is $35,000,000, subject, for the avoidance of doubt, to any limitations on borrowing as set forth herein.

"Communications" shall have the meaning assigned to such term in Section 10.17(a).

"Confirmation Order" shall mean an order of the Bankruptcy Court confirming an Acceptable Chapter 11 Plan pursuant to Section 1129 of the Bankruptcy Code, in form and substance reasonably acceptable to the Supermajority Lenders, which shall be in full force and effect and shall not be reversed, vacated, stayed, amended, supplemented or otherwise modified

or subject to the possibility of appeal, in each case, without the prior written consent of the Supermajority Lenders.

"Consummation Date" shall mean the date of the substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which for purposes of this Agreement shall be no later than the effective date) of a Chapter 11 Plan that is confirmed pursuant to a Confirmation Order of the Bankruptcy Court.

"Contingent Roll-Up Loans" shall mean loans deemed made pursuant to the first sentence of Section 2.01(f).

"Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract or otherwise, and "Controlling," "Controlled" and "Controls" shall have meanings correlative thereto.

"Control Agreement" shall mean an account control agreement among the applicable Borrower(s), the Collateral Agent and the applicable depository bank, in form and substance reasonably satisfactory to the Required Lenders.

"Corresponding New Money Loan" shall mean, (i) with respect to any Initial Roll-Up Loan, the New Money Loans made pursuant to Section 2.01(b), (ii) with respect to any Final Roll-Up Loan (Second Borrowing), the New Money Loans made pursuant to Section 2.01(c), (iii) with respect to any Final Roll-Up Loan (Third Borrowing) the New Money Loans made pursuant to Section 2.01(d), and (iv) with respect to any Incremental Roll-Up Loans, the Incremental Loans corresponding thereto pursuant to Section 2.06(e).

"CPE" shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

"CPEL" means Cloud Peak Energy Logistics LLC, a Delaware limited liability company and a Debtor and Debtor-in-Possession under Chapter 11 of the Bankruptcy Code.

"CPER" shall mean Cloud Peak Energy Resources LLC, a Delaware limited liability company and a Debtor and Debtor-in-Possession under Chapter 11 of the Bankruptcy Code.

"Creditors' Committee" shall mean the official committee of unsecured creditors in the Cases.

"Debtor Professionals" shall have the meaning assigned to such term in the Interim DIP Order, prior to entry of the Final DIP Order, and the Final DIP Order thereafter.

"Debtors" shall have the meaning specified in the recitals hereof.

"Default" shall mean any event or condition that upon notice, lapse of time or both would constitute an Event of Default.

"Designated Jurisdiction" means any country or territory to the extent that such country or territory itself is, or its government is, the subject of any Sanctions (currently, Crimea, Cuba, Iran, North Korea, and Syria).

"DIP Orders" shall mean, collectively, the Interim DIP Order and the Final DIP Order.

"Dollars" or "$" shall mean lawful money of the United States of America.

"Effective Date" shall mean the first date on which all of the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 4.01 or Section 10.08 (as applicable) which date shall be no later than three Business Days after the Initial DIP Order Entry Date.

"Eligible Assignee" shall mean (a) a Lender, or any affiliate of, or Approved Fund with respect to, a Lender or (b) any commercial bank, insurance company, investment or mutual fund or other entity that extends credit or buys loans in the ordinary course of its business; provided that "Eligible Assignee" shall not include (i) any natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural person), or (ii) any Borrower.

"Embargoed Person" or "Embargoed Persons" shall have the meaning given such term in Section 6.13.

"Environment" shall mean ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources such as flora and fauna, the workplace or as otherwise defined in any Environmental Law.

"Environmental Claim" means any claim, cause of action, investigation or notice by any Person, including any Governmental Authority having jurisdiction, alleging any potential or resulting in any liability or costs (including liabilities or costs relating to compliance costs, investigatory costs, cleanup or remediation costs, compliance with Reclamation Laws, governmental or third party response costs, natural resource damages, property damage, personal injuries, or fines or penalties) based on or relating to or arising from (A) the presence or Release of, or exposure to, any Hazardous Materials at any location, whether or not owned or operated by any Borrower or any of its Subsidiaries, as applicable, (B) the generation, handling, treatment, storage, disposal, transportation or arrangement for transportation of any Hazardous Materials, or (C) any Environmental Law, Environmental Permit, Mining Law or Mining Permit, including the alleged or actual violation thereof.

"Environmental Law" shall mean collectively, all Laws, including common law, that relate to (a) the prevention, abatement or elimination of pollution, or the protection of the Environment or human health (and with respect to exposure to Hazardous Materials, worker health), or of natural resources, including (i) to the extent so related, Mining Laws (other than the Mine Safety and Health Act (30 U.S.C. Section 801 et seq.)) and other Laws relating to the production of Coal, minerals, oil, natural gas and other hydrocarbons and their constituents, and (ii) all Reclamation Laws, and (b) the generation, handling, treatment, storage, disposal or

transportation, the regulation of or exposure to Hazardous Materials, including the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"), the Endangered Species Act, 16 U.S.C. §§ 1531 et seq., the Federal Land Policy and Management Act, 43 U.S.C. §§ 1701 et seq., the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq. ("RCRA"), the Clean Air Act, 42 U.S.C. §§ 7401 et seq., the Clean Water Act, 33 U.S.C. §§ 1251 et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., and the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§ 11001 et seq., each as amended, and their state or local counterparts or equivalents.

"Environmental Permit" shall have the meaning given such term in Section 3.15.

"Equity Interests" of any person shall mean any and all shares, interests, rights to purchase, warrants, options, participation or other equivalents of or interests in (however designated) equity of such person, including any preferred stock, any limited or general partnership interest and any limited liability company membership interest.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

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

"ERISA Event" shall mean (a) any Reportable Event; (b) a failure to satisfy the minimum funding standard under Section 412 or 430 of the Code or Section 302 or 303 of ERISA, whether or not waived, or the arising of a lien or other encumbrance or the provision of security under Section 412 or 430 of the Code or Section 302, 303 or 4068 of ERISA; (c) the filing pursuant to Section 412(c) of the Code or Section 303(c) of ERISA of an application for, or receipt of, a waiver of the minimum funding standard with respect to any Plan, the failure to make by its due date a required installment under Section 430(j) of the Code with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan; (d) a withdrawal by any Borrower, any Subsidiary, or any ERISA Affiliate from a Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (e) the incurrence by any Borrower, any Subsidiary or any ERISA Affiliate of any liability under Title IV of ERISA; (f) the receipt by any Borrower, any Subsidiary or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or to appoint a trustee to administer any Plan under Section 4042 of ERISA, or the occurrence of any event or condition which would reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (g) the incurrence by any Borrower, any Subsidiary or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; (h) the receipt by any Borrower, any Subsidiary or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Borrower, any Subsidiary or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal

Liability or a determination that a Multiemployer Plan is, or is expected to be, in endangered or critical status, or insolvent or in reorganization, within the meaning of Title IV of ERISA; (i) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which would reasonably be expected to result in liability to any Borrower or any Subsidiary; or (j) the filing of a notice of intent to terminate any Plan, if such termination would require material additional contributions in order to be considered a standard termination within the meaning of Section 4041(b) of ERISA, the filing under Section 4041(c) of ERISA of a notice of intent to terminate any Plan, or the termination of any Plan under Section 4041(c) of ERISA.

"Eurocurrency Borrowing" shall mean a Borrowing comprised of Eurocurrency Loans.

"Eurocurrency Loan" shall mean any Loan bearing interest at a rate determined by reference to the Adjusted LIBO Rate in accordance with the provisions of Article II.

"Event of Default" shall have the meaning assigned to such term in Section 8.01.

"Escrow Agent" shall mean Ankura Trust Company, LLC in its capacity as escrow agent under the Escrow Agreement.

"Escrow Agreement" means an escrow agreement, dated as of the Effective Date, in form and substance reasonably acceptable to the Collateral Agent and the Borrowers.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Excluded Account" means any payroll, trust and tax withholding accounts, in each case, to the extent used solely for such purpose and funded in the ordinary course of business.

"Excluded Subsidiaries" shall mean, collectively, (i) the Interstate Ditch Company, (ii) Wyoming Quality Healthcare Coalition, LLC, (iii) Venture Fuels Partnership, and (iv) the A/R Securitization Seller.

"Excluded Taxes" shall mean, with respect to any Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Borrower under any Loan Document, (a) Taxes imposed on (or measured by) its net income (however denominated), franchise Taxes or branch profits Taxes in each case, (i) imposed as a result of such Agent, Lender or other recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes (b) in the case of a Lender, any U.S. federal withholding Tax that is imposed pursuant to law in effect at the time such Lender becomes a party to this Agreement (except in the case of an assignee pursuant to a request by the Administrative Borrower under Section 2.17(b)) or designates a new lending office, except to the extent that such Lender (or its assignor, if any) was entitled, immediately prior to the designation of a new lending office (or assignment), to receive amounts from a Borrower with respect to such withholding tax pursuant to Section 2.15, (c) any

Tax that is attributable to such recipient's failure to comply with Section 2.15(e) or (f) and (d) any withholding Tax imposed under FATCA.

"Executive Order" shall have the meaning assigned to such term in Section 3.21(a).

"Existing Indenture Documents" shall mean, collectively, the 2021 Indenture Documents and the 2024 Indenture Documents.

"Existing Noteholders" shall mean, collectively, the 2021 Noteholders and the 2024 Noteholders.

"Existing Trustees" shall mean, collectively, the 2021 Indenture Trustee and the 2024 Indenture Trustee.

"Exit Fee" shall have the meaning assigned to such term in Section 2.10(d).

"Expiration Time" shall have the meaning set forth in the Notice and Subscription Form for Non-Backstop Parties.

"Extraordinary Receipts" means any cash received by or paid to any Borrower on account of any foreign, United States, state or local tax refunds, pension plan reversions, judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, condemnation awards (and payments in lieu thereof), indemnity payments received and any purchase price adjustment received in connection with any purchase agreement and proceeds of insurance.

"Facility" shall mean the Commitments and the Loans made hereunder.

"Fair Market Value" shall mean the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by the Board of Directors of each Borrower (unless otherwise provided in this Agreement).

"FATCA" shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version to the extent that it is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to current Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"FCPA" means Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

"Federal Funds Effective Rate" shall mean, for any day, the weighted average (rounded upward, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as

published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average (rounded upward, if necessary, to the next 1/100 of 1%) of the quotations for the day of such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"Fees" shall mean the Upfront Fee, the Exit Fee, the Administrative Agent Fee and all other fees due and payable to any Agent, the Required Lenders or any Lender under any of the Loan Documents.

"Final DIP Order" shall mean an order of the Bankruptcy Court (as the same may be amended, supplemented, or modified from time to time after entry thereof in accordance with the terms hereof) in form and substance reasonably satisfactory to the Supermajority Lenders (but in any event containing the Remedies Provision), approving, on a final basis, the Loan Documents and the transactions contemplated thereby and providing the Agents, the Lenders and the other Indemnitees with customary releases acceptable to the Supermajority Lenders.

"Final DIP Order Entry Date" shall mean the date on which the Final DIP Order is entered on the docket of the Bankruptcy Court.

"Final Order" means an order or judgment of the Bankruptcy Court, as entered on the docket of the Bankruptcy Court, that has not been reversed, stayed, modified, or amended, and as to which: (a) the time to appeal, seek review or rehearing or petition for certiorari has expired and no timely-filed appeal or petition for review, rehearing, remand or certiorari is pending; or (b) any appeal taken or petition for certiorari filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought, provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Federal Rules of Bankruptcy Procedure or other rules governing procedure in cases before the Bankruptcy Court, may be filed with respect to such order shall not cause such order not to be a Final Order.

"Financial Officer" of any person shall mean the Chief Financial Officer, principal accounting officer, Treasurer, Assistant Treasurer or Controller of such person.

"Final Roll-Up Loans (Second Borrowing)" shall have the meaning assigned to such term in Section 2.01(e).

"Final Roll-Up Loans (Third Borrowing)" shall have the meaning assigned to such term in Section 2.01(e).

"Final Upfront Fee" shall have the meaning assigned to such term in Section 2.10(d).

"Flood Insurance Laws" shall mean, collectively, (i) the National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any

successor statute thereto and (iii) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

"Foreign Lender" shall mean any Lender that is not a United States person within the meaning of Section 7701(a)(30) of the Code.

"GAAP" shall mean generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis, subject to the provisions of Section 1.02.

"Governmental Authority" shall mean the government of the United States of America, or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantee" of or by any Person (for purposes of this definition, the "guarantor") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (for purposes of this definition, the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business or customary indemnification agreements entered into in the ordinary course of business in connection with obligations that do not constitute Indebtedness. The amount of any Guarantee at any time shall be deemed to be an amount equal to the maximum stated or determinable amount of the primary obligation in respect of which such Guarantee is incurred, unless the terms of such Guarantee expressly provide that the maximum amount for which such Person may be liable thereunder is a lesser amount (in which case the amount of such Guarantee shall be deemed to be an amount equal to such lesser amount).

"Hazardous Materials" shall mean all pollutants, contaminants, chemicals, hazardous or toxic materials, substances and wastes, including, without limitation, explosive or radioactive substances or petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls or radon gas, of any nature, in each case subject to regulation or which can give rise to liability under any Environmental Law.

"Incremental Amendment" means an Incremental Amendment, in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders, among

the Borrower, the Administrative Agent and one or more Incremental Lenders, establishing Incremental Loans and effecting such other amendments hereto and to the other Loan Documents as are contemplated by Section 2.06.

"Incremental Lender" means a Lender with an outstanding Incremental Loan.

"Incremental Loans" means any Loans made pursuant to Section 2.06 (but shall not include any Incremental Roll-Up Loans).

"Incremental Roll-Up Loans" means any Roll-Up Loans that correspond to Incremental Loans and that are deemed made in accordance with the terms of the Final DIP Order.

"Indebtedness" of any person shall mean, without duplication, (a) all obligations of such person for borrowed money, (b) all obligations of such person evidenced by debentures, promissory notes or similar instruments evidencing obligations for borrowed money, (c) all obligations of such person issued or assumed as the deferred purchase price of property or services (other than current trade liabilities, but not any refinancings, extensions, renewals or replacements thereof, incurred in the ordinary course of business and maturing within 365 days after the incurrence thereof), (d) all Indebtedness of others secured by any Lien on property owned or acquired by such person, whether or not the obligations secured thereby have been assumed or are limited in recourse, but limited to the Fair Market Value of such property, (e) all Guarantees by such person of Indebtedness of others, (f) all Capital Lease Obligations of such person, (g) all payments that such person would have to make in the event of an early termination, on the date Indebtedness of such person is being determined, in respect of outstanding Swap Agreements, and (h) the principal component of all obligations, contingent or otherwise, of such person as an account party in respect of standby letters of credit, but not trade letters of credit, but only to the extent such standby letters of credit have been drawn upon and not reimbursed thereafter within five (5) Business Days. The Indebtedness of any person shall include the Indebtedness of any partnership in which such person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such person in respect thereof. The amount of any such Indebtedness shall be the principal amount thereof and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded. Indebtedness shall not include (x) with respect to any equity-linked security, the equity credit reflected on the most recent balance sheet of the Borrowers delivered pursuant to Section 5.04(a), (y) obligations not incurred in connection with borrowed money, except to the extent expressly provided above, and without limitation shall not include (i) bid bonds, performance bonds, completion bonds, surety bonds, appeal bonds and other similar bonds, guarantees or obligations of the Borrowers, in each case that are in existence on the Effective Date, (ii) purchase price adjustments incurred in connection with the disposition of any assets, (iii) indemnification obligations, (iv) letters of credit, bank guarantees or similar instruments to secure any of the foregoing, to the extent such letters of credit, bank guarantees or similar instruments have not been drawn upon or, if drawn upon, have not been reimbursed thereafter within five (5) Business Days, (v) obligations resulting from cash management services, any cash pooling or netting or set-off arrangements and (vi) endorsements of instruments for collection in the ordinary course of business, and (z) any liabilities of any Borrower to any Borrower.

"Indemnified Taxes" shall mean (a) all Taxes other than Excluded Taxes and (b) Other Taxes.

"Indemnitee" shall have the meaning assigned to such term in Section 10.05(b).

"Information" shall have the meaning assigned to such term in Section 3.13(a).

"Initial Borrowing" shall have the meaning assigned to such term in Section 2.01(a).

"Initial Budget" shall have the meaning assigned to such term in Section 3.22.

"Initial Roll-Up Loans" shall have the meaning assigned to such term in Section 2.01(e).

"Initial Upfront Fee" shall have the meaning assigned to such term in Section 2.10(c).

"Intellectual Property" means all intellectual property now owned or hereafter acquired by any Borrower or Subsidiary, as the case may be, including patents, copyrights, trademarks, trade secrets and licenses of any of the foregoing.

"Interest Election Request" shall mean a request by the Administrative Borrower to convert or continue a Borrowing in accordance with Section 2.05.

"Interest Payment Date" shall mean (a) with respect to any Eurocurrency Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and the date of any refinancing or conversion of such Borrowing with or to a Borrowing of a different Type, and (b) with respect to any ABR Loan, the last day of each calendar month.

"Interest Period" shall mean, as to any Eurocurrency Borrowing, the period commencing on the date of such Borrowing or on the last day of the immediately preceding Interest Period applicable to such Borrowing, as applicable, and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is one month thereafter, or, if sooner, the date any Eurocurrency Borrowing is converted to an ABR Borrowing in accordance with Section 2.05 or repaid or prepaid in accordance with Section 2.07, 2.08 or 2.09; provided, however, that, if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

"Interim DIP Order" shall mean the order of the Bankruptcy Court (as the same may be amended, supplemented, or modified from time to time after entry thereof in accordance with the terms hereof) attached hereto as Exhibit C, approving the Loan Documents and the transactions contemplated thereby on an interim basis, entered at Docket No. 106 in the Cases.

"Interim DIP Order Entry Date" shall mean May 15, 2019, the date on which the Interim DIP Order was entered on the docket of the Bankruptcy Court.

"Interpolated Screen Rate" shall mean, in relation to LIBO Rate for any Loan, the rate which results from interpolating on a linear basis between: (a) the rate appearing on the LIBOR01 page of Reuters BBA Libor Rates Intercontinental Exchange Benchmark Administration Ltd (ICE) (or on any successor or substitute page of such service) for the longest period (for which that rate is available) which is less than the Interest Period; and (b) the rate appearing on the LIBOR01 page of Reuters BBA Libor Rates Intercontinental Exchange Benchmark Administration Ltd (ICE) (or on any successor or substitute page of such service) for the shortest period (for which that rate is available) which exceeds the Interest Period each as of approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

"Inventory" has the meaning specified in the UCC.

"Inventory Appraisal" shall have the meaning assigned to such term in Section 5.04(k).

"Inventory Appraisers" shall have the meaning assigned to such term in Section 5.04(k).

"Investment" shall have the meaning assigned to such term in Section 6.01.

"Laws" shall have the meaning assigned to such term in the definition of "Mining Laws".

"Lender" shall mean each Person listed on Schedule 1.01(A) to this Agreement with a Commitment, as well as any Person that becomes a "Lender" hereunder pursuant to Section 10.04.

"LIBO Rate" shall mean, with respect to any Eurocurrency Borrowing for any Interest Period, the rate per annum determined by the Administrative Agent at approximately 11:00 a.m., London time, on the Quotation Day for such Interest Period by reference to the British Bankers' Association Interest Settlement Rates or any successor rates thereto if the British Bankers Association is no longer making such rates available for deposits in the currency of such Borrowing (as reflected on the applicable Reuters screen page), for a period equal to such Interest Period; provided that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the "LIBO Rate" shall be the Interpolated Screen Rate, on the Quotation Day for such Interest Period. Notwithstanding the foregoing, for purposes of this Agreement, LIBO Rate shall never be an amount less than zero (0).

"Lien" shall mean, with respect to any asset, (a) any mortgage, deed of trust, lien, hypothecation, pledge, encumbrance, charge or security interest in or on such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities (other than securities

representing an interest in a joint venture that is not a Subsidiary), any purchase option, call or similar right of a third party with respect to such securities.

"Loan Documents" shall mean this Agreement, any Incremental Amendment, the Security Documents, the Administrative Agent Fee Letter, any Note and any other agreement, document or instrument entered into now, or in the future, by any Borrower, on the one hand, and the Administrative Agent, the Collateral Agent, any Lender and/or any other Secured Party, on the other hand, in connection with any of the foregoing.

"Loans" shall mean the New Money Loans and the Roll-Up Loans.

"Local Time" shall mean New York City time.

"M&E Appraisal" shall have the meaning assigned to such term in Section 5.04(k).

"M&E Appraisers" shall have the meaning assigned to such term in Section 5.04(k).

"Margin Stock" shall have the meaning assigned to such term in Regulation U.

"Master Assignment and Acceptance" shall mean an assignment and acceptance entered into by assigning Lenders and an assignee, and accepted by the Administrative Agent and the Administrative Borrower (if required by such assignment and acceptance), in the form of Exhibit H to this Agreement or such other form as shall be approved by the Administrative Agent, acting in its sole discretion.

"Material Adverse Effect" shall mean a material adverse effect on (a) the business, assets, operations or condition (financial or otherwise) of the Administrative Borrower individually, and the Borrowers, taken as a whole, (b) the validity or enforceability of any Loan Document or the validity, enforceability or collectability of the Loans or the Loan Documents generally or any material portion of the Loans or the Loan Documents, (c) the rights and remedies of any Agent and/or any Lender with respect to matters arising under any Loan Document, (d) the ability of each Borrower to perform its obligations under any Loan Document to which it is a party, or (e) the status, existence, perfection, priority or enforceability of the Collateral Agent's security interests in and Liens on the Collateral; provided that in no event shall the commencement or continuation of the Cases give rise to a Material Adverse Effect.

"Material Contract" shall mean and include (i) any agreement evidencing, securing or pertaining to any Material Indebtedness, (ii) any Material Lease, (iii) any material Mining Lease, (iv) any Take-or-Pay Contract; (v) any operating lease where annual rentals exceed $1,000,000, (vi) any supply or production agreement having specified annual payments in excess of $1,000,000, (vii) any sales or customer agreement having specified annual payments in excess of $1,000,000, (viii) any management, consulting, advisory or similar services agreement between, on the one hand, a Borrower or a Subsidiary, and, on the other hand, a Person that is not a Borrower, (ix) the Existing Indenture Documents, (x) any employment agreement with members of management of any Borrower or any Subsidiary or other key personnel of any Borrower or any Subsidiary, and any stock option plan, employee incentive

plan or similar type plan, (xi) any warrant, option or similar agreement giving any Person a right to acquire an interest in any Borrower or any Subsidiary, and (xii) any other contract, agreement, permit or license, the failure to comply with which, or the termination (without contemporaneous replacement) of which, could reasonably be expected to have a Material Adverse Effect.

"Material Indebtedness" shall mean, collectively, (a) Indebtedness under the 2021 Indenture Documents; (b) Indebtedness under the 2024 Indenture Documents; (c) Indebtedness under the A/R Securitization Facility Documents; (d) any other Indebtedness (other than the Loans) that, individually or together with all other Indebtedness, has an aggregate principal balance in excess of $3,750,000.

"Material Lease" shall mean any Real Property Lease or other contractual obligations in respect of Material Leased Real Property.

"Material Leased Real Property" means any Real Property subject to a Real Property Lease with a Borrower, as lessee, with annual minimum royalties, rents or any similar payment obligations, in excess of $1,000,000 in the most recently ended fiscal year.

"Material Owned Real Property" means any Real Property owned or acquired in fee by any Borrower having a book value in excess of $1,000,000.

"Material Real Property" shall mean the Material Leased Real Property or the Material Owned Real Property, as the context may require.

"Maturity Date" means the earliest of (a) February 15, 2020, (b) the date of conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code without the prior written consent of the Supermajority Lenders, (c) the date of dismissal of any of the Cases without the prior written consent of the Supermajority Lenders, (d) the date of appointment in any Case of a trustee without the prior written consent of the Supermajority Lenders, (e) the appointment of an examiner with expanded powers without the prior written consent of the Supermajority Lenders, (f) the date of consummation of a sale of all or substantially all of the Borrowers' assets, whether under Section 363 of the Bankruptcy Code or otherwise, (g) the Consummation Date of any Chapter 11 Plan, (h) the date of termination in whole of the Commitments pursuant to Section 8.01, or (i) sixty five days after entry of the Interim DIP Order (or such later date as agreed by the Supermajority Lenders), if the Final DIP Order has not been entered by such date.

"Maximum Rate" shall have the meaning assigned to such term in Section 11.09.

"Milestones" shall have the meaning assigned to such term in Section 5.15.

"Mine" means any excavation or opening into the earth now and hereafter made from which Coal or other minerals are or can be extracted on or from any of the Real Properties in which any Borrower holds an ownership, leasehold or other interest.

"Mining Laws" means any and all applicable federal, state, local and foreign statutes, laws, regulations, guidance, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions or

common law causes of action ("Laws") relating to mining operations and activities, or oil, natural gas, minerals, and other hydrocarbons and their constituents production operations and activities. Mining Laws shall include but not be limited to, the Mineral Lands Leasing Act of 1920, the Federal Coal Leasing Amendments Act, the Surface Mining Control and Reclamation Act, all other land reclamation and use statutes and regulations relating to Coal mining, the Federal Coal Mine Health and Safety Act of 1969, the Black Lung Benefits Revenue Act of 1977, the Black Lung Benefits Reform Act of 1977, the Coal Industry Retiree Health Benefits Act of 1992, the Federal Mine Safety and Health Act of 1977, and the Occupational Safety and Health Act of 1970, each as amended, and their state and local counterparts or equivalents.

"Mining Lease" shall mean a lease, license or other use agreement held on the Petition Date or thereafter acquired which provides any Borrower or any Subsidiary the real property and water rights, other interests in land, including Coal, mining and surface rights, easements, rights of way and options, and rights to harvest or produce timber, Coal, minerals, oil, natural gas and other hydrocarbons and their constituents (including, without limitation, coalbed methane and gob gas) (i) currently operated by any Borrower or any Subsidiary or (ii) part of any of Borrowers' mine plans. Leases which provide any Borrower or any Subsidiary the right to construct and operate a preparation plant and related facilities on the surface of the Real Property containing such reserves shall also be deemed a Mining Lease.

"Mining Permits" means any and all permits, licenses, registrations, notifications, exemptions and any other authorization required under any applicable Mining Law or otherwise necessary to: (i) recover Coal from any Mine being operated by any Borrower or any Subsidiary; or (ii) produce minerals, oil, natural gas and other hydrocarbons and their constituents from any well operated by any Borrower or any Subsidiary.

"Multiemployer Plan" shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA with respect to which any Borrower, any Subsidiary or any ERISA Affiliate (a) is making or has an obligation to make contributions, (b) has within any of the preceding six plan years made or had an obligation to make contributions or (c) otherwise could incur liability.

"Net Cash Proceeds" shall mean:

(a) 100% of the cash proceeds (plus 100% of the net cash proceeds of any noncash consideration) of any Asset Disposition or Casualty and Condemnation Award actually received by any Borrower (whether in a single or a series of related transactions), or any of its Subsidiaries from any Asset Disposition or Casualty and Condemnation Award after the Petition Date including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, net of (i) attorneys' fees, accountants' fees, investment banking transaction fees or commissions, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, required debt payments and required payments of other obligations relating to the applicable asset, other customary expenses and brokerage, consultant and other costs fees, expenses or commissions in each case that are customary, reasonable,

documented, out-of-pocket and actually incurred in connection therewith and (ii) Taxes paid or payable as a result thereof,

(b) 100% of the cash proceeds (plus 100% of the net cash proceeds of any noncash consideration) from the incurrence, issuance or sale by any Borrower or any Subsidiary of any Indebtedness not expressly permitted to be incurred under Section 6.02, net of Taxes paid or payable as a result thereof.

For purposes of calculating the amount of Net Cash Proceeds, fees, commissions and other costs and expenses payable to any Borrower or any Affiliate thereof shall be disregarded.

Notwithstanding the foregoing, as it relates to any Asset Disposition that constitutes a sale of all or substantially all of the assets of the Borrowers pursuant to section 363 of the Bankruptcy Code, the definition of "Net Cash Proceeds" shall mean "Net Sale Proceeds" as defined in the SAPSA.

"New Money Loans" shall mean the term loans made by the Lenders to the Borrowers pursuant to Section 2.01 and any Incremental Loans made pursuant to Section 2.06, in each case other than Roll-Up Loans and Contingent Roll-Up Loans.

"Non-Wholly-Owned Subsidiary" shall mean, as to any Person, each Subsidiary of such Person that is not a Wholly Owned Subsidiary of such Person.

"Notes" means a promissory note of the Borrowers payable to any Lender (and its registered assigns), delivered pursuant to a request made pursuant to Section 2.07 in substantially the form attached hereto as Exhibit D, evidencing the aggregate indebtedness of the Borrowers to such Lender resulting from the Loans made by such Lender.

"Notice and Subscription Form for Backstop Parties" shall mean that certain Notice and Subscription Form for Backstop Parties distributed to certain holders of the 2021 Notes on June 13, 2019.

"Notice and Subscription Form for Non-Backstop Parties" shall mean that certain Notice and Subscription Form for Non-Backstop Parties distributed to certain holders of the 2021 Notes on June 13, 2019.

"Obligations" shall mean all amounts owing to any of the Agents or any Lender pursuant to the terms of this Agreement or any other Loan Document (in each case, including interest accruing or monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding).

"OFAC" shall have the meaning assigned to such term in Section 3.21(b)(iv).

"Organizational Documents" means, for any Person, its constituent or organizational documents, including: (a) in the case of any limited partnership, the certificate of limited partnership and limited partnership agreement for such Person; (b) in the case of any

limited liability company, the articles of formation and operating agreement for such Person; and (c) in the case of a corporation, the certificate or articles of incorporation and the bylaws or memorandum and articles of association for such Person.

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

"Other Taxes" shall mean all present or future stamp, documentary, intangible, recording, filing or similar Taxes arising from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, the Loan Documents, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.17(b)).

"Participant" shall have the meaning assigned to such term in Section 10.04(c).

"Participant Register" shall have the meaning assigned to such term in Section 10.04(c).

"PBGC" shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

"Permit" shall mean any and all permits, approvals, registrations, notifications, exemptions and any other regulatory authorization, in each case, from a Governmental Authority having jurisdiction.

"Permitted Business" means any business or business activity conducted by the Borrowers or its Subsidiaries on the Petition Date and any business or business activities incidental or related thereto.

"Permitted Real Estate Encumbrances" shall mean (a) Liens and other encumbrances permitted by clauses (a), (e), (f) and (h) of Section 6.03; (b) any interest or title of, or Liens created by, a lessor under any leases or subleases entered into by Borrower or any Subsidiary, as tenant, in the ordinary course of business and any precautionary UCC financing statement filing in respect of operating leases (and not any Indebtedness) entered into in the ordinary course of business; and (c) the following encumbrances which do not, in any case, individually or in the aggregate, materially detract from the value of any Mine subject thereto or interfere with the ordinary conduct of the business or operations of any Borrower as presently conducted on, at or with respect to such Mine and as to be conducted following the Petition Date: (i) encumbrances typically found upon Real Property used for mining purposes in the applicable jurisdiction in which the applicable Real Property is located to the extent such encumbrances would be permitted or granted by a prudent operator of mining property similar in use and configuration to such Real Property (e.g., surface rights agreements, wheelage agreements and reconveyance agreements); (ii) rights and easements of owners (A) of undivided interests in any

of the Real Property where the applicable Borrower or Subsidiary owns less than 100% of the fee interest, (B) of interests in the surface of any Real Property where the applicable Borrower or Subsidiary does not own or lease such surface interest, (C) and lessees, if any, of coal or other minerals (including oil, gas and coalbed methane) where the applicable Borrower or Subsidiary does not own such coal or other minerals, and (D) and lessees of other coal seams and other minerals (including oil, gas and coalbed methane) not owned or leased by such Borrower or Subsidiary; (iii) with respect to any Real Property in which any Borrower or any Subsidiary holds a leasehold interest, terms, agreements, provisions, conditions, and limitations (other than royalty and other payment obligations which are otherwise permitted hereunder) contained in the leases granting such leasehold interest and the rights of lessors thereunder (and their heirs, executors, administrators, successors, and assigns); (iv) farm, grazing, hunting, recreational and residential leases with respect to which Borrower or any Subsidiary is the lessor encumbering portions of the Real Properties to the extent such leases would be granted or permitted by, and contain terms and provisions that would be acceptable to, a prudent operator of mining properties similar in use and configuration to such Real Properties; (v) royalty and other payment obligations to sellers or transferors of fee coal or lease properties to the extent such obligations constitute a lien not yet delinquent; (vi) rights of others to subjacent or lateral support and absence of subsidence rights or to the maintenance of barrier pillars or restrictions on mining within certain areas as provided by any Mining Lease, unless in each case waived by such other person; and (vii) rights of repurchase or reversion when mining and reclamation are completed.

"person" or "Person" shall mean any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company or government, individual or family trusts, or any agency or political subdivision thereof.

"Petition Date" shall have the meaning specified in the recitals hereof.

"Plan" shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA which is maintained or contributed to by any Borrower, any Subsidiary or any ERISA Affiliate or with respect to which any Borrower, any Subsidiary or any ERISA Affiliate could incur liability (including under Section 4069 of ERISA).

"Platform" shall have the meaning assigned to such term in Section 10.17(b).

"Pre-Petition Debt" shall mean, collectively, the Indebtedness of each Debtor outstanding and unpaid on the date on which such Person becomes a Debtor.

"Pre-Petition Payment" shall mean a payment, directly or indirectly, (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any (i) Pre-Petition Debt, (ii) "critical vendor payments" or (iii) trade payables (including, without limitation, in respect of reclamation claims) or other pre-petition claims against any Debtor.

"Prime Rate" means the rate of interest quoted in *The Wall Street Journal*, Money Rates Section, as the "U.S. Prime Rate" (or its successor), as in effect from time to time. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. The Administrative Agent or any Lender may make commercial loans

or other loans at rates of interest at, above, or below the Prime Rate. Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

"Prior Permitted Liens" shall mean (a) Liens granted by the Borrowers in favor of third parties that were perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code and (b) Liens listed on Schedule 1.01(B) hereto.

"Professional Persons" shall have the meaning assigned to such term in the Interim DIP Order, prior to the entry of the Final DIP Order, and the Final DIP Order thereafter.

"Prohibited Plan or Sale" shall have the meaning assigned to such term in the Interim DIP Order (and, when applicable, the Final DIP Order). For the avoidance of doubt, a "Prohibited Plan or Sale" shall include any Chapter 11 Plan with terms and conditions that are inconsistent with the terms of the SAPSA.

"Projections" shall mean any projections and any forward-looking statements (including statements with respect to booked business) of such entities (or of the Borrowers and their Subsidiaries) furnished to the Lenders or the Administrative Agent by or on behalf of any Borrower or any of its Subsidiaries prior to the Effective Date.

"Quotation Day" shall mean, with respect to any Eurocurrency Borrowing and any Interest Period, the day on which it is market practice in the relevant interbank market for prime banks to give quotations for deposits in the currency of such Borrowing for delivery on the first day of such Interest Period. If such quotations would normally be given by prime banks on more than one day, the Quotation Day will be the last of such days.

"Real Property" shall mean, collectively, all right, title and interest of any Borrower or any Subsidiary (including, without limitation, any leasehold, mineral estate, or Coal, oil, natural gas or other hydrocarbon and their constituents leasehold) in and to any and all parcels of real property owned or operated by any Borrower or any Subsidiary, whether by lease, license or other use agreement, together with, in each case, all improvements and appurtenant fixtures (including, without limitation, all preparation plants or other Coal processing facilities and loadout and other transportation facilities), easements and other property and rights incidental to the ownership, lease or operation thereof.

"Real Property Lease" shall mean any lease, license, letting, concession, occupancy agreement, sublease, farm-in, farm-out, joint operating agreement, easement or right of way to which such Person is a party and is granted a possessory interest in or a right to use or occupy all or any portion of the Real Property (including, without limitation, the right to extract Coal, minerals oil, natural gas and other hydrocarbons and their constituents from any portion of Real Property not owned in fee by such Person) and every amendment or modification thereof, including with respect to the Borrowers, without limitation, the leases with respect to Real Property and any contractual obligation with respect to any of the foregoing.

"Receivables Equity" shall mean the Equity Interests of Cloud Peak Energy Receivables LLC.

"Reclamation Laws" shall mean all Laws, rules, and regulations relating to mining reclamation or reclamation liabilities including the Surface Mining Control and Reclamation Act of 1977, as amended, and its state and local counterparts or equivalents, including, without limitation, those applicable in Montana and Wyoming state laws, rules and regulations.

"Register" shall have the meaning assigned to such term in Section 10.04(b).

"Regulation U" shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation X" shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Related Parties" shall mean, with respect to any specified person, such person's partners (general and limited), shareholders, directors, members, principals, agents, advisors, officers, professionals (including counsel), subsidiaries and Affiliates, and the partners (general and limited), shareholders, directors, members, principals, agents, advisors, officers, professionals (including counsel) of such Affiliates.

"Release" shall mean any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or depositing in, into or onto the Environment or within or from buildings and structures.

"Released Parties" shall mean each Agent, each Lender and each of their respective Related Parties, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, predecessors, successors and assigns, both present and former.

"Remedies Notice Period" shall mean the period commencing on the date a Termination Declaration is delivered pursuant to Section 8.01 and ending on the date that is five (5) Business Days thereafter.

"Remedies Provision" shall mean a provision of the relevant DIP Order that provides that:

(a) the automatic stay in the Cases otherwise applicable to the Agents and the Lenders shall be modified so that, immediately after the Remedies Notice Period, the Required Lenders may direct the Agents to exercise all rights and remedies in accordance with the Loan Documents (subject to the funding in full of the Carve-Out Reserve) including without limitation, exercising rights of setoff or foreclosing on all or a portion of the Collateral, occupying the Borrowers' premises, or a sale or disposition of the Collateral, and shall be permitted to satisfy the relevant Obligations, the Lender's Superpriority Claim and Lien on the Collateral;

(b) during the Remedies Notice Period, the only basis on which the Borrowers and/or the Creditors' Committee (if appointed) shall be entitled to seek an emergency hearing within the Remedies Notice Period with the Bankruptcy Court shall be to contest

whether an Event of Default has occurred and/or is continuing and the Agents and the Required Lenders shall consent to such emergency hearing;

(c) unless during the Remedies Notice Period, the Bankruptcy Court determines that an Event of Default has not occurred, or the Borrowers cure the Event of Default (to the extent curable under the Loan Documents) that was the basis for the delivery of a Termination Declaration in accordance with the Loan Documents and the DIP Orders, the automatic stay imposed under Section 105 or 362(a) of the Bankruptcy Code or otherwise, as to the Lenders and the Agents, shall automatically be terminated at the end of the Remedies Notice Period without further notice or order; and

(d) upon expiration of the Remedies Notice Period, the Agents, at the direction of the Required Lenders, shall be permitted to exercise all remedies set forth herein, in the Loan Documents, and as otherwise available at law without further order of or application or motion to the Bankruptcy Court.

"Reportable Event" shall mean any reportable event as defined in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the 30-day notice period referred to in Section 4043(a) of ERISA has been waived, with respect to a Plan.

"Required Lenders" shall mean, at any time, Lenders the sum of whose outstanding Loans (excluding, for the avoidance of doubt, Contingent Roll-Up Loans) and Commitments at such time represents at least a majority of all outstanding Loans (excluding, for the avoidance of doubt, Contingent Roll-Up Loans) and Commitments.

"Reserves" shall mean any reserves established by the Supermajority Lenders in good faith in their reasonable discretion and notified to the Administrative Borrower to reflect any events, conditions, contingencies, risks or other factors that have not been reflected in the setting of the Advance Rate on the Effective Date and which the Supermajority Lenders reasonably and in good faith determine could be expected to adversely affect the Collateral (or the value thereof) or the Liens securing the Secured Obligations or the ability of the Secured Parties to realize the value of the Collateral; provided that (a) at any time, the aggregate amount of all Reserves shall not exceed $5,000,000, (b) it is acknowledged and agreed that the amount of "Reserves" as of the Effective Date is $0 and (c) no "Reserves" may be imposed in respect of an event that causes the destruction, damage or sale of any machinery, equipment or inventory resulting in a degradation in the value of any Collateral to the extent that such Collateral has been removed from the Borrowing Base following such event pursuant to Section 5.04(k).

"Responsible Officer" of any person shall mean any executive officer or Financial Officer of such person and any other officer or similar official thereof responsible for the administration of the obligations of such person in respect of this Agreement.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any shares of any class of capital stock of any Borrower or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such shares of capital stock of any

Borrower or any option, warrant or other right to acquire any such shares of capital stock of any Borrower.

"Roll-Up Loans" shall mean Loans deemed made hereunder used to refinance and discharge Secured Notes Debt (as defined in the Interim DIP Order and, when entered, the Final DIP Order) in accordance with the Final DIP Order. Unless specified otherwise herein, any reference to a Roll-Up Loan shall not include any Contingent Roll-Up Loan.

"Sale and Lease-Back Transaction" shall mean any arrangement, directly or indirectly, with any person whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

"Sanctions" shall mean any sanctions administered or enforced by the United States Government (including without limitation, OFAC), the United Nations Security Council, the European Union, or Her Majesty's Treasury.

"SAPSA" shall mean that certain Amended and Restated Sale and Plan Support Agreement, dated as of May 9, 2019, among the Specified Borrowers, the other Borrowers party thereto, the 2021 Noteholders party thereto and the 2024 Noteholders party thereto, as in effect on the Effective Date and as may be amended or modified in accordance with this Agreement.

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

"Second Borrowing" shall have the meaning assigned to such term in Section 2.01(a).

"Secured Obligations" shall mean the "Obligations" as defined in the Security Agreement.

"Secured Parties" shall mean the "Secured Parties" as defined in the Security Agreement.

"Security Agreement" shall mean that certain Debtor-in-Possession Pledge and Security Agreement dated as of the Effective Date among the Borrowers and the Collateral Agent (in its capacities specified therein).

"Security Documents" shall mean the Security Agreement, the Control Agreements, the DIP Orders and each of the other instruments and documents executed and delivered pursuant to any of the foregoing, pursuant to Section 5.17(b) of this Agreement or which otherwise pledge, grant or purport to pledge or grant a security interest or lien on any property as Collateral for the Secured Obligations. The Security Documents shall not limit the grant of Collateral pursuant to the DIP Orders.

"Segregated Account" shall mean an account of the Escrow Agent with the account number of 01893484573, maintained at the Segregated Account Depository, which shall at all times be subject to the Escrow Agreement.

"Segregated Account Depository" shall mean Huntington National Bank.

"Specified Borrowers" shall mean, collectively, CPE, CPER and Cloud Peak Energy Finance Corp.

"Specified Tax Condition" shall mean that the Liens securing the Secured Obligations for the benefit of the Secured Parties shall be senior in priority under applicable state, federal or other applicable laws to any liens securing Specified Taxes.

"Specified Taxes" has the meaning given to such term in Section 5.03.

"Specified Tender Offer" means that certain tender offer made to certain holders of the 2021 Notes on June 13, 2019 as described in the Specified Tender Offer Documents.

"Specified Tender Offer Documents" means, collectively, the Notice and Subscription Form for Backstop Parties and the Notice and Subscription Form for Non-Backstop Parties.

"Statutory Reserves" shall mean, with respect to any currency, any reserve, liquid asset or similar requirements established by any Governmental Authority of the United States of America or of the jurisdiction of such currency or any jurisdiction in which Loans in such currency are made to which banks in such jurisdiction are subject for any category of deposits or liabilities customarily used to fund loans in such currency or by reference to which interest rates applicable to Loans in such currency are determined.

"Subsidiary" shall mean, with respect to any person (herein referred to as the "parent"), any corporation, partnership, association or other business entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or more than 50% of the general partnership interests are, at the time any determination is being made, directly or indirectly, owned, Controlled or held by the parent or one or more subsidiaries of the parent, or (b) whose accounts are consolidated with the accounts of the parent or one or more subsidiaries of the parent in such parent's or subsidiary's SEC filings. Unless the context otherwise requires, Subsidiary shall mean a Subsidiary of a Borrower.

"Supermajority Lenders" shall mean, at any time, Lenders the sum of whose outstanding Loans (excluding, for the avoidance of doubt, Contingent Roll-Up Loans) and Commitments at such time represents at least 60% of all outstanding Loans (excluding, for the avoidance of doubt, Contingent Roll-Up Loans) and Commitments.

"Superpriority Claim" means a claim against any Debtor in any of the Cases which is an administrative expenses claim having priority over any or all administrative expenses of the kind that are specified in, or contemplated by, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 546(c), 726, 1114 or any other provisions of the Bankruptcy Code.

"Swap Agreement" shall mean any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions.

"Take-or-Pay Contracts" shall mean, collectively, (a) that certain Rail Transportation Amended and Restated Agreement BNSF-C-12820, effective as of January 1, 2018, by and between BNSF Railway Company, a Delaware corporation, and Cloud Peak Energy Logistics LLC, an Oregon limited liability company and (b) that certain Restated Shipping Agreement – Cloud Peak Energy, effective as of July 1, 2018, by and between Cloud Peak Energy Logistics LLC, an Oregon limited liability company and Westshore Terminals Limited Partnership, a limited partnership formed in British Columbia.

"Taxes" shall mean any and all present or future taxes, levies, imposts, assessments, duties (including stamp duties), deductions, charges (including ad valorem charges) or withholdings imposed by any Governmental Authority and any and all interest, additions to tax and penalties related thereto.

"Termination Declaration" shall have the meaning assigned to such term in Section 8.01(vi).

"Third Borrowing" shall have the meaning assigned to such term in Section 2.01(a).

"Transactions" shall mean the execution and delivery of this Agreement and the transactions contemplated thereby and the payment of fees and expenses related thereto.

"Type" when used in respect of any Loan or Borrowing, shall refer to the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term "Rate" shall include the Adjusted LIBO Rate and the Alternate Base Rate.

"UCC" shall mean (i) the Uniform Commercial Code as in effect in the applicable state of jurisdiction and (ii) certificate of title or other similar statutes relating to "rolling stock" or barges as in effect in the applicable jurisdiction.

"Unfunded Pension Liability" of any Plan means the amount, if any, by which the value of the accumulated plan benefits under the Plan, determined on a plan termination basis in accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the fair market value of all plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions).

"United States Tax Compliance Certificate" has the meaning assigned to such term in Section 2.15(e).

"Unpermitted Variance" shall mean actual amounts for aggregate (a) receipts and (b) disbursements, varying negatively (from the perspective of the Borrowers' business) from such respective categories in the Budget for each of the following, without duplication: (i) with respect to receipts (excluding receipts of CPEL), by more than 20% for any Variance Period and (ii) with respect to disbursements (excluding (w) disbursements of CPEL, (x) fees, costs and expenses of Professional Persons, (y) payments in respect of Adequate Protection and (z) any collateral deposits made in favor of the Administrator (as defined in the A/R Securitization Facility Agreement) in respect of the A/R Securitization Facility), by more than 15% for any Variance Period.

"Updated Budget" shall have the meaning assigned to such term in Section 5.04(h).

"U.S. Lender" shall mean any Lender that is a United States person within the meaning of Section 7701(a)(30) of the Code.

"U.S. PATRIOT Act" shall have the meaning assigned to such term in Section 10.18.

"Variance Period" means as of the last day of any full calendar week covered in the applicable Approved Budget (commencing with the first Business Day of the second full week after the Petition Date), the period then ended measured from the first day of the first full calendar week covered in such Approved Budget; provided that such period shall in no event exceed the four calendar week period ending with the week then ended.

"Variance Report" shall have the meaning assigned to such term in Section 5.04(i).

"Weekly Draw" shall have the meaning assigned to such term in Section 2.04(b).

"Weekly Draw Request" shall mean a certificate of a Financial Officer of the Borrowers substantially in the form of Exhibit E to this Agreement, which such certificate shall: (a) confirm compliance as of the proposed date of such Weekly Draw with the conditions set forth in Sections 6.23(a) through (h) and (b) specify the following information:

(i) the aggregate amount of the requested Weekly Draw (expressed in Dollars);

(ii) the date of such Weekly Draw, which shall be a Business Day;

(iii) the aggregate amount of cash in the Debtors' accounts after giving effect to such Weekly Draw; and

(iv) the location and number of the account to which funds are to be disbursed.

"Wholly Owned Subsidiary" of any person shall mean a Subsidiary of such person, all of the Equity Interests of which (other than directors' qualifying shares or nominee or

other similar shares required pursuant to applicable law) are owned by such person or another Wholly Owned Subsidiary of such person.

"Withdrawal Liability" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02. Terms Generally. The definitions set forth or referred to in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The words "assets" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights. All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Any reference to any law or regulation herein shall refer to such law or regulation as amended, modified or supplemented from time to time. Except as otherwise expressly provided herein, any reference in this Agreement to any Loan Document shall mean such document as amended, restated, supplemented or otherwise modified from time to time. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Administrative Borrower notifies the Administrative Agent (which the Administrative Agent shall promptly forward to the Lenders) that the Administrative Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Administrative Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. With respect to any amount in a currency other than Dollars, such amount shall be determined as of the date of incurrence thereof, and shall not be affected as a result of fluctuations in currency values.

SECTION 1.03. Administrative Borrower. Each Borrower hereby appoints CPER as the borrowing agent for the Borrowers which appointment shall remain in full force and effect unless and until the Administrative Agent and the Lenders shall have received prior written notice signed by all of the Borrowers that such appointment has been revoked or that another Borrower has been appointed in such capacity. Each Borrower hereby appoints and authorizes CPER (or its successor) (i) to provide to the Administrative Agent and the Lenders and receive from the Administrative Agent and the Lenders all notices with respect to Loans obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and (ii) to take such action as CPER deems appropriate on behalf of the Borrowers and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement. Any reference to any action or notice required or permitted to be taken or given hereunder and under the Loan Documents by the "Borrowers" or "each Borrower" shall be

effective if such action is taken, or such notice is delivered, by the Administrative Borrower or, as applicable, a Responsible Officer thereof.

SECTION 1.04. Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

SECTION 1.05. Orders Control. In the event of any discrepancy between the Interim DIP Order or, when entered, the Final DIP Order, as applicable, and any of the Loan Documents, the Interim DIP Order and, when entered, the Final DIP Order, shall control.

ARTICLE II.

THE CREDITS

SECTION 2.01. Commitments.

(a) Subject to the terms and conditions set forth herein and in the DIP Orders, each Lender severally agrees to make Loans to the Borrowers in two or three draws, the first of which (the "Initial Borrowing") shall be funded within three Business Days of the Interim DIP Order Entry Date, the second of which (the "Second Borrowing") shall be funded on the third Business Day following the Expiration Time, and, if the Specified Tax Condition is not satisfied on the date of the Second Borrowing, an additional borrowing (the "Third Borrowing") shall be funded after the Final DIP Order Entry Date solely to the extent the Specified Tax Condition is then satisfied in addition to the other applicable conditions set forth in Section 4.02. The Loans shall be made in an aggregate principal amount not to exceed the amount of such Lender's Commitment. The Borrowings shall be in an aggregate amount of not less than $10,000,000 and shall consist of Loans of the same Type made on the same day by the Lenders ratably according to their respective Commitments.

(b) Notwithstanding anything to the contrary, the Initial Borrowing shall be in an amount no greater than the lowest of: (i) $10,000,000; (ii) the Borrowing Base as of the Interim DIP Order Entry Date; and (iii) the amount of Loans hereunder authorized by the Bankruptcy Court in the Interim DIP Order.

(c) Notwithstanding anything to the contrary, the Second Borrowing shall be in an amount no greater than the lowest of: (i) the amount equal to (A) $35,000,000, *minus* (B) the amount of the Initial Borrowing; (ii) the amount equal to (A) the Borrowing Base as of the Final DIP Order Entry Date as set forth in the Final DIP Order, *minus* (B) the amount of the Initial Borrowing; and (iii) the full amount of Loans hereunder authorized by the Bankruptcy Court in the Final DIP Order to be funded on the date of the Second Borrowing; *provided* that, if as of the date of the Second Borrowing, the Specified Tax Condition is not satisfied, such lowest amount shall be reduced by $11,500,000.

(d) Notwithstanding anything to the contrary, the Third Borrowing shall be in an amount no greater than the lowest of: (i) the amount equal to (A) $35,000,000, *minus* (B) the amount of each of the Initial Borrowing and the Second Borrowing; (ii) the amount equal to (A) the Borrowing Base as of the Final DIP Order Entry Date as set forth in the Final DIP Order, *minus* (B) the amount of each of the Initial Borrowing and the Second Borrowing; and (iii) the full amount of Loans hereunder authorized by the Bankruptcy Court to be funded on the date of the Third Borrowing as set forth in the Final DIP Order.

(e) The Administrative Agent, the Lenders and the Borrowers each acknowledge and agree that each Roll-Up Loan shall be deemed fully funded, in each case in accordance with the terms of the Final DIP Order (without any notice or request by the Borrower) (i) on the date of the Second Borrowing, in an amount equal to 80% of (x) the Initial Borrowing (the "Initial Roll-Up Loan") and (y) the Second Borrowing (the "Final Roll-Up Loan (Second Borrowing)") and (ii) on the date of the Third Borrowing (if any), in an amount equal to 80% of the Third Borrowing (the "Final Roll-Up Loan (Third Borrowing)"). All Roll-Up Loans shall initially be Eurocurrency Borrowings with an Interest Period of one month.

(f) The Administrative Agent, the Lenders and the Borrowers each acknowledge and agree that the Contingent Roll-Up Loan (if any) shall be deemed fully funded, in each case in accordance with the terms of the Final DIP Order (without any notice or request by the Borrower), on the date of the Second Borrowing in the amount (if any) by which the outstanding Commitments on such date exceed the amount of the Second Borrowing. On the date of the Third Borrowing (if any), consistent with the Final DIP Order, any outstanding Contingent Roll-Up Loan shall automatically convert into a Final Roll-Up Loan (Third Borrowing) and such Final Roll-Up Loan (Third Borrowing) shall be deemed to be made pursuant to Section 2.01(e)(iii) on such date (without any notice or request by the Borrower). For the avoidance of doubt, prior to the date of the Third Borrowing (if any), any Contingent Roll-Up Loans shall be treated as set forth in the Final DIP Order and not deemed to be Roll-Up Loans for purposes of this Agreement, including, without limitation, that such Contingent Roll-Up Loans shall not bear interest under this Agreement and shall be treated for all purposes as having identical substantive rights (including with respect to economic rights, guarantees, collateral and lien priority) to those of the 2021 Notes, as set forth in the Final DIP Order.

(g) Loans prepaid or repaid may not be reborrowed. For the avoidance of doubt, any unused Commitments shall terminate on the earliest of (i) the date of the borrowing of all unused Commitments, (ii) the Maturity Date and (iii) 30 days after the Final DIP Order Entry Date.

(h) Any fees paid in kind (by being added to the outstanding principal balance of the Loans) pursuant to Section 2.10 on the date that any Loan is funded shall not utilize any of the Commitments hereunder and shall not constitute part of the applicable borrowing, but shall otherwise for all purposes hereunder be treated (and shall bear interest) as outstanding Loans.

SECTION 2.02. Loans and Borrowings.

(a) Each Loan shall be made as part of a Borrowing consisting of Loans of the same Type made by the Lenders ratably in accordance with their respective Commitments. The

failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to Section 2.12, each Borrowing shall be comprised entirely of ABR Loans or Eurocurrency Loans as any Borrower may request in accordance herewith. Each Lender at its option may make any ABR Loan or Eurocurrency Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of any Borrower to repay such Loan in accordance with the terms of this Agreement and such Lender shall not be entitled to any amounts payable under Section 2.13 or 2.15 solely in respect of increased costs resulting from such exercise and existing at the time of such exercise.

(c) Notwithstanding any other provision of this Agreement, no Borrower shall be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.03. Requests for Borrowings. To request a Borrowing, the Administrative Borrower shall notify the Administrative Agent of such request by telephone (a) in the case of a Eurocurrency Borrowing, not later than 12:00 p.m., Local Time, three (3) Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 12:00 noon, Local Time, one Business Day before the date of the proposed Borrowing; *provided* that, in any event, the Borrowing Request with respect to the Second Borrowing shall be delivered not later than the Expiration Time not in accordance with the foregoing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Borrowing Request in a form annexed hereto as Exhibit B and signed by the applicable Borrower. Each such telephonic and written Borrowing Request shall be irrevocable and shall specify the following information in compliance with Section 2.02:

(i) the aggregate amount of the requested Borrowing (expressed in Dollars);

(ii) the date of such Borrowing, which shall be a Business Day;

(iii) whether such Borrowing is to be an ABR Borrowing or a Eurocurrency Borrowing; and

(iv) the location and number of the account to which funds are to be disbursed (which shall be the Segregated Account).

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing. Subject to the terms and conditions set forth herein, all Roll-Up Loans will be deemed made and fully funded as Eurocurrency Borrowings with an Interest Period of one month concurrently with the deemed making thereof on the date set forth in Section 2.01(e).

SECTION 2.04. Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, Local Time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Loans available to the applicable Borrower by promptly wiring the amounts so received, in like funds, to the Segregated Account. Notwithstanding anything to the contrary, any Lender may make any of its Loans to be made by it hereunder by wire transfer of immediately available funds directly to the Segregated Account.

(b) The Borrowers may draw from the Segregated Account once per week (each, a "Weekly Draw"), subject to compliance with Sections 5.14 and 6.23, and use the proceeds of such draws solely in accordance with Sections 3.11, 5.09 and 6.24. The Administrative Agent shall make any Weekly Draw Request received by it available to the Lenders promptly upon receipt thereof from the Borrower and shall, unless the Required Lenders have advised the Administrative Agent that the conditions for a Weekly Draw are not satisfied, countersign and deliver such Weekly Draw Request to the Escrow Agent pursuant to the Escrow Agreement two Business Days thereafter.

SECTION 2.05. Interest Elections.

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request. Thereafter, the Borrowers may elect to convert such Borrowing to a different Type, or to continue such Borrowing, all as provided in this Section. The Borrowers may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Administrative Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrowers were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Administrative Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clause (iii) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day; and

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurocurrency Borrowing.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender to which such Interest Election Request relates of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Administrative Borrower fails to deliver a timely Interest Election Request with respect to a Eurocurrency Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall continue as a Eurocurrency Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the written request (including a request through electronic means) of the Required Lenders, so notifies the Borrowers, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurocurrency Borrowing and (ii) unless repaid, each Eurocurrency Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.06. Incremental Loans.

(a) The Borrower may on one or more occasions, by written notice to the Administrative Agent, request the making of Incremental Loans; provided that (i) the making of any Incremental Loans shall require the prior written consent of the Required Lenders and (ii) the aggregate amount of all Incremental Loans after the Effective Date shall not exceed $10,000,000. Each such notice shall specify (A) the date on which the Borrower proposes the Incremental Loans to be made, which shall be a date not less than 10 Business Days (or such shorter period as may be agreed to by the Administrative Agent and the Required Lenders) after the date on which such notice is delivered to the Administrative Agent, and (B) the amount of the Incremental Loans being requested (it being agreed that (x) any Lender approached to provide any Incremental Loan may elect or decline, in its sole discretion, to provide such Incremental Loan and (y) any Person that the Borrower proposes to become an Incremental Lender, if such Person is not then a Lender, must be reasonably acceptable to the Administrative Agent and the Required Lenders).

(b) The terms and conditions of any Incremental Loans shall be, except as otherwise set forth herein or in the applicable Incremental Amendment, identical to those of the New Money Loans that are then outstanding, provided that the only conditions to funding of such Incremental Loans contained in the applicable Incremental Amendment shall be the conditions set forth in Section 4.02 (provided that for the purposes of determining whether or not any Borrowing Base Deficiency exists or would result from the making of any Incremental Loans, such Incremental Amendment shall amend the definition of Advance Rate to increase the percentage as necessary to permit such Incremental Loans), to the extent applicable at such time to such Incremental Loans.

(c) Any Incremental Loans shall be effected pursuant to one or more Incremental Amendments executed and delivered by the Borrower, each Incremental Lender providing such Incremental Loans and the Administrative Agent. Each Incremental Amendment

may, with the consent of the Required Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent and the Required Lenders, to give effect to the provisions of this Section.

(d) Upon the making of an Incremental Loan by any Incremental Lender, such Incremental Lender shall be deemed to be a "Lender" hereunder, and henceforth shall be entitled to all the rights of, and benefits accruing to, Lenders hereunder and shall be bound by all agreements, acknowledgements and other obligations of Lenders hereunder and under the other Loan Documents. Upon the making of any Incremental Loans, such Incremental Loans shall be deemed to be and treated as New Money Loans for all purposes of this Agreement.

(e) Incremental Roll-Up Loans shall be deemed made pursuant to such terms as provided in the Final DIP Order or any applicable order entered into by the Bankruptcy Court. After such deemed making, the terms and conditions of any Incremental Roll-Up Loans shall be identical to those of the Roll-Up Loans that are then outstanding.

SECTION 2.07. Evidence of Debt.

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrowers to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder and the Type thereof, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder and (iii) any amount received by such Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(c) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Loans in accordance with the terms of this Agreement.

(d) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrowers shall prepare, execute and deliver to such Lender a promissory note payable to such Lender or its registered assigns and in a form approved by the Required Lenders. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 10.04) be represented by one or more Notes.

SECTION 2.08. Repayment of Loans.

(a) Each Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender all outstanding Obligations (whether of principal, interest, fees or otherwise, and including with respect to Roll-Up Loans and Incremental Loans) on the Maturity Date.

(b) Prior to any repayment of any Borrowing hereunder, other than upon the Maturity Date, the Borrowers shall select the Borrowing or Borrowings to be repaid and shall notify the Administrative Agent by telephone (confirmed by telecopy) of such selection not later than noon Local Time, (i) in the case of an ABR Borrowing, one Business Day before the scheduled date of such repayment and (ii) in the case of a Eurocurrency Borrowing, three (3) Business Days before the scheduled date of such repayment. Each repayment of a Borrowing shall be applied ratably to the Loans included in the repaid Borrowing. All repayments of Borrowings shall be accompanied by all accrued and unpaid interest with respect to the amount so repaid. Amounts so repaid may not be reborrowed.

SECTION 2.09. Optional and Mandatory Prepayment of Loans.

(a) The Borrowers shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, without premium or penalty (but subject to Section 2.10(d) and Section 2.14), in an aggregate principal amount of at least $1,000,000 and integral multiples of $1,000,000 in excess of that amount (or, if less, the aggregate amount then outstanding), subject to prior notice in accordance with Section 2.08(b).

(b) Within three (3) Business Days of receipt by any Borrower or any Subsidiary of the Net Cash Proceeds of any Asset Disposition or any Casualty and Condemnation Award, in each case, that exceed $250,000 per transaction or series of transactions, the Borrowers shall apply an amount equal to 100% of the Net Cash Proceeds of such Asset Disposition or Casualty and Condemnation Award to prepay the Loans; provided that, in connection with an Asset Disposition that constitutes a sale of all or substantially all of the assets of the Borrowers pursuant to 363 of the Bankruptcy Code, the requirement to make any prepayments with the Net Cash Proceeds of any such Asset Disposition shall be subject to Section 4(c) of the SAPSA.

(c) Within three (3) Business Days of receipt by any Borrower or any Subsidiary of the Net Cash Proceeds from the issuance of Indebtedness (which Indebtedness is not expressly permitted to be incurred under Section 6.02) at any time, the Borrowers shall apply an amount equal to 100% of such Net Cash Proceeds to prepay the Loans.

(d) Within three (3) Business Days of receipt by any Borrower or any Subsidiary of any Extraordinary Receipts that exceed $250,000 in the aggregate (other than any tax refund received by any Borrower Party in respect of federal income taxes for calendar year 2018, but solely in the event that all proceeds thereof are deposited in an operating account of a Borrower that is subject to a Control Agreement), the Borrowers shall apply an amount equal to 100% of such Extraordinary Receipts to prepay the Loans.

(e) In the event that at any time any Borrowing Base Deficiency shall exist, within three (3) Business Days, the Borrowers shall prepay the Loans so that the Borrowing Base Deficiency is promptly cured.

SECTION 2.10. Fees.

(a) On the date of the Initial Borrowing, the Borrowers shall pay to the Administrative Agent, for the account of the Administrative Agent, an agency fee (the

"Administrative Agent Fee") as separately agreed among the Borrowers and the Administrative Agent in the Administrative Agent Fee Letter.

(b) On the date of the Initial Borrowing, the Borrowers shall pay to the Administrative Agent a backstop commitment fee (the "Backstop Commitment Fee") in an amount separately agreed by the Borrowers, which Backstop Commitment Fee shall be fully earned on the Effective Date. The Backstop Commitment Fee shall be paid in kind by adding the amount of such Backstop Commitment Fee to the outstanding principal balance of the Loans of each Lender on the Effective Date. The payment in kind of the Backstop Commitment Fee shall not utilize any Commitments hereunder and shall not be deemed to be part of the Initial Borrowing. The amount of the Backstop Commitment Fee allocated to each Lender is set forth on Schedule 1.01(A) hereto.

(c) On the date of the Initial Borrowing, the Borrowers shall pay to the Administrative Agent, for the account of and for allocation ratably to each Lender, an upfront fee (the "Initial Upfront Fee") in an aggregate amount equal to $100,000, which Upfront Fee shall be fully earned on the Effective Date. The Initial Upfront Fee shall be paid in kind by adding the amount of such Initial Upfront Fee to the outstanding principal balance of the Loans. The payment in kind of the Initial Upfront Fee shall not utilize any Commitments hereunder and shall not be deemed to be part of the Initial Borrowing. The amount of the Initial Upfront Fee allocated to each Lender is set forth on Schedule 1.01(A) hereto.

(d) On the date of the Second Borrowing, the Borrowers shall pay to the Administrative Agent, for the account of and for allocation ratably to each Lender (after giving effect to each Master and Assignment executed and delivered in connection with the Specified Tender Offer), an upfront fee (the "Final Upfront Fee") in an aggregate amount equal to $250,000, which Final Upfront Fee shall be fully earned on the Effective Date. The Final Upfront Fee shall be paid in kind by adding the amount of such Final Upfront Fee to the outstanding principal balance of the Loans. The payment in kind of the Final Upfront Fee shall not utilize any Commitments hereunder and shall not be deemed to be part of the Second Borrowing.

(e) On the Maturity Date, or on the date of a prepayment or repayment of any Loans in part or in full, voluntarily, mandatorily, or upon acceleration of the Loans for any reason, or on any date on which the Loans become due and payable for any reason, the Borrowers shall pay to the Administrative Agent, for the ratable benefit of the Lenders, an exit fee equal to 1.00% of the amount of the New Money Loans outstanding on the Maturity Date or that are so prepaid, repaid or accelerated or which become due and payable for any reason (the "Exit Fee").

(f) All Fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, if and as appropriate, among the Lenders. Once paid, none of the Fees shall be refundable under any circumstances.

SECTION 2.11. Interest.

(a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Margin.

(b) The Loans comprising each Eurocurrency Borrowing shall bear interest at the Adjusted LIBO Rate plus the Applicable Margin.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any Fees or other amount payable by the Borrowers hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest in cash, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2.00% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other overdue amount, 2.00% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section; provided that, should the occurrence of any particular Event of Default be subsequently waived, the rate established by this paragraph (c) shall apply only to that period prior to such waiver.

(d) Accrued interest on each Loan shall be payable in kind (with the interest accrued as of the applicable date being added to the outstanding principal balance of the Loans) in arrears (i) on each Interest Payment Date for such Loan and (ii) on the Maturity Date; provided that (A) interest accrued pursuant to paragraph (c) of this Section shall be payable in cash on demand (and, if no such demand is made, then such interest shall be payable in accordance with clauses (i) and (ii) above), (B) in the event of any repayment or prepayment of any Loan, all accrued interest (which is not reflected in the principal amount being repaid or prepaid at such time) on the principal amount repaid or prepaid shall be payable in cash on the date of such repayment or prepayment and (C) in the event of any conversion of any Eurocurrency Loan, accrued interest on such Loan shall be payable in-kind on the effective date of such conversion. Any additional principal amounts of any Loan resulting from any in-kind payment of interest thereon shall be treated as principal for all purposes hereunder and shall bear interest after such in-kind payment.

(e) All interest hereunder shall be computed on the basis of a year of 360 days. The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.12. Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurocurrency Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrowers and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrowers and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurocurrency Borrowing shall be ineffective and such Borrowing shall be converted to or continued as on the last day of the Interest Period applicable thereto an ABR Borrowing and (ii) if any Borrowing Request requests a Eurocurrency Borrowing, such Borrowing shall be made as an ABR Borrowing or, if requested by the Borrowers, shall be made as a Borrowing bearing interest at such rate as the Required Lenders shall agree adequately reflects the costs to the Lenders of making the Loans comprising such Borrowing.

SECTION 2.13. Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender;

(ii) subject any Lender to any Tax of any kind whatsoever with respect to any Loan Document, or any Loan made or to be made by such Lender, or the performance by such Lender of its obligations under any Loan Document (except for Indemnified Taxes covered by Section 2.15 and any Tax on net income or profits or overall gross receipts, including but not limited to any Excluded Tax payable by such Lender); or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Eurocurrency Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, continuing, converting to or maintaining any Eurocurrency Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then the Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) If any Lender determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by such Lender, then from time to time the Borrowers shall pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as applicable, as specified in paragraph (a) or (b) of this Section shall be delivered to the Administrative Borrower and shall be conclusive

absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Promptly after any Lender has determined that it will make a request for increased compensation pursuant to this Section 2.13, such Lender shall notify the Administrative Borrower thereof. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation.

(e) Notwithstanding any other provision of this Section, no Lender shall demand compensation for any increased cost or reduction pursuant to this Section if it shall not at the time be the general policy and practice of such Lender to demand such compensation in similar circumstances under comparable provisions of other credit agreements.

SECTION 2.14. Break Funding Payments. In the event of (a) the payment of any principal of any Eurocurrency Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurocurrency Loan on the date specified in any notice delivered pursuant hereto or (d) the assignment of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Administrative Borrower pursuant to Section 2.17, then, in any such event, the Borrowers shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurocurrency Loan, such loss, cost or expense to any Lender shall be deemed to be the amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue a Eurocurrency Loan, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for deposits in Dollars of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Administrative Borrower and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

SECTION 2.15. Taxes.

(a) Any and all payments by or on account of any obligation of any Borrower under any Loan Document shall be made free and clear of and without deduction for any Taxes; provided that, if a Borrower, the Administrative Agent or other applicable withholding agent shall be required to deduct any Tax from any such payment, then (i) if such Tax is an Indemnified Tax, the sum payable by the applicable Borrower shall be increased as necessary so that after all required deductions have been made (including deductions applicable to additional sums payable under this Section 2.15) any Agent or Lender, as applicable, receives an amount

equal to the sum it would have received had no such deductions for Indemnified Taxes been made, (ii) the applicable withholding agent shall make such deductions and (iii) the applicable withholding agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, the Borrowers shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Each Borrower shall, jointly and severally, indemnify the Agents and each Lender within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes payable or paid by such Agent or Lender, as applicable, or required to be withheld or deducted with respect to any payment by or on account of any obligation of any Borrower under any Loan Document (including any Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.15) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Administrative Borrower by a Lender, or by the Administrative Agent on its own behalf, on behalf of another Agent or on behalf of a Lender, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Taxes by a Borrower to a Governmental Authority, the Administrative Borrower shall, on behalf of such Borrower, deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Each Lender shall, at such times as are reasonably requested by the Administrative Borrower or the Administrative Agent (or other applicable withholding agent), provide the Administrative Borrower and the Administrative Agent (or other applicable withholding agent) with any documentation prescribed by applicable law or reasonably requested by the Administrative Borrower or the Administrative Agent (or other applicable withholding agent) certifying as to any entitlement of such Lender to an exemption from, or reduction in, withholding Taxes with respect to any payments to be made to such Lender under any Loan Document. Each such Lender shall, whenever a lapse in time or change in circumstances renders such documentation (including any specific documentation required below in this Section 2.15(e)) obsolete, expired or inaccurate in any material respect, deliver promptly to the Borrower and the Administrative Agent (or other applicable withholding agent) updated or other appropriate documentation (including any new documentation reasonably requested by the Administrative Borrower or the Administrative Agent (or other applicable withholding agent) certifying as to any entitlement of such Lender to an exemption from, or reduction in, withholding Taxes with respect to any payments to be made to such Lender under any Loan Document) or promptly notify the Administrative Borrower and the Administrative Agent (or other applicable withholding agent) in writing of its legal ineligibility to do so. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in clauses (i), (ii) and (iii) below) shall not be required if in the Lender's reasonable judgment such completion,

execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

Without limiting the foregoing:

(i) Each U.S. Lender shall deliver to the Administrative Borrower and the Administrative Agent (or other applicable withholding agent) on or before the date on which it becomes a party to this Agreement two properly completed and duly signed copies of Internal Revenue Service Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding.

(ii) Each Foreign Lender shall deliver to the Administrative Borrower and the Administrative Agent (or other applicable withholding agent) on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Administrative Borrower or the Administrative Agent (or other applicable withholding agent) whichever of the following is applicable:

(A) two properly completed and duly signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party, and such other documentation as required under the Code,

(B) two properly completed and duly signed copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(C) in the case of a Foreign Lender that is not a bank described in Section 881(c)(3)(A) of the Code and that is entitled to claim the benefits of the exemption for portfolio interest under Section 871(h) or Section 881(c) of the Code, (A) two properly completed and duly signed certificates substantially in the form of Exhibit F-1, Exhibit F-2, Exhibit F-3 or Exhibit F-4, as applicable, (any such certificate, a "United States Tax Compliance Certificate") and (B) two properly completed and duly signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor forms), and/or

(D) to the extent a Foreign Lender is not the beneficial owner (for example, where the Foreign Lender is a partnership or a participating Lender), Internal Revenue Service Form W-8IMY (or any successor forms) of the Foreign Lender, accompanied by an Internal Revenue Service Form W-8ECI, W-8BEN or W-8BEN-E, United States Tax Compliance Certificate, Internal Revenue Service Form W-9, Internal Revenue Service Form W-8IMY or any other required information (or any successor forms) from each direct or indirect beneficial owner that would be required under this Section 2.15(e) if such beneficial owner were a Lender, as applicable (provided that, if the Foreign Lender is a partnership (and not a participating Lender) and one or more of its direct or indirect partners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Foreign Lender on behalf of such direct or indirect partners).

(iii) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable requirements of those Code Sections (including those contained in Sections 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Administrative Borrower and the Administrative Agent (or other applicable withholding agent) at the time or times prescribed by applicable law and at such time or times reasonably requested by the applicable withholding agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Administrative Borrower or the Administrative Agent (or other applicable withholding agent) as may be necessary (as determined by the applicable withholding agent) (A) for the applicable withholding agent to comply with its obligations under FATCA and (B) to determine whether such Lender has or has not complied with such Lender's obligations under FATCA and, if necessary, to determine the amount to deduct and withhold from such payment.

(iv) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Administrative Borrower and the Administrative Agent (or other applicable withholding agent) on or before the date on which it becomes a party to this Agreement, two properly completed and duly signed copies of any other form prescribed by applicable U.S. federal income tax laws (including the Treasury Regulations) as a basis for claiming a complete exemption from, or a reduction in, U.S. federal withholding tax on any payments to such Lender under the Loan Documents.

Notwithstanding any other provision of this Section 2.15(e), a Lender shall not be required to deliver any form that such Lender is not legally eligible to deliver.

(f) If an Agent or a Lender determines, in good faith and in its sole discretion, that it has received a refund of any Indemnified Taxes as to which it has been indemnified by a Borrower or with respect to which such Borrower has paid additional amounts pursuant to this Section 2.15, it shall pay over such refund to such Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by such Borrower under this Section 2.15 with respect to the Indemnified Taxes giving rise to such refund), net of all out-of-pocket expenses of such Agent or such Lender (including any Taxes imposed with respect to such refund) as is determined by such Agent or Lender in good faith and in its sole discretion, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that such Borrower, upon the request of such Agent or such Lender, agrees to repay as soon as reasonably practicable the amount paid over to such Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such Agent or such Lender in the event such Agent or such Lender is required to repay such refund to such Governmental Authority. This Section shall not be construed to require any Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the Borrowers or any other person. Notwithstanding anything to the contrary in this paragraph (f), in no event will the Administrative Agent or any Lender be required to pay amounts to any Borrower pursuant to this paragraph (f) to the extent such payment would place the Administrative Agent or such Lender in a less favorable net after-Tax

position than the Administrative Agent or such Lender would have been in if the Indemnified Taxes or Other Taxes giving rise to such refund had never been imposed.

(g) Each party's obligations under this Section shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

SECTION 2.16. Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) Unless otherwise specified, the Borrowers shall make each payment required to be made by it hereunder (whether of principal, interest, fees or of amounts payable under Sections 2.13, 2.15 or 2.16, or otherwise) prior to 2:00 p.m., Local Time, on the date when due, in immediately available funds, without condition or deduction for any defense, recoupment, set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Required Lenders, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent to the applicable account designated to the Administrative Borrower by the Administrative Agent, except payments pursuant to Sections 2.13, 2.15, 2.16 and 10.05 shall be made directly to the persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other person to the appropriate recipient immediately following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be the immediately preceding Business Day. All payments hereunder of (i) principal or interest in respect of any Loan, or (ii) any other amount due hereunder or under another Loan Document shall be made in Dollars. Any payment required to be made by the Administrative Agent hereunder shall be deemed to have been made by the time required if such Administrative Agent shall, at or before such time, have taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by such Administrative Agent to make such payment.

(b) If at any time insufficient funds are received by and available to the Administrative Agent from the Borrowers to pay fully all amounts of principal, interest and fees then due from the Borrowers hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due from the Borrowers hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal then due from the Borrowers hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; provided that (i) if any such participations are

purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph (c) shall not be construed to apply to any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrowers or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph (c) shall apply). Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Administrative Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Sections 2.04(b) or 2.16(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.17. Mitigation Obligations.

(a) If any Lender requests compensation under Section 2.15, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.13 or 2.15, as applicable, in the future and (ii) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. Each Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.13, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 10.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another

Lender, if a Lender accepts such assignment); provided that (i) the Borrowers shall have received the prior written consent of the Required Lenders, which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it under the Loan Documents, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.13 or payments required to be made pursuant to Section 2.15, such assignment will result in a reduction in such compensation or payments.

SECTION 2.18. Illegality. If any Lender reasonably determines that any change in law has made it unlawful, or that any Governmental Authority has asserted after the Effective Date that it is unlawful, for any Lender or its applicable lending office to make or maintain any Eurocurrency Loans, then, on notice thereof by such Lender to the Administrative Borrower through the Administrative Agent, any obligations of such Lender to make or continue Eurocurrency Loans or to convert ABR Borrowings to Eurocurrency Borrowings shall be suspended until such Lender notifies the Administrative Agent and the Administrative Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrowers shall upon demand from such Lender (with a copy to the Administrative Agent), convert all Eurocurrency Borrowings of such Lender to ABR Borrowings, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Loans. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

SECTION 2.19. Priority and Liens. Each of the Borrowers hereby covenants and agrees that upon the entry of an Interim DIP Order (and when applicable, the Final DIP Order), and at all times thereafter:

(a) Pursuant to Section 364(c)(1) of the Bankruptcy Code, all of its Obligations shall at all times constitute an allowed Superpriority Claim in the Cases: (a) except as set forth in the Interim DIP Order (and when applicable, the Final DIP Order), with priority over any and all administrative expense claims and unsecured claims against the Borrowers or their estates in any of the Cases (but junior only to the Carve-Out, and *pari passu* with the A/R Securitization Facility Superpriority Claim), at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code Sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114, and any other provision of the Bankruptcy Code, as provided under Section 364(c)(1) of the Bankruptcy Code; and (b) which shall at all times be senior to the rights of the Borrowers and their estates, and any successor trustee or other estate representative to the extent permitted by law.

(b) Such Superpriority Claim shall, for purposes of Section 1129(a)(9)(A) of the Bankruptcy Code, be subject and subordinate to the Carve-Out and shall be considered an administrative expense allowed under Section 503(b) of the Bankruptcy Code, shall be against each Borrower on a joint and several basis, and shall be payable from and have recourse to all property of the Debtors' estates (including, without limitation, all claims and causes of action

arising under chapter 5 of the Bankruptcy Code and any the proceeds thereof). Notwithstanding anything to the contrary, such Superpriority Claim shall be *pari passu* with any A/R Securitization Facility Superpriority Claim**.**

(c) The Liens granted to the Collateral Agent (for the benefit of the Secured Parties) securing the Obligations are continuing, valid, binding, enforceable, non-avoidable and perfected liens on all Collateral, and shall constitute, subject to clause (d) below:

(i) pursuant to Section 364(d)(1) of the Bankruptcy Code, a valid perfected first priority priming lien on, other than the Receivables Equity, all of the existing and after-acquired personal and real property, leasehold interests in real property, and tangible and intangible personal property of the Borrowers, including, without limitation, all cash and cash equivalents, all surface land, accounts receivable and other receivables (other than, in each case, the A/R Securitization Facility Collateral), inventory, equipment, machinery, parts, supplies, rolling stock, fixtures, patents, trade names, trademarks, copyrights, other general intangibles and membership interests, capital stock and Equity Interests owned by the Borrowers, in each case, together with the proceeds thereof and all books and records relating thereto; provided, that, such priority priming lien shall be subject to the Prior Permitted Liens and any account holding adequate assurance deposits for the benefit of the Borrowers' utility providers during the pendency of the Cases;

(ii) pursuant to Section 364(c)(3) of the Bankruptcy Code, subject to the Carve-Out, a valid perfected second priority lien on (A) the Receivables Equity and (B) any collateral subject to a Prior Permitted Lien (other than the A/R Securitization Facility Collateral); and

(iii) pursuant to Section 364(c)(2) of the Bankruptcy Code, subject to the Carve-Out, upon entry of the Final DIP Order and to the extent approved by the Bankruptcy Court, a valid perfected first priority lien on any property or proceeds recovered from any Avoidance Actions;

provided, that, there shall be no Lien on amounts held in trust by a Specified Borrower for the A/R Securitization Seller or the secured parties under the A/R Securitization Facility.

(d) The Liens granted to the Collateral Agent (for the benefit of the Secured Parties) and such Superpriority Claim, subject to the Carve-Out: (i) shall not be subject to Sections 506, 510, 549, 550, or 551 of the Bankruptcy Code or the "equities of the case" exception of Section 552 of the Bankruptcy Code, (i) shall not be subordinate to, or *pari passu* with, (w) any lien, security interest or claim heretofore or hereinafter granted in any of the Cases or any Successor Cases (other than the A/R Securitization Facility Superpriority Claim and the liens on the Receivables Equity), (y) any lien that is avoided and preserved for the benefit of the Borrowers and their estates under Section 551 of the Bankruptcy Code or otherwise or (y) any intercompany or affiliate liens or claims of the Debtors, and (iii) shall be valid and enforceable against any trustee or any other estate representative appointed or elected in the Cases, upon the

conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing, and/or upon the dismissal of any of the Cases.

(e) All of the Liens described in this Section 2.19 that have been granted to the Collateral Agent (for the benefit of the Secured Parties) shall be effective and perfected upon entry of the Interim DIP Order, without the necessity of the execution, recordation of filings by the Debtors of mortgages, intellectual property security agreements, security agreements, control agreements, pledge agreements, financing statements or other similar documents, lien notation on any certificates of title, or the possession or control by any Agent or any Secured Party of, or over, any Collateral, as set forth in the Interim DIP Order.

SECTION 2.20. No Discharge; Survival of Claims. Each of the Borrowers agrees that (i) unless satisfied in full, its Obligations shall not be discharged by the entry of a Final Order confirming a Chapter 11 Plan unless such Chapter 11 Plan provides for the termination of the Commitments and the payment in full in cash of the Obligations under the Loan Documents (other than contingent indemnification obligations as to which no claim has been asserted) on the Consummation Date of such Chapter 11 Plan (and each of the Borrowers, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (ii) the Superpriority Claim granted to the Agents and the Lenders pursuant to the DIP Orders and the Liens granted to the Agents and the Lenders pursuant to the DIP Orders shall not be affected in any manner by the entry of a Final Order confirming a Chapter 11 Plan.

SECTION 2.21. Payment of Obligations. Subject to the last paragraph of Section 8.01, upon the maturity (whether by acceleration or otherwise) of any of the Obligations of the Borrowers under this Agreement or any of the other Loan Documents, the Administrative Agent and the Lenders shall be entitled to immediate payment of such Obligations without further application to or order of the Bankruptcy Court.

SECTION 2.22. Joint and Several Liability. All Loans, upon funding, shall be deemed to be jointly funded to and received by the Borrowers. Each Borrower is jointly and severally liable under this Agreement for all Obligations, regardless of the manner or amount in which proceeds of Loans are used, allocated, shared or disbursed by or among the Borrowers themselves, or the manner in which an Agent and/or any Lender accounts for such Loans on its books and records. Each Borrower shall be liable for all amounts due to the Administrative Agent and/or any Lender from the Borrowers under this Agreement, regardless of which Borrower actually receives Loans hereunder or the amount of such Loans received or the manner in which such Agent and/or such Lender accounts for such Loans on its books and records. Each Borrower's Obligations with respect to Loans made to it, and such Borrower's Obligations arising as a result of the joint and several liability of such Borrower hereunder with respect to Loans made to the other Borrowers hereunder shall be separate and distinct obligations, but all such Obligations shall be primary obligations of such Borrower. The Borrowers acknowledge and expressly agree with the Agents and each Lender that the joint and several liability of each Borrower is required solely as a condition to, and is given solely as inducement for and in consideration of, credit or accommodations extended or to be extended under the Loan Documents to any or all of the other Borrowers and is not required or given as a condition of Loans to such Borrower. Each Borrower's Obligations under this Agreement shall, to the fullest extent permitted by law, be unconditional irrespective of (i) the release of any other Borrower or

the validity or enforceability, avoidance, or subordination of the Obligations of any other Borrower or of any promissory note or other document evidencing all or any part of the Obligations of any other Borrower, (ii) the absence of any attempt to collect the Obligations from any other Borrower, or any other security therefor, or the absence of any other action to enforce the same, (iii) the waiver, consent, extension, forbearance, or granting of any indulgence by an Agent and/or any Lender with respect to any provision of any instrument evidencing the Obligations of any other Borrower, or any part thereof, or any other agreement now or hereafter executed by any other Borrower and delivered to an Agent and/or any Lender, (iv) the failure by an Agent and/or any Lender to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Obligations of any other Borrower, (v) an Agent's and/or any Lender's election, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code, (vi) any borrowing or grant of a security interest by any other Borrower, as debtor-in-possession under Section 364 of the Bankruptcy Code, (vii) the disallowance of all or any portion of an Agent's and/or any Lender's claim(s) for the repayment of the Obligations of any other Borrower under Section 502 of the Bankruptcy Code, or (viii) any other circumstances which might constitute a legal or equitable discharge or defense of a guarantor or of any other Borrower. With respect to any Borrower's Obligations arising as a result of the joint and several liability of the Borrowers hereunder with respect to Loans made to any of the other Borrowers hereunder, such Borrower waives, until the Obligations shall have been paid in full and this Agreement shall have been terminated, any right to enforce any right of subrogation or any remedy which an Agent and/or any Lender now has or may hereafter have against any other Borrower, any endorser or any guarantor of all or any part of the Obligations, and any benefit of, and any right to participate in, any security or collateral given to an Agent and/or any Lender to secure payment of the Obligations or any other liability of any Borrower to an Agent and/or any Lender. Upon any Event of Default, the Agents may proceed directly and at once, without notice, against any Borrower to collect and recover the full amount, or any portion of the Obligations, without first proceeding against any other Borrower or any other Person, or against any security or collateral for the Obligations. Each Borrower consents and agrees that the Agents shall be under no obligation to marshal any assets in favor of any Borrower or against or in payment of any or all of the Obligations.

ARTICLE III.

REPRESENTATIONS AND WARRANTIES

Each Borrower represents and warrants to each of the Lenders that:

SECTION 3.01. Organization; Powers. Each Borrower and each of the Subsidiaries (a) is a partnership, limited liability company or corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, formation or incorporation, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to own its assets and to carry on its business as now conducted, (c) is duly qualified and is licensed and, as applicable, in good standing, under the laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license, except where the failure so to qualify would not reasonably be expected to have a Material Adverse Effect, and (d) subject, in the case of each Borrower that is a Debtor, to the entry of the DIP Orders and subject to the terms thereof, has the

power and authority to execute, deliver and perform its obligations under each of the Loan Documents and each other agreement or instrument directly related thereto to which it is a party, and consummate the Transactions contemplated thereby, including, in the case of each Borrower, to borrow and otherwise obtain credit hereunder.

SECTION 3.02. Authorization. Subject, in the case of each Borrower that is a Debtor, to the entry of the DIP Orders and subject to the terms thereof, the execution, delivery and performance by each Borrower and each of the Subsidiaries of each of the Loan Documents to which it is a party and the borrowings hereunder (a) have been duly authorized by all corporate, stockholder, limited liability company or partnership or other organizational action required to be obtained by such Borrower and such Subsidiaries and (b) (i) do not violate (A) any provision of law, statute, rule or regulation (including, without limitation, any Mining Law), or contravene the terms of any Organizational Document of any Borrower or any Subsidiary, (B) any applicable order of any court or any rule, regulation or order of any Governmental Authority (including, without limitation, any Mining Permit) or (C) any indenture, lease (including, without limitation, any Mining Lease), agreement or other instrument to which any such Borrower or any such Subsidiary is a party or by which any of them or any of their respective assets are or may be bound, except in respect of the Existing Indenture Documents, (ii) are not in conflict with, and do not result in a breach of or constitute (alone or with notice or lapse of time or both) a default under, give rise to a right of or result in any cancellation or acceleration of any right or obligation (including any payment) or to a loss of a material benefit under, any indenture, lease (including, without limitation, any Mining Lease), or other similar agreement or instrument, except in respect of the Existing Indenture Documents, or (iii) conflict with or result in any breach or contravention of, or the creation or imposition of any Lien (except for any Liens that arise under the Loan Documents) upon or with respect to any assets now owned or hereafter acquired by any Borrower or any such Subsidiary, or require any payment to be made under (A) any contractual obligation to which such Borrower or such Subsidiary is a party or affecting such Borrower or such Subsidiary or the properties of such Borrower, such Subsidiary or any of its or their Subsidiaries, except in respect of the Existing Indenture Documents or (B) any order, injunction, writ or decree of any governmental authority or any arbitral award to which such Borrower or such Subsidiary or its or their property is subject, in each case of this clause (b) where any such violation, conflict, breach, contravention, imposition of Lien, default, cancellation, acceleration or loss, would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.03. Enforceability. Subject, in the case of each Borrower that is a Debtor, to the entry of the DIP Orders and subject to the terms thereof, this Agreement has been duly executed and delivered by each Borrower and constitutes, and each other Loan Document when executed and delivered by each Borrower that is party thereto will constitute, a legal, valid and binding obligation of such Borrower enforceable against each such Borrower in accordance with its terms, subject to (i) except in the case of each Borrower that is not a Debtor, the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors' rights generally, (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (iii) implied covenants of good faith and fair dealing.

SECTION 3.04. Governmental Approvals. Subject to the entry of the DIP Orders and subject to the terms thereof, no action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required in connection with the Transactions except for (a) such consents, authorizations, filings or other actions that (i) have been made or obtained and are in full force and effect, (ii) notices required under the Mining Permits and Environmental Permits regarding a change in control solely to the extent required for the exercise of remedies in respect of the Liens created hereunder, which will be given to the applicable Governmental Authority on or prior to the date by which such notices are due or (iii) are listed on Schedule 3.04 hereto, (b) the filing of UCC financing statements, (c) filings with the United States Patent and Trademark Office and the United States Copyright Office and (d) such actions, consents and approvals the failure to be obtained or made which would not reasonably be expected to have a Material Adverse Effect.

SECTION 3.05. Financial Statements. There has heretofore been furnished to the Lenders the consolidated balance sheets as of December 31, 2017 and 2018 (the "Closing Date Financial Statements"), and related consolidated statements of operations, stockholders' equity and comprehensive income and cash flows of CPE and its consolidated subsidiaries for such fiscal years, audited by and accompanied by an opinion of PricewaterhouseCoopers LLP, independent public accountants, which financial statements (A) have been prepared in accordance with GAAP and (B) present fairly and accurately the consolidated financial condition and results of operations and cash flows of CPE and its consolidated subsidiaries as of the dates and for the periods to which they relate.

SECTION 3.06. No Material Adverse Effect. Since December 31, 2018, there has been no event or occurrence which has resulted in or would reasonably be expected to result in, individually or in the aggregate, any Material Adverse Effect.

SECTION 3.07. Title to Properties; Possession Under Leases.

(a) Each of the Borrowers and the Subsidiaries has good and marketable title to, or valid and subsisting leasehold interests in, or easements or other limited property interests in all of its property, including, without limitation, all personal property, all Real Property, and all Equity Interests, subject solely to Permitted Real Estate Encumbrances and except where the failure to have such title or interest would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Borrowers and the Subsidiaries have maintained or caused to be maintained, in all respects and in accordance with normal mining industry or prudent oilfield practice, all of the machinery, equipment, vehicles, preparation plants or other Coal processing facilities, loadout and other transportation facilities and other tangible personal property now owned or leased by the Borrowers and the Subsidiaries that is necessary to conduct their business as it is now conducted at such properties, except where the failure to maintain would not reasonably be expected to have a Material Adverse Effect. As of the Effective Date, Part 1 of Schedule 3.07(a) hereto sets forth a true, complete, accurate and correct list of all Material Leased Real Property and Part 2 of Schedule 3.07(a) hereto sets forth a true, complete, accurate and correct list of all Material Owned Real Property. There has been no occurrence of any fire, explosion, implosion, collapse, flooding, accident, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, in each case affecting any Borrower or any of its Subsidiaries, that either

individually or in the aggregate, directly or indirectly resulted in or could reasonably be expected to result in, a Material Adverse Effect.

(b) Other than as a result of the filing of the Cases, each of the Borrowers and the Subsidiaries has complied with all obligations under all leases (including, without limitation, Mining Leases and Real Property Leases) to which it is a party, except where the failure to comply would not have a Material Adverse Effect, and all such leases are in full force and effect, except (i) leases in respect of which the failure to be in full force and effect would not reasonably be expected to have a Material Adverse Effect and (ii) that are less than fully marketable because the consent of the lessor to a future assignment has not been obtained. Each of the Borrowers and the Subsidiaries enjoys peaceful and undisturbed possession under all such leases, in each case other than leases in respect of which the failure to enjoy peaceful and undisturbed possession would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) As of the Effective Date, except as set forth on Schedule 3.07(c) to this Agreement, none of the Borrowers or any of the Subsidiaries has received written or, to the knowledge of any Borrower and/or any Subsidiary, other notice of claims that any Borrower or any Subsidiary has mined any Coal that it did not have the right to mine or mined any Coal or produced any oil, natural gas or other hydrocarbons in such a manner as to give rise to any claims for loss, waste or trespass, and, to the knowledge of the Borrowers and the Subsidiaries, no facts exist upon which such a claim could be based, in each case, other than claims that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. To the knowledge of the Borrowers, all Material Real Property that is being mined or operated is in a physical condition that would permit mining or oil and natural gas production operations as presently conducted in all material respects.

(d) (i) Each of the Borrowers and the Subsidiaries owns or possesses the valid right to use all Intellectual Property that is used or held for use in or is otherwise necessary for the present conduct of its business, without any known conflict with the rights of others, except where such conflicts would not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate, or except as set forth on Schedule 3.07(d)(i) to this Agreement, (ii) neither any Borrower nor any of its or their Subsidiaries, nor any of their respective businesses, is to their best knowledge interfering with, infringing upon, misappropriating or otherwise violating, in each case in any material respect, Intellectual Property of any Person, (iii) no claim or litigation regarding any such interference, infringement, misappropriation or violation, or challenging the ownership, validity, enforceability or use of any Intellectual Property of any of the Borrowers or their Subsidiaries, is pending or, to the best knowledge of the Borrowers and the Subsidiaries, threatened, and (iv) to the best knowledge of the Borrowers and the Subsidiaries, no Person is interfering with, infringing upon, misappropriating or otherwise violating, in each case in any material respect, Intellectual Property owned or possessed by any of the Borrowers or their Subsidiaries.

(e) None of any Borrower or any of its or their Subsidiaries has received any written or, to the knowledge of any Borrower, other notice of any pending or contemplated condemnation proceeding affecting any of its Real Property or any sale or disposition thereof in lieu of condemnation that remains unresolved, except where such condemnation proceeding

would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, except as set forth on Schedule 3.07(e) to this Agreement or the Cases.

(f) None of the Borrowers and their Subsidiaries is obligated under any right of first refusal, preferential right to purchase, option or other contractual right to sell, assign or otherwise dispose of any Real Property or any interest therein, other than customary buy-back provisions following the termination of mining operations, satisfaction of reclamation obligations and release of applicable Mining Permits with respect to Real Property, except where such right of first refusal, preferential right to purchase, option or other contractual right would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or except as set forth on Schedule 3.07(f) to this Agreement.

(g) Schedule 3.07(g) to this Agreement sets forth the true, complete, accurate and correct name and jurisdiction of incorporation, formation or organization of each Borrower and each Subsidiary and the percentage of each class of Equity Interests owned by any Borrower or by any such Subsidiary, indicating the ownership thereof. Other than as set forth in Schedule 3.07(g), CPE does not have any direct or indirect Subsidiaries.

(h) There are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options and other rights to receive Equity Interests of a Borrower granted to employees or directors and directors' qualifying shares) of any nature relating to any Equity Interests of any Borrower or any of the Subsidiaries, except where such subscriptions, options, warrants, calls, rights or other agreements or commitments would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or except as set forth on Schedule 3.07(h) to this Agreement.

(i) All of the outstanding Equity Interests in each Borrower and each Subsidiary have been validly issued, are fully paid and nonassessable, and (other than the Equity Interests in CPE) are owned free and clear of all Liens (except those Liens permitted under Section 6.03).

(j) With respect to each Real Property, there are no rights or claims of parties in possession not shown by the public records, encroachments, overlaps, boundary line disputes or other matters which would be disclosed by an accurate survey or inspection of the premises except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.08. Litigation; Compliance with Laws.

(a) The Borrowers and the Subsidiaries are in compliance in all material respects with applicable Environmental Laws, Environmental Permits (as defined below) and Mining Permits. Except as set forth on Schedule 3.08(a) to this Agreement, (x) except for the Cases, there are no actions, suits, investigations or proceedings, including any claims under Environmental Law, at law or in equity or by or on behalf of any Governmental Authority or any other Person or in arbitration now pending against, or, to the knowledge of any Borrower, threatened in writing against or affecting, any Borrower or any of the other Subsidiaries or any business, property (including any Real Property) or rights of any such person (i) that involve or

purport to affect or pertain to any Loan Document or the Transactions; (ii) which would reasonably be expected, individually or in the aggregate, to materially adversely affect the Transactions; or (iii) as to which there is a reasonable likelihood of adverse determinations that would reasonably be expected to result in a Material Adverse Effect; (y) none of the Borrowers or any Subsidiary has been notified in writing, or, to the knowledge of any Borrower and the Subsidiaries, otherwise notified, by the Federal Office of Surface Mining or the agency of any state administering the Surface Mining Control and Reclamation Act of 1977, as amended, or any comparable state statute that it is: (i) ineligible to receive additional surface mining permits or (ii) under investigation to determine whether their eligibility to receive any Mining Permit should be revoked, i.e., "permit blocked", in each case of this clause (y), except as would not reasonably be expected to have a Material Adverse Effect; and (z) to the knowledge of any Borrower, no facts exist that presently or upon the giving of notice or the lapse of time or otherwise would render any Borrower or any Subsidiary ineligible to receive surface mining permits or maintain or comply in all material respects with any Mining Permit.

(b) Except as set forth in Schedule 3.08(b) to this Agreement, none of the Borrowers, the Subsidiaries or their respective assets is in violation of (nor will the continued operation of their material assets as currently conducted violate) any currently applicable law, rule or regulation (including any zoning, building, Environmental Law, ordinance, code or approval, Mining Law, Mining Permit, Mining Lease or any building permit) or any restriction of record or agreement affecting any Real Property, or is in default with respect to any order, judgment, writ, injunction or decree of any Governmental Authority, where such violation or default would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) The Borrowers and the Subsidiaries have, in the amounts and forms in compliance in all material respects with applicable Environmental Laws and orders, Mining Laws, Mining Permits or Mining Leases, obtained all performance bonds and surety bonds, or otherwise provided any financial assurance for the Borrowers' mining and reclamation obligations or otherwise in the ordinary conduct of their business and operations. Schedule 3.08(c) sets forth a true, complete, accurate and correct list of all such bonds.

SECTION 3.09. Federal Reserve Regulations.

(a) None of the Borrowers or the Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of purchasing or carrying Margin Stock.

(b) No part of the proceeds of any Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board, including Regulation U or Regulation X.

SECTION 3.10. Investment Company Act. None of the Borrowers or any Subsidiary is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

SECTION 3.11. Use of Proceeds. The Borrowers will use the proceeds from Borrowings of Loans only for the following purposes in each case, in accordance with the Approved Budget (as adjusted for any variance not constituting an Unpermitted Variance): (i) general corporate and working capital purposes; (ii) costs of the administration of the Cases, (iii) payment of all reasonable and documented accrued and unpaid transaction costs, fees and expenses with respect to the Facility, including fees and expenses of professional advisors to the Lenders and the Agents and (iv) in the case of Roll-Up Loans, to refinance and discharge Secured Notes Debt (as defined in the Interim DIP Order and, when entered, the Final DIP Order) as set forth in paragraph 6 of the Interim DIP Order (or any corresponding paragraph of the Final DIP Order); provided, that, with the prior written consent of the Required Lenders (which consent shall not be unreasonably withheld), proceeds of the Loans may be used to satisfy the Borrowers' obligations in accordance with, and to the extent and in such amounts required under, the A/R Securitization Facility to the extent incurred in the ordinary course of business and for a valid business purpose.

SECTION 3.12. Tax Returns. Except as set forth on Schedule 3.12 to this Agreement:

(a) Each Borrower and each of its or their Subsidiaries (i) has timely filed or caused to be timely filed all U.S. federal and other material state, local and non-U.S. Tax returns required to have been filed by it and each such Tax return is true and correct in all material respects, (ii) has timely paid or caused to be timely paid all material Taxes due and owing by it (whether or not shown on any Tax return), (except (x) Taxes or assessments that are being contested in good faith by appropriate proceedings in accordance with Section 5.03 and for which any Borrower or any of its or their Subsidiaries (as the case may be) has set aside on its books adequate reserves in accordance with GAAP and (y) Taxes that need not be paid pursuant to an order of the Bankruptcy Court or pursuant to the Bankruptcy Code) and (iii) has materially complied with all of its obligations in its capacity as withholding agent under applicable law;

(b) Each Borrower and each of its or their Subsidiaries has paid in full or made adequate provision (in accordance with GAAP) for the payment of all Taxes not yet due, which Taxes, if not paid or adequately provided for, would, individually or in the aggregate, reasonably be expected to be material; and

(c) With respect to each Borrower and each of its or their Subsidiaries, (i) there are no claims being asserted in writing with respect to any material Taxes, (ii) no presently effective waivers or extensions of statutes of limitation with respect to Taxes have been given or requested and (iii) no Tax returns are being examined by, and no written notification of intention to examine has been received from, the Internal Revenue Service or any other taxing authority that is reasonably expected to result in a material Tax liability.

SECTION 3.13. No Material Misstatements.

(a) All written information (other than the Projections, estimates and information of a general economic nature) (the "Information") concerning any Borrower, any Subsidiary, the Transactions and any other transactions contemplated hereby or by any other Loan Document prepared by or on behalf of the foregoing or their representatives (excluding any

reserve reports) and made available to any Lenders or the Administrative Agent in connection with the Transactions or the other transactions contemplated hereby or by any other Loan Document, when taken as a whole, were true and correct in all material respects, as of the date such Information was furnished to the Lenders and as of the Effective Date, after giving effect to any supplements to such Information through the Effective Date, did not contain any untrue statement of a material fact as of any such date or omit to state a material fact necessary in order to make the statements contained therein, when taken as a whole, not materially misleading in light of the circumstances under which such statements were made.

(b) The Projections and estimates and information of a general economic nature prepared by or on behalf of any Borrower or any of its representatives and that have been made available to any Lenders or the Administrative Agent in connection with the Transactions or the other transactions contemplated hereby (i) have been prepared in good faith based upon assumptions believed by the Borrowers to be reasonable as of the date thereof, as of the date such Projections and estimates were furnished to the Lenders hereunder and as of the Effective Date, and (ii) as of the Effective Date, have not been modified in any material respect by any Borrower.

SECTION 3.14. Employee Benefit Plans. Each Borrower, each Subsidiary and each Affiliate are in compliance with the applicable provisions of ERISA and the provisions of the Code relating to Plans and the regulations and published interpretations thereunder, except for such noncompliance that would not reasonably be expected to have a Material Adverse Effect. Each Plan (and each related trust, if any) which is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service ("IRS") to the effect that it meets the requirements of Section 401(a) and 501(a) of the Code covering all applicable tax law changes or is comprised of a master or prototype plan that has received a favorable opinion letter from the IRS, and, nothing has occurred since the date of such determination that would materially and adversely affect such determination. There exists no Unfunded Pension Liability with respect to Plans in the aggregate (taking into account only Plans with positive Unfunded Pension Liability) in excess of $1,000,000. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other ERISA Events which have occurred or for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect. If each Borrower, each Subsidiary and each ERISA Affiliate were to withdraw in a complete withdrawal as of the date this assurance is given or deemed given, the aggregate withdrawal liability that would be incurred would not be in excess of $1,000,000.

SECTION 3.15. Environmental Matters. Except as disclosed on Schedule 3.15 to this Agreement and except as to matters that would not reasonably be likely to have, individually or in the aggregate, a Material Adverse Effect (i) no written notice, request for information, demand, order, complaint or penalty has been received by any Borrower or any of the Subsidiaries, and there are no judicial, administrative or other actions, suits or proceedings, consent orders or consent or settlement agreements pending or threatened in writing against any Borrower or any of the Subsidiaries which allege a violation of or liability under any Environmental Laws or Environmental Permits, in each case relating to any Borrower or any of the Subsidiaries or their Real Property, (ii) each Borrower and each Subsidiary has obtained or in a timely manner applied for all Permits and licenses necessary for ownership of its assets and for

its operations as currently conducted to comply with all applicable Environmental Laws ("Environmental Permits") and is in compliance with the terms of such Environmental Permits , which are in full force and effect, and with all other applicable Environmental Laws, (iii) each Borrower and each Subsidiary has made available to the Administrative Agent prior to the Effective Date the most recent environmental assessment and environmental audit, if any, then available with respect to the operations and the Real Property of each Borrower and each Subsidiary, (iv) (a) to the knowledge of the Borrowers and the Subsidiaries, no Hazardous Material is located or (b) has been Released by any of the Borrowers or Subsidiaries or, to the knowledge of the Borrowers and the Subsidiaries, by any other Person at, on, under or is emanating from any property or facility, including the Real Property, currently owned, operated or leased by any Borrower or any of the Subsidiaries, nor has any Person been exposed to any such Hazardous Materials, that would reasonably be likely to give rise to any cost, liability or obligation of any Borrower or any of the Subsidiaries under any Environmental Laws or any Environmental Claim, and no Hazardous Material has been handled, generated, owned or controlled by any Borrower or any of the Subsidiaries and disposed of, or transported to or Released at any location in a manner or resulting in a condition that would reasonably be likely to give rise to any cost, liability or obligation of any Borrower or any of the Subsidiaries under any Environmental Laws, (v) there are no written agreements in effect as of the Effective Date pursuant to which any Borrower or any of the Subsidiaries has expressly assumed or undertaken responsibility for any liability or obligation of any other Person arising under or relating to Environmental Laws, which in any such case has not been made available to the Administrative Agent prior to the Effective Date, (vi) there are no landfills, disposal areas, or surface impoundments (including slurry impoundments) located at, on, in or under the assets or Real Property of any Borrower or any Subsidiary for which any Borrower or any Subsidiary does not hold and is not in compliance in all material respects with a valid Environmental Permit or Permit pursuant to Mining Laws , and which are closed or to be closed and reclaimed pursuant to Mining Laws and Environmental Laws, and (vii) to the knowledge of the Borrowers and the Subsidiaries, except as listed on Schedule 3.15(vii) to this Agreement there are not currently and there have not been any underground storage tanks "owned," or "operated" (as defined by applicable Environmental Law) by any Borrower or any Subsidiary or present or located on the Borrower's or any Subsidiary's Real Property.

SECTION 3.16. Security Documents. Subject to and upon the entry of the DIP Orders, the DIP Orders and the Security Documents, together with such filings and other actions required to be taken hereby or by the applicable Security Documents, when executed and delivered (and at all times thereafter) are effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) a valid, perfected, enforceable and unavoidable security interest in and lien on the Collateral in the priorities set forth in the applicable DIP Order. When UCC financing statements in appropriate form are filed in the offices specified in the Security Agreement, the Liens created by the Security Agreement in favor of the Collateral Agent (for the benefit of the Secured Parties) will constitute fully perfected Liens on, and security interests in, all right, title and interest of the Borrowers in such Collateral to the extent perfection can be obtained by filing UCC financing statements.

SECTION 3.17. [Reserved].

SECTION 3.18. Material Contracts. As of the Effective Date, each Borrower has heretofore delivered to the Administrative Agent and the Lenders true, correct and complete copies of all Material Contracts to which it is a party, or to which it or any of its properties is subject, which such Material Contracts are listed on Schedule 3.18 hereto. As of the Effective Date, all Material Contracts are in full force and effect and no material defaults (nor, to the knowledge of any Borrower, notice of any material default) currently exist thereunder.

SECTION 3.19. Labor Matters. Except as set forth on Schedule 3.19 to this Agreement or as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (a) there are no strikes pending or threatened against any Borrower or any of the Subsidiaries; (b) the hours worked and payments made to employees of the Borrowers and the Subsidiaries have not been in violation in any respect of the Fair Labor Standards Act or any other applicable law dealing with such matters; (c) all payments due from any Borrower or any of the Subsidiaries or for which any claim may be made against any Borrower or any of the Subsidiaries, on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of such Borrower or such Subsidiary to the extent required by GAAP; and (d) consummation of the Transactions will not give rise to a right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Borrower or any of the Subsidiaries (or any predecessor) is a party or by which any Borrower or any of the Subsidiaries (or any predecessor) is bound, other than collective bargaining agreements that, individually or in the aggregate, are not material to the Borrowers and the Subsidiaries, taken as a whole.

SECTION 3.20. Insurance. Schedule 3.20 to this Agreement sets forth a true, complete, accurate and correct description of all insurance maintained by or on behalf of the Borrowers or the Subsidiaries as of the Effective Date. As of such date, such insurance is in full force and effect. The insurance maintained by or on behalf of the Borrowers and the Subsidiaries is adequate.

SECTION 3.21. Anti-Terrorism Law.

(a) No Borrower and, to the knowledge of each Borrower, no officers, directors, employees, brokers, agent or Affiliate of such Borrower is in violation of any laws relating to terrorism or money laundering ("Anti-Terrorism Laws"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order"), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

(b) No Borrower, Subsidiary, or, to the knowledge of any Borrower, any director or officer, employee, broker, agent or Affiliate of such Borrower acting or benefiting in any direct capacity in connection with the Loans is, or is owned or controlled by one or more persons that are, any of the following:

(i) a person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a person owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a person that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control ("OFAC") at its official website or any replacement website or other replacement official publication of such list; or

(v) a person that is (i) currently the subject or target of any Sanctions or (ii) located, has a place of business, or is organized or resident in a Designated Jurisdiction.

(c) No Borrower, or, to the knowledge of any Borrower, any director or officer, employee, agent or Affiliate thereof, when acting on behalf of such Borrower, is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the FCPA, including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA and the Borrowers, its and their Subsidiaries and, to the knowledge of each Borrower, its Affiliates have conducted their businesses in compliance with the FCPA in all material respects and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(d) Each Borrower has instituted and maintained policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, compliance with all applicable Sanctions in all material respects.

SECTION 3.22. Initial Budget. The Borrowers have prepared and delivered to the Administrative Agent and the Lenders an initial budget (attached hereto as Exhibit G (it being understood and agreed that such initial budget is acceptable to the Administrative Agent and the Lenders), which reflects the Borrowers' forecasted receipts and disbursements on a consolidated basis for the 13-weeks commencing on the Effective Date (such budget, the "Initial Budget").

SECTION 3.23. DIP Orders. Each of the Interim DIP Order (to the extent necessary, with respect to the period prior to the entry of the Final DIP Order) and the Final DIP Order (from after the date the Final DIP Order is entered) is in full force and effect and has not been vacated, reversed or rescinded or, without the prior written consent of the Required Lenders, in their sole discretion, amended or modified and no appeal of such order has been timely filed or, if timely filed, no stay pending such appeal is currently effective.

SECTION 3.24. Bankruptcy Matters.

(a) The Cases were commenced on the Petition Date, in accordance with applicable requirements of law and proper notice thereof under the circumstances, and proper notice of (x) the motion seeking approval of the Loan Documents and entry of the DIP Orders, as applicable and (y) the hearings for the approval of the Interim DIP Order have been held by the Bankruptcy Court.

(b) After the entry of the DIP Orders, the Obligations will constitute DIP Superpriority Claims (as defined in the DIP Orders) having the priorities set forth in the Interim DIP Order and the Final DIP Order, as applicable.

(c) After the entry of the DIP Orders, as applicable, and pursuant to and to the extent provided in the DIP Orders, as applicable, the Obligations will be secured by valid, binding, enforceable, non-avoidable, and automatically and fully and properly perfected Liens on, and security interests in, the Collateral, in each case, having the priorities set forth in the Interim DIP Order and the Final DIP Order, as applicable.

(d) After the entry of each DIP Order, such DIP Order is in full force and effect, is not subject to appeal, leave to appeal or reconsideration process (as applicable) and has not been reversed, stayed, modified or amended in any manner without the Required Lenders' consent.

ARTICLE IV.

CONDITIONS OF EFFECTIVENESS AND LENDING

SECTION 4.01. Conditions Precedent to Effectiveness. The effectiveness of this Agreement and the obligations of each Lender to make Loans hereunder are, in each case, subject to the satisfaction of the following conditions precedent:

(a) The Administrative Agent and the Lenders shall have received executed counterparts of this Agreement from each party hereto.

(b) The Administrative Agent and the Lenders shall have received the following, each dated as of the Effective Date (unless otherwise specified), in form and substance satisfactory to the Required Lenders, and duly executed and delivered by each party thereto (as applicable):

(i) Notes payable to the Lenders (and their registered assigns) to the extent requested by any Lender on or prior to the Effective Date pursuant to Section 2.07(d);

(ii) a certificate of the secretary or assistant secretary of each Borrower, dated the Effective Date, certifying that attached thereto are (1) true and complete copies of the Organizational Documents of each Borrower certified as of a recent date by the appropriate governmental official, (2) signature and incumbency certificates of the officers of such Person executing the Loan Documents to which it is a party, (3) true and complete resolutions of the Board of Directors of each Borrower approving and

authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party or by which it or its assets may be bound as of the Effective Date, and authorizing and approving the borrowings hereunder, and certified as of the Effective Date by its secretary or an assistant secretary that such resolutions are in full force and effect without modification or amendment, (4) a good standing certificate from the applicable Governmental Authority of each Borrowers' jurisdiction of incorporation, organization or formation and in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business, each dated a recent date prior to the Effective Date, and (5) such other documents and certificates as the Administrative Agent, the Lenders or its or their counsel may reasonably request relating to the organization, existence and good standing of each Borrower, and the authorization of the Transactions;

(iii) the Security Agreement;

(iv) The Escrow Agreement with respect to the Segregated Account;

(v) a certificate from a Responsible Officer of the Borrowers, addressed to the Administrative Agent and each Lender, as to the matters set forth in Sections 4.01(d), (e), (f), (g), (h), (k) and (l);

(vi) the Initial Budget;

(vii) an Inventory Appraisal and an M&E Appraisal;

(viii) evidence of all insurance required to be maintained pursuant to Section 5.02;

(ix) results of a recent lien search in each relevant jurisdiction with respect to the Borrowers, revealing no liens on any of the assets of the Borrowers or their Subsidiaries except for Liens permitted under Section 6.03; and

(x) the Closing Date Financial Statements.

(c) All UCC financing statements to be filed in order to perfect and protect the Liens and security interests created or purported to be created under the Interim DIP Order and the Security Documents covering the Collateral described therein shall have been properly filed (or provided to the Collateral Agent to be filed) in each jurisdiction required, in each case, in form and substance satisfactory to, and to the extent requested by, the Agents and the Required Lenders.

(d) The Administrative Agent and the Required Lenders shall be reasonably satisfied with the form and substance of the "first day orders" sought by the Borrowers and entered on (or prior to) the Effective Date.

(e) The Borrowers shall have filed a motion seeking approval of the Facility by no later than the Petition Date.

(f) The Interim DIP Order Entry Date shall have occurred not later than three (3) Business Days following the Petition Date.

(g) All "first day orders" and all related pleadings intended to be entered on or prior to the Interim DIP Order Entry Date shall have been entered by the Bankruptcy Court and shall be reasonably satisfactory in form and substance to the Administrative Agent and the Required Lenders.

(h) No trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in any of the Cases.

(i) The Borrowers shall have paid all invoiced fees and expenses of the Agents and the Lenders accrued and payable on or prior to the Effective Date, including the accrued fees and expenses of counsel to each of the Agents and the Lenders.

(j) The Administrative Agent and each Lender shall have received all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the U.S. PATRIOT Act, as reasonably requested by the Administrative Agent and each Lender.

(k) No Default or Event of Default shall have occurred and be continuing immediately before and after giving effect to the Transactions, any incurrence of Indebtedness hereunder and the use of the proceeds hereof on a pro forma basis.

(l) The representations and warranties of each Borrower contained in each Loan Document to which it is a party shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) on and as of the Effective Date, with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects (or if applicable, in all respects) as of such earlier date).

(m) The SAPSA shall be in full force and effect.

Each Lender, by delivering its signature page to this Agreement, and funding its Loans on or about the Effective Date, shall be deemed to have acknowledged receipt of, and consented to and approved or accepted or to be satisfied with, each Loan Document and each other document required to be approved by, acceptable or satisfactory to any Agent, the Required Lenders or any other Lenders, as applicable, on or about the Effective Date.

SECTION 4.02. Conditions to Borrowings. In addition to the conditions precedent set forth in Section 4.01, the obligations of each Lender to fund any Borrowing hereunder are subject to the satisfaction of the following conditions precedent:

(a) The Administrative Agent shall have received a Borrowing Request as required by Section 2.03.

(b) With respect to the Second Borrowing, to the extent the Second Borrowing occurs more than twenty-eight (28) calendar days after the Effective Date, the Lenders shall have received an Updated Budget, dated as of the Final DIP Order Entry Date, which Updated Budget shall be an Approved Budget.

(c) With respect to any Third Borrowing, the Specified Tax Condition has been satisfied.

(d) The representations and warranties of each Borrower contained in each Loan Document to which it is a party shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) on and as of the date of such Borrowing, with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects (or if applicable, in all respects) as of such earlier date).

(e) Immediately prior to and immediately after giving effect to such Borrowing and the use of proceeds thereof, no Event of Default or Default shall have occurred and be continuing.

(f) The making of such Loan shall not violate any requirement of law and shall not be enjoined, temporarily, preliminarily or permanently.

(g) The amount of each Borrowing shall be in compliance with Section 2.01(b) or 2.01(c), as applicable.

(h) With respect to the Second Borrowing and the Third Borrowing, the Administrative Agent and the Lenders shall have received a Control Agreement with respect to each deposit account, securities account and commodities account of each Borrower (excluding the Excluded Accounts), in each case, duly executed and delivered by each party thereto.

(i) No Borrowing Base Deficiency shall exist immediately after giving effect to such Borrowing and to the application of the proceeds therefrom.

(j) The Administrative Agent and the Lenders shall have received a certificate of a Financial Officer of the Borrowers, dated as of the date of such Borrowing, confirming compliance with the conditions set forth in Sections 4.02(b), (d), (e), (f) and (i), in form and substance satisfactory to the Required Lenders.

(k) With respect to the Second Borrowing and the Third Borrowing, entry of an order authorizing the Debtors to assume the SAPSA and approving the settlement contained in Section 9 thereof pursuant to Bankruptcy Rule 9019.

(l) The Borrowers shall have paid all invoiced fees and expenses of the Agents and the Lenders accrued and payable on or prior to the date of such Borrowing, including the accrued fees and expenses of counsel to each of the Agents and the Lenders.

Each Borrowing shall be deemed to constitute a representation and warranty by each Borrower on the date of such Borrowing as to the applicable matters specified in Sections 4.02(b), (d), (e), (f) and (i).

ARTICLE V.

AFFIRMATIVE COVENANTS

Each Borrower covenants and agrees with each Lender that, so long as this Agreement shall remain in effect and until the commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document shall have been paid in full and discharged, unless the Required Lenders shall otherwise consent in writing, each Borrower will and will cause each of the Subsidiaries to:

SECTION 5.01. Existence; Businesses and Properties.

(a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and qualifications.

(b) Do or cause to be done all things reasonably necessary to (i) obtain, preserve, renew, extend and keep in full force and effect the permits, franchises, authorizations, Intellectual Property and rights or licenses with respect thereto necessary to the normal conduct of its business, (ii) except as otherwise permitted by the Bankruptcy Code, comply in all respects with all applicable laws, rules, regulations (including any zoning, mining, building, ordinance, code or approval or any building permits or any restrictions of record or agreements affecting the Real Property) and judgments, writs, injunctions, decrees and orders of any Governmental Authority, whether now in effect or hereafter enacted except in each case where failure to do so would not reasonably be expected to have a Material Adverse Effect, (iii) at all times maintain and preserve in all material respects all machinery and equipment (excluding machinery and equipment that is surplus, obsolete or not used or usable in the business of the Borrowers and which is not included in the calculation of the Borrowing Base) in the ordinary course of business, and keep such property in good repair, working order and condition (ordinary wear and tear and damage by fire or other casualty or taking by condemnation excepted) in all material respects and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith, if any, may be properly conducted at all times in all material respects, (iv) at all times maintain and preserve in all material respects all other property necessary to the normal conduct of its business and keep such property in good repair, working order and condition (ordinary wear and tear and damage by fire or other casualty or taking by condemnation excepted) and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith, if any, may be properly conducted at all times in all material respects and (v) in the case of leases of any Borrower, maintain such leases in full force and effect (x) subject to an applicable order of the Bankruptcy Court with respect to such leases or except as otherwise permitted by the Bankruptcy Code, (y) excluding such leases rejected under Section 365 of the Bankruptcy Code or as would not reasonably be expected to have a Material Adverse Effect and (z) excluding such leases where failure to do so is not

disadvantageous in any material respect to such Person or to the Administrative Agent and the Lenders.

SECTION 5.02. Insurance.

(a) Keep its properties insured at all times by financially sound and reputable insurers in such amounts as shall be customary for similar businesses and maintain such other reasonable insurance (including, to the extent consistent with past practices, industry practices and self-insurance), of such types, to such extent and against such risks, as is customary with companies in the same or similar businesses and maintain such other insurance as may be required by law or any other Loan Document.

(b) Subject to Section 5.21, keep its property insured in favor of the Collateral Agent as lender's loss payee and/or additional insured (subject to the exceptions in the immediately preceding paragraph), as applicable, and all policies or certificates (or certified copies thereof) with respect to such insurance (and any other insurance maintained by the Borrowers and/or such Subsidiaries) (i) shall be endorsed to the Collateral Agent's reasonable satisfaction for the benefit of the Collateral Agent (including, without limitation, by naming the Collateral Agent as lender's loss payee, mortgagee and/or additional insured, as applicable) and (ii) shall state that such insurance policies shall not be canceled without at least thirty (30) days' prior written notice (or if such cancellation is by reason of nonpayment of premium, at least ten (10) days' prior written notice) thereof by the respective insurer to the Collateral Agent (unless it is such insurer's policy not to provide such a statement).

(c) Subject to Section 5.21, keep its insurable Material Real Properties adequately insured, with customary deductibles, at all times by financially sound and reputable insurers, including self-insurance in accordance with customary industry practices; cause all property and casualty insurance policies with respect to the Material Real Properties to be endorsed or otherwise amended to include a "standard" or "New York" lender's loss payable endorsement, in form and substance reasonably satisfactory to the Agents and the Required Lenders, which endorsement shall provide that, from and after the Effective Date, if the insurance carrier shall have received written notice from the Administrative Agent or the Collateral Agent of the occurrence of an Event of Default, the insurance carrier shall pay all proceeds otherwise payable to any of the Borrowers under such policies directly to the Collateral Agent; cause all such policies to provide that neither any Borrower, the Administrative Agent, the Collateral Agent nor any other party shall be a coinsurer thereunder; and, with respect to all Material Real Property, deliver original or certified copies of all such policies or a certificate of an insurance broker to the Collateral Agent; cause each such policy to provide that it shall not be canceled or not renewed upon less than thirty (30) days' prior written notice thereof by the insurer to the Administrative Agent and the Collateral Agent; deliver to the Administrative Agent and the Collateral Agent, prior to the cancellation or nonrenewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Administrative Agent and the Collateral Agent), or insurance certificate with respect thereto, together with evidence satisfactory to the Required Lenders of payment of the premium therefor.

(d) If any portion of any Material Real Property upon which a "Building" (as defined in 12 CFR Chapter 11, Section 339.2) is located is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a Special Flood Hazard Area with respect to which flood insurance has been made available under the Flood Insurance Laws, then the Borrowers shall (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) deliver to the Collateral Agent evidence of such compliance in form and substance reasonably acceptable to the Collateral Agent, including, without limitation evidence of annual renewals of such insurance.

(e) Notify the Administrative Agent and the Collateral Agent promptly whenever any separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 5.02 is taken out by any Borrower or any of its Subsidiaries; and promptly deliver to the Administrative Agent and the Collateral Agent a duplicate original copy of such policy or policies, or an insurance certificate with respect thereto.

(f) To the extent any insurance premium financing is needed, the Borrowers shall provide reasonable notice to the Administrative Agent prior to obtaining such insurance premium financing, provided that, such notice shall not expand, modify, or change the amounts available under the applicable Approved Budget.

(g) In connection with the covenants set forth in this Section 5.02, it is understood and agreed that:

(i) none of the Agents, the Lenders and their respective agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 5.02, it being understood that (A) the Borrowers and its or their Subsidiaries shall look solely to their insurance companies or any other parties other than the aforesaid parties for the recovery of such loss or damage and (B) such insurance companies shall have no rights of subrogation against the Agents, the Lenders or their agents or employees. If, however, the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then each Borrower hereby agrees, to the extent permitted by law, to waive, and to cause each of its Subsidiaries to waive, its right of recovery, if any, against the Agents, the Lenders and their agents and employees; and

(ii) the designation of any form, type or amount of insurance coverage by the Administrative Agent, the Collateral Agent or any Lender under this Section 5.02 shall in no event be deemed a representation, warranty or advice by the Administrative Agent, the Collateral Agent or any Lender that such insurance is adequate for the purposes of the business of any Borrower and/or any of its or their Subsidiaries or the protection of their properties.

SECTION 5.03. Payment of Obligations.

(a) In the case of any Debtor, in accordance with the Bankruptcy Code and subject to any required approval by the Bankruptcy Court (it being understood that no Debtor shall be obligated to make any payments hereunder that may, in its reasonable judgment, result in a violation of any applicable law, including the Bankruptcy Code, without an order of the Bankruptcy Court authorizing such payment), pay and discharge promptly when due all material post-petition Taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property (in the case of any Debtor, solely to the extent arising post-petition), before the same shall become delinquent or in default, as well as all lawful claims for labor, materials and supplies or otherwise (in the case of any Debtor, solely to the extent arising post-petition) that, if unpaid, might give rise to a Lien upon such properties or any part thereof; provided, however, that such payment and discharge shall not be required with respect to (a) any such Tax, assessment, charge, levy or claim so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings, and the affected Borrower or the affected Subsidiary, as applicable, shall have set aside on its books adequate reserves in accordance with GAAP with respect thereto or (b) any Tax referred to on Schedule 5.03 hereto (the "Specified Taxes").

(b) In the case of any Debtor, in accordance with the Bankruptcy Code and subject to any required approval by the Bankruptcy Court (it being understood that no Debtor shall be obligated to make any payments hereunder that may, in its reasonable judgment, result in a violation of any applicable law, including the Bankruptcy Code, without an order of the Bankruptcy Court authorizing such payment), pay and discharge promptly when due all material pre-petition Taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful claims for labor, materials and supplies or otherwise that, if unpaid, might give rise to a Lien upon such properties or any part thereof that will be afforded priority over any Lien granted to the Collateral Agent for the benefit of the Secured Parties; provided, however, that such payment and discharge shall not be required with respect to (a) any such Tax, assessment, charge, levy or claim so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings, and the affected Borrower or the affected Subsidiary, as applicable, shall have set aside on its books adequate reserves in accordance with GAAP with respect thereto or (b) any Specified Taxes.

SECTION 5.04. Financial Statements, Reports; Borrowing Base Information, etc. Furnish to the Administrative Agent and the Lenders:

(a) upon reasonable request by the Required Lenders (and in any event within twenty-five (25) days after the end of each fiscal month), the consolidated balance sheet of the Borrowers and their Subsidiaries as of the end of such month and related statements of operations and cash flows of the Borrowers and their Subsidiaries for such month and for the period commencing at the end of the previous fiscal year and ending with the end of such month, duly certified by a Financial Officer of CPE, on behalf of the Borrowers, as (A) having been prepared in accordance with GAAP and (B) presenting fairly and accurately the consolidated financial condition and results of operations and cash flows of the Borrowers and the Subsidiaries as of the dates and for the periods to which they relate, subject, in the case of

clauses (A) and (B), to the absence of footnotes and to normal year-end audit adjustments none of which will be, individually or in the aggregate, material (provided, that the foregoing obligation shall be deemed satisfied to the extent such information is included in the "Monthly Operating Report" filed with the Bankruptcy Court for the applicable month on or prior to the date specified for compliance in this Section 5.04(a));

(b) concurrently with any delivery of financial statements under clause (a) above (or in the event of any deemed delivery by filing of a Monthly Operating Report, within 25 days of the end of each fiscal month), a certificate of a Financial Officer of CPE: (A) certifying that no Event of Default or Default has occurred or, if such an Event of Default or Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto, and (B) stating whether any change in GAAP as applied by (or in the application of GAAP by) any Borrower has occurred since the Effective Date and, if any such change has occurred (and has not been previously reported to the Administrative Agent and the Lenders), specifying the effect of such change on the financial statements accompanying such certificate;

(c) if, as a result of any change in accounting principles and policies from those as in effect on the Effective Date, the consolidated financial statements of the Borrower and the Subsidiaries delivered pursuant to paragraph (a) above will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such clauses had no such change in accounting principles and policies been made, then, 30 days after the first delivery of financial statements pursuant to paragraph (a) above following such change, a schedule prepared by a Financial Officer on behalf of each Borrower reconciling such changes to what the financial statements would have been without such changes;

(d) [reserved];

(e) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of any Borrower or any of its Subsidiaries, or compliance with the terms of any Loan Document, or such consolidating financial statements, as in each case the Administrative Agent may reasonably request (for itself or on behalf of any Lender);

(f) promptly upon the request by the Administrative Agent, copies of: (i) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed with the Internal Revenue Service with respect to a Plan; (ii) the most recent actuarial valuation report for any Plan; (iii) all notices received from a Multiemployer Plan sponsor or any Governmental Authority concerning an ERISA Event; and (iv) such other documents or governmental reports or filings relating to any Plan or Multiemployer Plan as the Administrative Agent shall reasonably request;

(g) (i) as soon as reasonably practicable in advance of filing with the Bankruptcy Court or delivering to the Creditors' Committee or the Chapter 11 trustee, as the case may be, the Final DIP Order and all other proposed orders and pleadings related to the Loans and the Loan Documents, any Chapter 11 Plan and/or any disclosure statement related thereto and (ii) by the earlier of (1) one Business Day prior to being filed (and if impracticable, then as soon

as possible and in no event later than promptly after being filed) on behalf of any of the Debtors with the Bankruptcy Court or (2) at the same time as such documents are provided by any of the Debtors to any statutory committee appointed in the Cases or the Chapter 11 trustee, all other notices, filings, motions, pleadings or other information concerning the financial condition of any Borrower or any of its Subsidiaries or other Indebtedness of the Borrowers or any request for relief under Section 363, 365, 1113 or 1114 of the Bankruptcy Code or Section 9019 of the Federal Rules of Bankruptcy Procedure;

(h) on or before the last Tuesday of every four-week period, commencing on the fourth Tuesday after the Effective Date, an updated budget consistent with the form and level of detail in the then Approved Budget and otherwise in form and substance reasonably satisfactory to the Required Lenders, which such budget upon the approval of the Required Lenders shall become the Approved Budget (the "Updated Budget"); provided, that, if the Required Lenders have not delivered a written rejection of or proposed comments to the Updated Budget, or shall have asked to become restricted, within three (3) Business Days of receipt of such Updated Budget, the Required Lenders shall be deemed to have approved such Updated Budget and such Updated Budget shall constitute the "Approved Budget"; provided, further, that, (i) after having asked to become restricted, the Required Lenders shall use commercially reasonable good faith efforts to promptly negotiate and enter into a customary non-disclosure agreement and (ii) if the Required Lenders have not delivered a written rejection of or proposed comments to the Updated Budget, within three (3) Business Days after they have become restricted, the Required Lenders shall be deemed to have approved such Updated Budget and such Updated Budget shall constitute the "Approved Budget";

(i) on or before the Thursday of every calendar week, commencing on the Thursday of the second full week after the Effective Date, (x) a report, in form and detail reasonably satisfactory to the Required Lenders (each a "Variance Report"), setting forth for the Variance Period immediately preceding the date of each such delivery comparing actual cumulative receipts and disbursements, respectively, for such period as set forth in the Approved Budget (broken out separately for CPEL and for the rest of the Borrowers) with an explanation of each Unpermitted Variance and (y) a certificate of a Financial Officer of the Borrowers attesting to the truth and accuracy of such Variance Report;

(j) within twenty-five (25) days after the end of each calendar month, a maintenance log for all machinery and equipment as of the last day of the preceding month, each of which shall be accompanied by supporting detail and documentation reasonably requested by the Required Lenders;

(k) (i) within twenty-five (25) days after the end of each calendar month, (a) if requested by the Required Lenders or their advisors or the Administrative Agent, an appraisal, as of the end of such month, of the Borrowers' inventory (an "Inventory Appraisal") prepared by Gordon Bros. or another independent inventory appraiser reasonably acceptable to the Administrative Borrower and the Required Lenders or their advisors (the "Inventory Appraiser"), which Inventory Appraisal shall be prepared in accordance with the methodology used in, and in generally the same format as, the Inventory Appraisal delivered to the Lenders on or prior to the Effective Date, and (b) if requested by the Required Lenders or their advisors or the Administrative Agent, an appraisal, as of the end of such month, of the Borrowers' machinery

and equipment (the "M&E Appraisal" and, together with the Inventory Appraisal, the "Appraisals") prepared by Duff & Phelps or another independent machinery and equipment appraiser reasonably acceptable to the Administrative Borrower and the Required Lenders or their advisors (the "M&E Appraiser" and, together with the Inventory Appraiser, the "Appraisers"), which M&E Appraisal shall be prepared in accordance with the methodology used in, and in generally the same format as, the M&E Appraisal delivered to the Lenders on or prior to the Effective Date; and (ii) promptly upon any Borrower (or Responsible Officer thereof) having knowledge of an event that causes the destruction, damage or sale of any machinery, equipment or inventory in each case, that causes an aggregate degradation in the value of the Collateral that will not be fixed or fully mitigated within 30 days (in each case, as reasonably determined in good faith by the Borrowers) in excess of $500,000, a certificate of a Responsible Officer of the Administrative Borrower detailing such event(s) and including an updated calculation of the Borrowing Base that removes all such destroyed or damaged machinery, equipment or inventory from such calculation (the "Appraisal Certificate"); provided that such $500,000 threshold shall reset upon delivery of any such Appraisal Certificate;

(l) within twenty-five (25) days after the end of each calendar month, and in any event concurrently with any delivery of any Appraisal or Appraisal Certificate under clause (k) above, a certificate (each, an "Borrowing Base Certificate") setting forth the calculation of the Borrowing Base as of such date of delivery; and

(m) on or before the Thursday of every calendar week, a certificate of a Financial Officer of CPE setting forth computations or evidence in reasonable detail satisfactory to the Required Lenders demonstrating compliance with the covenant contained in Section 6.28 for the prior week.

SECTION 5.05. Lender Conference Calls.

(a) Arrange for a teleconference for the Lenders and their advisors with professional advisors to the Borrowers (including any financial advisor to the Debtors), to take place at least once per calendar week (at such time as is mutually agreeable to the Borrowers and to the Administrative Agent and the Lenders), for purposes of discussing, among other things, any budget proposed to be the Approved Budget, Variance Reports, Borrowing Base Certificates, any updates on status and progress of the sale of any of the Borrowers or their assets, financial statements and any projections and such other information and matters reasonably requested by any Lender.

(b) At the request of the Required Lenders, arrange for a meeting for the Lenders and their advisors with senior management of the Borrowers (including any financial advisor to the Debtors), to take place at least once per calendar month (at such time as is reasonably satisfactory to the Administrative Agent and the Lenders), for purposes of discussing any budget proposed to be the Approved Budget, Variance Reports, Borrowing Base Certificates, any updates on status and progress of the sale of any of the Borrowers or their assets, financial statements and any projections and such other information and matters reasonably requested by any Lender.

SECTION 5.06. Notices. Furnish to the Administrative Agent written notice of the following promptly (but in any event no later than three (3) calendar days) after the occurrence of any of the following:

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

(b) the filing or commencement of, or any written threat or notice of intention of any person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, including without limitation any Environmental Claim, against any Borrower or any of its or their Subsidiaries as to which an adverse determination is reasonably probable and which, if adversely determined, would reasonably be expected to: (i) result in the termination of any Material Contract, Material Lease, Permit (including any Environmental Permit) or license, or (ii) have a Material Adverse Effect;

(c) the termination or material and adverse modification of the terms of any Material Contract, Material Lease, Permit (including any Environmental Permit) or license that would reasonably be expected to result in a Material Adverse Effect;

(d) the occurrence (or reasonable expectation of the occurrence) of any Casualty Events with respect to any portion of the Collateral having an appraised value of $1,000,000 individually or in the aggregate;

(e) (i) the occurrence of any ERISA Event that would reasonably be expected to result in liabilities of the Borrowers in an aggregate amount exceeding $1,000,000, (ii) a material increase in Unfunded Pension Liabilities (taking into account only Plans with positive Unfunded Pension Liabilities) since the date the representations hereunder are given or deemed given, or from any prior notice, as applicable, or (iii) a material increase since the date the representations hereunder are given or deemed given, or from any prior notice, as applicable, in potential withdrawal liability under Section 4201 of ERISA, or the arising of potential withdrawal liability under Section 4201 of ERISA, if each Borrower, each Subsidiary and each ERISA Affiliate were to withdraw completely from any and all Multiemployer Plans;

(f) the receipt of any proposed modifications or amendments to, or notices of a breach or default under, the 2021 Indenture or the 2024 Indenture along with copies thereof;

(g) if any Borrower (or any Responsible Officer thereof) determines, has knowledge or otherwise becomes aware of any events that would cause a material adverse change in the value of any material portion of the Collateral and a detailed explanation of any such adverse change;

(h) any Borrowing Base Deficiency; and

(i) any other occurrence or development that results in, or would reasonably be expected to result in, a Material Adverse Effect;

SECTION 5.07. Compliance with Laws. Except as otherwise permitted by the Bankruptcy Code, comply with, in all material respects, (a) all laws, rules, regulations and orders

of any Governmental Authority applicable to it or its property (owned or leased), including all Mining Laws and Mining Permits; and (b) the provisions of all material licenses, Permits, and coal and purchase supply contracts; provided that this Section 5.07 shall not apply to Environmental Laws, which are the subject of Section 5.10, or to laws related to Taxes, which are the subject of Section 5.03.

SECTION 5.08. Maintaining Records; Access to Properties; Inspections, Field Exams and Appraisals, Etc.

(a) Maintain proper books of record and account that are full, true and correct in all respects and maintain all financial records in accordance with GAAP.

(b) Permit any representatives or independent contractors designated by designated by the Collateral Agent or the Required Lenders to visit and inspect any of the properties of any Borrower or any Subsidiary to, at the Borrowers' expense, (i) conduct field examinations of any or all of the Collateral, (ii) conduct evaluations, environmental assessments, environmental audits and ongoing maintenance and monitoring of the assets and properties of the Borrowers and the Subsidiaries, and (iii) inspect, copy and take extracts from its and their respective financial and accounting records; provided, that, so long as no Default or Event of Default has occurred and is continuing, not more than two each of any such examinations, evaluations, assessments and audits may be conducted at the Borrowers' expense in each fiscal year.

SECTION 5.09. Use of Proceeds. Use the proceeds of the Loans solely for the purposes described in Section 3.11.

SECTION 5.10. Compliance with Environmental Laws. Except as otherwise permitted by the Bankruptcy Code, comply, and make commercially reasonable efforts to cause all lessees and other persons occupying its properties to comply, with all Environmental Laws and Environmental Permits applicable to its operations, facilities and properties; and obtain and renew all Environmental Permits, in each case in accordance with Environmental Laws, except, in each case with respect to this Section 5.10, to the extent the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.11. Compliance with Leases. Except as otherwise permitted by the Bankruptcy Court or as would not, individually or in the aggregate, be materially adverse to the interests of the Lenders, make all payments and otherwise perform all obligations in respect of all Material Leases to which any Borrower or any of its Subsidiaries is a party, keep such Material Leases in full force and effect and not allow such Material Leases to lapse or be terminated or any rights to renew such Real Property Leases to be forfeited or cancelled, except or in connection with the rejection of any unexpired lease pursuant to Sections 6.18 and 7.01.

SECTION 5.12. First and Second Day Orders. Cause all proposed "first day" orders and "second day" orders submitted to the Bankruptcy Court to be in accordance with and permitted by the terms of this Agreement and reasonably acceptable to the Administrative Agent in all respects, it being understood and agreed that the forms of orders approved by the

Administrative Agent prior to the Petition Date are in accordance with and permitted by the terms of this Agreement in all respects and are reasonably acceptable.

SECTION 5.13. Cash Management .

(a) Establish and maintain a cash management system on terms reasonably acceptable to the Required Lenders and otherwise in accordance with Section 5.12 whereby the Collateral Agent (on behalf of the Lenders) has a first priority perfected security interest on all cash of the Borrowers pursuant to a Control Agreement.

(b) Subject to Section 5.21, cause all cash on hand that is not used for the purposes of the proviso in Section 3.11 to be deposited in accounts of the Debtors' that are subject to Control Agreements and to otherwise be used in accordance with the Approved Budget.

SECTION 5.14. Segregated Account. Subsequent to each Borrowing but prior to each Weekly Draw, hold the proceeds of the Loans in the Segregated Account.

SECTION 5.15. Certain Case Milestones. Comply with the following events (each a "Milestone", collectively "Milestones") in the applicable timeframes set forth below (as may be extended in writing by the Required Lenders in their sole discretion, which extension may be granted by email notice from counsel to the Administrative Agent):

(a) No later than one (1) Business Day after the Petition Date, the Debtors shall file a motion, in form and substance reasonably satisfactory to the Required Lenders, seeking entry of the DIP Orders.

(b) No later than one (1) Business Day after the Petition Date, the Debtors' have filed a motion seeking approval of bidding procedures with respect to a 363 Sale of all or substantially all of the Borrowers' assets, in form and substance reasonably satisfactory to the Required Lenders, in the Cases.

(c) No later than five (5) Business Days after the Petition Date, the Bankruptcy Court shall have entered the Interim DIP Order.

(d) No later than sixty-five (65) days after entry by the Bankruptcy Court of the Interim DIP Order, the Bankruptcy Court shall have entered the Final DIP Order, in form and substance reasonably satisfactory to the Required Lenders, in the Cases.

(e) No later than thirty-five (35) days after the Petition Date, the Bankruptcy Court shall have entered an order approving bidding procedures with respect to a 363 Sale of all or substantially all of the Borrowers' assets, in form and substance reasonably satisfactory to the Lender Representative, in the Cases.

(f) No later than ninety (90) days after the Petition Date, commencement of an auction for substantially all assets of the Borrowers shall have been held such that consummation of the successful bid(s) would constitute an Acceptable 363 Sale.

(g) No later than ninety-five (95) days after the Petition Date, the Bankruptcy Court shall have entered a 363 Sale Order, in form and substance reasonably satisfactory to the Required Lenders, with respect to an Acceptable 363 Sale of all or substantially all of the Borrowers' assets, if any, in the Cases.

(h) No later than one hundred sixty-five (165) days after the Petition Date such Acceptable 363 Sale, if any, shall have closed in accordance with such 363 Sale Order and the Obligations on account of the New Money Loans shall have been indefeasibly paid in full and all other Obligations shall be paid in accordance with the terms of the SAPSA.

SECTION 5.16. Budget. Comply in all respects with the Approved Budget (which compliance shall be deemed satisfied so long as there is not any Unpermitted Variance) and, promptly upon the Final DIP Order Entry Date, request the Second Borrowing (to the extent that the applicable conditions to the Second Borrowing as set forth in Section 4.02 are otherwise satisfied at such time) and, to the extent the satisfaction of such conditions is under its control, use commercially reasonable efforts to cause such conditions to be satisfied.

SECTION 5.17. Further Assurances. Promptly upon request by any Agent or the Required Lenders, (a) correct any defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as any Agent or the Required Lenders may require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable law, subject each of the Borrowers' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Loan Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Loan Documents and (iv) subject to the first sentence of Section 3(b) of the Security Agreement, perfect and maintain the validity any of the Liens intended to be created thereunder.

SECTION 5.18. A/R Refunds. Cause the A/R Securitization Seller to promptly remit any and all A/R Refunds (solely to the extent the remittance is permitted under the A/R Securitization Facility) an account of the Debtors that is subject to a Control Agreement.

SECTION 5.19. Control Agreements. Subject to Section 5.21, cause all bank accounts of the Borrowers (excluding all Excluded Accounts) to be subject to Control Agreements.

SECTION 5.20. Information Rights.

(a) Promptly upon sending or receipt by, or on behalf of, any Borrower, furnish to the Lenders all material information concerning any of the Borrowers' efforts to sell all or a portion of their equity or assets to a third party, including but not limited to, copies of all sales and/or offering materials prepared by any of the Borrowers or any of their advisors or representatives (including, without limitation, industry and market analyses, historical financial information, estimated or projected financial and operating data, asset appraisals and similar information), all applicable bidding procedures, all bid letters (together with any related debt or

equity financing proposals or commitments), all requests for expense reimbursement or exclusivity, all letters of intent, expressions of interest, offers to purchase, term sheets, and/or draft sale agreements, as well as any notices that such sale, efforts or discussions have been terminated (whether orally or in writing) and, in each case, together with any subsequent drafts showing material changes and/or, in the case of notices, material correspondence.

(b) Without limiting the foregoing, each of the Borrowers shall provide the Lenders with such additional information concerning such sale efforts as the Required Lenders may reasonably request from time to time, including directing any financial advisor engaged by any of the Borrowers to consult with the Lenders regarding the foregoing.

SECTION 5.21. Post-Closing Covenants. On or prior to the Final DIP Order Entry Date, the Administrative Agent and the Lenders shall have received (i) a Control Agreement with respect to each deposit account, securities account and commodities account of each Borrower (other than any Excluded Accounts), in each case, duly executed and delivered by each party thereto, (ii) stock certificates and related stock transfer powers endorsed in blank to the extent representing Equity Interests that are Collateral and (iii) additional insured or lender loss payee endorsements, as applicable, to the extent required to comply with Section 5.02.

SECTION 5.22. Mining Permits and Environmental Permits. On or prior to the date due, the Borrowers shall deliver to the applicable Governmental Authority such notices required under the Mining Permits and Environmental Permits regarding a change in control solely to the extent required for the exercise of remedies in respect of the Liens created hereunder.

ARTICLE VI.

NEGATIVE COVENANTS

Each Borrower covenants and agrees with each Lender that, so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document have been paid in full and discharged (other than in respect of contingent indemnification as to which no claim has been asserted), unless the Required Lenders shall otherwise consent in writing, each Borrower will not, and will not permit any of its Subsidiaries to, on or after the Effective Date:

SECTION 6.01. Investments. Purchase or acquire (including pursuant to any merger with a person that is not a Subsidiary immediately prior to such merger) or hold any Equity Interests in, evidences of Indebtedness or other securities of, or make or hold any loans or advances to or Guarantees of the Indebtedness of any other Person (each, an "Investment"), except:

(a) Investments existing on the Effective Date and listed on Schedule 6.01 annexed hereto;

(b) Investments among Borrowers

(c) Investments in accordance with the Approved Budget;

(d) accounts receivable, advances and prepayments and other trade credits made in the ordinary course of business;

(e) Investments resulting from pledges and deposits made in the ordinary course of business;

(f) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of suppliers and customers and in good faith settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(g) [reserved];

(h) arising as a result of the A/R Securitization Facility;

(i) [reserved];

(j) Investments to the extent they constitute Indebtedness permitted under Section 6.02;

(k) Investments in cash and cash equivalents or short-term marketable debt securities, in each case entered into in the ordinary course of business;

(l) consisting of production payments, royalties, dedications of reserves under supply agreements or similar rights or interests granted, taken subject to, or otherwise imposed on properties with normal practices in the mining industry;

(m) Investments resulting from pledges and deposits permitted under Section 6.03;

(n) Investments in negotiable instruments deposited for collection and endorsements of negotiable instruments and documents, in each case entered into in the ordinary course of business;

(o) Investments in respect of transactions permitted under Section 6.04; and

(p) deposits of cash or cash equivalents or short-term marketable securities to secure performance or other services and prepaid expenses or other prepaid obligations, in any event, made in the ordinary course of business and consistent with the Approved Budget or otherwise permitted hereunder.

The amount of any Investment, other than a Guarantee, shall be (i) the amount actually invested, as determined at the time of each such Investment, without adjustment for subsequent increases or decreases in the value of such Investment, *minus* (ii) the amount of dividends or distributions received in connection with such Investment and any return of capital and any payment of principal received in respect of such Investment that in each case is received

in cash, cash equivalents or short-term marketable debt securities (not in excess of the amount of Investments originally made). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith.

SECTION 6.02. Indebtedness. Incur, create, assume or permit to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the Effective Date and listed on Schedule 6.02 hereto;

(c) Indebtedness arising under the Existing Indenture Documents in an aggregate principal amount not to exceed the aggregate principal amount of such Indebtedness as of the Effective Date plus any interest accreted to the principal balance thereof in accordance with the terms of the Existing Indenture Documents;

(d) Indebtedness under the A/R Securitization Facility Agreement;

(e) Indebtedness specifically provided for in an Approved Budget; and

(f) Indebtedness in respect of financing insurance premiums in the ordinary course of business and consistent with the Approved Budget.

SECTION 6.03. Liens. Create, incur, assume or permit to exist any Lien on any assets (including stock or other securities of any person, including any Subsidiary) at the time owned by it or on any income or revenues or rights in respect of any thereof, except for:

(a) Liens granted pursuant to the Loan Documents and Liens granted pursuant to Section 10(c) of the Escrow Agreement;

(b) customary rights of setoff and liens upon deposits of cash in accounts in favor of banks or other depository institutions in which such cash is maintained in the ordinary course of business, securing payment of fees, indemnities, charges for returning items and other similar obligations;

(c) Liens securing obligations under the Existing Indenture Documents, subject to Section 6.10(b);

(d) Liens on the A/R Securitization Facility Collateral and the Receivables Equity granted pursuant to the A/R Securitization Facility Documents, subject to Section 6.10(b);

(e) Liens granted pursuant to the Interim DIP Order and the Final DIP Order;

(f) Liens imposed by any Governmental Authority for (i) Specified Taxes (to the extent ranking junior to the Liens under the Interim DIP Order and the Final DIP Order, as applicable), or (ii) any other taxes, assessments or charges that, in the case of this clause (ii) are not yet due or that are being contested in good faith and by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of the Borrowers in accordance with GAAP;

(g) Liens imposed by law, such as materialmen's, mechanics', carriers', workmens', storage, landlord, and repairmen's Liens and other similar Liens arising in the ordinary course of business and securing obligations (other than Indebtedness for borrowed money) not yet due or that are being contested in good faith and by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of the Borrowers in accordance with GAAP;

(h) Liens incurred or pledges or deposits made (i) to secure obligations incurred in the ordinary course of business under workers' compensation laws, unemployment insurance or other similar social security legislation (other than in respect of employee benefit plans subject to ERISA) or (ii) to any supplier of the Borrowers to the extent such deposit was set forth in the Approved Budget;

(i) zoning restrictions, easements, licenses, or other restrictions on the use of any real estate (including leasehold title), in each case which do not interfere with or affect in any material respect the ordinary course conduct of the business of the Borrowers and their Subsidiaries;

(j) deposits of money securing leases to which a Borrower is a party as lessee made in the ordinary course of business;

(k) solely on Real Property, Permitted Real Estate Encumbrances;

(l) Liens in existence on the Effective Date securing performance bonds, surety bonds, public or statutory obligations, regulatory obligations or with respect to workers' compensation claims, and other bonds or obligations of like nature, in each case that are in existence on the Effective Date; and

(m) precautionary Lien filings regarding operating leases.

SECTION 6.04. Restrictions on Fundamental Changes. Other than pursuant to an Acceptable 363 Sale of all or substantially all of the Borrowers' assets or an Acceptable Chapter 11 Plan, (a) enter into any transaction of merger, division, consolidation or amalgamation, or liquidate or provisionally liquidate, wind up or dissolve itself (or suffer any liquidation, provisional liquidation or dissolution), except that any Borrower may merge, amalgamate or consolidate with any other Borrower and any Subsidiary may merge, amalgamate or consolidate with any Borrower if the Borrower is the surviving entity; (b) reorganize under the laws of a jurisdiction other than any jurisdiction in the United States; (c) change its name, jurisdiction of formation, chief executive office and/or principal place of business; (d) file a certificate of division, adopt a plan of division or otherwise take any action to effectuate a division pursuant to Section 18-217 of the Delaware Limited Liability Company Act (or any

analogous action taken pursuant to applicable law with respect to any corporation, limited liability company, partnership or other entity); or (e) sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of its assets (including, without limitation, any sale of all or substantially all of the assets of any Excluded Subsidiary) (in each case, whether now owned or hereafter acquired), other than, in the case of this clause (e), Asset Dispositions permitted by Section 6.05.

SECTION 6.05. Asset Dispositions. To engage in any Asset Disposition, except for:

(a) Asset Dispositions solely among Borrowers;

(b) the sale, contribution, transfer or other disposition of A/R Securitization Facility Collateral pursuant to and in accordance with the A/R Securitization Documents;

(c) sales, transfers or other dispositions of assets pursuant to any order of the Bankruptcy Court, in form and substance reasonably satisfactory to the Required Lenders, permitting *de minimis* asset dispositions without further order of the Bankruptcy Court as long as the proceeds thereof are promptly deposited in any of the Debtors' accounts that are subject to a Control Agreement;

(d) sales, transfers or other dispositions of assets contemplated in, and in accordance with, the Approved Budget;

(e) pursuant to an Acceptable 363 Sale pursuant to a 363 Sale Order, which 363 Sale Order shall be in form and substance reasonably satisfactory to the Required Lenders;

(f) a sale conducted pursuant to an Acceptable Chapter 11 Plan pursuant to a Confirmation Order; and

(g) sales, transfers or other dispositions of inventory, used, obsolete or surplus equipment or reserves, dispositions related to the burn-off of mines and cash and cash equivalents and short-term marketable securities in the ordinary course of business and dispositions of surface rights and termination of Mining Leases after the completion of mining and reclamation, and termination or abandonment of water rights no longer needed for mining, in each case as long as such sale, transfer or disposition is made for entirely cash consideration, the proceeds of which are promptly deposited in any of the Debtors' accounts that are subject to a Control Agreement;

(h) the abandonment, leases, subleases, licenses, sublicenses and cross-licenses of intellectual property in the ordinary course to the extent not material to the normal conduct of its business, and of other personal property that do not involve a substantial and prolonged interruption or disruption of business activities, taken as a whole;

(i) exchanges and relocation of easements in the ordinary course of business;

(j) involuntary loss, damage or destruction of assets (including by condemnation, seizure, taking, confiscation, requisition or transfer in lieu);

(k) Asset Dispositions in respect of transactions permitted to be taken under Section 6.04; and

(l) Asset Dispositions of joint ventures and of subsidiaries who do not own any material assets other than the Equity Interest of a joint venture.

SECTION 6.06. Restricted Payments. Directly or indirectly make any Restricted Payment, except that:

(a) any Subsidiary may make Restricted Payments to a Borrower (other than a Specified Borrower); and

(b) any Subsidiary may make Restricted Payments to a Specified Borrower to the extent deposited in any of the Debtors' accounts that are subject to a Control Agreement.

SECTION 6.07. Payments of Indebtedness. Except pursuant to and simultaneous with the consummation of an Acceptable Chapter 11 Plan, prepay, redeem, purchase defease, convert into cash or otherwise satisfy prior to the scheduled maturity in any manner (a) any Indebtedness of any Borrower incurred prior to the Petition Date (including under the Existing Indenture Documents except as permitted by the DIP Orders); (b) any Indebtedness that is subordinated to the Obligations; or (c) any other Indebtedness, except, in the case of clauses (b) and (c), for (i) the payment of the Obligations in accordance with the terms of this Agreement; (ii) the payment of the Borrowers' obligations in accordance with, and to the extent and in such amounts required under, the A/R Securitization Facility subject to compliance with Section 5.09; and (iii) any payments and expenses provided for in any interim orders or final orders of the Bankruptcy Court entered upon pleadings in form and substance reasonably satisfactory to the Required Lenders.

SECTION 6.08. Transactions with Affiliates. Enter into any transaction or series of related transactions with any Affiliate of any Borrower or any of its Subsidiaries involving aggregate consideration for all such transactions with any Affiliate in excess of $250,000 in any calendar year, except for (i) transactions among solely Borrowers not involving any Subsidiary or any other Affiliate, (ii) the payments of fees and indemnities to directors, officers, consultants and employees in the ordinary course of business consistent with past practice, (iii) arrangements with respect to the procurement of services of directors, officers, independent contractors, consultants or employees in the ordinary course of business and the payment of customary compensation and other benefits and reasonably reimbursement arrangements in connection therewith, in each case, the terms of which are comparable to those that could be obtained with a non-Affiliate third party on an arm's length basis; (iv) transactions with any joint venture or similar arrangements (including, without limitation, any cash management activities relating thereto); provided that such arrangements are on terms no less favorable to the Borrowers and Subsidiaries, on the one hand, and the relevant joint venture partner and its Affiliates, on the other hand, than could be obtained at the time on an arm's-length basis from unrelated third parties, but taking into account all related arrangements and transactions entered into by the Borrowers and their Subsidiaries, on the one hand, and the relevant joint venture partner and its Affiliates, on the other hand; (v) the Transactions and (vi)

transactions in connection with the A/R Securitization Facility in accordance with and pursuant to the A/R Securitization Facility Documents.

SECTION 6.09. Business of the Borrowers and the Subsidiaries. Notwithstanding any other provisions hereof, engage at any time in any material business or business activity other than a Permitted Business.

SECTION 6.10. Limitation on Modifications of Organizational Documents, Indebtedness and Certain Other Agreements, etc.

(a) Amend or modify in any manner, or grant any waiver or release under or terminate in any manner adverse to the interests of the Lenders, any Organizational Document of any Borrower or any of the Subsidiaries.

(b) Amend or modify in any manner, or grant any waiver or release under or terminate in any manner without the consent of the Required Lenders, the SAPSA, any of the A/R Securitization Facility Documents or any of the Existing Indenture Documents (including any amendment to grant any additional Liens under the Existing Indenture Documents or the A/R Securitization Facility Documents).

(c) Enter into (or permit any Subsidiary to enter into) any agreement or instrument that by its terms restricts (i) the payment of dividends or distributions or the making of cash advances by any Borrower or any Subsidiary to any Borrower or any Subsidiary that is a direct or indirect parent of such Subsidiary or (ii) the granting of Liens by any Borrower pursuant to the DIP Orders, in each case other than those arising under any Loan Document, except, in the case of clause (i), restrictions existing by reason of:

(A) applicable law, rule, regulation, order, approval, license, permit or similar restriction,

(B) contractual encumbrances or restrictions in effect under any Indebtedness outstanding on the Petition Date and listed on Schedule 6.10 hereto,

(C) restrictions under the Existing Indenture Documents and the A/R Facility Documents;

(D) customary restrictions contained in any agreement relating to the sale of any asset permitted under Section 6.05 pending the consummation of such sale;

(E) customary provisions contained in leases or licenses and other similar agreements entered into in the ordinary course of business and listed on Schedule 6.10 hereto; and

(F) customary restrictions in connection with deposits in the ordinary course of business.

SECTION 6.11. Reserved.

SECTION 6.12. Swap Agreements. Enter into any Swap Agreement.

SECTION 6.13. Embargoed Person. To the Borrowers' knowledge, cause or permit (a) any of the funds or properties of the Borrowers that are used to repay the Loans to constitute property of, or be beneficially owned directly or indirectly by, any person subject to sanctions or trade restrictions under United States law ("Embargoed Person" or "Embargoed Persons") that is identified on (1) the "List of Specially Designated Nationals and Blocked Persons" maintained by OFAC and/or on any other similar list maintained by OFAC pursuant to any authorizing statute including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Order or regulation promulgated thereunder, with the result that the Loans made by the Lenders would be in violation of law, or (2) the Executive Order, any related enabling legislation or any other similar Executive Orders, or (b) any Embargoed Person to have any direct or indirect interest, of any nature whatsoever in the Borrowers, with the result that the Loans are in violation of law.

SECTION 6.14. Anti-Terrorism Law; Anti-Money Laundering. Directly or indirectly, (i) knowingly conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in Section 3.21, (ii) knowingly deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or any other Anti-Terrorism Law or (iii) knowingly engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, in each case in any manner that would result in a violation of law by any Person (including, without limitation, any Borrower or any Lender).

SECTION 6.15. Changes in Fiscal Year. Make any change in the fiscal year of any Borrower or any of its Subsidiaries.

SECTION 6.16. Changes in Accounting. Make any change in accounting treatment or reporting practices, except as required by GAAP.

SECTION 6.17. Subsidiaries. Form or acquire any Subsidiary, unless and until such Subsidiary joins this Agreement, the Security Agreement and the other applicable Loan Documents as a "Borrower" or a "Grantor", as applicable, together with such other documents, instruments, filings and recordations (including, without limitation, any requirements under Section 5.17(b)) as any Agent or any Lender may reasonably request in order to ensure perfection of the Liens granted to the Collateral Agent (for the benefit of the Secured Parties) by such Subsidiary.

SECTION 6.18. Unexpired Leases; Executory Contracts. Terminate, reject or assume any unexpired leases or executory contracts (including, without limitation, any Material Lease or Material Contract) or enter into any new Material Lease or Material Contract (other than any customer contract or as otherwise, in each case as contemplated in the Approved Budget), in each case, without the prior written consent (such consent not to be unreasonably withheld) of the Required Lenders.

SECTION 6.19. Approvals. Let lapse any material governmental, environmental or regulatory approvals or Permits.

SECTION 6.20. Proceedings. Other than in connection with the royalty dispute described on Schedule 6.20, settle any material litigation or administrative or regulatory proceeding resulting in a liability by any Borrower to any Governmental Authority or any third party, environmental or regulatory authority, or that results in any material restraint on the conduct of business or relinquishment of any material contractual rights; provided, that, in the case of the royalty dispute described on Schedule 6.20, such settlement shall in no event exceed $2,000,000 in the aggregate and shall be payable over 60 months in accordance with the then applicable Approved Budget.

SECTION 6.21. Margin Stock. Use all or any part of the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that violates the provisions of the Regulations of the Board, including, to the extent applicable, Regulation U and Regulation X.

SECTION 6.22. Collateral. Other than (i) pursuant to a transaction otherwise permitted under this Agreement, (ii) in respect of cash used in accordance with the Approved Budget or (iii) the sale of the A/R Securitization Facility Collateral pursuant to and in accordance with the A/R Securitization Facility Documents, take any action adversely affecting any Collateral.

SECTION 6.23. Weekly Draws. Make any Weekly Draw unless each of the following conditions have been satisfied on or prior to the date of such Weekly Draw:

(a) the Collateral Agent shall have received, and there shall remain in effect, for the benefit of the Lenders a continuing, valid, binding, enforceable, non-avoidable and perfected security interest in and Lien on the Collateral in the priority set forth in Section 2.19(c);

(b) with respect to each Weekly Draw, no Material Adverse Effect shall have occurred since December 31, 2018;

(c) on such date, both immediately prior to and after giving effect to such Weekly Draw, no Default, Event of Default or Borrowing Base Deficiency shall have occurred or be continuing;

(d) the amount of such Weekly Draw shall be in an amount in accordance with the Approved Budget for the applicable week (taking into account the starting cash balance in the operating accounts of the Borrowers and the Borrowers' intent to have a cash balance remaining in their accounts, when taken together with amounts in the Segregated Account, of not less than $12,000,000 at the end of such week, it being understood that in no event shall the amount of such Weekly Draw exceed the amount set forth in the Approved Budget (as adjusted for any variance reasonably anticipated by the Borrowers not constituting an Unpermitted Variance in respect of total disbursements for such week) for the applicable week;

(e) the representations and warranties of each Borrower contained in each Loan Document to which it is a party shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) on and as of the date of such Weekly Draw, with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects (or if applicable, in all respects) as of such earlier date);

(f) the Borrowers shall have paid all fees and expenses of the Agents and the Lenders accrued and payable on or prior to such date and set forth in a monthly invoice delivered to the Borrowers, including the accrued fees and expenses of counsel to each of the Agents and the Lenders payable pursuant to Section 10.05;

(g) the SAPSA shall be in full force and effect; and

(h) no later than 12:00 p.m., Local Time two (2) Business Days prior to the date of such Weekly Draw, the Agents and the Lenders shall have received a Weekly Draw Request.

SECTION 6.24. Use of Proceeds. Use, directly or indirectly, to the knowledge of the Borrowers, the proceeds of the Loans or otherwise make available such proceeds to any Person for the purpose of financing activities of or with any person that is the subject of Sanctions, in a Designated Jurisdiction, or in any manner that results in a violation by any Person participating in this Loan, whether as Borrower, Lender or Agent, of (i) any Sanctions, (ii) the FCPA or (iii) any Anti-Terrorism Law.

SECTION 6.25. Carve-Out.

(a) Use any portion of the Carve-Out or any portion of the Collateral or the proceeds thereof for the payment of the fees and expenses of any Person incurred challenging, or in relation to any investigation, litigation, objection or challenge of (i) the Liens or claims of any or all of any Agent and/or any Lender, (ii) any claim or cause of action against any Agent or any Lender (or any of their respective Affiliates), including any claim under Chapter 5 of the Bankruptcy Code, and (iii) any claims or challenges relating to the allocation of value as between encumbered and unencumbered assets (if any).

(b) Use any portion of the Carve-Out, any portion of the Loan or any portion of the Collateral or any proceeds thereof in connection with preventing, hindering or delaying any Agent's (for the benefit of the Lenders) or any Lender's enforcement or realization upon the Collateral once an Event of Default has occurred and is continuing.

SECTION 6.26. Orders. Fail to comply with the Interim DIP Order, Final DIP Order, any 363 Sale Order, or any Confirmation Order.

SECTION 6.27. Bank Accounts. No Borrower shall open any deposit account, securities account or commodities account unless: (a) permitted to do so by an order of the Bankruptcy Court; and (b) prior to or concurrently with opening such account, deliver to the

Collateral Agent a Control Agreement with respect to such account, duly executed and delivered by each of the parties thereto.

SECTION 6.28. Minimum Liquidity. Permit the aggregate amount of cash in (a) the Segregated Account plus (b) the Debtors' accounts that are subject to a Control Agreement (when taken in the aggregate) to be less than $12,000,000 at any time; provided that the amount of cash in the Segregated Account shall not be less than $6,000,000 at any time.

ARTICLE VII.

[RESERVED]

ARTICLE VIII.

EVENTS OF DEFAULT

SECTION 8.01. Events of Default. In case of the happening of any of the following events (each, an "Event of Default"):

(a) any representation or warranty made or deemed made by a Borrower or any Subsidiary on or after the Effective Date in any Loan Document, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished on or after the Effective Date in connection with or pursuant to any Loan Document, shall prove to have been false or misleading in any material respect (except that such materiality qualifier shall not be applicable to any representation or warranty already qualified by materiality or Material Adverse Effect) when so made, deemed made or furnished by a Borrower or a Subsidiary;

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

(c) default shall be made in the payment of any interest on any Loan or in the payment of any Fee or any other amount (other than an amount referred to in (b) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of three (3) Business Days;

(d) default shall be made in the due observance or performance by any Borrower or any of the Subsidiaries of any covenant, condition or agreement contained in Sections 2.19, 5.01, 5.02, 5.04(a), 5.04(b), 5.04(g), 5.04(i), 5.04(k), 5.04(l), 5.06, 5.07, 5.08, 5.09, 5.10, 5.11, 5.12, 5.13, 5.14, 5.15, 5.16, 5.17, 5.19, 5.20, 5.21 or in Article VI; provided that any such default that arises as a result of operational or technical error in effectuating cash deposits shall be subject to a one (1) Business day grace period;

(e) (i) default shall be made in the due observance or performance by any Borrower or any of the Subsidiaries of any covenant, condition or agreement contained in Sections 5.03, 5.04 (other than as set forth in paragraph (d) above), 5.05, 5.18 or 5.22 and such default shall continue unremedied for a period of one (1) Business Day; or (ii) default shall be

made in the due observance or performance by any Borrower or any of the Subsidiaries of any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraphs (b), (c), (d) and (e)(i) above) and such default shall continue unremedied for a period of thirty (30) days following any Borrower becoming aware of such default;

(f) a default shall be made by any Borrower or any Subsidiary in (i) making any payment of principal of any Material Indebtedness, (ii) making any payment of premium or interest on any Material Indebtedness, in each case of clauses (i) and (ii) beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created or incurred, or (iii) the observance or performance of any other agreement or condition relating to any such Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to (x) cause, or to permit the holder or beneficiary of such Material Indebtedness (or a trustee or agent on behalf of such holder or beneficiary) to cause (determined without regard to whether any notice is required) such Material Indebtedness to become due prior to its stated maturity or (in the case of any such Material Indebtedness constituting a guarantee obligation) to become payable or (y) to cause (determined without regard to whether any notice is required) any Borrower to purchase or redeem or make an offer to purchase or redeem such Material Indebtedness prior to its stated maturity, in each case of clauses (i), (ii) and (iii) unless the exercise of any rights or remedies by a holder of such Indebtedness is subject to the automatic stay in the Cases;

(g) there shall have occurred a Change in Control;

(h) except as would not reasonably be expected to have a Material Adverse Effect, an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of any Subsidiary that is not a Debtor (any such Subsidiary, an "Applicable Subsidiary"), or of a substantial part of the assets of any Applicable Subsidiary, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Applicable Subsidiary or for a substantial part of the assets of any Applicable Subsidiary or (iii) the winding-up or liquidation of any Applicable Subsidiary; and such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) except as would not reasonably be expected to have a Material Adverse Effect, any Applicable Subsidiary shall (a) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, (b) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in paragraph (h) above, (c) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for an Applicable Subsidiary or for a substantial part of the assets of an Applicable Subsidiary, (d) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (e) make a general assignment for the benefit of creditors or (f) become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(j) the entry of one or more judgments or decrees (other than a judgment or decree against a Borrower entered prior to the Petition Date that is subject to the automatic stay in the Cases) against any Borrower or any Subsidiary involving, in the aggregate, a liability (not paid or covered by insurance as to which the relevant reputable and solvent insurance company has been notified of the claim and has not denied or disputed coverage) of $1,000,000 or more, and all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within sixty (60) days from the entry thereof;

(k) (i) one or more ERISA Events shall have occurred that, when taken together with all other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect, (ii) there is or arises an Unfunded Pension Liability (taking into account only Plans with positive Unfunded Pension Liability) of $1,000,000 or more, or (iii) there is or arises any potential withdrawal liability under Section 4201 of ERISA, if each Borrower, each Subsidiary and each ERISA Affiliate were to withdraw completely from any and all Multiemployer Plans, of $1,000,000 or more;

(l) any Borrower or Subsidiary shall (directly or indirectly) contest, delay, impede, challenge, impair, object to, or take or attempt to take any other action to contest, delay, impede, challenge, impair or object to, (A) the validity or enforceability of any Loan Document in writing or deny in writing that it has any further liability thereunder, (B) the validity, extent, perfection, or priority of any Liens and security interests securing the Loans or any security interest purported to be created by any Security Document in respect of assets that are material to the Borrowers and the Subsidiaries on a consolidated basis, or (C) the Superpriority Claim;

(m) the Collateral Agent (for the benefit of the Lenders) shall cease to have a valid, enforceable and perfected security interest in and Lien on any Collateral with the priorities set forth in Section 2.19;

(n) (i) any of the Cases of the Debtors shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code or any Debtors shall file a motion or other pleading seeking the dismissal of any of the Cases of the Debtors under Section 1112 of the Bankruptcy Code or otherwise without the consent (such consent not to be unreasonably withheld) of the Required Lenders or (ii) a trustee under Chapter 11 of the Bankruptcy Code or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) shall be appointed in any of the Cases of the Debtors;

(o) except as set forth in the DIP Orders, as applicable: (i) an application shall be filed by any Debtor for the approval of any other Superpriority Claim (and the motion seeking approval of the Loan Documents and entry of the DIP Orders shall not constitute such an application), or (ii) an order of the Bankruptcy Court shall be entered granting any other Superpriority Claim (other than the Carve-Out), in any of the Cases of the Debtors that is *pari passu* with or senior to the claims of the Administrative Agent, the Collateral Agent and the Lenders against any Borrower hereunder or under any of the other Loan Documents, or (iii) any Debtor shall permit there to arise or otherwise be granted any such *pari passu* or senior Superpriority Claim (other than the Carve-Out);

(p) the Bankruptcy Court shall enter an order or orders (other than the DIP Orders) granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code: (i) to permit any creditor to foreclose (or the granting to such creditor of a deed in lieu of foreclosure or the like) on (A) any Collateral or (B) any other assets of any of the Debtors which have a value in excess of $1,000,000 in the aggregate; (ii) with respect to any lien of or the granting of any lien on any Collateral to any federal, state, or local governmental or environmental authority or regulatory agency; or (iii) to permit other actions that would have a Material Adverse Effect on the Debtors or their estates (taken as a whole);

(q) (i) an order of the Bankruptcy Court (or any appellate court) shall be entered reversing, amending, supplementing, staying for a period of seven days or more, vacating or otherwise amending, supplementing or modifying the Interim DIP Order or the Final DIP Order, or any Borrower or any Subsidiary shall apply for the authority to do so, in each case in a manner that is adverse to any Agent or any Lenders, without the prior written consent (such consent not to be unreasonably withheld) of the Required Lenders ; (ii) an order of the Bankruptcy Court shall be entered denying or terminating use of cash collateral by the Borrowers and the Borrowers shall have not obtained use of cash collateral pursuant to an order consented to by (such consent not to be unreasonably withheld), and in form and substance reasonably acceptable to, the Required Lenders; (iii) the Interim DIP Order (prior to the entry of the Final DIP Order) or Final DIP Order (at all times thereafter) shall cease to be in full force and effect; (iv) any of the Borrowers or any Subsidiary shall fail to comply with the DIP Orders in any material respect; (v) other than with respect to the Carve-Out, a final non-appealable order in the Cases shall be entered charging any of the Collateral under Section 506(c) of the Bankruptcy Code against the Lenders; or (vi) the Final DIP Order shall not authorize the borrowing by the Borrower of the full amount of the Commitments provided for hereunder;

(r) except as permitted by the DIP Orders or as otherwise agreed to by the Required Lenders, any Debtor shall make (or any Debtor shall apply for authority to make) any Pre-Petition Payment other than Pre-Petition Payments authorized by the Bankruptcy Court in accordance with the "first day" orders of the Bankruptcy Court as set forth in the Approved Budget;

(s) a Chapter 11 Plan (or disclosure statement attendant thereto) that is not an Acceptable Chapter 11 Plan (or disclosure statement attendant thereto) shall be filed or confirmed in any of the Cases of the Debtors, or any order shall be entered which dismisses any of the Cases of the Debtors and which order does not provide for termination of the Commitments and payment in full in cash of the Obligations under the Loan Documents (other than contingent indemnification obligations as to which no claim has been asserted), or any of the Debtors shall seek confirmation of any such plan or entry of any such order;

(t) an order (including, without limitation, a 363 Sale Order) with respect to a 363 Sale that is not an Acceptable 363 Sale, or any other sale of all or substantially all of the assets of the Borrowers without the prior written consent (such consent not to be unreasonably withheld) of the Supermajority Lenders, shall be entered in the Cases;

(u) the entry of an order in the Cases amending, supplementing, staying, reversing, vacating or otherwise modifying (i) any Loan Document, (ii) the Interim DIP Order,

(iii) the Final DIP Order, (iv) any order confirming an Acceptable Chapter 11 Plan, (v) any order confirming an Acceptable 363 Sale, (vi) the Confirmation Order, or (vii) a 363 Sale Order, in each case without the prior written consent (such consent not to be unreasonably withheld) of the Supermajority Lenders;

(v) the entry of any order precluding, modifying or prohibiting any Agent or any Lender from having the right to or being permitted to "credit bid";

(w) the SAPSA shall cease to be in full force and effect or shall have been terminated;

(x) the bringing of a motion or taking of any action, in each case, by any Debtor in the Cases, or the entry of any order by the Bankruptcy Court in the Cases: (i) without the consent of the Administrative Agent (such consent not to be unreasonably withheld), to obtain additional financing under Section 364(c) and (d) of the Bankruptcy Code that does not provide for the repayment of the Loans and all other Obligations in full in cash on the date of closing of such additional financing or to grant any Lien upon or affecting any Collateral; (ii) that requests or seeks authority for or that approves or provides authority to take any other action or actions adverse to any Agent or any Lender (each in its capacity as such) or their rights and remedies hereunder or their interest in the Collateral; (iii) to avoid repayment of any portion of the Loans or any other Obligations; or (iv) to require repayment of any portion of the payments made on account of the Loans or other Obligations;

(y) the Bankruptcy Court shall have entered an order in the Chapter 11 Cases terminating any of the Debtors' exclusive right to file or solicit acceptances of a plan or plans or reorganization pursuant to section 1121 of the Bankruptcy Code;

(z) any Borrower or any Subsidiary shall make any attempt or take any action to reduce, setoff or subordinate the Loans, Obligations, or any Liens securing the Loans or other Obligations to any other Indebtedness;

(aa) one or more surety, reclamation or similar bonds securing obligations of any Borrower or any Subsidiary (or any required guaranties thereof or required letters of credit with respect thereto) with an aggregate face amount of $1,000,000 or more shall be actually terminated, suspended or revoked and not replaced within thirty (30) days of such termination, suspension or revocation by one or more of the following: surety, reclamation or similar bonds, letters of credit, proceeds of the Loans (to the extent permitted under the Loan Documents) or alternative guaranty products acceptable to the recipient thereof;

(bb) the occurrence, or the delivery of notice by the "Required Consenting Noteholders" (as defined in the Interim DIP Order)), of the Cash Collateral Termination Date (as defined in the Interim DIP Order);

(cc) any Borrower or other Subsidiary shall take any action in support of any matter set forth in any of the foregoing paragraphs or any other Person shall do so and such application is not contested in good faith by the Borrowers and the relief requested is granted in an order that is not stayed pending appeal, in each case unless the Required Lenders consents in writing (such consent not to be unreasonably withheld) to such action; or

(dd) the "Facility Termination Date", as such term is defined in the A/R Securitization Facility Agreement, shall have occurred;

then, notwithstanding the provisions of Section 362 of the Bankruptcy Code, without any application, motion, or notice to, hearing before or order from the Bankruptcy Court but subject to the terms and conditions set forth in the Interim DIP Order and, once entered, the Final DIP Order, and at any time thereafter during the continuance of such event, the applicable Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions, at the same or different times:

(i) terminate, reduce or restrict forthwith the Commitments;

(ii) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon, the Exit Fee, any other unpaid accrued Fees and all other liabilities and Obligations of the Borrowers accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by each Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding;

(iii) terminate the Facility and the Loan Documents as to any future liability or obligation of the Lenders and the Agents, but without affecting any of the Liens on the Collateral or the Obligations;

(iv) exercise, on behalf of the Secured Parties, all rights and remedies available to it under the Loan Documents, any DIP Order or applicable law, including, without limitation, in respect of the Collateral in accordance with provisions setting forth the rights and remedies of the Secured Parties in the Security Agreement and/or the comparable provisions of any other Security Document, and/or apply, or cause to be applied, any amounts in the Escrow Account consistent with Section 8.01;

(v) exercise any of its rights with respect to Real Property Leases or Material Contracts under Article VII (the exercise of any right under any of the foregoing clauses (i) through (vi), a "Termination Declaration");

provided, that, upon expiration of the Remedies Notice Period, the Agents, at the direction of the Required Lenders, shall be permitted to exercise all remedies set forth herein, in the Loan Documents, and as otherwise available at law without further order of or application or motion to the Bankruptcy Court; provided, further, that the Agents shall not, and the Required Lenders or Required Lenders, as applicable, shall not direct the Agents to, take any enforcement actions with respect to the Receivables Equity until such time as all obligations under the A/R Securitization Facility (other than contingent indemnification obligations as to which no claim has been asserted) are paid in full. Notwithstanding anything to the contrary, at any time a default or an Event of Default has occurred and is continuing, (x) the Lenders shall in no event be required to fund the Loan (or any portion thereof) and (y) no Weekly Draws shall be permitted.

SECTION 8.02. Application of Funds. On the Maturity Date and after the exercise of remedies provided for in Section 8.01 (or after the Obligations have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including any Fees, as well as fees, charges and disbursements of counsel to the Agents, the Required Lenders and the Lenders and amounts payable under Sections 2.13, 2.14, 2.15 and 2.18) payable to the Agents, the Required Lenders and/or Lenders in their capacities as such;

Second, to payment of that portion of the Obligations constituting interest on the Loans (other than Roll-Up Loans) and other Obligations, ratably among the Lenders in proportion to the respective amounts described in this clause *Second* payable to them;

Third, to payment of that portion of the Obligations constituting unpaid principal of the Loans (other than Roll-Up Loans), ratably among the Lenders in proportion to the respective amounts described in this clause *Third* held by them;

Fourth, to payment of that portion of the Obligations constituting interest on the Roll-Up Loan and other Obligations, ratably among the Lenders in proportion to the respective amounts described in this clause *Fourth* payable to them;

Fifth, to payment of that portion of the Obligations constituting unpaid principal of the Loans (other than Roll-Up Loans), ratably among the Lenders in proportion to the respective amounts described in this clause *Fifth* held by them; and

Sixth, to payment of any remaining Obligations, ratably among the Lenders in proportion to the respective amounts described in this clause *Sixth* held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the payment of those claims of creditors to the Borrowers (including those claims of (a) those holders of Contingent Roll-Up Loans, if any, and (b) those holders of the 2021 Notes) that are junior and subordinated to the claims of the Lenders, all subject to, and in accordance with, the priority of payment established by the DIP Orders and other applicable law;

provided, that the application to the Obligations pursuant to this Section 8.02 of amounts received in respect of Collateral that is the Receivables Equity is expressly subject to the priorities set forth in the Interim DIP Order (and, when entered, the Final DIP Order), and all such amounts shall first be allocated in accordance with such priorities before being applied to the Obligations pursuant to this Section 8.02; provided, further, that, to the extent that the

Maturity Date has occurred pursuant to clause (f) or (g) of the definition thereof, the application of amounts pursuant to this Section 8.02 shall be subject to Section 4(c) of the SAPSA.

ARTICLE IX.

THE AGENTS

SECTION 9.01. Appointment.

(a) In order to facilitate the transactions contemplated by this Agreement, Ankura Trust Company, LLC is hereby appointed to act as Administrative Agent and Collateral Agent under this Agreement and the other Loan Documents. Each of the Lenders and each assignee of any such Lender hereby irrevocably authorizes the Administrative Agent to take such actions on behalf of such Lender or assignee and to exercise such powers as are specifically delegated to the Administrative Agent by the terms and provisions hereof and of the other Loan Documents, together with such actions and powers as are reasonably incidental thereto. The Administrative Agent is hereby expressly authorized by the Lenders, without hereby limiting any implied authority, (a) to receive on behalf of the Lenders all payments of principal of and interest on the Loans and all other amounts due to the Lenders hereunder, and promptly to distribute to each Lender its proper share of each payment so received; (b) to give notice on behalf of each of the Lenders, at the direction of the Required Lenders, of any Event of Default specified in this Agreement of which the Administrative Agent has actual knowledge acquired in connection with the performance of its duties as Administrative Agent hereunder; and (c) to distribute to each Lender copies of all notices, financial statements and other materials delivered by any Borrower or any of its Subsidiaries pursuant to this Agreement as received by the Administrative Agent. Without limiting the generality of the foregoing, the Collateral Agent is hereby expressly authorized to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Security Documents, and all such rights and remedies in respect of such Collateral shall be implemented by the Collateral Agent.

(b) Neither the Agents nor any of their respective directors, officers, employees or agents shall be liable as such for any action taken or omitted by any of them except for its or his own gross negligence or willful misconduct as determined by a final, nonappealable order of a court of competent jurisdiction, or be responsible for any statement, warranty or representation herein or the contents of any document delivered in connection herewith, or be required to ascertain or to make any inquiry concerning the performance or observance by any Borrower of any of the terms, conditions, covenants or agreements contained in any Loan Document. The Agents shall not be responsible to the Lenders for the due execution, genuineness, validity, enforceability or effectiveness of this Agreement or any other Loan Documents or other instruments or agreements. The Agents shall in all cases be fully protected in acting, or refraining from acting, in accordance with written instructions signed by the Required Lenders and, except as otherwise specifically provided herein, such instructions and any action or inaction pursuant thereto shall be binding on all the Lenders if permitted to be taken or not taken with Required Lender direction. Each Agent shall, in the absence of knowledge to the contrary, be entitled to rely on any instrument or document believed by it in good faith to be genuine and correct and to have been signed or sent by the proper person or

persons. Neither the Agents nor any of their respective directors, officers, employees or agents shall have any responsibility to any Borrower or any other party hereto or to any Loan Document on account of the failure, delay in performance or breach by, or as a result of information provided by, any Lender of any of its obligations hereunder or to any Lender on account of the failure of or delay in performance or breach by any other Lender or any Borrower of any of their respective obligations hereunder or under any other Loan Document or in connection herewith or therewith. Each Agent may execute any and all duties hereunder by or through agents, employees or any sub-agent appointed by it and shall be entitled to rely upon the advice of legal counsel selected by it or Borrowers' counsel with respect to all matters arising hereunder and shall not be liable for any action taken or suffered in good faith by it in accordance with the advice of such counsel.

SECTION 9.02. Nature of Duties. The Lenders hereby acknowledge that no Agent shall be under any duty to take any discretionary action permitted to be taken by it pursuant to the provisions of this Agreement unless it shall be requested in writing to do so by the Required Lenders. The Lenders further acknowledge and agree that so long as an Agent shall make any determination to be made by it hereunder or under any other Loan Document in good faith, such Agent shall have no liability in respect of such determination to any person. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into the Loan Documents or otherwise exist against the Administrative Agent.

SECTION 9.03. Resignation by the Agents. Any Agent may, by written notice to the Administrative Borrower and the Lenders, resign at any time. Upon any such resignation, the Required Lenders shall have the right to appoint a successor with the consent of the Administrative Borrower (not to be unreasonably withheld or delayed); provided, that approval of the Administrative Borrower shall not be required during the continuation of a Default or Event of Default. If no successor shall have been so appointed by the Required Lenders and approved by the Administrative Borrower (to the extent such approval is required) and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the applicable Lenders with the consent of the Administrative Borrower (not to be unreasonably withheld or delayed), appoint a successor Agent which shall be a bank with an office in New York, New York (or a bank having an Affiliate with such an office) having a combined capital and surplus that is not less than $500 million or an Affiliate of any such bank. Upon the acceptance of any appointment as Agent hereunder by a successor bank, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents. After the Agent's resignation hereunder, the provisions of this Article IX and Section 10.05 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Agent. If no successor agent has accepted appointment as Agent by the date which is thirty (30) days following the retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and such Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents, and Required

Lenders shall perform all of the duties of the Agent hereunder until such time, if any, as a successor Agent has been appointed as provided for above.

SECTION 9.04. Each Agent in Its Individual Capacity. With respect to the Loans made by it hereunder, each Agent in its individual capacity and not as Agent shall have the same rights and powers as any other Lender and may exercise the same as though it were not an Agent, and the Agents and their Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrowers or any of their Subsidiaries or other Affiliates thereof as if it were not an Agent.

SECTION 9.05. Indemnification. Each Lender agrees (a) to reimburse the Agents, on demand, in the amount of its pro rata share (based on its Commitments hereunder, or if such Commitments shall have expired or been terminated, in accordance with the respective principal amounts of its applicable outstanding Loans) of any reasonable expenses incurred by the Agents, including reasonable counsel fees and compensation of agents and employees paid for services rendered, which shall not have been reimbursed by the Borrowers and (b) to indemnify and hold harmless each Agent and any of its directors, officers, employees or agents, on demand, in the amount of such pro rata share, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against it in its capacity as Agent, or any of them in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted by it or any of them under this Agreement or any other Loan Document, to the extent the same shall not have been reimbursed by the Borrowers; provided that no Lender shall be liable to an Agent for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements determined by a final and non-appealable order of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Agent. The agreements in this Section 9.05 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of any Loans and all other amounts payable hereunder.

SECTION 9.06. Lack of Reliance on Agents. Each Lender acknowledges that it has, independently and without reliance upon the Agents and any Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agents or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement or any other Loan Document, any related agreement or any document furnished hereunder or thereunder. Without limiting the foregoing, no Agent shall be deemed responsible for the verification of the satisfaction of the conditions or requirements for a Weekly Draw pursuant to Section 6.23 or otherwise, it being understood that the sole responsibility of the Administrative Agent with respect to any Weekly Draw Request is to make the same available to the Lenders and countersign such Weekly Draw Request in the absence of an objection by the Required Lenders, in each case pursuant to Section 2.04(b).

SECTION 9.07. Withholding Taxes. To the extent required by any applicable laws, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. Without limiting or expanding the provisions of Section 2.15, each Lender shall indemnify and hold harmless the Administrative Agent against, and shall make payable in respect thereof within 10 days after demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the Internal Revenue Service or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold Tax from amounts paid to or for the account of such Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 9.07. The agreements in this Section 9.07 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of any Loans and all other amounts payable hereunder.

SECTION 9.08. Credit Bidding. The Borrowers and the Lenders hereby irrevocably authorize each Agent, based upon the written instruction of the Required Lenders, to (a) consent to, credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including, without limitation, under Section 363 of the Bankruptcy Code or in connection with a Chapter 11 Plan, (b) credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale, transfer or other disposition thereof conducted under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC, or (c) credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any other sale or foreclosure conducted by any Agent (whether by judicial action or otherwise) in accordance with applicable law. In connection with any such credit bid or purchase, (i) the Obligations owed to the Lenders shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not unduly delay the ability of any Agent to credit bid or purchase at such disposition of the Collateral and, if such claims cannot be estimated without unduly delaying the ability of the applicable Agent to credit bid, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the asset or assets purchased by means of such credit bid) and the Lenders whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the asset or assets so purchased (or in the Equity Interests of the acquisition vehicle or vehicles that are used to consummate such purchase), and (ii) each Agent, based upon the written instruction of the Required Lenders, may accept non-cash consideration, including debt and equity securities issued by such acquisition vehicle or vehicles, and in connection therewith the Administrative Agent may reduce the Obligations owed to the Lenders

(ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) based upon the value of such non-cash consideration.

ARTICLE X.

MISCELLANEOUS

SECTION 10.01. Notices.

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

(i) if to any Borrower,

Cloud Peak Energy Resources LLC
385 Interlocken Crescent, Suite 400
Broomfield, CO 80021
Attention: Bryan Pechersky
Email: Bryan.Pechersky@cldpk.com

(ii) if to the Administrative Agent or the Collateral Agent,

Ankura Trust Company, LLC
140 Shearman Street, 4th Floor
Fairfield, CT 06824
Attention: Michael Fey
Telecopy: (603) 609-0707
Phone: (980) 226-7633
Email: michael.fey@ankura.com

with a copy (which shall not constitute notice) to:

Davis Polk & Wardwell
450 Lexington Avenue
New York, NY 10017
Attn: Damian Schaible and Aryeh Falk
Email: damian.schaible@davispolk.com; aryeh.falk@davispolk.com

(iii) if to any Lender, to it at the address listed on its signature page hereto or in the Assignment and Acceptance to which it is a party.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent. Each of the Administrative Agent, the Collateral Agent, each Lender and each Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant

to procedures approved by it; provided, further, that approval of such procedures may be limited to particular notices or communications.

(c) All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service, sent by telecopy or (to the extent permitted by paragraph (b) above) electronic means (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient) or on the date five (5) Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 10.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 10.01.

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

SECTION 10.02. Survival of Agreement. All covenants, agreements, representations and warranties made by the Borrowers herein, in the other Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and shall survive the making by the Lenders of the Loans and the execution and delivery of the Loan Documents, regardless of any investigation made by such persons or on their behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any Fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid and so long as the Commitments have not been terminated. Without prejudice to the survival of any other agreements contained herein, indemnification and reimbursement obligations contained herein (including pursuant to Sections 2.13, 2.15, 9.05 and 10.05) shall survive the payment in full of the principal and interest hereunder and the termination of the Commitments or this Agreement.

SECTION 10.03. Binding Effect, Effectiveness. This Agreement shall become binding (subject, however, to the satisfaction of the other conditions set forth in Section 4.01) when this Agreement shall have been executed by the Borrowers and the Agents and when the Administrative Agent shall have received copies thereof which, when taken together, bear the signature of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the Borrowers, the Agents and each Lender and their respective permitted successors and assigns; provided, however, this Agreement shall not become binding upon the Borrowers unless and to the extent approved by the Bankruptcy Court.

SECTION 10.04. Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and registered assigns permitted hereby, except that (i) no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by any Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance

with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any person (other than the parties hereto, their respective successors and assigns permitted hereby, including any Participants, to the extent provided in paragraph (c) of this Section, and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents, the Lenders and, to the extent expressly contemplated hereby, the other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Administrative Borrower (which consent shall be deemed given unless the Administrative Borrower shall have objected thereto by written notice to the Administrative Agent within five (5) Business Days after delivery of a written request for such consent), provided that no consent of the Administrative Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender or if an Event of Default has occurred and is continuing; and

(B) the Administrative Agent; provided that no consent of the Administrative Agent shall be required for an assignment of to a Lender, an Affiliate of a Lender or Approved Fund immediately prior to giving effect to such assignment.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment, the amount of the commitment of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than $1,000,000, unless the Administrative Agent otherwise consents;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of $3,500; provided that no such recordation fee shall be due in connection with an assignment to an existing Lender or Affiliate of a Lender or an Approved Fund of such Lender or an assignment by the Administrative Agent;

(D) any Roll-Up Loan may only be assigned subject to the concurrent assignment to the same assignee of Corresponding New Money Loans actually funded in a principal amount of 125.0% (for purposes of this provision not

counting any in-kind fees paid on such New Money Loans or any interest paid or accrued on such fees) of the Roll-Up Loan so assigned;

(E) any New Money Loan may only be assigned subject to the concurrent assignment to the same assignee of Roll-Up Loans (in a principal amount of 80.0% (for purposes of this provision not counting any in-kind fees paid on such New Money Loans or any interest paid or accrued on such fees) of such New Money Loan) for which such assigned New Money Loan is a Corresponding New Money Loan;

(F) any Contingent Roll-Up Loan may only be assigned subject to the concurrent assignment to the same assignee of a Commitment to make New Money Loans in an amount equal to 125.0% of such Contingent Roll-Up Loan; and

(G) at any time while any Contingent Roll-Up Loan is outstanding, a Commitment to make New Money Loans may only be assigned subject to the concurrent assignment to the same assignee of Contingent Roll-Up Loans in an amount equal to 80.0% of such Commitment.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Acceptance the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender hereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.13, 2.15, 2.16 and 10.05). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrowers, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal and interest amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrowers, the Agents and the Lenders shall treat each person whose name is recorded in the Register pursuant to the terms hereof as the Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Subject to Section 10.04(e), upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(vi) No such assignment shall be made (A) to any Borrower or any of any Borrower's Affiliates or Subsidiaries or (B) to a natural person.

(c) (i) Any Lender may, without the consent of any Borrower or the Administrative Agent, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrowers, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument (oral or written) pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and the other Loan Documents; provided that (x) such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in Section 10.04(a)(i) or clauses (i), (ii), (iii), (iv), (v) or (vi) of the first proviso to Section 10.08(b) that affects such Participant and (y) no other agreement (oral or written) with respect to such Participant may exist between such Lender and such Participant. Subject to paragraph (c)(ii) of this Section, the Borrowers agree that each Participant shall be entitled to the benefits of Sections 2.13, 2.14 and 2.15 to the same extent, and subject to the same documentary requirements, as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section (subject to the requirements and limitations of such sections as if it were a Lender). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.06 as though it were a Lender; provided that such Participant shall be subject to Section 2.16(c) as though it were a Lender.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.13 or 2.15 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent such entitlement to a greater payment results from a Change in Law after the sale of the participation takes place.

(iii) Each Lender shall, acting for this purpose as a non-fiduciary agent of the Borrowers, maintain at one of its offices a register for the recordation of the names and addresses of its Participants, and the amount and terms of its participations, including specifying any such Participant's entitlement to payments of principal and interest, and any payments made, with respect to each such participation (the "Participant Register"). The entries in the Participant Register shall be conclusive absent manifest error, and such

Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary; provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such Commitment, Loan, or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank having jurisdiction over such Lender, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) (i) Notwithstanding anything herein to the contrary herein, the Administrative Agent is hereby irrevocably authorized by each Lender to, in lieu of processing individual assignments to be effectuated by Master Assignments and Acceptances submitted in connection with the Specified Tender Offer, attach an amended and restated Schedule 1.01(A) to this Agreement in accordance with clause (ii) below. Such amended and restated Schedule 1.01(A) will reflect the percentages of the Loans and Commitments held by the Lenders as if such Master Assignments and Acceptances had been processed in accordance with the Specified Tender Offer Documents.

(ii) When determining the applicable percentages of the Loans and Commitments, the Administrative Agent shall act in consultation with the Borrowers and their advisors and may conclusively rely on the advice of its advisors and the advisors to the Borrowers. Prior to the date of the Second Borrowing, the Administrative Agent may provide to each Lender (and each Person that is contemplated to become a Lender pursuant to the Master Assignments and Acceptances) with the respective amounts of each such Lender's (or other Person's, as applicable) Loans and Commitments that are proposed to be included on such amended and restated Schedule 1.01(a). Each such Lender (or other Person, as applicable) will be deemed to have accepted and consented to such calculation of the amount of its Loans and Commitments unless it has objected in writing to the Administrative Agent within two (2) Business Days following the receipt of such amounts and has specifically stated the basis for such objection. Upon such deemed approval by all applicable Lenders (or other Persons, as applicable), such Master Assignments and Acceptances and such amended and restated Schedule 1.01(A) shall each be deemed effective for all purposes as of the date of the Second Borrowing and such amended and restated Schedule 1.01(A) attached to this Agreement pursuant to this Section 10.04(e) shall be conclusive absent manifest error.

(iii) After giving effect to the assignments of Loans and Commitments effectuated by the Master Assignments and Acceptances and by such amended and restated Schedule 1.01(A), as applicable, the Administrative Agent is hereby irrevocably

authorized to direct the disposition of funds among the Lenders (including any assignees under the Master Assignments and Acceptances) and the Borrower and to make such other adjustments to the Register as may be necessary so that each Lender holds its ratable share (i) of all New Money Loans made as part of the Initial Borrowing and the Second Borrowing, (ii) of all Initial Roll-Up Loans and all Final Roll-Up Loans (Second Borrowing) and (iii) all then remaining outstanding Commitments.

SECTION 10.05. Expenses; Indemnity.

(a) Each Borrower jointly and severally with the other Borrowers agrees to pay all reasonable costs and expenses (including Other Taxes) incurred by the Agents, the Required Lenders and the Lenders in connection with the preparation of this Agreement and the other Loan Documents, or by the Agents, the Required Lenders and the Lenders in connection with the administration of this Agreement (including expenses incurred in connection with due diligence and initial and ongoing Collateral examination, reasonable fees, disbursements and the charges for counsel (including in each jurisdiction where Collateral is located), and search, filing and recording fees associated therewith and in connection the Cases) or in connection with any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the Transactions hereby contemplated shall be consummated) or incurred by the Agents, the Required Lenders or any Lender in connection with the enforcement or protection of their rights in connection with this Agreement and the other Loan Documents, in connection with the Loans made hereunder, in each case, including, without limitation, the reasonable fees, charges and disbursements of Davis Polk & Wardwell LLP (counsel for the Required Lenders), Morris, Nichols, Arsht & Tunnell LLP (Delaware counsel for the Required Lenders) and any other professional advisors retained by any Agent, the Required Lenders, any Lender or any of the foregoing law firms, and, in connection with any such enforcement or protection, the reasonable fees, charges and disbursements of any other counsel, including the reasonable fees, charges and disbursements of counsel for the Agents, the Required Lenders and each Lender. Notwithstanding anything to the contrary, all such costs, fees, expenses, charges and disbursements under this clause (a) shall be due and payable by the Borrowers on: (i) the date of entry of the Interim DIP Order; (ii) the date of entry of the Final DIP Order; (iii) the date of payment in full in cash of the Obligations under the Loan Documents (other than contingent indemnification obligations as to which no claim has been asserted); (iv) the date of Consummation of a Chapter 11 Plan; and (v) otherwise, within seven (7) Business Days after delivery of an invoice therefor to the Administrative Borrower.

(b) Each Borrower agrees to indemnify the Agents, the Required Lenders, each Lender and each of their Related Parties (each such person being called an "Indemnitee") against, and to hold each Indemnitee harmless from, any and all losses, claims, settlement payments, damages, liabilities, litigation, obligations, actions or causes of action, investigations or proceedings and related costs and expenses, including reasonable counsel fees, charges and disbursements, incurred by or asserted or brought against any Indemnitee arising out of, in any way connected with, or as a result of (i) the execution or delivery of this Agreement or any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto and thereto of their respective obligations thereunder or the consummation of the Transactions and the other transactions contemplated hereby or by any other Loan Document, (ii) any actual or proposed use of the proceeds of the Loans, (iii) the

Cases, or (iv) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto and whether or not brought by a Borrower or any of its Subsidiaries or any other Person, except in each case to the extent resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final non-appealable order of a court of competent jurisdiction. Subject to and without limiting the generality of the foregoing sentence, each Borrower agrees to indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, litigation, investigations or proceedings and related expenses, including reasonable counsel or consultant fees, charges and disbursements, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (A) any Environmental Claim related in any way to any Borrower or any of its Subsidiaries, (B) any violation or alleged violation of any Environmental Law or Environmental Permit by or related in any way to any Borrower or any of its Subsidiaries, or (C) any actual or alleged presence, Release or threatened Release of or exposure to Hazardous Materials at, under, on or from any property or facility owned, leased or operated by any Borrower or any of its Subsidiaries, or by any predecessor of any Borrower or any of its Subsidiaries, except in each case to the extent resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final non-appealable order of a court of competent jurisdiction. The provisions of this Section 10.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of any Agent, the Required Lenders or any Lender. All amounts due under this Section 10.05 shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested. Each Borrower agrees that in the event that any actions or proceedings are in effect or are threatened by, or any Agent or any Lender reasonably believes any actions or proceedings may be brought by, the Creditors' Committee or any other party in interest attacking the legality, validity, enforceability of the obligations under the Loan Documents or the Liens arising under the Loan Documents at the time of the consummation of any sale of the assets of the Borrowers or at the time that Borrowers propose to pay and satisfy the Obligations in full, the Collateral Agent may (and shall at the direction of the Required Lenders) hold a reserve following the date of payment in full of the Obligations as cash collateral for the expenses or claims expected to be incurred in connection with such actions or proceedings until the earlier of (x) the Collateral Agent's receipt of a general release satisfactory in form and substance to the Collateral Agent and the Required Lenders, and (y) the entry of a final non-appealable order determining the outcome of such litigation.

(c) Except as expressly provided in Section 10.05(a) with respect to Other Taxes, which shall not be duplicative with any amounts paid pursuant to Section 2.15, this Section 10.05 shall not apply to Taxes, except any Taxes that represent losses, claims, damages or liabilities arising from any non-Tax claim.

(d) No Borrower shall assert, and each Borrower hereby waives, any claim against any Indemnitee by any Borrower or its or their Affiliates, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or the use of the proceeds thereof.

(e) No Indemnitee referred to in paragraph (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

SECTION 10.06. Right of Set-off. Subject to the DIP Orders and the final proviso of Section 8.01, if an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender to or for the credit or the account of any Borrower or any Subsidiary against any of and all the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or such other Loan Document and although the obligations may be unmatured. The rights of each Lender under this Section 10.06 are in addition to other rights and remedies (including other rights of set-off) that such Lender may have.

SECTION 10.07. Applicable Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK AND (TO THE EXTENT APPLICABLE) THE BANKRUPTCY CODE.

SECTION 10.08. Waivers; Amendment.

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

(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (x) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Administrative Borrower and the Required Lenders, and (y) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by each party thereto and the Collateral Agent and consented to by the Required Lenders; provided, that no such agreement shall:

(i) decrease or forgive the principal amount of, or extend the final maturity of, or decrease the rate of interest on, any Loan, without the prior written consent of each Lender directly affected thereby; provided that clauses (b) through (i) of the definition of "Maturity Date" may be amended or modified with the prior written consent of the Supermajority Lenders;

(ii) increase or extend the Commitment of any Lender or decrease the fees of any Lender without the prior written consent of such Lender (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the aggregate Commitments shall not constitute an increase of the Commitments of any Lender and that the date set forth in Section 2.01(f)(iii) may be extended with the prior written consent of the Supermajority Lenders);

(iii) extend any date on which payment of interest on any Loan or any Fees is due, without the prior written consent of each Lender adversely affected thereby;

(iv) amend or modify the provisions of Section 2.16(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby, without the prior written consent of each Lender adversely affected thereby;

(v) amend or modify the provisions of this Section or the definition of the term "Required Lenders", "Supermajority Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the prior written consent of each Lender adversely affected thereby (it being understood that, with the consent of the Required Lenders, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders or "Supermajority Lenders" on substantially the same basis as the Loans and Commitments are included on Effective Date);

(vi) release all or substantially all the Collateral or all or substantially all of the value of the Guarantees without the prior written consent of each Lender (except in connection with an Acceptable 363 Sale or pursuant to an Acceptable Chapter 11 Plan);

(vii) amend or modify the Superpriority Claim status of the Lenders under the DIP Orders or under any other Loan Documents without the consent of each Lender;

(viii) amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Collateral Agent without the prior written consent of the Administrative Agent or the Collateral Agent, respectively, acting as such, at the effective date of such agreement, as applicable. Each Lender shall be bound by any waiver, amendment or modification authorized by this Section 10.08 and any consent by any Lender pursuant to this Section 10.08 shall bind any assignee of such Lender;

(ix) waive, amend or modify any condition set forth in Section 4.01 or 4.02 without the prior written consent of the Supermajority Lenders; or

(x) waive, amend or modify any of the definitions of "Acceptable 363 Sale", "Acceptable Chapter 11 Plan", "Advance Rate" (other than in connection with an Incremental Amendment as set forth in Section 2.06), "Borrowing Base", "Confirmation Order", "Final DIP Order", "Interim DIP Order", "Prohibited Plan or Sale" or "Remedies Provision" without the prior written consent of the Supermajority Lenders;

(c) Without the consent of any Lender, the Borrowers and the Administrative Agent and/or Collateral Agent may (in their respective sole discretion, or shall, to the extent required by any Loan Document) enter into any amendment, modification or waiver of any Loan Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable law.

SECTION 10.09. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the applicable interest rate, together with all fees and charges that are treated as interest under applicable law (collectively, the "Charges"), as provided for herein or in any other document executed in connection herewith, or otherwise contracted for, charged, received, taken or reserved by any Lender, shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by such Lender in accordance with applicable law, the rate of interest payable hereunder, together with all Charges payable to such Lender, shall be limited to the Maximum Rate, provided that such excess amount shall be paid to such Lender on subsequent payment dates to the extent not exceeding the legal limitation.

SECTION 10.10. Entire Agreement. This Agreement, the other Loan Documents and the agreements regarding certain Fees referred to herein constitute the entire contract between the parties relative to the subject matter hereof. Any previous agreement among or representations from the parties or their Affiliates with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any party other than the parties hereto and thereto any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents. To the extent that any provision herein is inconsistent with any term of the DIP Orders, the DIP Order shall control.

SECTION 10.11. WAIVER OF JURY TRIAL. **EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT**

AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.11.

SECTION 10.12. Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 10.13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute but one contract, and shall become effective as provided in Section 10.03. Delivery of an executed counterpart to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed original.

SECTION 10.14. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 10.15. Jurisdiction; Consent to Service of Process.

(a) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Bankruptcy Court and, if the Bankruptcy Court does not have (or abstains from) jurisdiction, any federal court of the United States of America sitting in New York County, and any appellate court from any thereof, and, if such federal courts do not have (or abstain from jurisdiction), any New York State court, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents (other than under any Security Document governed by a law other than the laws of the State of New York or with respect to any Collateral subject thereto), or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined and shall be brought exclusively in such federal or, to the extent applicable, New York State court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any Lender or Agent may otherwise have to bring any action or proceeding relating to this Agreement or the other Loan Documents against any Borrower or their properties in the courts of any jurisdiction.

(b) Each Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or federal court. Each of the

parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

SECTION 10.16. Confidentiality. Each of the Lenders and each of the Agents agrees that it shall maintain in confidence any information relating to the Borrowers furnished to it by or on behalf of the Borrowers (other than information that (a) has become generally available to the public other than as a result of a disclosure by such party, (b) has been independently developed by such Lender or such Agent without violating this Section 10.16 or (c) was available to such Lender or such Agent from a third party having, to such person's knowledge, no obligations of confidentiality to any Borrower) and shall not reveal the same other than to its directors, trustees, officers, employees, advisors, agents and auditors with a need to know or to any person that approves or administers the Loans on behalf of such Lender (so long as each such person shall have been instructed to keep the same confidential in accordance with this Section 10.16), except (A) to the extent necessary to comply with law or any legal or regulatory process (including any self-regulatory authority) or the requirements of any Governmental Authority, the National Association of Insurance Commissioners or of any securities exchange on which securities of the disclosing party or any Affiliate of the disclosing party are listed or traded, (B) as part of normal reporting or review procedures to Governmental Authorities or the National Association of Insurance Commissioners, (C) to its parent companies, Affiliates, auditors and its, and its Affiliates', respective partners, directors, officers, employees, agents, advisors and other representatives (so long as each such person shall have been instructed to keep the same confidential in accordance with this Section 10.16), (D) in order to enforce its rights under any Loan Document in a legal proceeding, (E) to any prospective assignee of, or prospective Participant in, any of its rights under this Agreement (so long as such person shall have been instructed to keep the same confidential in accordance with this Section 10.16 or as shall be required to keep the same confidential pursuant to any letter or agreement with confidentiality provisions at least as restrictive as this Section 10.16), (F) to any direct or indirect contractual counterparty in any Swap Agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 10.16 or as shall be required to keep the same confidential pursuant to any letter or agreement with confidentiality provisions at least as restrictive as this Section 10.16), (G) with the consent of the Administrative Borrower, (H) to any nationally recognized rating agency in connection with ratings issued with respect to such Lender and (I) to other parties to this Agreement.

SECTION 10.17. Website Communications.

(a) Delivery. (i) Each Borrower hereby agrees that it will use all reasonable efforts to provide to the Administrative Agent all information, documents and other materials that it is obligated to furnish to the Administrative Agent pursuant to this Agreement and any other Loan Document, including, without limitation, all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (A) relates to a request for a new, or a conversion of an existing, borrowing or other extension of credit (including any election of an interest rate or interest period relating thereto), (B) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (C) provides notice of any Default or Event of Default under this Agreement or (D) is required to be delivered to satisfy any condition precedent to the

effectiveness of this Agreement and/or any borrowing or other extension of credit hereunder (all such non-excluded communications collectively, the "Communications"), by transmitting the Communications in an electronic/soft medium in a format reasonably acceptable to the Administrative Agent to the address set forth in Section 10.01(a). Nothing in this Section 10.17 shall prejudice the right of the Agents, any Lender or any Borrower to give any notice or other communication pursuant to this Agreement or any other Loan Document in any other manner specified in this Agreement or any other Loan Document.

(ii) The Administrative Agent agrees that receipt of the Communications by the Administrative Agent at its e-mail address set forth above shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Loan Documents. Each Lender agrees that notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender agrees (A) to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Lender's e-mail address to which the foregoing notice may be sent by electronic transmission and (B) that the foregoing notice may be sent to such e-mail address.

(b) Posting. Each Borrower further agrees that the Administrative Agent may make the Communications available to the Lenders by posting the Communications on Intralinks or a substantially similar electronic transmission system (the "Platform").

(c) The Platform is provided "as is" and "as available." The Agent Parties do not warrant the accuracy or completeness of the Communications, or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its affiliates or any of their respective officers, directors, employees, agents advisors or representatives (collectively, "Agent Parties") have any liability to the Borrowers, any Lender or any other person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Borrower's or the Administrative Agent's transmission of communications through the internet, except to the extent the liability of any Agent Party is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted primarily from such Agent Party's gross negligence or willful misconduct.

(d) Notwithstanding anything to the contrary herein, upon receipt of any information, documents and other materials that any Borrower is obligated to furnish to any Agent pursuant to this Agreement and/or any other Loan Document, including, without limitation, all notices, requests, financial statements, financial and other reports, certificates and other information materials, such Agent agrees that it shall promptly furnish such information, documents and other materials to each Lender (whether through the Platform or otherwise).

SECTION 10.18. U.S. PATRIOT Act. Each Lender hereby notifies each Borrower that pursuant to the requirements of the Executive Order No. 13224 on Terrorist Financing, effective September 23, 2001, and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (signed into law on October 26, 2001) (the "U.S. PATRIOT Act"), it is required to obtain, verify and record information that identifies Borrowers, which information includes the name and address of each Borrower and other information that will allow the Lenders to identify such Borrower in accordance with the U.S. PATRIOT Act.

SECTION 10.19. No Fiduciary Duty. Each Agent, the Required Lenders, each Lender and their Affiliates (collectively, solely for purposes of this paragraph, the "Lenders"), may have economic interests that conflict with those of the Borrowers, their stockholders and/or their affiliates. Each Borrower agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and such Borrower, its stockholders or its affiliates, on the other. The Borrowers acknowledge and agree that (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lenders, on the one hand, and the Borrowers, on the other and (ii) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of any Borrower, its stockholders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise any Borrower, its stockholders or its Affiliates on other matters) or any other obligation to any Borrower except the obligations expressly set forth in the Loan Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of any Borrower, its management, stockholders, creditors or any other Person. Each Borrower acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Borrower agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Borrower, in connection with such transaction or the process leading thereto.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first written above.

CLOUD PEAK ENERGY INC., as a Borrower

By: _____
Name:
Title:

[_____], as a Borrower

By: _____
Name:
Title:

ANKURA TRUST COMPANY, LLC, as
Administrative Agent and Collateral Agent

By: _____
Name:
Title:

Exhibit B

Budget

Cloud Peak Energy Inc., *et al*
DIP Budget No. 3
Effective July 8, 2019

$'s 000s Week Number Week Ending	FCST Week 1 12-Jul	FCST Week 2 19-Jul	FCST Week 3 26-Jul	FCST Week 4 2-Aug	FCST Week 5 9-Aug	FCST Week 6 16-Aug	FCST Week 7 23-Aug	FCST Week 8 30-Aug	FCST Week 9 6-Sep	FCST Week 10 13-Sep	FCST Week 11 20-Sep	FCST Week 12 27-Sep	FCST Week 13 4-Oct	Total 8-Jul 4-Oct
Receipts														
Coal Sales	13,650.4	10,586.1	13,551.3	10,350.5	5,061.0	17,699.8	255.6	17,735.6	4,822.0	11,534.6	10,509.4	8,619.5	12,299.1	136,674.9
Coal Sales (CPEL)	3,683.5	217.7	3,988.0	3,627.7	7,867.7	12,152.7	12,889.5	7,385.1	4,102.6	62.6	7,337.6	-	3,786.6	67,101.2
Other Receipts	100.0	-	-	-	-	100.0	-	-	-	100.0	-	-	-	300.0
Total Receipts	**17,433.9**	**10,803.7**	**17,539.3**	**13,978.1**	**12,928.7**	**29,952.5**	**13,145.1**	**25,120.7**	**8,924.6**	**11,697.2**	**17,847.0**	**8,619.5**	**16,085.7**	**204,076.0**
Operating Disbursements														
Operations (Core)	(4,678.6)	(6,101.7)	(7,906.0)	(19,033.9)	(4,711.7)	(5,522.1)	(7,453.0)	(15,014.8)	(4,731.6)	(4,593.3)	(5,369.5)	(7,755.4)	(12,572.6)	(105,444.0)
Operations (CPEL)	(3,444.5)	(2,547.7)	(7,836.4)	(7,643.0)	(10,757.5)	(4,388.3)	(5,680.8)	(1,663.0)	(4,053.8)	(3,197.0)	(2,725.3)	(2,547.7)	(5,103.5)	(61,588.5)
Employee Related	(4,705.4)	(1,100.3)	(4,244.1)	(3,863.7)	(4,327.4)	(1,129.2)	(4,389.9)	(985.8)	(4,502.9)	(1,129.2)	(4,649.5)	(954.5)	(4,561.3)	(40,543.2)
Total Operating Disbursements	**(12,828.5)**	**(9,749.6)**	**(19,986.5)**	**(30,540.6)**	**(19,796.6)**	**(11,039.6)**	**(17,523.7)**	**(17,663.7)**	**(13,288.3)**	**(8,919.5)**	**(12,744.3)**	**(11,257.5)**	**(22,237.4)**	**(207,575.8)**
Cash Flow From Operations	**4,605.5**	**1,054.1**	**(2,447.1)**	**(16,562.4)**	**(6,867.9)**	**18,912.9**	**(4,378.7)**	**7,457.0**	**(4,363.7)**	**2,777.7**	**5,102.6**	**(2,638.0)**	**(6,151.7)**	**(3,499.8)**
Other Disbursements														
Collateral Deposits	(7,600.0)	6,400.0	(7,500.0)	6,700.0	(3,700.0)	900.0	2,300.0	(10,500.0)	10,200.0	(8,400.0)	7,600.0	(3,900.0)	6,200.0	(1,300.0)
Cash Interest and Bank Fees	-	-	(83.9)	(5.0)	-	-	(83.9)	(5.0)	-	-	-	(86.2)	-	(264.1)
DIP Interest and Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Restructuring and Other	(467.1)	(3,997.1)	(467.1)	(1,427.1)	-	(2,760.0)	-	(100.0)	(860.0)	(2,865.0)	-	-	(960.0)	(13,903.2)
Total Other Disbursements	**(8,067.1)**	**2,402.9**	**(8,051.0)**	**5,267.9**	**(3,700.0)**	**(1,860.0)**	**2,216.1**	**(10,605.0)**	**9,340.0**	**(11,265.0)**	**7,600.0**	**(3,986.2)**	**5,240.0**	**(15,467.4)**
Total Net Cash Flow	**(3,461.6)**	**3,457.0**	**(10,498.1)**	**(11,294.5)**	**(10,567.9)**	**17,052.9**	**(2,162.6)**	**(3,148.0)**	**4,976.3**	**(8,487.3)**	**12,702.6**	**(6,624.3)**	**(911.7)**	**(18,967.1)**
Beginning Cash Balance	68,772.8	65,311.2	68,768.2	58,270.1	46,975.6	36,407.7	53,460.7	51,298.0	48,150.0	53,126.3	44,639.0	57,341.6	50,717.3	68,772.8
Net Cash Flow	(3,461.6)	3,457.0	(10,498.1)	(11,294.5)	(10,567.9)	17,052.9	(2,162.6)	(3,148.0)	4,976.3	(8,487.3)	12,702.6	(6,624.3)	(911.7)	(18,967.1)
Change in O/S Check Float	-	-	-	-	-	-	-	-	-	-	-	-	-	-
DIP Funding	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending Cash Balance	**65,311.2**	**68,768.2**	**58,270.1**	**46,975.6**	**36,407.7**	**53,460.7**	**51,298.0**	**48,150.0**	**53,126.3**	**44,639.0**	**57,341.6**	**50,717.3**	**49,805.7**	**49,805.7**
Segregated Account Activity (Excluding PIK Int. & Fees)														
Beginning Balance	6,005.6	6,005.6	6,005.6	19,405.6	19,405.6	19,405.6	19,405.6	19,405.6	19,405.6	19,405.6	19,405.6	19,405.6	19,405.6	6,005.6
DIP Funding	-	-	13,400.0	-	-	-	-	-	-	-	-	-	-	13,400.0
Transfers to DIP Loan Party Operating Accounts	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending Cash Balance (Segregated Account)	**6,005.6**	**6,005.6**	**19,405.6**	**19,405.6**	**19,405.6**	**19,405.6**	**19,405.6**	**19,405.6**	**19,405.6**	**19,405.6**	**19,405.6**	**19,405.6**	**19,405.6**	**19,405.6**
Ending Cash Balance (Including Segregated Account)	**71,316.9**	**74,773.9**	**77,675.7**	**66,381.2**	**55,813.4**	**72,866.3**	**70,703.7**	**67,555.7**	**72,532.0**	**64,044.6**	**76,747.2**	**70,123.0**	**69,211.3**	**69,211.3**

Schedule I

Reserved Challenge Assets

1. Cash or other proceeds held in the following accounts:

Name of Institution	Type of Account	Last 4 Digits of Account Number
PNC Bank	Disbursement Account	2984
PNC Bank	Benefits Account	2095
PNC Bank	Tax Account	2108
PNC Bank	Disbursement Account	2079
First Interstate Bank	Basic Business	4139

2. Equity interests in Wyoming Quality Healthcare Coalition

3. The following light vehicles identified on Cloud Peak Energy Resources LLC Schedule A/B, Part 8, Questions 47-53 [Docket No. 315]:

Asset Code	Description	Date Capitalized
002969	2011 FORD S-DTY F250	7/15/2010
002970	2011 FORD S-DTY F250	7/15/2010
002971	2011 FORD S-DTY F250	7/15/2010
002972	2011 FORD S-DTY F250	7/22/2010
003180	2011 FORD F250 PICKUP	8/1/2011
003181	2011 FORD EXPEDITION	8/1/2011
003224	REBUILD SHOP TRUCK	10/1/2011
003310	2012 FORD F350 S-DTY	8/1/2012
003313	2012 FORD EXPEDITION	8/1/2012
003338	2013 FORD ESCAPE	9/1/2012
003491	2014 FORD F350	9/1/2013
003492	2014 FORD EXPEDITION	9/1/2013
003513	2014 FORD F350	10/1/2013
003580	2015 FORD F350 S-DUTY	9/1/2014
003607	2015 FORD EXPEDITION	11/1/2014
003744	2016 FORD EXPEDITION	9/1/2015
003745	2016 FORD S-DTY F350	9/1/2015
003746	2016 FORD S-DTY F350	9/1/2015
003747	2016 FORD S-DTY F350	9/1/2015
003775	Service Truck - Rebuild Center	2/1/2016
003806	2016 F350 Crewcab Pickup	6/30/2016
003866	2017 F350 Crew Cab	10/31/2017
003867	2017 Ford F350 Crew Cab	10/31/2017
003868	2017 Ford F350 Crew Cab	10/31/2017
003906	2017 Ford Expedition	12/17/2018
003907	2017 Ford Expedition	12/17/2018

4. The following foreign trademarks:

Trademark	Country
Energy to Power the Country, App. No. 1120940, Reg. No. 625630	Canada
Cloud Peak Energy, App. No. 1,403,983, Reg. No. 815,928	Canada
Cloud Peak Energy & Mountain Design, App. No. 1,407,129, Reg. No. 815,889	Canada
Miscellaneous Design (Mountain), App. No. 1,444,200, Reg. No. 815,691	Canada
Cloud Peak Energy, App. No. 304076361, Reg. No. 304076361	Hong Kong
Cloud Peak Energy & Mountain Design, App. No. 304078026, Reg. No. 304078026	Hong Kong
Miscellaneous Design (Mountain), App. No. 304078099, Reg. No. 304078099	Hong Kong
Cloud Peak Energy, App. No. A0021479, Reg. No. 1054313	China, Japan, and Korea
Cloud Peak Energy & Design, App. No. A0021477, Reg. No. 1054828	China, Japan, and Korea
Miscellaneous Design (Mountain), App. No. A0021478, Reg. No. 1054965	Japan and Korea
Cloud Peak Energy, App. No. 100048669, Reg. No. 1508719	Taiwan
Cloud Peak Energy & Design, App. No. 100047668, Reg. No. 1508718	Taiwan
Miscellaneous Design (Mountain), App. No. 10047667, Reg. No. 1504672	Taiwan

5. Tax attributes, including net operating losses and capital losses, but excluding any entitlement to a tax refund that the Parent or Issuers had claimed or had the right to claim as of the Petition Date or that arose in respect of a year including or ending on or prior to the Petition Date and the proceeds of such a refund. For the avoidance of doubt, this item 5 does not include any alternative minimum tax credits or any refund arising therefrom.

6. Commercial tort claims

7. Postpetition proceeds of any of the foregoing

EXHIBIT A

DIP Credit Agreement

SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT

Dated as of June [26], 2019

by and among

JOERNS HEALTHCARE, LLC,
JOERNS LLC,
JOERNS HEALTHCARE PARENT LLC,
RECOVERCARE, LLC,

as the Borrowers and as Debtors and debtors-in-possession under Chapter 11 of the Bankruptcy Code,

THE OTHER PERSONS PARTY HERETO THAT ARE DESIGNATED AS CREDIT PARTIES

ANKURA TRUST COMPANY, LLC
as the Agent for all Lenders,

and

THE OTHER FINANCIAL INSTITUTIONS PARTY HERETO

as Lenders

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EXHIBITS

Exhibit 1.6	Form of Notice of Conversion/Continuation
Exhibit 2.1	Closing Checklist
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SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT (including all exhibits and schedules hereto, as the same may be amended, modified and/or restated from time to time, this "Agreement") is entered into as of June [__], 2019, by and among Joerns Healthcare, LLC, a Delaware limited liability company ("JHO"), Joerns LLC, a California limited liability company ("Joerns LLC"), Healthcare LLC (as defined below), RecoverCare, LLC, a Delaware limited liability company ("RecoverCare"; RecoverCare together with Healthcare LLC, Joerns LLC and JHO are sometimes referred to herein together as the "Borrowers" and individually as a "Borrower"), JHO, as Borrower Representative, the other Persons party hereto that are designated as a "Credit Party", the several financial institutions from time to time party to this Agreement (collectively, the "Lenders" and individually each a "Lender"), and Ankura Trust Company, LLC, as Agent for the Lenders.

W I T N E S S E T H:

WHEREAS, on June 24, 2019 (the "Petition Date"), the Borrowers and the other Credit Parties (collectively, the "Debtors" and, each individually, a "Debtor") commenced certain Chapter 11 Cases, which are being jointly administratively under Case No. 19-[_____] (each a "Chapter 11 Case" and collectively, the "Chapter 11 Cases"), by filing separate voluntary petitions for reorganization under Chapter 11 of Title 11 of the U.S. Code, 11 U.S.C. 101 et seq. (the "Bankruptcy Code"), with the United States Bankruptcy Court for the District of Delaware (together with any other court having jurisdiction over the Chapter 11 Cases or any proceeding therein from time to time, the "Bankruptcy Court"). Each Debtor continues to operate its businesses and manage its properties as a debtor and debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, prior to the Petition Date, certain lenders provided financing to the Borrowers pursuant to that certain Second Amended and Restated Credit Agreement, dated as of May 9, 2014 thereto (as amended, modified or supplemented through the Petition Date, the "Prepetition First Lien Credit Agreement") among the Borrowers, the other credit parties party thereto, Ankura Trust Company, LLC (as successor to Capital One, National Association, as agent, in such capacity, the "Prepetition First Lien Agent") and the lenders from time to time party thereto;

WHEREAS, the Borrowers have requested that the Lenders provide a senior secured, superpriority debtor-in-possession term loan facility to the Borrowers in the maximum principal amount of $80,000,000 in the aggregate, consisting of a new money facility as described below (the "New Money DIP Facility") and a roll-up facility as described below (the "Roll-Up DIP Facility"; together with the New Money DIP Facility, the "Term DIP Facility") as further set forth herein (the transactions contemplated hereby, the "Transactions"). The Term DIP Loans (as hereinafter defined) will be made for purposes set forth in Section 4.10;

WHEREAS, the Borrowers desire that all Obligations under the Loan Documents will be joint and several and all of the Credit Parties will guaranty all of the Obligations under the Loan Documents;

WHEREAS, in order to secure the Obligations of the Borrowers and the other Credit Parties under the Loan Documents, the Borrowers and the other Credit Parties will grant to Agent, for the benefit of Agent and all other Secured Parties, a security interest in and DIP Lien upon substantially all of the now existing and hereafter acquired personal and real property of the

Borrowers and the other Credit Parties, including, without limitation, all present and future equity interests of all Subsidiaries of the Borrowers and the other Credit Parties;

WHEREAS, the relative priority of the Liens and security interests granted to secure the Obligations in relation to the Liens and security interests securing the Prepetition First Lien Obligations and certain other obligations will be set forth in the Interim Order and the Final Order (in each case, as hereinafter defined);

WHEREAS, the Borrowers and the other Credit Parties will provide to the lenders and other secured parties under the Prepetition First Lien Credit Agreement and the other Prepetition First Lien Loan Documents, adequate protection in accordance with the Interim Order and the Final Order; and

WHEREAS, the Lenders are willing to extend such credit to the Borrowers on the terms and subject to the conditions set forth herein.

ARTICLE I - THE CREDITS

1.1 Amounts and Terms of Commitments.

(a) The Term DIP Loans. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of the Credit Parties contained herein, (i) each Lender with a Term DIP Commitment (defined below) severally and not jointly agrees to lend to the Borrowers (A) on the Closing Date, upon satisfaction of the conditions set forth in Section 2.1, a term loan in a principal amount not to exceed its pro rata share of up to $20,000,000 (the "Initial DIP Borrowing") and (B) after the date of the entry of the Final Order (the "Subsequent Draw Date"), following satisfaction of the conditions to Borrowing set forth in Section 2.2 (the Closing Date and Subsequent Draw Date, collectively, the "Borrowing Dates" and each, a "Borrowing Date"), to make a term loan to the Borrowers in a principal amount not to exceed its pro rata share of $40,000,000 less the Initial DIP Borrowing (such Borrowing, the "Subsequent DIP Borrowing"; together with the Initial DIP Borrowing, the "New Money DIP Loans"; the Commitment to make the New Money DIP Loans hereunder, such Lender's "Term DIP Commitment" (which, as of the Closing Date, shall be in the amount set forth adjacent such Lender's name under a heading of the same title on Schedule 1.1(a))) and (ii) each Lender (or, with respect to all or any portion of such Lender's rights under this clause (ii), one or more Affiliates thereof designated to Agent prior to the Closing Date, each of which shall execute this Agreement as a Lender on the Closing Date) identified on Schedule 1.1(a) as having a "Roll-Up DIP Share" (defined below) shall, concurrently with the Initial DIP Borrowing and the Subsequent DIP Borrowing, on a dollar-for dollar basis for every dollar of New Money DIP Loans disbursed by such Lender, be deemed to have converted a portion of such Lender's (or, in the amount of any portion so designated in the manner set forth above, any such designated Affiliate's) "Term Loan" under the Prepetition First Lien Credit Agreement into a portion of the outstanding principal amount of the Term DIP Loans without constituting a novation and such amounts shall be deemed borrowed hereunder on such applicable Borrowing Date (collectively, the "Roll-up DIP Loans"). Amounts borrowed or deemed borrowed under this subsection 1.1(a) are also referred to as the "Term DIP Loans." Amounts borrowed as a Term DIP Loan which are repaid or prepaid may not be reborrowed. Each Borrower hereby (x) represents, warrants, agrees, covenants and reaffirms that it has no defense, right of set off, claim or counterclaim against the Agent and the Lenders with regard to its Obligations in respect of the Term DIP Loans and (y) reaffirms its obligation to repay the Term DIP Loans in accordance with the terms and provisions of this Agreement and the other Loan Documents. Upon the borrowing of any New Money DIP Loan under the Term DIP

Commitment, such Commitment shall be deemed permanently reduced by an amount equal to such New Money DIP Loan. Unless previously terminated, the Commitments shall automatically terminate after the Subsequent Draw Date.

(b) Controlled Account. Pending use in accordance with the DIP Budget and subject to Section 5.30, all proceeds of the New Money DIP Loans (including any intra-company transfers of such proceeds) shall be deposited into a Controlled Account and invested at all times in cash and Cash Equivalents. On or prior to any Borrowing Date, the Agent (at the direction of the Required Lenders) and the Borrower Representative may agree to the direct application of all or any part of the proceeds of the New Money DIP Loans being extended on that Borrowing Date pursuant to a funds flow agreement (in form and substance consistent with the DIP Budget and acceptable to the Required Lenders) in which case the Agent shall disburse such proceeds as provided in such funds flow agreement (without deposit into a Controlled Account).

(c) Participation Right. All Prepetition First Lien Lenders (either directly or through one or more affiliated funds or financing vehicles) shall have an opportunity to fund their pro rata share of the Term DIP Commitments and participate in the Roll-Up DIP Facility on a pro rata basis based on the outstanding principal amount of Loans, excluding any accrued interest and fees, under the Prepetition First Lien Credit Agreement held by such Prepetition First Lien Lenders as of the Support Date; provided that such Prepetition First Lien Lender (or its Affiliates, as applicable) (each a "Joining First Lien Lender") shall have (A) become a party to (i) the RSA on or before the "Support Date" (as such term is defined in the RSA) and (ii) the DIP Commitment Letter (as defined in the RSA) within one (1) day of the Support Date, or (B) shall have executed (a)(1) a Joinder Agreement (pursuant to Section 8(a) of the RSA) on or prior to the date that is ten (10) days after entry of the Interim Order (the "RSA Joinder Deadline"), and (2) an Assignment of any New Money DIP Loans funded prior to the date thereof, any Roll-Up DIP Loans outstanding as of the date thereof (the consideration for such assignment of Roll-Up DIP Loans to be a corresponding assignment of an equivalent amount of Prepetition First Lien Obligations), and the unfunded portion of the Term DIP Commitments as of the RSA Joinder Deadline, in each case pursuant to an omnibus assignment agreement, in form and substance acceptable to the Agent; and provided further that to effectuate the foregoing, on the third(3 rd) Business Day after the RSA Joinder Deadline, any New Money DIP Loans funded prior to the date of the RSA Joinder Deadline, the Roll-Up DIP Loans outstanding as of the date of the RSA Joinder Deadline, the unfunded portion of the Term DIP Commitments as of the date of the RSA Joinder Deadline (together with any corresponding right to be deemed to have made and hold Roll-Up DIP Loans in connection with any funding thereunder), shall be allocated or reallocated, as applicable, such that the amounts and commitments held by the Prepetition First Lien Lenders joining the RSA after the Support Date are held on a pro rata basis determined based on the principal amount of Loans, excluding any accrued interest and fees, under the Prepetition First Lien Credit Agreement held by such Prepetition First Lien Lenders (or their Affiliates) party hereto as of the Support Date, with the appropriate adjustments being deemed made to Schedule 1.1(a). The Agent shall maintain Schedule 1.1(a) hereto and, upon request, share the information therein with the Borrower Representative, K&S, FTI and, solely with respect to information regarding the holdings or amounts assigned of such Lender, any Lender. Each Lender agrees that the Agent shall execute the aforementioned omnibus assignment agreement on its behalf in order to effectuate the participation in the Term DIP Commitments described above.

1.2 Notes.

The Term DIP Loan made by each Lender shall be evidenced by this Agreement and, if requested by such Lender, a DIP Term Note payable to such Lender in an amount equal to such Lender's Term DIP Loan.

1.3 Interest.

(a) Subject to subsections 1.3(c) and 1.3(d), each Loan shall bear interest on the outstanding principal amount thereof from the date when made at a rate per annum equal to the LIBOR or the Base Rate, as the case may be, plus the Applicable Margin. All computations of fees and interest (other than as provided in the next succeeding sentence) payable under this Agreement shall be made on the basis of a 360-day year and actual days elapsed. All computations of interest accruing on Base Rate Loans payable under this Agreement shall be made on the basis of a 365/366-day year and actual days elapsed. Interest and fees shall accrue during each period during which interest or such fees are computed from the first day thereof to the last day thereof.

(b) Interest on each Loan shall be paid in arrears on each InterestPayment Date. Interest shall also be paid on the date of any payment or prepayment of Loans in full and the DIP Termination Date.

(c) Automatically while any Event of Default exists, the Borrowers shall pay interest (after as well as before entry of judgment thereon to the extent permitted by law) on the Obligations under the Loan Documents from and after the date of occurrence of such Event of Default, at a rate per annum which is determined by adding two percent (2.0%) per annum to the Applicable Margin (plus the LIBOR or Base Rate, as the case may be) and, in the case of Obligations under the Loan Documents not subject to an Applicable Margin (other than the fees described in subsection 1.9(c)), at a rate per annum equal to the rate per annum applicable to Loans which are Base Rate Loans (including the Applicable Margin with respect thereto) plus two percent (2.0%). All such interest shall be payable on demand of the Agent or the Required Lenders.

(d) Anything herein to the contrary notwithstanding, the obligations of the Borrowers hereunder shall be subject to the limitation that payments of interest shall not be required for any period for which interest is computed hereunder, to the extent (but only to the extent) that contracting for or receiving such payment by the respective Lender would be contrary to the provisions of any law applicable to such Lender limiting the highest rate of interest which may be lawfully contracted for, charged or received by such Lender, and in such event the Borrowers shall pay such Lender interest at the highest rate permitted by applicable law ("Maximum Lawful Rate"); provided, however, that if at any time thereafter the rate of interest payable hereunder is less than the Maximum Lawful Rate, Borrowers shall continue to pay interest hereunder at the Maximum Lawful Rate until such time as the total interest received by Agent, on behalf of Lenders, is equal to the total interest that would have been received had the interest payable hereunder been (but for the operation of this paragraph) the interest rate payable since the Closing Date as otherwise provided in this Agreement.

1.4 Loan Accounts.

(a) The Agent, on behalf of the Lenders, shall record on its books and records the amount of each Loan made, the interest rate applicable, all payments of principal and interest thereon and the principal balance thereof from time to time outstanding. The Agent shall deliver to the Borrower Representative on a monthly basis a loan statement setting forth such record for the immediately preceding month. Such record shall, absent manifest error, be conclusive evidence of the amount of the Loans made by the Lenders to the Borrowers and the interest and payments

thereon. Any failure to so record or any error in doing so, or any failure to deliver such loan statement shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder (and under any Note) to pay any amount owing with respect to the Loans or provide the basis for any claim against the Agent.

(b) The Agent, acting as agent of the Borrowers solely for tax purposes and solely with respect to the actions described in this subsection 1.4(b), shall establish and maintain at its address referred to in Section 9.2 (or at such other address as the Agent may notify the Borrower Representative) (A) a record of ownership (the "Register") in which the Agent agrees to register by book entry the interests (including any rights to receive payment hereunder) of the Agent and each Lender in the Term DIP Loans, each of their obligations under this Agreement to participate in each Loan, and any assignment of any such interest, obligation or right and (B) accounts in the Register in accordance with its usual practice in which it shall record (1) the names and addresses of the Lenders (and each change thereto pursuant to Sections 9.9 and 9.22), (2) the Commitments of each Lender, (3) the amount of each Loan and each funding of any participation described in clause (A) above, for LIBOR Rate Loans, the Interest Period applicable thereto, (4) the amount of any principal or interest due and payable or paid, and (5) any other payment received by the Agent from a Borrower and its application to the Obligations.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Loans (including any Notes evidencing such Loans) are registered obligations, the right, title and interest of the Lenders and their assignees in and to such Loans, shall be transferable only upon notation of such transfer in the Register and no assignment thereof shall be effective until recorded therein. This Section 1.4 and Section 9.9 shall be construed so that the Loans are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code.

(d) The Credit Parties, the Agent and the Lenders shall treat each Person whose name is recorded in the Register as a Lender for all purposes of this Agreement. Information contained in the Register with respect to any Lender shall be available for access by the Borrowers, the Borrower Representative, the Agent or such Lender at any reasonable time and from time to time upon reasonable prior notice. No Lender shall, in such capacity, have access to or be otherwise permitted to review any information in the Register other than information with respect to such Lender unless otherwise agreed by the Agent.

(e) Each Lender that grants a participation shall maintain a register on which it records by book entry the name and address of each participant and the principal amount and interest of each participant's interest in the Loans granted by it (the "Participant Register"). The entries in the Participant Register shall be conclusive, absent manifest error. Information contained in the Participant Register with respect to any Lender shall be available for access by the Borrowers, the Borrower Representative and the Agent at any reasonable time and from time to time upon reasonable prior notice.

1.5 Procedure for Borrowing.

(a) Each Borrowing shall be made upon the Borrower Representative's irrevocable (subject to Section 10.5 hereof) written notice delivered to the Agent in the form of a Notice of Borrowing, which notice must be received by the Agent prior to 10:00 a.m. (New York time) on the date which is one (1) Business Day prior to (i) the Closing Date with respect to the Initial DIP Borrowing and (ii) the Subsequent Draw Date with respect to the Subsequent DIP Borrowing. Such Notice of Borrowing shall be copied to ankura.agency@db.com and specify:

(i) whether the request is for the Initial DIP Borrowing or the Subsequent DIP Borrowing (including the applicable amount thereof);

(ii) the requested Borrowing Date, which shall be a Business Day;

(iii) whether the Borrowing is to be comprised of LIBOR Rate Loans or Base Rate Loans; and

(iv) if the Borrowing is to be LIBOR Rate Loans, the Interest Period applicable to such Loans.

(b) Upon receipt of a Notice of Borrowing, the Agent will promptly notify each Lender of such Notice of Borrowing and of the amount of such Lender's Commitment Percentage of the Borrowing. Each Lender shall make each Loan to be made by it hereunder on the proposed Borrowing Date by wire transfer of immediately available funds by 12:00 noon, New York time to the account of the Agent most recently designated by it for such purpose by notice to the Lenders, in each case, subject to the provisions hereof, including Section 2.2.

(c) The Agent will make such Loans available to the Borrowers by promptly wiring the amounts so received, in like funds, to the Controlled Account pursuant to the wire transfer instructions specified on the signature page hereto (or as otherwise provided in Section 1.1(b)), and, concurrently therewith, a Roll-Up DIP Loan in a like amount shall be deemed to have been made in accordance with Section 1.1(a) of this Agreement; for avoidance of doubt, (x) the Roll-Up DIP Loans shall initially be deemed to be Base Rate Loans if the applicable Borrowing is of Base Rate Loans and (y) the Roll-Up DIP Loans shall initially be deemed to be LIBOR Rate Loans if the applicable Borrowing is of LIBOR Rate Loans, with the same Interest Period as such Loans. Notwithstanding anything to the contrary herein, any Lender may make any of its Loans to be made by it hereunder by wire transfer of immediately available funds directly to the Controlled Account. Nothing in this Agreement or the other Loan Documents shall be deemed to require Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its Commitments hereunder or to prejudice any rights that Agent or Borrowers may have against any Lender as a result of any default by such Lender hereunder.

1.6 Conversion and Continuation Elections.

(a) Borrowers shall have the option to (i) request that any Loan be made as a LIBOR Rate Loan, (ii) convert at any time all or any part of outstanding Loans from Base Rate Loans to LIBOR Rate Loans, (iii) convert any LIBOR Rate Loan to a Base Rate Loan, subject to Section 10.4 if such conversion is made prior to the expiration of the Interest Period applicable thereto, or (iv) continue all or any portion of any Loan as a LIBOR Rate Loan upon the expiration of the applicable Interest Period. Any Loan or group of Loans having the same proposed Interest Period to be made or continued as, or converted into, a LIBOR Rate Loan must be in a minimum amount of $1,000,000 and integral multiples of $100,000 in excess of such amount. Any such election must be made by Borrower Representative by noon (New York time) on the 3rd Business Day prior to (1) the date of any proposed Loan which is to bear interest at LIBOR, (2) the end of each Interest Period with respect to any LIBOR Rate Loans to be continued as such, or (3) the date on which Borrowers wish to convert any Base Rate Loan to a LIBOR Rate Loan for an Interest Period designated by Borrower Representative in such election. If no election is received with respect to a LIBOR Rate Loan by noon (New York time) on the 3rd Business Day prior to the end of the Interest Period with respect thereto, that LIBOR Rate Loan shall be converted to a Base Rate Loan at the end of its Interest Period. Borrower Representative must make such election by notice

to Agent in writing, by fax, overnight courier, or by Electronic Transmission. In the case of any conversion or continuation, such election must be made pursuant to a written notice (a "Notice of Conversion/Continuation") in the form of Exhibit 1.6. No Loan shall be made, converted into or continued as a LIBOR Rate Loan, if an Event of Default has occurred and is continuing and Required Lenders have determined not to make or continue any Loan as a LIBOR Rate Loan as a result thereof.

(b) Upon receipt of a Notice of Conversion/Continuation, the Agent will promptly notify each Lender thereof. In addition, the Agent will, with reasonable promptness, notify the Borrower Representative and the Lenders of each determination of LIBOR; provided that any failure to do so shall not relieve any Borrower of any liability hereunder or provide the basis for any claim against the Agent. All conversions and continuations shall be made pro rata according to the respective outstanding principal amounts of the Loans held by each Lender with respect to which the notice was given.

(c) Notwithstanding any other provision contained in this Agreement, after giving effect to any Borrowing, or to any continuation or conversion of any Loans, there shall not be more than seven (7) different Interest Periods in effect.

1.7 Optional Prepayments.

(a) The Borrowers may at any time upon at least two (2) Business Days' prior written notice by Borrower Representative to the Agent, prepay the Loans in whole or in part in an amount greater than or equal to $250,000, in each instance, without penalty or premium except as provided in Section 10.4. Optional partial prepayments of Term DIP Loans shall be applied pro rata to the outstanding Term DIP Loans and, in the absence of such direction, in the manner set forth in subsection 1.8(f). Optional partial prepayments of Term DIP Loans in amounts less than $250,000 (or, if less, the then outstanding principal amount of the Term DIP Loans) shall not be permitted.

(b) The notice of any prepayment shall not thereafter be revocable by the Borrowers or Borrower Representative and the Agent will promptly notify each Lender thereof and of such Lender's Commitment Percentage of such prepayment. The payment amount specified in such notice shall be due and payable on the date specified therein. Together with each prepayment under this Section 1.7, the Borrowers shall pay any amounts required pursuant to Sections 1.9 and 10.4.

(c) [Reserved.]

1.8 Mandatory Prepayments of Loans and Commitment Reductions.

(a) Scheduled Term DIP Loan Payments. The entire remaining principal amount of the Term DIP Loan shall be paid on the DIP Termination Date.

(b) [Reserved.]

(c) Dispositions; Events of Loss. If a Borrower or any Subsidiary of a Borrower shall at any time or from time to time:

(i) make a Disposition; or

(ii) suffer an Event of Loss;

and the aggregate amount of the Net Proceeds received by the Borrowers and their Subsidiaries in connection with such Disposition or Event of Loss and all other Dispositions and Events of Loss occurring during the fiscal year exceeds $100,000, then (A) the Borrower Representative shall promptly notify the Agent of such Disposition or Event of Loss (including the amount of the estimated Net Proceeds to be received by a Borrower and/or such Subsidiary in respect thereof) and (B) (x) within two (2) Business Days of receipt by a Borrower and/or such Subsidiary of the Net Proceeds of such Disposition or (y) within five (5) Business Days of receipt by a Borrower and/or such Subsidiary of the Net Proceeds of such Event of Loss, in each case, the Borrowers shall deliver, or cause to be delivered, such excess Net Proceeds to the Agent for distribution to the Lenders as a prepayment of the Loans, which prepayment shall be applied in accordance with subsection 1.8(f) hereof.

(d) Issuance of Securities. Within five (5) Business Days of the receipt by any Credit Party or any Subsidiary of any Credit Party of the Net Issuance Proceeds of the issuance of debt securities (other than Net Issuance Proceeds from the issuance of debt securities and/or incurrence of any other Indebtedness, in each instance, in respect of Indebtedness permitted hereunder), the Borrowers shall deliver, or cause to be delivered, to the Agent an amount equal to such Net Issuance Proceeds for application to the Loans in accordance with subsection 1.8(f).

(e) [Reserved.]

(f) Application of Prepayments. Subject to subsection 1.10(c), any prepayments pursuant to subsection 1.8(c) or 1.8(d) shall be applied pro rata to the outstanding Term DIP Loans. To the extent permitted by the foregoing sentence, amounts prepaid shall be applied first to any Base Rate Loans then outstanding and then to outstanding LIBOR Rate Loans with the shortest Interest Periods remaining. Together with each prepayment under this Section 1.8, the Borrowers shall pay any amounts required pursuant to Sections 1.9 and 10.4 hereof.

(g) No Implied Consent. Provisions contained in this Section 1.8 for the application of proceeds of certain transactions shall not be deemed to constitute consent of the Lenders to transactions that are not otherwise permitted by the terms hereof.

1.9 Fees.

The Borrowers shall pay to the Agent, (i) for the Agent's own account, fees in the amounts and at the times set forth in a letter agreement among Borrowers and Agent dated as of June 21, 2019 (as amended from time to time, the "Agent Fee Letter") and (ii) for the account of certain Lenders, as applicable, fees in the amounts and at the times set forth in a letter agreement among Borrowers, Agent and the Backstop Lenders dated as of June 21, 2019 (as amended from time to time, the "DIP Fee Letter"; together with the Agent Fee Letter, the "Fee Letters" and each, a "Fee Letter").

1.10 Payments by the Borrowers.

(a) All payments (including prepayments) to be made by each Credit Party on account of principal, interest, fees and other amounts required hereunder shall be made without set-off, recoupment, counterclaim or deduction of any kind, shall, except as otherwise expressly provided herein, be made to the Agent (for the ratable account of the Persons entitled thereto) at the address for payment specified in Schedule 9.2 in relation to the Agent (or such other address as

the Agent may from time to time specify in accordance with Section 9.2), and shall be made in Dollars and by wire transfer in immediately available funds (which shall be the exclusive means of payment hereunder), no later than 1:00 p.m. (New York time) on the date due. Any payment which is received by the Agent later than 1:00 p.m. (New York time) shall be deemed to have been received on the immediately succeeding Business Day and any applicable interest or fees shall continue to accrue.

(b) Subject to the provisions set forth in the definition of "Interest Period" herein, if any payment hereunder shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be.

(c) During the continuance of an Event of Default, the Agent may, and shall upon the direction of Required Lenders, subject to the terms of the Orders, apply any and all payments in respect of any Obligation in accordance with clauses first through sixth below. Notwithstanding any provision herein to the contrary, all amounts collected or received by the Agent after any or all of the Obligations have been accelerated (so long as such acceleration has not been rescinded) and all proceeds received by the Agent as a result of the exercise of its remedies under the Collateral Documents after the occurrence and during the continuance of an Event of Default shall be applied as follows:

first, to payment of costs and expenses, including Attorney Costs, of the Agent payable or reimbursable by the Credit Parties under the Loan Documents;

second, to payment of costs and expenses, including Attorney Costs, of Lenders payable or reimbursable by the Borrowers under this Agreement;

third, to payment of all accrued unpaid interest on the Obligations and fees owed to the Agent and Lenders;

fourth, to payment of principal of the Obligations;

fifth, to payment of any other amounts owing constituting Obligations; and

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

In carrying out the foregoing, (i) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category and (ii) each of the Lenders or other Persons entitled to payment shall receive an amount equal to its pro rata share of amounts available to be applied pursuant to clauses third, fourth and fifth above.

1.11 Payments by the Lenders to the Agent; Settlement.

(a) [Reserved].

(b) After each Borrowing Date, or sooner at Agent's election (each,a "Settlement Date"), Agent shall advise each Lender by telephone or in writing of the amount of such Lender's Commitment Percentage of principal, interest and Fees paid for the benefit of Lenders with respect to each applicable Loan. Provided that each Lender has funded all payments required to be made by it and funded all purchases of participations required to be funded by it

under this Agreement and the other Loan Documents as of such Settlement Date, Agent shall pay to each Lender such Lender's Commitment Percentage of principal, interest and fees paid by the Borrowers since the previous Settlement Date for the benefit of such Lender on the Loans held by it; provided, however, that in the case of any payment of principal received by Agent from Borrowers in respect of any Term DIP Loan prior to noon (New York time) on any Business Day, Agent shall pay to each applicable Lender such Lender's Commitment Percentage of such payment on such Business Day, and, in the case of any payment of principal received by Agent from Borrowers in respect of any Term DIP Loan later than noon (New York time) on any Business Day, Agent shall pay to each applicable Lender such Lender's Commitment Percentage of such payment on the next Business Day. Except as provided in the preceding proviso with respect to Term DIP Loan payments, such payments shall be made by wire transfer to such Lender not later than 1:00 p.m. (New York time) on the next Business Day following each Settlement Date. Agent shall be entitled to set off any funding shortfall against any Non-Funding Lender's Commitment Percentage of all payments received from the Borrowers and hold, in a non-interest bearing account, all payments received by Agent for the benefit of any Non-Funding Lender pursuant to this Agreement as cash collateral for any unfunded reimbursement obligations of such Non-Funding Lender until the Obligations are paid in full in cash and all Commitments have been terminated, and upon such unfunded obligations owing by a Non-Funding Lender becoming due and payable, Agent shall be authorized to use such cash collateral to make such payment on behalf of such Non-Funding Lender. Any amounts owing by a Non-Funding Lender to Agent which are not paid when due shall accrue interest at the interest rate applicable during such period to Loans that are Base Rate Loans.

(c) Availability of Lender's Commitment Percentage. Agent may assume that each Lender will make its Commitment Percentage of each Loan available to Agent prior to each Borrowing. If any Lender fails to pay the amount of its Commitment Percentage forthwith upon Agent's demand, Agent shall promptly notify the Borrower Representative. Nothing in this subsection 1.11(c) or elsewhere in this Agreement or the other Loan Documents shall be deemed to require Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its Commitments hereunder or to prejudice any rights that the Borrowers may have against any Lender as a result of any default by such Lender hereunder.

(d) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from the Borrowers and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to any Credit Party or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Loan Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to any Borrower or such other Person, without setoff, counterclaim or deduction of any kind.

(e) Non-Funding Lenders. The failure of any Non-Funding Lender to make any Loan or any other payment required by it hereunder, or to fund any purchase of any participation required to be made or funded by it on the date specified therefor shall not relieve any

other Lender (each such other Lender, an "Other Lender") of its obligations to make such loan or fund the purchase of any such participation on such date, but neither Agent nor, other than as expressly set forth herein, any Other Lender shall be responsible for the failure of any Non-Funding Lender to make a loan, fund the purchase of a participation or make any other payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Non-Funding Lender shall not have any voting or consent rights under or with respect to any Loan Document or constitute a "Lender" (or be, or have its Loans and Commitments, included in the determination of "Required Lenders" or "Lenders directly affected" pursuant to Section 9.1) for any voting or consent rights under or with respect to any Loan Document. Moreover, for the purposes of determining Required Lenders, the Loans and Commitments held by Non-Funding Lenders shall be excluded from the total Loans and Commitments outstanding.

(f) Procedures. Agent is hereby authorized by each Credit Party and each other Secured Party to establish procedures (and to amend such procedures from time to time) to facilitate administration and servicing of the Loans and other matters incidental thereto. Without limiting the generality of the foregoing, Agent is hereby authorized to establish procedures to make available or deliver, or to accept, notices, documents and similar items on, by posting to or submitting and/or completion, on E-Systems. The posting, completion and/or submissions by any Credit Party of any notice, certificate, demand, request, direction or other communication (each, a "Communication") shall constitute a representation and warranty by the Credit Parties that any representation, warranty, certificate or other similar statement requirement by the Loan Documents to be provided, given or made by a Credit Party in connection with any such Communication is true, correct and complete except as expressly noted in such Communication or E-System.

1.12 Borrower Representative. Each Borrower hereby designates and appoints JHO as its representative and agent on its behalf (the "Borrower Representative") for the purposes of issuing Notices of Borrowings, Notices of Conversion/Continuation, delivering certificates and Compliance Certificates, giving instructions with respect to the disbursement of the proceeds of the Loans, selecting interest rate options, giving and receiving all other notices and consents hereunder or under any of the other Loan Documents and taking all other actions (including in respect of compliance with covenants) on behalf of any Borrower or Borrowers under the Loan Documents. Borrower Representative hereby accepts such appointment. Agent and each Lender may regard any notice or other communication pursuant to any Loan Document from Borrower Representative as a notice or communication from all Borrowers. Each warranty, covenant, agreement and undertaking made on behalf of a Borrower by Borrower Representative shall be deemed for all purposes to have been made by such Borrower and shall be binding upon and enforceable against such Borrower to the same extent as if the same had been made directly by such Borrower.

1.13 Super Priority Nature of Obligations and Lenders' DIP Liens.

(a) The priority of the Secured Parties' DIP Liens on the Collateral owned by the Debtors shall be set forth in the Orders.

(b) Except as set forth herein or in the Orders, the Debtors shall not seek approval of any other claim having a priority superior or *pari passu* to that granted to Agent and Lenders by the Orders while any Obligations remain outstanding. Except for the Carve-Out, and subject to and effective only upon entry of the Final Order, no costs or expenses of administration shall be imposed against Agent, Lenders, or any of the DIP Collateral or Prepetition First Lien Agent, the Prepetition First Lien Lenders or the Prepetition First Lien Collateral under section 506(c) of the Bankruptcy Code, or otherwise, and each of the Credit Parties hereby waives for itself and on behalf of its estate in bankruptcy, any and all rights under section 506(c), to assert or impose

or seek to assert or impose, any such costs or expenses of administration against any of the Collateral.

1.14 No Discharge; Survival of Claims. Except as otherwise contemplated by Section 9.27 or provided in the Orders, until payment in full of the Loans and all other Obligations, each of the Borrowers and the other Credit Parties agree that (a) the Obligations hereunder shall not be discharged by the entry of an order confirming a plan of reorganization or liquidation in any Chapter 11 Case (and each of the Borrowers and the other Credit Parties, pursuant to section 1141(d)(4) of the Bankruptcy Code, hereby waive any such discharge) and (b) the Superpriority DIP Claim and the DIP Liens granted to the Agent pursuant to the Orders and described in this Agreement and the Orders shall not be affected in any manner by the entry of an order confirming a plan of reorganization or liquidation in any Chapter 11 Case.

1.15 Waiver of Certain Rights.

(a) On and after the Closing Date, and on behalf of themselves and their estates, and for so long as any Obligations shall be outstanding, the Borrowers and the other Credit Parties hereby irrevocably waive any right, pursuant to sections 364(c) or 364(d) of the Bankruptcy Code or otherwise, to grant any Lien of equal or greater priority than the DIP Liens securing the Obligations, or to approve a claim of equal or greater priority than the Obligations.

(b) The Final Order shall provide that in no event shall Agent, theLenders, the Prepetition First Lien Agent or the Secured Parties under the Prepetition First Lien Credit Agreement (the "Prepetition Secured Parties") be subject to the equitable doctrine of "marshalling" or any similar doctrine with respect to the DIP Collateral or the Prepetition First Lien Collateral, as applicable, and all proceeds shall be received and applied pursuant to the Final Order and the Loan Documents notwithstanding any other agreement or provision to the contrary.

(c) Subject to the Carve-Out, and only upon entry of the Final Order, the Debtors (on behalf of themselves and their estates) shall irrevocably waive, and shall be prohibited from asserting in the Chapter 11 Cases or any successor cases, (i) any surcharge claim under sections 506(c) of the Bankruptcy Code for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by Agent, the Lenders, or the Prepetition Secured Parties upon the DIP Collateral or the Prepetition First Lien Collateral, and (ii) Agent, the Lenders, and the Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to Agent, the Lenders, and the Prepetition Secured Parties with respect to proceeds, product, offspring or profits of any of the Prepetition First Lien Collateral or DIP Collateral.

ARTICLE II - CONDITIONS PRECEDENT

2.1 Conditions to Effectiveness and Initial DIP Borrowing. The effectiveness of this Agreement and the obligation of each Lender to make the Initial DIP Borrowing is subject to satisfaction of the following conditions:

(a) Loan Documents. The Agent shall have received all of the agreements, documents, instruments and other items set forth on the Closing Checklist attached hereto as Exhibit 2.1 (other than agreements, documents, instruments and other items noted therein to be

delivered after the Closing Date) each in form and substance reasonably satisfactory to the Agent (at the direction of the Required Lenders);

(b) No Litigation. Other than the Chapter 11 Cases, as stayed upon the commencement of the Chapter 11 cases, or as disclosed to Agent prior to the Petition Date, there shall exist no action, suit, investigation, litigation or proceeding pending or threatened in writing in any court or before any arbitrator or Governmental Authority that (i) would reasonably be expected to result in a Material Adverse Effect or (ii) restrains, prevents or purports to affect materially adversely the legality, validity or enforceability of the Term DIP Facility or the consummation of the transactions contemplated thereby;

(c) No Material Adverse Effect. Since the Petition Date there shall have occurred no event, circumstance or condition that would reasonably be expected to result in a Material Adverse Effect;

(d) Patriot Act. Agent shall have received, at least three (3) Business Days prior to the Closing Date to the extent requested reasonably prior to the Closing Date, all documentation and other information required by the Agent and regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the Patriot Act;

(e) Payment of Fees and Expenses. (i) All fees set forth in the Fee Letters required to be paid on the Closing Date and (ii) reasonable and documented (in summary form) out-of-pocket fees, costs, disbursements and expenses, accrued and unpaid as of the Closing Date, of (A) Agent (limited, in the case of counsel expenses incurred prior to the Closing Date, to all reasonable and documented out-of-pocket fees, costs, disbursements and expenses of Agent's outside counsel, Shearman & Sterling LLP ("S&S"), one firm of local counsel engaged by the Agent in connection with the Debtors' Chapter 11 Cases) and any successor counsel to the foregoing, (B) the First Lien Steering Committee (limited, in the case of counsel, financial advisors and other outside professional advisors to all reasonable and documented fees, costs, disbursements and expenses of the First Lien Steering Committee's outside counsel, King & Spalding LLP ("K&S"), and, to the extent necessary, one firm of local counsel engaged by the First Lien Steering Committee in connection with the Debtors' Chapter 11 Cases), (C) FTI Consulting ("FTI"), as financial advisor to the First Lien Steering Committee, and (D) any other (non-legal) professional advisors retained by Agent at the direction of the Required Lenders in their reasonable discretion, or First Lien Steering Committee or in their reasonable discretion, shall have been paid in full in cash (which payment may be made from the Initial DIP Borrowing), in each case to the extent invoices for any such accrued and unpaid amounts are provided to the Credit Parties no later than three (3) Business Days prior to the Closing Date;

(f) Agent and the Lenders shall have received the Initial Budget;

(g) All other first day motions, including those related to the Term DIP Facility, filed by the Credit Parties and related orders entered by the Bankruptcy Court in the Chapter 11 Cases shall be in form and substance reasonably satisfactory to Agent at the direction of the Required Lenders;

(h) Other than the Interim Order, there shall not exist any law, regulation, ruling, judgment, order, injunction or other restraint that prohibits, restricts or imposes a materially adverse condition on the Term DIP Facility or the exercise by the Agent at the direction of the Lenders of its rights as a secured party with respect to the DIP Collateral;

(i) Other than as a result of or in connection with the Chapter 11 Cases, all governmental approvals and third party consents and approvals to be obtained by any Credit Party reasonably necessary to be obtained by the Borrowers in connection with the Term DIP Facility, if any, shall have been obtained (without the imposition of any conditions that are not reasonably acceptable to Agent at the direction of the Required Lenders in their reasonable discretion) and shall remain in effect;

(j) Subject to entry of the Interim Order, Agent, for the benefit of the Lenders, shall have a valid and perfected Lien on and security interest in the DIP Collateral of the Credit Parties on the basis and with the priority set forth herein;

(k) The Interim Order shall have been entered within five (5) Business Days of the Petition Date and be in full force and effect and shall not have been amended, modified, stayed or reversed;

(l) The Credit Parties shall have entered into a restructuring support agreement with the Required Consenting Lenders, in form and substance reasonably satisfactory to Agent at the direction of Required Lenders (the "RSA");

(m) The representation or warranty by all Credit Parties contained herein or in any other Loan Document shall be true and correct in all material respect (without duplication of any materiality qualifier contained therein) as of the date of the Initial DIP Borrowing, except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representations and warranties shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such earlier date); and

(n) No Default or Event of Default shall have occurred and be continuing or would result after giving effect to the effectiveness of this Agreement or the Initial DIP Borrowing.

2.2 Conditions to Subsequent DIP Borrowings. Except as otherwise expressly provided herein, no Lender shall be obligated to fund any Loan, if, as of the date thereof:

(a) any representation or warranty by any Credit Party contained herein or in any other Loan Document is untrue or incorrect in any material respect (without duplication of any materiality qualifier contained therein) as of such date, except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representations and warranties were untrue or incorrect in any material respect (without duplication of any materiality qualifier contained therein) as of such earlier date), and Agent or Required Lenders have determined not to make such Loan as a result of the fact that such warranty or representation is untrue or incorrect;

(b) any Default or Event of Default has occurred and is continuing or would result after giving effect to any Loan, and Required Lenders shall have determined not to make any Loan as a result of that Default or Event of Default;

(c) such Subsequent DIP Borrowing would violate any requirement of law or would be enjoined, temporarily, preliminarily or permanently;

(d) such Subsequent DIP Borrowing is not authorized pursuant to theFinal Order;

(e) the Final Order shall not have been entered within thirty-eight (38) days after the Petition Date or is not in full force and effect or shall be subject to any pending appeal, motion for reconsideration, order of reversal, amendment or modification;

(f) it shall be determined, in Required Lenders' reasonable discretion, that the Debtors have failed to use commercially reasonable efforts to obtain public ratings for the Term DIP Facility from each of Standard & Poor's Ratings Services ("S&P") and Moody's Investors Service, Inc. ("Moody's"); provided that timely cooperation with the customary and reasonable request of S&P and Moody's, in conferral with the Lenders, shall be deemed to be commercially reasonable; and

(g) the RSA is not in full force and effect according to its terms as to the Credit Parties and the Required Consenting Lenders.

The request by Borrower Representative and acceptance by Borrowers of the proceeds of any Loan shall be deemed to constitute, as of the date thereof, (i) a representation and warranty by Borrowers that the conditions in this Section 2.2 and (ii) a reaffirmation by each Credit Party of the granting and continuance of Agent's Liens, on behalf of itself and Lenders, pursuant to the Collateral Documents.

ARTICLE III - REPRESENTATIONS AND WARRANTIES

The Credit Parties, jointly and severally, represent and warrant to the Agent and each Lender that the following are, and after giving effect to the Transactions will be, true, correct and complete:

3.1 Corporate Existence and Power. Each Credit Party and each of their respective Subsidiaries:

(a) is a corporation, limited liability company or limited partnership, as applicable, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization or formation, as applicable;

(b) subject to the entry by the Bankruptcy Court of the applicable Orders, has the power and authority and all governmental licenses, authorizations, Permits, consents and approvals to own its assets, carry on its business and execute, deliver, and perform its obligations under, the Loan Documents to which it is a party;

(c) is duly qualified as a foreign corporation, limited liability company or limited partnership, as applicable, and licensed and in good standing, under the laws of each jurisdiction where its ownership, lease or operation of Property or the conduct of its business requires such qualification or license; and

(d) is in compliance with all Requirements of Law;

except, in each case referred to in clause (b), clause (c) or clause (d), to the extent that the failure to do so would not reasonably be expected to, either individually or in the aggregate, have a Material Adverse Effect or result in any material liability or loss that is not subject to the automatic stay provisions of section 362 of the Bankruptcy Code.

3.2 Corporate Authorization; No Contravention.

(a) The execution, delivery and performance by each of the Credit Parties of this Agreement and by each Credit Party and each of their respective Subsidiaries of any other Loan Document to which such Person is party, have been duly authorized by all necessary action, and do not and will not:

(i) contravene the terms of any of that Person's Organization Documents;

(ii) conflict with or result in any material breach or contraventionof, or result in the creation of any Lien under, any document evidencing any material Contractual Obligation to which such Person is a party or any order, injunction, writ or decree of any Governmental Authority to which such Person or its Property is subject; or

(iii) violate any material Requirement of Law in any material respect.

(b) Subject to the entry by the Bankruptcy Court of the applicable Orders, the execution, delivery and performance by each Credit Party and each of their respective Subsidiaries of any Related Agreement to which such Person is party, have been duly authorized by all necessary action, and do not and will not:

(i) contravene the terms of any of that Person's Organization Documents;

(ii) conflict with or result in any breach or contravention of, or result in the creation of any Lien under, any document evidencing any Contractual Obligation to which such Person is a party or any order, injunction, writ or decree of any Governmental Authority to which such Person or its Property is subject, except, in each case, to the extent that the failure to do so would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect; or

(iii) violate any Requirement of Law except to the extent that the failure to do so would not reasonably be expected to, either individually or in the aggregate, have a Material Adverse Effect or result in any liability or loss that is not subject to the Automatic Stay;

(c) Schedule 3.2 sets forth, as of the Closing Date, the authorized Stock and Stock Equivalents of each of the Credit Parties and each of their respective Subsidiaries. All issued and outstanding Stock and Stock Equivalents of each of the Credit Parties and each of their respective Subsidiaries are duly authorized and validly issued, fully paid, non-assessable, and free and clear of all Liens other than, with respect to the Stock and Stock Equivalents of Borrowers and Subsidiaries of the Borrowers, those in favor of the Agent, for the benefit of the Secured Parties, and the Prepetition Obligations. All such securities were issued in compliance with all applicable state and federal laws concerning the issuance of securities. As of the Closing Date, all of the issued and outstanding Stock and Stock Equivalents of Ultimate Parent, the Credit Parties and their respective Subsidiaries are owned by the Persons and in the amounts set forth on Schedule 3.2. Except as set forth on Schedule 3.2, there are no pre-emptive or other outstanding rights, options, warrants, conversion rights or other similar agreements for the purchase or acquisition of any Stock and Stock Equivalents of any Credit Party (other than in connection with any transaction permitted under Section 5.3 or, if among Credit Parties, 5.2(j)).

3.3 Governmental Authorization. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Credit Party or any Subsidiary of any Credit Party of this Agreement, any other Loan Document except (a) for recordings and filings in connection with the Liens granted to the Agent under the Collateral Documents or in connection with the Prepetition Obligations, (b) those obtained or made on or prior to the Closing Date, and (c) the Interim Order or the Final Order, as applicable.

3.4 Binding Effect. Subject to the entry by the Bankruptcy Court of the Orders, this Agreement and each other Loan Document to which any Credit Party or any Subsidiary of any Credit Party is a party constitute the legal, valid and binding obligations of each such Person which is a party thereto, enforceable against such Person in accordance with their respective terms.

3.5 Litigation. Other than the Known Events, or as stayed upon commencement of the Chapter 11 Case, there are no actions, suits, proceedings, claims or disputes pending, or to the best knowledge of each Credit Party, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, against any Credit Party, any Subsidiary of any Credit Party or any of their respective Properties which:

(a) purport to affect or pertain to any Loan Document (other than any action, suit, proceeding, claim or dispute by Agent or any Lender against any Credit Party which purport to affect or pertain to any Loan Document), or any of the transactions contemplated hereby or thereby; or

(b) would reasonably be expected to result in equitable relief or monetary judgment(s), individually or in the aggregate which would reasonably be expected to result in a Material Adverse Effect or result in any material liability or loss that is not subject to the automatic stay provisions of section 362 of the Bankruptcy Code.

No injunction, writ, temporary restraining order or any order of any nature has been issued by any court or other Governmental Authority purporting to enjoin or restrain the execution, delivery or performance of this Agreement, any other Loan Document, or directing that the transactions provided for herein or therein not be consummated as herein or therein provided. Except as set forth on Schedule 3.5, as of the Closing Date, no Credit Party or any Subsidiary of any Credit Party is the subject of an audit by the IRS or other Governmental Authority or, to each Credit Party's knowledge, any review or investigation by the IRS or other Governmental Authority concerning the violation or possible violation of any Requirement of Law.

3.6 No Default. No Default or Event of Default exists or would result from the incurring of any Obligations by any Credit Party or the grant or perfection of the Agent's Liens on the Collateral or the consummation of the Transactions. No Credit Party and no Subsidiary of any Credit Party is in default under or with respect to any Contractual Obligation in any respect which, individually or together with all such defaults, would reasonably be expected to have a Material Adverse Effect or result in any material liability or loss that is not subject to the automatic stay provisions of section 362 of the Bankruptcy Code.

3.7 ERISA Compliance. Schedule 3.7 sets forth, as of the Closing Date, a complete and correct list of, and that separately identifies, (a) all Title IV Plans and (b) all Multiemployer Plans. Each Benefit Plan intended to qualify under Section 401(a) of the Code has received a favorable determination letter or opinion letter from the IRS as to its qualification under

such Section of the Code (or has submitted an application for a determination letter with the IRS, and is awaiting receipt of a response) and, to the knowledge of any Credit Party no act or omission has occurred which would reasonably be expected to result in the loss of any such Benefit Plan's qualified status. Except for those that would not, in the aggregate, have a Material Adverse Effect, (x) each Benefit Plan is in compliance with applicable provisions of ERISA, the Code and other Requirements of Law, (y) there are no existing or pending (or to the knowledge of any Credit Party, threatened) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan to which any Credit Party incurs or otherwise has or could reasonably be expected to have an obligation or any Liability and (z) no ERISA Event is reasonably expected to occur. On the Closing Date, no ERISA Event has occurred in connection with which material obligations and liabilities (contingent or otherwise) remain outstanding. Except as set forth in Schedule 3.7, no ERISA Affiliate would have any material Withdrawal Liability as a result of a complete withdrawal from any Multiemployer Plan on the date this representation is made.

3.8 Use of Proceeds; Margin Regulations. The proceeds of the Loansare intended to be and shall be used solely for the purposes set forth in and permitted by Section 4.10, and are intended to be and shall be used in compliance with Section 5.8. No Credit Party and no Subsidiary of any Credit Party is engaged in the business of purchasing or selling Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock. Proceeds of the Loans shall not be used for the purpose of purchasing or carrying Margin Stock.

3.9 Title to Properties. Each of the Credit Parties and each of their respective Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real Property, and good and valid title to all owned personal property and valid leasehold interests in all leased personal property, in each instance, (i) necessary or material in the ordinary conduct of their respective businesses and (ii) except for defects in title that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. The Property of the Credit Parties and its Subsidiaries is subject to no Liens, other than Permitted Liens.

3.10 Taxes. Except as set forth on Schedule 3.10: (i) all federal and material state, local and foreign income and franchise and other material tax returns, reports and statements (collectively, the "Tax Returns") required to be filed by any Tax Affiliate have been filed with the appropriate Governmental Authorities in all jurisdictions in which such Tax Returns are required to be filed, all such Tax Returns are true and correct in all material respects, and all income, franchise and other material taxes, charges and other impositions reflected therein or otherwise due and payable have been paid or, as applicable withheld, prior to the date on which any Liability may be added thereto for non-payment thereof except for those contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of the appropriate Tax Affiliate in accordance with GAAP; (ii) as of the Closing Date, no Tax Return is under audit or examination by any Governmental Authority and no written notice of such an audit or examination or any written assertion of any claim for Taxes has been given or made by any Governmental Authority; and (iii) no Tax Affiliate has participated in a "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4(b).

3.11 Financial Condition.

(a) The audited consolidated balance sheet of Ultimate Parent and its Subsidiaries dated December 31, 2017, and the related audited consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal year ended on that date:

(x) were prepared in accordance with GAAP consistently applied throughout the respective periods covered thereby, except as otherwise expressly noted therein; and

(y) present fairly in all material respects the consolidated financial condition of Ultimate Parent and its Subsidiaries as of the dates thereof and results of operations for the periods covered thereby.

(b) The Initial Budget delivered pursuant to Section 2.1(k) is, and each DIP Budget delivered thereafter pursuant to Section 4.2(n) will be when delivered, based on good faith estimates and assumptions believed by management of the Borrowers to be reasonable and fair in light of current conditions and facts known to the Borrowers at the time delivered (it being understood that such DIP Budgets and the assumptions on which they were based, may or may not prove to be correct).

(c) Since the Petition Date there has been no Material Adverse Effect.

(d) The Credit Parties and their Subsidiaries have no Indebtedness other than Indebtedness permitted pursuant to Section 5.5 and have no Contingent Obligations other than Contingent Obligations permitted pursuant to Section 5.9.

(e) All financial performance projections delivered to the Agent represent the Borrowers' good faith estimate of future financial performance and are based on assumptions believed by the Borrowers to be fair and reasonable in light of current market conditions at the time such projections were delivered, it being acknowledged and agreed by the Lenders that projections as to future events are not to be viewed as facts and that the actual results during the period or periods covered by such projections may differ materially from the projected results and failure to achieve such projected results shall not, in and of itself, constitute a Default or an Event of Default.

(f) Ultimate Parent has not engaged in any business activities or owned any assets other than (i) ownership of the Stock and Stock Equivalents of Healthcare LLC, (ii) activities incidental to maintenance of its corporate existence, (iii) performance of its obligations under the Loan Documents to which it is a party and (iv) activities related to the Known Events not otherwise in contravention of the Loan Documents. Healthcare LLC has not engaged in any business activities or owned any assets other than (i) ownership of the Stock and Stock Equivalents of Merger Sub, JHO, Joerns LLC and Dynamic Medical, (ii) activities incidental to maintenance of its corporate existence, (iii) performance of its obligations (including, without limitation, its obligations as a Borrower) under the Loan Documents to which it is a party and (iv) activities related to the Known Events not otherwise in contravention of the Loan Documents.

3.12 Environmental Matters. Except as set forth on Schedule 3.12, (a) the operations of each Credit Party and each Subsidiary of each Credit Party are and have been in compliance with all applicable Environmental Laws, including obtaining, maintaining and complying with all Permits required by any applicable Environmental Law, other than non-compliances that, in the aggregate, would not have a reasonable likelihood of resulting in Material Environmental Liabilities to any Credit Party or any Subsidiary of any Credit Party, (b) no Credit Party and no Subsidiary of any Credit Party is party to, and no Credit Party and no Subsidiary of any Credit Party and no real property currently (or to the knowledge of any Credit Party previously) owned, leased, subleased, operated or otherwise occupied by or for any such Person is subject to or the subject of, any Contractual Obligation or any pending (or, to the knowledge of any Credit Party, threatened) order, action, investigation, suit, proceeding, audit, claim, demand, dispute or notice of violation or of potential liability or similar notice relating in any manner to any

Environmental Law other than those that, in the aggregate, are not reasonably likely to result in Material Environmental Liabilities to any Credit Party or any Subsidiary of any Credit Party, (c) no Lien in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities has attached to any property of any Credit Party or any Subsidiary of any Credit Party and, to the knowledge of any Credit Party, no facts, circumstances or conditions exist that could reasonably be expected to result in any such Lien attaching to any such property, (d) no Credit Party and no Subsidiary of any Credit Party has caused or suffered to occur a Release of Hazardous Materials at, to or from any real property of any such Person and each such real property is free of contamination by any Hazardous Materials except for such Release or contamination that could not reasonably be expected to result, in the aggregate, in Material Environmental Liabilities to any Credit Party or any Subsidiary of any Credit Party, (e) no Credit Party and no Subsidiary of any Credit Party (i) is or has been engaged in, or has permitted any current or former tenant to engage in, operations or (ii) knows of any facts, circumstances or conditions, including receipt of any information request or notice of potential responsibility under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601 et seq.) or similar Environmental Laws, that, in the aggregate, would have a reasonable likelihood of resulting in Material Environmental Liabilities to any Credit Party or any Subsidiary of any Credit Party and (f) each Credit Party has made available to Agent copies of all material existing environmental reports, reviews and audits and all material documents pertaining to actual or potential Environmental Liabilities, in each case to the extent such reports, reviews, audits and documents are in their possession, custody or control.

3.13 Regulated Entities. None of any Credit Party, any Person controlling any Credit Party, or any Subsidiary of any Credit Party, is (a) an "investment company" within the meaning of the Investment Company Act of 1940 or (b) subject to regulation under the Federal Power Act, the Interstate Commerce Act, any state public utilities code, or any other Federal or state statute, rule or regulation limiting its ability to incur Indebtedness, pledge its assets or perform its Obligations under the Loan Documents.

3.14 Chapter 11 Cases. The Chapter 11 Cases were commenced on the Petition Date in accordance with applicable law and notice has been or will be given of (i) the motion seeking approval of the Loan Documents, the Interim Order and the Final Order and (ii) the hearing for the entry of the Interim Order, and (iii) hearing for the entry of the Final Order, as applicable.Labor Relations. There are no strikes, work stoppages, slowdowns or lockouts existing, pending (or, to the knowledge of any Credit Party, threatened) against or involving any Credit Party or any Subsidiary of any Credit Party, except for those that would not, in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.15, as of the Closing Date, (a) there is no collective bargaining or similar agreement with any union, labor organization, works council or similar representative covering any employee of any Credit Party or any Subsidiary of any Credit Party, (b) no petition for certification or election of any such representative is existing or pending with respect to any employee of any Credit Party or any Subsidiary of any Credit Party and (c) no such representative has sought certification or recognition with respect to any employee of any Credit Party or any Subsidiary of any Credit Party.

3.16 Intellectual Property. Each Credit Party and each Subsidiary of each Credit Party owns, or is licensed to use, all Intellectual Property necessary to conduct its business as currently conducted except for such Intellectual Property the failure of which to own or license would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. To the knowledge of each Credit Party, (a) the conduct and operations of the businesses of each Credit Party and each Subsidiary of each Credit Party does not infringe,

misappropriate, dilute, violate or otherwise impair any Intellectual Property owned by any other Person and (b) no other Person has contested any right, title or interest of any Credit Party or any Subsidiary of any Credit Party in, or relating to, any Intellectual Property, other than, in each case, as would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.17 Subsidiaries. As of the Closing Date, no Credit Party has any Subsidiaries or equity investments in any other corporation or entity other than those specifically disclosed in Schedule 3.2.

3.18 Brokers' Fees; Transaction Fees. Except as disclosed on Schedule 3.18 and except for fees payable to the Agent and Lenders, none of the Credit Parties or any of their respective Subsidiaries has any obligation to any Person in respect of any finder's, broker's or investment banker's fee in connection with the transactions contemplated hereby.

3.19 Insurance. Each of the Credit Parties and each of their respective Subsidiaries and their respective Properties are insured with financially sound and reputable insurance companies which are not Affiliates of the Borrowers, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar Properties in localities where such Person operates. As of the Closing Date, a true and complete listing of such insurance, including issuers, coverages and deductibles, has been provided to the Agent.

3.20 Full Disclosure. None of the representations or warranties made by any Credit Party or any of their Subsidiaries in the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the statements contained in each exhibit, report, statement or certificate furnished by or on behalf of any Credit Party or any of their Subsidiaries in connection with the Loan Documents (including the offering and disclosure materials, if any, delivered by or on behalf of any Credit Party to the Lenders prior to the Closing Date), taken as a whole, contains any untrue statement of a material fact or omits any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not materially misleading as of the time when made or delivered.

3.21 Foreign Assets Control Regulations and Anti-Money Laundering.

(a) OFAC. Neither any Credit Party nor any Subsidiary of any Credit Party (i) is a person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (ii) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such person in any manner violative of Section 2, or (iii) is a person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order.

(b) Patriot Act. Each of the Credit Parties and each of their respective Subsidiaries are in compliance, in all material respects, with the Patriot Act. No part of the proceeds of the Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, or

in violation of sanctions administered by the U.S. Department of Treasury's Office of Foreign Assets Control regulation.

3.22 [Reserved]

3.23 Health Care Matters.

(a) Other than as set forth on Schedule 3.23 or except to the extent that failure to do so would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, (i) each Credit Party is and has been in compliance with all Health Care Laws applicable to it, its products and its properties or other assets or its business or operation and (ii) each Credit Party, and, any Person acting on their behalf, has in effect all Permits, including, without limitation, all Permits necessary for it to own, lease or operate its properties and other assets and to carry on its business and operations as presently conducted and all such Permits are in full force and effect and there exists no default under, or violation of, any such Permit and (iii) no Credit Party has received notice or has knowledge that any Governmental Authority is considering limiting, suspending, terminating, adversely amending or revoking any such Permit. No action, demand, requirement or investigation by any Governmental Authority and no suit, action or proceeding by any other person, in each case with respect to any Credit Party or, to the knowledge of each Credit Party, any Person acting on their behalf, is pending or, to the knowledge of any Credit Party, threatened, except to the extent such action, demand, requirement, investigation, suit, or proceeding would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(b) Except as set forth on Schedule 3.23 or except as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, all reports, documents, claims, notices or approvals required to be filed, obtained, maintained or furnished pursuant to any Health Care Law to any Governmental Authority have been so filed, obtained, maintained or furnished, and all such reports, documents, claims and notices were complete and correct on the date filed (or were corrected in or supplemented by a subsequent filing).

(c) No Credit Party has made an untrue statement of a material factor fraudulent statement to any Governmental Authority, failed to disclose a material fact required to any Governmental Authority, or committed an act, made a statement, or failed to make a statement that, at the time such disclosure was made, would reasonably be expected to constitute a violation of any Health Care Law. No Credit Party, no employee or officer of a Credit Party, nor to such Credit Party's knowledge, any affiliate or agent of any Credit Party, has made any untrue statement of fact regarding material claims incurred but not reported.

(d) Each Credit Party has the requisite provider number or other Permit to bill under Medicare, the respective Medicaid program in the state or states in which such entity operates, Private Third Party Payor Programs, or any Capitated Contracts with managed care organizations to the extent such Credit Party, or contracting physician on behalf of such Credit Party, bills such programs and/or payors. Except as set forth on Schedule 3.23 and the Known Events, there is no investigation, audit, claim review, or other action pending, or to the knowledge of any Credit Party, threatened which would reasonably be expected to result in a revocation, suspension, termination, probation, restriction, limitation, or non-renewal of any Governmental Third Party Payor or Private Third Party Payor (as defined below) provider or supplier number or Permit or result in any Credit Party's exclusion from any Governmental Third Party Payor Program or Private Third Party Payor Program. For purposes of this Agreement, a "Private Third Party Payor" means private insurers and any other person or entity which presently or in the future

maintains Private Third Party Payor Programs. In addition, for purposes of this Agreement, "Private Third Party Payor Programs" means all non-governmental third party payor programs in which any Credit Party participates or is enrolled.

(e) Each Credit Party has received and maintains accreditation in good standing and without limitation or impairment by all applicable accrediting organizations, to the extent required by law (including any foreign law or equivalent regulation), except where the failure to have or maintain such accreditation in good standing or imposition of limitation or impairment would not have a Material Adverse Effect.

(f) There are no facts, circumstances or conditions that would reasonably be expected to form the basis for any investigation, suit, claim, audit, action (legal or regulatory) or proceeding (legal or regulatory) by a Governmental Authority against or affecting any Credit Party relating to any of the Health Care Laws except to the extent such investigation, suit, claim, audit, action or proceeding would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. No Credit Party (1) is a party to a corporate integrity agreement or deferred prosecution agreement, or (2) has any reporting obligations pursuant to a settlement agreement, plan of correction, or other remedial measure entered into with any Governmental Authority.

(g) Except for such noncompliance as would not reasonably be expected to result in any material liability to a Credit Party, no Credit Party is a party to any contract, lease agreement or other arrangement (including any joint venture or consulting agreement) with any physician, health care facility, hospital, nursing facility, home health agency or other person who is in a position to make or influence referrals to or otherwise generate business for or to provide items or services to or lease space or equipment from, or engage in any other venture or activity, other than agreements which are in compliance with all applicable Health Care Laws. No Credit Party, directly or indirectly: (1) offered or paid any remuneration, in cash or in kind, to, or made any financial arrangements with, any past, present or potential patient, supplier, medical staff member, contractor, Private Third Party Payor or Governmental Third Party Payor of any Credit Party in order to illegally obtain business or payments from such person in violation of any Health Care Law; (2) given or agreed to give, or is aware that there has been made or that there is any illegal agreement to make, any illegal gift or gratuitous payment of any kind, nature or description (whether in money, property or services) to any past, present or potential customer, patient, supplier, contractor, Private Third Party Payor, Governmental Third Party Payor or any other person in violation of any Health Care Law; (3) made or agreed to make, or is aware that there has been made or that there is any agreement to make, any contribution, payment or gift of funds or property to, or for the private use of, any governmental official, employee or agent where either the contribution, payment or gift or the purpose of such contribution, payment or gift is or was illegal under the laws of any Governmental Authority having jurisdiction over such payment, contribution or gift; (4) established or maintained any unrecorded fund or asset for any purpose or made any misleading, false or artificial entries on any of its books or records for any reason; or (5) made, or agreed to make, or is aware that there has been made or that there is any agreement to make, any payment to any person with the intention or understanding that any part of such payment would be in violation of any Health Care Law or used or was given for any purpose other than that described in the documents supporting such payment. For purposes of this Agreement, a "Governmental Third Party Payor" means Medicare, Medicaid, TRICARE, material state government insurers and any other material person or entity which presently or in the future maintains Governmental Third Party Payor Programs. In addition, for purposes of this Agreement, "Governmental Third Party Payor Programs" means all federal, material state or other material governmental third party payor programs in which any Credit Party, or customer of a Credit Party, participates or is enrolled

(including, without limitation, Medicare, Medicaid, TRICARE or any other federal or state health care programs).

(h) None of the Credit Parties is, has been, or has been threatened to be, (i) excluded from any Governmental Third Party Payor Program pursuant to 42 U.S.C. § 1320a-7 and related regulations, (ii) "suspended" or "debarred" from selling products to the U.S. government or its agencies pursuant to the Federal Acquisition Regulation, relating to debarment and suspension applicable to federal government agencies generally (48 C.F.R. Subpart 9.4), or other applicable laws or regulations, or (iii) made a party to any other action by any Governmental Authority that may prohibit it from selling products to any governmental or other purchaser pursuant to any federal, state or local laws or regulations, except where the same could not reasonably be expected to have a Material Adverse Effect.

(i) To the extent applicable to any Credit Party and for so long as (1) any Credit Party is a "covered entity" as defined in 45 C.F.R. § 160.103, (2) any Credit Party is a "business associate" as defined in 45 C.F.R. § 160.103, (3) any Credit Party is subject to or covered by the HIPAA Administrative Requirements codified at 45 C.F.R. Parts 160 & 162 (the "Transactions Rule") and/or the HIPAA Security and Privacy Requirements codified at 45 C.F.R. Parts 160 & 164 (the "Privacy and Security Rules"), and/or (4) any Credit Party sponsors any "group health plans" as defined in 45 C.F.R. § 160.103, such Credit Party is in compliance with the applicable privacy, security, transaction standards, breach notification, and other provisions and requirements of HIPAA and any comparable state laws, except for such non-compliance as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(j) As of the Closing Date, none of the Credit Parties (i) have been (or to their knowledge will be) a party to or are currently a party to any consent decree or settlement with the FDA or any comparable state Governmental Authority related to such Credit Parties' products, (ii) have been (or to their knowledge will be) subject or are currently subject to any material product recall required by the FDA or any comparable state Governmental Authority or (iii) have received (or to their knowledge will be receiving) any notice from the FDA regarding product safety that could reasonably be expected to have a Material Adverse Effect.

3.24 [Reserved].

3.25 Security Interest. This Agreement, the Orders and the DIP Security Documents, subject to entry of the Orders, are effective to create in favor of the Agent, subject to the Carve-Out, for the benefit of the Secured Parties, legal, valid, enforceable and continuing first priority Liens on, and security interests in, the DIP Collateral pledged hereunder or thereunder, in each case, with respect to priority, subject to Liens with the relative priorities granted pursuant to the terms of the Orders, as applicable. Pursuant to the terms of the Interim Order and/or Final Order, no filing or other action will be necessary to perfect or protect such Liens and security interests granted under the Loan Documents or the Orders. Pursuant to and to the extent provided in the Interim Order and the Final Order, the Obligations of the Debtors under this Agreement will constitute part of the Superpriority DIP Claim.

3.26 Orders. The Credit Parties are in compliance in all material respects with the terms and conditions of the Orders. Each of the Interim Order (with respect to the period prior to the entry of the Final Order) or the Final Order (from after the date the Final Order is entered), as applicable, is in full force and effect, shall not have been reversed,

vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Agent acting at the direction of the Required Lenders, which consent shall not be unreasonably withheld, delayed or conditioned and, solely with respect to terms and provisions affecting the rights, protections, duties or obligations of the Agent, the Agent in its sole and absolute discretion.

3.27 Business and Property of the Credit Parties. Upon and after the Closing Date, no Credit Party nor any of their respective Subsidiaries proposes to engage in any business other than those businesses in which such entity is engaged on the date of this Agreement or that are reasonably related thereto and activities necessary to conduct the foregoing.

ARTICLE IV - AFFIRMATIVE COVENANTS

Each Credit Party covenants and agrees that, so long as any Lender shall have any Commitment hereunder, or any Loan or other Obligation (other than contingent indemnification Obligations to the extent no claim giving rise thereto has been asserted) shall remain unpaid or unsatisfied:

4.1 Financial Statements. Each Credit Party shall maintain, and shall cause each of its Subsidiaries to maintain, a system of accounting established and administered in accordance with sound business practices to permit the preparation of financial statements in conformity with GAAP (provided that interim financial statements shall not be required to have footnote disclosures and are subject to normal year-end adjustments).

(a) As soon as available, (i) but in any event within one hundred twenty (120) days after the end of each fiscal year of the Borrowers, a copy of the audited consolidated balance sheet of the Borrowers and their Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case (to the extent available, with respect to any fiscal year ending prior to, or a portion of which occurs prior to, the Closing Date) in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of a Registered Public Accounting Firm of nationally recognized standing reasonably acceptable to the Lenders (provided that Borrowers' accounting firm as of the Closing Date is acceptable), which report and opinion shall be prepared in accordance with generally accepted auditing standards, (ii) but in any event within forty five (45) days after the end of each of the fiscal quarter of each fiscal year of the Borrowers, a consolidated balance sheet of the Borrowers and their Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations, and, to the extent prepared, cash flows for such fiscal quarter, and for the portion of the Borrowers' fiscal year then ended, setting forth in each case (to the extent available, with respect to any fiscal quarter or fiscal year ending prior to, or a portion of which occurs prior to, the Closing Date) in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, certified by the chief financial officer of the Borrower Representative as fairly presenting, in all material respects, the financial condition, results of operations, and to the extent prepared, cash flows of the Borrowers and its Subsidiaries as of the end of such fiscal quarter, subject only to normal year-end audit adjustments and the absence of footnotes, and (iii) but in any event within thirty (30) days after the end of each of the fiscal months of each fiscal year of the Borrowers, a consolidated balance sheet of the Borrowers and their Subsidiaries as at the end of such fiscal month, and the related consolidated statements of income

or operations, and, to the extent prepared, cash flows for such fiscal month, and for the portion of the Borrowers' fiscal year then ended, setting forth in each case (to the extent available, with respect to any fiscal month or fiscal year ending prior to, or a portion of which occurs prior to, the Closing Date) in comparative form the figures for the corresponding fiscal month of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, certified by the chief financial officer of the Borrower Representative as fairly presenting, in all material respects, the financial condition, results of operations, and to the extent prepared, cash flows of the Borrowers and their Subsidiaries as of the end of such fiscal month, subject only to normal year-end audit adjustments and the absence of footnotes; and

(b) The DIP Budget may be updated, modified or supplemented (with the consent of the Required Lenders and/or at the reasonable request of the Required Lenders) from time to time, and each such updated, modified or supplemented budget shall be approved by, and in form and substance satisfactory to, the Required Lenders and no such updated, modified or supplemented budget shall be effective until so approved and once so approved shall be deemed a DIP Budget; provided, that during the fourth (4th) week of the initial DIP Budget (and the fourth (4th) week of each successive DIP Budget thereafter), the Borrowers shall submit a budget for the next successive thirteen (13) week period to the Agent (for distribution to the Lenders), which budget shall be substantially in form of the initial DIP Budget and in substance reasonably acceptable to the Agent (at the direction of the Required Lenders); provided, further, that in the event that the Required Lenders and the Borrowers cannot, while acting reasonably and in good faith, agree as to an updated, modified or supplemented budget, such disagreement shall give rise to an Event of Default hereunder once the period covered by the most recent DIP Budget has terminated. Each DIP Budget delivered to the Agent (for distribution to the Lenders) shall be accompanied by such supporting documentation as reasonably requested by the Agent or Required Lenders.

4.2 Certificates; Other Information. The Borrowers shall furnish in electronic form, to the Agent (and Agent agrees to deliver promptly to each Lender) in detail reasonably satisfactory to Agent at the direction of the Required Lenders:

(a) [Reserved];

(b) [Reserved];

(c) promptly after the same are filed, copies of all financial statements and regular, periodic or special reports which such Person may make to, or file with, the Securities and Exchange Commission or any successor or similar Governmental Authority;

(d) [Reserved];

(e) upon the request of the Agent, at any time if an Event of Default shall have occurred and be continuing but otherwise not more often than once a year, the Borrowers will, at the Borrowers' expense, obtain and deliver to the Agent a report of an independent collateral auditor satisfactory to the Agent with respect to the Accounts and Inventory of the Credit Parties;

(f) upon the reasonable request of Agent or Required Lenders, periodic estimated summaries of the Reported Fee Accruals;

(g) promptly upon receipt thereof, copies of any reports submitted by the certified public accountants in connection with each annual, interim or special audit or review of

any type of the financial statements or internal control systems of any Credit Party made by such accountants, including any comment letters submitted by such accountants to management of any Credit Party in connection with their services;

(h) from time to time, but not more frequently than once per year, if the Agent or Required Lenders determine that obtaining appraisals is necessary in order for the Agent or any Lender to comply with applicable laws or regulations (including any appraisals required to comply with FIRREA), and at any time if an Event of Default shall have occurred and be continuing, the Agent or Required Lenders may, or may require the Borrowers to, in either case at the Borrowers' expense, obtain appraisals in form and from appraisers reasonably satisfactory to the Agent stating the then current fair market value of all or any portion of the real or personal property of any Credit Party or any Subsidiary of any Credit Party and the fair market value or such other value as determined by Agent (for example, replacement cost for purposes of Flood Insurance) of any real property of any Credit Party or any Subsidiary of any Credit Party;

(i) promptly, such additional business, financial, corporate affairs, perfection certificates and other information as the Agent may from time to time reasonably request;

(j) concurrently with the furnishing thereof, any material written notice, statement or report furnished to any holder of any of the Prepetition Obligations, each in its capacity as such which is not otherwise required to be delivered hereto;

(k) [Reserved];

(l) [Reserved];

(m) copies of any default or acceleration notices received with respect to the Prepetition Obligations or any other Indebtedness with a principal amount in excess of $500,000;

(n) Following the delivery of the Initial Budget on the Closing Date, (i) by the Friday of the fourth (4th) week of the Initial Budget (and by the Friday of the fourth (4th) week of each successive DIP Budget thereafter), an updated budget for the then-upcoming thirteen (13) week period, in each case, in substance reasonably satisfactory to and approved by the Agent (at the direction of the Required Lenders, such direction of Required Lenders not to be unreasonably withheld, delayed or conditioned and such approval by Agent to be conveyed promptly following approval by Required Lenders) and consistent with the form of the Initial Budget delivered on the Closing Date, including professional fees and expenses budgeted for the Estate Professionals on a monthly basis (the "DIP Budget"), provided, that, until a new DIP Budget has been approved by the Agent (at the direction of the Required Lenders), the most recently approved DIP Budget shall govern; and (ii) beginning on the first Friday following the Petition Date, and on every Friday thereafter, a variance report (the "Variance Report") (A) showing actual receipts and disbursements for each line item compared to the DIP Budget, as applicable, of the Credit Parties as of Saturday of each week on a line item and cumulative basis and setting forth all the variances, on a line-item and cumulative basis, as applicable, from the amount set forth for such period as compared to the Initial Budget or the most recently approved DIP Budget delivered prior to such Variance Report, and each such Variance Report shall include explanations for all material variances and (B) certified by the chief financial officer of the Borrowers; and

(o) as frequently as the same is prepared by the Credit Parties, but in any event no later than the thirtieth (30^{th}) day following the last day of each accounting month-end, an

updated, accurate and complete schedule of the aging of all accounts receivable of the Credit Parties.

4.3 Notices. The Borrowers shall notify promptly the Agent and each Lender of each of the following (and in no event later than three (3) Business Days after a Responsible Officer becoming aware thereof):

(a) the occurrence or existence of any Default or Event of Default hereunder;

(b) any breach or non-performance of, or any default under, any Contractual Obligation of any Credit Party or any Subsidiary of any Credit Party, or any violation of, or non-compliance with, any Requirement of Law, which would reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect, including a description of such breach, non-performance, default, violation or non-compliance and the steps, if any, such Person has taken, is taking or proposes to take in respect thereof;

(c) any dispute, litigation, investigation, proceeding or suspension which may exist at any time between any Credit Party or any Subsidiary of any Credit Party and any Governmental Authority which would reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect;

(d) the commencement of, or any material development in, any litigation or proceeding affecting any Credit Party or any Subsidiary of any Credit Party (i) in which the amount of damages claimed is $500,000 (or its equivalent in another currency or currencies) or more, (ii) in which injunctive or similar relief is sought and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect, or (iii) in which the relief sought is an injunction or other stay of the performance of this Agreement, or any Loan Document;

(e) (i) the receipt by any Credit Party of any notice of violation of or potential liability or similar notice under Environmental Law which would reasonably be expected to result in Material Environmental Liabilities, (ii)(A) unpermitted Releases, (B) the existence of any condition that could reasonably be expected to result in violations of or liabilities under, any Environmental Law or (C) the commencement of, or any material change to, any action, investigation, suit, proceeding, audit, claim, demand, dispute alleging a violation of or liability under any Environmental Law, that, for each of clauses (A), (B) and (C) above (and, in the case of clause (C), if adversely determined), in the aggregate for each such clause, could reasonably be expected to result in Environmental Liabilities in excess of $1,500,000, (iii) the receipt by any Credit Party of notification that any material property of any Credit Party is subject to any Lien in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities and (iv) any proposed acquisition or lease of real property, if such acquisition or lease would have a reasonable likelihood of resulting in aggregate Environmental Liabilities in excess of $1,500,000;

(f) (i) on or prior to any filing by any Credit Party of any notice of intent to terminate any Title IV Plan, a copy of such notice, (ii) promptly, and in any event within ten (10) days after, any officer of any Credit Party knows or has reason to know that an ERISA Affiliate has filed a notice of intent to terminate any Title IV Plan, a copy of such notice, and (iii) promptly, and in any event within 10 days, after any officer of any ERISA Affiliate knows that a request for a minimum funding waiver under Section 412 of the Code has been filed with respect to any Title IV Plan, a written notice describing such waiver request and any action that any ERISA Affiliate proposes to take with respect thereto, together with a copy of any notice filed with the PBGC or the IRS pertaining thereto;

(g) any Material Adverse Effect subsequent to the date of the most recent audited financial statements delivered to the Agent and Lenders pursuant to this Agreement;

(h) any material change in accounting policies or financial reporting practices by any Credit Party or any Subsidiary of any Credit Party;

(i) any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other labor disruption against or involving any Credit Party or any Subsidiary of any Credit Party if the same would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect;

(j) the creation, establishment or acquisition of any Subsidiary or the issuance by or to any Credit Party of any Stock or Stock Equivalent (other than (i) issuances by Ultimate Parent of Stock or Stock Equivalents to the extent permitted hereunder and (ii) issuances by any Wholly-Owned Subsidiary of Ultimate Parent to Ultimate Parent or other Wholly-Owned Subsidiary of Ultimate Parent not resulting in the issuance of certificated securities);

(k) (i) the creation, or filing with the IRS or any other Governmental Authority by a Tax Affiliate of any Contractual Obligation or other document extending, or having the effect of extending, the period for assessment or collection of any taxes of any Tax Affiliate (other than an extension to file a Tax Return made in the Ordinary Course of Business) and (ii) the creation by a Tax Affiliate of any Contractual Obligation of any Tax Affiliate, or the receipt of any request directed to any Tax Affiliate, to make any adjustment under Section 481(a) of the Code, by reason of a change in accounting method or otherwise, in the case of each of clauses (i) and (ii) above, which would have a Material Adverse Effect;

(l) any changes to the chief executive officer, chief financial officer, or any senior vice president of any Credit Party; and

(m) the termination, discharge or resignation of any of the Consultants.

Each notice pursuant to this Section shall be in electronic form accompanied by a statement by a Responsible Officer of the Borrower Representative, on behalf of the Borrowers, setting forth details of the occurrence referred to therein, and stating what action the Borrowers or other Person proposes to take with respect thereto and at what time. Each notice under subsection 4.3(a) shall describe with particularity any and all clauses or provisions of this Agreement or other Loan Document that have been breached or violated.

4.4 Preservation of Corporate Existence, Etc. Each Credit Party shall, and shall cause each of its Subsidiaries to:

(a) preserve and maintain in full force and effect its organizational existence and good standing under the laws of its jurisdiction of incorporation, organization or formation, as applicable, except as permitted by Section 5.3;

(b) preserve and maintain in full force and effect all rights, privileges, qualifications, permits, licenses and franchises necessary in the normal conduct of its business except in connection with transactions permitted by Section 5.3 and sales of assets permitted by Section 5.2 and except as would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect; and

(c) preserve or renew all of its registered trademarks, trade names and service marks, the non-preservation of which would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

4.5 Maintenance of Property. Each Credit Party shall maintain, andshall cause each of its Subsidiaries to maintain, and preserve all its Property which is used or useful in its business in good working order and condition, ordinary wear and tear excepted and shall make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

4.6 Insurance.

(a) Each Credit Party shall, and shall cause each of its Subsidiaries to, (i) maintain or cause to be maintained in full force and effect all policies of insurance of any kind with respect to the property and businesses of the Credit Parties and such Subsidiaries (including policies of life, fire, theft, product liability, public liability, Flood Insurance, property damage, other casualty, employee fidelity, workers' compensation, business interruption and employee health and welfare insurance) with financially sound and reputable insurance companies or associations (in each case that are not Affiliates of Borrowers) of a nature and providing such coverage as is sufficient and as is customarily carried by businesses of the size and character of the business of the Credit Parties and (ii) use commercially reasonable efforts post-closing to cause all such insurance relating to any property or business of any Credit Party to name Agent as additional insured or loss payee, as appropriate. All policies of insurance on real and personal property of the Credit Parties will contain an endorsement, in form and substance acceptable to Agent, showing loss payable to Agent and extra expense and business interruption endorsements. Such endorsement, or an independent instrument furnished to Agent, will provide that the insurance companies will give Agent at least thirty (30) days' prior written notice before any such policy or policies of insurance shall be altered or canceled and that no act or default of Borrowers or any other Person shall affect the right of Agent to recover under such policy or policies of insurance in case of loss or damage. Each Credit Party shall direct all present and future insurers under its "All Risk" policies of property insurance to pay all proceeds payable thereunder directly to Agent, subject to such Credit Party's right to reinvest pursuant to subsection 1.8(c). If any insurance proceeds are paid by check, draft or other instrument payable to any Credit Party and Agent jointly, Agent may endorse such Credit Party's name thereon and do such other things as Agent may deem advisable to reduce the same to cash. Agent reserves the right at any time, upon review of each Credit Party's risk profile, to reasonably require additional forms and limits of insurance. Notwithstanding the requirement in subsection (i) above, Federal Flood Insurance shall not be required for (x) real property owned, leased, subleased or otherwise operated or occupied by any Credit Party or any Subsidiary of any Credit Party not located in a Special Flood Hazard Area, or (y) such real property located in a Special Flood Hazard Area in a community that does not participate in the National Flood Insurance Program (but Flood Insurance may be required if applicable). Notwithstanding anything herein to the contrary, if any improved real property is at any time subject to a mortgage, Borrower will maintain Flood Insurance and/or Federal Flood Insurance with respect to such property in compliance with all requirements of applicable laws and regulations.

(b) Unless the Borrowers provide the Agent with evidence of the insurance coverage required by this Agreement, the Agent may, upon five (5) Business Days written notice to Borrower Representative, purchase such insurance at the Credit Parties' expense to protect the Agent's and Lenders' interests in the Credit Parties' and their Subsidiaries' properties. This

insurance may, but need not, protect the Credit Parties' and their Subsidiaries' interests. The coverage that the Agent purchases may not pay any claim that any Credit Party or any Subsidiary of any Credit Party makes or any claim that is made against such Credit Party or any Subsidiary in connection with said Property. The Borrowers may later cancel any insurance purchased by the Agent, but only after providing the Agent with evidence that there has been obtained insurance as required by this Agreement. If the Agent purchases insurance, the Credit Parties will be responsible for the costs of that insurance, including interest and any other charges the Agent may impose in connection with the placement of insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance shall be added to the Obligations. The costs of the insurance may be more than the cost of insurance the Borrowers may be able to obtain on their own.

4.7 Payment of Obligations. Such Credit Party shall, and shall cause each of its Subsidiaries to, pay, discharge and perform, in each case subject to and in accordance with the DIP Budget, as the same shall become due and payable or required to be performed, all their respective obligations and liabilities set forth below, except as prohibited by the Bankruptcy Code:

(a) all federal, state and local tax liabilities, assessments and governmental charges or levies upon it or its properties or assets in excess of $1,000,000 in the aggregate, unless the same are being contested in good faith by appropriate proceedings diligently prosecuted for which adequate reserves in accordance with GAAP are being maintained by such Person;

(b) all lawful claims which, if unpaid, would by law become a Lien (other than a Permitted Lien) upon its Property unless the same are being contested in good faith by appropriate proceedings diligently prosecuted which stay the imposition or enforcement of the Lien and for which adequate reserves in accordance with GAAP are being maintained by such Person;

(c) the performance of all obligations under any Contractual Obligation to which such Credit Party or any of its Subsidiaries is bound (other than obligations with respect to Indebtedness), or to which it or any of its properties is subject, except where the failure to perform would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect; and

(d) payments to the extent necessary to avoid the imposition of a Lien with respect to, or the involuntary termination of any underfunded Benefit Plan.

4.8 Compliance with Laws.

(a) Each Credit Party shall, and shall cause each of its Subsidiaries to, comply with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business, except where the failure to comply would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(b) Without limiting the generality of the foregoing, each Credit Party shall, and shall cause each of its Subsidiaries to, comply with, and maintain its real property, whether owned, leased, subleased or otherwise operated or occupied, in compliance with, all applicable Environmental Laws (including by implementing any Remedial Action necessary to achieve such compliance or that is required by orders and directives of any Governmental Authority) except for failures to comply that would not, reasonably be expected to have, in the aggregate, a Material Adverse Effect. Without limiting the foregoing, if an Event of Default is continuing or if Agent, at the direction of Required Lenders, at any time has a reasonable basis to believe that there exist

violations of Environmental Laws by any Credit Party or any Subsidiary of any Credit Party or that there exist any Environmental Liabilities, in each case, that would reasonably be expected to have, in the aggregate, a Material Adverse Effect, then each Credit Party shall, promptly upon receipt of request from Agent, cause the performance of, and allow Agent and its Related Persons access to such real property for the purpose of conducting, such environmental audits and assessments, including subsurface sampling of soil and groundwater, and cause the preparation of such reports, in each case as Agent may from time to time reasonably request. Such audits, assessments and reports, to the extent not conducted by Agent or any of its Related Persons, shall be conducted and prepared by reputable environmental consulting firms reasonably acceptable to Agent and shall be in form and substance reasonably acceptable to Agent.

4.9 Inspection of Property and Books and Records. Each Credit Party shall maintain and shall cause each of its Subsidiaries to maintain proper books of record and account, in which, in all material respects, full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of such Person. Each Credit Party shall, and shall cause each of its Subsidiaries to, with respect to each owned, leased, or controlled property, during normal business hours and upon reasonable advance notice: (a) provide access to such property to Agent and any of its Related Persons, as frequently as Agent determines to be appropriate; (b) permit Agent and any of its Related Persons to inspect, audit and make extracts and copies from all of such Credit Party's books and records; and (c) permit Agent to inspect, review, evaluate and make physical verifications and appraisals of the inventory and other Collateral in any manner and through any medium that Agent considers advisable, in each instance, at the Credit Parties' expense provided the Credit Parties shall not be responsible for costs and expenses more than one time per year unless an Event of Default has occurred and is continuing. Any Lender may accompany Agent in connection with any inspection at such Lender's expense.

4.10 Use of Proceeds. The proceeds of the New Money DIP Loans shallbe used to provide working capital, for general corporate purposes and to fund the Chapter 11 Cases, subject to the DIP Budget (including Permitted Variances) and the terms and conditions of this Agreement and the Orders, including, without limitation, to (i) provide working capital and for other general corporate purposes of the Debtors, (ii) fund the costs of the administration of the Chapter 11 Cases (including professional fees and expenses) and the consummation of the Debtors' Bankruptcy Plan; (iii) as cash collateral for certain Letters of Credit (as defined in the Prepetition First Lien Credit Agreement); and (iv) fund interest, fees, and other payments contemplated in respect of the Term DIP Facility. Without in any way limiting the foregoing, no DIP Collateral, DIP Proceeds, or any portion of the Carve-Out may be used directly or indirectly by any of the Debtors, the Committee, if any, or any trustee or other estate representative appointed in the Chapter 11 Cases (or any successor case) or any other person or entity (or to pay any professional fees, disbursements, costs or expenses incurred in connection therewith): (a) to seek authorization to obtain liens or security interests that are senior or *pari passu* with the DIP Liens or the Liens in existence on the Petition Date securing the Prepetition First Lien Obligations (the "Prepetition Senior Liens") or the liens in existence on the Petition Date securing the Prepetition Second Lien Obligations (the "Prepetition Junior Liens"; and together with the Prepetition Senior Liens, the "Prepetition Liens"); or (b) to investigate (including by way of examinations or discovery proceedings), prepare, assert, join, commence, support or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of, in such capacities, against any of the Agent, the Lenders, the Prepetition First Lien Agent, the Prepetition First Lien Lenders, the Prepetition Second Lien Agent, or the Prepetition Second Lien Purchasers, and each of their respective officers, directors, controlling persons,

employees, agents, attorneys, affiliates, assigns, or successors of each of the foregoing, with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, (i) any claims or causes of action arising under chapter 5 of the Bankruptcy Code; (ii) any so-called "lender liability" claims and causes of action; (iii) any action with respect to the validity, enforceability, priority and extent of, or asserting any defense, counterclaim, or offset to, the Obligations, the Superpriority DIP Claims, the DIP Liens, the Loan Documents, the Prepetition Senior Liens, the Prepetition First Lien Loan Documents, the Prepetition First Lien Obligations, the Prepetition Second Lien Note Documents, the Prepetition Junior Liens, or the Prepetition Second Lien Obligations; (iv) any action seeking to invalidate, modify, set aside, avoid or subordinate, in whole or in part, the Obligations, the Prepetition First Lien Obligations, or the Prepetition Second Lien Obligations; (v) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to either (A) the Agent or the Lenders hereunder or under any of the Loan Documents, (B) the Prepetition Secured Parties under any of the Prepetition First Lien Loan Documents (in each case, including, without limitation, claims, proceedings or actions that might prevent, hinder or delay any of the Agent's or the Lenders' assertions, enforcements, realizations or remedies on or against the DIP Collateral in accordance with the applicable Loan Documents and the Orders) or (C) the Prepetition Second Lien Agent or the Prepetition Second Lien Purchasers under any of the Prepetition Second Lien Note Documents (in each case, including, without limitation, claims, proceedings or actions that might prevent, hinder or delay any of the Agent's or the Lenders' assertions, enforcements, realizations or remedies on or against the DIP Collateral in accordance with the applicable Loan Documents and the Orders); or (vi) objecting to, contesting, or interfering with, in any way, the Agent's and the Lenders' enforcement or realization upon any of the DIP Collateral once an Event of Default (as defined herein) has occurred; provided, however, that no more than $50,000 in the aggregate of the DIP Collateral, DIP Proceeds, or the Carve-Out, may be used by the Committee, if any, to investigate claims and/or liens of (x) the Prepetition First Lien Agent and Prepetition First Lien Lenders under the Prepetition First Lien Credit Agreement or (y) the Prepetition Second Lien Agent and Prepetition Second Lien Purchasers under the Prepetition Second Lien Note Documents.

4.11 Cash Management Systems.

(a) Each Credit Party shall, and shall cause each Domestic Subsidiary of each Credit Party that is a Debtor under the Chapter 11 Cases to, enter into, and cause each depository, securities intermediary or commodities intermediary to enter into, Control Agreements no later than (i) the date that is ten (10) Business Days after the Closing Date (or such later date to be agreed by the Agent, at the direction of the Required Lenders) with respect to each deposit, securities, commodity or similar account (other than Excluded Accounts) maintained by such Person as of the Closing Date and (ii) with respect to each deposit, securities, commodity or similar account (other than Excluded Accounts) acquired or opened by such Person after the Closing Date which holds any DIP Proceeds, in each case, in accordance with the Orders. Except as otherwise provided in Section 1.1(b), each Credit Party shall cause all DIP Proceeds to be maintained in accounts subject to Control Agreements until used or transferred to an Excluded Account for prompt use in accordance with the DIP Budget.

(b) Each Credit Party shall, and shall cause each Domestic Subsidiary of each Credit Party that is a Debtor under the Chapter 11 Cases to, enter into lockbox agreements with respect to the Controlled Accounts, which are consistent with the lockbox arrangements of the Credit Parties' cash management systems existing as of the Petition Date, as soon as reasonably practical after the Closing Date, but in any event no later than the date twenty (20) days after the Closing Date.

4.12 [Reserved].

4.13 Further Assurances.

(a) Each Credit Party shall ensure that all written information, exhibits and reports furnished to the Agent or the Lenders with respect to the Credit Parties and their Subsidiaries (other than projections, budgets, financial estimates, forecasts and other forward-looking information and general economic or specific industry information), when taken as a whole, do not and will not contain any untrue statement of a material fact and do not and will not omit to state any material fact or any fact necessary to make the statements contained therein not misleading in light of the circumstances in which made, and will promptly disclose to the Agent and the Lenders and correct any defect or error that may be discovered therein or in any Loan Document or in the execution, acknowledgement or recordation thereof.

(b) Promptly upon request by the Agent, the Credit Parties shall (and, subject to the limitations hereinafter set forth, shall cause each of their Subsidiaries to) take such additional actions as the Agent may reasonably require from time to time in order (i) to subject to the Liens created by any of the Collateral Documents any of the Properties, rights or interests covered by any of the Collateral Documents, (ii) to perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and the Liens intended to be created thereby, and (iii) to better assure, convey, grant, assign, transfer, preserve, protect and confirm to the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other document executed in connection therewith. Without limiting the generality of the foregoing and except as otherwise approved in writing by Required Lenders, the Credit Parties shall cause each of their Domestic Subsidiaries (other than Domestic Subsidiaries that are Excluded Foreign Subsidiaries) to guaranty the Obligations and to cause each such Subsidiary to grant to the Agent, for the benefit of the Secured Parties, a security interest in, subject to the limitations hereinafter set forth, all of such Subsidiary's Property to secure such guaranty. Furthermore and except as otherwise approved in writing by Required Lenders, each Credit Party shall, and shall cause each of its Domestic Subsidiaries (other than Domestic Subsidiaries that are Excluded Foreign Subsidiaries) to, pledge all of the Stock and Stock Equivalents of each of its Domestic Subsidiaries (other than Domestic Subsidiaries that are Excluded Foreign Subsidiaries) and 65% of the voting Stock and Stock Equivalents and 100% of the non-voting Stock and Stock Equivalents of each first tier Excluded Foreign Subsidiary, in each instance, to the Agent, for the benefit of the Secured Parties, to secure the Obligations. In connection with each pledge of Stock and Stock Equivalents, the Credit Parties shall deliver, or cause to be delivered, to the Agent, irrevocable proxies and stock powers and/or assignments, as applicable, duly executed in blank.

(c) [Reserved]

(d) Notwithstanding anything to the contrary contained in this Section 4.13 or in any other Loan Document, each Credit Party shall be required to grant a Lien to the Agent, for the benefit of the Secured Parties, in any assets in which any Prepetition Agent, for the benefit of the Prepetition Creditors, shall have been granted a Lien.

4.14 [Reserved].

4.15 Health Care Matters. Each Credit Party shall notify Agent within ten (10) Business Days following the occurrence of any of the following facts, events, notices, or circumstances, whether threatened, existing or pending, together with such supporting data and information as shall be reasonably necessary to fully explain to Agent the scope and nature of the

fact, event, notice or circumstance, and shall provide to Agent within two (2) Business Days of Agent's request, such additional information as Agent shall request regarding such disclosure:

(a) notice of any material inquiry, civil or criminal investigation or audit, or pending or threatened proceedings by any federal, state, local governmental or Governmental Third Party Payor or Private Third Party Payor relating to any material violation by any Credit Party of any Health Care Laws;

(b) any Credit Party, an owner, officer, manager or Person with a "direct or indirect ownership interest" (as that phrase is defined in 42 C.F.R. § 420.201) in any Credit Party: (i) has had a civil monetary penalty assessed against him or her pursuant to 42 U.S.C. § 1320a-7a or is the subject of a proceeding seeking to assess such penalty; (ii) has been excluded from participation in a Governmental Third Party Payor or is the subject of a proceeding seeking to assess such penalty; (iii) has been convicted (as that term is defined in 42 C.F.R. § 1001.2) of any of those offenses described in 42 U.S.C. § 1320a-7b or 18 U.S.C. §§ 669, 1035, 1347, 1518 or is the subject of a proceeding seeking to assess such penalty; or (iv) has been involved or named in a U.S. Attorney complaint made or any other action taken pursuant to the False Claims Act under 31 U.S.C. §§ 3729-3731 or qui tam action brought pursuant to 31 U.S.C. §§ 3729 et seq.;

(c) any validation review or program integrity review related to any Credit Party by any commission, board or agency in connection with the business of Credit Parties;

(d) copies of any written recommendation from any Governmental Authority or other regulatory body that any Credit Party should have any of its Permits, provider or supplier number, or accreditation suspended, revoked, or limited in any way, or any penalties or sanctions imposed;

(e) notice of any claim to recover any alleged material overpayments to a Credit Party with respect to any receivables in excess of $500,000;

(f) voluntary disclosure by Credit Party to the Office of the Inspector General of the United States Department of Health and Human Services, a Medicare fiscal intermediary or any state's Medicaid program of a potential overpayment matter involving the submission of claims to such payor in any amount greater than $500,000;

(g) notice of termination of eligibility of any Credit Party to participate in any reimbursement program of any private insurance carrier, managed care or similar organization, or other obligor applicable to it;

(h) notice of any material reduction in the level of reimbursement expected to be received with respect to receivables due to any Credit Party; and

(i) notice of any reimbursement payment contract or process that results or is reasonably expected to result in any claim against a Credit Party (including on account of overpayments, settlement payments, appeals, repayment plan requests).

4.16 Compliance Program. Each Credit Party shall regularly (i) review and revise its policies and procedures to ensure continuing compliance by such Credit Party, their officers, directors and employees and all health care providers under contract with such Credit Party with all applicable Health Care Laws, (ii) maintain appropriate programs and procedures for communicating such policies and procedures to all officers, directors and employees of each Credit

Party and health care providers under contract with the such Credit Party, (iii) ensure that all officers, directors and employees of such Credit Party are able to report violations of any Health Care Laws, and (iv) ensure that such reported violations are adequately addressed and corrected as soon as practicable.

4.17 Credit Rating. The Borrowers shall at all times use their commercially reasonable efforts to obtain and thereafter maintain a private rating (but not any particular rating) in respect of the Loans from each of S&P and Moody's; provided that timely cooperation with the customary and reasonable request of S&P and Moody's shall be deemed to be commercially reasonable.

4.18 [Reserved]

4.19 Post-Closing Obligations. Notwithstanding the conditions precedent set forth in Article II above, the Borrowers have informed Agent and the Lenders that certain of such items required to be delivered to Agent or otherwise satisfied as conditions precedent to the effectiveness of this Agreement will not be delivered to Agent as of the Closing Date. Therefore, with respect to the items set forth on Schedule 4.19 (collectively, the "Outstanding Items"), and notwithstanding anything to the contrary contained herein or in any other Loan Document, the Borrowers shall deliver or otherwise satisfy each Outstanding Item to Agent in the form, manner and time set forth thereon for such Outstanding Item or within such other time as Agent, at the direction of Required Lenders, may reasonably agree.

4.20 Credit Enhancements. If any Prepetition Agent or any Prepetition Creditor receives any additional guarantee, or other credit enhancement under the Prepetition Loan Documents after the Closing Date not provided for in the Loan Documents, the Borrowers shall concurrently cause the same to be granted to Agent, for the benefit of the Secured Parties.

4.21 Financial Advisor. Each of the Credit Parties shall, and shall cause its officers, directors, employees and advisors to, cooperate fully with the Lenders, the Agent and its advisors (including FTI and K&S) in furnishing information as and when reasonably requested regarding the Collateral, and any Credit Party's financial affairs, finances, financial condition, business and operations. Each Credit Party authorizes the Agent and Lenders and their representatives and advisors to meet and/or have discussions with any of the Credit Parties' officers, directors, employees and advisors from time to time as reasonably requested by the Lenders to discuss any matters regarding the Collateral, and any Credit Party's financial affairs, finances, financial condition, business and operations, and shall direct and authorize all such persons and entities to fully disclose to the Lenders and their representatives and advisors all information reasonably requested regarding the foregoing. Each of the Credit Parties hereby waives and releases any such officer, director, employee and advisor from the operation and provisions of any confidentiality agreement with such Credit Party, as the case may be, such that such person or entity is not prohibited from providing any of the foregoing information to the Lenders or their representatives and advisors.

4.22 Progress Calls. Upon request by the Agent (at the direction ofthe Required Lenders), the Borrowers shall hold monthly progress telephone conference calls for the Agent and the Lenders, starting in the first week following the Closing Date, until the payment in full in cash of the Obligations and the termination of the Term DIP Commitments hereunder. Such conference calls shall be attended by the Borrowers' financial advisors and be held every month as soon as the chief financial officer of the Borrower Representative and representatives of such financial advisors are reasonably available to have such conference call. During such conference

calls the chief financial officer of the Borrower Representative and its financial advisors shall provide the participating Lenders with a reasonably comprehensive update on the Chapter 11 Cases, variances with respect to the DIP Budget and any other material information relating to the business, condition (financial or otherwise), operation, performance, properties or prospects of any of the Credit Parties and any other information that may be reasonably requested by the Agent or any Lender.

4.23 Bankruptcy Covenants. Notwithstanding anything in the Loan Documents to the contrary, the Debtors shall comply with all material covenants, terms and conditions and otherwise perform, in all material respects, all obligations set forth in the Orders (for the avoidance of doubt, if there is a conflict between a provision of any Loan Document and the Orders, the Orders shall govern).

(a) Chapter 11 Case Documents and Notices. Each Debtor shall deliver or cause to be delivered for review and comment, as soon as commercially reasonable and in any event at least two (2) Business Days (or as soon thereafter as is reasonably practicable under the circumstance) prior to filing, upon request, all material pleadings, motions and other documents (provided that any of the foregoing relating to the Term DIP Facility shall be deemed material) to be filed on behalf of the Debtors with the Bankruptcy Court to K&S and to counsel for the Agent and shall consult in good faith with such counsel regarding the form and substance of any such proposed filing. If not otherwise provided by the Bankruptcy Court's electronic docketing system, the Borrowers shall provide (x) copies to the Agent of all pleadings, motions, applications, judicial information, financial information and other documents filed by or on behalf of the Debtors with the Bankruptcy Court, distributed by or on behalf of the Debtors to any Committee, filed with respect to the Chapter 11 Cases or filed with respect to any Loan Document and (y) such other reports and information as the Agent may, from time to time, reasonably request. In connection with the Chapter 11 Cases, the Debtors shall give the proper notice for (x) the motions seeking approval of the Loan Documents and the Orders and (y) the hearings for the approval of the Orders. The Borrowers and the other Debtors shall give, on a timely basis as specified in the Orders, all notices required to be given to all parties specified in the Orders.

(b) Restructuring Proposals. Each Credit Party shall deliver or cause to be delivered to the Agent and the Lenders, as soon as commercially reasonable upon receipt of same, copies of any term sheets, proposals, presentations or other material documents, from any Person, related to (i) the restructuring of the Debtors, or (ii) the sale of any material asset of one or all of the Debtors (for the avoidance of doubt, excluding ordinary course asset sales).

(c) Prepetition Payments. Except to the extent permitted (or required) hereunder (including, without limitation, any payments made from cash in any Excluded Account, subject to the DIP Budget), under the Orders and under the DIP Budget, no Credit Party shall, without the express prior written consent of the Required Lenders or pursuant to an order of the Bankruptcy Court after notice and a hearing, use the DIP Proceeds or cash collateral to make any Prepetition Payment.

(d) Agreements. Except as approved in writing by the Agent (acting at the direction of the Required Lenders) or contemplated by the first day orders, no Credit Party shall assume, reject, cancel, terminate, breach or modify any agreement, contract, instrument or other document if such assumption, rejection, cancellation, termination, breach or modification, either individually or in the aggregate, would have a negative effect on the value of the Collateral (except if pursuant to the Order) or result in a Material Adverse Effect.

4.24 Retention of Consultants; Communications with Accountants and other Financial Advisors.

(a) There shall be no material modifications to the compensation (excluding any decreases in compensation but including any other modification in compensation) for the engagement of such Consultants or the appointment and/or replacement of any Consultants without the consent of the Required Lenders except as set forth in the DIP Budget. Among other things, such Consultants shall assist the Credit Parties with the preparation of the DIP Budget and the other financial and Collateral reporting required to be delivered to the Required Lenders pursuant to this Agreement and the Orders, and with approval of all requests for Borrowing and all disbursements by the Borrowers.

(b) The Borrowers authorize the Agent, the Required Lenders, and their respective representatives to communicate directly with the Credit Parties' independent certified public accountants, appraisers, financial advisors, investment bankers and consultants (including the Consultants), which have been engaged from time to time by the Credit Parties, and authorizes and shall instruct those accountants, appraisers, financial advisors, investment bankers and consultants to communicate to the Agent, the Required Lenders and their respective representatives' information relating to each Credit Party with respect to the business, results of operations, prospects and financial condition of such Credit Party. The Borrowers acknowledge and agree that the Credit Parties and their representatives will reasonably cooperate with the Consultants and any Lender Group Consultant.

(c) Each Credit Party acknowledges that the Agent and Required Lenders shall be permitted to engage such outside consultants and advisors, including, but not limited to FTI, K&S and S&S (each, a "Lender Group Consultant"), for the sole benefit thereof, as applicable, as the Required Lenders may determine to be necessary or appropriate, in their reasonable discretion. Each Credit Party covenants and agrees that (i) such Credit Party shall provide its complete cooperation with any Lender Group Consultant (including, without limitation, providing unfettered access to such Credit Party's business, books and records and senior management); (ii) all costs and expenses of any such Lender Group Consultant shall be expenses (subject to limitations regarding legal expenses provided in Section 9.5) required to be paid by the Credit Parties under Section 9.5 hereof; and (iii) all reports, determinations and other written and verbal information provided by any Lender Group Consultant shall be confidential and no Credit Party shall be entitled to have access to same.

4.25 Updates on Pending Investigation. The Credit Parties shall provide the Agent with (i) updates on the status of the Pending Investigation on the monthly lender calls held pursuant to Section 4.22 of the Credit Agreement, (ii) updates promptly upon any material development in the Pending Investigation (including, without limitation, any demand by any Government Authority for payment by a Credit Party of fines or penalties, or any settlement offer made or received, in each case with respect to such demand or offer involving an amount in excess of $250,000, or any involvement of the criminal division of the U.S. Department of Justice on the matter) and (iii) any material documents that relate to the Pending Investigation that the Credit Parties are not prohibited from sharing due to confidentiality or attorney-client privilege restrictions.

ARTICLE V - NEGATIVE COVENANTS

Each Credit Party covenants and agrees that, so long as any Lender shall have any Commitment hereunder, or any Loan or other Obligation (other than contingent indemnification Obligations to the extent no claim giving rise thereto has been asserted and) shall remain unpaid or unsatisfied:

5.1 Limitation on Liens. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, directly or indirectly, make, create, incur, assume or suffer to exist any Lien upon or with respect to any part of its Property, whether now owned or hereafter acquired, other than the following ("Permitted Liens"), in each instance solely to the extent permitted under the Orders:

(a) any Lien existing on the Property of a Credit Party or a Subsidiary of a Credit Party on the Petition Date and set forth in Schedule 5.1 securing Indebtedness outstanding on such date and permitted by subsection 5.5(c);

(b) (i) any Lien created under any Loan Document and (ii) any Lien created under the Prepetition Loan Documents in favor of any Prepetition Agent securing Prepetition Obligations to the extent permitted by Section 5.5(f), and subject to the Intercreditor Agreement, as applicable;

(c) Liens for taxes, fees, assessments or other governmental charges (i) which are not yet due, not delinquent, remain payable without penalty, or which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of the appropriate Person in accordance with GAAP or (ii) the non-payment of which is permitted by Section 4.7;

(d) carriers', warehousemen's, mechanics', landlords', materialmen's, repairmen's, custom brokers' or other similar Liens arising in the Ordinary Course of Business which are not delinquent for more than thirty (30) days (except for Prepetition claims which may be overdue by more than thirty (30) days), and that, in all cases are being contested in good faith and by appropriate proceedings diligently prosecuted, which proceedings have the effect of preventing the forfeiture or sale of the Property subject thereto and for which adequate reserves in accordance with GAAP are being maintained;

(e) Liens (other than any Lien imposed by ERISA) consisting of pledges or deposits required in the Ordinary Course of Business in connection with workers' compensation, employment insurance, unemployment insurance and other social security legislation or to secure the performance of tenders, statutory obligations, surety, stay, customs and appeals bonds, bids, leases, utilities, governmental contract, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money) or to secure liability to insurance carriers;

(f) Liens consisting of judgment liens, appeal bonds, judicial attachment liens or other similar Liens arising in connection with court proceedings, provided that the enforcement of such Liens is effectively stayed and all such Liens secure judgments the existence of which do not constitute an Event of Default under subsection 7.1(h);

(g) easements, rights-of-way, zoning and other restrictions, minor defects or other irregularities in title, and other similar encumbrances incurred in the Ordinary Course of

Business which, either individually or in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the Property subject thereto or interfere in any material respect with the ordinary conduct of the businesses of any Credit Party or any Subsidiary of any Credit Party;

(h) Liens on any Property acquired or held by any Credit Party or any Subsidiary of any Credit Party securing Indebtedness incurred or assumed for the purpose of financing (or refinancing) all or any part of the cost of acquiring, constructing, extending, renewing, replacing or improving such Property and permitted under subsection 5.5(d); provided that (i) any such Lien attaches to such Property concurrently with or within one hundred eighty (180) days after the acquisition, construction or improvement thereof, (ii) such Lien attaches solely to the Property so acquired, constructed, extended, renewed, replaced or improved in such transaction, and (iii) the principal amount of the debt secured thereby does not exceed 100% of the cost of such Property;

(i) Liens securing Capital Lease Obligations and other Indebtedness permitted under subsection 5.5(d) provided, that such Lien attaches solely to the property (and proceeds thereof) financed by such Indebtedness;

(j) any interest or title of a lessor or sublessor under any lease not prohibited by this Agreement;

(k) Liens arising from precautionary uniform commercial code financing statements filed under any lease as of the Petition Date not prohibited by this Agreement;

(l) licenses, sublicenses, leases or subleases granted to third parties in the Ordinary Course of Business not interfering with the business of the Credit Parties or any of their Subsidiaries;

(m) Liens in favor of collecting banks arising under Section 4-210 of the UCC (or, in the case of banks located in the State of New York, Section 4-208 of the UCC);

(n) Liens (including the right of set-off) in favor of a bank or other depository institution arising as a matter of law encumbering deposits;

(o) Liens arising out of consignment or similar arrangements for the sale of goods entered into by a Borrower or any Subsidiary of a Borrower in the Ordinary Course of Business;

(p) Liens consisting of cash deposits not to exceed $2,000,000 in the aggregate at any time outstanding securing overdraft facilities, and/or commodity hedging agreements and/or interest rate hedging arrangements, in each instance, entered in the Ordinary Course of Business for bona fide hedging purposes (as applicable) and not for speculation;

(q) adequate protection Liens granted under the Orders; and

(r) Liens in favor of customs and revenue authorities arising as a matter of law which secure payment of customs duties in connection with the importation of goods in the Ordinary Course of Business in an aggregate amount not to exceed $500,000 (A) that are being contested in good faith by appropriate proceedings, (B) the applicable Credit Party or Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (C)

such contest effectively suspends collection of the contested obligations and enforcement of any Lien securing such obligations.

5.2 Disposition of Assets. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, directly or indirectly, sell, assign, lease, convey, transfer or otherwise dispose of (whether in one or a series of transactions) any Property (including accounts and notes receivable, with or without recourse), except, in each instance solely to the extent permitted under the Orders:

(a) dispositions of inventory, rental assets, or used, worn-out or surplus equipment, all in the Ordinary Course of Business;

(b) [Reserved];

(c) dispositions of Cash Equivalents in a manner consistent with the DIP Budget;

(d) licenses, sublicenses, leases or subleases granted to third parties in the Ordinary Course of Business and not interfering with the business of the Credit Parties or any of their Subsidiaries;

(e) transfers of property subject to casualty or condemnation proceeding (including in lieu thereof) upon receipt of the Net Proceeds therefore; provided, that the Net Proceeds thereof are applied in accordance with Section 1.8;

(f) the abandonment of intellectual property rights in the Ordinary Course of Business which, in the reasonable good faith determination of the Borrowers, are no longer used or useful to the business of the Borrowers and their Subsidiaries;

(g) sales, transfers and other dispositions of delinquent account receivables in the Ordinary Course of Business in connection with the collection thereof;

(h) disposition of assets pursuant to Section 5.31;

(i) (x) transfers among the Credit Parties, (y) transfers among non-Credit Party Subsidiaries and (z) transfers among the Credit Parties and their Subsidiaries that are not Credit Parties in the Ordinary Course of Business;

(j) voluntary terminations of Rate Contracts not prohibited hereunder; and

(k) to the extent constituting sales, transfers or dispositions (i) Investments to the extent permitted pursuant to Section 5.4, (ii) Restricted Payments to the extent permitted pursuant to Section 5.11, (iii) [reserved], (iv) such sale, transfer or disposition effected pursuant to a merger, consolidation, liquidation or dissolution permitted pursuant to Section 5.3, in each case made in accordance with the terms and conditions applicable thereto or (v) transactions to the extent permitted pursuant to Section 5.6(e).

5.3 Consolidations and Mergers. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, merge, consolidate with or into, or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person,

except, in each instance solely to the extent permitted under the Orders, (a) upon not less than five (5) Business Days prior written notice to the Agent, any Subsidiary of Healthcare LLC may merge with, or dissolve or liquidate into, a Wholly-Owned Subsidiary of Healthcare LLC which is a Domestic Subsidiary, provided that (i) such Wholly-Owned Subsidiary which is a Domestic Subsidiary shall be the continuing or surviving entity, (ii) with respect to any such transaction to which a Credit Party is a party, such Credit Party shall be the continuing or surviving entity and (iii) with respect to any such transaction to which a Borrower is a party, such Borrower shall be the continuing or surviving entity and (b) any Foreign Subsidiary may merge with or dissolve or liquidate into another Foreign Subsidiary provided if a First Tier Foreign Subsidiary is a constituent entity in such merger, dissolution or liquidation, such First Tier Foreign Subsidiary shall be the continuing or surviving entity.

5.4 Loans and Investments. No Credit Party shall and no Credit Party shall suffer or permit any of its Subsidiaries to (i) purchase or acquire, or make any commitment to purchase or acquire any Stock or Stock Equivalents, or any obligations or other securities of, or any interest in, any Person, including the establishment or creation of a Subsidiary, or (ii) make or commit to make any Acquisitions, or any other acquisition of all or substantially all of the assets of another Person, or of any business or division of any Person, including without limitation, by way of merger, consolidation or other combination or (iii) make or commit to make any advance, loan, extension of credit or capital contribution to or any other investment in, any Person including any Affiliate of a Borrower or any Subsidiary of a Borrower (the items described in clauses (i), (ii) and (iii) are referred to as "Investments"; provided, that, for the avoidance of doubt, in no event shall any cash payment made in the ordinary course of business to a Mexican Subsidiary by a Credit Party for ordinary course fair market value labor and overhead costs related to contract manufacturing for such Credit Party's inventory be deemed to be an Investment) except for, in each instance solely to the extent permitted under the Orders:

(a) Investments in cash and Cash Equivalents;

(b) extensions of credit and capital contributions by (i) any Credit Party (other than Ultimate Parent) to any other Credit Party (other than Ultimate Parent), (ii) a Foreign Subsidiary of a Borrower to another Foreign Subsidiary of a Borrower; and (iii) capital contributions (and not extensions of credit) by Ultimate Parent to Healthcare LLC (and, in addition to the foregoing, Investments consisting of transfers of Inventory and Equipment among a Borrower and Subsidiaries of a Borrower in the Ordinary Course of Business);

(c) loans and advances to employees in the Ordinary Course of Business not to exceed $250,000 in the aggregate at any time outstanding;

(d) [Reserved];

(e) Investments acquired in connection with the settlement of delinquent Accounts in the Ordinary Course of Business or in connection with the bankruptcy or reorganization of suppliers or customers;

(f) Investments consisting of non-cash loans made by Ultimate Parent to officers, directors and employees which are used by such Persons to purchase simultaneously Stock or Stock Equivalents of Ultimate Parent;

(g) Investments existing on the Petition Date and set forth on Schedule 5.4;

(h) [Reserved];

(i) (i) Investments comprised of Contingent Obligations permitted by Section 5.9, (ii) Investments consisting of extensions of credit in the nature of Accounts or notes receivable arising from the grant of trade credit in the Ordinary Course of Business, (iii) bank deposits in the ordinary course of business so long as the provisions of Section 4.11 have been complied with, (iv) to the extent constituting an Investment, endorsement of negotiable instruments held for collection in the Ordinary Course of Business and (v) pledges, bonds and deposits permitted as Liens under Section 5.1; and

(j) Investments in Subsidiaries that are not Credit Parties to makecritical vendor relief payments in accordance with the DIP Budget and approved by the Bankruptcy Court.

5.5 Limitation on Indebtedness. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, create, incur, assume, permit to exist, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except, in each instance solely to the extent permitted under the Orders:

(a) Indebtedness incurred pursuant to this Agreement;

(b) Indebtedness consisting of Contingent Obligations described in clause (i) of the definition thereof and permitted pursuant to Section 5.9;

(c) Indebtedness existing on the Petition Date and set forth in Schedule 5.5;

(d) Indebtedness (including, without limitation, the Mexican Capital Lease Indebtedness and Capital Lease Obligations, if any, secured by Liens set forth on Schedule 5.1) not to exceed an aggregate amount at any time outstanding equal to $12,000,000 (which such amount shall be in addition to the Capital Lease Obligations and purchase money indebtedness set forth on Schedule 5.5 hereof), consisting of Capital Lease Obligations (including Capital Lease Obligations refinancing other Capital Lease Obligations) or secured by Liens permitted by subsection 5.1(h) or subsection 5.1(a);

(e) unsecured intercompany Indebtedness permitted pursuant to subsections 5.4(b) and 5.4(j); and

(f) Indebtedness pursuant to the Prepetition First Lien Credit Agreement or the Prepetition Second Lien Note Purchase Agreement limited to outstanding principal and fees and interest accrued and unpaid as of the Petition Date, in accordance with the Prepetition Loan Documents, as applicable.

5.6 Transactions with Affiliates. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, enter into any transaction with any Affiliate of a Borrower or of any such Subsidiary, except, in each instance solely to the extent permitted under the Orders:

(a) as permitted by this Agreement (including, without limitation, payment of any management, consulting or similar fees permitted pursuant to Section 5.7 and payment of any Restricted Payment pursuant to Section 5.11);

(b) in the Ordinary Course of Business and pursuant to the reasonable requirements of the business of such Credit Party or such Subsidiary provided that, in the case of this clause (b), upon fair and reasonable terms no less favorable to such Credit Party or such Subsidiary than would be obtained in a comparable arm's length transaction with a Person not an Affiliate of a Borrower or such Subsidiary and which are disclosed in writing to the Agent; provided, further, that in no event shall a Credit Party or any Subsidiary of a Credit Party perform or provide any management, consulting, administrative or similar services to or for any Person other than another Credit Party, a Subsidiary of a Credit Party or a customer in the Ordinary Course of Business;

(c) reasonable director, officer, consultant and employee compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans) in the Ordinary Course of Business to the extent consistent with the DIP Budget and reasonable indemnification and reimbursement arrangements with respect to such Persons; or

(d) transactions among Credit Parties and their Subsidiaries to theextent expressly permitted hereunder.

5.7 Management Fees and Compensation. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, pay any management, consulting or similar fees to any Affiliate of any Credit Party or to any officer, director or employee of any Credit Party or any Affiliate of any Credit Party except, in each instance solely to the extent permitted under the Orders and in accordance with the DIP Budget, payment of reasonable compensation to officers and employees for actual services rendered to the Credit Parties and their Subsidiaries in the Ordinary Course of Business.

5.8 Use of Proceeds. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, use any portion of the Loan proceeds, directly or indirectly, to purchase or carry Margin Stock or repay or otherwise refinance Indebtedness of any Credit Party or others incurred to purchase or carry Margin Stock, or otherwise in any manner which is in contravention of any Requirement of Law or in violation of this Agreement. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, engage principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T, U, or X of the Board of Governors of the Federal Reserve System).

5.9 Contingent Obligations. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Contingent Obligations except in respect of the Obligations and except, in each instance solely to the extent permitted under the Orders:

(a) endorsements for collection or deposit in the Ordinary Course of Business;

(b) Rate Contracts entered into in the Ordinary Course of Business for bona fide hedging purposes and not for speculation;

(c) Contingent Obligations of the Credit Parties and their Subsidiaries existing as of the Petition Date and listed in Schedule 5.9;

(d) Contingent Obligations incurred in the Ordinary Course of Business with respect to surety and appeal bonds, performance bonds and other similar obligations;

(e) Contingent Obligations arising under indemnity agreements to title insurers to cause such title insurers to issue to the Agent title insurance policies;

(f) Contingent Obligations arising under guarantees made in the Ordinary Course of Business of obligations of any Credit Party (other than Ultimate Parent), which obligations are otherwise permitted hereunder; provided, that if such obligation is subordinated to the Obligations, such guarantee shall be subordinated to the same extent;

(g) Contingent Obligations not exceeding $1,300,000 in the aggregate in any fiscal year arising under guarantees made by JHO in favor of Fernando Lugo and co-owners in connection with that certain Lease Agreement dated as of March 24, 2011 between Fernando Lugo and co-owners and JHC de México, S. de R.L. de C.V. as the same is in effect on March 24, 2011 or as amended or otherwise modified from time to time other than in a manner adverse to the Agent or Lenders or which would reasonably be expected to have a Material Adverse Effect;

(h) Contingent Obligations arising with respect to obligations of any Credit Party (other than Indebtedness), which obligations are otherwise permitted hereunder; and

(i) Contingent Obligations constituting Investments permitted underSection 5.4 (other than clause (i) of subsection 5.4(i)).

5.10 Compliance with ERISA. No Credit Party shall cause or suffer to exist (a) any event that would reasonably be expected to result in the imposition of a material Lien on any asset of a Credit Party or a Subsidiary of a Credit Party with respect to any Title IV Plan or Multiemployer Plan or (b) any other ERISA Event, that would, in the aggregate, have a Material Adverse Effect. No Credit Party shall cause or suffer to exist any event that would reasonably be expected to result in the imposition of a Lien with respect to any Benefit Plan.

5.11 Restricted Payments. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, (i) declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any Stock or Stock Equivalent of Ultimate Parent or any of its Subsidiaries or (ii) purchase, redeem or otherwise acquire for value any Stock or Stock Equivalent of Ultimate Parent or any of its Subsidiaries now or hereafter outstanding or (iii) make any payment or prepayment of principal of, premium, if any, interest, fees redemption, exchange, purchase, retirement, defeasance, sinking fund or similar payment with respect to, Indebtedness, except to the extent permitted by any Order or under the DIP Budget (the items described in clauses (i), (ii) and (iii) above are referred to as "Restricted Payments"); and except that, in each instance solely to the extent permitted under the Orders and subject to compliance with the DIP Budget, (i) any Wholly-Owned Subsidiary of Healthcare LLC may declare and pay dividends to Healthcare LLC or any Wholly-Owned Subsidiary of Healthcare LLC, (ii) Stat Technologies, LLC, a Delaware limited liability company, may declare and make pro rata dividends to its shareholders and (iii) solely for purposes of clarification, any Credit Party (or a Subsidiary) may make payments contemplated hereunder in connection therewith, both as of and after the Petition Date with respect to the aggregate consideration and any purchase price adjustments in accordance with the terms applicable thereto:

(a) [Reserved];

(b) [Reserved];

(c) the Subsidiaries of Ultimate Parent may declare and make dividend payments to Ultimate Parent (and if applicable, Ultimate Parent may declare and make dividend payments) that do not exceed the amount set forth therefore in the DIP Budget, the proceeds of which are used to fund actual, reasonable, out of pocket overhead and administrative expenses payable by Ultimate Parent (or its direct or indirect parent company) in the ordinary course of business; and

(d) if Ultimate Parent (or a direct or indirect parent company thereof) files a consolidated federal income tax return with a Credit Party (or, if the Credit Party is a disregarded entity for federal income tax purposes, with the Credit Party's owner), then such Credit Party may make distributions to Ultimate Parent, in accordance with the DIP Budget, (and, if applicable, Ultimate Parent may make distributions to its direct or indirect parent company) to pay federal and state income taxes then due and owing by Ultimate Parent (or a direct or indirect parent company thereof); provided that the amount of such distributions shall not be greater than, nor the receipt by such Credit Party of tax benefits less than, they would have been had such Credit Party not filed consolidated income tax returns with Ultimate Parent or such direct or indirect parent company thereof (and, if such Credit Party is a disregarded entity, if such Credit Party were treated as a corporation for federal and state income tax purposes).

5.12 Change in Business. No Credit Party shall, and no Credit Partyshall permit any of its Subsidiaries to, engage in any material line of business substantially different from those lines of business carried on by the Credit Parties on the Petition Date or otherwise reasonably related thereto or reasonable extensions thereof. Ultimate Parent shall not engage in any business activities other than (i) ownership of the Stock and Stock Equivalents of Healthcare LLC, (ii) activities incidental to maintenance of its limited liability company existence or incidental to any of the Known Events and not otherwise in contravention of the Loan Documents, (iii) performance of its obligations under the Prepetition Loan Documents and Loan Documents to which it is a party, (iv) holding any cash or property received in connection with Restricted Payments made in accordance with Section 5.11 pending application thereof by it, (v) any issuance of its Stock or Stock Equivalents permitted under this Agreement, (vi) financing activities, including the issuance of securities, incurrence of debt, payment of dividends, making contributions to the capital of its Subsidiaries and guaranteeing the obligations of its Subsidiaries in each case solely to the extent expressly permitted hereunder, (vii) participating in tax, accounting and other administrative matters as a member of the consolidated group of the Credit Parties, (viii) providing indemnification to officers and directors in accordance with their Organizational Documents and (ix) activities incidental to the businesses or activities described in clauses (i) to (viii) of this sentence. Healthcare LLC shall not engage in any business activities other than (i) ownership of the Stock and Stock Equivalents of Merger Sub, JHO, Joerns LLC, and Dynamic Medical (ii) activities incidental to maintenance of its limited liability company existence or incidental to any of the Known Events and not otherwise in contravention of the Loan Documents, (iii) performance of its obligations (including, without limitation, its obligations as a Borrower) under the Prepetition Loan Documents and Loan Documents to which it is a party, (iv) holding any cash or property received in connection with Restricted Payments made in accordance with Section 5.11 pending application thereof by it, (v) any issuance of its Stock or Stock Equivalents permitted under this Agreement, (vi) financing activities, including the issuance of securities, incurrence of debt, payment of dividends, making contributions to the capital of its Subsidiaries and guaranteeing the obligations of its Subsidiaries in each case solely to the extent expressly permitted hereunder, (vii) participating in tax, accounting and other administrative matters as a member of the consolidated group of the Credit Parties, (viii) providing indemnification to officers and directors in accordance with their Organizational Documents and (ix) activities incidental to the businesses or activities described in clauses (i) to (viii) of this sentence.

5.13 Change in Structure. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to amend any of its Organization Documents in any respect materially adverse to the Agent or Lenders.

5.14 Accounting Changes. No Credit Party, and no Credit Party shall suffer or permit any of its Subsidiaries to change the fiscal year or method for determining fiscal quarters of any Credit Party without the consent of the Agent at the direction of Required Lenders.

5.15 Amendments to Prepetition Loan Documents and Subordinated Indebtedness.

(a) No Credit Party shall and no Credit Party shall permit any of its Subsidiaries, to amend, supplement, waive or otherwise modify any provision of any Prepetition Loan Document in a manner adverse to the Agent or Lenders or which would reasonably be expected to have a Material Adverse Effect, or in violation of the Orders.

(b) No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries directly or indirectly to, change or amend the terms of any Subordinated Indebtedness or any subordination agreement between the Agent or Lenders and holders of any Subordinated Indebtedness in a manner adverse to the Agent or Lenders or which would reasonably be expected to have a Material Adverse Effect, or in violation of the Orders. Each Credit Party shall, prior to entering into any such amendment or modification, deliver to Agent reasonably in advance of the execution thereof, any final or execution form copy thereof.

5.16 No Negative Pledges. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, directly or indirectly, to: (A) create or otherwise cause or suffer to exist or become effective any consensual restriction or encumbrance of any kind on the ability of any such Subsidiary to pay dividends or make any other distribution on any of such Subsidiary's Stock or Stock Equivalents or to pay fees, including management fees, or make other payments and distributions to a Borrower or any of its Subsidiaries or (B) enter into, assume or become subject to any Contractual Obligation prohibiting or otherwise restricting the existence of any Lien upon any of its assets in favor of the Agent, whether now owned or hereafter acquired except in connection with any document or instrument governing Liens permitted pursuant to Section 5.1 provided that any such restriction contained therein relates only to the asset or assets subject to such permitted Liens; provided, that the following agreements, restrictions, encumbrances or Contractual Obligations shall be permitted, solely to the extent permitted under the Orders:

(i) the Loan Documents and the Prepetition Loan Documents;

(ii) customary provisions in leases restricting the subletting or assignment thereof (and restricting liens on the leasehold assets subject thereto);

(iii) customary provisions in agreements or licenses entered into in the Ordinary Course of Business restricting assignment of such agreement or license to the extent not materially interfering with the use of such licenses or agreements;

(iv) customary restrictions and conditions contained in any agreement relating to the sale of any property pending the consummation of such sale, provided that (1) such restrictions and conditions apply only to the property to be sold, and (2) such sale is permitted hereunder;

(v) in the case of any joint venture permitted under this Agreementin effect on the Petition Date, customary restrictions in such Person's Organization Documents or pursuant to any joint venture or stockholders agreements solely to the extent of the Stock of or property held in such joint venture; and

(vi) negative pledges and restrictions in favor of the holder of deposits constituting Permitted Liens so long as such negative pledges and restrictions extend solely to the amounts on deposit with such holders and not any other assets of the Credit Parties or their Subsidiaries.

5.17 OFAC. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to (i) become a person whose property or interests in property are blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit or Support Terrorism (66 Fed. Reg. 49079(2001)), (ii) engage in any dealings or transactions prohibited by Section 2 of such executive order, or be otherwise associated with any such person in any manner violative of Section 2, or (iii) otherwise become a person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other OFAC regulation or executive order.

5.18 Press Release and Related Matters. No Credit Party shall, and no Credit Party shall permit any of its Affiliates to, issue any press release or other public disclosure (other than any document filed with any Governmental Authority relating to a public offering of securities of any Credit Party) using the name, logo or otherwise referring to Agent or any Lender or of any of its Affiliates, the Loan Documents or any transaction contemplated therein to which the Agent is party without the prior consent of Agent or such Lender except to the extent required to do so under applicable Requirements of Law and then, only after consulting with Agent or such Lender prior thereto.

5.19 Sale-Leasebacks. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, engage in a sale leaseback, synthetic lease or similar transaction involving any of its assets.

5.20 Hazardous Materials. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, cause or suffer to exist any Release of any Hazardous Material at, to or from any real property owned, leased, subleased or otherwise operated or occupied by any Credit Party or any Subsidiary of any Credit Party that would violate any Environmental Law, form the basis for any Environmental Liabilities or otherwise adversely affect the value or marketability of any real property (whether or not owned by any Credit Party or any Subsidiary of any Credit Party), other than such violations, Environmental Liabilities and effects that would not, in the aggregate, have a Material Adverse Effect.

5.21 Stay, Extension and Usury Laws. Other than in connection with the Chapter 11 Cases, each Credit Party covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of its Obligations under the Loan Documents, and each Credit Party hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Agent or Lenders, but shall suffer and permit the execution of every such power as though no such law has been enacted.

5.22 Mexican Subsidiaries. No Credit Party shall permit any Mexican Subsidiary to (a) incur any Indebtedness or other material liabilities other than Indebtedness (the "Mexican Capital Lease Indebtedness") not to exceed $2,000,000 in the aggregate at any time outstanding consisting of Capital Lease Obligations (including Capital Lease Obligations refinancing other Capital Lease Obligations) or (b) grant any Liens, security interests or encumbrances of any kind on its assets or properties other than Liens securing the Mexican Capital Lease Indebtedness.

5.23 Regulated Entities. The Borrowers shall not, and shall not permit any of their Subsidiaries to, become (a) an "investment company" within the meaning of the Investment Company Act of 1940 or (b) subject to regulation under any other federal or state statute, rule or regulation limiting its ability to incur Indebtedness, pledge its assets or perform its obligations under the Loan Documents with which such Borrower or such Subsidiary is not in compliance.

5.24 [Reserved].

5.25 Chapter 11 Claims. Except for the Carve-Out and Permitted Priority Liens and as provided in the Orders, directly or indirectly, incur, create, assume, suffer to exist or permit any administrative expense claim or Lien that is *pari passu* with or senior to the claims or Liens of the Agent and the Lenders against the Credit Parties hereunder or under the Orders, or apply to the Bankruptcy Court for authority to do so.

5.26 Revision of Orders; Applications to Bankruptcy Court; Superpriority Claims. Directly or indirectly, (a) seek, support, consent to or suffer to exist any modification, stay, vacation or amendment (in any manner adverse to the Lenders or the Prepetition First Lien Lenders) of any Order or any other order of the Bankruptcy Court, including (i) any order which authorizes the rejection or assumption of any leases of any Credit Party without the Required Lender's prior consent and (ii) any order which authorizes the return of any of the Credit Parties' property pursuant to Section 546(h) of the Bankruptcy Code; except for any modifications and amendments agreed to in writing by the Agent and Required Lenders, in their reasonable discretion, (b) apply to the Bankruptcy Court for authority to take any action prohibited by this Article V (except to the extent such application and the taking of such action is conditioned upon receiving the written consent of the Required Lenders, in their sole discretion) or (c) seek authorization for, or permit the existence of, any claims other than that of the Secured Parties entitled to superpriority status under section 364(c)(1) of the Bankruptcy Code that is senior or pari passu with the Secured Parties' claim under section 364(c)(1) of the Bankruptcy Code, except for the Carve-Out.

5.27 Capital Expenditures. The Credit Parties and their Subsidiaries shall not make or commit to make Capital Expenditures in excess of the amount set forth in the DIP Budget.

5.28 Anti-Cash Hoarding. The Foreign Subsidiaries shall not have inthe aggregate, over any period of twenty (20) consecutive Business Days beginning on or after the Closing Date, an average amount of cash and Cash Equivalents (other than restricted cash) in excess of $5,000,000, unless, within three (3) Business Days after the end of any such period, such excess shall be transferred to a Credit Party and maintained in a Controlled Account.

5.29 Compliance with the DIP Budget.

(a) Except as otherwise provided herein or approved by the Agent (at the direction of the Required Lenders, in their reasonable discretion), directly or indirectly, (i) use any cash, including the proceeds of any Loans, in a manner or for a purpose other than those permitted under this Agreement, the Orders or the DIP Budget, (ii) make any Prepetition Payment or application for authority to make any Prepetition Payment, other than those permitted by this Agreement, the Orders or the DIP Budget, (iii) permit the actual aggregate disbursements in any Testing Period to exceed the aggregate amount of disbursements in the DIP Budget for such Testing Period by more than the Permitted Variance, and (iv) permit the actual aggregate cash receipts (excluding proceeds of the Loans that may be deemed a receipt) during any Testing Period to be less than the aggregate amount of such cash receipts in the DIP Budget for such Testing Period by more than the Permitted Variance; and

(b) So long as no Event of Default has occurred and is continuing, and to the extent permitted under the Orders, the Credit Parties are authorized and directed to pay fees and expenses allowed and payable, as applicable, by any interim, procedural, or final order of the Bankruptcy Court (that has not been vacated or stayed, unless the stay has been vacated) under sections 330 and 331 of the Bankruptcy Code, as the same may be due and payable.

5.30 Access to Controlled Account. No Credit Party shall withdraw funds from any Controlled Account unless the withdrawal of funds is for purposes and in amounts consistent with the DIP Budget and otherwise permitted by or consistent with the Orders.

5.31 Reclamation Claims. No Credit Party shall enter into any agreement to return any of its inventory to any of its creditors for application against any Prepetition Indebtedness, Prepetition trade payables or other Prepetition claims under section 546(c) of the Bankruptcy Code or agree to allow any creditor to take any setoff or recoupment against any of its Prepetition Indebtedness, Prepetition trade payables or other Prepetition claims based upon any such return pursuant to section 553(b)(l) of the Bankruptcy Code or otherwise if, after giving effect to any such agreement, setoff or recoupment, the aggregate amount applied to Prepetition Indebtedness, Prepetition trade payables and other Prepetition claims subject to all such agreements, setoffs and recoupments since the Petition Date would exceed $500,000.

ARTICLE VI - [RESERVED]

ARTICLE VII - EVENTS OF DEFAULT

7.1 Event of Default. Any of the following shall constitute an "Event of Default" to the extent such event shall have continued for three (3) Business Days (unless otherwise set forth below, and only to the extent that such Event of Default is capable of being cured):

(a) Non-Payment. Any Credit Party fails (i) to pay when and as required to be paid herein, any amount of principal of any Loan, including after maturity of the Loans or (ii) to pay after the same shall become due, interest on any Loan, any fee or any other amount payable hereunder or pursuant to any other Loan Document; or

(b) Representation or Warranty. Any representation, warranty or certification by or on behalf of any Credit Party or any of its Subsidiaries made or deemed made herein, in any other Loan Document, or which is contained in any certificate, document or financial or other statement by any such Person, or their respective Responsible Officers, furnished at any time under

this Agreement, or in or under any other Loan Document, shall prove to have been incorrect in any material respect (without duplication of other materiality qualifiers contained therein) on or as of the date made or deemed made; or

(c) Specific Defaults. Any Credit Party fails to perform or observe any term, covenant or agreement contained in (i) any of Sections 4.1, 4.2 (excluding 4.2(a)) or 4.3 (excluding 4.3(a)) hereof and such failure shall have continued for five (5) Business Days, or (ii) any of Sections 4.2(n), 4.4, 4.6, 4.9, 4.10, 4.11 or Article V hereof; or

(d) Other Defaults. Any Credit Party or any Subsidiary of any Credit Party fails to perform or observe any other term, covenant or agreement contained in this Agreement or any other Loan Document, and such default shall continue unremedied for a period of thirty (30) days after the earlier of (i) the date a Responsible Officer of a Credit Party becomes aware of such failure or (ii) the date upon which written notice thereof is given to the Borrower Representative by the Agent or Required Lenders; or

(e) Cross-Default. Any Credit Party or any Subsidiary of any Credit Party (A) fails to make any payment in respect of any post-petition Indebtedness (other than the Obligations and any intercompany Indebtedness) or post-petition Contingent Obligation (other than the Obligations and any intercompany Contingent Obligations) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than $500,000 when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) and such failure continues after the applicable grace or notice period, if any, specified in the document relating thereto on the date of such failure; or (B) fails to perform or observe any other condition or covenant, or any other event shall occur or condition exist, under any agreement or instrument relating to any such Indebtedness or Contingent Obligation, if the effect of such failure, event or condition is to cause, or to permit the holder or holders of such Indebtedness or beneficiary or beneficiaries of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause such Indebtedness to be declared to be due and payable prior to its stated maturity (without regard to any subordination terms with respect thereto), or such Contingent Obligation to become payable or cash collateral in respect thereof to be demanded; or

(f) Insolvency; Voluntary Proceedings. Other than with respect to the Chapter 11 Cases, any Credit Party or any Subsidiary of any Credit Party: (i) generally fails to pay, or admits in writing its inability to pay, its debts as they become due, subject to applicable grace periods, if any, whether at stated maturity or otherwise; (ii) voluntarily ceases to conduct its business in the ordinary course other than pursuant to a transaction expressly permitted hereunder; (iii) commences any Insolvency Proceeding with respect to itself; or (iv) takes any action to effectuate or authorize any of the foregoing; or

(g) Involuntary Proceedings. Other than with respect to the Chapter 11 Cases, (i) any involuntary Insolvency Proceeding is commenced or filed against any Credit Party or any Subsidiary of any Credit Party, or any writ, judgment, warrant of attachment, execution or similar process, is issued or levied against a substantial part of any such Person's Properties, and any such proceeding or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or fully bonded within sixty (60) days after commencement, filing or levy; (ii) any Credit Party or any Subsidiary of any Credit Party admits the material allegations of a petition against it in any Insolvency Proceeding, or an order for relief (or similar order under non-U.S. law) is ordered in any Insolvency Proceeding; or (iii) any Credit Party or any Subsidiary of any Credit Party acquiesces in the appointment of a receiver,

trustee, custodian, conservator, liquidator, mortgagee in possession (or agent therefor), or other similar Person for itself or a substantial portion of its Property or business; or

(h) Monetary Judgments. One or more judgments, non-interlocutory orders, decrees, appeal bonds or arbitration awards shall be entered against any one or more of the Credit Parties or any of their respective Subsidiaries involving in the aggregate a liability (to the extent not covered by independent third-party insurance) as to any single or related series of transactions, incidents or conditions, of $500,000 or more, and the same shall remain unsatisfied, unvacated and unstayed pending appeal for a period of sixty (60) days after the entry thereof; or

(i) Non-Monetary Judgments. One or more non-monetary judgments, orders or decrees shall be rendered against any one or more of the Credit Parties or any of their respective Subsidiaries which has or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, and there shall be any period of ten (10) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(j) Collateral. Any Collateral Document shall for any reason (other than pursuant to the terms thereof) cease to create a valid security interest in the Collateral purported to be covered thereby or such security interest shall for any reason (other than the failure of the Agent to take any action within its control based upon accurate and timely disclosure of relevant information by the Credit Parties as required herein) cease to be a perfected and first priority security interest subject only to Permitted Liens; or

(k) Ownership. After the Closing Date, except as contemplated by the RSA, (i) Quad-C, Aurora and Aurora Sponsor Group Investors, collectively, at any time fail to (x) own beneficially, directly or indirectly, at least fifty-one percent (51%) of the issued and outstanding voting and economic Stock of Ultimate Parent or, in any event, Stock representing voting control of Ultimate Parent or (y) own beneficially, directly or indirectly, at least ninety percent (90%) of the issued and outstanding voting and economic Stock of Ultimate Parent that such Persons own as of the Closing Date; (ii) Ultimate Parent ceases to own one hundred percent (100%) of the issued and outstanding Stock and Stock Equivalents of Healthcare LLC; (iii) subject to Section 5.3 or 5.2(i) (but, in the case of Section 5.2(i), solely with respect to transfers among the Credit Parties), (A) Healthcare LLC ceases to own one hundred percent (100%) of the issued and outstanding Stock and Stock Equivalents of Merger Sub, JHO, Joerns LLC and Dynamic Medical, (B) Joerns LLC ceases to own one hundred percent (100%) of the issued and outstanding Stock and Stock Equivalents of Scott Technology, LLC and Joerns Services LLC, (C) JHO ceases to own one hundred percent (100%) of the issued and outstanding Stock and Stock Equivalents of Joerns Healthcare Mexico Holdings I LLC and Joerns Healthcare Mexico Holdings II LLC, (D) Merger Sub ceases to own one hundred percent (100%) of the issued and outstanding Stock and Stock Equivalents of RecoverCare, and (E) RecoverCare ceases to own one hundred percent (100%) of the issued and outstanding Stock and Stock Equivalents of RCJH Cambridge Technologies, LLC and Global Medical, LLC, in each instance in clauses (i), (ii) and (iii) free and clear of all Liens, rights, options, warrants or other similar agreements, other than Liens in favor of the Agent, for the benefit of the Secured Parties and Liens in favor of each Prepetition Agent for the benefit of the Secured Parties; and (iv) a "Change of Control" or any term of similar effect, as defined in the any Prepetition Credit Agreement, shall occur.

(l) The occurrence of any of the following in any Chapter 11 Cases:

(i) occurrence of a Material Adverse Effect;

(ii) termination of the RSA by the Debtors or either of the Required Consenting First Lien Lenders or the Required Consenting Second Lien Lenders in accordance with the terms of the RSA (other than as a result of a breach of the RSA by any Required Consenting Lender that would constitute a Company Termination Event (as defined in the RSA));

(iii) filing of a plan of reorganization under Chapter 11 of the Bankruptcy Code by the Debtors (other than the Bankruptcy Plan) that has not been consented to by the Required Lenders;

(iv) the filing by any of the Debtors of a pleading seeking to vacate or modify any of the Orders over the objection of the Agent at the direction of the Required Lenders;

(v) entry of an order without the prior written consent of the Required Lenders amending, supplementing or otherwise modifying the Orders (other than, in respect of the Interim Order, the entry of the Final Order);

(vi) reversal, vacatur or stay of the effectiveness of the Orders except to the extent stayed or reversed within five (5) Business Days (and, other than, in respect of the Interim Order, the entry of the Final Order);

(vii) a failure by the Credit Parties to comply with any provision ofthe Orders (except where such failure would not adversely affect the Lenders and Agent);

(viii) dismissal of the Chapter 11 Case of a Debtor with material assets or conversion of the Chapter 11 Case of a Debtor with material assets to a case under Chapter 7 of the Bankruptcy Code;

(ix) appointment of a Chapter 11 trustee or examiner with enlarged powers relating to the operation of the business of any Borrower or any other Credit Party;

(x) any sale of all or substantially all assets of the Debtors pursuant to section 363 of the Bankruptcy Code, unless (i) the proceeds of such sale are applied to repay the Obligations in full in cash or (ii) such sale is supported by the Agent at the direction of the Required Lenders;

(xi) failure to meet a Milestone, unless extended or waived pursuant to the written consent of the Agent at the direction of the Required Lenders;

(xii) granting of relief from the automatic stay in the Chapter 11 Cases to permit foreclosure or enforcement on assets of any Borrower or any other Credit Party, in each case, with a fair market value in excess of $200,000;

(xiii) the Debtors' filing of (or supporting another party in the filing of) a motion seeking entry of, or the entry of an order by the Bankruptcy Court, granting any superpriority claim or lien (except as contemplated herein) which is senior to or *pari passu* with the Lenders' claims under the Term DIP Facility;

(xiv) the Debtors' filing of (or supporting another party in the filing of) a motion seeking entry of an order approving any key employee incentive plan, employee

retention plan, or comparable plan, except as provided in the Bankruptcy Plan, without the prior written consent of the Required Lenders;

(xv) the Debtors shall seek, or shall support any other person's motion seeking (in any such case, verbally in any court of competent jurisdiction or by way of any motion or pleading with the Bankruptcy Court, or any other writing to another party in interest by Debtors) to challenge the extent, validity, perfection, priority, or enforceability of any of the Lien or obligations of the parties under the Prepetition First Lien Loan Documents or the Prepetition Second Lien Note Documents;

(xvi) any material provision of any of the Loan Documents shall cease, for any reason, to be in full force and effect, other than pursuant to the terms hereof or thereof, or as a result of acts or omissions of the Agent or any Lender;

(xvii) the Debtors shall assert in any pleading filed in any court that the guarantee contained in the Loan Documents is not valid and binding, for any reason, to be in full force and effect, other than pursuant to the terms hereof or thereof, or as a result of acts or omissions of the lenders thereto;

(xviii) payment of or granting adequate protection with respect to prepetition debt, other than as expressly provided herein or in the Orders or consented to by the Agent at the direction of the Required Lenders;

(xix) expiration or termination of the period provided by section 1121 of the Bankruptcy Code for the exclusive right to file a plan, with respect to a Debtor with material assets;

(xx) cessation of the DIP Liens or the Superpriority DIP Claims to be valid, perfected and enforceable in all respects;

(xxi) Permitted Variances under the DIP Budget are exceeded by a material amount for any period of time without consent of or waiver by the Agent at the direction of the Required Lenders;

(xxii) any uninsured judgments are entered with respect to any post-petition non-ordinary course claims against any of the Debtors or any of their respective affiliates in a combined aggregate amount in excess of $200,000 unless stayed; and

(xxiii) other than in the ordinary course and consistent with past practice, any Debtor asserting any right of subrogation or contribution against any other Debtor until all borrowings under the Term DIP Facility are paid in full and the commitments are terminated.

7.2 Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default, the Agent, at the direction of the Required Lenders shall, by written notice to the Borrowers, their counsel, the United States Trustee and counsel for any statutory committee, terminate the Term DIP Facility, declare the obligations in respect thereof to be immediately due and payable and, subject to the immediately following paragraph, exercise all rights and remedies under the Loan Documents and the Orders.

(b) If any Event of Default occurs and is continuing, then, and in any such event, without further order from the Bankruptcy Court, and subject to the terms of the Orders, the automatic stay provisions of section 362 of the Bankruptcy Code shall be modified to the extent necessary to permit the Agent and the Lenders to enforce all of their rights under the Loan Documents and (i) upon the occurrence and during the continuance of any Event of Default under the Loan Documents, to (A) cease making any Loans under the Term DIP Facility to the Debtors and (B) declare all Obligations to be immediately due and payable; and (ii) unless the Bankruptcy Court orders otherwise during such period, upon the occurrence of an Event of Default and the giving by the Agent at the direction of the Required Lenders of five (5) Business Days prior written notice (the "Termination Notice"; and such notice period, the "Remedies Notice Period"); provided that such period may be extended by the Debtors and the Agent (acting at the direction of the Required Lenders), each in their reasonable discretion, delivered to counsel to the Debtor, with copies to the United States Trustee and counsel to the Committee (if any), in each case subject in all respects to the Carve-Out and the proviso below, including without limitation the Debtors' rights to fund the Carve-Out Reserves as set forth in the Orders, to (A) immediately terminate the Debtors' use of any cash collateral, (B) freeze monies or balances in the Debtors' accounts (and, with respect to this Agreement and the Term DIP Facility, sweep all funds contained in the Controlled Accounts); (C) set-off any and all amounts in accounts maintained by the Debtors with the Agent or the Lenders against the Obligations, or otherwise enforce any and all rights against the DIP Collateral in the possession of any of the applicable Lenders, including, without limitation, disposition of the DIP Collateral solely for application towards the Obligations; and (D) take any other actions or exercise any other rights or remedies permitted under the Orders, the Loan Documents or applicable law to effect the repayment of the Obligations; provided, however, that during the Remedies Notice Period, the Debtors shall be permitted to continue to use the proceeds of the Term DIP Facility previously funded and cash on hand, including any cash collateral to (1) fund the Carve-Out Reserves and (2) to pay (x) accrued wages and any other critical employee-related expenses and (y) subject to the consent of the Agent (at the direction of the Required Lenders) any other critical business-related expenses, necessary to operate the Debtors' business or preserve the DIP Collateral as determined by the Debtors in their reasonable discretion and in good faith; provided, further, that the only basis on which the Debtors, the Committee or any other party-in-interest shall have the right to contest a Termination Notice shall be with respect to the validity of the Event of Default giving rise to such Termination Notice (i.e., whether or not such Event of Default has occurred or not, or whether or not it has been cured within the cure periods expressly set forth in the applicable Loan Documents).

(c) Upon and after the delivery of the Termination Notice, the Debtors and the Agent at the direction of the Required Lenders consent to a hearing on an expedited basis to consider whether the automatic stay may be lifted so that the Agent and the Lenders may exercise all of their respective rights and remedies in respect of the DIP Collateral in accordance with the Orders and the Loan Documents, or to consider any other appropriate relief (including the Debtors' use of cash collateral on a nonconsensual basis).

(d) Except as expressly provided above in this Section 7.2, to the maximum extent permitted by applicable law, presentment, demand, protest and all other notices of any kind are hereby expressly waived.

7.3 Rights Not Exclusive. The rights provided for in this Agreement and the other Loan Documents are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

ARTICLE VIII - THE AGENT

8.1 Appointment and Duties.

(a) Appointment of Agent. Each Lender hereby appoints Ankura Trust Company, LLC (together with any successor Agent pursuant to Section 8.9) as the Agent hereunder and authorizes the Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from any Credit Party, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to the Agent under such Loan Documents and (iii) exercise such powers as are reasonably incidental thereto.

(b) Duties as Collateral and Disbursing Agent. Without limiting the generality of clause (a) above, the Agent shall have the sole and exclusive right and authority, and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents, and each Person making any payment in connection with any Loan Document to any Secured Party is hereby authorized to make such payment to the Agent, (ii) act as collateral agent for each Secured Party for purposes of the perfection of all Liens created by such agreements and all other purposes stated therein, (iii) manage, supervise and otherwise deal with the Collateral, (iv) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (v) except as may be otherwise specified in any Loan Document, exercise all remedies given to the Agent and the other Secured Parties with respect to the Collateral, whether under the Loan Documents, applicable Requirements of Law or otherwise and (vi) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided, however, that the Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for the Agent and the Lenders for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by a Credit Party with, and cash and Cash Equivalents held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to the Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) Limited Duties. Under the Loan Documents, the Agent (i) is acting solely on behalf of the Lenders (except to the limited extent provided in subsection 1.4(b) with respect to the Register), with duties that are entirely administrative in nature, notwithstanding the use of the defined term "Agent", the terms "agent", "Agent" and "collateral agent" and similar terms in any Loan Document to refer to the Agent, which terms are used for title purposes only, (ii) is not assuming any obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Person and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document, and each Lender hereby waives and agrees not to assert any claim against the Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (i) through (iii) above.

8.2 Binding Effect. Each Lender agrees that (i) any action taken by the Agent or the Required Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken by the Agent in reliance upon the instructions of Required Lenders (or, where so required, such greater proportion) and (iii) the exercise by the Agent or the Required Lenders (or, where so required, such greater

proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Secured Parties.

8.3 Use of Discretion.

(a) No Action without Instructions. The Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except any action it is required to take or omit to take (i) under any Loan Document or (ii) pursuant to instructions from the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

(b) Right Not to Follow Certain Instructions. Notwithstanding clause (a) above, the Agent shall not be required to take, or to omit to take, any action (i) unless, upon demand, the Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to the Agent, any other Person) against all Liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against the Agent or any Related Person thereof or (ii) that is, in the opinion of the Agent or its counsel, contrary to any Loan Document or applicable Requirement of Law.

(c) Exclusive Right to Enforce Rights and Remedies. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Credit Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Agent in accordance with the Loan Documents for the benefit of all the Lenders; provided that the foregoing shall not prohibit (i) the Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents, (ii) any Lender from exercising setoff rights in accordance with Section 9.11 or (iii) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Credit Party under any bankruptcy or other debtor relief law; and provided further that if at any time there is no Person acting as the Agent hereunder and under the other Loan Documents, then (A) the Required Lenders shall have the rights otherwise ascribed to the Agent pursuant to Section 7.2 and (B) in addition to the matters set forth in clauses (ii) and (iii) of the preceding proviso and subject to Section 9.11, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

8.4 Delegation of Rights and Duties. The Agent may, upon any termor condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Secured Party). Any such Person shall benefit from this Article VIII to the extent provided by the Agent.

8.5 Reliance and Liability.

(a) The Agent may, without incurring any liability hereunder, (i) treat the payee of any Note as its holder until such Note has been assigned in accordance with Section 9.9, (ii) rely on the Register to the extent set forth in Section 1.4, (iii) consult with any of its Related Persons and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Credit Party) and (iv) rely and

act upon any document and information (including those transmitted by Electronic Transmission) and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties.

(b) None of the Agent and its Related Persons shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Lender, each Borrower and each other Credit Party hereby waive and shall not assert (and the Borrowers shall cause each other Credit Party to waive and agree not to assert) any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the gross negligence or willful misconduct of the Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, the Agent:

(i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders) or for the actions or omissions of any of its Related Persons selected with reasonable care (other than employees, officers and directors of the Agent, when acting on behalf of the Agent);

(ii) shall not be responsible to any Lender or other Person for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document;

(iii) makes no warranty or representation, and shall not be responsible, to any Lender or other Person for any statement, document, information, representation or warranty made or furnished by or on behalf of any Credit Party or any Related Person of any Credit Party in connection with any Loan Document or any transaction contemplated therein or any other document or information with respect to any Credit Party, whether or not transmitted or (except for documents expressly required under any Loan Document to be transmitted to the Lenders) omitted to be transmitted by the Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by the Agent in connection with the Loan Documents; and

(iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document, whether any condition set forth in any Loan Document is satisfied or waived, as to the financial condition of any Credit Party or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from the Borrower Representative, any Lender describing such Default or Event of Default clearly labeled "notice of default" (in which case the Agent shall promptly give notice of such receipt to all Lenders);

and, for each of the items set forth in clauses (i) through (iv) above, each Lender and each Borrower hereby waives and agrees not to assert (and each Borrower shall cause each other Credit Party to waive and agree not to assert) any right, claim or cause of action it might have against the Agent based thereon.

8.6 Agent Individually. The Agent and its Affiliates may make loans and other extensions of credit to, acquire Stock and Stock Equivalents of, engage in any kind of business with, any Credit Party or Affiliate thereof as though it were not acting as Agent and may receive separate fees and other payments therefor. To the extent the Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms "Lender", "Required Lender", and any similar terms shall, except where otherwise expressly provided in any Loan Document, include, without limitation, the Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Required Lenders, respectively.

8.7 Lender Credit Decision.

(a) Each Lender acknowledges that it shall, independently and without reliance upon the Agent, any Lender or any of their Related Persons or upon any document (including any offering and disclosure materials in connection with the syndication of the Loans) solely or in part because such document was transmitted by the Agent or any of its Related Persons, conduct its own independent investigation of the financial condition and affairs of each Credit Party and make and continue to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate. Except for documents expressly required by any Loan Document to be transmitted by the Agent to the Lenders, the Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Credit Party or any Affiliate of any Credit Party that may come in to the possession of the Agent or any of its Related Persons.

(b) If any Lender has elected to abstain from receiving material non-public information ("MNPI") concerning the Credit Parties or their Affiliates, such Lender acknowledges that, notwithstanding such election, Agent and/or the Credit Parties will, from time to time, make available syndicate-information (which may contain MNPI) as required by the terms of, or in the course of administering the Loans to the credit contact(s) identified for receipt of such information on the Lender's administrative questionnaire who are able to receive and use all syndicate-level information (which may contain MNPI) in accordance with such Lender's compliance policies and contractual obligations and applicable law, including federal and state securities laws; provided, that if such contact is not so identified in such questionnaire, the relevant Lender hereby agrees to promptly (and in any event within one (1) Business Day) provide such a contact to Agent and the Credit Parties upon request therefor by Agent or the Credit Parties. Notwithstanding such Lender's election to abstain from receiving MNPI, such Lender acknowledges that if such Lender chooses to communicate with Agent, it assumes the risk of receiving MNPI concerning the Credit Parties or their Affiliates.

8.8 Expenses; Indemnities.

(a) Each Lender agrees to reimburse the Agent and each of its Related Persons (to the extent not reimbursed by any Credit Party promptly after demand therefor) promptly upon demand, severally and ratably, of any out-of-pocket costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and Other Taxes paid in the name of, or on behalf of, any Credit Party) that may be incurred by the Agent or any of its Related Persons in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement (whether through negotiations, through any work-out, bankruptcy,

restructuring or other legal or other proceeding or otherwise) of, or legal advice in respect of its rights or responsibilities under, any Loan Document.

(b) Each Lender further agrees to indemnify the Agent and each of its Related Persons (to the extent not reimbursed by any Credit Party promptly after demand therefor), severally and ratably, from and against Liabilities (including taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to on or for the account of any Lender) that may be imposed on, incurred by or asserted against the Agent or any of its Related Persons in any matter relating to or arising out of, in connection with or as a result of any Loan Document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by the Agent or any of its Related Persons under or with respect to any of the foregoing; provided, however, that no Lender shall be liable to the Agent or any of its Related Persons to the extent such liability has resulted primarily from the gross negligence or willful misconduct of the Agent or, as the case may be, such Related Person, as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

(c) To the extent required by any applicable law, Agent may withhold from any payment to any Lender under a Loan Document an amount equal to any applicable withholding tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate certification form was not delivered, was not properly executed, or fails to establish an exemption from, or reduction of, withholding tax with respect to a particular type of payment, or because such Lender failed to notify Agent or any other Person of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), or Agent reasonably determines that it was required to withhold taxes from a prior payment but failed to do so, such Lender shall promptly indemnify Agent fully for all amounts paid, directly or indirectly, by Agent as tax or otherwise, including penalties and interest, and together with all expenses incurred by Agent, including legal expenses, allocated internal costs and out-of-pocket expenses. Agent may offset against any payment to any Lender under a Loan Document, any applicable withholding tax that was required to be withheld from any prior payment to such Lender but which was not so withheld, as well as any other amounts for which Agent is entitled to indemnification from such Lender under this Section 8.8(c).

8.9 Resignation of Agent.

(a) (i) The Agent may resign at any time by delivering notice of such resignation to the Lenders and the Borrower Representative, effective on the date set forth in such notice or, if no such date is set forth therein, upon the date such notice shall be effective. If the Agent delivers any such notice or if the Agent is removed pursuant to clause (ii) below, the Required Lenders shall have the right to appoint a successor Agent. If, within 30 days after the retiring Agent having given notice of resignation, no successor Agent has been appointed by the Required Lenders that has accepted such appointment, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent from among the Lenders. Each appointment under this clause (a) shall be subject to the prior consent of the Borrowers, which may not be unreasonably withheld but shall not be required during the continuance of an Event of Default. (ii) At any time when the Person acting as Agent is also a Non-Funding Lender of the type described in clause (a) of the definition thereof, Required Lenders may remove Agent in its capacity as such upon thirty (30) days' prior written notice to Agent and Borrower Representative, unless such Person ceases to be such a Non-Funding Lender on or prior to the expiration of such thirty (30) day period. (iii) The Required Lenders may, to the extent permitted by applicable law, by notice in writing to the

Borrower Representative and the Agent, remove Agent in its capacity as such and, as provided in the manner above, appoint a successor Agent.

(b) Effective immediately upon its resignation or removal, (i) the retiring Agent or removed Agent shall be discharged from its duties and obligations under the Loan Documents, (ii) the Lenders shall assume and perform all of the duties of the Agent until a successor Agent shall have accepted a valid appointment hereunder, (iii) the retiring Agent or removed Agent and its Related Persons shall no longer have the benefit of any provision of any Loan Document other than with respect to any actions taken or omitted to be taken while such retiring Agent or removed Agent was, or because such Agent had been, validly acting as Agent under the Loan Documents and (iv) subject to its rights under Section 8.3, the retiring Agent or removed Agent shall take such action as may be reasonably necessary to assign to the successor Agent its rights as Agent under the Loan Documents; provided that (i) the retiring Agent or removed Agent shall not be required to take any acts or execute any documents. Effective immediately upon its acceptance of a valid appointment as Agent, a successor Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Agent or removed Agent under the Loan Documents.

8.10 Release of Collateral. Each Lender hereby consents to the release and hereby directs the Agent to release (or, in the case of clause (b)(ii) below, release or subordinate) the following:

(a) [Reserved]; and

(b) any Lien held by the Agent for the benefit of the Secured Parties against (i) any Collateral that is sold, transferred, conveyed or otherwise disposed of by a Credit Party in a transaction permitted by the Loan Documents (including pursuant to a valid waiver or consent), to the extent all Liens required to be granted in such Collateral pursuant to Section 4.13 after giving effect to such transaction have been granted, (ii) any property subject to a Lien permitted hereunder in reliance upon subsection 5.1(h) or (i) and (iii) all of the Collateral and all Credit Parties, upon (A) payment and satisfaction in full of all Loans, and all other Obligations under the Loan Documents (other than contingent indemnification obligations in respect of which no claim has been made), that the Agent has theretofore been notified in writing by the holder of such Obligation are then due and payable, (B) deposit of cash collateral with respect to all contingent Obligations in amounts and on terms and conditions and with parties satisfactory to the Agent and each Indemnitee that is, or may be, owed such Obligations and (C) to the extent requested by the Agent, receipt by Agent and the Secured Parties of liability releases from the Credit Parties each in form and substance acceptable to the Agent.

Each Lender hereby directs the Agent, and the Agent hereby agrees, upon receipt of reasonable advance notice from the Borrower Representative, when and as directed in this Section 8.10, to (i) promptly to execute and deliver or file such documents and to perform other actions reasonably necessary to release the Liens and (ii) deliver to the Credit Parties any portion of such Collateral so released in the possession of the Agent.

8.11 Additional Secured Parties. The benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not a Lender party hereto as long as, by accepting such benefits, such Secured Party agrees, as among the Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by the Agent, shall confirm such agreement in a writing in form and substance acceptable to the Agent) this Article VIII, Section 9.3, Section 9.9, Section

9.10, Section 9.11, Section 9.17, Section 9.24 and Section 10.1 and the decisions and actions of the Agent and the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders or other parties hereto as required herein) to the same extent a Lender is bound; provided, however, that, notwithstanding the foregoing, (a) such Secured Party shall be bound by Section 8.8 only to the extent of Liabilities, costs and expenses with respect to or otherwise relating to the Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of pro rata share or similar concept, (b) subject to the express provisions of Sections 1.10(c) and 9.1(b), each of the Agent and the Lenders party hereto shall be entitled to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (c) except as otherwise set forth herein, such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any LoanDocument.

ARTICLE IX - MISCELLANEOUS

9.1 Amendments and Waivers.

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by any Credit Party therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by the Agent with the consent of the Required Lenders given in writing or by Electronic Transmission), the Borrower Representative and acknowledged by the Agent (which such acknowledgement shall be provided by the Agent upon written direction of the Required Lenders), and then such waiver shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, or consent shall, unless in writing and signed by all the Lenders directly affected thereby (or by the Agent with the consent of all the Lenders directly affected thereby given in writing or by Electronic Transmission), in addition to the Required Lenders (or by the Agent with the consent of the Required Lenders given in writing or by Electronic Transmission), the Borrowers and acknowledged by the Agent (which such acknowledgement shall be provided by the Agent upon written direction of all Lenders directly affected thereby), do any of the following:

(i) increase or extend the Commitment of any Lender (or reinstate any Commitment terminated pursuant to subsection 7.2(a));

(ii) postpone or delay any date fixed for, or waive, any scheduled installment of principal or any payment of interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document (other than prepayments pursuant to subsections 1.8(c) and (d));

(iii) reduce the principal of, or the rate of interest specified herein (it being agreed that waiver of the default interest margin shall only require the consent of Required Lenders) or the amount of interest payable in cash specified herein on any Loan, or of any fees or other amounts payable hereunder or under any other Loan Document;

(iv) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans which shall be required for the Lenders or any of them to take any action hereunder;

(v) amend Section 1.10(c), or amend this Section 9.1 (other than subsection 9.1(c)) or the definition of Required Lenders, Required Consenting First Lien Lenders, Required Consenting Second Lien Lenders, or Required Consenting Lenders or any provision providing for consent or other action by all Lenders;

(vi) pursue any action seeking to invalidate, modify, set aside, avoid or subordinate, in whole or in part, the Liens or the Prepetition First Lien Obligations;

(vii) [reserved]; or

(viii) discharge any Credit Party from its respective payment Obligations under the Loan Documents, or release all or substantially all of the Collateral, except as otherwise may be provided in this Agreement or the other Loan Documents;

it being agreed that all Lenders shall be deemed to be directly affected by an amendment or waiver of the type described in the preceding clauses (iv), (v), (vi), (vii) and (viii).

(b) No amendment, waiver or consent shall, unless in writing and signed by the Agent, in addition to the Required Lenders or all Lenders directly affected thereby, as the case may be (or by the Agent with the consent of the Required Lenders or all the Lenders directly affected thereby, as the case may be) and the Borrower Representative, affect the rights or duties of the Agent.

(c) Notwithstanding anything to the contrary contained in this Section 9.1, (y) Agent may amend Schedule 1.1(a) and/or 1.1(b) to reflect Sales entered into pursuant to Section 9.9, and (z) Agent and Borrowers may amend or modify this Agreement and any other Loan Document to (1) cure any ambiguity, defect or omission, or (2) grant a new Lien for the benefit of the Secured Parties, extend an existing Lien over additional property for the benefit of the Secured Parties or join additional Persons as Credit Parties.

(d) Notwithstanding any provision to the contrary set forth in thisAgreement, it is agreed and understood as follows with respect to Limited Voting Lenders:

(i) all Limited Voting Lenders (and their respective Loans and Commitments, as applicable) shall be excluded from the determination of Required Lenders, and shall not have voting rights with respect to any matters requiring the approval of Required Lenders; and

(ii) no Limited Voting Lender shall have any voting rights (A) under Section 9.1(a)(ii) so long as such postponement, delay or waiver is effective as to all Lenders entitled to vote thereon, or (B) Section 9.1(a)(iv);

provided that, without the consent of any such Lender, no such amendment, modification, waiver consent or other action shall (1) increase any Commitment of such Lender or (2) treat such Lender in a disproportionate manner in relation to Lenders that are not Limited Voting Lenders.

9.2 Notices.

(a) Addresses. All notices, demands, requests, directions and other communications required or expressly authorized to be made by this Agreement shall, whether or not specified to be in writing but unless otherwise expressly specified to be given by any other

means, be given in writing and (i) addressed to the address set forth on Schedule 9.2, (ii) posted to Intralinks® or SyndTrak®, Debt Domain (to the extent such system is available and set up by or at the direction of the Agent prior to posting) in an appropriate location by uploading such notice, demand, request, direction or other communication, (iii) posted to any other E-System set up by or at the direction of Agent or (iv) addressed to such other address as shall be notified in writing (A) in the case of the Borrowers and the Agent, to the other parties hereto and (B) in the case of all other parties, to the Borrower Representative and the Agent. Transmission by electronic mail (including E-Fax) shall not be sufficient or effective to transmit any such notice under this clause (a) unless such transmission is an available means to post to any E-System.

(b) Effectiveness. All communications described in clause (a) above and all other notices, demands, requests and other communications made in connection with this Agreement shall be effective and be deemed to have been received (i) if delivered by hand, upon personal delivery, (ii) if delivered by overnight courier service, one (1) Business Day after delivery to such courier service, (iii) if delivered by mail, three (3) Business Days after deposit in the mail, (iv) if delivered by facsimile (other than to post to an E-System pursuant to clause (a)(ii) or (a)(iii) above), upon sender's receipt of confirmation of proper transmission, and (v) if delivered by posting to any E-System, on the later of the Business Day of such posting and the Business Day access to such posting is given to the recipient thereof in accordance with the standard procedures applicable to such E-System; provided, however, that no communications to Agent pursuant to Article I shall be effective until received by Agent.

(c) Each Lender shall notify the Agent in writing of any changes in the address to which notices to such Lender should be directed, of addresses of its Lending Office, of payment instructions in respect of all payments to be made to it hereunder and of such other administrative information as the Agent shall reasonably request.

(d) With respect to all references to written notice or written consent in this Agreement, such written notice or written consent may, in each case, be delivered by e-mail (or other electronic means), to the e-mail address set forth on Schedule 9.2, or as otherwise provided by the parties hereto from time to time.

9.3 Electronic Transmissions.

(a) Authorization. Subject to the provisions of Section 9.2(a), each of Agent, Lenders, each Credit Party and each of their Related Persons, is authorized (but not required) to transmit, post or otherwise make or communicate, in its sole discretion, Electronic Transmissions in connection with any Loan Document and the transactions contemplated therein. Each Credit Party and each Secured Party hereto acknowledges and agrees that the use of Electronic Transmissions is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse and each indicates it assumes and accepts such risks by hereby authorizing the transmission of Electronic Transmissions.

(b) Signatures. Subject to the provisions of Section 9.2(a), (i)(A) no posting to any E-System shall be denied legal effect merely because it is made electronically, (B) each E-Signature on any such posting shall be deemed sufficient to satisfy any requirement for a "signature" and (C) each such posting shall be deemed sufficient to satisfy any requirement for a "writing", in each case including pursuant to any Loan Document, any applicable provision of any UCC, the federal Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act and any substantive or procedural Requirement of Law governing such subject matter, (ii) each such posting that is not readily capable of bearing either a signature or a

reproduction of a signature may be signed, and shall be deemed signed, by attaching to, or logically associating with such posting, an E-Signature, upon which each Secured Party and each Credit Party may rely and assume the authenticity thereof, (iii) each such posting containing a signature, a reproduction of a signature or an E-Signature shall, for all intents and purposes, have the same effect and weight as a signed paper original and (iv) each party hereto or beneficiary hereto agrees not to contest the validity or enforceability of any posting on any E-System or E-Signature on any such posting under the provisions of any applicable Requirement of Law requiring certain documents to be in writing or signed; provided, however, that nothing herein shall limit such party's or beneficiary's right to contest whether any posting to any E-System or E-Signature has been altered after transmission.

(c) Separate Agreements. All uses of an E-System shall be governed by and subject to, in addition to Section 9.2 and this Section 9.3, the separate terms, conditions and privacy policy posted or referenced in such E-System (or such terms, conditions and privacy policy as may be updated from time to time, including on such E-System) and related Contractual Obligations executed by Agent and Credit Parties in connection with the use of such E-System.

(d) LIMITATION OF LIABILITY. ALL E-SYSTEMS AND ELECTRONIC TRANSMISSIONS SHALL BE PROVIDED "AS IS" AND "AS AVAILABLE". NONE OF AGENT, ANY LENDER OR ANY OF THEIR RELATED PERSONS WARRANTS THE ACCURACY, ADEQUACY OR COMPLETENESS OF ANY E-SYSTEMS OR ELECTRONIC TRANSMISSION AND DISCLAIMS ALL LIABILITY FOR ERRORS OR OMISSIONS THEREIN. NO WARRANTY OF ANY KIND IS MADE BY AGENT, ANY LENDER OR ANY OF THEIR RELATED PERSONS IN CONNECTION WITH ANY E-SYSTEMS OR ELECTRONIC COMMUNICATION, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS. Each of each Borrower, each other Credit Party executing this Agreement and each Secured Party agrees that Agent has no responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Electronic Transmission or otherwise required for any E-System.

9.4 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Agent or any Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. No course of dealing between any Credit Party, any Affiliate of any Credit Party, the Agent or any Lender shall be effective to amend, modify or discharge any provision of this Agreement or any of the other Loan Documents.

9.5 Costs and Expenses. Each Borrower and each other Credit Party shall jointly and severally pay all (i) reasonable and documented (in summary form) out-of-pocket fees, costs, disbursements and expenses of (a) the Agent (including (and limited, in the case of counsel, to) all reasonable and documented out-of-pocket fees, costs, disbursements and expenses of the Agent's outside counsel, S&S, and, to the extent necessary, one firm of local counsel engaged by the Agent in connection with the Debtors' Chapter 11 Cases, and any successor counsel to each) and (b) the First Lien Steering Committee (including (and limited, in the case of counsel, financial advisors and other outside professionals, to) all reasonable and documented out-of-pocket fees, costs, disbursements and expenses of the First Lien Steering Committee's outside counsel, K&S, and, to the extent necessary, one firm of local counsel engaged by the First Lien Steering Committee in connection with the Debtors' Chapter 11 Cases, and FTI), in the case of each of the foregoing

clauses (a) and (b), in connection with the negotiations, preparation, execution and delivery of the Loan Documents and the funding of all Loans under the Term DIP Facility, including, without limitation, all due diligence, transportation, computer, duplication, messenger, audit, insurance, appraisal, valuation and consultant costs and expenses, and all search, filing and recording fees, incurred or sustained by the Agent and the First Lien Steering Committee, and their counsel and professional advisors in connection with the Term DIP Facility, the Loan Documents or the transactions contemplated thereby, the administration of the Term DIP Facility and any amendment or waiver of any provision of the Loan Documents, and (ii) without duplication, reasonable and documented (in summary form) out-of-pocket fees, costs, disbursements and expenses of the Agent and First Lien Steering Committee (including (and limited, in the case of counsel, to) (x) all reasonable and documented out-of-pocket fees, costs, disbursements and expenses of one firm of outside counsel for the Agent and, to the extent necessary, one firm of local counsel engaged by the Agent in connection therewith in each relevant jurisdiction and any successor counsel to such primary counsel and local counsel, and (y) all reasonable and documented out-of-pocket fees, costs, disbursements and expenses of one firm of outside counsel for the First Lien Steering Committee, taken as a whole, and, to the extent necessary, one firm of local counsel engaged by the First Lien Steering Committee, taken as a whole, in connection therewith) in connection with (A) the enforcement of any rights and remedies under the Loan Documents, (B) the Chapter 11 Cases, including attendance at all hearings in respect of the Chapter 11 Cases, and (C) defending and prosecuting any actions or proceedings arising out of or relating to the Prepetition First Lien Obligations, the Obligations, the Liens securing the Prepetition First Lien Obligations and the Obligations or any transaction related to or arising in connection with the Prepetition First Lien Loan Documents, this Agreement or the other Loan Documents (in the case of the Prepetition First Lien Obligations and the Liens securing the Prepetition First Lien Obligations, to the extent provided in the Prepetition First Lien Loan Documents).

9.6 Indemnity.

(a) Each Credit Party agrees, jointly and severally, to indemnify, hold harmless and defend Agent, each Lender and each of their respective Related Persons (each such Person being an "Indemnitee") from and against all Liabilities (including (x) brokerage commissions, fees and other compensation and (y) reasonable and documented out-of-pocket fees and disbursements of one counsel, one local counsel in each relevant jurisdiction, and any successor counsel to primary or local counsel, for the Agent and one counsel for the other Indemnitees) that may be imposed on, incurred by or asserted or awarded against any such Indemnitee in any matter relating to or arising out of, in connection with or as a result of (i) any Loan Document, any Obligation (or the repayment thereof), the use or intended use of the proceeds of any Loan or the use of any securities filing of, or with respect to, any Credit Party, (ii) any commitment letter, proposal letter or term sheet with any Person or any Contractual Obligation, arrangement or understanding with any broker, finder or consultant, in each case entered into by or on behalf of any Credit Party or any Affiliate of any of them in connection with any of the foregoing and any Contractual Obligation entered into in connection with any E-Systems or other Electronic Transmissions, (iii) any actual or prospective investigation, litigation or other proceeding, whether or not brought by any such Indemnitee or any of its Related Persons, any holders of securities or creditors, whether or not any such Indemnitee, Related Person, holder or creditor is a party thereto, and whether or not based on any securities or commercial law or regulation or any other Requirement of Law or theory thereof, including common law, equity, contract, tort or otherwise, in each case, arising out of matters described in clauses

(i) or (ii) above, or (iv) any other act, event or transaction related, contemplated in or attendant to any of the foregoing (collectively, the "Indemnified Matters"); provided, however, that no Credit Party shall have any liability under this Section 9.6 to any Indemnitee with respect to any Indemnified Matter, and no Indemnitee shall have any liability with respect to any Indemnified Matter other than (to the extent otherwise liable), (x) to the extent such liability is found in a final non appealable judgment by a court of competent jurisdiction to have resulted solely from the gross negligence, or willful misconduct of such Indemnitee or its Related Persons, (y) to the extent such liability is found in a final non appealable judgment by a court of competent jurisdiction to have resulted from the material breach by such Indemnitee or its Related Persons of its obligations hereunder or under any other Loan Document or (z) to the extent such liability is a result of any dispute solely among the Indemnitees (other an Indemnitee in its capacity as Agent or a bookrunner) at any time when no Credit Party or its Affiliates has breached its obligations under this Agreement or any other Loan Document in any material respect, in the case of each of the foregoing clauses (x), (y) and (z), as determined by a court of competent jurisdiction in a final non-appealable judgment or order. Furthermore, each of each Borrower and each other Credit Party executing this Agreement waives and agrees not to assert against any Indemnitee, and shall cause each other Credit Party to waive and not assert against any Indemnitee, any right of contribution with respect to any Liabilities that may be imposed on, incurred by or asserted against any Related Person. This subsection 9.6(a) shall not apply with respect to Taxes other than Taxes that represent Liabilities arising from any non-Tax claim.

(b) Without limiting the foregoing, "Indemnified Matters" includes all Environmental Liabilities, including those arising from, or otherwise involving, any property of any Credit Party or any Related Person of any Credit Party or any actual, alleged or prospective damage to property or natural resources or harm or injury alleged to have resulted from any Release of Hazardous Materials on, upon or into such property or natural resource or any property on or contiguous to any real property of any Credit Party or any Related Person or any Credit Party, whether or not, with respect to any such Environmental Liabilities, any Indemnitee is a mortgagee pursuant to any leasehold mortgage, a mortgagee in possession, the successor-in-interest to any Credit Party or any Related Person of any Credit Party or the owner, lessee or operator of any property of any Related Person through any foreclosure action, in each case except to the extent such Environmental Liabilities (i) are incurred solely following foreclosure by Agent or following Agent or any Lender having become the successor-in-interest to any Credit Party or any Related Person of any Credit Party and (ii) are attributable solely to acts of such Indemnitee.

9.7 Marshaling; Payments Set Aside. No Secured Party shall be under any obligation to marshal any property in favor of any Credit Party or any other Person or against or in payment of any Obligation. To the extent that any Secured Party receives a payment from a Borrower, from any other Credit Party, from the proceeds of the Collateral, from the exercise of its rights of setoff, any enforcement action or otherwise, and such payment is subsequently, in whole or in part, invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not occurred.

9.8 Successors and Assigns. The provisions of this Agreement shallbe binding upon and inure to the benefit of the parties hereto and their respective successors and

assigns; provided that any assignment by any Lender shall be subject to the provisions of Section 9.9 hereof, and provided further that no Credit Party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Agent and each Lender.

9.9 Assignments and Participations; Binding Effect.

(a) The provisions of this Agreement, the other Loan Documents, andall Liens and DIP Liens and other rights and privileges created hereby or pursuant hereto or to any other Loan Document shall be binding upon each Debtor, the estate of each Debtor, and any trustee, other estate representative or any successor in interest of any Debtor in any Chapter 11 Case or any subsequent case commenced under Chapter 7 of the Bankruptcy Code, and shall not be subject to section 365 of the Bankruptcy Code. This Agreement and the other Loan Documents shall be binding upon, and inure to the benefit of, the successors of the Agent and the Lenders and their respective assigns, transferees and endorsees. The Liens and DIP Liens created by this Agreement and the other Loan Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of any Chapter 11 Case or any other bankruptcy case of any Debtor to a case under Chapter 7 of the Bankruptcy Code or in the event of dismissal of any Chapter 11 Case or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the Agent file financing statements or otherwise perfect its Liens or DIP Liens under applicable law. No Credit Party may assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or under any of the other Loan Documents without the prior express written consent of the Lenders. Any such purported assignment, transfer, hypothecation or other conveyance by any Credit Party without the prior express written consent of the Lenders shall be void. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of each Credit Party, the Agent and the Lenders with respect to the transactions contemplated hereby and no Person shall be a third party beneficiary of any of the terms and provisions of this Agreement or any of the other Loan Documents. Notwithstanding the foregoing provisions of this Section 9.9(a), nothing in this Section 9.9 is intended to or should be construed to limit the Borrower's right to prepay the Obligations as provided hereunder.

(b) Each Lender may sell, transfer, negotiate or assign (a "Sale") all or a portion of its rights and obligations hereunder (including all or a portion of its Commitments and its rights and obligations with respect to Loans and Letters of Credit) to (i) any existing Lender (other than a Non-Funding Lender or Impacted Lender), (ii) any Affiliate or Approved Fund of any existing Lender (other than a Non-Funding Lender or Impacted Lender), (iii) to any Prepetition First Lien Lender to effectuate the allocation or reallocation set forth in Section 1.1(c) or (iv) any other Person acceptable (which acceptance shall not be unreasonably withheld or delayed) to the Required Lenders and, so long as no Event of Default is continuing, the Borrower Representative (which acceptance shall not be unreasonably withheld, delayed or conditioned) (each an "Eligible Assignee"), in each case, subject to the restrictions in the RSA; provided, however, that (x) any such Eligible Assignee shall support the RSA, (y) for each Loan, the aggregate outstanding principal amount (determined as of the effective date of the applicable Assignment) of the Loan or Commitments subject to any such Sale shall be in a minimum amount of $1,000,000, unless such Sale is made to an existing Lender or an Affiliate or Approved Fund of any existing Lender, in connection with the assignment described in Section 1.1(c), is of the assignor's (together with its Affiliates and Approved Funds) entire interest in such facility or is made with the prior consent of the Borrower Representative and the Agent and (z) such Sales by Non-Funding Lenders shall be subject to Required Lenders' prior written consent in all instances; provided further, after giving effect to the applicable assignment and together with participations held by Qualified Persons pursuant to subsection (f) below, in no event shall Qualified Persons hold, in the aggregate, more

than twenty percent (20%) of the sum of the then aggregate outstanding Term DIP Loans; provided that a Sale to a Credit Party shall in all cases be deemed unacceptable to the Required Lenders.

(c) The parties to each Sale made in reliance on clause (b) above (other than those described in clause (e) or (f) below) shall execute and deliver to the Agent an Assignment via an electronic settlement system designated by the Agent (or, if previously agreed with the Agent, via a manual execution and delivery of the Assignment) evidencing such Sale, together with any existing Note subject to such Sale (or any affidavit of loss therefor acceptable to the Agent), any tax forms required to be delivered pursuant to Section 10.1, a joinder to the RSA and payment of an assignment fee in the amount of $3,500; provided that (1) if a Sale by a Lender is made to an Affiliate or an Approved Fund of such assigning Lender, then no assignment fee shall be due in connection with such Sale, (2) if a Sale by a Lender is made to an assignee that is not an Affiliate or Approved Fund of such assignor Lender, and concurrently to one or more Affiliates or Approved Funds of such assignee, then only one assignment fee of $3,500 shall be due in connection with such Sale, and (3) no assignment fee shall be due in connection with the assignment described in Section 1.1(c). Upon receipt of all the foregoing, and conditioned upon such receipt and, if such Assignment is made in accordance with Section 9.9(b)(iii), upon the Required Lenders (and the Borrower, if applicable) consenting to such Assignment (if required), from and after the effective date specified in such Assignment, the Agent shall record or cause to be recorded in the Register the information contained in such Assignment.

(d) Subject to the recording of an Assignment by the Agent in the Register pursuant to Section 1.4(b), (i) the assignee thereunder shall become a party hereto and, to the extent that rights and obligations under the Loan Documents have been assigned to such assignee pursuant to such Assignment, shall have the rights and obligations of a Lender, (ii) any applicable Note shall be transferred to such assignee through such entry and (iii) the assignor thereunder shall, to the extent that rights and obligations under this Agreement have been assigned by it pursuant to such Assignment, relinquish its rights (except for those surviving the termination of the Commitments and the payment in full of the Obligations) and be released from its obligations under the Loan Documents, other than those relating to events or circumstances occurring prior to such assignment (and, in the case of an Assignment covering all or the remaining portion of an assigning Lender's rights and obligations under the Loan Documents, such Lender shall cease to be a party hereto).

(e) In addition to the other rights provided in this Section 9.9, each Lender may grant a security interest in, or otherwise assign as collateral, any of its rights under this Agreement, whether now owned or hereafter acquired (including rights to payments of principal or interest on the Loans), to (A) any federal reserve bank (pursuant to Regulation A of the Federal Reserve Board), by notice to the Agent or (B) any holder of, or trustee for the benefit of the holders of, such Lender's Indebtedness or equity securities, without notice to the Agent; provided, however, that no such holder or trustee, whether because of such grant or assignment or any foreclosure thereon (unless such foreclosure is made through an assignment in accordance with clause (b) above), shall be entitled to any rights of such Lender hereunder and no such Lender shall be relieved of any of its obligations hereunder.

(f) In addition to the other rights provided in this Section 9.9, each Lender may, (x) with notice to the Agent, grant to an SPV the option to make all or any part of any Loan that such Lender would otherwise be required to make hereunder (and the exercise of such option by such SPV and the making of Loans pursuant thereto shall satisfy the obligation of such Lender to make such Loans hereunder) and such SPV may assign to such Lender the right to receive payment with respect to any Obligation and (y) without notice to or consent from the Agent or the Borrowers, sell participations to one or more Persons in or to all or a portion of its rights and

obligations under the Loan Documents; provided, however, that, whether as a result of any term of any Loan Document or of such grant or participation, (i) no such SPV or participant shall have a commitment, or be deemed to have made an offer to commit, to make Loans hereunder, and, except as provided in the applicable option agreement, none shall be liable for any obligation of such Lender hereunder, (ii) such Lender's rights and obligations, and the rights and obligations of the Credit Parties and the Secured Parties towards such Lender, under any Loan Document shall remain unchanged and each other party hereto shall continue to deal solely with such Lender, which shall remain the holder of the Obligations in the Register, except that (A) each such participant and SPV shall be entitled to the benefit of Article X, but, with respect to Section 10.1, only to the extent such participant or SPV delivers the tax forms such Lender is required to collect pursuant to subsection 10.1(f) and then only to the extent of any amount to which such Lender would be entitled in the absence of any such grant or participation and (B) each such SPV may receive other payments that would otherwise be made to such Lender with respect to Loans funded by such SPV to the extent provided in the applicable option agreement and set forth in a notice provided to the Agent by such SPV and such Lender, provided, however, that in no case (including pursuant to clause (A) or (B) above) shall an SPV or participant have the right to enforce any of the terms of any Loan Document, and (iii) the consent of such SPV or participant shall not be required (either directly, as a restraint on such Lender's ability to consent hereunder or otherwise) for any amendments, waivers or consents with respect to any Loan Document or to exercise or refrain from exercising any powers or rights such Lender may have under or in respect of the Loan Documents (including the right to enforce or direct enforcement of the Obligations), except for those described in clauses (ii) and (iii) of subsection 9.1(a) with respect to amounts, or dates fixed for payment of amounts, to which such participant or SPV would otherwise be entitled and, in the case of participants, except for those described in clause (vi) of subsection 9.1(a). Each Lender that grants an option to a SPV or sells a participation, acting solely for this purpose as an agent of the Borrower, shall maintain a register on which it enters the name and address of each SPV and participant and the principal amounts (and stated interest) of each SPV and participant's interest in the Loans or other obligations under the Loan Documents (the "SPV/Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the SPV/Participant Register (including the identity of any SPV or participant or any information relating to any SPV or participant's interest in any Loans or other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Loan or other obligation is in registered form under Section 5f.103-1(c) or Section 1.871-14(c) of the United States Treasury Regulations. The entries in the SPV/Participant Register shall be conclusive absent manifest error, and the parties hereto shall treat each Person whose name is recorded in the SPV/Participant Register as the owner of such portion of the Loan or participation for all purposes of this Agreement notwithstanding any notice to the contrary. No party hereto shall institute (and each Borrower shall cause each other Credit Party not to institute) against any SPV grantee of an option pursuant to this clause (f) any bankruptcy, reorganization, insolvency, liquidation or similar proceeding, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper of such SPV; provided, however, that each Lender having designated an SPV as such agrees to indemnify each Indemnitee against any Liability that may be incurred by, or asserted against, such Indemnitee as a result of failing to institute such proceeding (including a failure to get reimbursed by such SPV for any such Liability). The agreement in the preceding sentence shall survive the termination of the Commitments and the payment in full of the Obligations. Notwithstanding anything to the contrary contained herein or in any other Loan Document, Qualified Persons shall not be permitted to acquire participations pursuant to this subsection (f) if the aggregate amount of participations held by Qualified Persons (together with Loans and Commitments held by Qualified Persons) would exceed twenty percent (20%) of the sum of the then aggregate outstanding Loans and Commitments.

9.10 Confidentiality. (a) Each Lender and the Agent agrees to use all reasonable efforts to maintain, in accordance with its customary practices, the confidentiality of information obtained by it pursuant to any Loan Document and designated in writing by any Credit Party as confidential for a period of two (2) years following the date on which this Agreement terminates in accordance with the terms hereof, except that such information may be disclosed (i) with the Borrower Representative's consent, (ii) to Related Persons of such Lender or the Agent, as the case may be, that are advised of the confidential nature of such information and are instructed to keep such information confidential, (iii) to the extent such information presently is or hereafter becomes available to such Lender or the Agent, as the case may be, on a non-confidential basis from a source other than any Credit Party, (iv) to the extent disclosure is required by applicable Requirements of Law or other legal process or requested or demanded by any Governmental Authority, (v) to the extent necessary or customary for inclusion in league table measurements or in any tombstone or other advertising materials (and the Credit Parties consent to the publication of such tombstone or other advertising materials by the Agent, any Lender or any of their Related Persons), (vi) (A) to the National Association of Insurance Commissioners or any similar organization, any examiner or any nationally recognized rating agency or (B) otherwise to the extent consisting of general portfolio information that does not identify borrowers, (vii) to current or prospective assignees, a Lender's current or prospective investors and funding source, SPVs (including the investors therein) or participants, in each case to the extent such assignees, investors, participants, counterparties or Related Persons agree to be bound by provisions substantially similar to the provisions of this Section 9.10 and (viii) in connection with the exercise of any remedy under any Loan Document. In the event of any conflict between the terms of this Section 9.10 and those of any other Contractual Obligation entered into with any Credit Party (whether or not a Loan Document), the terms of this Section 9.10 shall govern.

(b) Each Credit Party consents to the publication by Agent or any Lender of advertising material relating to the financing transactions contemplated by this Agreement; provided that under no circumstance shall Agent use a Borrower's or any other Credit Party's name, product photographs, logo or trademark without Borrower Representative's prior consent. Agent or such Lender shall provide a draft of any advertising material to Borrower Representative for review and comment prior to the publication thereof.

9.11 Set-off; Sharing of Payments.

(a) Right of Setoff. Each of the Agent, each Lender and each Affiliate (including each branch office thereof) of any of them is hereby authorized, without notice or demand (each of which is hereby waived by each Credit Party), at any time and from time to time during the continuance of any Event of Default and to the fullest extent permitted by applicable Requirements of Law, to set off and apply any and all deposits (whether general or special, time or demand, provisional or final but excluding deposits in any withholding tax or fiduciary account referred to in Section 4.11) at any time held and other Indebtedness, claims or other obligations at any time owing by the Agent, such Lender or any of their respective Affiliates to or for the credit or the account of the Borrowers or any other Credit Party against any Obligation of any Credit Party now or hereafter existing, whether or not any demand was made under any Loan Document with respect to such Obligation and even though such Obligation may be unmatured. No Lender shall exercise any such right of set off without the prior consent of Agent or Required Lenders. Each of the Agent and each Lender agrees promptly to notify the Borrower Representative and the Agent after any such setoff and application made by such Lender or its Affiliates; provided, however, that the failure to give such notice shall not affect the validity of such setoff and application. The rights under this Section 9.11 are in addition to any other rights and remedies (including other rights of setoff) that the Agent, the Lenders, their Affiliates and the other Secured Parties, may have.

(b) Sharing of Payments, Etc. If any Lender, directly or through an Affiliate or branch office thereof, obtains any payment of any Obligation of any Credit Party (whether voluntary, involuntary or through the exercise of any right of setoff or the receipt of any Collateral or "proceeds" (as defined under the applicable UCC) of Collateral) other than pursuant to Article X or customary set off rights set forth in deposit account control agreements with a Lender and such payment exceeds the amount such Lender would have been entitled to receive if all payments had gone to, and been distributed by, the Agent in accordance with the provisions of the Loan Documents, such Lender shall purchase for cash from other Lenders such participations in their Obligations as necessary for such Lender to share such excess payment with such Lenders to ensure such payment is applied as though it had been received by the Agent and applied in accordance with this Agreement (or, if such application would then be at the discretion of the Borrowers, applied to repay the Obligations in accordance herewith); provided, however, that (a) if such payment is rescinded or otherwise recovered from such Lender in whole or in part, such purchase shall be rescinded and the purchase price therefor shall be returned to such Lender without interest and (b) such Lender shall, to the fullest extent permitted by applicable Requirements of Law, be able to exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Lender were the direct creditor of the applicable Credit Party in the amount of such participation. If a Non-Funding Lender or Impacted Lender receives any such payment as described in the previous sentence, such Lender shall turn over such payments to Agent in an amount that would satisfy the cash collateral requirements set forth in subsection 1.11(b).

9.12 Counterparts. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or Electronic Transmission shall be as effective as delivery of a manually executed counterpart hereof.

9.13 Severability; Facsimile Signature. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder. Any Loan Document, or other agreement, document or instrument, delivered by facsimile transmission or, subject to the provisions hereof, Electronic Transmission, shall have the same force and effect as if the original thereof had been delivered.

9.14 Captions. The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

9.15 Independence of Provisions. The parties hereto acknowledge that this Agreement and other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, and that such limitations, tests and measurements are cumulative and must each be performed, except as expressly stated to the contrary in this Agreement.

9.16 Interpretation. This Agreement is the result of negotiations among and has been reviewed by counsel to the Agent, each Lender and other parties hereto, and is the product of all parties hereto. Accordingly, this Agreement and the other Loan Documents shall not be construed against the Lenders or the Agent merely because of the Agent's or Lenders' involvement in the preparation of such documents and agreements.

9.17 No Third Parties Benefited. This Agreement is made and entered into for the sole protection and legal benefit of the Borrowers, the Lenders, the Agent and, subject to the provisions of Section 8.11 hereof, each other Secured Party, and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. Neither the Agent nor any Lender shall have any obligation to any Person not a party to this Agreement or the other Loan Documents.

9.18 Governing Law and Jurisdiction.

(a) Governing Law. Except to the extent governed by the BankruptcyCode, the laws of the State of New York shall govern all matters arising out of, in connection with or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance and enforcement.

(b) Submission to Jurisdiction. Any legal action or proceeding with respect to any Loan Document may be brought in the Bankruptcy Court located in the District of Delaware or, if that court does not have or otherwise declines or abstains from exercising jurisdiction, in the courts of the United States of America sitting in the Southern District of New York, or, if that court does not have or otherwise declines or abstains from exercising jurisdiction, in the courts of the in the courts of the State of New York located in the City of New York, Borough of Manhattan and, by execution and delivery of this Agreement, each Borrower and each other Credit Party executing this Agreement hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. The parties hereto (and, to the extent set forth in any other Loan Document, each other Credit Party) hereby irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens, that any of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdictions. Notwithstanding any other provision of this Section 9.18, the Bankruptcy Court shall have exclusive jurisdiction over any action or dispute involving, relating to or arising out of this Agreement or any other Loan Documents.

(c) Service of Process. Each Credit Party hereby irrevocably waives personal service of any and all legal process, summons, notices and other documents and other service of process of any kind and consents to such service in any suit, action or proceeding brought in the United States of America with respect to or otherwise arising out of or in connection with any Loan Document by any means permitted by applicable Requirements of Law, including by the mailing thereof (by registered or certified mail, postage prepaid) to the address of Borrowers specified herein (and shall be effective when such mailing shall be effective, as provided therein). Each Credit Party agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(d) Non-Exclusive Jurisdiction. Nothing contained in this Section 9.18 shall affect the right of Agent or any Lender to serve process in any other manner permitted by applicable Requirements of Law or commence legal proceedings or otherwise proceed against any Credit Party in any other jurisdiction.

9.19 Waiver of Jury Trial. THE PARTIES HERETO, TO THE EXTENT PERMITTED BY LAW, WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF, IN CONNECTION WITH OR RELATING TO, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND ANY OTHER TRANSACTION

CONTEMPLATED HEREBY AND THEREBY. THIS WAIVER APPLIES TO ANY ACTION, SUIT OR PROCEEDING WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE.

9.20 Entire Agreement; Release; Survival.

(a) THE LOAN DOCUMENTS EMBODY THE ENTIRE AGREEMENT OF THE PARTIES AND SUPERSEDE ALL PRIOR AGREEMENTS AND UNDERSTANDINGS RELATING TO THE SUBJECT MATTER THEREOF AND ANY PRIOR LETTER OF INTEREST, CONFIDENTIALITY AND SIMILAR AGREEMENTS INVOLVING ANY CREDIT PARTY AND ANY LENDER OR ANY OF THEIR RESPECTIVE AFFILIATES RELATING TO A FINANCING OF SUBSTANTIALLY SIMILAR FORM, PURPOSE OR EFFECT OTHER THAN THE FEE LETTERS, WHICH EXPRESSLY SHALL SURVIVE. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS AGREEMENT AND ANY OTHER LOAN DOCUMENT, THE TERMS OF THIS AGREEMENT SHALL GOVERN (UNLESS SUCH TERMS OF SUCH OTHER LOAN DOCUMENTS ARE NECESSARY TO COMPLY WITH APPLICABLE REQUIREMENTS OF LAW, IN WHICH CASE SUCH TERMS SHALL GOVERN TO THE EXTENT NECESSARY TO COMPLY THEREWITH).

(b) Execution of this Agreement by the Credit Parties constitutes afull, complete and irrevocable release of any and all claims which each Credit Party may have at law or in equity in respect of all prior discussions and understandings, oral or written, relating to the subject matter of this Agreement and the other Loan Documents. In no event shall any Indemnitee be liable on any theory of liability for any special, indirect, consequential or punitive damages (including any loss of profits, business or anticipated savings). Each of each Borrower and each other Credit Party signatory hereto hereby waives, releases and agrees (and shall cause each other Credit Party to waive, release and agree) not to sue upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(c) (i) Any indemnification or other protection provided to any Indemnitee pursuant to Article VIII (The Agent), Section 9.5 (Costs and Expenses), Section 9.6 (Indemnity), this Section 9.20, and Article X (Taxes, Yield Protection and Illegality) of this Agreement, (ii) solely for the two (2) year time period specified therein, the provisions of Section 9.10 of this Agreement and (iii) the provisions of Section 8.1 of the Guaranty and Security Agreement, in each case, shall (x) survive the termination of the Commitments and the payment in full of all other Obligations and (y) with respect to clause (i) hereof, inure to the benefit of any Person that at any time held a right thereunder (as an Indemnitee or otherwise) and, thereafter, its successors and permitted assigns.

9.21 Patriot Act. Each Lender that is subject to the Patriot Act hereby notifies the Borrowers that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Borrower, which information includes the name and address of each Borrower and other information that will allow such Lender to identify each Borrower in accordance with the Patriot Act.

9.22 Replacement of Lender. Within forty-five days after: (i) receipt by the Borrower Representative of written notice and demand from any Lender (an "Affected Lender") for payment of additional costs as provided in Sections 10.1, 10.3 and/or 10.6; (ii) any default by a Lender in its obligation to make Loans hereunder after all conditions thereto have been satisfied or waived in accordance with the terms hereof, provided such default shall not have been cured; or (iii) any failure by any Lender to consent to a requested amendment, waiver or modification to any

Loan Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender (or each Lender directly affected thereby, as applicable) is required with respect thereto, the Required Lenders through Agent may, at their option, notify such Affected Lender (or such defaulting or non-consenting Lender, as the case may be) of the Required Lenders' intention to obtain, at the Borrowers' expense (so long as the DIP Budget reflects payment of such expense), a replacement Lender ("Replacement Lender") for such Affected Lender (or such defaulting or non-consenting Lender, as the case may be); provided that such Replacement Lender becomes a party to the RSA with respect to the acquired interest. In the event the Required Lenders obtain a Replacement Lender within forty-five (45) days following notice of their intention to do so, the Affected Lender (or defaulting or non-consenting Lender, as the case may be) shall sell and assign its Loans and Commitments to such Replacement Lender, at par, provided that the Borrowers have reimbursed such Affected Lender for (i) its increased costs for which it is entitled to reimbursement under this Agreement through the date of such sale and assignment and (ii) any amounts owing pursuant to Section 10.4 as a result of such assignment. In the event that a replaced Lender does not execute an Assignment pursuant to Section 9.9 within five (5) Business Days after receipt by such replaced Lender of notice of replacement pursuant to this Section 9.22 and presentation to such replaced Lender of an Assignment evidencing an assignment pursuant to this Section 9.22, the Required Lenders shall be entitled (but not obligated) to execute such an Assignment on behalf of such replaced Lender, and any such Assignment so executed by the Required Lenders, the Replacement Lender and the Agent, shall be effective for purposes of this Section 9.22 and Section 9.9. Notwithstanding the foregoing, with respect to a Lender that is a Non-Funding Lender or an Impacted Lender, the Borrowers or Agent at direction of Required Lenders may obtain a Replacement Lender and execute an Assignment on behalf of such Non-Funding Lender or Impacted Lender at any time and without prior notice to such Non-Funding Lender or Impacted Lender and cause its Loans and Commitments to be sold and assigned at par. Upon any such assignment and payment and compliance with the other provisions of Section 9.9, such replaced Lender shall no longer constitute a "Lender" for purposes hereof; provided, any rights of such replaced Lender to indemnification hereunder shall survive as to such replaced Lender.

9.23 Joint and Several. The obligations of the Credit Parties hereunder and under the other Loan Documents are joint and several. Without limiting the generality of the foregoing, reference is hereby made to Article II of the Guaranty and Security Agreement, to which the obligations of Borrower and the other Credit Parties are subject.

9.24 Creditor-Debtor Relationship. The relationship between Agent and each Lender, on the one hand, and the Credit Parties, on the other hand, is solely that of creditor and debtor. No Secured Party has any fiduciary relationship or duty to any Credit Party arising out of or in connection with, and there is no agency, tenancy or joint venture relationship between the Secured Parties and the Credit Parties by virtue of, any Loan Document or any transaction contemplated therein.

9.25 [Reserved]

9.26 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection withthe exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

9.27 Exit Financing. The Agent and the Lenders agree that on the date of consummation of the Bankruptcy Plan, together with such modifications as may be agreed by the Required Consenting Lenders, and following entry of a confirmation order approving the Bankruptcy Plan, which shall be in form and substance reasonably acceptable to the Required Lenders in their sole discretion, which plan shall have been solicited and approved by Prepetition First Lien Lenders holding at least 66 2/3% in funded amount outstanding under the Prepetition First Lien Loan Documents and more than 50% in number of the Prepetition First Lien Lenders, the Term DIP Facility shall be converted into a first-out senior secured exit term loan and each Lender will exchange, in full and final satisfaction, settlement, release and discharge, such Lender's pro rata portion of the Obligations hereunder, into its pro rata portion of the exit term loans, in accordance with the terms of the RSA, including documentation for the exit term loans in form and substance reasonably acceptable to Required Lenders.

9.28 Financing Orders. In the event of a conflict between the terms of the Orders and this Agreement or any other Loan Document, the terms of the Orders shall control.

ARTICLE X - TAXES, YIELD PROTECTION AND ILLEGALITY

10.1 Taxes.

(a) Except as otherwise provided in this Section 10.1 or by a Requirement of Law, each payment by any Credit Party under any Loan Document shall be made free and clear of all present or future taxes, levies, imposts, deductions, charges or withholdings and all interest, penalties or similar liabilities with respect thereto (and without deduction for any of them) (collectively, but excluding the taxes set forth in clauses (i), (ii) and (iii) below, the "Taxes") other than for (i) taxes measured by net income (including branch profits taxes) and franchise taxes imposed in lieu of net income taxes, in each case imposed on any Secured Party as a result of (x) a present or former connection between such Person and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than such connection arising solely from any Secured Party having executed, delivered or performed its obligations or received a payment under, or enforced, any Loan Document) or (y)

such Secured Party being organized under the laws of, or having its principal office, or in the case of any Lender, its applicable lending office located in the jurisdiction imposing the tax (or any political subdivision thereof); (ii) taxes that are attributable to the failure by Agent or any Lender to comply with clause (f) below; or (iii) any withholding tax that is imposed under Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), including any current or future United States Treasury Regulations promulgated thereunder, any official interpretation or other guidance issued in connection therewith, any agreement entered into under Section 1471(b)(1) of the Code, and any applicable intergovernmental agreements or any non-U.S. implementing legislation with respect thereto ("FATCA").

(b) If any Taxes shall be required by a Requirement of Law to be deducted from or in respect of any amount payable under any Loan Document by a Credit Party to any Secured Party (i) such amount shall be increased as necessary to ensure that, after all required deductions for Taxes are made (including deductions applicable to any increases to any amount under this Section 10.1), such Secured Party receives the amount it would have received had no such deductions been made, (ii) the relevant Credit Party shall be entitled to make such deductions, (iii) the relevant Credit Party shall timely pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable Requirements of Law and (iv) within 30 days after such payment is made, the relevant Credit Party, if the applicable withholding agent, shall deliver to the Agent an original or certified copy of a receipt evidencing such payment; provided, however, that no such increase shall be made with respect to, and no Credit Party shall be required to indemnify any Secured Party pursuant to clause (d) below for, Taxes to the extent that the obligation to pay or withhold such Taxes existed on the date that such Person became a "Secured Party" under this Agreement or arose due to a change in circumstances of such Secured Party after the Closing Date (including, but not limited to, a Lender changing its lending office, but other than a change in any statute, treaty, regulation or other applicable law with respect to taxes), except in each case to the extent (other than with respect to a change in any statute, treaty, regulation or other applicable law with respect to taxes) (x) such Person is a direct or indirect assignee (other than pursuant to Section 9.22) of any other Secured Party that was entitled, at the time the assignment to such Person became effective, to receive additional amounts under this clause (b), or (y) such Lender was entitled, at the time it changed its lending office, to receive additional amounts under this clause (b) in such amounts.

(c) In addition, the Borrowers agree to pay, and authorize the Agent to pay in their name, any stamp, documentary, excise or property tax, charges or similar levies imposed by any applicable Requirement of Law or Governmental Authority and all interest, penalties or similar liabilities with respect thereto (including by reason of any delay in payment thereof), in each case arising from the execution, delivery or registration of, or otherwise with respect to, any Loan Document or any transaction contemplated therein (collectively, "Other Taxes"). Within 30 days after the date of any payment of Taxes or Other Taxes by any Credit Party, the Borrowers shall furnish to the Agent, at its address referred to in Section 9.2, the original or a certified copy of a receipt evidencing payment thereof.

(d) The Borrowers shall reimburse and indemnify, within 30 days after receipt of demand therefor (with copy to the Agent), each Secured Party for all Taxes and Other Taxes (including any Taxes and Other Taxes imposed by any jurisdiction on amounts payable under this Section 10.1) paid by such Secured Party, whether or not such Taxes or Other Taxes were correctly or legally asserted. A certificate of the Secured Party (or of the Agent on behalf of such Secured Party) claiming any compensation under this clause (d), setting forth the amounts to be paid thereunder together with an original or certified copy of a receipt, if any, evidencing payment of

Taxes or other Taxes for which the compensation is claimed and delivered to the Borrower Representative with copy to the Agent, shall be conclusive, binding and final for all purposes, absent manifest error.

(e) Any Lender claiming any additional amounts payable pursuant to this Section 10.1 shall use its reasonable efforts (consistent with its internal policies and Requirements of Law) to change the jurisdiction of its lending office if such a change would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the sole determination of such Lender, be otherwise disadvantageous to such Lender.

(f)

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrowers and the Agent, at the time or times reasonably requested by the Borrowers or the Agent, such properly completed and executed documentation reasonably requested by the Borrowers or the Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Agent as will enable the Borrower or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 10.1(f)(ii)(A) or (B), (iii), (iv) and (v) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Each Non-U.S. Lender Party shall (w) on or prior to the date such Non-U.S. Lender Party becomes a "Non-U.S. Lender Party" hereunder, (x) on or prior to the date on which any such form or certification expires or becomes obsolete, (y) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (i) and (z) from time to time if requested by the Borrower Representative or the Agent (or, in the case of a participant or SPV, the relevant Lender), provide the Agent and the Borrower Representative (or, in the case of a participant or SPV, the relevant Lender) with two completed originals of each of the following, as applicable: (A) Forms W-8ECI (claiming exemption from U.S. withholding tax because the income is effectively connected with a U.S. trade or business), W-8BEN or W-8BEN-E (claiming exemption from, or a reduction of, U.S. withholding tax under an income tax treaty, if any) and/or W-8IMY (accompanied by Forms W-8BEN or W-8BEN-E, Form W-8ECI, Form W-9 or other certification documents from each beneficial owner, as applicable) or any successor forms, (B) in the case of a Non-U.S. Lender Party claiming exemption under Sections 871(h) or 881(c) of the Code, Form W-8BEN or W-8BEN-E (claiming exemption from U.S. withholding tax under the portfolio interest exemption) or any successor form and a certificate in form and substance acceptable to the Agent that such Non-U.S. Lender Party is not (1) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (2) a "10 percent shareholder" of the Borrowers within the meaning of Section 881(c)(3)(B) of the Code or (3) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code or (C) any other applicable document prescribed by the IRS or applicable law certifying as to the entitlement of such Non-U.S. Lender Party to such

exemption from United States withholding tax or reduced rate with respect to all payments to be made to such Non-U.S. Lender Party under the Loan Documents, or otherwise as prescribed by applicable law as a basis for claiming exemption from or a reduction in United States withholding tax, in each case, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrowers or the Agent to determine the withholding or deduction required to be made. Unless the Borrower Representative and the Agent have received forms or other documents satisfactory to them indicating that payments under any Loan Document to or for a Non-U.S. Lender Party are not subject to United States withholding tax or are subject to such tax at a rate reduced by an applicable tax treaty, the Credit Parties and the Agent shall be entitled to withhold amounts required to be withheld by applicable Requirements of Law from such payments at the applicable statutory rate.

(iii) Each U.S. Lender Party shall (A) on or prior to the date such U.S. Lender Party becomes a "U.S. Lender Party" hereunder, (B) on or prior to the date on which any such form or certification expires or becomes obsolete, (C) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (f) and (D) from time to time if requested by the Borrower Representative or the Agent (or, in the case of a participant or SPV, the relevant Lender), provide the Agent and the Borrower Representative (or, in the case of a participant or SPV, the relevant Lender) with two completed originals of Form W-9 (certifying that such U.S. Lender Party is not subject to U.S. backup withholding tax) or any successor form.

(iv) Each Non-U.S. Lender Party shall deliver to the Borrower Representative and the Agent (or, in the case of a participant or SPV, the relevant Lender), on or prior to the date on which such Non-U.S. Lender Party becomes a Lender hereunder (or a participant or SPV hereunder), and from time to time thereafter upon the reasonable request of the Borrower Representative or the Agent, in such number of copies as shall be requested by the Borrower Representative or the Agent, any documentation that is required under FATCA, and such additional documentation reasonably requested by the Borrower Representative or the Agent, to enable the Borrower Representative and the Agent to determine and execute their obligations, duties and liabilities with respect to FATCA, including but not limited to any Taxes they may be required to withhold in respect of FATCA. Solely for purposes of this Section 10.1(f)(iii), "FATCA" shall include any amendments made to Sections 1471 through 1474 of the Code after the date of this Agreement.

(v) Each Lender having sold a participation in any of its Obligations or identified an SPV as such to the Agent shall collect from such participant or SPV the documents described in this clause (f) and provide them to the Agent.

(vi) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower Representative and the Agent in writing of its legal inability to do so.

(g) If the Borrowers pay any amounts pursuant to the provisions of this Section 10.1, and if thereafter any Secured Party becomes aware that it has received or been granted a credit against, a refund of, or other relief for Taxes payable by such Secured Party in respect of the amounts so paid by the Borrowers (including by the payment of additional amounts pursuant to Section 10.1(b)), such Secured Party shall to the extent that it can do so without prejudice to the

retention of the amount of such credit or other relief and provided no Event of Default then exists, pay to the Borrowers within thirty (30) days after the date on which such Secured Party became aware that it effectively obtained the benefit of such credit or other relief an amount equal to such credit, refund, or other relief less any sum which it is required by law to deduct therefrom and less any fees and out-of-pocket expenses (including Taxes) incurred by such Secured Party in connection therewith. Such Secured Party may, in its reasonable discretion, determine the order of utilization of all charges, deductions, credits and expenses which reduce taxes imposed on its net income. Nothing in this Section 10.1(g) shall be construed as requiring any Secured Party to (A) conduct its business or to arrange or alter in any respect its tax or financial affairs so that it is entitled to receive such refund, credit or other relief, other than performing any ministerial acts necessary to be entitled to receive such credit or other relief or (B) disclose any tax return or any other information that it deems confidential.

10.2 Illegality. If after the date hereof any Lender shall determine that the introduction of any Requirement of Law, or any change in any Requirement of Law or in the interpretation or administration thereof, has made it unlawful, or that any central bank or other Governmental Authority has asserted that it is unlawful, for any Lender or its Lending Office to make LIBOR Rate Loans, then, on notice thereof by such Lender to the Borrowers through the Agent, the obligation of that Lender to make LIBOR Rate Loans shall be suspended until such Lender shall have notified the Agent and the Borrower Representative that the circumstances giving rise to such determination no longer exists.

(a) Subject to clause (c) below, if any Lender shall determine that it is unlawful to maintain any LIBOR Rate Loan, the Borrowers shall prepay in full all LIBOR Rate Loans of such Lender then outstanding, together with interest accrued thereon, either on the last day of the Interest Period thereof if such Lender may lawfully continue to maintain such LIBOR Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBOR Rate Loans, together with any amounts required to be paid in connection therewith pursuant to Section 10.4.

(b) If the obligation of any Lender to make or maintain LIBOR Rate Loans has been terminated, the Borrower Representative may elect, by giving notice to such Lender through the Agent that all Loans which would otherwise be made by any such Lender as LIBOR Rate Loans shall be instead Base Rate Loans.

(c) Before giving any notice to the Agent pursuant to this Section 10.2, the affected Lender shall designate a different Lending Office with respect to its LIBOR Rate Loans if such designation will avoid the need for giving such notice or making such demand and will not, in the judgment of the Lender, be illegal or otherwise disadvantageous to the Lender.

10.3 Increased Costs and Reduction of Return.

(a) If any Lender shall determine that, due to either (i) the introduction of, or any change in, or in the interpretation of, any law or regulation or (ii) the compliance with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law), in the case of either clause (i) or (ii) subsequent to the Closing Date, there shall be any increase in the cost to such Lender of agreeing to make or making, funding or maintaining any LIBOR Rate Loans, then the Borrowers shall be liable for, and shall from time to time, within thirty (30) days of demand therefor by such Lender (with a copy of such demand to the Agent), pay to the Agent for the account of such Lender, additional amounts as are sufficient to compensate such Lender for such increased costs; provided, that the Borrowers shall not be required to

compensate any Lender pursuant to this Section for any increased costs incurred more than 180 days prior to the date that such Lender notifies the Borrower Representative, in writing of the increased costs and of such Lender's intention to claim compensation thereof; provided, further, that if the circumstance giving rise to such increased costs is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof; provided, further, that notwithstanding anything to the contrary in this Section 10.3, it shall be a condition to a Lender's exercise of its rights, if any, under this Section 10.3 that such Lender shall generally be exercising similar rights with respect to borrowers under similar agreements where available.

(b) If any Lender shall have determined that:

(i) the introduction of any Capital Adequacy Regulation;

(ii) any change in any Capital Adequacy Regulation;

(iii) any change in the interpretation or administration of any Capital Adequacy Regulation by any central bank or other Governmental Authority charged with the interpretation or administration thereof; or

(iv) compliance by such Lender (or its Lending Office) or any entity controlling the Lender, with any Capital Adequacy Regulation;

affects the amount of capital required or expected to be maintained by such Lender or any entity controlling such Lender and (taking into consideration such Lender's or such entities' policies with respect to capital adequacy and such Lender's desired return on capital) determines that the amount of such capital is increased as a consequence of its Commitment(s), loans, credits or obligations under this Agreement, then, within thirty (30) days of demand of such Lender (with a copy to the Agent), the Borrowers shall pay to such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender (or the entity controlling the Lender) for such increase; provided, that the Borrowers shall not be required to compensate any Lender pursuant to this Section for any amounts incurred more than 180 days prior to the date that such Lender notifies the Borrower Representative, in writing of the amounts and of such Lender's intention to claim compensation thereof; provided, further, that if the event giving rise to such increase is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof; provided, further, that notwithstanding anything to the contrary in this Section 10.3, it shall be a condition to a Lender's exercise of its rights, if any, under this Section 10.3 that such Lender shall generally be exercising similar rights with respect to borrowers under similar agreements where available.

(c) This Section 10.3 shall not apply to increased costs with respect to any Taxes (which for purposes of this Section 10.3 shall include the items set forth in clauses (i), (ii) and (iii) of Section 10.1(a)), levels, imposts, deductions, charges or withholdings and liabilities with respect thereto, which shall be governed solely by Section 10.1, other than financial transaction Taxes, core capital Taxes or similar Taxes.

(d) Notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case in respect of this clause (ii) pursuant to Basel III, shall, in each

case, be deemed to be a change in a Requirement of Law under subsection (a) above and/or a change in Capital Adequacy Regulation under subsection (b) above, as applicable, regardless of the date enacted, adopted or issued.

10.4 Funding Losses. The Borrowers agree to reimburse each Lender and to hold each Lender harmless from any loss or expense which such Lender may sustain or incur as a consequence of:

(a) the failure of the Borrowers to make any payment or mandatory prepayment of principal of any LIBOR Rate Loan (including payments made after any acceleration thereof);

(b) the failure of the Borrowers to borrow, continue or convert a Loan after the Borrower Representative has given (or is deemed to have given) a Notice of Borrowing or a Notice of Conversion/Continuation;

(c) the failure of the Borrowers to make any prepayment after the Borrowers have given a notice in accordance with Section 1.7;

(d) the prepayment (including pursuant to Section 1.8) of a LIBOR Rate Loan on a day which is not the last day of the Interest Period with respect thereto including pursuant to an assignment in accordance with Section 9.22; or

(e) the conversion pursuant to Section 1.6 of any LIBOR Rate Loan to a Base Rate Loan on a day that is not the last day of the applicable Interest Period;

including any such loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain its LIBOR Rate Loans hereunder or from fees payable to terminate the deposits from which such funds were obtained (but excluding loss of anticipated profits); provided that, with respect to the expenses described in clauses (d) and (e) above, such Lender shall have notified Agent of any such expense within two (2) Business Days of the date on which such expense was incurred. Solely for purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 10.4 and under subsection 10.3(a): each LIBOR Rate Loan made by a Lender (and each related reserve, special deposit or similar requirement) shall be conclusively deemed to have been funded at the LIBOR used in determining the interest rate for such LIBOR Rate Loan by a matching deposit or other borrowing in the interbank eurodollar market for a comparable amount and for a comparable period, whether or not such LIBOR Rate Loan is in fact so funded.

10.5 Inability to Determine Rates. If the Agent shall have determined in good faith that for any reason adequate and reasonable means do not exist for ascertaining the LIBOR for any requested Interest Period with respect to a proposed LIBOR Rate Loan or that the LIBOR applicable pursuant to subsection 1.3(a) for any requested Interest Period with respect to a proposed LIBOR Rate Loan does not adequately and fairly reflect the cost to the Lenders of funding such Loan, the Agent will forthwith give notice of such determination to the Borrower Representative and each Lender. Thereafter, the obligation of the Lenders to make or maintain LIBOR Rate Loans hereunder shall be suspended until the Agent revokes such notice in writing. Upon receipt of such notice, the Borrower Representative may revoke any Notice of Borrowing or Notice of Conversion/Continuation then submitted by it. If the Borrower Representative does not revoke such notice, the Lenders shall make, convert or continue the Loans, as proposed by the Borrower Representative, in the amount specified in the applicable notice submitted by the Borrower Representative, but such Loans shall be made, converted or continued as Base Rate Loans.

10.6 Reserves on LIBOR Rate Loans. The Borrowers shall pay to each Lender, as long as such Lender shall be required under regulations of the Federal Reserve Board to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional costs on the unpaid principal amount of each LIBOR Rate Loan equal to actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent demonstrable error), payable on each date on which interest is payable on such Loan provided the Borrower Representative shall have received at least fifteen (15) days' prior written notice (with a copy to the Agent) of such additional interest from the Lender. If a Lender fails to give notice fifteen (15) days prior to the relevant Interest Payment Date, such additional interest shall be payable fifteen (15) days from receipt of such notice.

10.7 Certificates of Lenders. Any Lender claiming reimbursement or compensation pursuant to this Article X shall deliver to the Borrower Representative (with a copy to the Agent) a certificate setting forth in reasonable detail the amount payable to such Lender hereunder and such certificate shall be conclusive and binding on the Borrowers in the absence of manifest error.

ARTICLE XI - DEFINITIONS

11.1 Defined Terms. The following terms are defined in the Sectionsor subsections referenced opposite such terms:

"Affected Lender"	9.22
"Agent Fee Letter"	1.9(a)(i)
"Agreement"	Preamble
"Bankruptcy Code"	Recitals
"Bankruptcy Court"	Recitals
"Borrower" and "Borrowers"	Preamble
"Borrower Representative"	1.12
"Borrowing Date"	1.1(a)
"Chapter 11 Cases"	Recitals
"Communication"	1.11(f)
"Consenting First Lien Lender"	2.1(k)
"Debtors"	Recitals
"DIP Budget"	4.2(n)
"DIP Fee Letter"	1.9
"Eligible Assignee"	9.9
"Event of Default"	7.1
"FATCA"	10.1(a)
"Fee Letter" and "Fee Letters"	1.9(a)
"FTI"	2.1(e)
"Governmental Third Party Payor"	3.23(e)
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In addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

"Account" means, as at any date of determination, all "accounts" (as such term is defined in the UCC) of the Borrowers and their Subsidiaries, including, without limitation, the unpaid portion of the obligation of a customer of a Borrower or any of its Subsidiaries in respect of Inventory purchased by and shipped to such customer and/or the rendition of services by a Borrower or such Subsidiary, as stated on the respective invoice of a Borrower or such Subsidiary, net of any credits, rebates or offsets owed to such customer.

"Acquisition" means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any business or division of a Person, (b) the acquisition of in excess of fifty percent (50%) of the Stock and Stock Equivalents of any Person or otherwise causing any Person to become a Subsidiary of a Borrower, or (c) a merger or consolidation or any other combination with another Person.

"Affiliate" means, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. A Person shall be deemed to control another Person if the controlling Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other Person, whether through the ownership of voting securities, by contract or otherwise. Without limitation, any director, executive officer or beneficial owner of ten percent (10%) or more of the Stock (either directly or through ownership of Stock Equivalents) of a Person shall for the purposes of this Agreement, be deemed to control the other Person. Notwithstanding the foregoing, neither the Agent nor any Lender shall be deemed an "Affiliate" of any Credit Party or of any Subsidiary of any Credit Party.

"Agent" means Ankura Trust Company, LLC in its capacity as administrative agent for the Lenders hereunder, and any successor administrative agent.

"Aggregate Term DIP Commitment" means the combined Term DIP Commitments of the Lenders, which shall be in the amount of $40,000,000 on the Closing Date, as such amount may be reduced from time to time pursuant to this Agreement.

"Applicable Margin" means, (i) if a Base Rate Loan, five percent (5.00%) per annum and (ii) if a LIBOR Rate Loan, six percent (6.00%) per annum.

"Approved Fund" means, with respect to any Lender, any Person (other than a natural Person) that (a) (i) is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the Ordinary Course of its Business or (ii) temporarily warehouses loans for any Lender or any Person described in clause (i) above and (b) is advised or managed by (i) such Lender, (ii) any Affiliate of such Lender or (iii) any Person (other

than an individual) or any Affiliate of any Person (other than an individual) that administers or manages such Lender.

"Assignment" means an assignment agreement entered into by a Lender, as assignor, and any Person, as assignee, pursuant to the terms and provisions of Section 9.9 (with the consent of any party whose consent is required by Section 9.9), accepted by the Agent, in substantially the form of Exhibit 11.1(a) or any other form approved by the Agent.

"Attorney Costs" means and includes all reasonable fees and disbursements of any law firm or other external counsel.

"Aurora" means Aurora Equity Partners III, L.P. and Aurora Overseas Equity Partners III, L.P., and their respective Controlled Investment Affiliates.

"Aurora Sponsor Group Investors" shall mean (a) Aurora Equity Partners III L.P., Aurora Overseas Equity Partners III, L.P. and Aurora Capital Partners Management L.P. (the "Limited Partnerships"), (b) Aurora Capital Partners III L.P. and Aurora Overseas Capital Partners III, L.P. (the "General Partners"), (c) Aurora Advisors III LLC (the "Ultimate General Partner"), (d) Aurora Management Partners LLC, (e) any limited partners of the Limited Partnerships, provided that a Limited Partnership, a General Partner or the Ultimate General Partner holds a proxy entitled to vote shares owned by such limited partners for election of directors of Ultimate Parent (or its direct or indirect parent company), (f) managing directors or employees of Aurora Management Partners LLC, provided that each of such managing directors and employees agree that it will vote in a manner consistent with the Limited Partnerships, (g) members of the Advisory Board or Executive Board of Aurora Management Partners LLC, provided that each such member agrees that it will vote in a manner consistent with the Limited Partnerships, (h) any other investment fund holding investments managed by Aurora Management Partners LLC, (i) any Person that is a shareholder of WoundCo Holdings immediately prior to the transactions (including restructurings) contemplated by the Related Agreements (as such term is defined in the Prepetition First Lien Credit Agreement); provided that such Person has conveyed to a Limited Partnership, a General Partner or the Ultimate General Partner (pursuant to stockholder agreements, proxies or other contractual arrangements) the power to vote shares owned by such Persons for election of directors of Ultimate Parent (or its direct or indirect parent company) and (j) the Affiliates of Aurora Management Partners LLC, provided that such Affiliates agree that they will vote in a manner consistent with the Limited Partnerships.

"Availability" means, as of any date of determination, the lesser of (i) the amount by which (x) the aggregate amount of unrestricted cash and Cash Equivalents of Healthcare LLC and its Domestic Subsidiaries on deposit on the date of determination in deposit accounts maintained in the United States and subject to a Control Agreement exceeds (y) $2,000,000 and (ii) $10,000,000.

"Avoidance Actions" means any avoidance actions under chapter 5 of the Bankruptcy Code.

"Backstop Lender" means any of those Prepetition First Lien Lenders that are Lenders and have signed the DIP Commitment Letter (as defined in the RSA), or any of their Affiliates, as of the Support Date.

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

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

"Bankruptcy Code" means the Federal Bankruptcy Reform Act of 1978 (11 U.S.C. §101, et seq.), as amended and in effect from time to time and the regulations issued from time to time thereunder.

"Bankruptcy Plan" means a plan of reorganization filed by the Debtors in form and substance satisfactory to the Required Lenders, and consistent with the RSA.

"Base Rate" means, for any day, a rate per annum equal to the highest of (a) the rate last quoted by The Wall Street Journal as the "Prime Rate" in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by Agent) or any similar release by the Federal Reserve Board (as determined by Agent), (b) the sum of 0.50% per annum and the Federal Funds Rate, and (c) the sum of (x) LIBOR, as defined herein, calculated for each such day based on an Interest Period of one month determined two (2) Business Days prior to such day (but for the avoidance of doubt, not less than one percent (1.00%) per annum), plus (y) the excess of the Applicable Margin for LIBOR Rate Loans over the Applicable Margin for Base Rate Loans, in each instance, as of such day. Any change in the Base Rate due to a change in any of the foregoing shall be effective on the effective date of such change in the "bank prime loan" rate, the Federal Funds Rate, or LIBOR for an Interest Period of three months.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate.

"Benefit Plan" means any employee benefit plan as defined in Section 3(3) of ERISA (whether governed by the laws of the United States or otherwise) to which any Credit Party incurs or otherwise has any obligation or liability, contingent or otherwise.

"Borrowing" means a borrowing hereunder consisting of Loans made to or for the benefit of the Borrowers on the same day by the Lenders pursuant to Article I.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close and, if the applicable Business Day relates to any LIBOR Rate Loan, a day on which dealings are carried on in the London interbank market.

"Capital Adequacy Regulation" means any guideline, request or directive of any central bank or other Governmental Authority, or any other law, rule or regulation, whether or not having the force of law, in each case, regarding capital adequacy or liquidity of any Lender or of any corporation controlling a Lender.

"Capital Expenditures" shall mean, for any period, an amount equal to the aggregate of all expenditures and other obligations for the period of measurement which should be capitalized under GAAP, less, in each case, to the extent otherwise included:

(1) Net Proceeds from Dispositions which a Credit Party or any of its Subsidiaries is permitted to reinvest pursuant to subsection 1.8(c) hereof,

(2) expenditures financed with cash proceeds from Excluded Equity Issuances,

(3) all insurance proceeds and condemnation awards received on account of any Event of Loss which a Credit Party or any of its Subsidiaries is permitted to reinvest pursuant to subsection 1.8(c) hereof,

(4) portion of Capital Expenditures incurred as a result of purchase accounting adjustments related to, or purchase price paid for, Acquisitions as determined in accordance with GAAP, and

(5) capital expenditures included above reimbursed in cash during the applicable period of measurement from any Person that is not a Credit Party or any Subsidiary thereof and for which no Credit Party or Subsidiary thereof has any corresponding obligation or liability to such Person with respect to such expenditure.

"Capital Lease" means any leasing or similar arrangement which, in accordance with GAAP, is classified as a capital lease. Notwithstanding the foregoing, all leases of any Person (including leases entered into after the Closing Date) that are or would be treated as operating leases in accordance with GAAP as in effect on December 31, 2013, shall continue to be accounted for as operating leases (and none of the obligations of the lessee thereunder shall constitute Capital Lease Obligations) for purposes of this Agreement regardless of any change in GAAP after such date that would otherwise require any of the obligations of the lessee thereunder to be treated as Capital Lease Obligations.

"Capital Lease Obligations" means all monetary obligations of any Credit Party or any Subsidiary of any Credit Party under any Capital Leases.

"Capitated Contracts" means any of Credit Parties' contracts whether presently existing or hereafter executed between a Credit Party and various health maintenance organizations and all proceeds therefrom.

"Carve-Out" shall have the meaning assigned to such term in the then applicable Order.

"Carve-Out Reserves" shall have the meaning assigned to such term in the then applicable Order.

"Cash Equivalents" means: (a) securities issued or fully guaranteed or insured by the United States Government or any agency thereof having maturities of not more than six (6) months from the date of acquisition; (b) certificates of deposit, time deposits, repurchase agreements, reverse repurchase agreements, or bankers' acceptances, having in each case a tenor of not more than six (6) months, issued by any U.S. commercial bank or any branch or agency of a non-U.S. bank licensed to conduct business in the U.S. having combined capital and surplus of not less than $250,000,000; (c) commercial paper of an issuer rated at least A-1 by Standard & Poor's Corporation or P-1 by Moody's Investors Service Inc. and in either case having a tenor of not more than three (3) months; (d) money market funds provided that substantially all of the assets of such fund are comprised of securities of the type described in clauses (a) through (c); (e) other short-term investments utilized by Foreign Subsidiaries of Ultimate Parent in accordance with normal

investment practices for cash management in investments of a type analogous to the foregoing and (f) other short term liquid investments approved in writing by Agent.

"Closing Date" means June [__], 2019.

"Code" means the Internal Revenue Code of 1986, and regulationspromulgated thereunder.

"Collateral" means all Property and interests in Property and proceeds thereof now owned or hereafter acquired by any Credit Party, any of their respective Subsidiaries and any other Person who has granted a Lien to the Agent, in or upon which a Lien now or hereafter exists in favor of any Lender or the Agent for the benefit of the Agent, Lenders and other Secured Parties, whether under this Agreement or under any other documents executed by any such Persons and delivered to the Agent, in each case securing the Obligations or any guaranty in respect thereof.

"Collateral Documents" means, collectively, the Guaranty and Security Agreement and each Control Agreement, and, to the extent required under the Loan Documents, all other security agreements, pledge agreements, patent and trademark security agreements, lease assignments, guarantees and other similar agreements, and all amendments, restatements, modifications or supplements thereof or thereto, by or between any one or more of any Credit Party, any of their respective Subsidiaries or any other Person pledging or granting a lien on Collateral to secure the Obligations or any guaranty in respect thereof or guaranteeing the payment and performance of the Obligations, and any Lender or the Agent for the benefit of the Agent, the Lenders and other Secured Parties now or hereafter delivered to the Lenders or the Agent pursuant to or in connection with the transactions contemplated hereby, and all financing statements (or comparable documents now or hereafter filed in accordance with the UCC or comparable law) against any such Person as debtor in favor of any Lender or the Agent for the benefit of the Agent, the Lenders and the other Secured Parties, as secured party, as any of the foregoing may be amended, restated and/or modified from time to time.

"Commitment" means, for each Lender, its Term DIP Commitments.

"Commitment Percentage" means, as to any Lender, the percentage equivalent of such Lender's Term DIP Commitment divided by the Aggregate Term DIP Commitment.

"Committee" means the official committee of unsecured creditors appointed in the Chapter 11 Cases.

"Consultants" means the Investment Banker and the Financial Advisor.

"Contingent Obligation" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person: (i) with respect to any Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto; (ii) under any Rate Contracts; (iii) to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement; or (iv) for the obligations of another Person through any agreement to purchase, repurchase or otherwise acquire such obligation or any Property constituting security therefor, to provide funds for the payment or discharge of such obligation or to maintain the solvency, financial condition or any balance sheet item or level of

income of another Person. The amount of any Contingent Obligation shall be equal to the amount of the obligation so guaranteed or otherwise supported or, if not a fixed and determined amount, the maximum amount so guaranteed or supported.

"Contractual Obligations" means, as to any Person, any provision of any security issued by such Person or of any agreement, undertaking, contract, indenture, mortgage, deed of trust or other instrument, document or agreement to which such Person is a party or by which it or any of its Property is bound.

"Control Agreement" means a deposit account, securities account or commodities account control agreement by and among the applicable Credit Party, Agent, the Prepetition Agents, as applicable, and the depository, securities intermediary or commodities intermediary, and each in form and substance reasonably satisfactory in all respects to Agent (acting at the direction of the Required Lenders) and in any event providing to Agent and each Prepetition Agent "control" of such deposit account, securities or commodities account within the meaning of Articles 8 and 9 of the UCC.

"Controlled Account" means a deposit account, securities account or commodities account maintained by a Credit Party and subject to a Control Agreement.

"Controlled Investment Affiliate" means, with respect to any Sponsor, any Person (other than a natural Person) that (i) is organized by such Sponsor or an Affiliate of the Sponsor for the purpose of making equity investments in one or more companies and (ii) is controlled by, or is under common control with, such Sponsor. For purposes of this definition "control" means the power to direct or cause the direction of management and policies of a Person, whether by contract or otherwise.

"Conversion Date" means any date on which the Borrowers convert a Base Rate Loan to a LIBOR Rate Loan or a LIBOR Rate Loan to a Base Rate Loan.

"Copyrights" means all rights, title and interests (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to copyrights and all mask work, database and design rights, whether or not registered or published, all registrations and recordations thereof and all applications in connection therewith.

"Credit Parties" means each Borrower, Ultimate Parent, and each other Person (i) which executes this Agreement as a "Credit Party," (ii) which executes a guaranty of the Obligations, (iii) which grants a Lien on all or substantially all of its assets to secure payment of the Obligations and (iv) all of the Stock of which is pledged to Agent for the benefit of the Secured Parties.

"Default" means any event or circumstance which, with the giving of notice, the lapse of time, or both, would (if not cured or otherwise remedied during such time) constitute an Event of Default.

"DIP Collateral" means all assets (whether tangible, intangible, personal or mixed) of the Borrowers and the other Credit Parties, whether now owned or hereafter acquired and wherever located, before or after the Petition Date, including, without limitation all accounts, proceeds of leases, inventory, equipment, equity interests or capital stock in subsidiaries, investment property, instruments, chattel paper, contracts, patents, copyrights, trademarks and other general intangibles, the proceeds of all claims or causes of action, and all products, offspring, profits and proceeds thereof, including, without limitation all of the Prepetition Collateral. Notwithstanding the

foregoing, the DIP Collateral shall not include (i) any assets held by the Debtors in trust, and any Excluded Collateral; provided that, upon entry of the Final Order, the DIP Collateral shall include proceeds of Avoidance Actions (but not Avoidance Actions). For the avoidance of doubt, the DIP Collateral shall be limited to the property of the Debtors and shall not include any assets of (i) any Affiliate of a Debtor or (ii) any Subsidiary of a Debtor (in each case, that is not otherwise a Debtor).

"DIP Liens" means:

(a) subject to the Carve-Out and subject only to Permitted Priority Liens and any other Lien arising as a matter of law to the extent that such existing Liens have been incurred and are valid, perfected, enforceable and non-avoidable Liens as of the Petition Date or are valid non-avoidable Liens that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, in each case, with priority under applicable law, pursuant to section 364(d)(1) of the Bankruptcy Code, a first priority perfected senior priming Lien on, and security interest in the DIP Collateral,

(b) subject to the Carve-Out, pursuant to section 364(c)(2) of the Bankruptcy Code, a first priority perfected Lien on, and security interest in, all present and after acquired property of the Debtors, wherever located, not subject to a lien or security interest on the Petition Date (which shall include, among other things, all of the unencumbered Stock and Stock Equivalents of the Debtors' Excluded Foreign Subsidiaries and, subject to and only upon the entry of the Final Order, proceeds of Avoidance Actions) (the "Unencumbered Property");

(c) subject to the Carve-Out, pursuant to section 364(c)(3) of the Bankruptcy Code, a junior perfected Lien on, and security interest in, all present and after-acquired property of the Debtors, wherever located, that is subject to a perfected Lien or security interest on the Petition Date or subject to a Lien or security interest in existence on the Petition Date that is perfected subsequent thereto as permitted by section 546(b) of the Bankruptcy Code; and

(d) subject to the Carve-Out, a first priority perfected lien on, and security interest in, all funds on deposit in any Controlled Accounts.

Notwithstanding the foregoing, the DIP Liens shall not extend to (i) any assets held by the Debtors in trust, and (ii) any Excluded Collateral.

"DIP Proceeds" means the proceeds received from the Borrowers from the New Money DIP Loan.

"DIP Security Documents" means the Guaranty and Security Agreement, the Control Agreements and the Orders.

"DIP Termination Date" means the earliest of (i) one hundred and twenty (120) days after the Petition Date, (ii) the consummation of any sale of all or substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code, (iii) the acceleration of the Loans and the termination of the Term DIP Commitments upon the occurrence of an event referred in Section 7.2(a), (iv) the date that is thirty-eight (38) calendar days after the Petition Date, if the Final Order has not been entered on or before that date, and (v) the Effective Date.

"DIP Term Note" means a promissory note of the Borrowers payable to a Lender, in substantially the form of Exhibit 11.1(d) hereto, evidencing the Indebtedness of the Borrowers to such Lender resulting from the Term DIP Loan made to the Borrowers by such Lender.

"Disposition" means (a) the sale, lease, conveyance or other disposition of Property, other than sales or other dispositions expressly permitted under Section 5.2 (other than subsection 5.2(e), 5.2(h) and 5.2(k)(iii)) and (b) the sale or transfer by a Borrower or any Subsidiary of a Borrower of any Stock or Stock Equivalent issued by any Subsidiary of a Borrower and held by such transferor Person. For the avoidance of doubt, the issuance by any Person of its own Stock or Stock Equivalent shall not be deemed to be a Disposition.

"Dollars", "dollars" and "$" each mean lawful money of the United States of America.

"Domestic Subsidiary" means, with respect to any Person, a Subsidiary of such Person, which Subsidiary is incorporated or otherwise organized under the laws of the United States of America, the District of Columbia or a state of the United States of America.

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

"EEA Member Country" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

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

"Effective Date" shall mean the effective date of the Bankruptcy Plan pursuant to an order of the Bankruptcy Court.

"Electronic Transmission" means each document, instruction, authorization, file, information and any other communication transmitted, posted or otherwise made or communicated by e-mail or E-Fax, or otherwise to or from an E-System or other equivalent service.

"Environmental Laws" means all present and future Requirements of Law and Permits imposing liability or standards of conduct for or relating to the regulation and protection of human health, safety, the environment and natural resources, and including public notification requirements and environmental transfer of ownership, notification or approval statutes.

"Environmental Liabilities" means all Liabilities (including costs of Remedial Actions, natural resource damages and costs and expenses of investigation and feasibility studies) that may be imposed on, incurred by or asserted against any Credit Party or any Subsidiary of any Credit Party as a result of, or related to, any claim, suit, action, investigation, proceeding or demand by any Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law or otherwise, arising under any Environmental Law or in connection with any environmental, health or safety condition or with any Release and resulting from the

ownership, lease, sublease or other operation or occupation of property by any Credit Party or any Subsidiary of any Credit Party, whether on, prior or after the Closing Date.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" means, collectively, any Credit Party and any Person under common control or treated as a single employer with, any Credit Party, within the meaning of Section 414(b), (c), (m) or (o) of the Code.

"ERISA Event" means any of the following: (a) a reportable event described in Section 4043(b) or (c) of ERISA (unless the applicable notice requirement has been duly waived under the applicable regulations) with respect to a Title IV Plan; (b) the withdrawal of any ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (c) the complete or partial withdrawal of any ERISA Affiliate from any Multiemployer Plan; (d) with respect to any Multiemployer Plan, the filing of a notice of reorganization, insolvency or termination (or treatment of a plan amendment as termination) under Section 4041A of ERISA; (e) the filing of a notice of intent to terminate a Title IV Plan (or treatment of a plan amendment as termination) under Section 4041 of ERISA; (f) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC; (g) the failure to make any required contribution to any Title IV Plan or Multiemployer Plan when due; (h) the imposition of a lien under Section 430 of the Code or Section 302 or 4068 of ERISA on any property (or rights to property, whether real or personal) of any ERISA Affiliate; (i) the failure of a Benefit Plan or any trust thereunder intended to qualify for tax exempt status under Section 401 or 501 of the Code; and (j) any other event or condition that is reasonably expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan.

"Estate Professionals" shall have the meaning assigned to such term in the then applicable Order.

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

"Event of Loss" means, with respect to any Property, any of the following: (a) any loss, destruction or damage of such Property; or (b) any actual condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, of such Property, or confiscation of such Property or the requisition of the use of such Property.

"Excluded Account" means (i) any petty cash account and other accounts provided the aggregate amount on deposit for all such petty cash and other accounts does not exceed $50,000 (ii) any payroll account so long as such payroll account is a zero balance account, (iii) any withholding tax account, (iv) any fiduciary account, (v) any Governmental Account, (vi) any account used to cash collateralize Letters of Credit and pledged to Capital One, National Association, as "L/C Issuer" under the Prepetition First Lien Credit Agreement, and (vii) that certain account set up and maintained at Wells Fargo Bank, N.A. pursuant to the Orders and used primarily for the payment of gas, water, cable, electric, waste removal, telephone, internet, security, and other similar utility services.

"Excluded Collateral" means (i) Excluded Equity, (ii) any permit or license or any Contractual Obligation entered into by any Credit Party (A) that prohibits or requires the consent of any Person other than a Credit Party and its Affiliates which has not been obtained as a condition

to the creation by such Credit Party of a Lien on any right, title or interest in such permit, license or Contractual Obligation or any Stock or Stock Equivalent related thereto or (B) to the extent that any Requirements of Law applicable thereto prohibits the creation of a Lien thereon, but only, with respect to the prohibition in (A) and (B), to the extent, and for so long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the UCC or any other Requirement of Law, (iii) Property owned by any Credit Party that is subject to a purchase money Lien or a Capital Lease permitted under this Agreement if the Contractual Obligation pursuant to which such Lien is granted (or in the document providing for such Capital Lease) prohibits or requires the consent of any Person other than a Credit Party and its Affiliates which has not been obtained as a condition to the creation of any other Lien on such equipment, (iv) any "intent to use" Trademark applications for which a statement of use has not been filed (but only until such statement is filed), and (v) any Excluded Account; provided, however, "Excluded Collateral" shall not include any proceeds, products, substitutions or replacements of Excluded Collateral (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Collateral).

"Excluded Equity" means any voting stock in excess of 65% of the outstanding voting stock of any Foreign Subsidiary, which, pursuant to the terms of this Agreement, is not required to guaranty the Obligations, but only if (and for so long as) the Borrower Representative reasonably determines in good faith that a pledge of a greater percentage of such voting stock would result in material adverse tax consequences to any Credit Party. For the purposes of this definition, "voting stock" means, with respect to any issuer, the issued and outstanding shares of each class of Stock of such issuer entitled to vote (within the meaning of Treasury Regulations 1.956-2(c)(2)).

"Excluded Equity Issuance" means Net Issuance Proceeds resulting from the issuance of (a) Stock or Stock Equivalents by Ultimate Parent to management or employees of a Credit Party under any employee stock option or stock purchase plan or other employee benefits plan in existence from time to time, (b) Stock or Stock Equivalents by a Wholly-Owned Subsidiary of Ultimate Parent to Ultimate Parent or another Wholly-Owned Subsidiary of Ultimate Parent constituting an Investment permitted hereunder, (c) Stock or Stock Equivalents by Ultimate Parent to any Sponsor or any other equityholder of Ultimate Parent as of the Closing Date, (d) Stock or Stock Equivalents by a Foreign Subsidiary of such Foreign Subsidiary to qualify directors where required pursuant to a Requirement of Law or to satisfy other requirements of applicable law, in each instance, with respect to the ownership of Stock of Foreign Subsidiaries and (e) Stock or Stock Equivalents by Ultimate Parent, one hundred percent (100%) of the Net Issuance Proceeds of which are used to make Capital Expenditures permitted hereunder.

"Excluded Foreign Subsidiary" means any Subsidiary of a Borrower (i) that is a "controlled foreign corporation" as defined in the Code or (ii) all or substantially all of the assets of which consist of Stock and Stock Equivalents of one or more Subsidiaries described in clause (i) above, in each case, that has not guaranteed or pledged any of its assets or suffered a pledge of more than 65% of its voting Stock and Stock Equivalents and 100% of its non-voting Stock and Stock Equivalents, to secure, directly or indirectly, any Indebtedness of any Borrower or any other Credit Party.

"E-Fax" means any system used to receive or transmit faxes electronically.

"E-Signature" means the process of attaching to or logically associating with an Electronic Transmission an electronic symbol, encryption, digital signature or process (including the name or an abbreviation of the name of the party transmitting the Electronic Transmission) with the intent to sign, authenticate or accept such Electronic Transmission.

"E-System" means any electronic system, including Intralinks®, SyndTrak®, Debt Domain and ClearPar® and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Agent, any of its Related Persons or any other Person, providing for access to data protected by passcodes or other security system.

"FDA" means the U.S. Food and Drug Administration.

"Federal Flood Insurance" means Federally backed Flood Insurance available under the National Flood Insurance Program to owners of real property improvements located in Special Flood Hazard Areas in a community participating in the National Flood Insurance Program.

"Federal Funds Rate" means, for any day, the rate per annum (rounded upward to the nearest 1/100th of 1%) equal to the weighted average of the rates on overnight Federal Funds transactions with members of the Federal Reserve System arranged by Federal Funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to the Agent on such day on such transactions as determined by the Agent in a commercially reasonable manner.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System, or any entity succeeding to any of its principal functions.

"FEMA" means the Federal Emergency Management Agency, a component of the U.S. Department of Homeland Security that administers the National Flood Insurance Program.

"Final Order" means the final order entered by the Bankruptcy Court in the Chapter 11 Cases authorizing and approving, among other things, the Term DIP Facility and the Transactions, which final order is in form and substance satisfactory to Agent and the Required Lenders in their sole discretion and, solely with respect to terms and provisions affecting the rights, protections, duties or obligations of the Agent, in form and substance satisfactory to the Agent in its sole and absolute discretion.

"Financial Advisor" means Conway MacKenzie, as financial advisor to the Credit Parties.

"FIRREA" means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

"First Lien Steering Committee" means the Consenting First Lien Lenders who are represented by K&S, as legal counsel, and FTI, as financial advisor.

"First Tier Foreign Subsidiary" means a Foreign Subsidiary more than fifty percent (50%) of the voting Stock (directly or through ownership of Stock Equivalents) of which are held directly by a Borrower or indirectly by a Borrower through one or more Domestic Subsidiaries.

"Flood Insurance" means, for any Real Estate located in a Special Flood Hazard Area, Federal Flood Insurance or private insurance that meets the requirements set forth by FEMA in its Mandatory Purchase of Flood Insurance Guidelines. Flood Insurance shall be in an amount equal to the full, unpaid balance of the Loans and any prior liens on the Real Estate up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Agent, with deductibles not to exceed $50,000.

"Foreign Subsidiary" means, with respect to any Person, a Subsidiary of such Person, which Subsidiary is not a Domestic Subsidiary.

"Funds Transfer and Deposit Account Liability" means the liability of any Credit Party owing to any of the Lenders, or any Affiliates of such Lenders, arising out of (a) the execution or processing of electronic transfers of funds by automatic clearing house transfer, wire transfer or otherwise to or from the deposit accounts of such Credit Party now or hereafter maintained with any of the Lenders or their Affiliates, (b) credit card and purchasing card services provided to such Credit Party by any of such Lenders or their Affiliates, (c) the acceptance for deposit or the honoring for payment of any check, draft or other item with respect to any such deposit accounts, and (d) any other deposit, disbursement, and cash management services afforded to such Credit Party by any of such Lenders or their Affiliates.

"GAAP" means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), which are applicable to the circumstances as of the date of determination.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

"Guaranty and Security Agreement" means that certain Guaranty and Security Agreement, dated as of the Closing Date, made by the Credit Parties in favor of the Agent, for the benefit of the Secured Parties, and as the same may be amended, restated and/or modified from time to time.

"Hazardous Materials" means any substance, material or waste that is classified, regulated or otherwise characterized under any Environmental Law as hazardous, toxic, a contaminant or a pollutant or by other words of similar meaning or regulatory effect, including petroleum or any fraction thereof, asbestos, polychlorinated biphenyls and radioactive substances.

"Healthcare LLC" means Joerns Healthcare Parent LLC, a Delaware limited liability company.

"Health Care Laws" means (i) any and all federal, state and local fraud and abuse laws, including, without limitation, the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7(b)), the Stark Law (42 U.S.C. § 1395nn), the civil False Claims Act (31 U.S.C. § 3729 et seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), the Anti Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), the exclusion laws (42 U.S.C. § 1320a-7), the civil monetary penalty laws (42 U.S.C. § 1320a-7a), the regulations promulgated pursuant to such statutes and any comparable state laws; (ii) the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.), and the regulations promulgated thereunder and any comparable state laws, (iii) Medicare (Title XVIII of the Social Security Act) and the regulations promulgated thereunder; (iv) Medicaid (Title XIX of the Social Security Act) and the regulations promulgated thereunder; (v) the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. No. 108-173) and the regulations promulgated thereunder; (vi) quality, safety and accreditation standards and requirements of all applicable state laws or Governmental Authorities (including, but not limited to, product safety and quality standards, laws, regulations or statutes promulgated by the FDA or

any comparable state Governmental Authority); (vii) Requirements of Law relating to the licensure, ownership or operation of a health care facility or business, or assets used in connection therewith, (viii) Requirements of Law relating to the billing or submission of claims, collection of accounts receivable, underwriting the cost of, or provision of management or administrative services in connection with, any and all of the foregoing, by any Credit Party, including, but not limited to, laws and regulations relating to practice of medicine and other health care professions, patient or program charges, recordkeeping, referrals, professional fee splitting, tax-exempt organization and charitable trust law applicable to health care organizations, certificates of need, certificates of operations and authority, and (ix) any and all other applicable health care laws, rules, codes, statutes, ordinances, regulations, manual provisions, policies and administrative guidance, each of (i) through (ix) as may be amended from time to time.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as the same may be amended, modified or supplemented from time to time, any successor statute thereto, any and all rules or regulations promulgated from time to time thereunder, and any comparable state laws.

"Indebtedness" of any Person means, without duplication: (a) all indebtedness for borrowed money; (b) all obligations issued, undertaken or assumed as the deferred purchase price of Property or services (other than (i) post-Petition Date trade payables entered into in the Ordinary Course of Business not overdue by sixty (60) days and (ii) pre-Petition Date trade payables); (c) without duplication, all drafts drawn under letters of credit issued for the account of such Person and all drawn and unreimbursed letters of credit, surety bonds and other similar instruments issued by such Person; (d) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of Property, assets or businesses; (e) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to Property acquired by the Person (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such Property); (f) all Capital Lease Obligations; (g) the principal balance outstanding under any synthetic lease, off-balance sheet loan or similar off balance sheet financing product; (h) all obligations, whether or not contingent, to purchase, redeem, retire, defease or otherwise acquire for value any of its own Stock or Stock Equivalents (or any Stock or Stock Equivalent of a direct or indirect parent entity thereof) prior to the date that is 180 days after the later of (1) the final scheduled installment payment date for any of the Prepetition Obligations and (2) the DIP Termination Date of the Term DIP Loans, valued at, in the case of redeemable preferred Stock, the greater of the voluntary liquidation preference and the involuntary liquidation preference of such Stock plus accrued and unpaid dividends; (i) all indebtedness referred to in clauses (a) through (h) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in Property (including accounts and contracts rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such indebtedness; and (j) all Contingent Obligations described in clause (i) of the definition thereof in respect of indebtedness or obligations of others of the kinds referred to in clauses (a) through (i) above. For the avoidance of doubt, any post-closing purchase price adjustment, indemnity payment, deferred or contingent purchase price owing to a seller which is not required to be included as a liability on the balance sheet of the buyer thereof in accordance with GAAP, or cash-collateralized or escrowed obligation (included in the purchase price) shall not be Indebtedness for purposes hereof.

"Initial Budget" means a 13-week operating budget setting forth all forecasted receipts and disbursements on a weekly basis for such 13-week period beginning as of the week of the Petition Date, broken down by week, including the anticipated weekly uses of the proceeds of the Term

DIP Facility for such period, which shall include, among other things, available cash, cash flow, trade payables and ordinary course expenses, total expenses and incremental capital expenditures, fees and expenses relating to the Term DIP Facility, fees and expenses related to the Chapter 11 Cases, and working capital and other general corporate needs, which forecast shall be in form and substance reasonably satisfactory to the Agent at the direction of the Required Lenders. Such budget shall be in the form set forth in Schedule 2.1(k) hereto. Until supplemented pursuant to Section 4.2(n), the Initial Budget shall constitute a "DIP Budget".

"Intellectual Property" means all rights, title and interests in or relating to intellectual property and industrial property arising under any Requirement of Law and all IP Ancillary Rights relating thereto, including all Copyrights, Patents, Trademarks, Internet domain names, Trade Secrets and IP Licenses.

"Intercreditor Agreement" means that certain Intercreditor Agreement, dated as of March 15, 2017, by and among the Prepetition First Lien Agent, the Prepetition Second Lien Agent and the Credit Parties, as amended, supplemented, replaced, or otherwise modified from time to time in accordance with its terms.

"Interest Payment Date" means, (a) with respect to any LIBOR Rate Loan (other than a LIBOR Rate Loan having an Interest Period of six (6) or twelve (12) months) the last day of each Interest Period applicable to such Loan, (b) with respect to any LIBOR Rate Loan having an Interest Period of six (6) or twelve (12) months, the last day of each three (3) month interval and, without duplication, the last day of such Interest Period, and (c) with respect to Base Rate Loans the last Business Day of each fiscal quarter.

"Interest Period" means, with respect to any LIBOR Rate Loan, the period commencing on the Business Day such Loan is disbursed or continued or on the Conversion Date on which a Base Rate Loan is converted to the LIBOR Rate Loan and, ending on the date one, two, three, six, or, if available to all affected Lenders, twelve months thereafter, as selected by the Borrower Representative in its Notice of Borrowing or Notice of Conversion/Continuation; provided that:

(a) if any Interest Period pertaining to a LIBOR Rate Loan would otherwise end on a day which is not a Business Day, that Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month, in which event such Interest Period shall end on the immediately preceding Business Day;

(b) any Interest Period pertaining to a LIBOR Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period;

(c) no Interest Period for any Term DIP Loan shall extend beyond the last scheduled payment date therefor; and

(d) no Interest Period applicable to any Term DIP Loan or portion thereof shall extend beyond any date upon which is due any scheduled principal payment in respect of such Term DIP Loan unless the aggregate principal amount of such Term DIP Loan represented by Base Rate Loans or by LIBOR Rate Loans having Interest Periods that will expire on or before such date is equal to or in excess of the amount of such principal payment.

"Interim Order" means the interim order entered by the Bankruptcy Court in the Chapter 11 Cases (as the same may be amended, supplemented, or modified from time to time after entry thereof in a manner satisfactory to the Required Lenders in their sole discretion) authorizing and approving, among other things, the Term DIP Facility and the Transactions, which interim order, together with all amendments, supplements and modifications, is, solely with respect to terms and provisions affecting the rights, protections, duties or obligations of the Agent, in form and substance satisfactory to the Agent in its sole and absolute discretion, and is in form and substance substantially in the form attached hereto as Exhibit 11.1(b).

"Inventory" means all of the "inventory" (as such term is defined in the UCC) of the Borrowers and their Subsidiaries, including, but not limited to, all merchandise, raw materials, parts, supplies, work-in-process and finished goods intended for sale, together with all the containers, packing, packaging, shipping and similar materials related thereto, and including such inventory as is temporarily out of a Borrower's or such Subsidiary's custody or possession, including inventory on the premises of others and items in transit.

"Investment Banker" means Moelis & Company, as investment banker to the Credit Parties.

"Insolvency Proceeding" means (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of its creditors generally or any substantial portion of its creditors; in each case in (a) and (b) above, undertaken under U.S. Federal, state or foreign law, including the Bankruptcy Code.

"IP Ancillary Rights" means, with respect to any other Intellectual Property, as applicable, all foreign counterparts to, and all divisionals, reversions, continuations, continuations-in-part, reissues, reexaminations, renewals and extensions of, such Intellectual Property and all income, royalties, proceeds and Liabilities at any time due or payable or asserted under or with respect to any of the foregoing or otherwise with respect to such Intellectual Property, including all rights to sue or recover at law or in equity for any past, present or future infringement, misappropriation, dilution, violation or other impairment thereof, and, in each case, all rights to obtain any other IP Ancillary Right.

"IP License" means all Contractual Obligations (and all related IP Ancillary Rights), whether written or oral, granting any right, title and interest in or relating to any Intellectual Property.

"IRS" means the Internal Revenue Service of the United States and any successor thereto.

"Known Events" means, the commencement and continuation of the Chapter 11 Cases, the events leading up to the Chapter 11 Cases, the effect of the bankruptcy, the conditions in the industry in which the Borrowers operate in as existing on the Closing Date, the consummation of transactions contemplated by the Debtors' "first day" pleadings reviewed by the Agent and Required Lenders, or as disclosed to the Agent prior to the Petition Date.

"Lender-Related Distress Event" means, with respect to any Lender or any Person that directly or indirectly controls such Lender (each a "Distressed Person"), (a) a voluntary or involuntary case with respect to such Distressed Person under the Bankruptcy Code or any similar bankruptcy laws of its jurisdiction of formation, (b) a custodian, conservator, receiver or similar

official is appointed for such Distressed Person or any substantial part of such Distressed Persons' assets, (c) such Distressed Person or any Person that directly or indirectly controls such Distressed Person is subject to a forced liquidation, merger, sale or other change of majority control supported in whole or in part by guaranties or other support (including, without limitation, the nationalization or assumption of majority ownership or operating control by) the U.S. government or other Governmental Authority, or (d) such Distressed Person makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Person or its assets to be, insolvent or bankruptcy. For purposes of this definition, control of a Person shall have the same meaning as in the second sentence of the definition of "Affiliate".

"Lending Office" means, with respect to any Lender, the office or offices of such Lender specified as its "Lending Office" beneath its name on Schedule 9.2, or such other office or offices of such Lender as it may from time to time notify the Borrower Representative and the Agent.

"Liabilities" means all claims, actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, taxes, commissions, charges, disbursements and expenses, in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

"LIBOR" means, for each Interest Period, the highest of (a) the offered rate per annum for deposits of Dollars for the applicable Interest Period that appears on Reuters Screen LIBOR01 Page as of 11:00 A.M. (London, England time) three (3) Business Days prior to the first day in such Interest Period and (b) one percent (1.00%). If no such offered rate exists, such rate will be the rate of interest per annum, as determined by the Agent (rounded upwards, if necessary, to the nearest 1/100 of 1%) at which deposits of Dollars in immediately available funds are offered at 11:00 A.M. (London, England time) three (3) Business Days prior to the first day in such Interest Period by major financial institutions reasonably satisfactory to the Agent in the London interbank market for such Interest Period for the applicable principal amount on such date of determination.

"LIBOR Rate Loan" means a Loan that bears interest based on LIBOR.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, charge or deposit arrangement, encumbrance, lien (statutory or otherwise) or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including those created by, arising under or evidenced by any conditional sale or other title retention agreement, the interest of a lessor under a Capital Lease, any financing lease having substantially the same economic effect as any of the foregoing, or the filing of any financing statement naming the owner of the asset to which such lien relates as debtor, under the UCC or any comparable law) and any contingent or other agreement to provide any of the foregoing, but not including the interest of a lessor under a lease which is not a Capital Lease.

"Limited Voting Lender" means, at any relevant time of determination, any Lender, so long as such Lender shall have provided prior written notice to Agent of the applicability of either of the following clauses (a) or (b) (provided, absent such prior written notice to Agent, Agent shall be entitled to conclusively assume a Lender is not a Limited Voting Lender for all purposes under the Loan Documents), (a) that, together with its respective Affiliates (taken as a whole) owns (whether directly or indirectly), ten percent (10%) or more of the issued and outstanding Stock and Stock Equivalents of Ultimate Parent; or (b) with respect to which the principal amount of outstanding

Loans and unfunded Commitments hereunder then held by such Lender and its Managed Lender Affiliates (taken as a whole) constitute less than sixty-five percent (65%) of the sum of the following amounts then held by such Lender and its Managed Lender Affiliates (taken as a whole): (i) the principal amount of outstanding Loans and unfunded Commitments hereunder; (ii) the principal amount of Subordinated Indebtedness (including any unfunded commitments in respect thereof); and (iii) the original purchase price (whether funded with cash, contributed equity, rollover equity or otherwise) paid in respect of outstanding Stock and Stock Equivalents (whether direct or indirect, and regardless of when acquired or obtained) in Ultimate Parent.

"Loan" means an extension of credit by a Lender to the Borrowers pursuant to Article I hereof, including the Term DIP Loans, and may be a Base Rate Loan or a LIBOR Rate Loan.

"Loan Documents" means this Agreement, the Notes, the Fee Letters, the Collateral Documents and all documents delivered to the Agent and/or any Lender in connection with any of the foregoing.

"Managed Lender Affiliates" means an Affiliate of a Lender, provided, that any such Affiliate of a Lender shall not be deemed to be a Managed Lender Affiliate if, at any applicable time of determination: (i) the applicable Lender shall have delivered to Agent a letter agreement regarding, among other things, its managerial independence from any Affiliates having interests in any Subordinated Indebtedness or in the Stock and Stock Equivalents of Ultimate Parent, and that is satisfactory to Agent in its reasonable discretion; (ii) the representations and warranties set forth in such letter agreement are and continue to be true and correct in all material respects; and (iii) such Lender shall have complied, in all material respects, with its obligations under such letter agreement, with respect to the foregoing clauses (ii) and (iii), as reasonably determined by Agent.

"Margin Stock" means "margin stock" as such term is defined in Regulation T, U or X of the Federal Reserve Board.

"Material Adverse Effect" means any event, circumstance or condition that materially adversely affects: (i) the business, operations, properties or financial condition of the Debtors and their subsidiaries, collectively; (ii) the legality, validity or enforceability of any Loan Documents or the Orders; (iii) the ability of the Borrowers or the other Credit Parties, taken as a whole, to perform their payment obligations under the Loan Documents; (iv) the perfection or priority of the DIP Liens granted pursuant to the Orders; or (v) the rights and remedies of the Agent and the Lenders under the Loan Documents taken as a whole (it being agreed that none of the Known Events shall constitute or result in a Material Adverse Effect).

"Material Environmental Liabilities" means Environmental Liabilities exceeding $2,000,000 in the aggregate.

"Merger Sub" means RCJH Merger Sub I, LLC, a Delaware limited liability company.

"Mexican Subsidiaries" means one or more Persons organized under the laws of Mexico directly or indirectly owned by any of the Credit Parties.

"Milestone" shall mean any of the following:

(a) The Debtors shall have commenced solicitation on the BankruptcyPlan by 11:59 p.m. (New York time) on June 21, 2019.

(b) Promptly following the Support Date and, in any event, no later than June 23, 2019, the Debtors shall file the Chapter 11 Cases (for the avoidance of doubt, commencement of the Chapter 11 Cases remains subject to approval of the board of directors or other governing bodies of the Debtors).

(c) The Debtors' filing with the Bankruptcy Court, on or within twenty-four (24) hours of the Petition Date, the Bankruptcy Plan, which shall be in form and substance reasonably acceptable to the Required Lenders and, solely with respect to terms and provisions affecting the rights, protections, duties or obligations of the Agent or the Prepetition First Lien Agent, the Agent or the Prepetition First Lien Agent, as applicable, and for which the Debtors shall have solicited and obtained the requisite consent to the Bankruptcy Plan by the Required Consenting Lenders or requested and obtained authority from the Bankruptcy Court to complete solicitation within twenty (20) days from the Petition Date.

(d) The Debtors' filing with the Bankruptcy Court, on or within twenty-four (24) hours of the Petition Date, of a disclosure statement relating to the Bankruptcy Plan, and all related schedules, supplements, exhibits and orders (as applicable), in form and substance reasonably satisfactory to the Agent at the direction of the Required Lenders (the "Disclosure Statement").

(e) The Bankruptcy Court's entry of the Interim Order approving theTerm DIP Facility (including the Term DIP Commitments, all documents and lender fees related thereto, and the payment of the fees and expenses of the First Lien Steering Committee's and Prepetition First Lien Agent's advisors), in form and substance acceptable to the Required Lenders on or before five (5) Business Days following the Petition Date.

(f) The Bankruptcy Court shall hold the combined hearing on the Bankruptcy Plan and Disclosure Statement on or before thirty-five (35) calendar days following the Petition Date.

(g) The Bankruptcy Court's entry of the Final Order on or before thirty-eight (38) calendar days following the Petition Date.

(h) The Bankruptcy Court's entry of an order, in form and substance reasonably satisfactory to the Agent at the direction of the Required Lenders, approving the Disclosure Statement (the "Disclosure Statement Order") on or before thirty-eight (38) calendar days following the Petition Date.

(i) The Bankruptcy Court's entry of an order, in form and substance reasonably satisfactory to the Agent at the direction of the Required Lenders, and solely with respect to terms and provisions affecting the rights, protections, duties or obligations of the Agent or the Prepetition First Lien Agent, as applicable, confirming the Bankruptcy Plan (the "Plan Confirmation Order") on or before thirty-eight (38) calendar days following the Petition Date.

(j) The Effective Date having occurred not later than fifty-two (52) calendar days following the Petition Date.

or, in each case, if any such date is not a Business Day, the next Business Day.

"Multiemployer Plan" means any multiemployer plan, as defined in Section 4001(a)(3) of ERISA, as to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

"National Flood Insurance Program" means the program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994, that mandates the purchase of flood insurance to cover real property improvements located in Special Flood Hazard Areas in participating communities and provides protection to property owners through a Federal insurance program.

"Net Issuance Proceeds" means, in respect of any issuance of debt or equity securities, or incurrence of other Indebtedness, cash proceeds (including cash proceeds as and when received in respect of non-cash proceeds received or receivable in connection with such issuance or incurrence), net of underwriting discounts, upfront fees and reasonable out-of-pocket costs and expenses paid or incurred in connection therewith in favor of any Person not an Affiliate of a Borrower.

"Net Proceeds" means proceeds in cash, checks or other cash equivalent financial instruments (including Cash Equivalents) as and when received by the Person making a Disposition and insurance proceeds received on account of an Event of Loss, net of: (a) in the event of a Disposition (i) the direct costs relating to such Disposition excluding amounts payable to a Borrower or any Affiliate of a Borrower, (ii) sale, use or other transaction taxes paid or payable as a result thereof and other taxes payable by a Credit Party or its Subsidiary in connection therewith, (iii) amounts required to be applied to repay principal, interest and prepayment premiums and penalties on Indebtedness secured by a Lien on the asset which is the subject of such Disposition, (iv) any portion of such proceeds required to be deposited in an escrow account pursuant to the documentation relating to such Disposition (provided that such amounts, if any, shall be treated as Net Proceeds upon their release from such escrow account to the applicable Credit Party) and (v) reasonable reserves established by any Credit Party or Subsidiary thereof for indemnification obligations attributable to its indemnities and representations and warranties as a seller to the purchaser in any such Disposition (provided that such amounts, if any, shall be treated as Net Proceeds upon their release from such reserve) and (b) in the event of an Event of Loss, (i) all of the costs and expenses reasonably incurred in connection with the collection of such proceeds, award or other payments, and (ii) any amounts retained by or paid to parties having superior rights to such proceeds, awards or other payments.

"Non-Funding Lender" means any Lender (a) that has failed to fund any payments required to be made by it under the Loan Document within two (2) Business Days after any such payment is due, unless such failure to fund is the subject of a good faith dispute by such Lender that the conditions in Section 2.2 have not been satisfied, (b) that has given written notice to a Borrower, Agent or any Lender and has otherwise publicly announced that such Lender believes it will fail to fund all payments required to be made by it or fund all purchases of participations required to be funded by it under this Agreement and the other Loan Documents, unless such failure to fund is the subject of a good faith dispute by such Lender that the conditions in Section 2.2 have not been satisfied, (c) as to which Agent has a good faith belief that such Lender has defaulted in fulfilling its obligations (as a lender or agent) under one or more other syndicated credit facilities or (d) with respect to which one or more Lender-Related Distress Events has occurred with respect to such Person or any Person that directly or indirectly controls such Lender and Agent has determined that such Lender may become a Non-Funding Lender. For purposes of this definition, control of a Person shall have the same meaning as in the second sentence of the definition of Affiliate.

"Non-U.S. Lender Party" means each of the Agent, each Lender, each SPV and each participant, in each case that is not a United States person under and as defined in Section 7701(a)(30) of the Code.

"Note" means any DIP Term Note and "Notes" means all such Notes.

"Notice of Borrowing" means a notice given by the Borrower Representative to the Agent pursuant to Section 1.5, in substantially the form of Exhibit 11.1(c) hereto.

"Obligations" means all Loans, and other Indebtedness, advances, debts, liabilities, obligations, covenants and duties owing by any Credit Party to any Lender, the Agent or any other Person required to be indemnified, that arises under any Loan Document, and all obligations of any Credit Party in respect of Funds Transfer and Deposit Account Liability, in each case, whether or not for the payment of money, whether arising by reason of an extension of credit, loan, guaranty, indemnification or in any other manner, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired.

"Orders" means, (i) until entry of the Final Order, the Interim Order, and (ii) after entry of the Final Order, the Final Order.

"Ordinary Course of Business" means, in respect of any transaction involving any Credit Party or any Subsidiary of any Credit Party, the ordinary course of such Person's business, as conducted by any such Person in accordance with past practice (or as otherwise due to any Known Event) and undertaken by such Person in good faith and not for purposes of evading any covenant or restriction in any Loan Document, in each case subject to any necessary modifications in respect of the Chapter 11 Cases.

"Organization Documents" means, (a) for any corporation, the certificate or articles of incorporation, the bylaws, any certificate of determination or instrument relating to the rights of preferred shareholders of such corporation, any shareholder rights agreement, (b) for any partnership, the partnership agreement and, if applicable, certificate of limited partnership, (c) for any limited liability company, the operating agreement and articles or certificate of formation or (d) any other document setting forth the manner of election or duties of the officers, directors, managers or other similar persons, or the designation, amount or relative rights, limitations and preference of the Stock of a Person.

"Patents" means all rights, title and interests (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to letters patent and applications therefor.

"Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, P.L. 107-56, as amended.

"PBGC" means the United States Pension Benefit Guaranty Corporation any successor thereto.

"Pending Investigation" means that certain investigation of the U.S. Department of Justice and any other Governmental Authority arising out of or related to the matters set forth on Civil Investigative Demand No. 2018 EDCA 0026 and Civil Investigative Demand No. 2018 EDCA 0027, including any follow up or developments arising from such investigation or any

commencement of litigation in connection therewith (including for the avoidance of doubt, any qui tam actions).

"Permits" means, with respect to any Person, any permit, approval, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other Contractual Obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Permitted Priority Liens" means any of those existing liens incurred pursuant to Section 5.1(c) through (s) of the Prepetition First Lien Credit Agreement (to the extent that such liens were valid, perfected, and enforceable and non-avoidable liens as of the Petition Date) and any other lien arising as a matter of law and permitted pursuant to the Prepetition First Lien Credit Agreement, to the extent that such existing Liens are valid, perfected, enforceable and unavoidable Liens as of the Petition Date or are valid non-avoidable liens that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code.

"Permitted Variance" means, for the applicable "Testing Periods" set forth in the table below: (i) all favorable variances and (ii) an unfavorable variance of no more than the "Applicable Percentage" (set forth in the table below) for each of actual receipts, disbursements and net cash flow as compared to the budgeted receipts, disbursements and net cash flow, respectively, set forth in the DIP Budget with respect to the applicable Testing Period; provided, that any disbursements in such Testing Period made from proceeds of favorable variances with respect to receipts in such Testing Period shall not be counted as disbursements for purposes of calculating unfavorable variances; and provided further (x) receipts shall not be tested during the "Week 1" Testing Period, (y) the calculation of net cash flow for any Testing Period shall be with respect to operating net cash flow and shall exclude restructuring-related costs, and (z) that the calculation of disbursements shall not include disbursements on account of the Debtors' payment of professional fees in accordance with the DIP Budget. The Permitted Variance with respect to each Testing Period shall be determined and reported to the Agent and the Lenders not later than the Friday immediately following each such Testing Period weekly in accordance with clause (v) of "Financial Reporting Requirements". Additional variances, if any, from the DIP Budget, and any proposed changes to the DIP Budget, shall be subject to the approval of the Agent at the direction of the Required Lenders.

Testing Period (from Petition Date)	Applicable Percentage
Week 1	20%
Through Week 2 (cumulative)	20%
Through Week 3 (cumulative)	15%
Through Week 4 (cumulative) and subsequent rolling 4-Week periods thereafter	10%

"Person" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"Prepetition Agent" means the Prepetition First Lien Agent or the Prepetition Second Lien Agent, as applicable.

"Prepetition Creditor" means, collectively, the Prepetition First Lien Lenders and the Prepetition Second Lien Purchasers.

"Prepetition First Lien Collateral" means the "Collateral" as defined in the Prepetition First Lien Credit Agreement as of the Closing Date.

"Prepetition First Lien Credit Agreement" means that certain Second Amended and Restated Credit Agreement, dated as of May 9, 2014, among the Borrowers, the other credit parties signatory thereto, the Prepetition First Lien Agent and the lenders from time to time signatory thereto (as amended, modified or supplemented through the Petition Date).

"Prepetition First Lien Lenders" shall mean the "Lenders" as defined in the Prepetition First Lien Credit Agreement as of the Closing Date.

"Prepetition First Lien Loan Documents" means the "Loan Documents" as defined in the Prepetition First Lien Credit Agreement as of the Closing Date.

"Prepetition First Lien Obligations" means the "Obligations" as defined in the Prepetition First Lien Credit Agreement as of the Closing Date.

"Prepetition Indebtedness" means Indebtedness of any Credit Party that was incurred or accrued prior to the commencement of the Chapter 11 Cases.

"Prepetition Loan Documents" means the Prepetition First Lien Loan Documents and the Prepetition Second Lien Note Documents, as applicable.

"Prepetition Obligations" means, collectively, the Prepetition First Lien Obligations and the Prepetition Second Lien Obligations.

"Prepetition Payment" means a payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any Prepetition Indebtedness, trade payables incurred prior to the Petition Date or other claims incurred prior to the Petition Date against any Debtor (excluding (i) any payments resulting from foreclosure or enforcement and, if applicable, after the granting of relief from the automatic stay provisions of section 362 of the Bankruptcy Code with respect thereto not constituting an Event of Default under Section 7.1(l)(xi) and (ii) intercompany payments among the Credit Parties and their Subsidiaries).

"Prepetition Second Lien Agent" means U.S. Bank National Association, as agent under the Prepetition Second Lien Note Purchase Agreement.

"Prepetition Second Lien Note Documents" means the "Note Documents" as defined in the Prepetition Second Lien Note Purchase Agreement as of the Closing Date.

"Prepetition Second Lien Note Purchase Agreement" means that certain Second Lien Note Purchase Agreement dated as of March 15, 2017, by and among the Prepetition Second Lien Agent, the Prepetition Second Lien Purchasers and the Credit Parties, as amended in accordance with the Intercreditor Agreement.

"Prepetition Second Lien Obligations" has the meaning given to the term "Second Lien Obligations" as defined in the Intercreditor Agreement but not to exceed the "Maximum Second Lien Principal Amount" as defined in the Intercreditor Agreement.

"Prepetition Second Lien Purchasers" means the "Purchasers" as defined in the Prepetition Second Lien Note Purchase Agreement on the Closing Date, or any Person that becomes a Purchaser in compliance with the terms of the Intercreditor Agreement.

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

"Quad-C" means Quad-C Partners VII, L.P., a Delaware limited partnership and its Controlled Investment Affiliates

"Qualified Person" means any Prepetition Second Lien Purchaser or any Sponsor or any of their respective Affiliates other than a Credit Party.

"Rate Contracts" means swap agreements (as such term is defined in Section 101 of the Bankruptcy Code) and any other agreements or arrangements designed to provide protection against fluctuations in interest or currency exchange rates or to protect against fluctuations in commodity prices.

"Related Persons" means, with respect to any Person, each Affiliate of such Person and each director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor (including those retained in connection with the satisfaction or attempted satisfaction of any condition set forth in Article II) and other consultants and agents of or to such Person or any of its Affiliates.

"Releases" means any release, threatened release, spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Material into or through theenvironment.

"Remedial Action" means all actions required to (a) clean up, remove, treat or in any other way address any Hazardous Material in the indoor or outdoor environment, (b) prevent or minimize any Release so that a Hazardous Material does not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment or (c) perform pre remedial studies and investigations and post-remedial monitoring and care with respect to any Hazardous Material.

"Reported Fee Accruals" means all accrued and unpaid fees, disbursements, costs and expenses, allowed by the Bankruptcy Court and incurred by any professional (other than an ordinary course professional) retained by the Borrowers or the Committee pursuant to a final order of the Bankruptcy Court (which order has not been vacated or stayed, unless the stay has been vacated) under sections 327, 328, 363 or 1103(a) of the Bankruptcy Codes.

"Required Consenting First Lien Lenders" means Consenting First Lien Lenders which hold more than 66.67% of the Prepetition First Lien Obligations held by all Consenting First Lien Lenders.

"Required Consenting Lenders" means, collectively, the Required Consenting First Lien Lenders and the Required Consenting Second Lien Lenders.

"Required Consenting Second Lien Lenders" means Consenting Second Lien Lenders which hold more than 66.67% of the Prepetition Second Lien Obligations held by all Consenting Second Lien Lenders.

"Required Lenders" means Lenders having (a) more than fifty percent (50%) of the sum of (i) the Aggregate Term DIP Commitments plus (ii) the aggregate outstanding amount of the Term DIP Loans, in each case, of all Lenders, or (b) if the Aggregate Term DIP Commitments have been terminated, more than fifty percent (50%) of the sum of the aggregate outstanding amount of Term DIP Loans.

"Requirement of Law" means, as to any Person, any law (statutory or common), ordinance, treaty, rule, regulation, order, policy, other legal requirement or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

"Responsible Officer" means the chief executive officer, chief financial officer, chief restructuring officer, corporate controller, or the president of a Borrower or Borrower Representative, as applicable, or any other officer having substantially the same authority and responsibility; or, with respect to compliance with financial covenants or delivery of financial information, the chief financial officer or the treasurer of a Borrower or Borrower Representative, as applicable, or any other officer having substantially the same authority and responsibility.

"Secured Party" means the Agent, each Lender, each other Indemnitee and each other holder of any Obligation of a Credit Party.

"Special Flood Hazard Area" means an area that FEMA's current flood maps indicate has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year.

"Sponsors" means together (a) Quad-C and (b) Aurora.

"SPV" means any special purpose funding vehicle identified as such in a writing by any Lender to the Agent.

"Stock" means all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership or membership interests, joint venture interests, participations or other ownership or profit interests in or equivalents (regardless of how designated) of or in a Person (other than an individual), whether voting or non-voting.

"Stock Equivalents" means all securities convertible into or exchangeable for Stock or any other Stock Equivalent and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any Stock or any other Stock Equivalent, whether or not presently convertible, exchangeable or exercisable.

"Subordinated Indebtedness" means any Indebtedness of any Credit Party or any Subsidiary of any Credit Party which is subordinated to the Obligations as to right and time of payment and as to other rights and remedies thereunder and having such other terms as are, in each case, reasonably satisfactory to Agent.

"Subsidiary" of a Person means any corporation, association, limited liability company, partnership, joint venture or other business entity of which more than fifty percent (50%) of the voting Stock, is owned or controlled directly or indirectly by the Person, or one or more of the Subsidiaries of the Person, or a combination thereof.

"Superpriority DIP Claim" means all Obligations shall be entitled, on a joint and several basis, to the benefits of section 364(c)(1) of the Bankruptcy Code, having superpriority over any and all unsecured claims and all administrative expenses, including administrative expenses of the kind that are specified in sections 105, 326, 328, 330, 331, 365, 503(a) 503(b), 506(c) (subject to the entry of the Final Order), 507(a), 507(b), 546(c), 726, 1114 or any other provisions of the Bankruptcy Code, subject only to the Carve-Out.

"Tax Affiliate" means, (a) each Borrower and its Subsidiaries and (b) any Affiliate of a Borrower with which such Borrower files or is eligible to file consolidated, combined or unitary tax returns.

"Title IV Plan" means a pension plan subject to Title IV of ERISA, other than a Multiemployer Plan, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

"Trade Secrets" means all right, title and interest (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to trade secrets.

"Trademark" means all rights, title and interests (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers and, in each case, all goodwill associated therewith, all registrations and recordations thereof and all applications in connection therewith.

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

"Ultimate Parent" means Joerns Woundco Holdings Inc. (formerly known as Quad-C JH Holdings, Inc.), a Delaware corporation.

"United States" and "U.S." each means the United States of America.

"U.S. Lender Party" means each of the Agent, each Lender, each SPV and each participant, in each case that is a United States person under and as defined in Section 7701(a)(30) of the Code.

"Wholly-Owned Subsidiary" means any Subsidiary in which (other than directors' qualifying shares required by law) one hundred percent (100%) of the Stock and Stock Equivalents, at the time as of which any determination is being made, is owned, beneficially and of record, by any Credit Party, or by one or more of the other Wholly-Owned Subsidiaries, or both.

"Withdrawal Liabilities" means, at any time, any liability incurred (whether or not assessed) by any ERISA Affiliate and not yet satisfied or paid in full at such time with respect to any Multiemployer Plan pursuant to Section 4201 of ERISA.

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

11.2 Other Interpretive Provisions.

(a) Defined Terms. Unless otherwise specified herein or therein, all terms defined in this Agreement or in any other Loan Document shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto. The meanings of defined terms shall be equally applicable to the singular and plural forms of the defined terms. Terms (including uncapitalized terms) not otherwise defined herein and that are defined in the UCC shall have the meanings therein described.

(b) The Agreement. The words "hereof", "herein", "hereunder" and words of similar import when used in this Agreement or any other Loan Document shall refer to this Agreement or such other Loan Document as a whole and not to any particular provision of this Agreement or such other Loan Document; and subsection, section, schedule and exhibit references are to this Agreement or such other Loan Documents unless otherwise specified.

(c) Certain Common Terms. The term "documents" includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced. The term "including" is not limiting and means "including without limitation."

(d) Performance; Time. Whenever any performance obligation hereunder or under any other Loan Document (other than a payment obligation) shall be stated to be due or required to be satisfied on a day other than a Business Day, such performance shall be made or satisfied on the next succeeding Business Day. In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including." If any provision of this Agreement or any other Loan Document refers to any action taken or to be taken by any Person, or which such Person is prohibited from taking, such provision shall be interpreted to encompass any and all means, direct or indirect, of taking, or not taking, such action.

(e) Contracts. Unless otherwise expressly provided herein or in any other Loan Document, references to agreements and other contractual instruments, including this Agreement and the other Loan Documents, shall be deemed to include all subsequent amendments, thereto, restatements and substitutions thereof and other modifications and supplements thereto which are in effect from time to time, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document.

(f) Laws. Except as otherwise provided, references to any statute or regulation are to be construed as including all statutory and regulatory provisions related thereto or consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

11.3 Accounting Terms and Principles. All accounting determinationsrequired to be made pursuant hereto shall, unless expressly otherwise provided herein, be made in accordance with GAAP. No change in the accounting principles used in the preparation of any financial statement hereafter adopted by Credit Parties shall be given effect for purposes of measuring compliance with any provision of Article V or VI unless the Borrowers, the Agent and the Required Lenders agree to modify such provisions to reflect such changes in GAAP and, unless such provisions are modified, all financial statements, Compliance Certificates and similar documents provided hereunder shall be provided together with a reconciliation between the calculations and amounts set forth therein before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to in Article V and Article VI shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any other Financing Accounting Standard having a similar result or

effect) to value any Indebtedness or other liabilities of any Credit Party or any Subsidiary of any Credit Party at "fair value."

11.4 Payments. The Agent may set up standards and procedures to determine or redetermine the equivalent in Dollars of any amount expressed in any currency other than Dollars and otherwise may, but shall not be obligated to, rely on any determination made by any Credit Party. Any such determination or redetermination by the Agent shall be conclusive and binding for all purposes, absent manifest error. No determination or redetermination by any Secured Party or any Credit Party and no other currency conversion shall change or release any obligation of any Credit Party or of any Secured Party (other than the Agent and its Related Persons) under any Loan Document, each of which agrees to pay separately for any shortfall remaining after any conversion and payment of the amount as converted. The Agent may round up or down, and may set up appropriate mechanisms to round up or down, any amount hereunder to nearest higher or lower amounts and may determine reasonable de minimis payment thresholds.

[Balance of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the day and year first above written.

BORROWERS:

JOERNS HEALTHCARE, LLC, a Delaware limited liability company

By: _____
Title: _____

JOERNS LLC, a California limited liability company

By: _____
Title: _____

JOERNS HEALTHCARE PARENT LLC, a Delaware limited liability company

By: _____
Title: _____

RECOVERCARE, LLC, a Delaware limited liability company

By: _____
Title: _____

BORROWER REPRESENTATIVE:

JOERNS HEALTHCARE, LLC, a Delaware limited liability company

By: _____
Title: _____

Address for notices:

2430 Whitehall Park Drive, Suite 100
Charlotte, North Carolina 28273
Attn: Mark Urbania
Email: mark.urbania@joerns.com

Address for Wire Transfers:

Bank Name: Wells Fargo Bank, N.A.
Address: 420 Montgomery
San Francisco, CA 94104
ABA: 121000248
Account#: 2000035270162

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the day and year first above written.

ADDITIONAL CREDIT PARTIES:

JOERNS WOUNDCO HOLDINGS, INC., a Delaware corporation

By: _____
Title: _____

SCOTT TECHNOLOGY, LLC, a Connecticut limited liability company

By: _____
Title: _____

JOERNS HEALTHCARE MEXICO HOLDINGS I LLC, a Delaware limited liability company

By: _____
Title: _____

JOERNS HEALTHCARE MEXICO HOLDINGS II LLC, a Delaware limited liability company

By: _____
Title: _____

RCJH CAMBRIDGE TECHNOLOGIES, LLC, a Delaware limited liability company

By: _____
Title: _____

GLOBAL MEDICAL, LLC, a Maryland limited liability company

By: _____
Title: _____

RCJH MERGER SUB I, LLC, a Delaware limited liability company

By: _____
Title: _____

DYNAMIC MEDICAL SYSTEMS, LLCa Nevada limited liability company

By: _____
Title: _____

JOERNS SERVICES LLC, a Delaware limited liability company

By: _____
Title: _____

Address for notices:

2430 Whitehall Park Drive, Suite 100
Charlotte, North Carolina 28273
Attn: Mark Urbania
Email: mark.urbania@joerns.com

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the day and year first above written.

ANKURA TRUST COMPANY, LLC, as the Agent

By: _____
Title: Its Duly Authorized Signatory

Address for Notices:

140 Sherman Street, 4th Floor,
Fairfield, Connecticut 06824
Attention: Michael Fey, Managing Director
Email: michael.fey@ankura.com; jay.hopkins@ankura.com

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the day and year first above written.

[_____], as a Lender

By: _____
Name: _____
Title: _____

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: JOERNS WOUNDCO HOLDINGS, INC., *et al.*, Debtors.[1]	Chapter 11 Case No. 19-11401 (JTD) Jointly Administered **Re: Docket Nos. 16, 61**

FINAL ORDER: (I) AUTHORIZING THE DEBTORS TO OBTAIN SENIOR SECURED POSTPETITION FINANCING; (II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS; (III) AUTHORIZING THE USE OF CASH COLLATERAL; AND (IV) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES

Upon the motion, dated June 24, 2019 (the "**DIP Motion**")[2] of Joerns WoundCo Holdings, Inc., on behalf of itself and its affiliated debtors and debtors-in possession (collectively, the "**Debtors**") in the above-captioned chapter 11 cases (collectively, the "**Chapter 11 Cases**"), seeking entry of the Interim Order (as defined herein) and a final order (this "**Final Order**") pursuant to sections 105, 361, 362, 363, 364(c)(l), 364(c)(2), 364(c)(3), 364(d), 364(e), 506, 507 and 552 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 4001-2 of the Local Rules for the United States Bankruptcy Court, District of Delaware (the "**Local Rules**"), *inter alia*:

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Joerns WoundCo Holdings, Inc. (3555); Dynamic Medical Systems, LLC (6816); Global Medical, LLC (0696); Joerns LLC (3625); Joerns Healthcare, LLC (1510); Joerns Healthcare Mexico Holdings I LLC (2869); Joerns Healthcare Mexico Holdings II LLC (2942); Joerns Healthcare Parent LLC (2727); Joerns Services LLC (3441); RecoverCare, LLC (1634); RCJH Cambridge Technologies, LLC (5541); RCJH Merger Sub I, LLC (3709); and Scott Technology, LLC (8047). The address of the Debtors' corporate headquarters is 2430 Whitehall Park Drive, Suite 100, Charlotte, NC 28273.

[2] Capitalized terms used but not defined herein have the meanings given to them in the DIP Motion or the DIP Credit Agreement (as defined below), as applicable.

(i) authorizing the Debtors to obtain senior secured postpetition financing on a superpriority basis consisting of a senior secured superpriority term credit facility (the "**DIP Facility**"; and the financial institutions party thereto from time to time as lenders, as provided in the DIP Credit Agreement (as defined herein), the "**DIP Lenders**"), comprised of (a) a new money multiple draw term loan facility in an aggregate principal amount of up to $40 million (the "**New Money DIP Facility**"; the new money loans made thereunder, the "**New Money DIP Loans**"), which certain Prepetition First Lien Lenders agreed to backstop; and (b) from and after the Closing Date (as defined in the DIP Credit Agreement) following entry of the Interim Order, in connection with the funding of any New Money DIP Loans, a roll up loan facility in an aggregate principal amount of up to $40 million (the "**Roll-Up DIP Facility**"; together with the New Money DIP Facility, the "**DIP Facility**"), pursuant to which the DIP Lenders are deemed to make loans under the Roll-Up DIP Facility (the loans under the Roll-Up DIP Facility, the "**Roll-Up DIP Loans**"; together with the New Money DIP Loans, the "**DIP Loans**") on a dollar-for-dollar basis for every dollar of New Money DIP Loans disbursed by such DIP Lenders (or their affiliates), which Roll-Up DIP Loans are deemed used to satisfy and discharge such DIP Lenders' (or their affiliates') claims with respect to the Prepetition First Lien Obligations (as defined herein) in an amount equal to the aggregate principal amount of New Money DIP Loans funded, in each case, pursuant to the terms and conditions of this Final Order and that certain *Superpriority Secured Debtor-in-Possession Credit Agreement*, dated as of June 27, 2019 (as the same may be amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the "**DIP Credit Agreement**," together with the schedules and exhibits attached thereto, and all agreements, documents, instruments and amendments executed and delivered in connection therewith, including, but not limited to that certain L/C Pledge Agreement by and among the

Debtors and Capital One, National Association, as L/C Issuer, the "**DIP Documents**"), by and among Joerns Healthcare, LLC ("**JHO**"), Joerns LLC ("**Joerns LLC**"), Joerns Healthcare Parent LLC ("**Healthcare**"), and RecoverCare, LLC ("**RecoverCare**," and together with JHO, Joerns LLC, and Healthcare, the "**Borrowers**," and each a "**Borrower**"), and the other Credit Parties party thereto (the Borrowers and the other Credit Parties which are, in each case, Debtors in the Chapter 11 Cases, collectively, the "**DIP Parties**"), the DIP Lenders, and Ankura Trust Company, LLC ("**Ankura**"), as administrative agent and collateral agent (in such capacity, the "**DIP Agent**"), for and on behalf of itself and the DIP Lenders;

(ii) authorizing the Debtors, (A) during the period from the entry of the Interim Order through and including the entry of this Final Order, subject to the terms, conditions, limitations on availability and reserves set forth in the DIP Documents and the Interim Order, to (x) request extensions of credit (in the form of New Money DIP Loans) up to an aggregate outstanding principal amount of not greater than $20,000,000 at any one time outstanding under the DIP Facility and (y) to incur a like amount of Roll-Up DIP Loans up to an aggregate outstanding principal amount of not greater than $20,000,000 at any one time outstanding under the DIP Facility (collectively, the "**Interim Financing**") and (B) during the period from the entry of this Final Order through and including the DIP Termination Date (as defined herein), subject to the terms, conditions, limitations on availability and reserves set forth in the DIP Documents and this Final Order, to (x) request additional extensions of credit (in the form of New Money DIP Loans) up to an aggregate outstanding principal amount of not greater than $40,000,000 at any one time outstanding under the DIP Facility (after accounting for the Interim Financing) and (y) to incur a like amount of Roll-Up DIP Loans up to an aggregate outstanding principal amount of not greater

than $40,000,000 at any one time outstanding under the DIP Facility (after accounting for the Interim Financing);

(iii) authorizing the Debtors party thereto to execute and deliver the DIP Credit Agreement and any other agreements and documents related thereto, and to perform such other acts as may be necessary or desirable in connection with the DIP Documents;

(iv) authorizing the Debtors to enter into the DIP Facility and to incur all obligations owing thereunder and under the DIP Documents to the DIP Agent and DIP Lenders (collectively, and including all "Obligations" as described in the DIP Credit Agreement, the "**DIP Obligations**"), and granting the DIP Agent and DIP Lenders allowed superpriority administrative expense claim status in each of the Chapter 11 Cases and in any Successor Case (as defined herein), subject to the Carve Out;

(v) granting to the DIP Agent on a final basis, for the benefit of itself and the DIP Lenders, automatically perfected security interests in and liens on all of the DIP Collateral (as defined herein), including, without limitation, all property constituting "cash collateral" as defined in section 363(a) of the Bankruptcy Code ("**Cash Collateral**"), which liens shall have the priorities set forth herein and shall be subject to the Carve Out;

(vi) authorizing the Debtors on a final basis to use any Cash Collateral in which the Prepetition Secured Parties have an interest, and proceeds of the DIP Facility, in each case in accordance with this Final Order and the DIP Documents, including in accordance with the Budget (subject to Permitted Variances, and except as otherwise provided in this Final Order and the DIP Documents with respect to the Debtors' Professionals' (as defined herein) fees) as required herein;

(vii) authorizing the Debtors on a final basis to pay the principal, interest, fees, expenses and other amounts payable under the DIP Documents as such become due, including, without

limitation, commitment fees, closing fees, backstop fees, administrative agent's fees, and the reasonable fees and disbursements of the DIP Agent's and the DIP Lenders' respective attorneys, advisors, accountants, and other consultants, in each case, as and to the extent provided in, and in accordance with, the applicable DIP Documents and this Final Order;

(viii) authorizing the Debtors on a final basis to use the Prepetition Collateral (as defined herein), including the Cash Collateral of the Prepetition Secured Parties under the Prepetition Documents (each as defined herein), and providing adequate protection to the Prepetition Secured Parties solely to the extent of any aggregate Diminution in Value (as defined herein) of their respective interests in the Prepetition Collateral, including the Cash Collateral; and

(ix) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents, the Interim Order and this Final Order, and to provide for the immediate effectiveness of this Final Order.

The Court having considered the DIP Motion, the exhibits attached thereto, the *Declaration of Barak Klein in Support of the Debtors' Motion for Entry of Interim and Final Orders: (I) Authorizing the Debtors to Obtain Senior Secured Postpetition Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Status, (III) Authorizing the Debtors to Use Cash Collateral, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the "**Klein Declaration**"), the DIP Documents, the First Day Declaration, and the evidence submitted and arguments made at a hearing before the Court on June 26, 2019 (the "**Interim Hearing**") and at the hearing held before the Court on July [25], 2019 (the "**Final Hearing**"); and the Court having entered after the Interim Hearing the *Interim Order: (I) Authorizing the Debtors to Obtain Senior*

Secured Postpetition Financing; (II) Granting Liens and Superpriority Administrative Expense Status; (III) Authorizing the Use of Cash Collateral; (IV) Granting Adequate Protection to Prepetition Secured Parties; (V) Scheduling a Final Hearing [Docket No. 61] (the "**Interim Order**"); and due and proper notice of the DIP Motion and the Final Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Rules; and the Final Hearing having been held and concluded; and all objections, if any, to the final relief requested in the DIP Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval of the relief requested in the DIP Motion is necessary to avoid harm to the Debtors and their estates, is fair and reasonable and in the best interests of the Debtors, their estates and all parties-in-interest, and is essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Credit Agreement is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING AND FINAL HEARING, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[3]

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

A. **Petition Date**. On June 24[4], 2019 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "**Court**").

B. **Debtors in Possession**. The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. **Jurisdiction and Venue**. This Court has jurisdiction over the Chapter 11 Cases, the DIP Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the DIP Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). This Court may enter a final order consistent with Article III of the United States Constitution. Venue for the Chapter 11 Cases and proceedings on the DIP Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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

E. **Notice**. Proper, timely, adequate, and sufficient notice of the DIP Motion and the Final Hearing has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules,

[4] Prior to the Petition Date, on June 21, 2019, the Debtors executed a restructuring support agreement (the "**Restructuring Support Agreement**") with certain of its Prepetition Lenders (as defined below) who hold approximately 86% of the outstanding principal amount of the Prepetition First Lien Obligations and 100% of the outstanding principal amount of the Prepetition Second Lien Obligations (each as defined below). Pursuant to the milestones agreed to by the parties in the Restructuring Support Agreement, the Debtors were required to commence the Chapter 11 Cases on or before June 23, 2019, however, by agreement of the parties, such deadline was extended to June 24, 2019. Since the Interim Hearing, each of the Prepetition First Lien Lenders that did not initially execute the Restructuring Support Agreement have now done so. As such, all Prepetition Lenders are now parties to the Restructuring Support Agreement and will participate in the DIP Facility (including the Roll-Up DIP Facility) on a pro rata basis based on the principal amount of the Prepetition First Lien Obligations.

and the Local Rules, and no other or further notice of the DIP Motion with respect to the relief requested at the Final Hearing or the entry of this Final Order shall be required.

F. **Debtors' Stipulations**. After consultation with their attorneys and financial advisors, and subject and without prejudice to, the rights of parties-in-interest, including any Creditors Committee (as defined below) or any other statutory committee that may be appointed in the Chapter 11 Cases, as set forth in paragraph 42 herein, the Debtors, on their own behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree as follows (paragraphs F(i)-(vi) and G below are referred to herein, collectively, as the "**Debtors' Stipulations**"):

(i) *Prepetition First Lien Facility*. Pursuant to that certain Second Amended and Restated Credit Agreement, dated as of May 9, 2014 (as amended, restated, supplemented, or otherwise modified from time to time, the "**Prepetition First Lien Agreement**," and collectively with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, or otherwise modified from time to time, the "**Prepetition First Lien Documents**,") among (a) JHO, as a borrower and the borrower representative, (b) the other Borrowers party thereto, (c) the other person party thereto from time to time that are designated as "credit parties" (each a "**Prepetition First Lien Guarantor**"), (d) Ankura, as administrative agent (as successor to Capital One, National Association, in such capacity, the "**Prepetition First Lien Agent**") and (e) the lenders from time to time party thereto (the "**Prepetition First Lien Lenders**," and together with the Prepetition First Lien Agent, and the other Secured Parties (as defined in the Prepetition First Lien Agreement), the "**Prepetition First Lien Parties**"), the Prepetition First Lien Lenders provided revolving loans, term loans, and other financial accommodations to, and issued letters of credit for the account of, the Borrowers pursuant to the Prepetition First Lien Documents (the "**Prepetition First Lien Facility**").

(ii) *Prepetition Second Lien Facility.* Pursuant to that certain Second Lien Note Purchase Agreement, dated as of March 15, 2017 (as amended, restated, supplemented, or otherwise modified from time to time, the "**Prepetition Second Lien Agreement**"; the Prepetition Second Lien Agreement and the Prepetition First Lien Agreement shall collectively be referred to as the "**Prepetition Agreements**") and collectively with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, or otherwise modified from time to time, the "**Prepetition Second Lien Documents**," and together with the Prepetition First Lien Documents, the "**Prepetition Documents**") among (a) JHO, Joerns LLC, Healthcare, RecoverCare and RCJH Merger Sub I, LLC, as issuers (the "**Issuers**"), (b) the other persons party thereto from time to time that are designated as "note parties", (c) U.S. Bank National Association, as agent (the "**Prepetition Second Lien Agent**", together with the Prepetition First Lien Agent, the "**Prepetition Agents**") and (d) the purchasers from time to time party thereto (the "**Prepetition Second Lien Note Purchasers**," and collectively with the Prepetition Second Lien Agent, and the other Secured Parties (as defined in the Prepetition Second Lien Agreement), the "**Prepetition Second Lien Parties**"; the Prepetition Second Lien Note Purchases, and together with the Prepetition First Lien Lenders, the "**Prepetition Lenders**") (the Prepetition First Lien Parties and Prepetition Second Lien Parties, collectively with the Prepetition Agents, the "**Prepetition Secured Parties**"), the Prepetition Second Lien Note Purchasers purchased second lien notes from the Issuers (the "**Prepetition Second Lien Facility**," and together with the Prepetition First Lien Facility, the "**Prepetition Secured Facilities**").

(iii) *Prepetition Secured Obligations*. Under the Prepetition First Lien Facility, the Prepetition First Lien Lenders provided to the Debtors party thereto commitments in respect of term loans in the aggregate principal amount of up to $265,000,000 and commitments in respect

of revolving loans in the aggregate principal amount of up to $30,000,000. Under the Prepetition Second Lien Facility, the Prepetition Second Lien Note Purchasers extended credit to the Debtors party thereto in an initial aggregate principal amount of $45,000,000 ($15,000,000 in respect of tranche A notes and $30,000,000 in respect of tranche B notes) as a result of the purchase of the secured notes from the Issuers.[5] Immediately prior to the Petition Date, the aggregate principal amount outstanding under the Prepetition First Lien Facility on account of term loans was not less than $272,012,500 (the "**Prepetition First Lien Term Loans**"), the face amount of all issued and outstanding undrawn letters of credit was not less than $3,200,000 (the "**Prepetition LCs**"), and there were no revolving loan amounts outstanding (such amounts on account of the Prepetition First Lien Term Loans and Prepetition LCs, together with any accrued and unpaid interest, fees, expenses and disbursements (including, without limitation, any accrued and unpaid attorneys' fees, and financial advisors' fees, and related expenses and disbursements), indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtors' (as defined therein) obligations under the Prepetition First Lien Documents, including all "Obligations" as defined in the Prepetition First Lien Agreement, the "**Prepetition First Lien Obligations**"). Immediately prior to the Petition Date, the aggregate principal amount outstanding under the Prepetition Second Lien Agreement was not less than $80,426,866 in respect of tranche A notes and not less than $45,616,146 in respect of tranche B notes (such amounts, together with any accrued and unpaid interest, fees, expenses and disbursements (including, without limitation, any accrued and unpaid attorneys' fees, and financial advisors' fees, and related expenses and

[5] Pursuant to the Limited Waiver and First Amendment to Second Lien Note Purchase Agreement, dated as of June 8, 2017, incremental notes were issued in an aggregate principal amount of $40,000,000 ($25,604,007.58 in respect of tranche A notes and $14,395,992.42 in respect of tranche B notes).

disbursements), indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtors' obligations under the Prepetition Second Lien Documents, including all "Obligations" as defined in the Prepetition Second Lien Agreement, the "**Prepetition Second Lien Obligations**," and together with the Prepetition First Lien Obligations, the "**Prepetition Secured Obligations**").

(iv) *Prepetition Liens and Prepetition Collateral*. The Debtors represent that, as more fully set forth in the Prepetition Documents, prior to the Petition Date:

(a) pursuant to that certain Guaranty and Security Agreement, dated as of August 6, 2010, as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, each Borrower and each Prepetition First Lien Guarantor (collectively, the "**Prepetition Credit Parties**") jointly and severally guaranteed all of the Prepetition First Lien Obligations (except, each Borrower only guaranteed the obligations of each other Borrower), and granted to the Prepetition First Lien Agent, for the benefit of itself and the other Prepetition First Lien Parties, a lien on and security in all of its right, title and interest in (the "**Prepetition Senior Liens**") substantially all of its assets (the "**Prepetition First Lien Collateral**"); and

(b) pursuant to that certain Guaranty and Security Agreement, dated as of March 15, 2017, as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, each Issuer and each Prepetition Second Lien Guarantor jointly and severally guaranteed all of the Prepetition First Lien Obligations (except, each Issuer only guaranteed the obligations of each other Issuer), and granted to the Prepetition Second Lien Agent, for the benefit of itself and the other Prepetition Second Lien Parties, a lien on and security in all of its right, title and interest in (the "**Prepetition Junior Liens**") substantially all of its assets (the "**Prepetition**

Second Lien Collateral," and together with the Prepetition First Lien Collateral, the "**Prepetition Collateral**"), subject to the relative priorities among the Prepetition Secured Parties set forth in the Prepetition Documents, including that certain Intercreditor Agreement (as defined herein).

(v) *Priority of Prepetition Liens; Intercreditor Agreements*. The Prepetition First Lien Agent, the Prepetition Second Lien Agent, and others entered into that certain Intercreditor Agreement, dated as of March 15, 2017 (as amended, restated, supplemented, or otherwise modified from time to time prior to the date hereof, the "**Intercreditor Agreement**") to govern the respective rights, interests, obligations, priority, and positions of the Prepetition Secured Obligations with respect to the Prepetition Collateral. Each of the Debtors under the Prepetition Documents acknowledged and agreed to the Intercreditor Agreement.

(vi) *Validity, Perfection and Priority of Prepetition Liens and Prepetition Secured Obligations*. As of the Petition Date: (a) the Prepetition Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to certain liens otherwise permitted by the Prepetition Documents and any other lien arising as a matter of law (in each case, to the extent that such existing liens were valid, properly perfected, non-avoidable and senior in priority to the Prepetition Senior Liens as of the Petition Date or were valid non-avoidable senior liens that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, the "**Permitted Prior Liens**");[6] (b) the Prepetition Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable and properly perfected and were granted to, or for the benefit of, the Prepetition Secured Parties for fair consideration and

[6] Nothing herein shall constitute a finding or ruling by this Court that any such Permitted Prior Lien is valid, senior, enforceable, prior, perfected or non-avoidable. Moreover, nothing shall prejudice the rights of any party-in-interest, including, but not limited to the Debtors, the DIP Agent, the Prepetition Secured Parties, or a Creditors' Committee (if appointed), to challenge the validity, priority, enforceability, seniority, avoidability, perfection or extent of any alleged Permitted Prior Lien and/or security interests.

reasonably equivalent value; (c) the Prepetition Secured Obligations constitute legal, valid, binding, and non- avoidable obligations of the Prepetition Credit Parties enforceable in accordance with the terms of the respective Prepetition Secured Documents; (d) no offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Secured Obligations exist, and no portion of the Prepetition Liens or Prepetition Secured Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including without limitation, avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition Secured Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees arising out of, based upon or related to the Prepetition Secured Facilities; (f) the Debtors have waived, discharged and released any right to challenge any of the Prepetition Secured Obligations, the priority of the Debtors' obligations thereunder, and the validity, extent and priority of the liens securing the Prepetition Secured Obligations (for the avoidance of doubt, subject and without prejudice to, the rights of parties-in-interest, including any Creditors Committee or any other statutory committee that may be appointed in the Chapter 11 Cases, as set forth in paragraph 42 herein) and (g) the Prepetition Secured Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

G. **Cash Collateral**. All of the Prepetition Credit Parties' cash, including any cash in deposit accounts (other than any Excluded Account), wherever located, constitutes Cash Collateral of the Prepetition Secured Parties.

H. **Findings Regarding Postpetition Financing**

(i) *Request for Postpetition Financing*. The Debtors seek authority to (a) enter into the DIP Facility on the terms described herein and in the DIP Documents, and (b) use Cash Collateral on the terms described herein, to administer their Chapter 11 Cases and fund their operations.

(ii) *Priming of the Prepetition Liens*. The priming of the Prepetition Liens of the Prepetition Secured Parties on the Prepetition Collateral under section 364(d) of the Bankruptcy Code, as contemplated by the DIP Facility, and authorized by the Interim Order and this Final Order, and as further described below, will enable the Debtors to continue borrowing under the DIP Facility and to continue to operate their businesses to the benefit of their estates and creditors. The Prepetition Secured Parties are each entitled to receive adequate protection as set forth in the Interim Order and this Final Order pursuant to sections 361, 363, and 364 of the Bankruptcy Code, solely to the extent of any aggregate diminution in value resulting from the Debtors' use, sale or lease of Cash Collateral and other Prepetition Collateral and the imposition of the automatic stay ("**Diminution in Value**") of each of their respective interests in the Prepetition Collateral (including Cash Collateral).

(iii) *Need for Postpetition Financing and Use of Cash Collateral*. The Debtors need to use Cash Collateral and to obtain credit pursuant to the DIP Facility in order to, among other things, enable the orderly continuation of their operations, to administer these Chapter 11 Cases, and to consummate the restructuring transactions contemplated by the Restructuring

Support Agreement that will maximize recoveries to stakeholders. The ability of the Debtors to maintain business relationships with their vendors, suppliers and customers, to pay their employees and otherwise finance their operations requires the availability of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of which would harm the Debtors, their estates, and parties-in-interest. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or maintain their properties in the ordinary course of business without the DIP Facility and authorized use of Cash Collateral.

(iv) *No Credit Available on More Favorable Terms*. The DIP Facility is the best source of debtor in possession financing available to the Debtors. Given their current financial condition, financing arrangements, and capital structure, the Debtors have been and continue to be unable to obtain financing from sources other than the DIP Lenders on terms more favorable than the DIP Facility. The Debtors are unable to obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors have also been unable to obtain (a) unsecured credit having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code, (b) credit secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien, or (c) credit secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Financing on a postpetition basis is not otherwise available without granting the DIP Agent, for the benefit of itself and the DIP Lenders (1) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth in paragraph 6 hereof, (2) superpriority claims and liens, and (3) the other protections set forth in this Final Order.

(v) *Use of Proceeds of the DIP Facility*. As a condition to the Debtors' entry into the DIP Documents, the extension of credit under the DIP Facility and the authorization to use Prepetition Collateral, including Cash Collateral, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties required, and the Debtors agreed, that proceeds of the DIP Facility shall be used, in each case in a manner consistent with the terms and conditions of this Final Order and the DIP Documents and in accordance with the budget[7] (as the same may be modified from time to time consistent with the terms of the DIP Documents and subject to such variances as permitted in the DIP Credit Agreement, the "**Budget**") and as otherwise provided in this Final Order and the DIP Documents, for: (a) working capital; (b) other general corporate purposes of the Debtors; (c) permitted payments of the costs of administration of the Chapter 11 Cases (including professional fees and expenses of the Debtors' professionals and professionals retained by a Committee (if appointed)), and the consummation of the Debtors' Chapter 11 Plan; (d) payment of such prepetition expenses as consented to by the DIP Agent (acting at the direction of the DIP Lenders holding in excess of fifty percent (50%) of the outstanding loans and commitments under the DIP Facility, the "**Required DIP Lenders**")), and as approved by the Court; (e) payment of interest, fees and expenses (including without limitation, legal and other professionals' fees and expenses of the DIP Agent and the DIP Lenders owed under the DIP Documents); (f) payment of certain adequate protection amounts to the Prepetition First Lien Parties, as set forth in paragraph 16 hereof; (g) cash collateralization of the Prepetition LCs in an aggregate amount not to exceed $3.36 million; and (h) payment of the Carve Out (which shall be in accordance with paragraph 39 of this Final Order).

[7] A copy of the initial budget was attached to the Interim Order as Exhibit B.

(vi) *Application of Proceeds of Collateral*. As a condition to entry into the DIP Credit Agreement, the extension of credit under the DIP Facility and authorization to use Cash Collateral, the Debtors, the DIP Agent, the DIP Lenders, and the Prepetition Agents and the Prepetition Lenders have agreed that, as of and commencing on the date of the Interim Hearing, the Debtors shall apply the proceeds of DIP Collateral in accordance with this Final Order, the DIP Loan Documents, and the Intercreditor Agreement.

I. **Adequate Protection**. The Prepetition Agents, for the benefit of themselves and the Prepetition Secured Parties, are each entitled to receive adequate protection to the extent of any aggregate Diminution in Value of their respective interests in the Prepetition Collateral. Pursuant to sections 361, 363 and 507(b) of the Bankruptcy Code, as adequate protection, subject in all respects to the Carve Out (as defined below): (i) the Prepetition First Lien Parties received pursuant to the Interim Order, and will continue to receive (a) solely to the extent of any aggregate Diminution in Value of their interests in the Prepetition Collateral, adequate protection liens and superpriority claims, as more fully set forth in paragraphs 12-14 herein, and (b) current payment of expenses (including without limitation, legal and other professionals' fees and expenses of the Prepetition First Lien Agent and the Consenting First Lien Lenders (solely in their capacity as Prepetition First Lien Lenders) party to the Restructuring Support Agreement as of the Petition Date (the "**First Lien Steering Committee**") represented by King & Spalding LLP ("**King & Spalding**"), as legal counsel, and FTI Consulting, Inc. ("**FTI**"), as financial advisor, whether arising before or after the Petition Date); and (ii) Prepetition Second Lien Parties received pursuant to the Interim Order, and will continue to receive, solely to the extent of any aggregate Diminution

in Value of their interests in the Prepetition Collateral, adequate protection liens and superpriority claims, as more fully set forth in paragraphs 12-14 herein.

J. **Sections 506(c) and 552(b)**. In light of (i) the DIP Agent's and DIP Lenders' agreement that their liens and superpriority claims shall be subject to the Carve Out; and (ii) the Prepetition Agents and Prepetition Lenders' agreement that their respective liens and claims, including any adequate protection liens and claims, shall be subject to the Carve Out and subordinate to the DIP Liens, (a) the Prepetition Secured Parties are entitled to a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code, and (b) the DIP Agent, DIP Lenders, and Prepetition Secured Parties are each entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code.

K. **Good Faith of the DIP Agent and DIP Lenders**.

(i) *Willingness to Provide Financing*. The DIP Lenders have indicated a willingness to continue providing the DIP Facility to the Debtors subject to: (a) entry of this Final Order; (b) approval of the terms and conditions of the DIP Facility and the DIP Documents; (c) satisfaction of the closing conditions set forth in the DIP Documents; and (d) findings by this Court that the DIP Financing is essential to the Debtors' estates, that the DIP Agent and DIP Lenders are extending credit to the Debtors pursuant to the DIP Documents in good faith, and that the DIP Agent's and DIP Lenders' DIP Superpriority Claims and DIP Liens, and other protections granted pursuant to this Final Order and the DIP Documents will have the protections provided by section 364(e) of the Bankruptcy Code.

(ii) *Business Judgment and Good Faith Pursuant to Section 364(e)*. The terms and conditions of the DIP Facility and the DIP Documents, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available to the Debtors under the circumstances,

reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration. The terms and conditions of the DIP Facility and the use of Cash Collateral were negotiated in good faith and at arms' length among the Debtors, DIP Agent, DIP Lenders, the Prepetition First Lien Parties and the Prepetition Second Lien Parties, with the assistance and counsel of their respective advisors. Use of Cash Collateral and credit to be extended under the DIP Facility shall be deemed to have been allowed, advanced, made, or extended in good faith by the DIP Agent, DIP Lenders, the Prepetition First Lien Parties, and the Prepetition Second Lien Parties within the meaning of section 364(e) of the Bankruptcy Code.

(iii) *Consent to DIP Financing and Use of Cash Collateral*. Absent an order of this Court and the provision of adequate protection, consent of the Prepetition Secured Parties is required for the Debtors' use of Cash Collateral and the other Prepetition Collateral. The Prepetition Secured Parties have consented, or are deemed pursuant to the Prepetition Documents, to have consented or have not objected to the Debtors' use of Cash Collateral and the other Prepetition Collateral, and the Debtors' entry into the DIP Documents in accordance with and subject to the terms and conditions in this Final Order and the DIP Documents.

L. **Final Hearing**. Notice of the Final Hearing and the relief requested in the DIP Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery, to certain parties-in-interest, including, among others: (i) the U.S. Trustee; (ii) counsel to the First Lien Steering Committee; (iii) counsel to the Prepetition First Lien Agent; (iv) counsel to the Prepetition Second Lien Agent; (v) holders of the 30 largest unsecured claims against the Debtors on a consolidated basis; (vi) any such other party entitled to notice under the Bankruptcy Rules and Local Rules. The Debtors have made reasonable efforts to afford the best

notice possible under the circumstances and no other notice is required in connection with the relief set forth in this Final Order.

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

IT IS HEREBY ORDERED THAT:

1. Final Financing Approved. The DIP Motion is granted as set forth herein, and the DIP Facility is authorized and approved, and the use of Cash Collateral is authorized, in each case on a final basis and subject to the terms and conditions set forth in the DIP Documents and this Final Order. All objections to this Final Order to the extent not withdrawn, waived, settled or resolved are hereby denied and overruled. This Final Order shall become effective immediately upon its entry. Unless specifically amended, supplemented, or otherwise modified by this Final Order, all provisions of the Interim order, including, but not limited to, findings of fact, conclusions of law, and authorizations made by this Court, remain in full force and effect and are hereby ratified by this Final order and incorporated herein by reference as though set forth fully below.

DIP Facility Authorization

2. Authorization of the DIP Financing. The DIP Facility is hereby approved on a final basis. The Debtors are expressly and immediately authorized and empowered to execute and deliver (to the extent not previously executed or delivered) any DIP Documents, to continue borrowing under the DIP Facility, and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Final Order and the DIP Documents, and to deliver all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens

(as defined herein) described in and provided for by this Final Order and the DIP Documents. The Debtors are hereby authorized to pay, in accordance with this Final Order, any principal, interest, fees, expenses, and other amounts described in the DIP Documents, the Interim Order, and this Final Order, as such amounts become due and owing, without need to obtain further Court approval (except as otherwise provided herein or in the DIP Documents (including any related fee letters)), subject to and in accordance with the terms hereof and thereof, including, without limitation, any closing fees, commitment fees, backstop fees, and administrative agent's fees, as well as any reasonable and documented fees and disbursements of the DIP Agent's and the DIP Lenders' professionals, as set forth herein and in the DIP Credit Agreement, whether or not such professional fees and disbursements arose before or after the Petition Date, and whether or not the transactions contemplated hereby are consummated), to implement all applicable reserves and to take any other actions that may be necessary or appropriate, all to the extent provided in this Final Order and the DIP Documents. All collections and proceeds, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnations or otherwise, will be deposited and applied as required by this Final Order and the DIP Documents. The DIP Documents represent valid and binding obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms.

3. Authorization to Borrow. The Debtors are hereby authorized to (x) request extensions of credit (in the form of New Money DIP Loans) and (y) to incur a like amount of Roll-Up DIP Loans, in each case in accordance with paragraph 10 herein.

4. DIP Obligations. The DIP Documents and this Final Order shall constitute and evidence the validity and binding effect of the Debtors' DIP Obligations, which DIP Obligations shall be enforceable against the Debtors, their estates and any successors thereto,

including without limitation, any trustee appointed in the Chapter 11 Cases, or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "**Successor Cases**"). Upon entry of this Final Order, the DIP Obligations will include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP Agent or any of the DIP Lenders, under the DIP Documents or this Final Order, including, without limitation, all principal, accrued and unpaid interest, costs, fees, expenses, and other amounts under the DIP Documents. The DIP Parties shall be jointly and severally liable for the DIP Obligations. The DIP Obligations shall be due and payable, without notice or demand, and the use of Cash Collateral shall automatically cease on the DIP Termination Date (as defined herein), except as provided in paragraphs 30 and 33 herein, and subject to the Carve Out requirements in paragraph 39 herein. No obligation, payment, transfer, or grant of collateral security hereunder or under the DIP Documents (including any DIP Obligation or DIP Liens (as defined herein), and including in connection with any adequate protection provided to the Prepetition Secured Parties hereunder, subject to paragraph 42 herein) shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

5. DIP Liens. In order to secure the DIP Obligations, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP Agent, for the benefit of itself and the DIP Lenders, were granted, on an interim basis, immediately upon entry of the Interim Order, and are hereby granted on a final basis, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens (collectively, the "**DIP Liens**"), with the priorities set forth in paragraph 6 herein, on all real and personal property, whether now existing or hereafter arising and wherever located, tangible and intangible, of, with respect to the DIP Obligations, each of the DIP Parties (the "**DIP Collateral**"), including without limitation: (a) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables (including credit card receivables), chattel paper, contract rights, inventory (wherever located), instruments, documents, securities (whether or not marketable) and investment property (including, without limitation, all of the issued and outstanding capital stock of each of its subsidiaries), furniture, fixtures, equipment, goods, franchise rights, trade names, trademarks, servicemarks, copyrights, patents, intellectual property, general intangibles, rights to the payment of money (including, without limitation, tax refunds and any other extraordinary payments), supporting obligations, guarantees, letter of credit rights, commercial tort claims, causes of action and all substitutions, books and records related to the foregoing, and proceeds of the foregoing, wherever located, including insurance or other proceeds, (b) all owned real property interests and all proceeds of leased real property, (c) proceeds of any avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code ("**Avoidance Actions**"), and (d) all other property of the DIP Parties that was not otherwise subject to valid, perfected, enforceable and nonavoidable liens on the Petition Date, including, without limitation, for the avoidance of doubt, any unpledged stock (or equivalent equity interest) of a foreign subsidiary of a Debtor (other than any entity in

the process of being dissolved or wound up). Notwithstanding the foregoing, the DIP Collateral shall not include (and the DIP Liens shall not extend to) (i) any assets held by the Debtors in trust, and any "Excluded Collateral" (as defined in the DIP Credit Agreement) or (ii) Avoidance Actions; provided that, the DIP Collateral shall include proceeds of Avoidance Actions. For the avoidance of doubt, the DIP Collateral shall be limited to the property of the Debtors as set forth in the DIP Documents, and shall not include any assets of (i) any affiliate of a Debtor or (ii) any subsidiary of a Debtor (in each case, that is not otherwise a Debtor).

6. DIP Lien Priority. The DIP Liens securing the DIP Obligations are valid, automatically perfected, non-avoidable, senior in priority and superior to any security, mortgage, collateral interest, lien or claim to any of the DIP Collateral, except that the DIP Liens shall be subject to the Carve Out and shall otherwise be junior only to Permitted Prior Liens. Other than as set forth in this Final Order or in the DIP Documents, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The DIP Liens shall not be subject to section 510, 549 or 550 of the Bankruptcy Code, other than in respect of any Prepetition First Lien Obligations that have been satisfied and replaced by Roll-Up DIP Loans (subject only to the Challenge Deadline and related provisions set forth in paragraph 42). No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

7. Superpriority Claims. The DIP Agent and DIP Lenders were granted, on an interim basis upon entry of the Interim Order and are hereby granted on a final basis, pursuant to Section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Chapter 11 Cases and any Successor Cases (a "**DIP Superpriority Claim**") for all DIP Obligations: (a) except as set forth herein, with priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of the Chapter 11 Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever; and (b) which shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative to the extent permitted by law. Notwithstanding anything to the contrary in this Final Order, the Interim Order, or the DIP Documents, the DIP Superpriority Claim shall be subject in all respects to the Carve Out.

8. No Obligation to Extend Credit. Except as required to fund the Carve Out as set forth in paragraph 39, the DIP Lenders shall have no obligation to make any loan under the DIP Documents, unless all of the conditions precedent to the making of such extension of credit under the DIP Documents and this Final Order have been satisfied in full or waived by the DIP Agent (acting at the direction of the Required DIP Lenders, as applicable, and in accordance with the terms of the DIP Credit Agreement).

9. Use of Proceeds of DIP Facility. From and after the Petition Date, the Debtors shall use advances of credit under the DIP Facility, in accordance with the Budget (subject to Permitted Variances, and except as otherwise provided in this Final Order and the DIP Documents with respect to the Debtors' Professionals' fees), only for the purposes specifically set forth in this Final Order and the DIP Documents, and in compliance with the terms and conditions in this Final Order and the DIP Documents.

10. Roll-Up DIP Loans. Pursuant to the Interim Order, upon the funding of the initial New Money DIP Loans thereunder, without any further action required by the Debtors or any other party, Prepetition First Lien Term Loans held by the DIP Lenders in an amount equal to the aggregate principal amount of the New Money DIP Loans that were funded, were converted on a dollar-for-dollar basis into Roll-Up DIP Loans and constitute DIP Obligations pursuant to, and consistent with, the terms of the DIP Documents, the Interim Order and this Final Order, which conversion (or "roll-up") shall be in full satisfaction and discharge of such Prepetition First Lien Term Loans. Upon the funding of any additional New Money DIP Loans on or after the date hereof in accordance with this Final Order and the DIP Documents, without any further action by the Debtors or any other party, an amount of Prepetition First Lien Term Loans held by the DIP Lenders equal to the aggregate principal amount of the New Money DIP Loans funded shall be converted, on a dollar-for-dollar basis, into Roll-Up DIP Loans and shall constitute DIP Obligations pursuant to, and consistent with, the terms of the DIP Documents and this Final Order, which conversion (or "roll-up") was in full satisfaction and discharge of such Prepetition First Lien Term Loans. The conversion (or "roll-up") shall be authorized as compensation for, in consideration for, and solely on account of, the agreement of certain Prepetition First Lien Lenders (or their affiliates) to fund the New Money DIP Loans and not as adequate protection for any Prepetition First Lien Obligations. Subject to the terms and conditions of the Restructuring Support Agreement, this Final Order, the DIP Credit Agreement and the Intercreditor Agreement, all rights of the Prepetition First Lien Parties shall be fully preserved. The Prepetition Secured Parties would not otherwise consent to the use of their Cash Collateral or the subordination of their liens to the DIP Liens, and the DIP Lenders would not be willing to provide the New Money DIP Loans or extend credit to the Debtors thereunder without the inclusion of the Roll-Up DIP Loans in the DIP

Obligations. The Roll-Up DIP Loans shall be subject to the reservation of rights in paragraph 42 below, and therefore will not prejudice the rights of any party in interest.

Authorization to Use Cash Collateral

11. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Final Order (including, without limitation, paragraphs 33 and 39 hereof), the DIP Facility and the DIP Documents, and in accordance with the Budget (including Permitted Variances, and except as otherwise provided under this Final Order or the DIP Documents with respect to professional fees), the Debtors are authorized to use Cash Collateral until the DIP Termination Date. Nothing in this Final Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Final Order, the DIP Facility, the DIP Documents, and in accordance with the Budget (including Permitted Variances, and except as otherwise provided under this Final Order and the DIP Documents with respect to professional fees).

12. Adequate Protection Liens.

(i) *Prepetition Adequate Protection Liens*. Pursuant to Sections 361, 363(e) and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Secured Parties in the Prepetition Collateral, solely to the extent of any aggregate Diminution in Value of such interests in the Prepetition Collateral, the Prepetition Credit Parties hereby grant (as of the date of entry of the Interim Order) to (x) the Prepetition First Lien Agent, on behalf of itself and the Prepetition First Lien Parties and (y) the Prepetition Second Lien Agent, on behalf of itself and the Prepetition Second Lien Parties, continuing valid, binding, enforceable and perfected

postpetition security interests in and liens on the DIP Collateral (the "**Adequate Protection Liens**").

13. Priority of Adequate Protection Liens.

(i) The Adequate Protection Liens shall be subject to the Carve Out and shall otherwise be junior only to: (1) Permitted Prior Liens; (2) the DIP Liens; and (3) in the case of any Adequate Protection Liens granted to the Prepetition Second Lien Parties, the Adequate Protection Liens and the Prepetition Liens of the Prepetition First Lien Parties. The Adequate Protection Liens shall be senior to all other security interests in, liens on, or claims against any of the DIP Parties' assets. For the avoidance of doubt, as among the Prepetition First Lien Parties and the Prepetition Second Lien Parties, the Adequate Protection Liens shall be subject to the Intercreditor Agreement.

(ii) Except as provided herein, including, without limitation, with respect to the Carve Out, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases and shall be valid and enforceable against any trustee appointed in any of the Chapter 11 Cases or any Successor Cases, or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. Subject to the Challenge Deadline and related provisions of paragraph 42, the Adequate Protection Liens shall not be subject to sections 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the Prepetition Liens or the Adequate Protection Liens.

14. Adequate Protection Superpriority Claims.

(i) *Prepetition Superpriority Claim*. As further adequate protection of the interests of the Prepetition Secured Parties in the Prepetition Collateral, solely to the extent of any aggregate Diminution in Value (if any) of their respective interests in the Prepetition Collateral, and subject in all respects to the Carve Out, (x) the Prepetition First Lien Agent, on behalf of itself and the Prepetition First Lien Parties and (y) the Prepetition Second Lien Agent, on behalf of itself and the Prepetition Second Lien Parties, are each hereby granted (as of the date of entry of the Interim Order) as and to the extent provided by section 507(b) or the Bankruptcy Code allowed superpriority administrative expense claims in each of the Chapter 11 Cases and any Successor Cases (the "**Adequate Protection Superpriority Claims**").

15. Priority of the Adequate Protection Superpriority Claims. Except as set forth herein, the Adequate Protection Superpriority Claims shall have priority over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever; *provided*, *however*, that the Adequate Protection Superpriority Claims shall be subject to the Carve Out and the Intercreditor Agreement, and shall be junior to the DIP Superpriority Claim.

16. Adequate Protection Payments and Protections for Prepetition First Lien Parties. As further adequate protection (the "**Adequate Protection Payments**"), the Debtors were authorized pursuant to the Interim Order, and continue to be authorized pursuant to this Final Order, to pay in cash, without the need for the filing of formal fee applications: (i) immediately upon entry of the Interim Order, all reasonable and documented (in summary form) accrued and unpaid out-of-pocket fees, costs, disbursements and expenses, of (x) the Prepetition First Lien Agent (limited, in the case of counsel, to all reasonable and documented out-of-pocket fees, costs,

disbursements and expenses of Shearman & Sterling LLP ("**Shearman**")) and any successor counsel, and, to the extent necessary, one firm of local counsel, and (y) the First Lien Steering Committee, including all reasonable and documented accrued and unpaid out-of-pocket fees, costs, disbursements and expenses of King & Spalding, FTI, and, to the extent necessary, one firm of local counsel (which payment may be made from proceeds of the DIP Facility), in each case to the extent invoices for any such accrued and unpaid amounts were provided to the Debtors no later than two (2) Business Days prior to the Closing Date, and (ii) thereafter, all reasonable and documented (in summary form) accrued and unpaid out-of-pocket fees, costs, disbursements and expenses, of (x) the Prepetition First Lien Agent (limited, in the case of counsel, to all reasonable and documented out-of-pocket fees, costs, disbursements and expenses of Shearman) and any successor counsel, and, to the extent necessary, one firm of local counsel, and (y) the First Lien Steering Committee, including all accrued and unpaid reasonable and documented out-of-pocket fees, costs, disbursements and expenses of King & Spalding, FTI, and, to the extent necessary, one firm of local counsel, which payments shall be made within ten (10) business days (which time period may be extended by the applicable professional) following receipt by the Debtors, the Committee, if any, and the U.S. Trustee (the "**Review Period**") of an invoice therefor (the "**Invoiced Fees**") and without the necessity of filing formal fee applications, including as to any amounts arising before or after the Petition Date. The invoices for such Invoiced Fees shall include the number of hours billed (except for financial advisors compensated on other than an hourly basis) and a summary description of services provided and the aggregate expenses incurred by the applicable professional firm; *provided*, *however*, that any such invoice (i) may be limited and/or redacted to protect privileged, confidential, or proprietary information and (ii) shall not be required to contain individual time detail (*provided* that such invoice shall contain (except for financial

advisors compensated on other than an hourly basis) summary data regarding hours worked by each timekeeper for the applicable professional and such timekeepers' hourly rates). The Debtors, the Committee (if appointed), and the U.S. Trustee may object to any portion of the Invoiced Fees (the "**Disputed Invoiced Fees**") within the Review Period by filing with the Court a motion or other pleading, on at least ten (10) business days' prior written notice (but no more than fifteen (15) business days' notice) of any hearing on such motion or other pleading, setting forth the specific objections to the Disputed Invoiced Fees in reasonable narrative detail and the basis for such objections; *provided* that payment of any undisputed portion of Invoiced Fees shall not be delayed based on any objections thereto.

17. Adequate Protection Reservation. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Secured Parties hereunder is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral during the Chapter 11 Cases or any Successor Cases. The receipt by the Prepetition Secured Parties of the adequate protection provided herein shall not be deemed an admission that the interests of the Prepetition Secured Parties are adequately protected in the event of a termination of the Restructuring Support Agreement. Further, this Final Order shall not prejudice or limit the rights of the Prepetition Secured Parties to seek additional relief with respect to the use of Cash Collateral or for additional adequate protection, subject, in all respects, to the terms and conditions of the Intercreditor Agreement.

Provisions Common to DIP Financing and Use of Cash Collateral

18. Amendment of the DIP Documents. The DIP Documents may from time to time be amended, modified or supplemented by the parties thereto without further order of the Court if: (a) the amendment, modification, or supplement (i) is in accordance with the DIP Documents, and (ii) does not prejudice the rights of the Debtors or their estates in any material respect; (b) a copy (which may be provided through electronic mail or facsimile) of the amendment, modification or supplement is provided to counsel to the Creditors' Committee (if appointed) or any other statutory committee appointed in the Chapter 11 Cases, and the U.S. Trustee (collectively, the "**Notice Parties**"); and (c) notice of the amendment, modification or supplement is filed with the Court; *provided*, that neither consent of the Notice Parties nor approval of the Court will be necessary to effectuate any such amendment, modification or supplement, and *provided further* that such amendment, modification or supplement shall be without prejudice to the right of any party in interest to be heard regarding such proposed amendment.

19. Budget Maintenance and Compliance. The use of borrowings under the DIP Facility shall be in accordance with the Budget (subject to the Permitted Variances, and except as otherwise provided under this Final Order and the DIP Documents with respect to Debtors' Professionals' fees) and the terms and conditions set forth in the DIP Documents and this Final Order; *provided*, that, in the case of fees, costs and expenses of the DIP Agent, the Prepetition First Lien Agent, the First Lien Steering Committee, and the Debtors' Professionals, the Debtors shall pay such fees, costs and expenses in accordance with the DIP Documents, the Interim Order, and this Final Order without being limited by the Budget. The Budget and any modification to, or amendment or update of, the Budget shall be subject to the approval of, and in form and substance acceptable to, the DIP Agent (acting at the direction of the Required DIP Lenders).

20. [Reserved.]

21. Modification of Automatic Stay. The automatic stay imposed under section 362(a)(2) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Final Order, including, without limitation, to: (a) permit the Debtors to grant the DIP Liens, Adequate Protection Liens, DIP Superpriority Claim, and Adequate Protection Superpriority Claims; (b) permit the Debtors to perform such acts as the DIP Agent, DIP Lenders, or the Prepetition Agents each may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Agent, DIP Lenders, and Prepetition Secured Parties under the DIP Documents, the DIP Facility and this Final Order; and (d) authorize the Debtors to make, and the DIP Agent, the DIP Lenders and the Prepetition Secured Parties to retain and apply, payments made in accordance with the terms of this Final Order, the DIP Documents and the Prepetition Documents, as applicable.

22. Perfection of DIP Liens and Adequate Protection Liens. This Final Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non- bankruptcy law) the DIP Liens and the Adequate Protection Liens, or to entitle the DIP Agent, the DIP Lenders, the DIP Obligations, the Prepetition Secured Parties, and the Prepetition Secured Obligations to the priorities granted herein. Notwithstanding the foregoing, the DIP Agent and the Prepetition Agents each are authorized, but not required, to file, subject to the terms and priorities of this Final Order

and the Intercreditor Agreement, as they in their respective sole discretion deem necessary or advisable, such financing statements, security agreements, mortgages, notices of liens, and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP Liens and the Adequate Protection Liens; *provided*, *however*, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens, or the Adequate Protection Liens. The Debtors, without further consent of any party, are authorized on a final basis to execute and deliver, upon request of the DIP Agent and/or the Prepetition Agents, all such financing statements, mortgages, notices, and other documents as the DIP Agent or the Prepetition Agents may reasonably request. The DIP Agent and the Prepetition Agents, each in its discretion, may file a photocopy of this Final Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or similar instrument. To the extent that any Prepetition First Lien Agent or Prepetition Second Lien Agent is the secured party under any security agreement, mortgage, leasehold mortgage, landlord waiver, credit card processor notices or agreements, bailee letters, custom broker agreements, financing statement, account control agreements, or any other Prepetition Documents or is listed as loss payee or additional insured under any of the Debtors' insurance policies, the DIP Agent shall also be deemed to be the secured party or mortgagee, as applicable, under such documents or to be the loss payee or additional insured, as applicable. The Prepetition First Lien Agent or the Prepetition Second Lien Agent, as applicable, shall serve as agent for the DIP Agent for purposes of perfecting the DIP Agent's liens on all DIP Collateral that, without giving effect to the Bankruptcy Code, the Interim Order, and this Final Order, is of a type such that perfection of a lien therein may be accomplished only by possession or control by a secured party.

23. Application of Proceeds of Collateral. As a condition to the entry of the DIP Documents, the extension of credit under the DIP Facility and the authorization to use Cash Collateral, the Debtors agreed that as of and commencing on the date of the Interim Order, except as otherwise expressly contemplated by the Restructuring Support Agreement, including pursuant to the Chapter 11 Plan, the Debtors shall apply all net proceeds of DIP Collateral in accordance with the DIP Credit Agreement until the DIP Obligations have been indefeasibly paid in full, in cash, and thereafter to the Prepetition Secured Obligations in accordance with the Prepetition Documents, including the Intercreditor Agreement. The reduction of any Prepetition Secured Obligations is subject to the preservation of rights provided in paragraph 42 herein.

24. Protections of Rights of DIP Agent, DIP Lenders and Prepetition Secured Parties.

(i) Unless the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition First Lien Agent (acting at the direction of the "Required Lenders" (as such term is defined in the Prepetition First Lien Agreement, the "**Required Lenders**")) shall have provided their prior written consent or all DIP Obligations have been paid in full in cash and all commitments thereunder are terminated, there shall not be entered in any of these Chapter 11 Cases or any Successor Cases any order (including any order confirming any plan of reorganization or liquidation) that authorizes any of the following: (A) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other Lien on all or any portion of the DIP Collateral or Prepetition Collateral and/or that is entitled to administrative priority status, in each case that is superior to or *pari passu* with the DIP Liens, the DIP Superpriority Claim, the Prepetition Liens, the Prepetition Adequate Protection Liens, and/or the Adequate Protection Superpriority Claims; (B) the use of Cash Collateral for any purpose other

than as permitted in the DIP Documents and this Final Order, or (C) any modification of any of the DIP Agent's, DIP Lenders', or the Prepetition Secured Parties' rights under this Final Order, the DIP Documents or the Prepetition Documents with respect any DIP Obligations or Prepetition Secured Obligations (except as expressly contemplated by the Restructuring Support Agreement, including pursuant to the Chapter 11 Plan); provided, that any modification to the rights of the Prepetition Second Lien Parties hereunder shall also require the consent of such Prepetition Second Lien Parties to the extent such consent is required under the Intercreditor Agreement. For the avoidance of doubt, if any order (including any order confirming any plan of reorganization or liquidation) authorizing the actions specified in clause (A) through (C) above is entered in these Chapter 11 Cases, or any Successor Cases, without the prior written consent of the Prepetition First Lien Agent (acting at the direction of the Required Lenders) at any time prior to the indefeasible repayment in full of the Prepetition Secured Obligations, Prepetition Secured Parties' rights to object to the Debtors' use of Cash Collateral and to assert a lack of adequate protection shall be fully preserved.

(ii) The Debtors (and/or their legal and financial advisors in the case of clauses (B) through (D) below) will, until the DIP Termination Date, (A) maintain books, records, and accounts to the extent and as required by the DIP Documents, (B) reasonably cooperate with, consult with, and provide to the DIP Agent and the DIP Lenders all such information and documents that any or all of the Debtors are obligated (including upon the request by the DIP Agent (acting at the direction of the Required DIP Lenders)) to provide under the DIP Documents or the provisions of this Final Order, (C) upon reasonable advance notice, permit consultants, advisors, and other representatives of each of the DIP Agent (acting at the direction of the Required DIP Lenders), the DIP Lenders, the Prepetition First Lien Agent (acting at the direction of the

Required Lenders), and the First Lien Steering Committee to visit and inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of their respective books and records, to tour the Debtors' business premises and other properties, and to discuss, and provide advice with respect to, their respective affairs, finances, properties, business operations, and accounts with their respective officers, employees, independent public accountants, and other professional advisors (other than legal counsel) as and to the extent required by the DIP Documents and/or the Prepetition First Lien Documents, (D) permit the DIP Agent (acting at the direction of the Required DIP Lenders), the DIP Lenders, the Prepetition First Lien Agent (acting at the direction of the Required Lenders), and the First Lien Steering Committee (without duplication), and their respective consultants, advisors and other representatives to consult with the Debtors' management and advisors on matters concerning the Debtors' businesses, financial condition, operations and assets, and (E) upon reasonable advance notice, permit the DIP Agent (acting at the direction of the Required DIP Lenders), the DIP Lenders, the Prepetition First Lien Agent (acting at the direction of the Required Lenders), and the First Lien Steering Committee (without duplication) to conduct, at their reasonable discretion and at the Debtors' cost and expense, field audits, collateral examinations, liquidation valuations and inventory appraisals at reasonable times in respect of any or all of the DIP Collateral and Prepetition Collateral.

(iii) The DIP Agent (acting at the direction of the Required DIP Lenders) shall have the right to credit bid up to the full amount of the outstanding DIP Obligations including any accrued interest and expenses, in any sale of DIP Collateral, as provided for in section 363(k) of the Bankruptcy Code, whether such sale is effectuated through Section 363 or 1129 of the Bankruptcy Code, by a Chapter 7 trustee under Section 725 of the Bankruptcy Code, or otherwise. The Prepetition First Lien Agent (acting at the direction of the Required Lenders) shall have the

right to credit bid up to the full amount of any remaining Prepetition First Lien Obligations in any sale of Prepetition Collateral, as provided for in section 363(k) of the Bankruptcy Code, whether such sale is effectuated through Section 363 or 1129 of the Bankruptcy Code, by a Chapter 7 trustee under Section 725 of the Bankruptcy Code, or otherwise, subject, in each case, to the rights and duties of the parties under the Intercreditor Agreement and to the satisfaction of the DIP Obligations, or as otherwise consented to by the DIP Agent (at the direction of the Required DIP Lenders).

25. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in these Chapter 11 Cases or any Successor Cases, shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c) or 364(d) in violation of the DIP Documents at any time prior to the indefeasible repayment in full of all DIP Obligations, and the termination of the DIP Agent's and DIP Lenders' obligation to extend credit under the DIP Facility, and such facilities are secured by any DIP Collateral, then all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Agent to be applied in accordance with this Final Order and the DIP Documents and the Intercreditor Agreement. For the avoidance of doubt, if the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in the Chapter 11 Cases, or any Successor Cases, shall obtain credit or incur debt pursuant to Bankruptcy Code 364(d) at any time prior to the indefeasible repayment in full of the Prepetition Secured Obligations, the Prepetition Secured Parties' rights to object to the Debtors' use of Cash Collateral and assert a lack of adequate protection shall be fully preserved.

26. Cash Collection. The Debtors shall maintain cash management consistent with prepetition practices and in accordance with the DIP Credit Agreement, including, without

limitation, Section 4.11 thereof. Except as otherwise permitted under the DIP Credit Agreement or otherwise agreed to in writing by the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition First Lien Agent (acting at the direction of Required Lenders), the Debtors shall maintain no accounts except those identified in the final order entered by the Court authorizing the Debtors' continued use of their existing cash management system (the "**Cash Management Order**"). The Debtors and the financial institutions where the Debtors maintain deposit accounts (as identified in any Cash Management Order), are authorized and directed to remit, without offset or deduction, funds in such deposit accounts upon receipt of any direction to that effect from the DIP Agent (acting at the direction of the Required DIP Lenders). On the Closing Date the Debtors shall enter into one or more deposit account control agreements with respect to all accounts identified in the Cash Management Order (other than Excluded Accounts) in favor of the DIP Agent for the benefit of the DIP Lenders.

27. Maintenance of DIP Collateral. Until (x) the indefeasible payment in full of all DIP Obligations and the termination of the DIP Agent and the DIP Lenders' obligation to extend credit under the DIP Facility, or (y) consummation of the Chapter 11 Plan as contemplated under the Restructuring Support Agreement, the Debtors shall: (a) insure the DIP Collateral as required under the DIP Facility or the Prepetition Documents, as applicable; and (b) maintain the cash management system in effect as of the Petition Date, as modified by any order that may be entered by the Court which has first been agreed to by the DIP Agent (acting at the direction of the Required DIP Lenders), including the Cash Management Order, or as otherwise required by the DIP Documents. For the avoidance of doubt, at any time prior to the indefeasible repayment in full of the Prepetition Secured Obligations, Prepetition Secured Parties' rights to object to the Debtors' use of Cash Collateral and to assert a lack of adequate protection as a result of the Debtors'

failure to (a) insure the DIP Collateral as required under the Prepetition Documents or (b) maintain the cash management system in effect as of the Petition Date shall be fully preserved.

28. Disposition of DIP Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral or Prepetition Collateral other than in the ordinary course of business without the prior written consent of the DIP Agent (acting at the direction of the Required Term DIP Lenders) and the Prepetition First Lien Agent (acting at the direction of the Required Lenders) (and no such consent shall be implied, from any other action, inaction or acquiescence by the DIP Agent, DIP Lenders, or Prepetition First Lien Parties), except as otherwise provided for in the DIP Documents, and subject to the Intercreditor Agreement.

29. Letters of Credit. All Prepetition LCs shall (a) continue in place, (b) be secured by the Prepetition Senior Liens and the Adequate Protection Liens, and (c) be cash collateralized with proceeds of the New Money DIP Facility in an amount equal to 105% of the face amount thereof, and such Cash Collateral shall not be subject to or subordinate to the Carve Out and shall be held in an account at the issuer of the Prepetition LCs, Capital One, National Association ("**CONA**"), for the ratable benefit of CONA, KeyBank National Association, and SunTrust Bank, as Revolving Lenders under (and as defined in) the Prepetition First Lien Agreement. Any release or return of such Cash Collateral to the Debtors' shall immediately be remitted to the DIP Agent for application to the DIP Obligations in accordance with the terms hereof.

30. DIP Termination Date. On the DIP Termination Date, except as provided in paragraph 33 and subject to the Carve Out, (a) all DIP Obligations shall be immediately due and payable, all commitments to extend credit under the applicable DIP Facility will terminate, other than as required in paragraph 39 with respect to the Carve Out, and (b) all authority to use Cash

Collateral shall cease. For the purposes of this Final Order, "DIP Termination Date" shall have the meaning provided in the DIP Credit Agreement.

31. Events of Default. The occurrence of any of the following events, unless waived by the DIP Agent (acting at the direction of the Required DIP Lenders) in writing and in accordance with the terms of the DIP Credit Agreement, shall constitute an event of default (collectively, the "**Events of Default**"): (a) the failure of the Debtors to perform, in any respect, any of the terms, provisions, conditions, covenants, or obligations under this Final Order (except where such failure would not adversely affect the DIP Agent and the DIP Lenders), or (b) the occurrence of any other "Event of Default" under, and as defined in, the DIP Credit Agreement.

32. Reserved.

33. Rights and Remedies Upon Event of Default. (a) The automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified to the extent necessary to permit the DIP Agent (acting at the direction of the Required DIP Lenders) to enforce all of their rights under this Final Order and the DIP Documents and, immediately upon the occurrence and during the continuation of an Event of Default and the giving by the DIP Agent (acting at the direction of the Required DIP Lenders) of five (5) business days' prior written notice (the "**Termination Notice**"; and such notice period, the "**Remedies Notice Period**," provided that such period may be extended by written agreement between the Debtors and the DIP Agent (acting at the direction of the Required DIP Lenders), in their respective discretion), delivered to counsel to the Debtors, with copies to the U.S. Trustee and counsel to the Committee (if appointed), subject in all respects to the terms of this Final Order, including clause (b) below, (1) the DIP Agent (acting at the direction of the Required DIP Lenders) may declare (any such declaration shall be referred to herein as a "**Termination Declaration**") (w) all DIP Obligations owing under the respective

DIP Documents to be immediately due and payable, (x) the termination, reduction or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the respective DIP Facility, and (y) termination of the DIP Credit Agreement and the DIP Documents as to any future liability or obligation of the DIP Agent and the DIP Lenders, but without affecting any of the DIP Liens or the DIP Obligations; and (2) the DIP Agent (acting at the direction of the Required DIP Lenders) may declare a termination, reduction or restriction on the ability of the Debtors to use Cash Collateral (the date which is the earliest to occur of any such date a Termination Declaration is delivered and the DIP Termination Date shall be referred to herein as the "**Termination Date**"). The Termination Declaration shall be given by electronic mail (or other electronic means) to counsel to the Debtors, counsel to the Prepetition Agents, counsel to a Creditors' Committee (if appointed), and the U.S. Trustee. Upon termination of the Remedies Notice Period, unless the Court orders otherwise during such period, and subject to clause (b) below: (A) the DIP Agent and the DIP Lenders shall be entitled to exercise their rights and remedies in accordance with the respective DIP Documents and this Final Order and shall be permitted to satisfy the relevant DIP Obligations, DIP Superpriority Claim and DIP Liens, subject to the Carve Out, (B) the applicable Prepetition Secured Parties shall be entitled to exercise their rights and remedies to satisfy the relevant Prepetition Secured Obligations, Adequate Prepetition Superpriority Claims and Prepetition Adequate Protection Liens, subject to and consistent with (i) the Carve Out, (ii) this Final Order, and (iii) the Intercreditor Agreement. During the Remedies Notice Period, the only basis on which the Debtors and/or a Creditors' Committee (if any) shall be entitled to seek an emergency hearing within the Remedies Notice Period with the Court shall be to contest whether an Event of Default has occurred and/or is continuing and, upon and after delivery of the Termination Notice, the Debtors and the DIP Agent (at the direction of the Required

DIP Lenders consent to such emergency hearing on an expedited basis to consider whether the automatic stay may be lifted so that the DIP Agent and DIP Lenders may exercise all of their respective rights and remedies in respect of the DIP Collateral in accordance with this Final Order and the DIP Documents, or to consider any other appropriate relief (including the Debtors' use of cash collateral on a nonconsensual basis); and the Debtors shall not be entitled to seek relief under Section 105 of the Bankruptcy Code or otherwise in contravention of any express rights or remedies granted to the DIP Agent, the DIP Lenders or the Prepetition Secured Parties under this Final Order or the DIP Documents. Unless the Court orders otherwise, the automatic stay, as to all of the DIP Agent, DIP Lenders, and Prepetition Secured Parties, shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period, subject to the Carve Out in all respects, including the requirements of paragraph 39 hereof, the DIP Agent, DIP Lenders, and the Prepetition Secured Parties shall be permitted to exercise all remedies set forth herein, in the DIP Documents, the Prepetition Documents, and as otherwise available at law without further order of or application or motion to the Court, consistent with the Intercreditor Agreement.

(b) Notwithstanding anything to the contrary in this Final Order, the Interim Order, or the DIP Documents, during the Remedies Notice Period, the Debtors shall be permitted to use proceeds of the DIP Facility and cash on hand, including Cash Collateral, to (1) fund the Carve Out Reserves and pay any amounts in accordance with the Carve Out, and (2) pay (x) accrued wages and any other critical employee-related expenses and (y) subject to the consent of the DIP Agent (at the direction of the Requisite DIP Lenders) any other critical business-related expenses, necessary to operate the Debtors' business or preserve the DIP Collateral as determined by the Debtors in their reasonable discretion and in good faith.

34. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Final Order. The DIP Agent, DIP Lenders, and the Prepetition Secured Parties have acted in good faith in connection with this Final Order and are entitled to rely upon the protections granted herein and by section 364(e) of the Bankruptcy Code. Based on the findings set forth in this Final Order and the record made during the Interim Hearing and the Final Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Final Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties are entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such modification, amendment or vacatur shall not affect the validity and enforceability of any advances previously made hereunder, or any lien, claim or priority authorized or created hereby.

35. DIP and Other Expenses. The Debtors are authorized, on a final basis, to pay all reasonable and documented prepetition and postpetition fees and expenses of the DIP Agent and DIP Lenders in connection with the DIP Facility, as provided in the DIP Documents, whether or not the transactions contemplated hereby are consummated, including attorneys' fees, financial advisory fees, fees and expenses of other consultants, and indemnification and reimbursement of fees and expenses, in each case to the extent provided for in this Final Order and the DIP Documents. Payment of all such fees and expenses shall not be subject to allowance by the Court. Professionals for the DIP Agent, the DIP Lenders, the Prepetition First Lien Agent and the First Lien Steering Committee shall not be required to comply with the U.S. Trustee fee guidelines, however any time that such professionals seek payment of fees and expenses from the Debtors, each professional shall provide copies of its fee and expense statements or invoices in summary form (which may be redacted or modified to the extent necessary to delete any information subject

to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine) to the U.S. Trustee and counsel for a Creditors' Committee (if appointed) contemporaneously with the delivery of such fee and expense statements to the Debtors. No attorney or advisor to the DIP Agent, DIP Lenders, the Prepetition First Lien Agent or the First Lien Steering Committee shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. Any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors to (x) the DIP Agent or DIP Lenders in connection with or with respect to the DIP Facility, or (y) the Prepetition First Lien Parties in connection with or with respect to the Prepetition First Lien Facility, are, in each case, hereby approved in full.

36. Indemnification. The Debtors shall indemnify and hold harmless the DIP Agent and the DIP Lenders in accordance with the terms and conditions of the DIP Credit Agreement.

37. Proofs of Claim. The DIP Agent, the DIP Lenders, and the Prepetition Secured Parties will not be required to file proofs of claim in any of the Chapter 11 Cases or Successor Cases for any claim allowed herein. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Chapter 11 Cases or any Successor Cases to the contrary, the Prepetition Agents, in each case, on behalf of themselves and the applicable Prepetition Secured Parties, are hereby authorized and entitled, in their respective sole discretion, but not required, to file (and amend and/or supplement, as they see fit) a single, consolidated, master proof of claim and/or aggregate proofs of claim on behalf of the applicable Prepetition Secured Parties, and may file such master claims in the lead Chapter 11 Case [Case No. 19-11401],

or any Successor Cases, for any claim allowed herein, and such claim shall be deemed filed in every case jointly administered with such case. Any proofs of claim filed by any Prepetition Agent or any Prepetition Lender shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by such Prepetition Agent or any Prepetition Lender. Any order entered by the Court in relation to the establishment of a bar date in any of the Chapter 11 Cases or Successor Cases shall not apply to any claim of the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties.

38. Reserved.

39. Carve Out.

(a) Carve Out. As used in this Final Order, the "**Carve Out**" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in clause (iii) below); (ii) all reasonable fees and expenses up to $25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in clause (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise (and, solely in the case of the Committee Professionals (as defined herein), if any, subject to the Budget, including any Permitted Variance thereto), all accrued and unpaid fees, disbursements, costs and expenses (the "**Allowed Professional Fees**") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "**Debtor Professionals**") and the Creditors' Committee (if any, subject to the Budget) pursuant to section 328 or 1103 of the Bankruptcy Code (the "**Committee Professionals**" and, together with the Debtor Professionals, the "**Professional Persons**") at any time before or on the first business day following delivery by the DIP Agent (at

the direction of the Required DIP Lenders) of a Carve Out Trigger Notice (as defined herein), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed $1,250,000 incurred after the first business day following delivery by the DIP Agent (at the direction of the Required DIP Lenders) of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "**Post-Carve Out Trigger Notice Cap**"). For purposes of the foregoing, "**Carve Out Trigger Notice**" shall mean a written notice delivered by email (or other electronic means) by the DIP Agent (at the direction of the Required DIP Lenders to the Debtors), their lead restructuring counsel, the U.S. Trustee, and counsel to the Creditors' Committee (if any), which notice may be delivered following the occurrence and during the continuation of an Event of Default under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) Carve Out Reserves. On the day on which a Carve Out Trigger Notice is given by the DIP Agent to the Debtors with a copy to counsel to the Creditors' Committee (if any) (the "**Carve Out Trigger Notice Date**"), the Carve Out Trigger Notice shall be deemed a draw request and notice of borrowing by the Debtors for New Money DIP Loans under the DIP Facility in an amount equal to the unpaid amounts of the Allowed Professional Fees (any such amounts actually advanced to the Debtors under the DIP Facility to fund the Pre-Carve Out Trigger Notice Reserve (as defined herein) shall constitute New Money DIP Loans), and shall also constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor (including any Cash Collateral) to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees (which cash amounts shall reduce, on a

dollar-for-dollar basis, the draw request for New Money DIP Loans with respect thereto). The Debtors shall deposit and hold such amounts in a segregated account in trust exclusively to pay such unpaid Allowed Professional Fees (the "**Pre-Carve Out Trigger Notice Reserve**") prior to any and all other claims. On the Carve Out Trigger Notice Date, the Carve Out Trigger Notice shall also be deemed a request by the Debtors for New Money DIP Loans in an amount equal to any unfunded portion of the Post-Carve Out Trigger Notice Cap (any such amounts actually advanced to the Debtors under the DIP Facility to fund the Post-Carve Out Trigger Notice Reserve (as defined herein) shall constitute New Money DIP Loans) and shall also constitute a demand to the Debtors to utilize all cash on hand as of such date and an available cash thereafter held by any Debtor (including Cash Collateral) to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap (which cash amounts shall reduce, on a dollar-for-dollar basis, the draw request for New Money DIP Loans with respect thereto). The Debtors shall deposit and hold such amounts in a segregated account in trust exclusively to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap (the "**Post-Carve Out Trigger Notice Reserve**" and, together with the Pre-Carve Out Trigger Notice Reserve, the "**Carve Out Reserves**") prior to any and all other claims. Promptly following the Carve Out Trigger Notice Date and the deemed requests for the making of DIP Loans as provided in this paragraph (b), notwithstanding anything in the DIP Credit Agreement to the contrary, including with respect to (1) the existence of a Default or Event of Default, (2) the failure of the Debtors to satisfy any or all of the conditions precedent for the making of any DIP Loans under the DIP Credit Agreement, (3) any termination of the Commitments (following an Event of Default), or (4) the occurrence of the DIP Termination Date, each DIP Lender with an outstanding Commitment shall make available to the DIP Agent such DIP Lender's pro rata share of such DIP Loans; *provided*, *however*, that nothing herein shall

require the DIP Lenders to make New Money DIP Loans in excess of $40 million in the aggregate. For the avoidance of doubt, the Carve Out Reserves shall constitute the primary source for payment of Allowed Professional Fees entitled to benefit from the Carve Out, and any lien priorities or superpriority claims granted pursuant to this Final Order to secure payment of the Carve Out shall be limited to any shortfall in funding as provided below.

(c) Application of Carve Out Reserves. (i) All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in subparagraphs (a)(i) through (a)(iii) of the definition of Carve Out set forth above (the "**Pre-Carve Out Amounts**"), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap until paid in full. If the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, subject to clause (iii), below, any remaining funds after payment of all Allowed Professional Fees constituting Pre-Carve Out Amounts (whenever allowed), plus payment of any shortfall under the Post-Carve Out Trigger Notice Reserve with respect to payment of Allowed Professional Fees constituting Post-Carve Out Amounts (whenever allowed), shall then be distributed *first* to the DIP Agent on account of the DIP Obligations until indefeasibly paid in full, in cash, and all Commitments have been terminated, and *thereafter* to the Prepetition Secured Parties in accordance with their rights and priorities as of the Petition Date in accordance with this Final Order and the Intercreditor Agreement.

(ii) All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the "**Post-Carve Out Amounts**"). If the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, subject to clause (iii), below, any remaining funds after payment of all Allowed Professional Fees constituting Post-Carve Out Amounts (whenever allowed), plus payment of any shortfall under the Pre-Carve Out Trigger Notice Reserve with respect to payment of Allowed

Professional Fees constituting Pre-Carve Out Amounts (whenever allowed), shall then be distributed *first* to the DIP Agent on account of the DIP Obligations until indefeasibly paid in full, in cash, and all Commitments have been terminated, and *thereafter* to the Prepetition Secured Parties in accordance with their rights and priorities as of the Petition Date in accordance with this Final Order and the Intercreditor Agreement.

(iii) Notwithstanding anything to the contrary in the DIP Documents or this Final Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in this paragraph (b), then, any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively, shall be used to fund the other Carve Out Reserve to the extent of any shortfall in funding prior to making any payments to the DIP Agent or the Prepetition Secured Parties, as applicable.

(iv) Notwithstanding anything to the contrary in the DIP Documents, the Interim Order, or this Final Order, following delivery of a Carve Out Trigger Notice, if the DIP Agent (at the direction of the Required DIP Lenders) sweeps or forecloses on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors, the DIP Agent shall promptly deposit any cash swept or foreclosed upon after delivery of the Carve Out Trigger Notice (including cash received as a result of the sale or other disposition of assets) into the Carve Out Reserves, until both Carve Out Reserves have been fully funded.

(v) Notwithstanding anything to the contrary in this Final Order or the Interim Order, (i) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out and (ii) in no way shall the Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of Allowed Professional Fees due and payable by the Debtors. For the

avoidance of doubt and notwithstanding anything to the contrary herein or in the DIP Documents, or in any Prepetition Secured Facilities, the Carve Out shall be senior to all liens and claims securing the DIP Facility, the Adequate Protection Liens, and the Adequate Protection Superpriority Claims, and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations or the Prepetition Secured Obligations.

(d) No Direct Obligation to Pay Allowed Professional Fees. The DIP Agent and the DIP Lenders shall not be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any Successor Cases under any chapter of the Bankruptcy Code. Nothing in this Final Order or otherwise shall be construed to obligate the DIP Agent or the DIP Lenders, in any way, to directly pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(e) Payment of Allowed Professional Fees Prior to the Carve Out Trigger Notice Date. Prior to the Carve Out Trigger Notice Date, the Debtors shall be permitted to pay compensation and reimbursement of all Allowed Professional Fees of Estate Professionals, as the same may be due and payable, and such payments shall not reduce the Carve Out. Upon the receipt of the Carve Out Trigger Notice, the right of the Debtors to pay professional fees outside the Carve Out shall terminate and the Debtors shall provide immediate notice to all Professional Persons informing them that such notice was delivered and further advising them that the Debtors' ability to pay such Professional Persons is subject to and limited by the Carve Out. Any payment or reimbursement made prior to the occurrence of the Carve Out Trigger Notice Date in respect of any Allowed Professional Fees shall not reduce the Carve Out.

(f) Payment of Carve Out on or After the Carve Out Trigger Notice Date. Any payment or reimbursement made on or after the occurrence of the Carve Out Trigger Notice Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis. Any funding of the Carve Out from draws or deemed draws under the DIP Facility shall be added to, and made a part of, the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under this Final Order, the DIP Documents, the Bankruptcy Code, and applicable law.

40. Limitations on Use of DIP Proceeds, Cash Collateral and Carve Out. The DIP Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral and the Carve Out may not be used in connection with: (a) preventing, hindering, or delaying any of the DIP Agent's, the DIP Lenders', or the Prepetition Secured Parties' enforcement or realization upon any of the DIP Collateral or Prepetition Collateral in accordance with the Final Order and the DIP Documents, subject to the Intercreditor Agreement; (b) using or seeking to use Cash Collateral or selling or otherwise disposing of DIP Collateral without the consent of the DIP Agent (acting at the direction of the Required DIP Lenders) other than as permitted in the DIP Documents and this Final Order; (c) outside the ordinary course of business, using or seeking to use any insurance proceeds constituting DIP Collateral without the consent of the DIP Agent (acting at the direction of the Required DIP Lenders); (d) incurring Indebtedness without the prior consent of the DIP Agent (acting at the direction of the Required DIP Lenders), except to the extent permitted under the DIP Credit Agreement; (e) seeking to amend or modify any of the rights granted to the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties under the Interim Order or under this Final Order, the DIP Documents, or the Prepetition Documents; (f) objecting to or challenging in any way the DIP Liens, DIP Obligations, Prepetition Liens, Prepetition Secured Obligations, DIP

Collateral (including Cash Collateral) or, as the case may be, Prepetition Collateral, or any other claims or liens, held by or on behalf of any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties, respectively; (g) asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, any actions under Chapter 5 of the Bankruptcy Code or applicable state law equivalents, any so-called "lender liability" claims and causes of action, or actions to recover or disgorge payments, against any of the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees, solely in their capacities as such; (h) litigating, objecting to, challenging, or contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Obligations, the DIP Liens, the Prepetition Liens, or the Prepetition Secured Obligations, or any rights or interests of any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties granted under the Interim Order, this Final Order, or the DIP Documents; or (i) seeking to subordinate, recharacterize, disallow or avoid the DIP Obligations or the Prepetition Secured Obligations; *provided*, *however*, that the Carve Out and such collateral proceeds and loans under the DIP Documents may be used for allowed fees and expenses, in an amount not to exceed $50,000 in the aggregate, incurred solely by a Creditors' Committee (if appointed), in investigating (but not prosecuting or challenging) the validity, enforceability, perfection, priority or extent of the Prepetition Liens or Prepetition Secured Obligations (the "**Investigation Budget**").

41. Payment of Compensation. Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses of any Professional Person or shall affect the right of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties to object to the allowance and payment of such fees and expenses. So long as an unwaived Event of Default has

not occurred, the Debtors shall be permitted to pay fees and expenses allowed and payable by final order (that has not been vacated or stayed, unless the stay has been vacated) under sections 328, 330, 331, and 363 of the Bankruptcy Code, as the same may be due and payable, in accordance with this Final Order and the DIP Documents.

42. Effect of Stipulations on Third Parties.

(i) *Generally*. The admissions, stipulations, agreements, releases, and waivers set forth in the Interim Order and/or this Final Order are and shall be binding on the Debtors, any subsequent trustee, responsible person, examiner with expanded powers, any other estate representative, and all creditors and parties in interest and all of their successors in interest and assigns, including, without limitation, any official committee that may be appointed in these cases, unless, and solely to the extent that, (i) a Creditors' Committee (if any) or any other party in interest with standing and requisite authority (other than the Debtors, as to which any Challenge (as defined herein) shall be waived) has timely filed the appropriate pleadings, and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy Rules challenging the Debtors' Stipulations (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "**Challenge**") before the earlier of: (A) the date on which objections to confirmation of the Chapter 11 Plan are due, and (B) no later than (1) for a Committee (to the extent one is appointed), sixty (60) calendar days from the date of the Committee's appointment, or (2) seventy-five (75) calendar days from the entry of the Interim DIP Order for any other party in interest with requisite standing (the "**Challenge Deadline**"), as such applicable date may be extended in writing from time to time by the Prepetition First Lien Agent (acting at the direction of the Required Lenders (with respect to the Prepetition First Lien Documents), or by

this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline, and (ii) this Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further review or appeal. For the avoidance of doubt, any trustee appointed or elected in these Chapter 11 Cases shall, until the expiration of the period provided herein for asserting Challenges, and thereafter for the duration of any adversary proceeding or contested matter timely commenced prior to the Challenge Deadline pursuant to this paragraph (whether commenced by such trustee or commenced by any other party in interest with the requisite standing on behalf of the Debtors' estates), be deemed to be a party other than the Debtors and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations and stipulations of the Debtors in the Interim Order or this Final Order.

(ii) *Binding Effect*. To the extent no Challenge is timely and properly commenced by the Challenge Deadline, then, without further notice, motion, or application to, order of, or hearing before, this Court and without the need or requirement to file any proof of claim, the Debtors' Stipulations shall, pursuant to this Final Order, become binding, conclusive, and final on any person, entity, or party in interest in the Chapter 11 Cases, and their successors and assigns, and in any Successor Case for all purposes and shall not be subject to challenge or objection by any party in interest, including, without limitation, a trustee, responsible individual, examiner with expanded powers, or other representative of the Debtors' estates. Notwithstanding anything to the contrary herein, if any such proceeding is properly and timely commenced, the Debtors' Stipulations shall nonetheless remain binding on all other parties in interest and preclusive as provided in subparagraph (a) above, except to the extent that any of such Debtors'

Stipulations is expressly the subject of a timely and properly filed Challenge, which Challenge is successful as set forth in a final judgment, and only as to plaintiffs or movants that have complied with the terms hereof. To the extent any such Challenge proceeding is timely and properly commenced, the Prepetition First Lien Agent, the First Lien Steering Committee, and any other Prepetition First Lien Lender to the extent approved by the Debtors and the Prepetition First Lien Agent (acting at the direction of the Required Lenders) in their respective reasonable discretion, shall be entitled to payment of the related costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred under the Prepetition First Lien Documents in defending themselves and the other Prepetition First Lien Lenders in any such proceeding as adequate protection.

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

44. Section 506(c) Claims. No costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases at any time shall be charged against the DIP Agent, DIP Lenders, or the Prepetition Secured Parties, or any of their respective claims, the DIP Collateral, or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent, as applicable, of the DIP Agent (acting at the direction of the Required DIP Lenders), the Prepetition First Lien Agent (acting at the direction of the Required Lenders) or the Prepetition Second Lien Agent (acting at the direction of the requisite lenders), as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agents or lenders.

45. No Marshaling/Applications of Proceeds. The DIP Agent, DIP Lenders, and Prepetition Secured Parties shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as the case may be, and proceeds shall be received and applied pursuant to this Final Order and the DIP Documents notwithstanding any other agreement or provision to the contrary.

46. Section 552(b). The Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Secured Parties, with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.

47. Access to DIP Collateral. Without limiting any other rights or remedies of the DIP Agent, exercisable on behalf of the DIP Lenders, contained in this Final Order, the DIP Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Documents, upon written notice to the landlord of any leased premises that an Event of Default or the Termination Date has occurred and is continuing, the DIP Agent (acting at the direction of the Required DIP Lenders) may, subject to the applicable notice provisions, if any, in this Final Order and any separate applicable agreement by and between such landlord and the DIP Agent, enter upon any leased premises of the Debtors or any other party for the purpose of exercising any remedy with respect to DIP Collateral located thereon and shall be entitled to all of the Debtors' rights and privileges as lessee under such lease without interference from the landlords thereunder, *provided* that the DIP Agent shall be obligated only to pay rent of the Debtors that first accrues after the written notice referenced above and that is payable during the period of such occupancy by the DIP Agent, calculated on a daily per diem basis. Nothing herein shall require the DIP Agent to assume any lease as a condition to the rights afforded in this paragraph. For the avoidance of

doubt, subject to (and without waiver of) the rights of the DIP Agent and/or DIP Lenders under applicable nonbankruptcy law, the DIP Agent and/or DIP Lenders can only enter upon a leased premises after an Event of Default or the Termination Date in accordance with (i) a separate agreement with the landlord at the applicable leased premises, (ii) consent of the landlord, or (iii) upon entry of an order of this Court obtained by motion of the DIP Agent and/or DIP Lenders, on such notice to the landlord as shall be required by this Court or applicable law.

48. Limits on Lender Liability. Nothing in the Interim Order, this Final Order, any of the DIP Documents or Prepetition Documents, or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders or the Prepetition Secured Parties of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the restructuring efforts and the administration of these Chapter 11 Cases. The DIP Agent, the DIP Lenders and the Prepetition Secured Parties shall not be deemed in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or state statute). Nothing in the Interim Order, this Final Order, the DIP Documents, or the Prepetition Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or any of the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors.

49. Insurance Proceeds and Policies. To the fullest extent provided by applicable law, the DIP Agent (on behalf of the DIP Lenders), and the Prepetition First Lien Agent

(on behalf of the Prepetition First Lien Lenders), shall be, and shall be deemed to be on a final basis, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained by the Debtors that constitutes DIP Collateral.

50. Joint and Several Liability. Nothing in the Interim Order or this Final Order shall be construed to constitute a substantive consolidation of any of the Debtors' estates, it being understood, however, that the Borrower Representative and the other Credit Parties shall be jointly and severally liable for the obligations hereunder and all DIP Obligations in accordance with the terms hereof and of the DIP Facility and the DIP Documents.

51. Rights Preserved. Except as provided in this Final Order and the DIP Documents, and subject to the obligations and agreements of such parties under the Restructuring Support Agreement, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the DIP Agent's, DIP Lenders', and Prepetition Secured Parties' right to seek any other or supplemental relief in respect of the Debtors; (b) any of the rights of any of the DIP Agent, DIP Lenders, or the Prepetition Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Chapter 11 Cases or Successor Cases, conversion of any of the Chapter 11 Cases to cases under Chapter 7, or appointment of a Chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a Chapter 11 plan or plans; or (c) subject to the Intercreditor Agreement, any other rights, claims or privileges (whether legal, equitable or otherwise) of any of the DIP Agent, DIP Lenders, or Prepetition Secured Parties. Notwithstanding anything herein to the contrary, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the Debtors', a

Creditors' Committee's (if appointed) or any party in interest's right to oppose any of the relief requested in accordance with the immediately preceding sentence except as expressly set forth in this Final Order.

52. No Waiver by Failure to Seek Relief. The failure of the DIP Agent, DIP Lenders, or Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Final Order, the DIP Documents, the Prepetition Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the DIP Agent, DIP Lenders, or Prepetition Secured Parties.

53. Binding Effect of Final Order. Immediately upon the entry of the Final Order by this Court, the terms and provisions of this Final Order shall become valid and binding upon and inure to the benefit of the Debtors, DIP Agent, DIP Lenders, Prepetition Secured Parties, all other creditors of any of the Debtors, any Creditors' Committee (or any other court appointed committee) appointed in the Chapter 11 Cases, and all other parties-in-interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Chapter 11 Cases, any Successor Cases, or upon dismissal of any Chapter 11 Case or Successor Case.

54. No Modification of Final Order. Until and unless the DIP Obligations and the Prepetition Secured Obligations have been indefeasibly paid in full in cash (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms), and all Prepetition LCs shall have been cancelled, backed, or cash collateralized in accordance with the terms of the Prepetition First Lien Agreement, and all commitments to extend credit under the DIP Facility have been terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior

written consent of the DIP Agent or the Prepetition First Lien Agent acting at the direction of the Required DIP Lenders or Required Lenders (or, in each case, the requisite lenders otherwise required to effectuate any such waiver, consent or amendment under Section 9.1 of the DIP Credit Agreement or Section 9.1 of the Prepetition First Lien Agreement, as applicable), respectively, (i) any modification, stay, vacatur or amendment to this Final Order; or (ii) a priority claim for any administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation any administrative expense of the kind specified in sections 503(b), 506(c), 507(a) or 507(b) of the Bankruptcy Code) in any of the Chapter 11 Cases or Successor Cases, equal or superior in priority to the DIP Superpriority Claim or Adequate Protection Superpriority Claims, other than the Carve Out; (b) without the prior written consent of the DIP Agent (acting at the direction of the Required DIP Lenders), any lien on any of the DIP Collateral with priority equal or superior to the DIP Liens, except as specifically provided in the DIP Documents; (c) without the prior written consent of the Prepetition First Lien Agent (acting at the direction of the Required Lenders), any lien on any of the Prepetition Collateral with priority equal or superior to the Prepetition Liens or Adequate Protection Liens (other than the DIP Liens); (d) to the extent such consent is required under the Intercreditor Agreement, without the prior written consent of the Prepetition Second Lien Agent (acting at the direction of the "Required Lenders" (as such term is defined in the Prepetition Second Lien Agreement)), any modification, stay, vacatur or amendment to this Final Order that materially and adversely affects the rights of the Prepetition Second Lien Parties hereunder, or (e) without the prior written consent of the DIP Agent or Prepetition First Lien Agent, as applicable, any modification, stay, vacatur or amendment to this Final Order affecting the rights, duties or obligations of the DIP Agent or Prepetition First Lien Agent, as applicable. The Debtors

irrevocably waive any right to seek any amendment, modification or extension of this Final Order without the prior written consent, as provided in the foregoing, of the DIP Agent or the Prepetition First Lien Agent acting at the direction of the Required DIP Lenders or Required Lenders, respectively, and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Agent or the Prepetition First Lien Agent.

55. Continuing Effect of the Intercreditor Agreement. The Intercreditor Agreement and any other intercreditor agreement or subordination agreement between and/or among any Prepetition Secured Party, and any other applicable intercreditor or subordination provisions contained in any of the Prepetition Documents (i) shall remain in full force and effect, (ii) shall continue to govern the relative priorities, rights and remedies of the Prepetition Secured Parties (including, by agreement of the Prepetition First Lien Agent and the Prepetition Second Lien Agent (in each case, at the direction of the requisite respective Prepetition Secured Parties) the relative priorities, rights and remedies of such parties with respect to the replacement liens and administrative expense claims and superpriority administrative expense claims granted, or amounts payable, by the Debtors under this Final Order or otherwise and the modification of the automatic stay), and (iii) shall not be deemed to be amended, altered or modified by the terms of this Final Order or the DIP Documents, unless expressly set forth herein. The Debtors, the DIP Agent, DIP Lenders, and Prepetition Secured Parties have each agreed that they shall be bound by, and in all respects the DIP Facility and DIP Collateral shall be governed by, and be subject to, all the terms, provisions and restrictions of the Intercreditor Agreement, except as may be expressly modified by this Final Order. The DIP Facility is a First Lien Loan Agreement as that term is used in the Intercreditor Agreement, and any repayment of the Prepetition First Lien Obligations

pursuant to this Final Order shall not be deemed to constitute a "discharge" of Prepetition First Lien Obligations for purposes of the Intercreditor Agreement.

56. Final Order Controls. In the event of any inconsistency between the terms and conditions of the DIP Documents, the Interim Order, and this Final Order, the provisions of this Final Order shall govern and control.

57. Discharge. Except as contemplated by the Restructuring Support Agreement and pursuant to the Chapter 11 Plan, the DIP Obligations and the obligations of the Debtors with respect to the adequate protection provided herein shall not be discharged by the entry of an order confirming any plan of reorganization in any of the Chapter 11 Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash, on or before the effective date of such confirmed plan of reorganization.

58. Survival. The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Chapter 11 Cases; (b) converting any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code; (c) dismissing any of the Chapter 11 Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Chapter 11 Cases or Successor Cases. The terms and provisions of this Final Order, including the claims, liens, security interests, and other protections granted to the DIP Agent, DIP Lenders, and Prepetition Secured Parties granted pursuant to the Interim Order, this Final Order and/or the DIP Documents, shall continue in the Chapter 11 Cases, in any Successor Cases, or following dismissal of the Chapter 11 Cases or any Successor Cases, and shall maintain their priority as provided by this Final Order until: (i) in respect of the DIP Facility, all the DIP Obligations, pursuant to the

DIP Documents and this Final Order, have been indefeasibly paid in full in cash; and (ii) in respect of the Prepetition First Lien Agreement, all of the Prepetition First Lien Obligations pursuant to the Prepetition First Lien Documents and this Final Order have been indefeasibly paid in full in cash. The terms and provisions concerning the indemnification of the DIP Agent and DIP Lenders shall continue in the Chapter 11 Cases, in any Successor Cases, following dismissal of the Chapter 11 Cases or any Successor Cases, following termination of the DIP Documents and/or the indefeasible repayment of the DIP Obligations.

59. Satisfaction of DIP Claims. In connection with any allocation of the Debtors' property for purposes of determining the value the Prepetition Secured Parties' interests in the Prepetition Collateral after the Debtors have accounted for, and satisfied the DIP Claims (in connection with confirmation of a plan of reorganization or otherwise), the DIP Claims shall be satisfied from all present and after acquired property of the Debtors (including the proceeds, product, offspring, profits or value thereof), wherever located, not subject to a lien or security interest on the Petition Date prior to the use of the Prepetition Collateral to satisfy such DIP Claims.

60. Texas Tax Liens. Notwithstanding any other provisions included in the Interim Order or this Final Order, or any agreements approved hereby, any statutory liens (collectively, the "**Tax Liens**"), including business personal property liens, of Bell County Tax Appraisal District, Texas, The City of Waco, Texas, and Runnels County, Texas (collectively, the "**Texas Taxing Jurisdictions**") shall not be primed by nor made subordinate to any liens granted to any party hereby to the extent such Tax Liens are, as of the Petition Date, valid, senior, perfected, unavoidable, and enforceable, and all parties' rights to object to the priority, validity, amount, and extent of the claims and liens asserted by the Texas Taxing Jurisdictions are fully preserved.

61. Nunc Pro Tunc Effect of this Final Order. This Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable nunc pro tunc to the Petition Date immediately upon execution thereof.

62. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

63. No later than two (2) business days after the date of this Final Order, the Debtors shall serve a copy of the Final Order on the Notice Parties and shall file a certificate of service no later than 24 hours after service.

64. Retention of Jurisdiction. The Court has, and will retain, jurisdiction to enforce the terms of any and all matters arising from or related to the DIP Facility and/or this Final Order.

Dated: July 25th, 2019
Wilmington, Delaware

JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
BLACKHAWK MINING LLC, *et al.*,[1]	)	Case No. 19-11595 (LSS)
Debtors.	)	(Joint Administration Requested)

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

The above-captioned debtors and debtors in possession (collectively, the "Debtors"),[2] respectfully submit this motion[3] for the relief set forth herein. In support of this motion, the Debtors respectfully submit the First Day Declaration and the declaration of Marc Puntus (the "Puntus Declaration"), filed contemporaneously herewith. In further support of this motion, the Debtors respectfully state the following:

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: Blackhawk Mining LLC (5600); Blackhawk Coal Sales, LLC (9456); Blackhawk Land and Resources, LLC (7839); Blackhawk River Logistics, LLC (3388); Blue Creek Mining, LLC (2427); Blue Diamond Mining, LLC (3488); Eagle Shield, LLC (6721); FCDC Coal, Inc. (6188); Guyandotte Mining, LLC (4882); Hampden Coal, LLC (8241); Kanawha Eagle Mining, LLC (0586); Logan & Kanawha, LLC (3178); Panther Creek Mining, LLC (0627); Pine Branch Land, LLC (9758); Pine Branch Mining, LLC (9681); Pine Branch Resources, LLC (9758); Redhawk Mining, LLC (0852); Rockwell Mining, LLC (3874); Spruce Pine Land Company (2254); Spurlock Mining, LLC (2899); Triad Mining, LLC (7713); and Triad Trucking, LLC (6112). The location of the Debtors' service address in these chapter 11 cases is 3228 Summit Square Place, Suite 180, Lexington, Kentucky 40509.

[2] Capitalized terms used but not defined in this section shall have the meanings ascribed to such terms further below, in the First Day Declaration (as defined herein), this motion, the DIP Loan Agreement, or in the Interim Order, as applicable.

[3] The facts and circumstances supporting this motion are set forth in the *Declaration of Jesse M. Parrish, Chief Financial Officer of Blackhawk Mining LLC, in Support of Chapter 11 Petitions and First Day Pleadings* (the "First Day Declaration"), filed contemporaneously with this motion and incorporated by reference herein.

Introduction

1. The Debtors are in urgent need of additional liquidity. As described in the First Day Declaration, the Debtors have only approximately $500,000 in cash on hand as of the Petition Date. First Day Decl. ¶ 48. To execute the value-maximizing restructuring contemplated by the Debtors' restructuring support agreement ("RSA") and to fund these chapter 11 cases, the Debtors require debtor-in-possession ("DIP") financing in the form of continued access to an asset-based lending ("ABL") facility and additional new money financing in the form of a term DIP facility. Moreover, access to the proposed DIP Facilities (as defined below) will send a clear signal to the market that the Debtors' operations can and will continue on a business-as-usual basis. Indeed, the coupling of the DIP Facilities with the Debtors' RSA sends a strong message that the Debtors will have the liquidity necessary to emerge a stronger, well-capitalized company.

2. Accordingly, the Debtors seek approval of the proposed $240 million DIP Facilities. The proposed DIP Facilities consist of (a) a $90.0 million DIP ABL facility, which will primarily refinance the Debtors' prepetition ABL credit facility and provide $5.0 million of incremental liquidity (the "DIP ABL Facility"), and (b) a $150.0 million Term DIP Loan, including $50.0 million in new-money financing and the roll up of $100.0 million of the Debtors' prepetition first lien term loans (the "Term DIP Facility," and together with the DIP ABL Facility, the "DIP Facilities").

3. The DIP Facilities will provide the Debtors with ample liquidity to fund the Debtors' business operations and administrative expenses during the contemplated time period of these chapter 11 cases. If approved, the Debtors will use the proceeds of the DIP Facilities to, among other things, honor employee wages and benefits, procure goods and services, fund general and corporate operating needs and the administration of these chapter 11 cases, in each case in

accordance with a budget agreed to by the Debtors and the DIP Lenders (the "Budget") attached hereto as **Schedule 1** to **Exhibit A**.

4. As set forth in the First Day Declaration, the Debtors and their estates would suffer immediate and irreparable harm if the Debtors were denied the financing needed to sustain on-going business operations during the critical first weeks of these cases. The DIP Facilities ensure that the Debtors (a) have sufficient funding to consummate the chapter 11 plan contemplated by the RSA, and (b) can continue to operate uninterrupted in these chapter 11 cases. Further, as set forth in the Puntus Declaration, the terms of the DIP Facilities are reasonable under the circumstances, and were the product of good faith, arm's length negotiations.

5. Thus, for the reasons set forth herein, in the Puntus Declaration, and in the First Day Declaration, the Debtors believe that approval of the DIP Facilities will maximize the value of the Debtors' estates for the benefit of all of the Debtors' stakeholders and is an exercise of the Debtors' sound business judgment. Accordingly, the Debtors respectfully request that the Court approve the relief requested herein, and enter an interim order substantially in the form attached hereto as **Exhibit A** (the "Interim Order") and a final order (the "Final Order," and together with the Interim Order, the "DIP Orders").

Jurisdiction and Venue

6. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent

of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

7. The bases for the relief requested herein are sections 105, 361, 362, 363, 364, 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014, and Rules 2002-1(b), 4001-2, and 9013-1(f) of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

Relief Requested

8. By this motion, the Debtors seek entry of the Interim Order and the Final Order:

a. authorizing the Debtors to obtain senior secured postpetition financing on a superpriority basis in the form of the DIP ABL Facility, consisting of an asset-based revolving credit facility in the aggregate principal amount of $90 million, pursuant to the terms and conditions of that certain *Senior Secured Super-Priority Debtor-in-Possession ABL Credit Agreement* (as the same may be amended, restated, supplemented, waived, or otherwise modified from time to time, the "DIP ABL Credit Agreement"), by and among Blackhawk Mining LLC, as borrower, the other borrowers party thereto and MidCap Funding IV Trust, as administrative agent (in such capacity, the "DIP ABL Agent") and Midcap Financial Trust, and the financial institutions or other entities from time to time parties thereto ("MidCap" or the "DIP ABL Lenders") substantially in the form attached hereto as **Exhibit B**;

b. authorizing the Debtors to obtain superpriority postpetition financing in the form of a multiple-draw term loan credit facility in an aggregate principal amount of up to $150 million in the form of the Term DIP Facility (all amounts extended under the Term DIP Facility, the "Term DIP Loans") consisting of: (i) new money term loans (the "New Money Term DIP Loans") including (A) an initial draw in the aggregate principal amount of $35 million available upon entry of the Interim Order and (B) a delayed draw of up to $15 million within one business day after entry of the Final Order; and (ii) the roll-up of $100 million of the prepetition first lien term loans (the "Term DIP Roll-Up Loans"), which shall be secured on a junior basis to the New Money Term DIP Loans pursuant to the terms and conditions of that certain *Secured Debtor-in-Possession Term Loan Credit Agreement* (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the "Term DIP Credit Agreement," and together with the DIP ABL Credit Agreement, the "DIP Credit

Agreements"), by and among Blackhawk Mining LLC, as borrower, Cantor Fitzgerald Securities as administrative agent and collateral agent (in such capacities, the "Term DIP Agent," and, together with the DIP ABL Agent, the "DIP Agents"), and certain of the Prepetition First Lien Term Loan Lenders (the "Term DIP Lenders" and together with the DIP ABL Lenders, the "DIP Lenders") substantially in the form of **Exhibit C**, attached hereto;

c. authorizing the Debtors to execute and deliver the DIP ABL Credit Agreement, and any other agreements, instruments, pledge agreements, guarantees, control agreements and other documents related thereto (as each of the foregoing may be amended, restated, supplemented, waived, and/or modified from time to time in accordance with the terms hereof and thereof, and collectively with the DIP ABL Credit Agreement, the "DIP ABL Financing Documents") and to perform their respective obligations thereunder and all such other and further acts as may be necessary, appropriate, or desirable in connection with the DIP ABL Financing Documents;

d. authorizing the Debtors to execute and deliver the Term DIP Credit Agreement and any other agreements, instruments, pledge agreements, guarantees, control agreements, and other documents related thereto (as amended, restated, supplemented, waived, and/or modified from time to time, collectively, with the Term DIP Credit Agreement, the "Term DIP Documents," and together the DIP ABL Financing Documents, the "DIP Documents") and to perform their respective obligations thereunder and all such other and further acts as may be necessary, appropriate, or desirable in connection with the Term DIP Documents;

e. granting the DIP ABL Facility and all obligations owing thereunder and under, or secured by, the DIP ABL Financing Documents to the DIP ABL Agent and the DIP ABL Lenders (collectively, and including all obligations as described in the DIP ABL Credit Agreement, the "DIP ABL Obligations") allowed superpriority administrative expense claim status in each of the Cases, or in any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Cases");

f. granting the Term DIP Facility and all obligations owing thereunder and under, or secured by the Term DIP Documents to the Term DIP Agent and Term DIP Lenders (collectively, and including all Obligations as described in the Term DIP Credit Agreement, the "Term DIP Obligations," and together with the DIP ABL Obligations, the "DIP Obligations") allowed superpriority administrative expense claims status in each of the Cases and any Successor Cases;

g. granting to each of (i) the DIP ABL Agent and the DIP ABL Lenders under the applicable DIP Documents, and (ii) the Term DIP Agent, for the benefit of itself and the Term DIP Lenders and each other Secured Party (as defined in the Term DIP Credit Agreement) under the applicable DIP Documents, automatically perfected security interests in and liens on all of the DIP Collateral (as defined herein), including all property constituting "cash collateral" as defined in section 363(a) of the Bankruptcy Code ("Cash Collateral"), which liens shall be subject to the priorities set forth in the Interim Order;

h. authorizing the Debtors to pay the principal, interest, fees, expenses, and other amounts payable under the DIP Documents as such become earned, due and payable, including letter of credit fees (including issuance and other related charges), continuing commitment fees, closing fees, audit fees, appraisal fees, valuation fees, liquidator fees, structuring fees, administrative agent's fees, and the reasonable fees and disbursements of the DIP Agents' attorneys, advisors, accountants, and other consultants, all to the extent provided in, and in accordance with, the DIP Documents;

i. authorizing the Debtors to use the Prepetition Collateral (as defined herein), including the Cash Collateral of the Prepetition ABL Lender under the Prepetition ABL Credit Agreement and the First Lien Lenders under the Prepetition First Lien Term Loan Agreement (each as defined in the Plan), and providing adequate protection to the DIP ABL Lender and Prepetition First Lien Lenders for any diminution in value of their respective interests in Prepetition Collateral, including the Cash Collateral, resulting from the imposition of the automatic stay, the Debtors' use, sale, or lease of Prepetition Collateral, including Cash Collateral and/or the priming of their respective interests in Prepetition Collateral, including the Cash Collateral (including by the Carve Out (as defined in the Interim Order));

j. vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and the Interim Order;

k. scheduling a final hearing (the "Final Hearing") within approximately 21 days of the Petition Date to consider the relief requested herein and approving the form of notice with respect to the Final Hearing; and

l. granting related relief.

Concise Statement Pursuant to Bankruptcy Rule 4001(b) and Local Rule 4001-2

I. Concise Statement regarding the DIP ABL Facility.

9. The below chart contains a summary of the material terms of the proposed DIP ABL Facility, together with references to the applicable sections of the relevant source documents, as required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B) and Local Rule 4001-2.[4]

Bankruptcy Code	Summary of Material Terms
Borrowers Bankruptcy Rule 4001(c)(1)(B)	Blackhawk Mining LLC Blue Diamond Mining, LLC Triad Mining, LLC Triad Trucking, LLC Hampden Coal, LLC Logan & Kanawha, LLC Spurlock Mining, LLC Redhawk Mining, LLC Spruce Pine Land Company Pine Branch Mining, LLC Pine Branch Resources, LLC Pine Branch Land, LLC FCDC Coal, Inc. Eagle Shield, LLC Blackhawk Coal Sales, LLC Blackhawk Land and Resources, LLC Blue Creek Mining, LLC Panther Creek Mining, LLC Rockwell Mining, LLC Guyandotte Mining, LLC Kanawha Eagle Mining, LLC Blackhawk River Logistics, LLC *See* DIP ABL Credit Agreement, Recitals and Annex B
Guarantors Bankruptcy Rule 4001(c)(1)(B)	Not applicable to the DIP ABL Facility.

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

Bankruptcy Code	Summary of Material Terms
DIP ABL Agent Bankruptcy Rule 4001(c)(1)(B)	MidCap Funding IV Trust *See* DIP ABL Credit Agreement, Recitals.
DIP ABL Lender Bankruptcy Rule 4001(c)(1)(B)	MidCap Financial Trust *See* DIP ABL Credit Agreement, Recitals.
Reporting Information Bankruptcy Rule 4001(c)(1)(B)	The DIP ABL Facility includes standard and customary conditions that require the Borrower to provide periodic reports to the DIP ABL Lenders and their respective professionals regarding the Approved Budget, the status of these chapter 11 cases, and certain other matters. The failure of the Borrowers to comply with such reporting obligations will cause an Event of Default that may permit the DIP Agents to exercise remedies against the Borrowers, including terminating the DIP Facilities. *See* DIP ABL Credit Agreement, Article 6
Term Bankruptcy Rule 4001(b)(l)(B)(iii), 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	The earliest to occur of (a) 90 days after the Petition Date, (b) the date on which any DIP ABL Termination Event occurs, (c) the date on which DIP ABL Agent accelerates the maturity of the Loans pursuant to Section 10.2 of the DIP ABL Credit Agreement, or (d) the termination date stated in any notice of termination of the DIP ABL Credit Agreement provided by Borrowers in accordance with Section 2.12(b) thereof. *See* DIP ABL Credit Agreement, Article 1.
Commitment Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	From the Closing Date through entry of the Final DIP Order, the sum of (1) the amount of the Prepetition ABL Obligations that have been paid pursuant to Section 2.11 of the DIP ABL Credit Agreement plus (2) $5,000,000. Upon entry of the Final DIP Order: $90,000,000. *See* DIP ABL Credit Agreement, Annex A
Conditions of Borrowing Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	*Conditions to Closing*. The DIP Documents include conditions to closing that are customary and appropriate for similar debtor-in-possession financings of this type. *See* DIP ABL Credit Agreement § 7.1 *Conditions to Each Loan*. The DIP Documents include conditions to all credit extensions that are customary and appropriate for similar debtor-in-possession financings of this type. *See* DIP ABL Credit Agreement § 7.2
Interest Rates Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	Loans shall bear interest at the sum of the LIBOR Rate *plus* 6.00%. Default Rate: 2.0% per annum in excess of the otherwise applicable rate. *See* DIP ABL Credit Agreement §§ 2.2; 10.6

Bankruptcy Code	Summary of Material Terms
Use of DIP Financing Facility and Cash Collateral **Bankruptcy Rule** 4001(b)(l)(B)(ii) Local Rule 4001-2(a)(ii)	Subject to the terms and conditions contained in the Interim Order and the DIP ABL Credit Agreement, the Debtors shall, in each case only in compliance with the Approved Budget and in compliance with the terms and conditions in the Interim Order and the DIP Documents, use the proceeds of the DIP ABL Facility: • for working capital; • other general corporate purposes and costs of administration of the Chapter 11 Cases claims or amounts approved by the Bankruptcy Court as set forth in the Approved Budget; • to pay adequate protection as set forth in the DIP Orders; • to pay interest, fees, and expenses in accordance with the Interim Order and DIP ABL Credit Agreement; and • to roll-up and refinance the Prepetition ABL Credit Facility. *See* DIP ABL Credit Agreement § 4.11
Adequate Protection Bankruptcy Rules 4001(b)(l)(B)(iv), 4001(c)(1)(B)(ii)	*ABL Indemnification Liens and Adequate Protection of Prepetition ABL Secured Parties*. The Prepetition ABL Secured Parties are entitled to (a) the ABL Indemnification Liens and (b) pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, adequate protection of their interests in all Prepetition Collateral, including Cash Collateral, in an amount equal to the aggregate diminution in the value of the Prepetition ABL Secured Parties' interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including, without limitation, any such diminution resulting from the depreciation, sale, lease or use by the DIP Loan Parties (or other decline in value) of the Prepetition Collateral, the priming of the Prepetition ABL Liens by the DIP Liens pursuant to the DIP Documents and the Interim Order and/or the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (the "Prepetition ABL Adequate Protection Claim"). In consideration of the foregoing, upon entry of the Interim Order, the Prepetition ABL Secured Parties will be granted the following, in each case, subject to the Carve-Out (collectively, the "Prepetition ABL Secured Parties Adequate Protection Obligations"): *ABL Indemnification Liens and Prepetition ABL Adequate Protection Liens*. Upon entry of the Interim Order, the Prepetition ABL Agent (for itself and for the benefit of the Prepetition ABL Lenders) will be granted (effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), (i) to secure payment of any and all Prepetition ABL Indemnification Claims and the ABL Indemnification Liens and (ii) to secure payment of any and all of the Prepetition ABL Adequate Protection Claims, a valid, perfected replacement security interest in and lien (the "Prepetition ABL Adequate Protection Liens") (subject to the limitations set forth above) upon the Collateral, except for the Specified Excluded Unencumbered Property, in accordance with the priorities shown in **Exhibit A** to the Interim Order and in each case subject to the Carve-Out. *Prepetition ABL Section 507(b) Claim*. Upon entry of the Interim Order, the Prepetition ABL Secured Parties will be granted against each of the DIP Loan Parties on a joint and several basis an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of the Prepetition ABL Adequate Protection Claim with, except as set forth in the Interim Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code. The Prepetition ABL 507(b) Claim shall be subject and subordinate only to the Carve-Out and the DIP Superpriority Claims granted in respect of the DIP Obligations and shall be *pari passu* with the Prepetition First Lien

Bankruptcy Code	Summary of Material Terms
	Term Loan 507(b) Claim and senior in all respects to the Prepetition Second Lien Term Loan 507(b) Claim. Except to the extent expressly set forth in the Interim Order or the DIP Credit Agreements, the Prepetition ABL Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Prepetition ABL 507(b) Claim unless and until the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and any claims having a priority superior to or *pari passu* with the DIP Superpriority Claims have indefeasibly been Paid in Full and the DIP Commitments have been terminated. For purposes of the Interim Order, the terms "Paid in Full," "Repaid in Full," "Repay in Full," and "Payment in Full" shall mean, with respect to any referenced DIP Obligations and/or Prepetition Debt, (i) the indefeasible payment in full in cash of such obligations, (ii) the termination or cash collateralization, in accordance with the DIP Documents and/or Prepetition Documents, as applicable, of all undrawn letters of credit and Banking Services Obligations outstanding thereunder, and (iii) the termination of all commitments under the DIP Documents and/or the Prepetition Debt Documents, as applicable. *Prepetition ABL Agent Fees and Expenses.* The Prepetition ABL Agent shall receive from the DIP Loan Parties, for the benefit of the Prepetition ABL Lenders, current cash payments of the reasonable and documented prepetition and postpetition fees and expenses with respect to Prepetition ABL Debt under the Prepetition ABL Financing Documents, including, but not limited to, the reasonable and documented fees and expenses of counsel for the Prepetition ABL Agent (including Hogan Lovells US LLP as primary counsel to the Prepetition ABL Agent, Morris, Nichols, Arsht & Tunnell LLP as bankruptcy and Delaware counsel to the Prepetition ABL Agent, one local counsel to the Prepetition ABL Agent in each other applicable jurisdiction) promptly upon receipt of invoices therefor. The DIP Loan Parties shall be authorized to pay the prepetition reasonable and documented fees and expenses described in the DIP ABL Credit Agreement immediately upon entry of the Interim Order. *Prepetition ABL Secured Parties' Cash Payments.* Subject to reallocation or recharacterization as payment of principal under sections 506(a) and (b) of the Bankruptcy Code, the Prepetition ABL Secured Parties shall receive current cash payments in the amount of interest on the outstanding principal at the non-default rate under the Prepetition ABL Credit Agreement prior to the ABL Discharge. *Information Rights.* Until the occurrence of the ABL Discharge, the Debtors shall promptly provide the Prepetition ABL Agent, on behalf of itself and the Prepetition ABL Lenders, with all required written financial reporting and other periodic reporting that is delivered by any of the DIP Loan Parties under the DIP Documents. In addition, the Debtors shall upon reasonable advance notice, permit the Prepetition ABL Agent, on behalf of itself and the Prepetition ABL Lenders, to conduct field audits, collateral examinations, liquidation valuations, and inventory appraisals at reasonable times in respect of any or all of the Collateral in accordance with the terms and conditions set forth in the Prepetition ABL Financing Documents. *See* Interim Order ¶ 20

Bankruptcy Code	Summary of Material Terms
Roll-Up Local Rule 4001-2(a)(i)(E)	Upon entry of the Interim Order, the DIP Loan Parties are authorized to (x) perform the transactions and undertakings contemplated thereby, which are thereby approved in all respects, (y) to remit the Debtors' prepetition and postpetition accounts receivable and all other proceeds of the DIP ABL Priority Collateral for application to the outstanding principal balance of the Prepetition ABL Debt (the "Interim ABL Roll-Up"), thereby creating a dollar-for-dollar increase in the DIP Revolving Loan Availability (as defined in the DIP ABL Credit Agreement), and, upon entry of the Final Order, to use the proceeds of the DIP ABL Financing to roll-up and refinance the remainder of the Prepetition ABL Debt, including interest and fees through the date of repayment (at the non-default contract rate) (the "Final ABL Roll-Up," and together with the Interim ABL Roll-Up, the "ABL Roll-Up", and the amounts so rolled-up and refinanced, the "ABL Roll-Up Loans"), which roll-up and refinancing shall be indefeasible upon the occurrence of the ABL Discharge and shall be entitled to all the priorities, privileges, rights, and other benefits afforded to the other DIP Obligations under the Interim Order, the Final Order and the DIP Loan Documents, and (z) use the proceeds of the DIP ABL Financing to pay any fees, charges or expenses incurred by the Prepetition ABL Agent prior to the Petition Date, but which are posted after the payoff of the Prepetition ABL Debt. *See* Interim Order ¶ 10
Budget Bankruptcy Rule 4001 (c)(1)(B) Local Rule 4001-2(a)(ii) **Variance Covenant** Bankruptcy Rule 4001(c)(l)(B) Local Rule 4001-2(a)(ii)	The initial Budget, which shall be delivered to DIP ABL Agent and DIP ABL Lenders on or prior to the Closing Date (as defined in the DIP ABL Credit Agreement), and each subsequent Budget shall be prepared in good faith based upon assumptions the Borrowers believed to be reasonable assumptions on the date of delivery of such Budget. *See* DIP ABL Credit Agreement § 3.25 Subsequent Budgets must be approved in accordance with section 6.1 of the DIP ABl Credit Agreement before becoming an "Approved Budget" as defined therein. *See* DIP ABl Credit Agreement § 6.1 Beginning with the delivery of the initial Budget Variance Report, as of the last day of each applicable Budget Test Period, (i) the negative variance (as compared to the Approved Budget) of the actual operating cash receipts of the Debtors shall not exceed 20% and (ii) the positive variance (as compared to the Approved Budget) of the aggregate operating disbursements (excluding professional fees and expenses) made by the Debtors shall not exceed 10%. *See* DIP ABL Credit Agreement § 6.3
Events of Default Bankruptcy Rule 4001(c)(l)(B) Local Rule 4001-2(a)(ii)	Usual and customary for financings of this type, including failure to obtain entry of the Interim Order. *See* DIP ABL Credit Agreement § 10.1
Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	The DIP Documents and Interim Order contain indemnification provisions ordinary and customary for DIP financings of this type by the Borrower and each Guarantor in favor of the DIP Agents, each of the DIP Lenders, and each of their respective affiliates and the respective officers, directors, employees, agents, advisors, attorneys and representatives of each of them subject to customary carve-outs. *See* DIP ABL Credit Agreement § 12.14.

Bankruptcy Code	Summary of Material Terms
Entities with Interests in Cash Collateral Bankruptcy Rule 4001(b)(l)(B)(i)	As of the Petition Date, the following secured parties have an interest in Cash Collateral (subject to the priorities set forth in the Prepetition Intercreditor Agreements, the DIP Intercreditor Agreement and the DIP Orders): • DIP ABL Secured Parties • Prepetition ABL Secured Parties • Term DIP Secured Parties • Prepetition First Lien Term Loan Secured Parties • Prepetition Second Lien Term Loan Secured Parties *See* DIP ABL Credit Agreement, Article 1; Term DIP Credit Agreement, Article 1; Interim Order ¶ 6(k).
Carve Out Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(F)	The Interim Order provides a "Carve Out" of certain statutory fees, allowed professional fees of the Debtors, and any official committee of unsecured creditors appointed under section 1102 of the Bankruptcy Code appointed in the chapter 11 cases pursuant to section 1103 of the Bankruptcy Code, including a Post-Carve Out Trigger Notice Cap, all as detailed in the Interim Order. *See* Interim Order ¶ 12
Fees Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	• Unused Line Fee. 0.5% per annum on the average daily balance of unused DIP Revolving Loan Commitments. Such fee is to be paid monthly in arrears on the first day of each month. • Exit Fee. The Borrowers agree to pay to DIP ABL Agent for the ratable account of DIP ABL Lenders, payable upon the occurrence of any DIP ABL Termination Date, a fully earned, non-refundable exit fee in an amount equal to 1.5% of the DIP Revolving Loan Commitment Amount *plus* all or any portion of the Revised Prepetition Deferred Revolving Loan Origination Fee (a fee in an amount equal to one and 1.5% of the "Revolving Loan Commitment" (as defined in the Prepetition ABL Credit Agreement) payable in lieu of the 3% Deferred Revolving Loan Origination Fee that would otherwise be thereunder) that was not paid upon termination or roll up, as the case may be, of the obligations under the Prepetition ABL Credit Agreement and the other Prepetition ABL Financing Documents. *See* DIP ABL Credit Agreement § 2.2
506(c) Waiver Bankruptcy Rule 4001(c)(l)(B)(x) Local Rule 4001-2(a)(i)(C) **Section 552(b)** Bankruptcy Rule 4001(c)(l)(B)	*Limitation on Charging Expenses Against Collateral*. Subject to entry of the Final Order, and subject to the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Collateral (including Cash Collateral) pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior express written consent of each of the DIP Agents, the Prepetition Agents (in the case of the Prepetition ABL Agent, prior to the ABL Discharge) and the Prepetition Lenders, as the case may be, that holds a lien on the relevant asset, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agents, the DIP Lenders, the Prepetition Agents or the Prepetition Lenders, and nothing contained in the Interim Order shall be deemed to be a consent by the DIP Agents, the DIP Lenders or the Prepetition

Bankruptcy Code	Summary of Material Terms
Local Rule 4001-2(a)(i)(H)	Secured Parties to any charge, lien, assessment or claim against the Collateral under section 506(c) of the Bankruptcy Code or otherwise. *Payments Free and Clear*. Any and all payments or proceeds remitted to the DIP Agents by, through or on behalf of the DIP Lenders pursuant to the provisions of the Interim Order, the Final Order, the DIP Documents or any subsequent order of the Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including without limitation, any such claim or charge arising out of or based on, directly or indirectly, sections 506(c) or 552(b) of the Bankruptcy Code (subject to entry of the Final Order approving the waiver of the Debtors' rights under sections 506(c) and 552(b) of the Bankruptcy Code), whether asserted or assessed by through or on behalf of the Debtors. *See* Interim Order ¶¶ 17 & 18
Liens on Avoidance Actions Local Rule 4001-2(a)(i)(D)	Avoidance Proceeds shall be subject to liens upon entry of the Final Order *See* Interim Order ¶ 14
Stipulations to Prepetition Liens and Claims Bankruptcy Rule 4001(c)(1)(B)(iii) Local Rule 4001-2(a)(i)(B)	After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties-in-interest, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree immediately upon entry of the Interim Order, to certain stipulations regarding the validity and extent of the Prepetition ABL Lenders and Prepetition Term Loan Lenders' claims and liens. *See* Interim Order ¶ 6
Liens and Priorities Bankruptcy Rule 4001(c)(1)(B)(i) Local Rule 4001-2(a)(i)(D) and (G), 4001-2(a)(4)	As security for the DIP ABL Obligations, effective and perfected upon the date of the Interim Order and without the necessity of the execution, recordation or filing by the DIP ABL Loan Parties of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, any notation of certificates of title for a titled good or the possession or control by the DIP ABL Agent of, or over, any DIP Collateral (including for the avoidance of doubt any DIP ABL Collateral as defined in the DIP ABL Credit Agreement), security interests and liens are granted by the Interim DIP Order (with priority as set forth on **Exhibit A** to the Interim Order) to the DIP ABL Agent for its own benefit and the benefit of the DIP ABL Secured Parties. *See* Interim Order ¶ 14
Milestones Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	The Borrowers shall comply with the following milestones in connection with the Chapter 11 Cases: • no later than one day after the Petition Date, filing of a motion, in form and substance satisfactory to the Required DIP ABL Lenders, seeking entry of the Interim DIP Order, including approval of the DIP ABL Credit Agreement and the other DIP ABL Financing Documents. • no later than five days after the Petition Date, entry of the Interim DIP Order and filing of an Acceptable Disclosure Statement and an Acceptable Chapter 11 Plan; • no later than forty-five days after the Petition Date, the Bankruptcy Court shall have entered the Final DIP Order;

Bankruptcy Code	Summary of Material Terms
	• no later than seventy-five days after the Petition Date, the Chapter 11 Confirmation Date shall have occurred; and • no later than fourteen days after the Chapter 11 Confirmation Date, the Chapter 11 Plan Effective Date shall have occurred. *See* DIP ABL Credit Agreement § 4.21
Challenge Period Bankruptcy Rule 4001(c)(l)(B) Local Rule 4001-2(a)(i)(B)	*Challenge Period.* (i) the earlier of (x) five (5) Business Days prior to the commencement of the hearing to confirm a chapter 11 plan, (y) 75 calendar days after entry of the Interim Order and (z) 60 calendar days after the appointment of any Committee or (ii) any such later date as has been agreed to, in writing, by the Prepetition Agents (with the consent of the DIP Lenders) as applicable. *See* Interim Order ¶ 30
Waiver/Modification of the Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv)	The automatic stay imposed under section 362(a) of the Bankruptcy Code is vacated and modified by the Interim Order to permit the DIP Loan Parties to grant the liens and security interests to the DIP Agents, the other DIP Secured Parties and the Prepetition Secured Parties, in any such case, contemplated by the Interim Order and the other DIP Documents, and such liens and security interests are hereby automatically granted, attached and perfected by the Interim Order. *See* Interim Order ¶ 14(d) The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified by the Interim Order to the extent necessary to permit the DIP Secured Parties in respect of any DIP Facility to enforce all of their rights under the applicable DIP Documents and take any or all of the following actions, at the same or different time, in each case without further order or application of the Court: (i) immediately upon the occurrence of an Event of Default, declare (A) the termination, reduction or restriction of any further DIP Commitment to the extent any such DIP Commitment remains, (B) all DIP Obligations to be immediately due, owing and payable, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the DIP Loan Parties; notwithstanding anything herein or in any DIP Document to the contrary, (ii) the termination of the applicable DIP Documents as to any future liability or obligation of the applicable DIP Agent and the applicable DIP Lenders (but, for the avoidance of doubt, without affecting any of the DIP Liens or the DIP Obligations), (iii) whether or not the maturity of any of the DIP Obligations shall have been accelerated, proceed to protect, enforce and exercise all rights and remedies of the DIP Secured Parties under the DIP Documents for such DIP Facility or applicable law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in any such DIP Document or any instrument pursuant to which such DIP Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of any of such DIP Secured Parties, and (iv) unless this Court orders otherwise during the Remedies Notice Period (as defined below) after a hearing, upon the occurrence of an Event of Default and the giving of five business days' prior written notice (which shall run concurrently with any notice required to be provided under the DIP Documents) (the "Remedies Notice Period") via email to counsel to the Debtors and the office of the United States Trustee

Bankruptcy Code	Summary of Material Terms
	for the District of Delaware (the "U.S. Trustee") to (A) withdraw consent to the DIP Loan Parties' continued use of Cash Collateral and (B) exercise all other rights and remedies provided for in the DIP Documents and under applicable law with respect to the DIP Collateral; provided, that no such notice shall be required for any exercise of rights or remedies (A) to block or limit withdrawals from any bank accounts that are a part of the Collateral (including, without limitation, by sending any control activation notices to depositary banks pursuant to any control agreement) or (B) in the event of DIP Obligations that have not been Paid in Full (other than contingent indemnification obligations as to which no claim has been asserted) on the applicable termination of the respective DIP Document. During the Remedies Notice Period, the DIP Loan Parties shall be permitted to use Cash Collateral solely to (A) pay payroll and other critical administrative expenses to keep the business of the DIP Loan Parties operating, strictly in accordance with the Approved Budget and (B) fund the Carve-Out. During the Remedies Notice Period, the Debtors, the Committee (if appointed) and/or any party in interest shall be entitled to seek an emergency hearing with the Court within the Remedies Notice Period for the purpose of contesting whether, in fact, an Event of Default has occurred and is continuing. Except as set forth in the Interim Order, the Debtors have irrevocably waived their right to seek relief under the Bankruptcy Code, including, without limitation, under section 105 of the Bankruptcy Code, to the extent that such relief would in any way impair or restrict the rights or remedies of the DIP Secured Parties set forth in the Interim Order or the DIP Documents. *See* Interim Order ¶¶ 15(f) & (g). The automatic stay is modified to the extent necessary to validate or perfect liens and security interests. *See* Interim Order ¶¶ 24(a) & (b) The automatic stay provisions pursuant to section 362 of the Bankruptcy Code are vacated and modified to the extent necessary so as to permit the Prepetition Agents and the Prepetition Secured Parties to exercise any of their rights with respect to Real Property Leases *See* Interim Order ¶ 27

II. Concise Statement regarding the Term DIP Facility.

10. The below chart contains a summary of the material terms of the proposed Term DIP Loan, together with references to the applicable sections of the relevant source documents, as required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B) and Local Rule 4001-2.[5]

Bankruptcy Code	Summary of Material Terms
Borrower Bankruptcy Rule 4001(c)(1)(B)	Blackhawk Mining LLC *See* Term DIP Credit Agreement, Intro
Guarantors Bankruptcy Rule 4001(c)(1)(B)	Blue Diamond Mining, LLC Triad Mining, LLC Triad Trucking, LLC Hampden Coal, LLC Logan & Kanawha, LLC Spurlock Mining, LLC Redhawk Mining, LLC Spruce Pine Land Company Pine Branch Mining, LLC Pine Branch Resources, LLC Pine Branch Land, LLC FCDC Coal, Inc. Eagle Shield, LLC Blackhawk Coal Sales, LLC Blackhawk Land and Resources, LLC Blue Creek Mining, LLC Panther Creek Mining, LLC Rockwell Mining, LLC Guyandotte Mining, LLC Kanawha Eagle Mining, LLC Blackhawk River Logistics, LLC *See* Term DIP Credit Agreement, § 1.01 (*def'n* of Guarantor)
Term DIP Lenders Bankruptcy Rule 4001(c)(1)(B)	Knighthead Capital Management, LLC, solely on behalf of certain funds and accounts it manages and/or advises that have signed the RSA Redwood Capital Management, LLC, solely on behalf of certain funds and accounts it manages and/or advises that have signed the RSA Solus Alternative Asset Management LP, solely on behalf of certain funds and accounts it manages and/or advises that have signed the RSA BIWA Fund Limited Blackstone Alternative Multi Strategy Sub Fund IV L.L.C . Canyon Capital Advisors LLC (on behalf of its participating funds and/or accounts) Canyon Partners Real Estate LLC (on behalf of its participating funds and/or accounts) Caspian Focused Opportunities Fund, LP.

[5] Capitalized terms used in the following summary chart but not otherwise defined have the meanings ascribed to them in the DIP Documents or the Interim Order, as applicable.

Bankruptcy Code	Summary of Material Terms
	Caspian HLSC1, LLC Caspian SC Holdings, L.P. Caspian Select Credit Master Fund, Ltd. Caspian Solitude Master Fund, L.P. CPPIB Canada Inc. CPPIB Credit Investments Inc. CQS ACS Fund CQS Aiguille Du Chardonnet MF S.C.A. SICAV-SIF CQS Credit Multi Asset Fund CQS Global Funds (Ireland) Limited CQS Global Funds ICAV Essex Equity High Income Joint Investment Vehicle, LLC Essex Equity Joint Investment Vehicle, LLC GraceChurch Loans Fund GraceChurch Opportunities Fund Limited J.H. Lane Partners Master Fund, LP Jefferies Leveraged Credit Products, LLC Mercer Multi-Asset Credit Fund, A Sub-Fund of Mercer QIF Fund PLC Richmond Hill Capital Partners, LP Richmond Hill Investment Co., LP Richmond Hill Investments, LLC Super Caspian Cayman Fund Limited York Global Finance BDH, LLC Other Prepetition First Lien Term Loan Lenders that, prior to the date of the entry of the Interim DIP Order, elect to provide New Money DIP Commitments up to its pro rata share of the Prepetition First Lien Term Loans by either (i) submitting a signature page to the RSA indicating its New Money DIP Commitment or (ii) entering into a written agreement evidencing its New Money DIP Commitment. *See* RSA, Exhibit B; Exhibit F
Term Bankruptcy Rule 4001(b)(l)(B)(iii), 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	Termination Date. The earliest of (a) the Maturity Date, (b) the effective date of the Acceptable Plan of Reorganization or any other Reorganization Plan, (c) the consummation of a sale or other disposition of all or substantially all assets of the Debtors under section 363 of the Bankruptcy Code, (d) the date of acceleration of the Loans and the termination of the Commitments with respect to the DIP Term Facility upon and during the continuance of an Event of Default and (e) the date that is 45 days after the entry of the Interim Order (or such later date as may be agreed by the Required Lenders), unless the Final Order has been entered by the Bankruptcy Court on or prior to such date. Maturity Date. To be the date that is six (6) months after the commencement of the Cases. Delayed Draw Commitment Termination Date. The earlier to occur of (a) the Delayed Draw Borrowing Date (within one Business Day of entry of the Final DIP Order) and (b) the Termination Date. *See* Term DIP Credit Agreement, § 1.01
Commitment Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	Commitment. The aggregate principal amount of $150 million. New Money Term DIP Loans. $50 million in the aggregate consisting of $35 million available upon the entry of the Interim Order and $15 million upon the entry of the Final Order. Term DIP Roll-Up Loans. $100 million of prepetition first lien term loans will roll up into the Term DIP Facility. *See* Term DIP Credit Agreement § 1.01, 2.01

Bankruptcy Code	Summary of Material Terms
Conditions of Borrowing Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	Conditions Precedent to the Closing Date and the making of the Initial Loans. The DIP Documents include conditions to closing that are customary and appropriate for similar debtor-in-possession financings of this type. Conditions Precedent to the Delayed Draw Borrowing. The DIP Documents include conditions to the delayed draw borrowings that are customary and appropriate for similar debtor-in-possession financings of this type. *See* Term DIP Credit Agreement § 5.01, 5.02
Interest Rates Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	The Term DIP Loans will bear interest of LIBOR + 9.50% per annum, with a LIBOR floor of 2.00%. Default Interest: 2.00% above then-applicable interest rate. *See* Term DIP Credit Agreement, § 1.01, 2.06(b)
Use of DIP Financing Facility and Cash Collateral Bankruptcy Rule 4001(b)(l)(B)(ii) Local Rule 4001-2(a)(ii)	Proceeds will be used by the Borrower (i) for the general corporate purposes of the Borrower and its Restricted Subsidiaries, (ii) to pay the fees, costs and expenses of the Administrative Agent and the Lenders, (iii) to pay fees and expenses of professionals associated with the Cases, (iv) to effect the Roll-Up and (v) to provide certain adequate protection payments permitted by the Orders. *See* Term DIP Credit Agreement § 6.08
Adequate Protection Bankruptcy Rules 4001(b)(l)(B)(iv), 4001(c)(1)(B)(ii)	*Prepetition Term Loan Adequate Protection Liens*. The Prepetition First Lien Term Loan Agent, on behalf of the Prepetition First Lien Term Loan Secured Parties, and the Prepetition Second Lien Term Loan Agent, on behalf of the Prepetition Second Lien Term Loan Secured Parties, will be granted (effective and perfected upon entry of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of the applicable Prepetition Term Loan Parties Adequate Protection Claim held by such Prepetition Term Loan Secured Parties, a replacement security interest in and lien (the "Prepetition Term Loan Adequate Protection Liens" and, together with the Prepetition ABL Adequate Protection Liens, the "Adequate Protection Liens") (subject to the limitations set forth in the Interim Order) upon the Collateral, except for the Specified Excluded Unencumbered Property, in accordance with the priorities shown in **Exhibit A** to the Interim Order and in each case subject to the Carve-Out. *Prepetition Term Loan Secured Parties Section 507(b) Claim*. The Prepetition First Lien Term Loan Secured Parties will be granted, subject to the Carve-Out, allowed superpriority claims as provided for in section 507(b) of the Bankruptcy Code, junior to the DIP Superpriority Claims (the "Prepetition First Lien Term Loan 507(b) Claim"). The Prepetition Second Lien Term Loan Secured Parties will be granted, subject to the Carve-Out, allowed superpriority claims as provided for in section 507(b) of the Bankruptcy Code, junior to the DIP Superpriority Claims, the Prepetition ABL 507(b) Claim and the Prepetition First Lien Term Loan 507(b) Claim (the "Prepetition Second Lien Term Loan 507(b) Claim" and, together with the Prepetition First Lien Term Loan 507(b) Claim, the "Prepetition Term Loan 507(b) Claims," and the Prepetition Term Loan 507(b) Claims together with the Prepetition ABL 507(b) Claim, the "507(b) Claims"). If the Prepetition First Lien Term Loan Secured Parties holding 66.67% of the Prepetition First Lien Term Loan Debt waive the requirement that their Prepetition Term Loan 507(b) Claims be paid in full in cash, then the Prepetition Second Lien Term Loan Secured Parties will also be

Bankruptcy Code	Summary of Material Terms
	deemed to waive such requirement. The Prepetition First Lien Term Loan 507(b) Claim shall be subject and subordinate to only the Carve-Out and the DIP Superpriority Claims granted in respect of the DIP Obligations and shall be *pari passu* with the Prepetition ABL 507(b) Claim. The Prepetition Second Lien Term Loan 507(b) Claim shall be subject and subordinate to only the Carve-Out, the Prepetition First Lien Term Loan 507(b) Claim, the Prepetition ABL 507(b) Claim and the DIP Superpriority Claims granted in respect of the DIP Obligations. Except to the extent expressly set forth in the Interim Order or the DIP Credit Agreements, the Prepetition Term Loan Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Prepetition Term Loan 507(b) Claim unless and until the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and any claims having a priority superior to or *pari passu* with the DIP Superpriority Claims have indefeasibly been Paid in Full and the DIP Commitments have been terminated. *Prepetition Term Loan Secured Parties' Fees and Expenses.* The Prepetition Term Loan Agents shall receive from the DIP Loan Parties, for the benefit of the Prepetition Term Loan Lenders, current cash payments of the reasonable and documented prepetition and postpetition fees and expenses of the Prepetition Term Loan Agents under the Prepetition Term Loan Documents, including, but not limited to, the reasonable and documented fees and disbursements of one counsel and one local counsel in each applicable jurisdiction for each of the Prepetition Term Loan Agents. The DIP Loan Parties shall also pay all reasonable and documented prepetition and postpetition fees and expenses of: (i) the Crossover Group, to the extent not already paid, including the reasonable and documented fees and expenses of Davis Polk & Wardwell LLP, as counsel to the Crossover Group, Simpson Thacher & Bartlett LLP, as counsel to Solus Alternative Asset Management LP (a member of the Crossover Group), one local counsel to the Crossover Group in each applicable jurisdiction, if retained; and (ii) the First Lien Group, to the extent not already paid, including the reasonable and documented fees and expenses of Shearman & Sterling LLP, as counsel, one local counsel to the First Lien Group in each applicable jurisdiction, if retained. *Information Rights.* The Debtors shall promptly provide the Prepetition Term Loan Agents, on behalf of itself and the Prepetition Term Loan Lenders, with all required written financial reporting and other periodic reporting that is delivered by any of the DIP Loan Parties under the DIP Documents, including the Approved Budget and any related variance reporting. In addition, the Debtors shall provide the Prepetition Term Loan Agents, on behalf of itself and the Prepetition Term Loan Lenders, with reasonable access to the Debtors' officers, management, books and records, premises and properties in accordance with the terms and conditions set forth in the Prepetition Term Loan Financing Documents. *See* Interim Order ¶ 21
Repayment Features Local Rule 4001-2(a)(i)(E)	*Voluntary Prepayments*. Borrowers may prepay the principal of any of the Loans at any time in whole or in party without premium or penalty. *Mandatory Repayments.* • Indebtedness. On each date upon which the Borrower or any of its Restricted Subsidiaries receives any Net Cash Proceeds from any issuance or incurrence by the Borrower or any of its Restricted Subsidiaries of Indebtedness (other than Indebtedness permitted to be incurred pursuant to Section 8.04 of the Term DIP Credit Agreement), an amount equal to 100% of the Net Cash Proceeds of the respective incurrence of Indebtedness shall be applied on such date as a mandatory

Bankruptcy Code	Summary of Material Terms
	repayment in accordance with the requirements of Section 4.02(g) of the Term DIP Credit Agreement. • Asset Sales. If the Borrower or any Restricted Subsidiary receives any Net Sale Proceeds from an Asset Sale (other than any Permitted Asset Sale), on the fifth Business Day following the receipt of such Net Sale Proceeds, the Borrower shall, subject to Section 4.02(h) of the Term DIP Credit Agreement, apply an amount equal to 100% of the Net Sale Proceeds therefrom on such date as a mandatory repayment in accordance with the requirements of Section 4.02(g) of the Term DIP Credit Agreement. • Recovery Events. If the Borrower or any Restricted Subsidiary receives any Net Cash Proceeds from a Recovery Event, on the fifth Business Day following the receipt of such Net Cash Proceeds, the Borrower shall, subject to Section 4.02(h) of the Term DIP Credit Agreement, apply an amount equal to 100% of the Net Cash Proceeds therefrom on such date as a mandatory repayment in accordance with the requirements of Section 4.02(g) of the Term DIP Credit Agreement. • Application. Subject to the Orders and the DIP ABL Intercreditor Agreement, each amount required to be applied pursuant to clauses (c), (d), or (e) of Section 4.02 of the Term DIP Credit Agreement in accordance with Section 4.02(g) of the Term DIP Credit Agreement shall be applied pro rata among (i) the New Money Loans then outstanding until such New Money Loans are repaid in full and (ii) thereafter, the Roll-Up Loans then outstanding until such Roll-Up Loans are repaid in full. In addition to any other mandatory repayments pursuant to Section 4.02 of the Term DIP Credit Agreement, for the avoidance of doubt all then outstanding Term Loans shall be repaid in full on the Termination Date. *See* Term DIP Credit Agreement § 4.01-4.02 Roll-Up. On the date of each borrowing of New Money Term DIP Loans under the Term DIP Credit Agreement, the Prepetition First Lien Term Loan Debt held by the Term DIP Lenders (or if a Term DIP Lender is a designee of a Prepetition First Lien Term Loan Lender, the Prepetition First Lien Term Loan Debt held by such designating Prepetition First Lien Term Loan Lender) shall immediately, automatically and irrevocably be deemed to have been converted into Term DIP Roll-Up Loans in an amount equal to $2.00 for each $1.00 of the New Money Term DIP Loans funded on such date (the "Term Loan Roll-Up"), which Term DIP Roll-Up Loans shall be entitled to all the priorities, privileges, rights, and other benefits afforded to the other DIP Obligations under the Interim Order, the Final Order and the DIP Loan Documents, in each case subject to the terms and conditions set forth in the Interim Order, the Final Order, the DIP Documents and the reservation of rights of parties in interest in paragraph 30 of the Interim Order. *See* Interim Order ¶ 11
Budget Bankruptcy Rule 4001 (c)(1)(B) Local Rule 4001-2(a)(ii)	*Approved Budget*. The Approved Budget is attached as **Schedule 1** to **Exhibit A**. *Variance Covenant*. Beginning with the delivery of the initial Budget Variance Report, as of the last day of each applicable Test Period, (a) the negative variance (as compared to the Approved Budget) of the actual operating cash receipts of the Debtors shall not exceed 20% and (b) the positive variance (as compared to the Approved Budget) of the aggregate

Bankruptcy Code	Summary of Material Terms
Variance Covenant Bankruptcy Rule 4001(c)(l)(B) Local Rule 4001-2(a)(ii)	operating disbursements (excluding professional fees and expenses) made by the Debtors shall not exceed 10%. *See* Term DIP Credit Agreement § 8.16
Events of Default Bankruptcy Rule 4001(c)(l)(B) Local Rule 4001-2(a)(ii)	*Events of Default*. Usual and customary for financings of this type, including failure to obtain entry of the Interim Order. *See* Term DIP Credit Agreement, Article IX
Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	*Indemnification*. The DIP Documents and Interim Order contain indemnification provisions ordinary and customary for DIP financings of this type by the Borrower and each Guarantor in favor of the DIP Agents, each of the DIP Lenders, and each of their respective affiliates and the respective officers, directors, employees, agents, advisors, attorneys and representatives of each of them subject to customary carve-outs. *See* Term DIP Credit Agreement § 11.01
Entities with Interests in Cash Collateral Bankruptcy Rule 4001(b)(l)(B)(i)	The following secured parties have an interest in Cash Collateral: • DIP ABL Secured Parties • Prepetition ABL Secured Parties • Term DIP Secured Parties • Prepetition First Lien Term Loan Secured Parties • Prepetition Second Lien Term Loan Secured Parties *See* Term DIP Credit Agreement, Article 1; DIP ABL Credit Agreement, Article 1; Interim Order ¶ 6(k)
Carve Out Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(f)	The Interim Order provides a "Carve Out" of certain statutory fees, allowed professional fees of the Debtors, and say official committee of unsecured creditors appointed under section 1102 of the Bankruptcy Code appointed in the chapter 11 cases pursuant to section 1103 of the Bankruptcy Code, including a Post-Carve Out Trigger Notice Cap, all as detailed in the Interim Order *See* Interim Order ¶ 12
Fees Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	*Fees*. The Borrower agrees to pay to the Administrative Agent and any Lender such fees as may be agreed to in writing from time to time by the Borrower and the Administrative Agent and any Lender, including the following fees: • The Borrower agrees to pay to the Administrative Agent for the account of each Lender according to its pro rata share of the Delayed Draw Commitments a nonrefundable commitment fee (the "Unused Commitment Fee") for each day from and including the Closing Date until but excluding the Delayed Draw Commitment Termination Date equal to the Unused Commitment Fee Rate (computed on the basis

Bankruptcy Code	Summary of Material Terms
	of a year of 365 or 366 days, as the case may be, and actual days elapsed) multiplied by the average daily amount of unused Delayed Draw Commitments. All Unused Commitment Fees shall be payable in arrears for each month (x) on the last Business Day of such month ending after the Closing Date and (y) on the Delayed Draw Borrowing Date; • The Borrower agrees to pay to the Administrative Agent for the account of each Lender, an upfront fee in an amount equal to 1.00% of (i) the principal amount of each such Lender's aggregate Initial Commitment on the Closing Date, payable on the Closing Date upon the funding of the Initial Loan and (ii) the principal amount of each such Lender's aggregate Delayed Draw Commitment on the Delayed Draw Borrowing Date, payable on the Delayed Draw Borrowing Date upon the funding of the Delayed Draw Loans, in each case, which may, at the option of the Required Lenders, be in the form of original issue discount; • The Borrower agrees to pay to the Lenders an exit fee in an aggregate amount equal to 1.00% of the aggregate principal amount of the New Money Loans, which shall be payable in cash on the Plan Effective Date or, in the case of New Money Loans prepaid in whole or in part prior to the Plan Effective Date, if any, shall be payable in cash on the date of such prepayment; and • The Borrower shall pay to the Agents such other fees as shall have been separately agreed upon in writing for its own account fees in the amounts and at the times so specified, including the fees specified in the Agent Fee Letter, attached to this Motion as **Exhibit D**. *See* Term DIP Credit Agreement § 3.01
506(c) Waiver Bankruptcy Rule 4001(c)(l)(B)(x) Local Rule 4001-2(a)(i)(C) **Section 552(b)** Bankruptcy Rule 4001(c)(l)(B) Local Rule 4001-2(a)(i)(h)	*Limitation on Charging Expenses Against Collateral*. Subject to entry of the Final Order, and subject to the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Collateral (including Cash Collateral) pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior express written consent of each of the DIP Agents, the Prepetition Agents (in the case of the Prepetition ABL Agent, prior to the ABL Discharge) and the Prepetition Lenders, as the case may be, that holds a lien on the relevant asset, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agents, the DIP Lenders, the Prepetition Agents or the Prepetition Lenders, and nothing contained in this Interim Order shall be deemed to be a consent by the DIP Agents, the DIP Lenders or the Prepetition Secured Parties to any charge, lien, assessment or claim against the Collateral under section 506(c) of the Bankruptcy Code or otherwise. *Payments Free and Clear*. Any and all payments or proceeds remitted to the DIP Agents by, through or on behalf of the DIP Lenders pursuant to the provisions of the Interim Order, the Final Order, the DIP Documents or any subsequent order of the Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including without limitation, any such claim or charge arising out of or based on, directly or indirectly, sections 506(c) or 552(b) of the Bankruptcy Code (subject to entry of the Final Order approving the waiver of the Debtors' rights under sections 506(c) and 552(b) of the Bankruptcy Code), whether asserted or assessed by through or on behalf of the Debtors.

Bankruptcy Code	Summary of Material Terms
	See Interim Order ¶ 17-18
Liens on Avoidance Actions Local Rule 4001-2(a)(i)(D)	*Liens on Unencumbered Property*. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected (A) first priority senior security interest in and lien upon all tangible and intangible pre- and postpetition property (including mineral rights) of the Term DIP Loan Parties, whether existing on the Petition Date or thereafter acquired, of the same nature, scope and type as the Prepetition Term Loan Priority Collateral, and the proceeds, products, rents and profits thereof, which, subject to and upon entry of the Final Order, shall include any Avoidance Proceeds related to the forgoing ("DIP Term Loan Proirity Collateral," which for the avoidance of doubt shall include Prepetition Term Loan Priority Collateral) and (B) junior security interest in and lien upon all tangible and intangible pre- and postpetition property of the Term DIP Loan Parties, whether existing on the Petition Date or thereafter acquired, of the same nature, scope and type as the Prepetition ABL Priority Collateral, and the proceeds, products, rents and profits thereof, in each case that, on or as of the Petition Date are not subject to either (x) a valid, perfected and non-avoidable lien, or (y) a valid and non-avoidable lien in existence as of the Petition Date that is perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, and in each case, other than the Avoidance Actions (but including Avoidance Proceeds subject to entry of the Final Order), but in each case subject to the Carve-Out, provided that, with respect to the Term DIP Roll-Up Loans, the security interests and liens granted pursuant to this paragraph shall not include liens on the Specified Excluded Unencumbered Property; *See* Interim Order ¶ 14
Stipulations to Prepetition Liens and Claims Bankruptcy Rule 4001(c)(1)(B)(iii) Local Rule 4001-2(a)(i)(B)	After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties-in-interest, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree immediately upon entry of the Interim Order, to certain stipulations regarding the validity and extent of the Prepetition ABL Lenders and Prepetition Term Loan Lenders' claims and liens. *See* Interim Order ¶ 6
Liens and Priorities Bankruptcy Rule 4001(c)(1)(B)(i) Local Rule 4001-2(a)(i)(D) and (G), 4001-2(a)(4)	As security for the Term DIP Obligations, effective and perfected upon the date of the Interim Order and without the necessity of the execution, recordation or filing by the Term DIP Loan Parties of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Term DIP Agent of, or over, any DIP Collateral, security interests and liens are granted by the Interim Order (with priority as set forth on **Exhibit A** to the Interim Order) to the Term DIP Agent for its own benefit and the benefit of the Term DIP Lenders. *See* Interim Order ¶ 14
Milestones Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	The Credit Parties shall ensure the satisfaction of the following milestones, unless waived or extended with the consent of the Required Lenders or the Administrative Agent (with the consent of the Required Lenders): • No later than one day after the Petition Date, filing of a motion, in form and substance satisfactory to the Required Lenders, seeking approval of the DIP Term Facility; • No later than five days after the Petition Date, entry of the Interim Order and filing of an Acceptable Disclosure Statement and an Acceptable Plan of Reorganization;

Bankruptcy Code	Summary of Material Terms
	• No later than 45 days after the Petition Date, entry of the Final Order; • No later than 75 days after the Petition Date, approval of an Acceptable Disclosure Statement and approval of the Acceptable Plan of Reorganization (the "Confirmation Date"); and • No later than 14 days after the Confirmation Date, effectiveness of the Acceptable Plan of Reorganization. The Milestones may be amended, modified or extended, in each case, only by (i) order of the Bankruptcy Court or (ii) the prior written consent of the Required Lenders. *See* Term DIP Credit Agreement § 7.16
Challenge Period Bankruptcy Rule 4001(c)(l)(B) Local Rule 4001-2(a)(i)(B)	*Challenge Period*. (i) the earlier of (x) five (5) Business Days prior to the commencement of the hearing to confirm a chapter 11 plan, (y) 75 calendar days after entry of the Interim Order and (z) 60 calendar days after the appointment of any Committee or (ii) any such later date as has been agreed to, in writing, by the Prepetition Agents (with the consent of the DIP Lenders) as applicable. *See* Interim Order ¶ 30
Waiver/Modification of the Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv)	The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified by the Interim Order to the extent necessary to permit the DIP Secured Parties in respect of any DIP Facility to enforce all of their rights under the applicable DIP Documents and take any or all of the following actions, at the same or different time, in each case without further order or application of the Court: (i) immediately upon the occurrence of an Event of Default, declare (A) the termination, reduction or restriction of any further DIP Commitment to the extent any such DIP Commitment remains, (B) all DIP Obligations to be immediately due, owing and payable, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the DIP Loan Parties; notwithstanding anything herein or in any DIP Document to the contrary, (ii) the termination of the applicable DIP Documents as to any future liability or obligation of the applicable DIP Agent and the applicable DIP Lenders (but, for the avoidance of doubt, without affecting any of the DIP Liens or the DIP Obligations), (iii) whether or not the maturity of any of the DIP Obligations shall have been accelerated, proceed to protect, enforce and exercise all rights and remedies of the DIP Secured Parties under the DIP Documents for such DIP Facility or applicable law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in any such DIP Document or any instrument pursuant to which such DIP Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of any of such DIP Secured Parties, and (iv) unless this Court orders otherwise during the Remedies Notice Period (as defined below) after a hearing, upon the occurrence of an Event of Default and the giving of five business days' prior written notice (which shall run concurrently with any notice required to be provided under the DIP Documents) (the "Remedies Notice Period") via email to counsel to the Debtors and the office of the United States Trustee for the District of Delaware (the "U.S. Trustee") to (A) withdraw consent to the DIP Loan Parties' continued use of Cash Collateral and (B) exercise all other rights and remedies provided for in the DIP Documents and under applicable law with respect to the DIP Collateral; *provided*, that no such notice shall be required for any exercise of rights or remedies (A) to block or limit

Bankruptcy Code	Summary of Material Terms
	withdrawals from any bank accounts that are a part of the Collateral (including, without limitation, by sending any control activation notices to depositary banks pursuant to any control agreement) or (B) in the event of DIP Obligations that have not been Paid in Full (other than contingent indemnification obligations as to which no claim has been asserted) on the applicable termination of the respective DIP Document. *See* Interim Order ¶ 15(f)

The Debtors' Prepetition Capital Structure

11. The following table summarizes the Debtors prepetition capital structure:

Funded Debt	Maturity[6]	Outstanding Principal Amount as of July 19, 2019
Secured Debt		
Prepetition ABL Facility	September 6, 2022	$82 million
First Lien Term Loan Facility	February 17, 2022	$639 million
Second Lien Term Loan Facility	April 27, 2021	$318 million
Equipment Leases	Varies	$28 million
Total Secured Debt		**$1.07 billion**
Unsecured Debt		
Patriot Unsecured Note	October 28, 2021	$16 million
Total Funded Debt		**$1.09 billion**

I. Secured Debt.

A. ABL Credit Facility.

12. On September 6, 2017, the Debtors entered into the Prepetition ABL Credit Agreement (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "ABL Credit Agreement"), which governs an asset-based revolving credit facility among the Debtors, as borrowers and/or guarantors, MidCap as agent and lender, and additional lenders from time to time party thereto. The Prepetition ABL Credit Facility matures on September 6, 2022. Availability of funds under the Prepetition ABL Facility is capped by the

[6] Subject to certain springing maturities, as provided for in the applicable credit agreements.

lesser of (a) a borrowing base calculated as the sum of certain percentages of value of the Debtors' eligible inventory and eligible accounts receivable and (b) a commitment equal to $85 million.[7] The obligations arising under the Prepetition ABL Credit Agreement are secured by (a) senior, first priority security interests in, and liens upon, substantially all of the Debtors' receivables, inventory, as-extracted collateral, deposit securities, and commodities accounts, items related to each of the foregoing, and the proceeds thereof (collectively, the "ABL Priority Collateral"); and (b) senior, second priority security interests in, and liens upon, the First Lien Priority Collateral (as defined below) (collectively, the "ABL Collateral"). As of the Petition Date, there is approximately $82 million in aggregate principal amount outstanding under the Prepetition ABL Credit Facility.

B. Prepetition First Lien Term Loan Credit Facility.

13. On February 17, 2017, Blackhawk entered into the Prepetition First Lien Term Loan Credit Agreement, (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "First Lien Term Loan Agreement"), which governs the $660 million prepetition first lien term loan credit facility (the lenders thereunder, the "First Lien Lenders"). Blackhawk's obligations under the Prepetition First Lien Term Loan Credit Agreement are guaranteed by the other Debtors. On December 15, 2017, Blackhawk entered into an amendment to the Prepetition First Lien Term Loan Credit Agreement to, among other things, (a) defer the requirement for Blackhawk to make scheduled term loan repayments to certain Prepetition First Lien Term Loan Lenders (the "Initial First Lien B-1 Lenders," and the loans in respect thereof, the "Initial First Lien B-1 Loans"), (b) increase the applicable margin with respect

[7] The Prepetition ABL Credit Agreement originally contemplated a maximum loan amount of $50 million, which was ultimately increased to $85 million pursuant to an amendment dated October 10, 2018.

to the Initial First Lien B-1 Loans, and (c) provide for the payment of interest-in-kind to the Initial First Lien B-1 Lenders via the deemed borrowing of $35.5 million from the Initial First Lien B-1 Lenders (resulting in additional principal of $35.5 million due at maturity). The Prepetition First Lien Term Loan Credit Facility matures on February 17, 2022. The obligations arising under the Prepetition First Lien Term Loan Agreement are secured by (i) senior, first priority security interests in, and liens upon, a substantial portion of the Debtors' equipment, real property, equity interests, intellectual property, intercompany indebtedness, and all other assets and property other than the ABL Priority Collateral (collectively, the "First Lien Priority Collateral") and (ii) senior, second priority security interests in, and liens upon, the ABL Priority Collateral. As of the Petition Date, there is approximately $639 million outstanding under the Prepetition First Lien Term Loan Credit Facility.

C. Prepetition Second Lien Term Loan Credit Facility.

14. On October 28, 2015, Blackhawk entered into the Prepetition Second Lien Term Loan Credit Agreement (as amended restated, amended and restated, supplemented, or otherwise modified from time to time, the "Second Lien Term Loan Agreement"), which governs the $229.2 million Prepetition Second Lien Term Loan Credit Facility (the lenders thereunder, the "Second Lien Lenders" and together with the First Lien Lenders, the "Prepetition Term Loan Lenders"). Blackhawk's obligations under the Prepetition Second Lien Term Loan Credit Agreement are guaranteed by the other Debtors. On December 15, 2017, Blackhawk entered into the Fourth Amendment to the Prepetition Second Lien Term Loan Credit Agreement to, among other things, permit Blackhawk to capitalize, compound, and otherwise add to the unpaid principal amount of certain loans under the Prepetition Second Lien Term Loan Credit Agreement, held by certain Prepetition Second Lien Term Loan Lenders, the interest that otherwise would be payable in cash thereon. The Prepetition Second Lien Term Loan Credit Facility matures on April 27, 2021. The

obligations arising under the Prepetition Second Lien Term Loan Credit Agreement are secured by senior, third priority security interests in, and liens upon (a) the First Lien Priority Collateral, subject to the rights of the Prepetition ABL Credit Facility, and (b) the ABL Priority Collateral. As of the Petition Date, there is approximately $318 million outstanding under the Prepetition Second Lien Term Loan Credit Facility.

D. Other Secured Debt.

15. Certain of the Debtors entered into equipment financing agreements with Caterpillar Financial Services Corporation, 1st Trust Bank, Inc., NEFPASS LLC, Komatsu Financial Limited Partnership, and Mitsubishi UFJ Lease & Finance (U.S.A.) Inc. Certain of the Debtors are required to make payments monthly at varying rates described in the equipment financing agreements. The equipment financing obligations are payable at interest rates between 3.9% and 11.4% with maturity dates ranging from October 2019 through November 2022. As of the Petition Date, there is approximately $28 million outstanding under the equipment financing agreements.

II. Unsecured Note.

16. On October 28, 2015, Blackhawk issued the Patriot Unsecured Note to PCC Liquidating Trust. The Patriot Unsecured Note matures on October 28, 2021, and has an aggregate principal amount of approximately $15 million. Interest on the Patriot Unsecured Note accrues at a rate of 2.00% per year, which is capitalized and added to the principal amount outstanding on the last business day of March, June, September, and December of each year, and is payable in cash upon maturity. As of the Petition Date, there is approximately $16 million outstanding under the Patriot Unsecured Note. Blackhawk the only Debtor entity obligated under the Patriot Unsecured Note. The Debtors and PCC Liquidating Trust have reached a settlement of the Patriot Unsecured Note, which is discussed further in the First Day Declaration.

III. Unencumbered Assets.

17. Due to certain restrictions in certain of the Debtors' mineral leases, as much as approximately 26% of their mineral reserve assets are unencumbered.

The DIP Facilities

I. The Debtors' Need for Access to Financing and Use of Cash Collateral.

18. As described in the First Day Declaration, the Debtors require immediate access to liquidity to ensure that they are able to continue operating during these chapter 11 cases and preserve the value of their estates for the benefit of all parties in interest. As of the Petition Date, the Debtors' total cash balance was approximately $500,000, which is insufficient to operate their enterprise and continue paying their obligations as they come due. *See* First Day Decl. ¶ 48. Without immediate postpetition financing and access to Cash Collateral, the Debtors will be unable to pay wages to their employees, pay vendors for equipment and services, meet working capital and business operating needs, preserve and maximize the value of their estates, and administer these chapter 11 cases, causing immediate and irreparable harm to the value of the Debtors' estates to the detriment of all stakeholders. *See* First Day Decl. ¶ 11. Moreover, sufficient post-petition financing is necessary to send a strong market signal that these chapter 11 cases are well-funded. Otherwise customers may seek alternative products and services, and vendors and suppliers may refuse to do business with the Debtors.

19. The Debtors undertook an analysis of how much postpetition financing would be required to operate the Debtors' business and pay administrative costs during the chapter 11 process. This analysis included, among other things, assessing the potential acceleration of demands on available liquidity following the commencement of these chapter 11 cases including potential working capital contraction. Based on this analysis, the Debtors determined that they would require incremental liquidity of approximately $55 million and continued access to an asset-

based revolving loan facility to operate smoothly postpetition, and satisfy all administrative costs and expenses. Therefore, the Debtors believe the DIP Facilities are essential to preserve and maximize the value of their estates, and responsibly administer these chapter 11 cases.

A. Alternative Sources of Financing Are Not Available on Better Terms.

20. The Debtors, with the assistance of their advisors, solicited interest for a $90 million DIP asset-based revolver to primarily refinance the $82 million Prepetition ABL Credit Facility; and a $50 million new money term loan to fund incremental liquidity needs.

21. In April 2019, Centerview solicited interest from seven third-party financial institutions to determine the extent to which third-parties would be willing to provide postpetition financing to the Debtors. *See* Puntus Decl. ¶ 7. The potential third-party lenders contacted by the Debtors included various institutions that routinely provide asset-based debtor-in-possession financing, including both well-known commercial banks and specialty lenders. *See* Puntus Decl. ¶ 7. Of these lenders, six executed confidentiality agreements and received access to non-public information. None of these lenders indicated a willingness to provide the Debtors with DIP financing on an unsecured, junior-lien, or *pari passu* basis. *See* Puntus Decl. ¶ 7. The Debtors received no third-party new money term loan proposals. Regarding a DIP ABL Facility, two third-party lenders submitted proposals with indicative terms, both of which were subject to material due diligence. *See* Puntus Decl. ¶ 7.

22. In addition to third-party lenders, Centerview solicited a DIP asset-based revolver proposal from MidCap, and a new money term loan proposal backstopped by funds managed or advised by Knighthead Capital Management, LLC, Solus Alternative Asset Management LP, and Redwood Capital Management, LLC (collectively, the "Crossover Group"), the primary parties with which the Debtors were negotiating a global restructuring transaction. *See* Puntus Decl. ¶ 8. Over the course of multiple weeks, the Debtors and their advisors engaged in various conversations

and extensive negotiations with MidCap, the Crossover Group, and a group of lenders representing approximately 39% of the Debtors' first lien term loan debt (the "First Lien Group") to achieve the best possible terms for the DIP ABL Facility and Term DIP Facility. *See* Puntus Decl. ¶ 9. Following these arm's-length negotiations, the Debtors were able to secure the proposed $240 million DIP Facilities. The negotiations resulted in material concessions being made by MidCap and the Crossover Group, including with respect to interest rates, fees, and other material terms. Significantly, the DIP Facilities were the Debtors' only viable source of postpetition funding and no other, better alternative was reasonably attainable. *See* Puntus Decl. ¶ 9.

B. The DIP ABL Facility Proposal.

23. MidCap worked constructively with the Debtors through the prepetition process, indicating that it would be willing to provide the DIP ABL Facility under economic terms more favorable than the Prepetition ABL Credit Facility. The Debtors and their advisors negotiated over a number of weeks regarding the structure and economic costs of a proposed DIP ABL Facility. *See* Puntus Decl. ¶ 10. Ultimately, the Debtors' and MidCap agreed to a set of terms that provided the Debtors with necessary access to liquidity during the pendency of these chapter 11 cases on economic terms superior to the terms proposed by competing financing providers. *See* Puntus Decl. ¶ 10. Additionally, by not replacing the Debtors' incumbent lender group and agent with a completely new facility, the Debtors are able to continue to use their existing cash management system (to the extent approved by the Court), rather than having to transition to a completely different commercial banking platform. The Debtors could also leverage the existing Credit Documents to reduce negotiating time and costs.

24. Pending entry of the Final Order, obligations under the Prepetition ABL Credit Facility will roll-up on a "creeping basis." Upon entry of the Final Order, any obligations remaining under the Prepetition ABL Credit Facility will be refinanced by and rolled up into the

DIP ABL Facility. The roll-up of the Prepetition ABL Credit Facility is required by MidCap as a condition to provide postpetition financing. *See* Puntus Decl. ¶ 10. Refinancing these obligations into the DIP ABL Facility will allow the Debtors to continue to make critical investments in their business at an interest rate that is lower that the Prepetition ABL Credit Facility interest rate. *See* Puntus Decl. ¶ 11. Importantly, MidCap reduced fees owed under the Prepetition ABL Credit Facility and DIP ABL Facility (including the Prepetition ABL Credit Facility delayed origination fee) to an amount well below the fees proposed by potential third-party lenders. *See* Puntus Decl. ¶ 11. Therefore, based on the DIP ABL Facility terms and related benefits, the Debtors believe that entry into the DIP ABL Facility with MidCap is in the best interests of the Debtors and their estates.

C. The Term DIP Facility Proposal.

25. Simultaneously with the DIP ABL Facility negotiations, the Debtors and the Crossover Group engaged in arm's-length negotiations regarding a chapter 11 plan of reorganization and a DIP term loan to fund the plan process. In March 2019, the Crossover Group proposed a $50 million DIP term loan credit facility to be provided by Prepetition First Lien Term Loan Lenders and backstopped by the Crossover Group in connection with a restructuring transaction that would leave the reorganized company with significantly more leverage than would the restructuring ultimately agreed to pursuant to the RSA. *See* Puntus Decl. ¶ 13. Following continued negotiations, the Debtors, the Crossover Group, and the First Lien Group were only willing to move forward with a more comprehensive restructuring that would include the equitization of a significant portion of the Prepetition First Lien Term Loan. *See* Puntus Decl. ¶ 13. As part of the more comprehensive restructuring, the Crossover Group and the First Lien Group were only willing to provide the $50 million New Money Term DIP Loans if the DIP Term Loan also included the roll up of $100 million of Prepetition First Lien Term Loan claims.

See Puntus Decl. ¶ 10. Notably, the Debtors' Prepetition First Lien Term Loan Lenders agreed that upon confirmation of the Debtors' proposed prepackaged Plan, the Term DIP Loans will convert into exit term loans, ensuring that the Debtors will not need to solicit additional sources of capital to fund the Debtors' emergence. *See* Puntus Decl. ¶ 13. Importantly, the New Money Term DIP Loan is an integral part of the Debtors' RSA and all of the proposed Term DIP Lenders also signed the RSA documenting their support for the Debtors' proposed plan and solidifying support for a prepackaged, value-maximizing restructuring.

26. The Term DIP Loans are critical to the Debtors' ability to pay the administrative costs of these chapter 11 cases, and provides the Debtors with sufficient liquidity to operate their business without creating a value-destructive "priming" or valuation dispute at the outset of these chapter 11 cases. In tandem with the RSA and the DIP ABL Facility, the Term DIP Facility provides a path to emergence that is important to reassure customers and vendors, protect operations, and maximize value for creditors.

Basis for Relief

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

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

27. The Court should authorize the Debtors, as an exercise of their sound business judgment, to enter into the DIP Documents, obtain access to the DIP Facilities, and continue using Cash Collateral. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances discussed in detail below. Courts grant a debtor-in-possession considerable deference in acting in accordance with its business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g.*, *In re Trans*

World Airlines, Inc., 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving a postpetition loan and receivables facility because such facility "reflect[ed] sound and prudent business judgment"); *In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender."); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party in interest.").

28. Specifically, to determine whether the business judgment standard is met, a court need only "examine whether a reasonable business person would make a similar decision under similar circumstances." *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor's business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of the debtor's authority under the [Bankruptcy] Code").

29. Furthermore, in considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *See In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003) (while many of the terms favored the DIP lenders, "taken in context, and considering the relative circumstances of the parties," the court found them to be reasonable); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Elingsen McLean Oil Co., Inc.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into

"hard bargains" to acquire funds for its reorganization). The Court may also appropriately take into consideration non-economic benefits to the Debtors offered by a proposed postpetition facility. For example, in *In re ION Media Networks, Inc.*, the bankruptcy court for the Southern District of New York held that:

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

No. 09-13125, 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009) (emphasis added).

30. The Debtors' determination to move forward with the DIP Facilities is an exercise of their sound business judgment following an arm's length process and careful evaluation of available alternatives. Specifically, the Debtors and their advisors determined that the Debtors would require significant postpetition financing to support their operational and chapter 11 activities. The DIP Facilities will allow the Debtors to: (a) fund capital expenditures that are essential to the Debtors' continuation as a going concern; (b) provide the liquidity necessary to continue favorable trade terms with vendors and to reassure other stakeholders; (c) fund payroll obligations; (d) fund the administrative cost of these chapter 11 cases; and (e) provide a path to emergence by allowing the Debtors to implement the restructuring contemplated by the RSA and the Plan. The Debtors negotiated the DIP Facilities and other DIP Documents with the DIP Lenders in good faith, at arm's length, and with the assistance of their respective advisors, and the Debtors believe that they have obtained the best financing available under the circumstances.

Accordingly, the Court should authorize the Debtors' entry into the DIP Credit Agreement, as it is a reasonable exercise of the Debtors' business judgment.

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

31. The Debtors propose to obtain financing under the DIP Facilities by providing security interests and liens as set forth in the DIP Documents pursuant to section 364(c) of the Bankruptcy Code. Specifically, the Debtors propose to provide to the DIP Lenders postpetition security interest in and liens on the DIP Collateral (as defined in the Interim Order) and Prepetition Collateral that are valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination immediately upon entry of the Interim Order.

32. The above-described liens on encumbered and unencumbered assets are common features of postpetition financing facilities, and as set forth in greater detail in the Puntus Declaration, were a necessary feature here to provide security for the proposed financings. Indeed, postpetition financing facilities approved in this Circuit and elsewhere routinely are secured by the proceeds of a debtor's unencumbered assets such as leaseholds that are subject to leases that prohibit the impositions of liens thereon. *See, e.g.*, *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019) (approving DIP liens on collateral including any leasehold interests or the proceeds thereof as permitted by applicable law); *In re ATD Corporation*, No. 18-12221 (KJC) (Bankr. D. Del. Oct. 26, 2018) (same); *In re Am. Apparel, LLC*, No. 16-12551 (Bankr. D. Del. Dec. 12, 2016) (same); *In re Vestis Retail Grp., LLC*, No. 16-10971 (Bankr. D. Del. Jun. 1, 2016) (same); *In re Quicksilver, Inc.*, No. 15-11880 (Bankr. D. Del. Oct. 28, 2015) (same).

33. The statutory requirement for obtaining postpetition credit under section 364(c) is a finding, made after notice and hearing, that a debtor is "unable to obtain unsecured credit allowable under Section 503(b)(1) of [the Bankruptcy Code]." 11 U.S.C. § 364(c). *See In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c)

of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained). Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

a. the debtor is unable to obtain unsecured credit under section 364(b) of the Bankruptcy Code, *i.e.*, by allowing a lender only an administrative claim;

b. the credit transaction is necessary to preserve the assets of the estate; and

c. the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lenders.

See In re Los Angeles Dodgers LLC, 457 B.R. 308 (Bankr. D. Del. 2011); *See In re Ames Dep't Stores*, 115 B.R. 34, 37–40 (Bankr. S.D.N.Y. 1990); *see also In re St. Mary Hosp.*, 86 B.R. 393, 401–02 (Bankr. E.D. Pa. 1988); *Crouse Grp.*, 71 B.R. at 549.

34. As described above and as set forth in the Puntus Declaration, due to the high amount of the Debtors' existing secured debt obligations, each third-party lender indicated it would be unwilling to provide postpetition DIP financing on an unsecured, *pari passu*, or junior-lien basis to the Prepetition Secured Parties. *See* Puntus Decl. ¶ 7. Therefore, the Debtors, in consultation with their advisors, concluded that any workable financing likely would require the support of, or be provided by, the Debtors' existing lenders. The Debtors, however, also negotiated with their creditors and surveyed certain potential lending sources for actionable alternative proposals—but determined that the DIP Facilities provided the best collective opportunity available to the Debtors under the circumstances to fund these chapter 11 cases. *See* Puntus Decl. ¶ 9.

35. Absent the DIP Facilities, which will provide assurances that the Debtors will have sufficient liquidity to administer these chapter 11 cases, the value of the Debtors' estates would be significantly impaired to the detriment of all stakeholders. *See* First Day Decl. ¶¶ 48–49. Without postpetition financing, the Debtors lack sufficient funds to operate their enterprise, continue paying

their debts as they come due, and cover the projected costs of these chapter 11 cases. *See* First Day Decl. ¶¶ 48–49. Given the Debtors' circumstances, the Debtors believe that the terms of the DIP Facilities, as set forth in the DIP Documents, are reasonable as more fully set forth above and in the Puntus Declaration. For all these reasons, the Debtors submit that they have met the standard for obtaining postpetition financing.

36. In the event that a debtor is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, section 364(c) of the Bankruptcy Code provides that a court "may authorize the obtaining of credit or the incurring of debt (a) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code]; (b) secured by a lien on property of the estate that is not otherwise subject to a lien; or (c) secured by a junior lien on property of the estate that is subject to a lien." As described above, the Debtors are unable to obtain unsecured credit. Therefore, approving a superpriority claim in favor of the DIP Lenders is reasonable and appropriate.

37. Further, section 364(d) of the Bankruptcy Code provides that a debtor may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien, after notice and a hearing, where the debtor is "unable to obtain such credit otherwise" and "there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." 11 U.S.C. § 364(d)(1). The Debtors may incur "priming" liens under the DIP Facilities if either (a) the Prepetition Lenders have consented or (b) Prepetition Lenders' interest in collateral are adequately protected. *See Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 122 (N.D. Ga. 1989) ("[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the debtor of having to demonstrate that they were adequately protected."). Accordingly, the Debtors may incur "priming" liens under the

DIP Facilities if either (a) their Prepetition Lenders have consented or (b) Prepetition Lenders' interests in collateral are adequately protected.

38. Here, MidCap and the substantial majority of the Prepetition Term Loan Lenders have affirmatively consented to the DIP Facilities and actively participated in facilitating the proposed DIP Facilities, and the Second Lien Lenders are deemed to have consented pursuant to the Prepetition Intercreditor Agreements. Moreover, as set forth more fully in the Interim Order, the Debtors propose to provide a variety of adequate protection to protect the interests of the Prepetition Secured Parties. Therefore, the relief requested pursuant to section 364(d)(1) of the Bankruptcy Code is appropriate.

C. No Comparable Alternative to the DIP Facilities Are Reasonably Available on More Favorable Overall Terms.

39. A debtor need only demonstrate "by a good faith effort that credit was not available without" the protections afforded to potential lenders by sections 364(c) of the Bankruptcy Code. *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992). Moreover, in circumstances where only a few lenders likely can or will extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing." *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court's finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that

section 364 requirement was met); *In re Ames Dep't Stores*, 115 B.R. at 37–39 (debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b)).

40. As noted above, the Debtors do not believe that a more favorable alternative DIP financing is reasonably available given the realities imposed by the Debtors' existing capital structure and the Debtors' solicitation of alternative financing proposals. Additionally, the Debtors' overall restructuring is closely tied to the successful transaction described in the RSA. Thus, the Debtors have determined that the DIP Facilities provide the most favorable terms whereby the DIP ABL Facility provided by MidCap offers the most efficient transaction costs while reducing execution risks, and the Term DIP Loan provided by the Term DIP Lenders is an integral piece of the debt reduction included in the RSA and is provided on reasonable terms under the circumstances. Simply put, the DIP Facilities provide the Debtors with the liquidity they need at the lowest cost available while simultaneously placing the Debtors on an optimal path for a successful restructuring. Therefore, the Debtors submit that the requirement of section 364 of the Bankruptcy Code that alternative credit on more favorable terms be unavailable to the Debtors is satisfied.

D. The Repayment Features of the DIP Facilities Are Appropriate.

41. Section 363(b) of the Bankruptcy Code permits a debtor to use, sell, or lease property, other than in the ordinary course of business, with court approval. It is well settled in the Third Circuit that such transactions should be approved when they are supported by a sound business purpose. *See In re Abbots Dairies, Inc.*, 788 F.2d 143 (3d Cir. 1986) (holding that in the Third Circuit, a debtor's use of assets outside the ordinary course of business under section 363(b) of the Bankruptcy Code should be approved if the debtor can demonstrate a sound business justification for the proposed transaction). The business judgment rule shields a debtor's management from judicial second-guessing. *In re Johns-Manville Corp.*, 60 B.R. 612, 615–16

(Bankr. S.D.N.Y. 1986) ("[T]he [Bankruptcy] Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.").

42. Repayment of prepetition debt (often referred to as a "roll-up") is a common feature in debtor in possession financing arrangements. Courts in this jurisdiction have approved similar DIP features, including on the first day of the case. *See, e.g.*, *In re ATD Corporation*, No. 18-12221 (KJC) (Bankr. D. Del. Oct. 26, 2018) (authorizing an approximately $1,230 million DIP, including a full roll-up of the prepetition ABL outstanding principal of $639 million and an additional $250 million in additional liquidity, pursuant to interim order); *In re Remington Outdoor Co., Inc.*, No. 18-10684 (BLS) (Bankr. D. Del. Mar. 28, 2018) (authorizing approximately $338 million DIP and a roll-up of approximately $150 million, including a full ABL roll-up of $114 million, pursuant to interim order); *In re Bon-Ton Stores, Inc.*, No. 18-10248 (MFW) (Bankr. D. Del. Feb. 6, 2018) (authorizing full roll-up of all $489 million outstanding prepetition revolving obligations pursuant to interim order); *In re Real Indus. Inc.*, No. 17-12464 (KJC) (Bankr. D. Del. Nov. 20, 2017) (authorizing approximately $365 million DIP that included a creeping roll-up pursuant to interim order and a full roll-up pursuant to final order of approximately $266 million prepetition debt); *In re Charming Charlie, LLC*, No. 17-12906 (CSS) (Bankr. D. Del. Dec. 12, 2017) (authorizing approximately $90 million DIP that included a full ABL roll-up of approximately $22 million prepetition debt pursuant to interim order).[8]

43. The DIP ABL Facility will roll up the full amount outstanding under the Prepetition ABL Credit Agreement in addition to providing the Debtors with additional liquidity. In addition,

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

the Term DIP Facility will roll up $100 million of the Debtors' Prepetition First Lien Term Loans in addition to providing $50 million in new money financing.

44. The roll up of funds is a sound exercise of the Debtors' business judgment, is a material component of the DIP Facilities, and is required by the DIP ABL Lenders and the Term DIP Lenders as a condition to their commitments to provide postpetition financing. *See* Puntus Decl. ¶ 11, 13. The Debtors were unable to obtain DIP financing on similar terms that did not provide for the repayment of prepetition amounts. *See* Puntus Decl. ¶ 11, 13.

45. In addition, refinancing the DIP ABL Obligations into the DIP ABL Facility will allow the Debtors to continue to make critical investments in their business at an interest rate that is lower than the prepetition interest rate including default interest. Moreover, MidCap reduced the fees owed under the Prepetition ABL Credit Facility and the DIP ABL Facility (including the Prepetition ABL Credit Facility's delayed origination fee) to amounts well below the fees proposed by potential third-party providers. *See* Puntus Decl. ¶ 11. Therefore, it is favorable to the Debtors and to all stakeholders that the Debtors enter into the DIP ABL Credit Agreement as soon as possible.

46. Likewise, the Term DIP Lenders were only willing to provide the $50 million New Money Term DIP Loan if it included the $100 million Term DIP Roll-Up Loan. The Term DIP Loans are a critical part of a comprehensive restructuring that includes each Term DIP Lender's signature to the Debtors' RSA. *See* Puntus Decl. ¶ 14. The Term DIP Loans are also critical to the Debtors' ability to pay the administrative costs of the chapter 11 cases. *See* Puntus Decl. ¶ 14.

47. The roll up of the prepetition amounts owed under the Prepetition ABL Facility merely accelerates the satisfaction of the obligations owed under the Prepetition ABL Credit Facility without affecting recovery to other creditors because the Debtors believe that these

obligations are fully secured by perfected, first priority liens with respect to, among other things, inventory and receivables, with a value in excess of outstanding borrowings.

48. Absent support from MidCap and the Crossover Group, the Debtors' chapter 11 cases would likely devolve into a costly priming fight. The roll up of the Prepetition ABL Loans merely affects the timing, not the amount or certainty, of MidCap's recovery—the secured claims arising on account of the Prepetition ABL Loans are required by section 1129 of the Bankruptcy Code to be satisfied in full before recoveries to junior creditors may be provided, absent consent of such secured parties (which consent the Debtors do not have here). Given these circumstances, repayment of the Prepetition ABL Loans is reasonable, and a sound exercise of the Debtors' business judgment.

II. The Debtors Should Be Authorized to Use the Cash Collateral.

49. Section 363 of the Bankruptcy Code generally governs the use of estate property. Section 363(c)(2)(A) of the Bankruptcy Code permits a debtor in possession to use Cash Collateral with the consent of the secured party. Here, the DIP Lenders and the Prepetition Lenders consent or are deemed to consent to the Debtors' use of the Cash Collateral, subject to the terms and limitations set forth in the Interim Order.

50. Section 363(e) of the Bankruptcy Code provides for adequate protection of interests in property when a debtor uses Cash Collateral. Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *See In re Cont'l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (en banc). While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *See, e.g.*, *In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (explaining that the "determination of whether there is adequate protection is made

on a case by case basis"); *In re Satcon Tech. Corp.*, No. 12-12869 (KG), 2012 WL 6091160, at *6 (Bankr. D. Del. Dec. 7, 2012) (same); *In re N.J. Affordable Homes Corp.*, No. 05-60442 (DHS), 2006 WL 2128624, at *14 (Bankr. D.N.J. June 29, 2006) ("the circumstances of the case will dictate the necessary relief to be given"); *In re Columbia Gas Sys., Inc.*, Nos. 91-803, 91-804, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992) ("what interest is entitled to adequate protection and what constitutes adequate protection must be decided on a case-by-case basis"); *see also In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy ¶ 361.01[1] at 361–66 (15th ed. 1993) (explaining that adequate protection can take many forms and "must be determined based upon equitable considerations arising from the particular facts of each proceeding")).

A. Adequate Protection Provided to the Prepetition ABL Lender.

51. As set forth in the Interim Order, the Debtors propose to provide the Prepetition Secured Parties with a variety of adequate protection to protect against the postpetition diminution in value of the Cash Collateral resulting from the use, sale, or lease of the Cash Collateral by the Debtors and the imposition of the automatic stay (collectively, the "ABL Adequate Protection Obligations"), including:

a. the reasonable professional fees and expenses of the Prepetition ABL Agent and Prepetition ABL Lenders;

b. the roll-up of the Prepetition ABL Obligations into DIP ABl Obligations in accordance with the DIP ABL Credit Agreement and DIP Orders;

c. payment of post-petition interest at the non-default rate under the Prepetition ABL Credit Agreement;

d. valid and perfected replacement security interests in and liens on the Collateral (subject to the Carve Out and the priorities set out In the Interim Order);

e. allowed, superpriority administrative claims under sections 503(b) and 507(b) of the Bankruptcy Code (subject to the Carve Out and the priorities set out in the Interim Order); and

f. financial reporting and other reports and notices delivered by the Company under the DIP ABL Facility.

B. Adequate Protection Provided to the Prepetition First Lien Term Loan Lenders.

52. As described more fully below, and as set forth in the Interim Order, the Debtors propose to provide the Prepetition Term Loan Lenders with a variety of adequate protection to protect against the postpetition diminution in value of the Cash Collateral resulting from the use, sale, or lease of the Cash Collateral by the Debtors and the imposition of the automatic stay (collectively, the "First Lien Adequate Protection Obligations"):

a. the reasonable professional fees and expenses of certain of the Prepetition First Lien Secured Parties;

b. valid and perfected replacement security interests in and liens on the Collateral (subject to the Carve Out and the liens priorities set forth in the Interim Order);

c. allowed, superpriority administrative claims under section 507(b) of the Bankruptcy Code (subject to the Carve Out and the priorities set out in the Interim Order); and

d. financial reporting and other reports and notices delivered by the Company under the Term DIP Facility.

C. Adequate Protection Provided to the Prepetition Second Lien Term Loan Lenders.

53. As described more fully below, and as set forth in the Interim Order, the Debtors propose to provide the Prepetition Second Lien Term Loan Lenders with adequate protection to protect against the postpetition diminution in value of relevant collateral resulting from the use, sale, or lease of the Cash Collateral by the Debtors and the imposition of the automatic stay (collectively, the "Second Lien Adequate Protection Obligations" and together with the ABL

Adequate Protection Obligations and the First Lien Adequate Protection Obligations, the "Adequate Protection Obligations"):

a. the reasonable professional fees and expenses of certain of the Prepetition Second Lien Term Loan Lenders;

b. allowed, superpriority administrative claims under section 507(b) of the Bankruptcy Code (subject to the Carve Out and the priorities set out in the Interim Order);

c. valid and perfected replacement security interests in and liens on the Collateral (subject to the Carve Out and the priorities set out in the Interim Order); and

d. financial reporting and other reports and notices delivered by the Company under the Term DIP Facility.

54. The Debtors submit that the proposed Adequate Protection Obligations are sufficient to protect the Prepetition Secured Parties from any potential diminution in value to the Cash Collateral. In light of the foregoing, the Debtors further submit, and the Prepetition Secured Parties agree, that the proposed Adequate Protection Obligations to be provided for the benefit of the Prepetition Secured Parties are appropriate. Thus, the Debtors' provision of the Adequate Protection Obligations is not only necessary to protect against any diminution in value but is fair and appropriate under the circumstances of these chapter 11 cases to ensure the Debtors are able to continue using the Cash Collateral, subject to the terms and limitations set forth in the Interim Order, for the benefit of all parties in interest and their estates.

III. The Debtors Should Be Authorized to Pay the Fees Required by the DIP Lenders Under the DIP Documents.

55. Under the DIP Documents, the Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Agents and the DIP Lenders. In particular, as noted above, the Debtors have agreed to pay the following fees:

a. to the DIP ABL Agent for the benefit of the DIP ABL Lenders:

(i). an unused line fee of 0.50% of the average daily balance of the unused portion of the DIP Revolving Loan Commitment (as defined in the DIP ABL Credit Agreement), payable monthly in arrears; and

(ii). an exit fee of 1.50% of the DIP Revolving Loan Commitment Amount (as defined in the DIP ABL Credit Agreement).

b. to the Term DIP Lenders:

(i). an up-front fee of 1.00% of the aggregate principal amount of the New Money Term DIP Loans;

(ii). an unused line fee of 1.00% per annum on the actual daily amount of the unused delayed draw New Money Term DIP Loans; and

(iii). an exit fee of 1.00% of the aggregate principal amount of the New Money Term DIP Loans.

56. Courts in this district and others have approved similar aggregates in fees in large chapter 11 cases. *See In re ATD Corporation*, No. 18-12221 (KJC) (Bankr. D. Del. Oct. 26, 2018) (approving a cash fee approximately 2.0 percent of the overall DIP facility); *In re PES Holdings LLC*, No. 18-10122 (KG) (Bankr. D. Del. Jan. 22, 2018) (same); *In re Toys "R" US, Inc.*, No. 17-34665 (KLP) (Bankr. E.D.Va. Sept. 19, 2017) (approving aggregate fees that were just less than 3.0 percent of the overall DIP facility).

57. It is understood and agreed by all parties, that these fees are an integral component of the overall terms of the DIP Facilities, and were required by the DIP Lenders as consideration for the extension of postpetition financing. *See* Puntus Decl. ¶ 18. Accordingly, the Court should authorize the Debtors to pay the fees provided under the DIP Documents in connection with entering into those agreements.

IV. The DIP Lenders Should Be Deemed Good-Faith Lenders Under Section 364(e).

58. Section 364(e) of the Bankruptcy Code protects a good-faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the

authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code provides that:

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

59. As explained herein, in the Puntus Declaration, and in the First Day Declaration, the DIP Documents are the result of: (a) the Debtors' reasonable and informed determination that the DIP Lenders provided the best postpetition financing alternative available under the circumstances and (b) extended arm's length, good-faith negotiations between the Debtors and the DIP Lenders. The Debtors submit that the terms and conditions of the DIP Documents are reasonable under the circumstances, and the proceeds of the DIP Facilities will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to any party to the DIP Documents other than as described herein. Accordingly, the Court should find that the DIP Lenders are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code and are entitled to all of the protections afforded by that section.

V. The Automatic Stay Should Be Modified on a Limited Basis.

60. The proposed Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to allow the DIP Lenders to file any financing statements, security agreements, notices of liens, and other similar instruments and documents in order to validate and perfect the liens and security interests granted to them under the Interim Order. The proposed Interim Order further provides that the automatic stay is modified as

necessary to permit the Debtors to grant liens to the DIP Lenders and to incur all liabilities and obligations set forth in the Interim Order. Finally, the proposed Interim Order provides that, following the occurrence of a DIP Event of Default or Event of Default (as defined in the DIP Credit Agreements) and an appropriate opportunity for the Debtors to obtain appropriate relief from the Court, the automatic stay shall be vacated and modified to the extent necessary to permit the DIP Agents to exercise all rights and remedies in accordance with the DIP Documents, or applicable law.

61. Stay modifications of this kind are ordinary and standard features of debtor in possession financing arrangements and, in the Debtors' business judgment, are reasonable and fair under the circumstances of these chapter 11 cases. *See, e.g.*, *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019) (modifying automatic stay as necessary to effectuate the terms of the order); *ATD Corporation*, No. 18-12221 (KJC) (Bankr. D. Del. Oct. 26, 2018) (same); *In re In re Charming Charlie, LLC*, No. 17-12906 (CSS) (Bankr. D. Del. Dec. 12, 2017) (same); *In re Magnum Hunter Res. Corp.*, No. 15-12533 (KG) (Bankr. D. Del. Dec. 15, 2015) (terminating automatic stay after event of default); *In re Peak Broad., LLC*, No. 12-10183 (PJW) (Bankr. D. Del. Feb. 2, 2012) (terminating automatic stay after occurrence of termination event).

VI. Failure to Obtain Immediate Interim Access to the DIP Facilities and Cash Collateral Would Cause Immediate and Irreparable Harm.

62. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code or to use Cash Collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court may conduct a preliminary, expedited hearing on the motion and authorize the obtaining of credit and use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

63. For the reasons noted above, the Debtors have an immediate postpetition need to use Cash Collateral, and access the liquidity provided by the DIP Facilities. The Debtors cannot maintain the value of their estates during the pendency of these chapter 11 cases without access to cash. The Debtors will use cash, among other things, to fund the operation of their business, including to ensure that vendors continue to manufacture and ship inventory, and to fund the administration of these chapter 11 cases. Substantially all of the Debtors' available cash constitutes the Cash Collateral of the Prepetition ABL Lenders and the Prepetition First Lien Term Loan Lenders and Prepetition Second Lien Term Loan Lenders. The Debtors will therefore be unable to operate their business or otherwise fund these chapter 11 cases without access to Cash Collateral, and will suffer immediate and irreparable harm to the detriment of all creditors and other parties in interest. *See* First Day Declaration ¶¶ 48–49. In short, the Debtors' ability to administer these chapter 11 cases through the use of Cash Collateral is vital to preserve and maximize the value of the Debtors' estates.

64. The Debtors request that the Court hold and conduct a hearing to consider entry of the Interim Order authorizing the Debtors, from and after entry of the Interim Order until the Final Hearing, to receive initial funding under the DIP Facilities. The Debtors require the initial funding under the DIP Facilities prior to the Final Hearing and entry of the Final Order to continue operating, pay their administrative expenses, and to implement the relief requested in the Debtors' other "first day" motions. This relief will enable the Debtors to preserve and maximize value and, therefore, avoid immediate and irreparable harm and prejudice to their estates and all parties in interest, pending the Final Hearing.

Request for Final Hearing

65. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable, and in no event after 25 days

after the Petition Date, and fix the time and date prior to the Final Hearing for parties to file objections to this motion.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

66. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Notice

67. The Debtors have provided notice of this motion to the following parties or their respective counsel: (a) the office of the U.S. Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the administrative agent under the Debtors' prepetition asset-based revolving credit facility; (d) the administrative agent under the Debtors' Prepetition First Lien Term Loan Credit Facility; (e) the administrative agent under the Debtors' prepetition second lien term loan facility; (f) counsel to the Crossover Group; (g) counsel to the First Lien Group; (h) the administrative agent under the Debtors' proposed debtor in possession term loan financing facility; (i) the administrative agent under the Debtors' proposed debtor in possession asset-based revolving financing facility; (j) the Environmental Protection Agency and similar state environmental agencies for states in which the Debtors operate; (k) the office of the attorneys general for the states in which the Debtors operate; (l) the United States Attorney's Office for the District of Delaware; (m) the Internal Revenue Service; (n) the Term DIP Lenders; and (o) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this motion is seeking "first day" relief, within two business days of the hearing on this motion, the Debtors will serve copies of this motion and any order entered in respect to this motion as required by Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

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

[*Remainder of page intentionally blank*]

WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: July 19, 2019
Wilmington, Delaware

/s/ *L. Katherine Good*

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Exhibit A

Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 11
BLACKHAWK MINING LLC, *et al.*,[1]	)	Case No. 19-11595 (LSS)
Debtors.	)	(Joint Administration Requested)

INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

Upon the motion (the "**Motion**")[2] of Blackhawk Mining LLC (the "**Company**"), and its affiliated debtors, each as a debtor and debtor in possession (collectively, the "**Debtors**") in the above-captioned cases (the "**Chapter 11 Cases**") pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 364(e), 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**"), Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Rule 4001-2 of the

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: Blackhawk Mining LLC (5600); Blackhawk Coal Sales, LLC (9456); Blackhawk Land and Resources, LLC (7839); Blackhawk River Logistics, LLC (3388); Blue Creek Mining, LLC (2427); Blue Diamond Mining, LLC (3488); Eagle Shield, LLC (6721); FCDC Coal, Inc. (6188); Guyandotte Mining, LLC (4882); Hampden Coal, LLC (8241); Kanawha Eagle Mining, LLC (0586); Logan & Kanawha, LLC (3178); Panther Creek Mining, LLC (0627); Pine Branch Land, LLC (9661); Pine Branch Mining, LLC (9681); Pine Branch Resources, LLC (9758); Redhawk Mining, LLC (0852); Rockwell Mining, LLC (3874); Spruce Pine Land Company (2254); Spurlock Mining, LLC (2899); Triad Mining, LLC (7713); and Triad Trucking, LLC (6112). The location of the Debtors' service address in these chapter 11 cases is 3228 Summit Square Place, Suite 180, Lexington, Kentucky 40509.

[2] Capitalized terms used herein and not herein defined have the meaning ascribed to such terms in the Motion.

Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Bankruptcy Rules**") seeking, among other things:

(i) authorization for (x) the Company and certain of its subsidiaries party to the DIP ABL Credit Agreement (as defined below) as borrowers (collectively, the "**DIP ABL Borrowers**") to obtain postpetition financing as set forth in the DIP ABL Financing Documents (as defined below) (the "**DIP ABL Financing**"), and for the DIP ABL Guarantors[3] (together with the DIP ABL Borrowers, the "**DIP ABL Loan Parties**") to guaranty the obligations (the "**DIP ABL Obligations**") of the DIP ABL Borrowers in connection with the DIP ABL Financing; and (y) the Company to obtain postpetition financing as set forth in the Term DIP Documents (as defined below) (the "**Term DIP Financing**" and, together with the DIP ABL Financing, the "**DIP Financing**"), and for the Term DIP Guarantors[4] (together with the Company, the "**Term DIP Loan Parties**"; the Term DIP Loan Parties and the DIP ABL Loan Parties are collectively referred to herein as the "**DIP Loan Parties**") to guaranty the obligations (the "**Term DIP Obligations**" and, together with the DIP ABL Obligations, the "**DIP Obligations**") of the Company in connection with the Term DIP Financing; the DIP Financing consisting of:

(I) a superpriority debtor-in-possession asset-based revolving credit facility made available to the DIP ABL Borrowers in an aggregate principal amount of up to $90,000,000 (the "**DIP ABL Facility**"), pursuant to the terms and conditions of that certain Senior Secured Superpriority Debtor in Possession ABL Credit Agreement (as may be amended, restated, supplemented, waived or otherwise modified from time to time in accordance with the terms hereof and thereof, the "**DIP ABL Credit Agreement**"), among the DIP ABL Borrowers, the DIP ABL Guarantors and MidCap Funding IV Trust, as administrative agent (in such capacity, the "**DIP ABL Agent**"), the lenders party thereto, including their respective successors and assigns (the "**DIP ABL Lenders**" and, together with the DIP ABL Agent, the "**DIP ABL Secured Parties**"), substantially in the form attached to the Motion as **Exhibit B**; and

(II) a superpriority debtor-in-possession term loan credit facility made available to the Company in an aggregate principal amount of up to $150,000,000 (the "**Term DIP Facility**" and, together with the

[3] The "**DIP ABL Guarantors**" shall mean, collectively, the "Guarantors" (as defined in the DIP ABL Credit Agreement).

[4] The "**Term DIP Guarantors**" shall mean, collectively, the "Guarantors" (as defined in the Term DIP Credit Agreement).

DIP ABL Facility, the "**DIP Facilities**") to be provided by certain of the Prepetition First Lien Term Loan Lenders (as defined below) or their designees (in their capacity as lenders under the Term DIP Facility, the "**Term DIP Lenders**") in the form of (X) new money term loans (the "**New Money Term DIP Loans**") in an aggregate principal amount of up to $50 million and (Y) roll-up term loans (the "**Term DIP Roll-Up Loans**" and, together with the New Money Term DIP Loans, the "**Term DIP Loans**"), which shall be secured on a junior basis to the New Money Term DIP Loans, to convert Prepetition First Lien Term Loans (as defined below) held by the Term DIP Lenders in the aggregate principal amount of up to $100 million, in each case pursuant to the terms and conditions of that certain Senior Secured Debtor-in-Possession Term Loan Credit Agreement (as may be amended, restated, supplemented, waived or otherwise modified from time to time in accordance with the terms hereof and thereof, the "**Term DIP Credit Agreement**" and, together with the DIP ABL Credit Agreement, the "**DIP Credit Agreements**"), among the Company, the Term DIP Guarantors, the Term DIP Lenders and Cantor Fitzgerald Securities ("**Cantor**"), as administrative agent and collateral agent (in such capacities, the "**Term DIP Agent**" and, together with the DIP ABL Agent, the "**DIP Agents**"; the Term DIP Lenders together with the Term DIP Agent, the "**Term DIP Secured Parties**"; the Term DIP Secured Parties, together with the DIP ABL Secured Parties are collectively referred to herein as the "**DIP Secured Parties**"), substantially in the form attached to the Motion as **Exhibit C**;

(ii) authorization for:

(I) the DIP ABL Borrowers and the DIP ABL Guarantors to execute and enter into the DIP ABL Credit Agreement, the Security Agreement (as defined in the DIP ABL Credit Agreement) and any other agreements, instruments, pledge agreements, guarantees, security agreements, intellectual property security agreements, control agreements, notes and other DIP ABL Financing Documents (as defined in the DIP ABL Credit Agreement) and documents related thereto, including, without limitation, the "Fee Letter" (as defined in the DIP ABL Credit Agreement), and the DIP ICA (as defined below) (as each of the foregoing may be amended, restated, supplemented, waived, and/or modified from time to time in accordance with the terms hereof and thereof, and collectively with the DIP ABL Credit Agreement, the "**DIP ABL Financing Documents**") and to perform their respective obligations thereunder and all such other and further acts as may be necessary, appropriate, or desirable in connection with the DIP ABL Financing Documents;

(II) the Company and the Term DIP Guarantors to execute and enter into the Term DIP Credit Agreement, Security Agreement (as defined in the Term DIP Credit Agreement)and any other agreements, instruments, pledge agreements, guarantees, security agreements, intellectual property security agreements, control agreements, notes and other Credit Documents (as defined in the Term DIP Credit Agreement) and documents related thereto, including, without limitation, the DIP ICA (as each of the foregoing may be amended, restated, supplemented, waived, and/or modified from time to time in accordance with the terms hereof and thereof, and collectively with the Term DIP Credit Agreement, the "**Term DIP Documents**"; the Term DIP Documents together with the DIP ABL Financing Documents, are collectively referred to herein as the "**DIP Documents**") and to perform their respective obligations thereunder and all such other and further acts as may be necessary, appropriate, or desirable in connection with the Term DIP Documents;

(iii) the DIP Loan Parties to apply the Debtors' prepetition and postpetition accounts receivable to the outstanding principal balance of the Prepetition ABL Debt (as defined below) and, upon entry of the Final Order (as defined below) use the proceeds of the DIP ABL Financing to refinance the remainder of the Prepetition ABL Debt, including interest and fees through the date of repayment (at the non-default contract rate), which refinancing shall be indefeasible upon the occurrence of the ABL Discharge;[5]

(iv) until the occurrence of the ABL Discharge, the granting of Postpetition liens to the Prepetition ABL Agent (as defined below) and the Prepetition ABL Lenders (as defined below) in connection with the Prepetition ABL Credit Agreement (as defined below);

(v) authorization to convert $2.00 of Prepetition First Lien Term Loan Debt (up to an aggregate principal amount of $100 million) held by the Term

[5] "**ABL Discharge**" means the indefeasible payment of the Prepetition ABL Debt (as defined below) in full in cash, including interest and fees through the date of repayment (at the non-default contract rate), which shall be deemed to have occurred if no adversary proceeding or contested matter is timely and properly asserted in accordance with this Interim Order and the Final Order (as defined below) with respect to the Prepetition ABL Debt or against any Prepetition ABL Secured Party (as defined below), or if such an adversary proceeding or contested matter is timely and properly asserted in accordance with this Interim Order and the Final Order, upon the final disposition of such adversary proceeding or contested matter in favor of the applicable Prepetition ABL Secured Party or Parties by order of a court of competent jurisdiction; *provided* that, for the avoidance of doubt, interest shall cease to accrue on the Prepetition ABL Debt upon the repayment in full in cash, including interest and fees through the date of repayment, of the Prepetition ABL Debt upon the entry of the Final Order unless the Prepetition ABL Debt is reinstated.

DIP Lenders into Term DIP Roll-Up Loans for each $1.00 of New Money Term DIP Loans funded by the Term DIP Lenders;

(vi) authorization for the DIP Loan Parties to grant adequate protection to the Prepetition Secured Parties (as defined below) under, or in connection with, or according to the priorities of, the following agreements, as applicable:

(I) that certain Credit Agreement, dated as of September 6, 2017 (as amended, supplemented, restated or otherwise modified prior to the Petition Date (as defined below), the "**Prepetition ABL Credit Agreement**" and, the facility thereunder, the "**Prepetition ABL Credit Facility**"), among the DIP ABL Borrowers, the guarantors party thereto (the "**Prepetition ABL Guarantors**"), MidCap Funding IV Trust, as successor agent (the "**Prepetition ABL Agent**"), the lenders party thereto (the "**Prepetition ABL Lenders**" and, together with the Prepetition ABL Agent and any other "Secured Creditor" as defined in the Prepetition ABL Credit Agreement, the "**Prepetition ABL Secured Parties**"), and those certain Security Documents (as defined in the Prepetition ABL Credit Agreement and, collectively with the Prepetition ABL Credit Agreement, and all other documentation executed in connection therewith, the "**Prepetition ABL Financing Documents**");

(II) First Lien Term Loan Agreement, dated as of February 17, 2017 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the "**Prepetition First Lien Term Loan Credit Agreement**," the facility thereunder, the "**Prepetition First Lien Term Loan Credit Facility**," and the loans extended thereunder, the "**Prepetition First Lien Term Loans**"), among the Company, as borrower, the guarantors party thereto (the "**Prepetition First Lien Term Loan Guarantors**"), Cantor, as successor administrative agent and collateral agent (the "**Prepetition First Lien Term Loan Agent**"), and the lenders party thereto (the "**Prepetition First Lien Term Loan Lenders**" and, together with the Prepetition First Lien Term Agent, the "**Prepetition First Lien Term Loan Secured Parties**"), and those certain Credit Documents (as defined in the Prepetition First Lien Term Loan Credit Agreement and, collectively with the Prepetition First Lien Tern Loan Credit Agreement, and all other documentation executed in connection therewith, the "**Prepetition First Lien Term Loan Documents**");

(III) Second Lien Term Loan Agreement, dated as of October 28, 2015 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the "**Prepetition Second Lien Term Loan**

Credit Agreement"[6] and, the facility thereunder, the "**Prepetition Second Lien Term Loan Credit Facility**"[7]), among the Company, as borrower, the guarantors party thereto (the "**Prepetition Second Lien Term Loan Guarantors**"), Cortland Capital Market Services, LLC, as administrative agent and collateral agent (the "**Prepetition Second Lien Term Loan Agent**" and together with the Prepetition First Lien Term Loan Agent and Prepetition ABL Agent, the "**Prepetition Agents**"), and the lenders party thereto (the "**Prepetition Second Lien Term Loan Lenders**[8]" and, together with the Prepetition Second Lien Term Loan Agent, the "**Prepetition Second Lien Term Loan Secured Parties**"[9]), and those certain Credit Documents (as defined in the Prepetition Second Lien Credit Agreement and, collectively with the Prepetition Second Lien Credit Agreement, and all other documentation executed in connection therewith, the "**Prepetition Second Lien Term Loan Documents**" and together with the Prepetition First Lien Term Loan Documents and Prepetition ABL Financing Documents, the "**Prepetition Documents**");

(IV) ABL Intercreditor Agreement, dated as of September 6, 2017 (as amended, restated or otherwise modified from time to time, the "**Prepetition ABL Intercreditor Agreement**") entered into between the Prepetition ABL Agent, the Prepetition First Lien Term Loan Agent, and one or more of the Debtors;

(V) Amended and Restated Junior Priority Intercreditor Agreement, dated as of February 17, 2017 (as amended, restated or otherwise modified from time to time, the "**Prepetition Junior Lien Intercreditor Agreement**" and, together with the Prepetition ABL Intercreditor Agreement, the "**Prepetition Intercreditor Agreements**") entered into between the Prepetition ABL Agent,

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[6] The Prepetition ABL Credit Agreement, the Prepetition First Lien Term Loan Credit Agreement and the Prepetition Second Lien Term Loan Credit Agreement are collectively referred to as the "**Prepetition Credit Agreements**."

[7] The Prepetition ABL Credit Facility, the Prepetition First Lien Term Loan Credit Facility and the Prepetition Second Lien Term Loan Credit Facility are collectively referred to as the "**Prepetition Credit Facilities**."

[8] The Prepetition First Lien Term Loan Lenders and the Prepetition Second Lien Term Loan Lenders are collectively referred to as the "**Prepetition Term Loan Lenders**", and, together with the Prepetition ABL Lenders, the "**Prepetition Lenders**."

[9] The Prepetition First Lien Term Loan Secured Parties and the Prepetition Second Lien Term Loan Secured Parties are collectively referred to as the "**Prepetition Term Loan Secured Parties**", and, together with the Prepetition ABL Secured Parties, the "**Prepetition Secured Parties**".

the Prepetition First Lien Term Loan Agent, the Prepetition Second Lien Term Loan Agent and one or more of the Debtors;

(vii) subject to the restrictions set forth in the DIP Documents and this Interim Order (the "**Interim Order**"), authorization for the DIP Loan Parties to continue to use Cash Collateral (as defined below) and all other Prepetition Collateral (as defined below) in which any of the Prepetition Secured Parties has an interest, and to grant adequate protection to the Prepetition Secured Parties with respect to, *inter alia*, such use of Cash Collateral and other Prepetition Collateral;

(viii) authorization for the DIP Loan Parties to pay the principal, interest, fees, expenses and other amounts payable under the DIP Documents as such become earned, due and payable, including, but not limited to, unused line commitment fees, upfront fees, structuring fees, backstop fee, closing fees, exit fees, prepayment fee, audit fees, appraisal fees, valuation fees, administrative agent's fees, the reasonable fees and disbursements of the DIP Agents' and DIP Lenders' attorneys, advisors, accountants, appraisers, bankers, and other consultants, all to the extent provided in, and in accordance with, the DIP Documents;

(ix) approval of certain stipulations by the Debtors with respect to the Prepetition Documents and the liens, claims, and security interests arising therefrom;

(x) the granting to the DIP Secured Parties of allowed superpriority claims, subject to the Carve-Out (as defined below), pursuant to section 364(c)(1) of the Bankruptcy Code payable from and having recourse to all assets of the DIP Loan Parties;

(xi) the granting to the DIP Secured Parties of liens pursuant to section 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code on all prepetition and postpetition property of the DIP Loan Parties' estates and all proceeds thereof, including, subject only to and effective upon entry of the Final Order, any Avoidance Proceeds (as defined below), in each case subject to the Carve-Out and with the relative priorities set forth in this Interim Order and on **Exhibit A** hereto;

(xii) subject to entry of the Final Order, a waiver of (a) the Debtors' right to surcharge the Prepetition Collateral and the DIP Collateral (as defined below) (together, the "**Collateral**") pursuant to section 506(c) of the Bankruptcy Code, and (b) any right of the Debtors under the "equities of the case" exception under section 552(b) of the Bankruptcy Code;

(xiii) modification of the automatic stay to the extent set forth herein and in the DIP Documents;

(xiv) the scheduling of an interim hearing (the "**Interim Hearing**") on the Motion to be held before this Court to consider entry of the Interim Order; and;

(xv) the scheduling of a final hearing (the "**Final Hearing**") to be held within 30 days of the entry of the Interim Order to consider final approval of the DIP Facilities and use of Cash Collateral pursuant to a proposed final order (the "**Final Order**"), as set forth in the Motion and the DIP Documents filed with this Court;

and due and appropriate notice of the Motion and the Interim Hearing having been served by the Debtors on the parties identified in the Motion, and it appearing that no other or further notice need be provided; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the Court having reviewed the Motion; and pursuant to Bankruptcy Rule 4001, the Interim Hearing on the Motion having been held by this Court on [July __, 2019]; and the relief requested in the Motion being in the best interests of the Debtors, their creditors and their estates and all other parties in interest in these Chapter 11 Cases; and the Court having determined that the relief requested in the Motion is necessary to avoid immediate and irreparable harm; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon the record made by the Debtors in the Motion, the *Declaration of Marc D. Puntus in Support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* (the "**Puntus Declaration**"), the *Declaration of Jesse M. Parrish, Chief Financial Officer of Blackhawk Mining LLC, in Support of the Chapter 11 Petitions and First Day Motions* (the "**First Day Declaration**"), the DIP Documents, and in the evidence submitted and arguments

made by the Debtors at the Interim Hearing, and after due deliberation and sufficient cause appearing therefor;

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

1. *Disposition.* The relief requested in the Motion is GRANTED ON AN INTERIM BASIS in accordance with the terms of this Interim Order. Any and all objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived, settled, or resolved and all reservations of rights included therein, are hereby denied and overruled on the merits. This Interim Order shall become effective immediately upon its entry.

2. *Petition Date*. On July 19, 2019 (the "**Petition Date**"), each Debtor filed a voluntary petition (each, a "**Petition**") under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in any of the Chapter 11 Cases.

3. *Jurisdiction.* This Court has core jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. *Committee Formation*. As of the date hereof, no official committee of unsecured creditors under section 1102 of the Bankruptcy Code (the "**Committee**") or any other statutory committee has been appointed in the Chapter 11 Cases.

5. *Notice*. Appropriate notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules. No other or

further notice of this Interim Order shall be required. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing.

6. *Debtors' Stipulations*. Without prejudice to the rights of any other party in interest and subject to the limitations thereon contained in paragraphs 26 and 28 below, the Debtors admit, stipulate and agree that:

(a) (i) as of the Petition Date: (A) the DIP ABL Borrowers and the Prepetition ABL Guarantors were justly and lawfully indebted and liable to the Prepetition ABL Secured Parties, without defense, counterclaim, recoupment or offset of any kind, in the aggregate principal amount of not less than $85,000,000 in respect of loans made to the DIP ABL Borrowers, plus accrued and unpaid interest thereon and fees, expenses (including, without limitation, any attorneys', accountants', appraisers' and financial advisors' fees, in each case, that are chargeable or reimbursable under the Prepetition ABL Financing Documents), charges, indemnities and other obligations incurred in connection therewith (whether arising before or after the Petition Date) as provided in the Prepetition ABL Financing Documents (the "**Prepetition ABL Debt**"), which Prepetition ABL Debt has been guaranteed on a joint and several basis by all of the Prepetition ABL Guarantors; (B) the Company and the Prepetition First Lien Term Loan Guarantors were justly and lawfully indebted and liable to the Prepetition First Lien Term Loan Secured Parties without defense, counterclaim or offset of any kind, in the aggregate principal amount of not less than approximately $538,974,437 in respect of loans made by the Prepetition First Lien Term Loan Lenders pursuant to, and in accordance with the terms of, the Prepetition First Lien Term Loan Documents, plus accrued and unpaid interest thereon and fees, expenses (including any attorneys', accountants', appraisers' and financial

advisors' fees, in each case, that are chargeable or reimbursable under the Prepetition First Lien Term Loan Documents), charges, indemnities and other obligations incurred in connection therewith (whether arising before or after the Petition Date) as provided in the Prepetition First Lien Term Loan Documents (collectively, the "**Prepetition First Lien Term Loan Debt**"), which Prepetition First Lien Term Loan Debt has been guaranteed on a joint and several basis by all of the Prepetition First Lien Term Loan Guarantors and (C) the Company and the Prepetition Second Lien Term Loan Guarantors were justly and lawfully indebted and liable to the Prepetition Second Lien Term Loan Secured Parties without defense, counterclaim or offset of any kind, in the aggregate principal amount of not less than approximately $318,307,228 in respect of loans made by the Prepetition Second Lien Term Loan Lenders pursuant to, and in accordance with the terms of, the Prepetition Second Lien Term Loan Documents, plus accrued and unpaid interest thereon and fees, expenses (including any attorneys', accountants', appraisers' and financial advisors' fees, in each case, that are chargeable or reimbursable under the Prepetition Second Lien Term Loan Documents), charges, indemnities and other obligations incurred in connection therewith (whether arising before or after the Petition Date) as provided in the Prepetition Second Lien Term Loan Documents (collectively, the "**Prepetition Second Lien Term Loan Debt**" and, together with the Prepetition ABL Debt and Prepetition First Lien Term Loan Debt, the "**Prepetition Debt**"), which Prepetition Second Lien Term Loan Debt has been guaranteed on a joint and several basis by all of the Prepetition Second Lien Term Loan Guarantors; (ii) the Prepetition Debt constitutes the legal, valid, binding, and non-avoidable obligations of the applicable Prepetition Borrowers[10] and the applicable Prepetition Guarantors,[11]

[10] "**Prepetition Borrowers**" shall mean, in the case of the Prepetition First Lien Term Loan Debt and the Prepetition Second Lien Term Loan Debt, the Company and, in the case of the Prepetition ABL Debt, the DIP ABL Borrowers.

enforceable in accordance with its terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code); and (iii) no portion of the Prepetition Debt or any payment made to the Prepetition Secured Parties or applied to or paid on account of the obligations owing under the Prepetition Documents prior to the Petition Date is subject to any contest, attack, rejection, recovery, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law;

(b) as of the Petition Date, the liens and security interests granted to the Prepetition ABL Secured Parties (the "**Prepetition ABL Liens**") pursuant to and in connection with the Prepetition ABL Financing Documents are: (i) valid, binding, perfected, enforceable, first-priority liens and security interests in the Prepetition ABL Priority Collateral;[12] (ii) valid, binding, perfected, enforceable, second-priority liens and security interests in the Prepetition Term Loan Priority Collateral[13] (together with the Prepetition ABL Priority Collateral, the "**Prepetition Collateral**"); (iii) not subject to avoidance, recharacterization, subordination, recovery, attack, counterclaim, crossclaim, offset, recoupment, defense or claim under the Bankruptcy Code or applicable non-bankruptcy law; and (iv) as of the Petition Date, subject and subordinate only to (A) in the case of the Prepetition Term Loan Priority Collateral, (1) the liens and security interests in favor of the Prepetition First Lien Term Loan Secured Parties and (2) certain other liens permitted by the Prepetition Documents, solely to the extent any such

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[11] "**Prepetition Guarantors**" shall mean, collectively, the Prepetition ABL Guarantors, the Prepetition First Lien Term Loan Guarantors and the Prepetition Second Lien Term Loan Guarantors.

[12] "**Prepetition ABL Priority Collateral**" means "ABL Priority Collateral" as defined in the Prepetition ABL Intercreditor Agreement (as defined below).

[13] **"Prepetition Term Loan Priority Collateral"** means "Term Loan Priority Collateral" as defined in the Prepetition ABL Intercreditor Agreement.

permitted liens were valid, properly perfected, non-avoidable and *pari passu* or senior in priority to Prepetition First Lien Term Liens (as defined below) and (B) in the case of the Prepetition ABL Priority Collateral, certain other liens permitted by the Prepetition Documents, solely to the extent any such permitted liens were valid, properly perfected, non-avoidable and *pari passu* or senior in priority to the Prepetition ABL Liens;

(c) as of the date of the Petition Date, the liens and security interests granted to the Prepetition First Lien Term Loan Secured Parties (the "**Prepetition First Lien Term Liens**") pursuant to and in connection with the Prepetition First Lien Term Loan Documents are: (i) valid, binding, perfected, enforceable, first-priority liens and security interests in the Prepetition Term Loan Priority Collateral; (ii) valid, binding, perfected, enforceable, second-priority liens and security interests in the Prepetition ABL Priority Collateral; (iii) not subject to avoidance, recharacterization, subordination, recovery, attack, effect, counterclaim, crossclaim, offset, recoupment, defense or claim (as such term is used in the Bankruptcy Code, "**Claim**") under the Bankruptcy Code or applicable non-bankruptcy law; and (iv) as of the Petition Date, subject and subordinate only to (A) in the case of the Prepetition ABL Priority Collateral, (1) the liens and security interests in favor of the Prepetition ABL Secured Parties and (2) certain other liens permitted by the Prepetition Documents, solely to the extent any such permitted liens were valid, properly perfected, non-avoidable and *pari passu* or senior in priority to the Prepetition ABL Liens and (B) in the case of the Prepetition Term Loan Priority Collateral, certain other liens permitted by the Prepetition Documents, solely to the extent any such permitted liens were valid, properly perfected, non-avoidable and *pari passu* or senior in priority to Prepetition First Lien Term Liens;

(d) as of the Petition Date, the liens and security interests granted to the Prepetition Second Lien Term Loan Secured Parties (the "**Prepetition Second Lien Term Liens**" and, together with the Prepetition First Lien Term Liens, the "**Prepetition Term Liens**" and together with the Prepetition ABL Liens, the "**Prepetition Liens**") pursuant to and in connection with the Prepetition Second Lien Term Loan Agreements are: (i) valid, binding, perfected, enforceable, third-priority liens and security interests in the Prepetition Term Loan Priority Collateral; (ii) valid, binding, perfected, enforceable, third-priority liens and security interests in the Prepetition ABL Priority Collateral; (iii) not subject to avoidance, recharacterization, subordination, recovery, attack, counterclaim, crossclaim, offset, recoupment, defense or claim under the Bankruptcy Code or applicable non-bankruptcy law; and (iv) as of the Petition Date, subject and subordinate only to (A) in the case of the Prepetition ABL Priority Collateral, (1) the liens and security interests in favor of the Prepetition ABL Secured Parties and the Prepetition First Lien Term Loan Secured Parties and (2) certain other liens permitted by the Prepetition Documents, solely to the extent any such permitted liens were valid, properly perfected, non-avoidable and *pari passu* or senior in priority to the Prepetition First Lien Term Liens and (B) in the case of the Prepetition Term Loan Priority Collateral, (1) the Prepetition First Lien Term Liens and Prepetition ABL Liens and (2) certain other liens permitted by the Prepetition Documents, solely to the extent any such permitted liens were valid, properly perfected, non-avoidable and *pari passu* or senior in priority to Prepetition First Lien Term Liens;

(e) the aggregate value of the Prepetition ABL Priority Collateral exceeds the aggregate amount of the Prepetition ABL Debt;

(f) as of the Petition Date, other than as expressly permitted under the Prepetition Documents, there were no liens on or security interests in the Prepetition Collateral other than the Prepetition Liens;

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

(h) no claims, counterclaims, objections, defenses, set-off rights, challenges or causes of action exist against, or with respect to, the Prepetition Secured Parties or any of their respective affiliates, agents, subsidiaries, partners, controlling persons, agents, attorneys, advisors, professionals, officers, directors and employees, whether arising under applicable state or federal law (including, without limitation, any recharacterization, or other equitable relief that might otherwise impair the aforementioned parties or their interest in the Prepetition Collateral, subordination, avoidance or other claims, including any claims or causes of action arising under or pursuant to sections 105, 502(d), 510, 542 through 553(b) or 724(a) of the Bankruptcy Code), in connection with or arising under any Prepetition Documents or the transactions contemplated thereunder or the Prepetition Debt or Prepetition Liens, including without limitation, any right to assert any disgorgement or recovery; and the Debtors and their estates hereby release and discharge any and all such claims, counterclaims, objections, defenses, set-off rights, challenges and causes of actions;

(i) subject to entry of the Final Order, the Debtors hereby absolutely and unconditionally release and forever discharge and acquit the Prepetition Secured Parties and their

respective Representatives (as defined below) each solely in their capacity as such (collectively, the "**Released Parties**") from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all claims, counterclaims, demands, debts, accounts, contracts, liabilities, actions and causes of action arising prior to the Petition Date (collectively, the "**Released Claims**") of any kind, nature or description, whether known or unknown, foreseen or unforeseen or liquidated or unliquidated, arising in law or equity or upon contract or tort or under any state or federal law or otherwise, arising out of or related to (as applicable) the Prepetition Documents, the obligations owing and the financial obligations made thereunder, the negotiation thereof and of the transactions reflected thereby, and the obligations and financial obligations made thereunder, in each case that the Debtors at any time had, now have or may have, or that their successors or assigns hereafter can or may have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of this Interim Order, whether such Released Claims are matured, contingent, liquidated, unliquidated, unmatured, known, unknown or otherwise;

(j) that the (A) Prepetition Intercreditor Agreements govern, among other things, the relative priorities of the Prepetition Liens in respect of the applicable Prepetition Collateral, (B) the Prepetition Intercreditor Agreements are binding and enforceable against the Prepetition Borrowers, the Prepetition Guarantors and the Prepetition Secured Parties in accordance with their terms, and (C) the Prepetition Borrowers, the Prepetition Guarantors and the Prepetition Secured Parties are not entitled to take any action that would be contrary to the provisions thereof; and

(k) all cash, securities or other property of the DIP Loan Parties (and the proceeds therefrom), in each case, constituting Prepetition Collateral, as of the Petition Date,

including, without limitation, all cash, securities or other property (and the proceeds therefrom) and other amounts on deposit or maintained by the DIP Loan Parties in any account or accounts (collectively, the "**Depository Institutions**"), in each case, constituting Prepetition Collateral were subject to rights of set-off under the Prepetition Documents and applicable law, for the benefit of the Prepetition Secured Parties, subject to the priorities set forth in the Prepetition Intercreditor Agreements. All proceeds of the Prepetition Collateral (including cash on deposit at the Depository Institutions as of the Petition Date, securities or other property, whether subject to control agreements or otherwise, in each case that constitutes Prepetition Collateral) are "cash collateral" of the Prepetition Secured Parties within the meaning of section 363(a) of the Bankruptcy Code (the "**Cash Collateral**"), subject to the priorities set forth in the Prepetition Intercreditor Agreements.

7. *Findings Regarding the DIP Financing and Use of Cash Collateral.*

(a) Good and sufficient cause has been shown for the entry of this Interim Order and authorization for the DIP Loan Parties to obtain financing pursuant to the DIP Facilities.

(b) The DIP Loan Parties have an immediate need to obtain the DIP Financing and continue to use the Prepetition Collateral (including Cash Collateral) in order to, among other things, (i) permit the orderly continuation of the operation of their businesses, (ii) maintain business relationships with customers, vendors and suppliers, (iii) pay for the necessary services and materials to maintain compliance with permitting and environmental regulatory requirements, (iv) pay for use of the mining equipment leased from third parties, (v) make payroll, (vi) satisfy other working capital and operational needs, (vii) repay a portion of the Prepetition First Lien Term Loan Debt pursuant to the Term Loan Roll-Up (as defined below),

(viii) repay the Prepetition ABL Debt pursuant to the Interim ABL Roll-Up (as defined below) and, subject to entry of the Final Order, Repay in Full any remaining Prepetition ABL Debt. The access by the DIP Loan Parties to sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition Collateral, incurrence of new indebtedness under the DIP Documents and other financial accommodations provided under the DIP Documents are necessary and vital to the preservation and maintenance of the going concern values of the DIP Loan Parties and to a successful reorganization of the DIP Loan Parties. The terms of the proposed financing are fair and reasonable, reflect the DIP Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration. The adequate protection provided in this Interim Order and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code.

(c) The Prepetition ABL Secured Parties would not otherwise consent to the use of their Cash Collateral or the subordination of their liens (to the extent set forth on **Exhibit A** hereto), and the DIP ABL Agent and the DIP ABL Lenders would not be willing to provide the DIP ABL Facility or extend credit to the Debtors thereunder without the inclusion of the ABL Roll-Up. Moreover, the conversion and roll-up of all outstanding Prepetition ABL Obligations into the DIP ABL Obligations will create availability under the DIP ABL Facility.

(d) The Prepetition First Lien Term Loan Secured Parties would not otherwise consent to the use of their Cash Collateral or the subordination of their liens (to the extent set forth on **Exhibit A** hereto), and the Term DIP Lenders would not be willing to provide the Term DIP Facility or extend credit to the Debtors thereunder without the inclusion of the Term Loan Roll-Up.

(e) The DIP Loan Parties are unable to obtain financing on more favorable terms from sources other than the DIP Lenders[14] under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The DIP Loan Parties are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the DIP Loan Parties granting to the DIP Secured Parties, subject to the Carve-Out, the DIP Liens and the DIP Superpriority Claims (as defined below) and, subject to the Carve-Out, incurring the Adequate Protection Obligations (as defined below), in each case, under the terms and conditions set forth in this Interim Order and in the DIP Documents.

(f) Based on the Motion, the Puntus Declaration, the First Day Declaration and the record presented to the Court at the Interim Hearing, (i) the terms of the DIP Financing, (ii) the terms of the adequate protection granted to the Prepetition Secured Parties as provided in paragraphs 20 and 21 of this Interim Order (the "**Adequate Protection**") and (iii) the terms on which the DIP Loan Parties may continue to use the Prepetition Collateral (including Cash Collateral), in each case pursuant to this Interim Order and the DIP Documents, are in each case fair and reasonable, reflect the DIP Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties, constitute reasonably equivalent value and fair consideration, and represent the best financing presently available.

(g) To the extent such consent is required, the Prepetition Secured Parties have consented or are deemed under the Prepetition Intercreditor Agreements to have consented to the DIP Loan Parties' use of Cash Collateral and the other Prepetition Collateral, and the DIP

[14] **"DIP Lenders"** means, collectively, the DIP ABL Lenders and the Term DIP Lenders.

Loan Parties' entry into the DIP Documents, in accordance with and subject to the terms and conditions set forth in this Interim Order and the DIP Documents.

(h) The DIP Financing, the Adequate Protection and the use of the Prepetition Collateral (including Cash Collateral) have been negotiated in good faith and at arm's length among the DIP Loan Parties, the DIP Agents and the DIP Lenders, and all of the DIP Loan Parties' obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing and the DIP Documents, including, without limitation: (i) all loans made to and guarantees issued by the DIP Loan Parties pursuant to the DIP Documents (the "**DIP Loans"**) and any "**Obligations**" and "**DIP ABL Obligations**" (as defined in the DIP Credit Agreements) shall be deemed to have been extended by the DIP Agents and the DIP Lenders and their respective affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Agents and the DIP Lenders (and the successors and assigns thereof) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise. The Prepetition Secured Parties have acted in good faith regarding the DIP Financing and the DIP Loan Parties' continued use of the Prepetition Collateral (including Cash Collateral) to fund the administration of the DIP Loan Parties' estates and continued operation of their businesses (including the incurrence and payment of the Adequate Protection Obligations and the granting of the Adequate Protection Liens (as defined below)), in accordance with the terms hereof, and the Prepetition Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of section 363(m) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(i) The Prepetition Secured Parties are entitled to the Adequate Protection provided in this Interim Order as and to the extent set forth herein pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code. Based on the Motion, the Puntus Declaration, the First Day Declaration and the record presented to the Court, the terms of the proposed Adequate Protection arrangements and of the use of the Prepetition Collateral (including Cash Collateral) are fair and reasonable, reflect the DIP Loan Parties' prudent exercise of business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration for the use of the Prepetition Collateral (including Cash Collateral); *provided* that nothing in this Interim Order or the DIP Documents shall (x) be construed as the affirmative consent by any of the Prepetition Secured Parties for the use of Cash Collateral other than on the terms set forth in this Interim Order and in the context of the DIP Financing authorized by this Interim Order, (y) be construed as a consent by any party to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior or junior) or (z) prejudice, limit or otherwise impair the rights of any of the Prepetition Secured Parties, subject to any applicable provisions of the Prepetition Intercreditor Agreements, to seek new, different or additional adequate protection or assert the interests of any of the Prepetition Secured Parties.

(j) Payment of the Prepetition ABL Debt and a portion of the Prepetition First Lien Term Loan Debt pursuant to the ABL Roll-Up and Term Loan Roll-Up, respectively, reflect the DIP Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties.

(k) The Debtors have prepared and delivered to DIP Agents and the DIP Lenders an initial budget (the "**Initial Budget**"), a copy of which is attached to the Motion as **Schedule 1** to **Exhibit A**. The Initial Budget reflects the Debtors' anticipated cash receipts

and anticipated disbursements for each calendar week during the period from the Petition Date through and including the end of the thirteenth (13th) calendar week following the Petition Date (the Initial Budget and each subsequent budget approved pursuant to the DIP Documents (an "**Approved Budget**")). The Debtors believe that the Initial Budget is reasonable under the facts and circumstances. The DIP Agents and the DIP Lenders are relying, in part, upon the Debtors' covenants in the DIP Credit Agreements with respect to the Approved Budget, the other DIP Documents, and this Interim Order in determining to enter into the postpetition financing arrangements provided for in this Interim Order.

(l) The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Bankruptcy Rules and good cause has been shown for the immediate entry of this Interim Order. For the reasons set forth in the Motion, the Puntus Declaration and the First Day Declaration, absent granting the relief set forth in this Interim Order, the DIP Loan Parties' estates would face significant business disruption resulting in immediate and irreparable harm. Consummation of the DIP Financing and the use of Prepetition Collateral (including Cash Collateral), in accordance with this Interim Order and the DIP Documents are therefore in the best interests of the DIP Loan Parties, their estates and their creditors. The terms of this Interim Order and the DIP Facilities are fair and reasonable under the circumstances, reflect the DIP Loan Parties' exercise of their prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

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

(a) The DIP Loan Parties are hereby authorized to execute, enter into and perform all obligations under the DIP Documents. The DIP ABL Borrowers are hereby

authorized to forthwith borrow money pursuant to the DIP ABL Credit Agreement, and the DIP ABL Guarantors are hereby authorized to guaranty DIP ABL Obligations, in each case up to an aggregate principal or face amount equal to $90 million under the DIP ABL Facility, together with applicable interest, protective advances, expenses, fees and other charges payable in connection with the DIP ABL Facility, subject in each case to any limitations on borrowing under the DIP ABL Financing Documents, which shall be used for all purposes permitted under the DIP Documents, including, without limitation, to roll-up and refinance the Prepetition ABL Debt as provided herein, to provide working capital for the DIP Loan Parties and to pay interest, fees and expenses in accordance with this Interim Order and the DIP Documents (including any indemnification obligations). The DIP Loan Parties are hereby authorized to forthwith borrow money pursuant to the Term DIP Credit Agreement, and the Term DIP Guarantors are hereby authorized to guaranty the DIP Loan Parties' Term DIP Obligations with respect to such borrowings, in each case up to an aggregate principal amount equal to $35 million of New Money Term DIP Loans and $70 million of Term DIP Roll-Up Loans on an interim basis, together with applicable interest, protective advances, expenses, fees and other charges payable in connection with the Term DIP Facility and, subject to entry of the Final Order, an additional $15 million of New Money Term DIP Loans and $30 million of Term DIP Roll-Up Loans, together with applicable interest, protective advances, expenses, fees and other charges payable in connection with the Term DIP Facility, subject to any limitations on borrowing under the Term DIP Documents, which shall be used for purposes permitted under the DIP Documents, including, without limitation, to roll-up and refinance a portion of the Prepetition First Lien Term Loan Debt as provided herein and to pay interest, fees and expenses in accordance with this Interim Order and the DIP Documents (including any indemnification obligations).

(b) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages, deeds of trust and financing statements), and to pay all fees that may be reasonably required or necessary for the DIP Loan Parties to implement the terms of, performance of their obligations under or effectuate the purposes of and transactions contemplated by this Interim Order or the DIP Financing, including, without limitation:

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

(ii) the execution and delivery of, and performance under, one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each case, in such form as the DIP Loan Parties, the DIP Agents, the Required DIP ABL Lenders (as defined in the DIP ABL Credit Agreement, the "**Required DIP ABL Lenders**") and the Required Lenders (as defined in the Term DIP Credit Agreement, the "**Required Term DIP Lenders**," and together with the Required DIP ABL Lenders, the "**Required DIP Lenders**"), as applicable, may agree, it being understood that no further approval of the Court shall be required for authorizations, amendments, waivers, consents or other modifications to and under the DIP Documents (and any fees and other expenses (including any attorneys', accountants', appraisers' and financial advisors' fees), amounts, charges, costs, indemnities and other obligations paid in connection therewith) that do not shorten the maturity of the extensions of credit thereunder or increase the aggregate commitments or the rate of interest payable thereunder;

(iii) the non-refundable payment to the DIP Agents and/or the DIP Lenders, as the case may be, of all fees, including, without limitation, any closing fee, backstop

fee, unused line commitment fee, structuring fee, upfront fee, exit fee, prepayment fee or agency fee (which fees, in each case, shall be, and shall be deemed to have been, approved upon entry of this Interim Order, and which fees shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise) and any amounts due (or that may become due) in respect of the indemnification obligations, in each case referred to in the DIP Credit Agreements (and in any separate letter agreements between any or all DIP Loan Parties, on the one hand, and any of the DIP Agents and/or DIP Lenders, on the other, in connection with the DIP Financing) and the costs and expenses as may be due from time to time, including, without limitation, fees and expenses of the professionals retained by any of the DIP Agents or DIP Lenders, including, without limitation, the reasonable and documented fees and expenses of (i) Hogan Lovells US LLP as primary counsel to the DIP ABL Agent, Morris, Nichols, Arsht & Tunnell LLP as bankruptcy and Delaware counsel to the DIP ABL Agent, and a single local counsel to the DIP ABL Agent in each other applicable jurisdiction, (ii) Herrick Feinstein LLP as primary counsel to the Term DIP Agent and Prepetition First Lien Term Loan Agent and a single local counsel to the Term DIP Agent and Prepetition First Lien Term Loan Agent in each applicable jurisdiction, (iii) Stroock & Stroock & Lavan LLP as primary counsel to the Prepetition Second Lien Term Loan Agent and a single local counsel to the Prepetition Second Lien Term Loan Agent in each applicable jurisdiction, (iv) Davis Polk & Wardwell LLP as primary counsel to an ad hoc group of Term DIP Lenders, Prepetition First Lien Term Loan Lenders and Prepetition Second Lien Term Loan Lenders (the "**Crossover Group**"), a single local counsel to the Crossover Group in each applicable jurisdiction, and (v) Shearman &

Sterling LLP as primary counsel to certain of the Prepetition First Lien Term Loan Lenders (the "**First Lien Group**"), and a single local counsel to the First Lien Group, in each case, as provided for in the DIP Documents, without the need to file retention motions or fee applications or to provide notice to any party, but subject to the provisions of this Interim Order regarding the submission of fee statements and the related objection period; and

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

(c) Upon execution and delivery of the DIP Documents, each of the DIP Documents shall constitute valid, binding and non-avoidable obligations of the DIP Loan Parties, fully enforceable against each DIP Loan Party in accordance with the terms of the DIP Documents and this Interim Order. No obligation, payment, transfer or grant of security under the DIP Documents or this Interim Order to the DIP Agents (including their Representatives) and/or the DIP Lenders (including their Representatives) shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, 548 or 549 of the Bankruptcy Code, any applicable Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or other similar state statute or common law), or subject to any defense, reduction, setoff, recoupment, recharacterization, subordination, disallowance, impairment, cross-claim, claim or counterclaim.

(d) No DIP Lender or DIP Agent shall have any obligation or responsibility to monitor any DIP Loan Party's use of the DIP Financing, and each DIP Lender or DIP Agent may rely upon each DIP Loan Party's representations that the amount of DIP Financing requested at

any time and the use thereof, are in accordance with the requirements of this Interim Order, the DIP Documents, and Bankruptcy Rule 4001(c)(2).

(e) The Debtors and the financial institutions where the Debtors' Cash Collection Accounts (as defined below) are maintained (including those accounts identified in any Cash Management Order), are authorized and directed to remit, without offset or deduction, funds in such Cash Collection Accounts upon receipt of any direction to that effect from the DIP ABL Agent. For the avoidance of doubt, except to the extent expressly set forth in the DIP ABL Financing Documents, all prepetition practices and procedures for the payment and collection of proceeds of the Prepetition ABL Priority Collateral, the turnover of cash, the delivery of property to the Prepetition ABL Agent and the Prepetition ABL Lenders, including any control agreements and any other similar lockbox or blocked depository bank account arrangements, are hereby approved and shall continue without interruption and shall apply to the DIP ABL Facility. Without limiting the general applicability of the immediately preceding sentence, and notwithstanding anything contrary in this Interim Order, from and after the date of the entry of this Interim Order, all collections and proceeds of any Prepetition ABL Priority Collateral and other DIP ABL Priority Collateral and all Cash Collateral (other than identifiable net proceeds of DIP Term Loan Priority Collateral and except as otherwise set forth in the DIP ABL Credit Agreement) that shall at any time come into the possession, custody, or control of any Debtor, or to which any Debtor is now or shall become entitled at any time, shall be promptly deposited in the same lock-box and/or deposit accounts into which the collections and proceeds of the Prepetition ABL Priority Collateral were deposited under the Prepetition ABL Financing Documents (or in such other accounts as are designated by the DIP ABL Agent from time to time) (collectively, the "**Cash Collection Accounts**") for application in accordance with this

Interim Order, which accounts (except as otherwise set forth in the DIP ABL Credit Agreement) shall be subject to the sole dominion and control of the DIP ABL Agent until the discharge of the DIP ABL Facility. Unless otherwise agreed to in writing by the DIP ABL Agents and the Prepetition ABL Agents, or otherwise provided for herein, the Debtors shall maintain no accounts except those identified in this Interim Order or in any cash management order entered by the Court (a "**Cash Management Order**").

9. *DIP Intercreditor Agreement*. The DIP Loan Parties are hereby authorized and directed to execute, enter into and perform under the intercreditor agreement among the DIP Loan Parties, the DIP ABL Agent and the Term DIP Agent, substantially in the form attached to the DIP Credit Agreements (the "**DIP ICA**"). For the avoidance of doubt the DIP ICA shall be deemed a DIP Document hereunder.

10. *Payment of the Prepetition ABL Debt*. The DIP Loan Parties are hereby authorized to (x) perform the transactions and undertakings contemplated hereby, which are hereby approved in all respects, (y) to remit the Debtors' prepetition and postpetition accounts receivable and all other proceeds of the DIP ABL Priority Collateral for application to the outstanding principal balance of the Prepetition ABL Debt (the "**Interim ABL Roll-Up**"), thereby creating a dollar-for-dollar increase in the DIP Revolving Loan Availability (as defined in the DIP ABL Credit Agreement), and, upon entry of the Final Order, to use the proceeds of the DIP ABL Financing to roll-up and refinance the remainder of the Prepetition ABL Debt, including interest and fees through the date of repayment (at the non-default contract rate) (the "**Final ABL Roll-Up**," and together with the Interim ABL Roll-Up, the "**ABL Roll-Up**"), and the amounts so rolled-up and refinanced, the "**ABL Roll-Up Loans**"), which roll-up and refinancing shall be indefeasible upon the occurrence of the ABL Discharge and shall be entitled

to all the priorities, privileges, rights, and other benefits afforded to the other DIP Obligations under this Interim Order, the Final Order and the DIP Loan Documents, and (z) use the proceeds of the DIP ABL Financing to pay any fees, charges or expenses incurred by the Prepetition ABL Agent prior to the Petition Date, but which are posted after the payoff of the Prepetition ABL Debt. The foregoing transactions in respect of the Prepetition ABL Debt shall be indefeasible upon the ABL Discharge. Subject to the terms and conditions contained in this Interim Order (including, without limitation, the DIP Liens (as defined below) granted hereunder and the Carve-Out (as defined below)), any and all prepetition or postpetition liens and security interests (including, without limitation, any adequate protection replacement liens at any time granted to the Prepetition ABL Secured Parties by this Court) that the Prepetition ABL Secured Parties have or may have in the Collateral shall (a) continue to secure the unpaid portion of any Prepetition ABL Debt (including, without limitation, any Prepetition ABL Debt subsequently reinstated after the repayment thereof) and (b) be junior and subordinate in all respects to the Carve-Out and otherwise have the priorities set forth on **Exhibit A** attached hereto (such liens and security interests of the Prepetition ABL Secured Parties are hereinafter referred to as the "**ABL Indemnification Liens,**" and any such unpaid or reinstated Prepetition ABL Debt described in clause (a) of this sentence is hereinafter referred to as the "**Prepetition ABL Indemnification Obligations**"). Any surviving obligations as set forth in any DIP Document, Prepetition Documents, any payoff letter related to the Prepetition ABL Debt and/or any documents related to the foregoing, including, without limitation, any indemnification of the Prepetition ABL Secured Parties and the ABL Indemnification Liens, shall continue and survive the ABL Discharge and the other transactions described in this paragraph and shall not be

discharged pursuant to a chapter 11 plan or any discharge under section 1141 of the Bankruptcy Code.

11. *Payment of the Prepetition First Lien Term Loan Debt.* On the date of each borrowing of New Money Term DIP Loans under the Term DIP Credit Agreement, the Prepetition First Lien Term Loan Debt held by the Term DIP Lenders (or if a Term DIP Lender is a designee of a Prepetition First Lien Term Loan Lender, the Prepetition First Lien Term Loan Debt held by such designating Prepetition First Lien Term Loan Lender) shall immediately, automatically and irrevocably be deemed to have been converted into Term DIP Roll-Up Loans in an amount equal to $2.00 for each $1.00 of the New Money Term DIP Loans funded on such date (the "**Term Loan Roll-Up**"), which Term DIP Roll-Up Loans shall be entitled to all the priorities, privileges, rights, and other benefits afforded to the other DIP Obligations under this Interim Order, the Final Order and the DIP Loan Documents, in each case subject to the terms and conditions set forth in this Interim Order, the Final Order, the DIP Documents and the reservation of rights of parties in interest in paragraph 30 below.

12. *Carve-Out*

(a) As used in this Interim Order, the "Carve Out" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the "Allowed Professional Fees") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the

Bankruptcy Code (the "Debtor Professionals") and the official committee of unsecured creditors (the "Creditors' Committee") (if appointed) pursuant to section 328 or 1103 of the Bankruptcy Code (the "Committee Professionals" and, together with the Debtor Professionals, the "Professional Persons") at any time before or on the first business day following delivery by the Term DIP Agent or the DIP ABL Agent of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed $2,000,000 incurred after the first business day following delivery by the Term DIP Agent or the DIP ABL Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "Post-Carve Out Trigger Notice Cap"). For purposes of the foregoing, "Carve Out Trigger Notice" shall mean a written notice delivered by email (or other electronic means) by the Term DIP Agent or the DIP ABL Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Creditors' Committee (if appointed) with a copy to the Prepetition First Lien Term Loan Agent (which shall post the same to the Prepetition First Lien Term Loan Lenders), the Prepetition ABL Agent (which shall post the same to the Prepetition ABL Lenders), and the DIP Agent not delivering such notice, which notice may be delivered following the occurrence and during the continuation of an Event of Default (as defined in this Interim Order) and acceleration of the DIP ABL Obligations or the Term DIP Obligations under the DIP ABL Facility or the Term DIP Facility, as applicable, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) Fee Estimates. Not later than 7:00 p.m. New York time on the third business day of each week starting with the first full calendar week following the Closing Date,

each Professional Person shall deliver to the Debtors a statement setting forth a good-faith estimate of the amount of fees and expenses (collectively, "Estimated Fees and Expenses") incurred during the preceding week by such Professional Person (through Saturday of such week, the "Calculation Date"), along with a good-faith estimate of the cumulative total amount of unreimbursed fees and expenses incurred through the applicable Calculation Date and a statement of the amount of such fees and expenses that have been paid to date by the Debtors (each such statement, a "Weekly Statement"); *provided*, *that* within one business day of the occurrence of the Termination Declaration Date (as defined below), each Professional Person shall deliver one additional statement (the "Final Statement") setting forth a good-faith estimate of the amount of fees and expenses incurred during the period commencing on the calendar day after the most recent Calculation Date for which a Weekly Statement has been delivered and concluding on the Termination Declaration Date. If any Professional Person fails to deliver a Weekly Statement within three calendar days after such Weekly Statement is due, such Professional Person's entitlement (if any) to any funds in the Carve Out Reserves (as defined below) with respect to the aggregate unpaid amount of Allowed Professional Fees for the applicable period(s) for which such Professional Person failed to deliver a Weekly Statement covering such period shall be limited to the aggregate unpaid amount of Allowed Professional Fees included in the Approved Budget for such period for such Professional Person; *provided*, *that* such Professional Person shall be entitled to be paid any unpaid amount of Allowed Professional Fees in excess of Allowed Professional Fees included in the Approved Budget for such period for such Professional Person from a reserve to be funded by the Debtors from all cash on hand as of such date and any available cash thereafter held by any Debtor pursuant to paragraph 12(c) below. Solely as it relates to the DIP ABL Agent, the Term DIP Agent, the DIP

ABL Lenders, the Term DIP Lenders, the Prepetition ABL Agent, and the Prepetition Secured Parties, any deemed draw and borrowing pursuant to paragraph 12(c)(i)(x) for amounts under paragraph 12(a)(iii) above shall be limited to the greater of (x) the sum of (I) the aggregate unpaid amount of Estimated Fees and Expenses included in such Weekly Statements timely received by the Debtors prior to the Termination Declaration Date *plus*, without duplication, (II) the lesser of (1) the aggregate unpaid amount of Estimated Fees and Expenses included in the Final Statements timely received by the Debtors pertaining to the period through and including the Termination Declaration Date and (2) the Budgeted Cushion Amount (as defined below), and (y) the aggregate unpaid amount of Allowed Professional Fees included in the Approved Budget for the period prior to the Termination Declaration Date (such amount, the "DIP Professional Fee Carve Out Cap"). For the avoidance of doubt, at all times, the DIP ABL Agent and the Term DIP Agent shall be entitled to maintain reserves (the "Carve-Out Reserve"), including, without limitation, a reserve in an amount (the "Carve-Out Reserve Amount")[15] equal to the sum of (i) the greater of (x) the aggregate unpaid amount of Estimated Fees and Expenses included in all Weekly Statements timely received by the Debtors, and (y) the aggregate amount of Allowed Professional Fees contemplated to be unpaid in the Approved Budget at the applicable time, *plus* (ii) the Post-Carve Out Trigger Notice Cap, *plus* (iii) the amounts contemplated under paragraph 12(a)(i) and 12(a)(ii) above, *plus* (iv) an amount equal to the amount of Allowed Professional Fees set forth in the Approved Budget for the then current week occurring after the most recent Calculation Date and the two weeks succeeding such current week (such amount set forth in (iv), regardless of whether such reserve is maintained, the "Budgeted Cushion Amount"). Not later than 7:00 p.m. New York time on the fourth business day of each week starting with the first full

[15] For the avoidance of doubt, the Carve-Out Reserve and the Carve-Out Reserve Amount shall in no way limit the "Reserves" as defined in the DIP ABL Credit Agreement.

calendar week following the Closing Date, the Debtors shall deliver to the DIP ABL Agent and the Term DIP Agent a report setting forth the Carve-Out Reserve Amount as of such time, and, in setting the Carve-Out Reserve, the DIP ABL Agent and the Term DIP Agent shall be entitled to rely upon such reports in accordance with the DIP ABL Credit Agreement and section 8.16 the Term DIP Credit Agreement, respectively. Prior to the delivery of the first report setting forth the Carve-Out Reserve Amount, the DIP ABL Agent and the Term DIP Agent shall calculate the Carve-Out Reserve Amount by reference to the Approved Budget for subsection (i) of the Carve-Out Reserve Amount and for the portion of the Carve-Out Reserve Amount attributable to section 12(a)(i).

(c) Carve Out Reserves

(i) On the day on which a Carve Out Trigger Notice is given by the DIP ABL Agent or the Term DIP Agent to the Debtors with a copy to counsel to the Creditors' Committee (if appointed) (the "Termination Declaration Date"), the Carve Out Trigger Notice shall (x) be deemed a draw request and notice of borrowing by the Debtors for DIP Loans under the DIP ABL Credit Agreement or the Term DIP Credit Agreement, as applicable (on a pro rata basis based on the then outstanding DIP Commitments), in an amount equal to the sum of (1) the amounts set forth in paragraphs 12(a)(i) and 12(a)(ii) above, and (2) the lesser of (a) the then unpaid amounts of the Allowed Professional Fees (b) the DIP Professional Fee Carve Out Cap (any such amounts actually advanced shall constitute DIP ABL Loans or Term DIP Loans, as applicable) and (y) also constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the sum of the amounts set forth in paragraphs 12(a)(i)–(iii) above. The Debtors shall deposit and hold such amounts in trust in a segregated third-party bank account (in respect of amounts

funded by the DIP ABL Lenders or from the DIP ABL Priority Collateral) and the Term DIP Agent in trust (in respect of proceeds of the Term Loan Priority Collateral or the proceeds of the Term DIP Loans) exclusively to pay such then unpaid Allowed Professional Fees (the "Pre-Carve Out Trigger Notice Reserve") prior to any and all other claims.

(ii) On the Termination Declaration Date, the Carve Out Trigger Notice shall also (x) be deemed a request by the Debtors for DIP ABL Loans under the DIP ABL Credit Agreement or Term DIP Loans under the Term DIP Credit Agreement, as applicable (on a pro rata basis based on the then outstanding DIP Commitments), in an amount equal to the Post-Carve Out Trigger Notice Cap (any such amounts actually advanced shall constitute DIP ABL Loans or Term DIP Loans, as applicable) and (y) constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor, after funding the Pre-Carve Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap. The Debtors shall deposit and hold such amounts in trust in a segregated third-party account with the DIP ABL Agent or the Term DIP Agent (as applicable) to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap (the "Post-Carve Out Trigger Notice Reserve" and, together with the Pre-Carve Out Trigger Notice Reserve, the "Carve Out Reserves") prior to any and all other claims.

(iii) On the first business day after the Term DIP Agent or the DIP ABL Agent gives such notice to such DIP ABL Lenders (as defined in the DIP ABL Credit Agreement), notwithstanding anything in the DIP ABL Credit Agreement to the contrary, including with respect to the existence of a Default (as defined in the DIP ABL Credit Agreement) or Event of Default, the failure of the Debtors to satisfy any or all of the conditions precedent for DIP ABL Loans under the DIP ABL Facility, any termination of the DIP

Commitments following an Event of Default, or the occurrence of the Maturity Date, each DIP ABL Lender with an outstanding DIP Revolving Loan Commitment (on a pro rata basis based on the then outstanding DIP Revolving Loan Commitments) shall make available to the DIP ABL Agent such DIP ABL Lender's pro rata share with respect to such borrowing in accordance with the DIP ABL Facility; *provided* that in no event shall the DIP ABL Agent or the DIP ABL Lenders be required to extend DIP ABL Loans pursuant to a deemed draw and borrowing pursuant to paragraphs 12(c)(i)(x) and 12(c)(ii)(x) in an aggregate amount exceeding the Carve-Out Reserve Amount.

(iv) All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out set forth above (the "Pre-Carve Out Amounts"), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full. If the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, subject to clause (vi), below, all remaining funds in (x) the account funded by the DIP ABL Lenders shall be distributed *first* to the DIP ABL Agent on account of the DIP ABL Obligations until indefeasibly Paid in Full, and *thereafter* for application to the Prepetition ABL Obligations in accordance with the Prepetition ABL Credit Agreement and (y) all remaining funds in the account funded by the Term DIP Lenders shall be distributed to the Term DIP Agent which shall apply such funds to the Term DIP Obligations in accordance with the Term DIP Credit Agreement until indefeasibly Paid in Full.

(v) All funds in the Post Carve Out Trigger Notice Reserve, to the extent they exceed the DIP Professional Fee Carve Out Cap, shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the "Post-Carve Out Amounts"). If, after such application, the Post Carve Out Trigger Notice Reserve has not

been reduced to zero, subject to clause (vi) below, all remaining funds (x) in respect of the account funded by the DIP ABL Lenders, shall be distributed *first* to the DIP ABL Agent on account of the DIP ABL Obligations until indefeasibly Paid in Full, and *thereafter* for application to the Prepetition ABL Obligations in accordance with the Prepetition ABL Credit Agreement and (y) all remaining funds in the account funded by the Term DIP Lenders shall be distributed to the Term DIP Agent, which shall apply such funds to the Term DIP Obligations in accordance with the Term DIP Credit Agreement until indefeasibly Paid in Full.

(vi) Notwithstanding anything to the contrary in the DIP ABL Documents, the Term DIP Documents, or this Interim Order, (x) if either of the Carve Out Reserves required to be funded by the DIP ABL Lenders is not funded in full in the amounts set forth in this paragraph, then any excess funds in one of the Carve Out Reserves held in any account funded by the DIP ABL Lenders following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts (subject to the limits contained in the DIP Professional Fee Carve Out Cap and the Post-Carve Out Trigger Notice Cap, respectively) shall be used to fund the other Carve Out Reserve to the extent of any shortfall in funding by the DIP ABL Lenders prior to making any payments to the DIP ABL Agent or the Prepetition ABL Secured Parties, as applicable, and (y) if either of the Carve Out Reserves required to be funded with the proceeds of Prepetition Term Loan Priority Collateral is not funded in full in the amounts set forth in this paragraph, then any excess funds in one of the Carve Out Reserves held in any account funded by such cash on hand following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts (subject to the Post-Carve Out Trigger Notice Cap), respectively, shall be used to fund the other Carve Out Reserve to the extent of any shortfall in funding by the cash on hand prior to making any payments to the Term DIP Agent or the Prepetition Secured Parties, as applicable.

(vii) Notwithstanding anything to the contrary in the DIP ABL Documents, the Term DIP Documents or this Interim Order, following delivery of a Carve Out Trigger Notice, the DIP ABL Agent and the Prepetition ABL Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves required to be funded by the DIP ABL Lenders have been fully funded, but the DIP ABL Agent and the Prepetition ABL Agent have a security interest in any residual interest in the Carve Out Reserves held in accounts by the DIP ABL Agent, with any excess paid as provided in paragraphs (iv) and (v) above; and (y) the Term DIP Agent and the Prepetition First Lien Term Loan Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid as provided in paragraphs (iv) and (v) above. The security interests of the DIP ABL Agent and the Term DIP Agent on any residual interest in the Carve Out Reserves shall be shared pro rata based on the amount of funds in the Carve Out Reserves funded by (x) the proceeds of Term DIP Priority Collateral and (y) the DIP ABL Lenders or the DIP ABL Collateral. Further, notwithstanding anything to the contrary in this Interim Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not constitute DIP Loans or increase or reduce the Term DIP Obligations or the DIP ABL Obligations, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the Initial Budget, Approved Budget, Carve Out, Post- Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this

Interim Order, the Term DIP Facility, the DIP ABL Facility, or in any Prepetition Credit Agreement, the Carve Out shall be senior to all liens and claims securing the Term DIP Facility, the DIP ABL Facility, the Adequate Protection Liens, and the 507(b) Claim, and any and all other forms of adequate protection, liens, or claims securing the Term DIP Obligations, the DIP ABL Obligations, or the Prepetition Secured Obligations.

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

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

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

entitled to the protections granted under this Interim Order, the DIP Documents, the Bankruptcy Code, and applicable law. Any funding of the Carve Out by the DIP ABL Lenders shall be added to, and made a part of, the DIP ABL Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under this Interim Order, the DIP Documents, the Bankruptcy Code, and applicable law.

13. *DIP Superpriority Claims.* Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against the DIP Loan Parties on a joint and several basis (without the need to file any proof of claim) with priority over any and all claims against the DIP Loan Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 364, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(c), 546(d), 726, 1113, 1114 or any other section of the Bankruptcy Code (including the Adequate Protection Obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims (the "**DIP Superpriority Claims**") shall, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which DIP Superpriority Claims shall be payable from and have recourse to all pre- and postpetition property of the DIP Loan Parties and all proceeds thereof in accordance with the DIP Credit Agreements and this Interim Order, subject only to the liens on such property and the Carve-Out. The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed

or modified, on appeal or otherwise. The DIP Superpriority Claims in respect of the DIP ABL Obligations and the Term DIP Obligations shall, without otherwise impairing the lien priorities as set forth herein, be *pari passu* in right of payment with one another and senior to the Adequate Protection Claims; *provided* that the DIP Superpriority Claims in respect of the Term DIP Roll-Up Loans shall be subject and subordinate to the DIP Superpriority Claims in respect of the New Money Term DIP Loans.

14. *DIP Liens.*

(a) *DIP ABL Liens.* As security for the DIP ABL Obligations, effective and perfected upon the date of this Interim Order and without the necessity of the execution, recordation or filing by the DIP ABL Loan Parties of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, any notation of certificates of title for a titled good or the possession or control by the DIP ABL Agent of, or over, any DIP Collateral (including for the avoidance of doubt any DIP ABL Collateral as defined in the DIP ABL Credit Agreement), the following security interests and liens are hereby granted to the DIP ABL Agent for its own benefit and the benefit of the DIP ABL Secured Parties (all property identified in clauses (i)-(iii) below being collectively referred to as the "**DIP ABL Collateral**"), subject only to the payment of the Carve-Out and in each case in accordance with the priorities set forth in **Exhibit A** hereto (all such liens and security interests granted to the DIP ABL Agent, for its benefit and for the benefit of the DIP ABL Lenders, pursuant to this Interim Order and the DIP ABL Financing Documents, the "**DIP ABL Liens**"):[16]

(i) Liens on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected (A) first priority

[16] For the avoidance of doubt, DIP ABL Liens include the New Money DIP ABL Liens and all security interests and liens in respect of the ABL Roll-Up Loans.

senior security interest in and lien upon all tangible and intangible pre- and postpetition property (including mineral rights) of the DIP ABL Loan Parties, whether existing on the Petition Date or thereafter acquired, of the same nature, scope and type as the Prepetition ABL Priority Collateral and the proceeds, products, rents and profits thereof, which, subject to and upon entry of the Final Order, shall include any Avoidance Proceeds related to the forgoing ("**DIP ABL Priority Collateral**," which for the avoidance of doubt shall include Prepetition ABL Priority Collateral), and (B) junior security interest in (to the extent set forth on **Exhibit A** hereto) and lien upon all tangible and intangible pre- and postpetition property of the DIP ABL Loan Parties, whether existing on the Petition Date or thereafter acquired, of the same nature, scope and type as the Prepetition Term Loan Priority Collateral, and the proceeds, products, rents and profits thereof, in each case that, on or as of the Petition Date are not subject to either (x) a valid, perfected and non-avoidable lien, or (y) a valid and non-avoidable lien in existence as of the Petition Date that is perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, and in each case other than the Avoidance Actions[17] (but including Avoidance Proceeds[18] subject to entry of the Final Order), but in each case subject to the Carve-Out, provided that, solely with respect to the ABL Roll-Up Loans, the security interests and liens granted pursuant to this clause (i) shall not include liens on any real property lease that, as of the Petition Date, was not subject to a valid and perfected lien securing the Prepetition First Lien Term Loans in accordance with the Prepetition First Lien Term Loan Credit Agreement because the consent of the applicable lessor to the creation of a security interest in favor of the Prepetition First Lien

[17] "**Avoidance Actions**" means, collectively, claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code.

[18] "**Avoidance Proceeds**" means any proceeds or property recovered, unencumbered or otherwise, from Avoidance Actions, whether by judgment, settlement or otherwise.

Term Lenders was required pursuant to the terms of the applicable real property lease and such consent was not obtained (the "**Specified Excluded Unencumbered Property**");

(ii) Liens Priming Certain Prepetition Secured Parties' Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code: (A) a valid, binding, continuing, enforceable, fully-perfected first priority priming security interest in and lien upon all pre- and postpetition property (including mineral rights) of the DIP Loan Parties of the same nature, scope and type as the Prepetition ABL Priority Collateral, regardless of where located, that are subject to (1) valid, perfected and non-avoidable liens as of the Petition Date or (2) valid and non-avoidable liens as of the Petition Date and that are perfected after the Petition Date to the extent provided by section 546(b) of the Bankruptcy Code, regardless of whether or not any liens on such assets are voided, avoided, invalidated, lapsed or unperfected, which security interest and lien shall prime the Prepetition ABL Liens and the Prepetition Term Liens (the "**DIP ABL Priority Collateral Priming Liens**"), and (B) a valid, binding, continuing, enforceable, fully-perfected priming security interest in and lien upon (with priority as set forth on **Exhibit A** hereto) all pre- and postpetition property of the DIP Loan Parties that are subject to (1) valid, perfected and non-avoidable liens as of the Petition Date or (2) valid and non-avoidable liens as of the Petition Date and that are perfected after the Petition Date to the extent provided by section 546(b) of the Bankruptcy Code, of the same nature, scope and type as the Prepetition Term Loan Priority Collateral (as defined below), regardless of where located, regardless of whether or not any liens on such assets are voided, avoided, invalidated, lapsed or unperfected, which security interest and lien shall prime the Prepetition ABL Liens and Prepetition Second Lien Term Liens (the "**DIP ABL Term Loan Priority Collateral Priming Liens**," and together with the DIP ABL Priority Collateral Priming Liens, the "**DIP ABL Priming Liens**"). Notwithstanding anything

herein to the contrary, but subject to the relative priorities set forth in paragraph 14(c) herein, the DIP ABL Priming Liens shall be (A) subject and junior to the Carve-Out in all respects, (B) junior to (1) valid, perfected and non-avoidable liens, if any, to which the Prepetition ABL Liens are subject to, and (2) valid and non-avoidable liens to which the Prepetition ABL Liens are subject to and that are perfected after the Petition Date to the extent provided by section 546(b) of the Bankruptcy Code, in each case unless such liens are themselves Prepetition ABL Liens, and (C) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code; and

(iii) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, and subject to the Carve-Out, a valid, binding, continuing, enforceable, fully-perfected junior security interest (to the extent set forth on **Exhibit A** hereto) in and lien upon (A) all pre- and postpetition property of the Term DIP Loan Parties of the same nature, scope and type as the Prepetition Term Loan Priority Collateral and (B) all pre- and postpetition property of the ABL DIP Loan Parties of the same nature, scope and type as the Prepetition ABL Priority Collateral that, on or as of the Petition Date, is subject to valid, perfected and non-avoidable senior liens or valid and non-avoidable senior permitted liens in existence immediately prior to the Petition Date or that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, in each case other than the Prepetition ABL Liens.

(b) *Term DIP Liens.* As security for the Term DIP Obligations, effective and perfected upon the date of this Interim Order and without the necessity of the execution, recordation or filing by the Term DIP Loan Parties of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the

possession or control by the Term DIP Agent of, or over, any DIP Collateral, the following security interests and liens are hereby granted to the Term DIP Agent for its own benefit and the benefit of the Term DIP Lenders (all property identified in clauses (i)-(iii) below being collectively referred to as the "**Term DIP Collateral**" and, collectively with DIP ABL Collateral, the "**DIP Collateral**"), subject only to the payment of the Carve-Out and in each case in accordance with the priorities set forth in **Exhibit A** hereto (all such liens and security interests granted to the Term DIP Agent, for its benefit and for the benefit of the Term DIP Lenders, pursuant to this Interim Order and the Term DIP Documents, the "**Term DIP Liens**" and together with the DIP ABL Liens, the "**DIP Liens**"):

(i) Liens on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected (A) first priority senior security interest in and lien upon all tangible and intangible pre- and postpetition property (including mineral rights) of the Term DIP Loan Parties, whether existing on the Petition Date or thereafter acquired, of the same nature, scope and type as the Prepetition Term Loan Priority Collateral, and the proceeds, products, rents and profits thereof, which, subject to and upon entry of the Final Order, shall include any Avoidance Proceeds related to the forgoing ("**DIP Term Loan Priority Collateral**," which for the avoidance of doubt shall include Prepetition Term Loan Priority Collateral) and (B) junior security interest in and lien upon all tangible and intangible pre- and postpetition property of the Term DIP Loan Parties, whether existing on the Petition Date or thereafter acquired, of the same nature, scope and type as the Prepetition ABL Priority Collateral, and the proceeds, products, rents and profits thereof, in each case that, on or as of the Petition Date are not subject to either (x) a valid, perfected and non-avoidable lien, or (y) a valid and non-avoidable lien in existence as of the Petition Date that is perfected subsequent

to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, and in each case, other than the Avoidance Actions (but including Avoidance Proceeds subject to entry of the Final Order), but in each case subject to the Carve-Out, provided that, with respect to the Term DIP Roll-Up Loans, the security interests and liens granted pursuant to this clause (i) shall not include liens on the Specified Excluded Unencumbered Property;

(ii) Liens Priming Certain Prepetition Secured Parties' Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code: (A) a valid, binding, continuing, enforceable, fully-perfected first priority priming security interest in and lien upon all pre- and postpetition property (including mineral rights) of the DIP Loan Parties that are subject to (1) valid, perfected and nonavoidable liens as of the Petition Date or (2) valid and non-avoidable liens as of the Petition Date and that are perfected after the Petition Date to the extent provided by section 546(b) of the Bankruptcy Code, of the same nature, scope and type as the Prepetition Term Loan Priority Collateral, regardless of where located, regardless of whether or not any liens on such assets are voided, avoided, invalidated, lapsed or unperfected, which security interest and lien shall prime the Prepetition ABL Liens and the Prepetition Term Liens (the "**Term DIP Term Loan Priority Collateral Priming Liens**"), and (B) a valid, binding, continuing, enforceable, fully-perfected priming security interest in and lien upon (with priority as set forth on **Exhibit A** hereto) all pre- and postpetition property of the DIP Loan Parties that are subject to (1) valid, perfected and nonavoidable liens as of the Petition Date or (2) valid and non-avoidable liens as of the Petition Date and that are perfected after the Petition Date to the extent provided by section 546(b) of the Bankruptcy Code, of the same nature, scope and type as the Prepetition ABL Priority Collateral, regardless of where located, regardless of whether or not any liens on such assets are voided, avoided, invalidated, lapsed or unperfected, which security interest and lien shall prime the

Prepetition First Lien Term Liens and Prepetition Second Lien Term Liens (the "**Term DIP ABL Priority Collateral Priming Liens**", and together with the Term DIP Term Loan Priority Collateral Priming Liens, the "**Term DIP Priming Liens**"). Notwithstanding anything herein to the contrary, but subject to the relative priorities set forth in paragraph 14(c) herein, the Term DIP Priming Liens shall be (A) subject and junior to the Carve-Out in all respects, (B) junior to (1) valid, perfected and non-avoidable liens, if any, to which the Prepetition Term Liens are subject to and (2) valid and non-avoidable liens to which the Prepetition Term Liens are subject to and that are perfected after the Petition Date to the extent provided by section 546(b) of the Bankruptcy Code, in each case unless such liens are themselves Prepetition Term Liens, and (C) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code; and

(iii) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected junior security interest in and lien upon (A) all pre- and postpetition property of the DIP ABL Loan Parties of the same nature, scope and type as the Prepetition ABL Priority Collateral and (B) all pre- and postpetition property of the Term DIP Loan Parties of the same nature, scope and type as the Prepetition Term Loan Priority Collateral that, on or as of the Petition Date, is subject to valid, perfected and non-avoidable senior liens or valid and non-avoidable senior permitted liens in existence immediately prior to the Petition Date or that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, in each case other than the Prepetition Term Liens;

(c) *Relative Priority of Liens*. Notwithstanding anything to the contrary herein, (i) in respect of the Term DIP Collateral, the DIP Liens in respect of the Term DIP Roll-

Up Loans (the "**Term DIP Roll-Up Liens**") shall be subject and subordinate to the DIP Liens in respect of the New Money Term DIP Loans (the "**New Money Term DIP Liens**"), and (ii) in respect of the Specified Excluded Unencumbered Property, the DIP Liens in respect of the new money portion of the DIP ABL Facility (the "**New Money DIP ABL Liens**") shall be subject to and subordinate to the New Money Term DIP Liens. Notwithstanding anything to the contrary in, the preceding sentence, this Interim Order or in the DIP Documents, the relative priority of each DIP Lien granted in this paragraph 14 shall be as set forth in **Exhibit A** attached hereto and the relative priority of the Prepetition ABL Liens, the ABL Indemnification Liens, the Prepetition ABL Adequate Protection Liens, Prepetition Term Liens and the Prepetition Term Loan Adequate Protection Liens shall be as set forth in **Exhibit A** attached hereto; *provided* that, for the avoidance of doubt, each such lien shall be subject and subordinate to the Carve-Out.

(d) *Automatic Effectiveness of Liens.* The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby vacated and modified to permit the DIP Loan Parties to grant the liens and security interests to the DIP Agents, the other DIP Secured Parties and the Prepetition Secured Parties, in any such case, contemplated by this Interim Order and the other DIP Documents, and such liens and security interests are hereby automatically granted, attached and perfected.

15. *Protection of DIP Lenders' Rights.*

(a) So long as (1) there are any Term DIP Obligations outstanding or the Term DIP Lenders have any outstanding "Commitments" (as defined, and used, in the Term DIP Credit Agreement) (the "**Term DIP Commitments**") under the Term DIP Credit Agreement, or (2) there is any Prepetition First Lien Term Loan Debt outstanding under the Prepetition First Lien Term Loan Credit Agreement, the Prepetition ABL Secured Parties shall: (i) with respect

to the DIP Term Loan Priority Collateral and Prepetition Term Loan Priority Collateral, have no right to and shall take no action to foreclose upon, or recover in connection with, the liens granted pursuant to the Prepetition Documents or this Interim Order, or otherwise seek to exercise or enforce any rights or remedies against such DIP Term Loan Priority Collateral and Prepetition Term Loan Priority Collateral, including in connection with the ABL Indemnification Liens, the Prepetition ABL Liens or the Prepetition ABL Adequate Protection Liens; (ii) be deemed to have consented to any transfer, disposition or sale of, or release of liens on, such DIP Term Loan Priority Collateral and Prepetition Term Loan Priority Collateral (but not any proceeds of such transfer, disposition or sale to the extent remaining after payment in cash in full of the Term DIP Obligations and termination of the Term DIP Commitments and payment in cash in full of the Prepetition First Lien Term Loan Debt), to the extent such transfer, disposition, sale or release is authorized under the DIP Documents; (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in such DIP Term Loan Priority Collateral and Prepetition Term Loan Priority Collateral unless, solely as to this clause (iii), the DIP Agents or the DIP Lenders file financing statements or other documents to perfect the liens granted pursuant to this Interim Order, or as may be required by applicable state law to continue the perfection of valid and non-avoidable liens or security interests as of the Petition Date and (iv) at the request of the Term DIP Agent, deliver or cause to be delivered, at the Term DIP Loan Parties' cost and expense, any termination statements, releases and/or assignments in favor of the Term DIP Agents or the Term DIP Lenders or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of liens on any portion of such DIP Term Loan Priority Collateral subject to any sale or disposition

permitted by the DIP Documents and this Interim Order or in connection with the ABL Discharge.

(b) So long as (1) there are any DIP ABL Obligations outstanding or the DIP ABL Lenders have any outstanding "DIP Revolving Loan Commitment" (as defined, and used, in the DIP ABL Credit Agreement) (the "**DIP ABL Commitments**," and together with the Term DIP Commitments, the "**DIP Commitments**") under the DIP ABL Credit Agreement or (2) there is any Prepetition ABL Debt outstanding (including any Prepetition ABL Indemnification Obligations) under the Prepetition ABL Credit Agreement, the Prepetition Term Loan Secured Parties shall: (i) with respect to the Prepetition ABL Priority Collateral and DIP ABL Priority Collateral, have no right to and shall take no action to foreclose upon, or recover in connection with, the liens granted pursuant to the Prepetition Documents or this Interim Order, or otherwise seek to exercise or enforce any rights or remedies against such Prepetition ABL Priority Collateral and DIP ABL Priority Collateral, including in connection with the Prepetition Term Liens or the Prepetition Term Loan Adequate Protection Liens; (ii) be deemed to have consented to any transfer, disposition or sale of, or release of liens on, such Prepetition ABL Priority Collateral or DIP ABL Priority Collateral (but not any proceeds of such transfer, disposition or sale to the extent remaining after payment in cash in full of the DIP ABL Obligations and Prepetition ABL Debt and termination of the DIP ABL Commitments and "Commitments" as defined under the Prepetition ABL Credit Agreement), to the extent such transfer, disposition, sale or release is authorized under the DIP Documents; (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in such Prepetition ABL Priority Collateral or DIP ABL Priority Collateral unless, solely as to this clause (b), the DIP Agents or

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

(c) To the extent any Prepetition ABL Secured Party has possession of any Prepetition ABL Priority Collateral or DIP ABL Priority Collateral or has control with respect to any Prepetition ABL Priority Collateral or DIP ABL Priority Collateral, or has been noted as a secured party on any certificate of title for a titled good constituting Prepetition ABL Priority Collateral or DIP ABL Priority Collateral, then such Prepetition ABL Secured Party shall be deemed to maintain such possession or notation or exercise such control as a gratuitous bailee and/or gratuitous agent for perfection for the benefit of the DIP Agents and the DIP Lenders (subject to the priorities set forth in **Exhibit A** hereto), and it shall comply with the instructions of the DIP ABL Agent with respect to the exercise of such control.

(d) To the extent any Prepetition Term Loan Secured Party has possession of any Prepetition Term Loan Priority Collateral or DIP Term Loan Priority Collateral or has control with respect to any Prepetition Term Loan Priority Collateral or DIP Term Loan Priority

Collateral, or has been noted as a secured party on any certificate of title for a titled good constituting Prepetition Term Loan Priority Collateral or DIP Term Loan Priority Collateral, then such Prepetition Term Loan Secured Party shall be deemed to maintain such possession or notation or exercise such control as a gratuitous bailee and/or gratuitous agent for perfection for the benefit of the DIP Agents and the DIP Lenders (subject to the priorities set forth in **Exhibit A** hereto), and it shall comply with the instructions of the Term DIP Agent with respect to the exercise of such control.

(e) Any proceeds of Prepetition Collateral received by any Prepetition Secured Party in connection with the exercise of any right or remedy (including setoff) relating to the Prepetition Collateral or otherwise received by any Prepetition Secured Party shall be segregated and held in trust for the benefit of and forthwith paid over to the applicable DIP Agents for the benefit of the applicable DIP Secured Parties (subject to the priorities set forth in **Exhibit A** hereto) in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. The DIP Agents are hereby authorized to make any such endorsements as agent for any such Prepetition Secured Party. This authorization is coupled with an interest and is irrevocable.

(f) The automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent necessary to permit the DIP Secured Parties in respect of any DIP Facility to enforce all of their rights under the applicable DIP Documents and take any or all of the following actions, at the same or different time, in each case without further order or application of the Court: (i) immediately upon the occurrence of an Event of Default, declare (A) the termination, reduction or restriction of any further DIP Commitment to the extent any such DIP Commitment remains, (B) all DIP Obligations to be immediately due, owing and

payable, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the DIP Loan Parties; notwithstanding anything herein or in any DIP Document to the contrary, (ii) the termination of the applicable DIP Documents as to any future liability or obligation of the applicable DIP Agent and the applicable DIP Lenders (but, for the avoidance of doubt, without affecting any of the DIP Liens or the DIP Obligations), (iii) whether or not the maturity of any of the DIP Obligations shall have been accelerated, proceed to protect, enforce and exercise all rights and remedies of the DIP Secured Parties under the DIP Documents for such DIP Facility or applicable law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in any such DIP Document or any instrument pursuant to which such DIP Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of any of such DIP Secured Parties, and (iv) unless this Court orders otherwise during the Remedies Notice Period (as defined below) after a hearing, upon the occurrence of an Event of Default and the giving of five business days' prior written notice (which shall run concurrently with any notice required to be provided under the DIP Documents) (the "**Remedies Notice Period**") via email to counsel to the Debtors and the office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**") to (A) withdraw consent to the DIP Loan Parties' continued use of Cash Collateral and (B) exercise all other rights and remedies provided for in the DIP Documents and under applicable law with respect to the DIP Collateral; *provided*, that no such notice shall be required for any exercise of rights or remedies (A) to block or limit withdrawals from any bank accounts that are a part of the Collateral (including, without limitation, by sending any control activation notices to depositary banks pursuant to any control

agreement) or (B) in the event of DIP Obligations that have not been Paid in Full (other than contingent indemnification obligations as to which no claim has been asserted) on the applicable termination of the respective DIP Document.

(g) During the Remedies Notice Period, the DIP Loan Parties shall be permitted to use Cash Collateral solely to (A) pay payroll and other critical administrative expenses to keep the business of the DIP Loan Parties operating, strictly in accordance with the Approved Budget and (B) fund the Carve-Out. During the Remedies Notice Period, the Debtors, the Committee (if appointed) and/or any party in interest shall be entitled to seek an emergency hearing with the Court within the Remedies Notice Period for the purpose of contesting whether, in fact, an Event of Default has occurred and is continuing. Except as set forth in this Interim Order, the Debtors have irrevocably waived their right to seek relief under the Bankruptcy Code, including, without limitation, under section 105 of the Bankruptcy Code, to the extent that such relief would in any way impair or restrict the rights or remedies of the DIP Secured Parties set forth in this Interim Order or the DIP Documents.

(h) In no event shall the DIP Agents, the DIP Lenders or the Prepetition Secured Parties be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral. Further, subject to entry of the Final Order, in no event shall the "equities of the case" exception in section 552(b) of the Bankruptcy Code apply to the secured claims of the Prepetition Secured Parties.

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

termination of the DIP Loan Parties' authority to continue to use Cash Collateral; or (iii) the terms of any other order or stipulation related to the DIP Loan Parties' continued use of Cash Collateral or the provision of adequate protection to any party.

(j) Except to the extent the DIP Lenders are required to fund the Carve Out as set forth in this Interim Order, the DIP Agents and DIP Lenders shall have no obligation to make any loan or advance under the DIP Documents, unless all of the conditions precedent to the making of such extension of credit under the DIP Documents and this Interim Order have been satisfied in full or waived in writing by the applicable DIP Agent and in accordance with the terms of the applicable DIP Documents.

16. *Proceeds of Subsequent Financing*. Without limiting the provisions and protections of Paragraph 14 above, but subject in all respects to the Carve-Out, if at any time prior to the Repayment in Full in accordance with the DIP Documents of all the DIP Obligations (including subsequent to the confirmation of any chapter 11 plan or plans with respect to any of the Debtors), the Debtors' estates, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed shall obtain credit or incur debt pursuant to sections 364(b), 364(c), 364(d), or any other provision of the Bankruptcy Code in violation of this Interim Order or the DIP Documents, then all of the cash proceeds derived from such credit or debt and all Cash Collateral shall immediately be turned over to the DIP Agents for application to the DIP Obligations, in accordance with the priorities set forth herein, until such DIP Obligations are Paid in Full.

17. *Limitation on Charging Expenses Against Collateral*. Subject to entry of the Final Order, and subject to the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy

or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Collateral (including Cash Collateral) pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior express written consent of each of the DIP Agents, the Prepetition Agents (in the case of the Prepetition ABL Agent, prior to the ABL Discharge) and the Prepetition Lenders, as the case may be, that holds a lien on the relevant asset, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agents, the DIP Lenders, the Prepetition Agents or the Prepetition Lenders, and nothing contained in this Interim Order shall be deemed to be a consent by the DIP Agents, the DIP Lenders or the Prepetition Secured Parties to any charge, lien, assessment or claim against the Collateral under section 506(c) of the Bankruptcy Code or otherwise.

18. *Payments Free and Clear*. Any and all payments or proceeds remitted to the DIP Agents by, through or on behalf of the DIP Lenders pursuant to the provisions of the Interim Order, the Final Order, the DIP Documents or any subsequent order of the Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including without limitation, any such claim or charge arising out of or based on, directly or indirectly, sections 506(c) or 552(b) of the Bankruptcy Code (subject to entry of the Final Order approving the waiver of the Debtors' rights under sections 506(c) and 552(b) of the Bankruptcy Code), whether asserted or assessed by through or on behalf of the Debtors.

19. *Use of Cash Collateral*. The DIP Loan Parties are hereby authorized, subject to the terms and conditions of this Interim Order, to use Cash Collateral; *provided* that (a) the Prepetition Secured Parties are granted the Adequate Protection as hereinafter set forth and (b) except on the terms and conditions of this Interim Order, the DIP Loan Parties shall be

enjoined and prohibited from at any time using the Cash Collateral absent further order of the Court.

20. *ABL Indemnification Liens and Adequate Protection of Prepetition ABL Secured Parties*. The Prepetition ABL Secured Parties are entitled to (a) the ABL Indemnification Liens and (b) pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, adequate protection of their interests in all Prepetition Collateral, including Cash Collateral, in an amount equal to the aggregate diminution in the value of the Prepetition ABL Secured Parties' interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including, without limitation, any such diminution resulting from the depreciation, sale, lease or use by the DIP Loan Parties (or other decline in value) of the Prepetition Collateral, the priming of the Prepetition ABL Liens by the DIP Liens pursuant to the DIP Documents and this Interim Order and/or the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (the "**Prepetition ABL Adequate Protection Claim**"). In consideration of the foregoing, the Prepetition ABL Secured Parties are hereby granted the following, in each case, subject to the Carve-Out (collectively, the "**Prepetition ABL Secured Parties Adequate Protection Obligations**"):

(a) ABL Indemnification Liens and Prepetition ABL Adequate Protection Liens. The Prepetition ABL Agent (for itself and for the benefit of the Prepetition ABL Lenders) is hereby granted (effective and perfected upon the date of this Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), (i) to secure payment of any and all Prepetition ABL Indemnification Claims and the ABL Indemnification Liens and (ii) to secure payment of any and all of the Prepetition ABL Adequate Protection Claims, a valid, perfected replacement

security interest in and lien (the "**Prepetition ABL Adequate Protection Liens**") (subject to the limitations set forth above) upon the Collateral, except for the Specified Excluded Unencumbered Property, in accordance with the priorities shown in **Exhibit A** and in each case subject to the Carve-Out.

(b) Prepetition ABL Section 507(b) Claim. The Prepetition ABL Secured Parties are hereby granted against each of the DIP Loan Parties on a joint and several basis an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of the Prepetition ABL Adequate Protection Claim with, except as set forth in this Interim Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code (the "**Prepetition ABL 507(b) Claim**"). The Prepetition ABL 507(b) Claim shall be subject and subordinate only to the Carve-Out and the DIP Superpriority Claims granted in respect of the DIP Obligations and shall be *pari passu* with the Prepetition First Lien Term Loan 507(b) Claim (as defined below) and senior in all respects to the Prepetition Second Lien Term Loan 507(b) Claim (as defined below). Except to the extent expressly set forth in this Interim Order or the DIP Credit Agreements, the Prepetition ABL Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Prepetition ABL 507(b) Claim unless and until the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and any claims having a priority superior to or *pari passu* with the DIP Superpriority Claims have indefeasibly been Paid in Full and the DIP Commitments have been terminated. For purposes of this Interim Order, the terms "Paid in Full," "Repaid in Full," "Repay in Full," and "Payment in Full" shall mean, with respect to any referenced DIP Obligations and/or Prepetition Debt, (i) the indefeasible payment in full in cash of such

obligations, (ii) the termination or cash collateralization, in accordance with the DIP Documents and/or Prepetition Documents, as applicable, of all undrawn letters of credit and Banking Services Obligations outstanding thereunder, and (iii) the termination of all commitments under the DIP Documents and/or the Prepetition Debt Documents, as applicable.

(c) Prepetition ABL Agent Fees and Expenses. The Prepetition ABL Agent shall receive from the DIP Loan Parties, for the benefit of the Prepetition ABL Lenders, current cash payments of the reasonable and documented prepetition and postpetition fees and expenses with respect to Prepetition ABL Debt under the Prepetition ABL Financing Documents, including, but not limited to, the reasonable and documented fees and expenses of counsel for the Prepetition ABL Agent (including Hogan Lovells US LLP as primary counsel to the Prepetition ABL Agent, Morris, Nichols, Arsht & Tunnell LLP as bankruptcy and Delaware counsel to the Prepetition ABL Agent, one local counsel to the Prepetition ABL Agent in each other applicable jurisdiction) promptly upon receipt of invoices therefor. The DIP Loan Parties are authorized to pay the prepetition reasonable and documented fees and expenses described in this subsection (c) immediately upon entry of this Interim Order. Postpetition, the Prepetition ABL Agent shall provide summary form fee and expense statements (i.e., without any detail) to the DIP Loan Parties, the U.S. Trustee, and any Committee, which may be redacted for privileged information. If no written objection is received by 12:00 p.m., prevailing Eastern Time, on the date that is ten (10) business days after delivery of such invoice to the Debtors, the U.S. Trustee, and any Committee, the DIP Loan Parties shall promptly pay such invoices. If an objection to a professional's invoice is timely received, the DIP Loan Parties shall promptly pay the undisputed amount of the invoice and this Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. The Prepetition ABL

Agent (and each of its professionals) shall not be required to comply with U.S. Trustee fee guidelines or file applications or motions with, or obtain approval of, the Court for the payment of any of their out-of-pocket costs, fees, expenses, disbursements and other charges. Payments of any amounts set forth in this paragraph are not subject to recharacterization, avoidance, subordination or disgorgement.

(d) Prepetition ABL Secured Parties' Cash Payments. Subject to reallocation or recharacterization as payment of principal under sections 506(a) and (b) of the Bankruptcy Code, the Prepetition ABL Secured Parties shall receive current cash payments in the amount of interest on the outstanding principal at the non-default rate under the Prepetition ABL Credit Agreement prior to the ABL Discharge.

(e) Information Rights. Until the occurrence of the ABL Discharge, the Debtors shall promptly provide the Prepetition ABL Agent, on behalf of itself and the Prepetition ABL Lenders, with all required written financial reporting and other periodic reporting that is delivered by any of the DIP Loan Parties under the DIP Documents. In addition, the Debtors shall upon reasonable advance notice, permit the Prepetition ABL Agent, on behalf of itself and the Prepetition ABL Lenders, to conduct field audits, collateral examinations, liquidation valuations, and inventory appraisals at reasonable times in respect of any or all of the Collateral in accordance with the terms and conditions set forth in the Prepetition ABL Financing Documents.

21. *Adequate Protection of Prepetition Term Loan Secured Parties.* The Prepetition Term Loan Secured Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, to adequate protection of their interests in all Prepetition Collateral, for and equal in amount to the aggregate diminution in the value of the Prepetition Term Loan

Secured Parties' interests in the Prepetition Collateral from and after the Petition Date, if any, including, without limitation, any such diminution resulting from the depreciation, sale, lease or use by the DIP Loan Parties (or other decline in value) of the Prepetition Collateral, the priming of the Prepetition Term Liens by the DIP Liens pursuant to the DIP Documents and this Interim Order and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, (the "**Prepetition Term Loan Parties Adequate Protection Claim**" and, together with the Prepetition ABL Adequate Protection Claim, the "**Adequate Protection Claims**"); *provided*, that the avoidance of any Prepetition Term Loan Secured Parties' interests in Prepetition Collateral shall not constitute diminution in the value of such Prepetition Term Loan Secured Party's interests in Prepetition Collateral. As adequate protection of the Prepetition Term Loan Parties Adequate Protection Claim, the Prepetition Term Loan Secured Parties are hereby granted the following, in each case subject to the Carve-Out (collectively, the "**Prepetition Term Loan Adequate Protection Obligations**" and, together with the Prepetition ABL Secured Parties Adequate Protection Obligations, the "**Adequate Protection Obligations**"):

(a) Prepetition Term Loan Adequate Protection Liens. The Prepetition First Lien Term Loan Agent, on behalf of the Prepetition First Lien Term Loan Secured Parties, and the Prepetition Second Lien Term Loan Agent, on behalf of the Prepetition Second Lien Term Loan Secured Parties, are each hereby granted (effective and perfected upon the date of this Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of the applicable Prepetition Term Loan Parties Adequate Protection Claim held by such Prepetition Term Loan Secured Parties, a replacement security interest in and lien (the "**Prepetition Term Loan Adequate Protection Liens**" and, together with the Prepetition ABL Adequate Protection Liens,

the "**Adequate Protection Liens**") (subject to the limitations set forth above) upon the Collateral, except for the Specified Excluded Unencumbered Property, in accordance with the priorities shown in **Exhibit A** and in each case subject to the Carve-Out.

(b) Prepetition Term Loan Secured Parties Section 507(b) Claim. The Prepetition First Lien Term Loan Secured Parties are hereby granted, subject to the Carve-Out, allowed superpriority claims as provided for in section 507(b) of the Bankruptcy Code, junior to the DIP Superpriority Claims (the "**Prepetition First Lien Term Loan 507(b) Claim**"). The Prepetition Second Lien Term Loan Secured Parties are hereby granted, subject to the Carve-Out, allowed superpriority claims as provided for in section 507(b) of the Bankruptcy Code, junior to the DIP Superpriority Claims, the Prepetition ABL 507(b) Claim and the Prepetition First Lien Term Loan 507(b) Claim (the "**Prepetition Second Lien Term Loan 507(b) Claim**" and, together with the Prepetition First Lien Term Loan 507(b) Claim, the "**Prepetition Term Loan 507(b) Claims**," and the Prepetition Term Loan 507(b) Claims together with the Prepetition ABL 507(b) Claim, the "**507(b) Claims**"). If the Prepetition First Lien Term Loan Secured Parties holding 66.67% of the Prepetition First Lien Term Loan Debt waive the requirement that their Prepetition Term Loan 507(b) Claims be paid in full in cash, then the Prepetition Second Lien Term Loan Secured Parties will also be deemed to waive such requirement. The Prepetition First Lien Term Loan 507(b) Claim shall be subject and subordinate to only the Carve-Out and the DIP Superpriority Claims granted in respect of the DIP Obligations and shall be *pari passu* with the Prepetition ABL 507(b) Claim. The Prepetition Second Lien Term Loan 507(b) Claim shall be subject and subordinate to only the Carve-Out, the Prepetition First Lien Term Loan 507(b) Claim, the Prepetition ABL 507(b) Claim and the DIP Superpriority Claims granted in respect of the DIP Obligations. Except to the extent

expressly set forth in this Interim Order or the DIP Credit Agreements, the Prepetition Term Loan Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Prepetition Term Loan 507(b) Claim unless and until the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and any claims having a priority superior to or *pari passu* with the DIP Superpriority Claims have indefeasibly been Paid in Full and the DIP Commitments have been terminated.

(c) Prepetition Term Loan Secured Parties' Fees and Expenses. The Prepetition Term Loan Agents shall receive from the DIP Loan Parties, for the benefit of the Prepetition Term Loan Lenders, current cash payments of the reasonable and documented prepetition and postpetition fees and expenses of the Prepetition Term Loan Agents under the Prepetition Term Loan Documents, including, but not limited to, the reasonable and documented fees and disbursements of one counsel and one local counsel in each applicable jurisdiction for each of the Prepetition Term Loan Agents. The DIP Loan Parties shall also pay all reasonable and documented prepetition and postpetition fees and expenses of: (i) the Crossover Group, to the extent not already paid, including the reasonable and documented fees and expenses of Davis Polk & Wardwell LLP, as counsel to the Crossover Group, Simpson Thacher & Bartlett LLP, as counsel to Solus Alternative Asset Management LP (a member of the Crossover Group), one local counsel to the Crossover Group in each applicable jurisdiction, if retained; and (ii) the First Lien Group, to the extent not already paid, including the reasonable and documented fees and expenses of Shearman & Sterling LLP, as counsel, one local counsel to the First Lien Group in each applicable jurisdiction, if retained. The DIP Loan Parties are authorized to pay the reasonable and documented prepetition fees and expenses described in this subsection (c) immediately upon entry of this Interim Order. Postpetition, the Prepetition Term Loan Agents,

the Crossover Group, and the First Lien Group shall provide summary form fee and expense statements (i.e., without any detail) to the DIP Loan Parties, the U.S. Trustee, and any Committee, which may be redacted for privileged information. If no written objection is received by 12:00 p.m., prevailing Eastern Time, on the date that is ten (10) business days after delivery of such invoice to the Debtors, the U.S. Trustee, and any Committee, the DIP Loan Parties shall promptly pay such invoices. If an objection to a professional's invoice is timely received, the DIP Loan Parties shall promptly pay the undisputed amount of the invoice and this Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. The Prepetition Term Loan Agents, the Crossover Group, and the First Lien Group (and each of their professionals) shall not be required to comply with U.S. Trustee fee guidelines or file applications or motions with, or obtain approval of, the Court for the payment of any of their out-of-pocket costs, fees, expenses, disbursements and other charges. Payments of any amounts set forth in this paragraph are not subject to recharacterization, avoidance, subordination or disgorgement.

(e) Information Rights. The Debtors shall promptly provide the Prepetition Term Loan Agents, on behalf of itself and the Prepetition Term Loan Lenders, with all required written financial reporting and other periodic reporting that is delivered by any of the DIP Loan Parties under the DIP Documents, including the Approved Budget and any related variance reporting. In addition, the Debtors shall provide the Prepetition Term Loan Agents, on behalf of itself and the Prepetition Term Loan Lenders, with reasonable access to the Debtors' officers, management, books and records, premises and properties in accordance with the terms and conditions set forth in the Prepetition Term Loan Financing Documents.

22. *Adequate Protection Liens and Prepetition Intercreditor Agreements.* Notwithstanding anything to the contrary herein, the Adequate Protection Liens shall retain the same priority between and among the Prepetition Secured Parties as the liens such parties held prior to the Petition Date pursuant to and as governed by the Prepetition Intercreditor Agreements, and the Prepetition Intercreditor Agreements shall continue in full force and effect and nothing herein shall be construed as modifying, amending, waiving or in any way impacting the effectiveness and enforceability thereof. The Prepetition ABL Lenders and the Prepetition First Lien Term Loan Lenders each consent to the priming of their respective Prepetition Liens by the DIP Liens and the Adequate Protection Liens, and the Prepetition Second Lien Term Loan Lenders are deemed to consent to the priming of their Prepetition Second Lien Term Liens by the DIP Liens and the Adequate Protection Liens pursuant to the terms of the Prepetition Intercreditor Agreements, in each case where and to the extent set forth on **Exhibit A** hereto.

23. *Reservation of Rights of Prepetition Secured Parties*. Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, including, subject to the entry of the Final Order, section 506(c) of the Bankruptcy Code, the Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Prepetition Secured Parties; *provided* that, subject to the terms of the Prepetition Intercreditor Agreements, any of the Prepetition Secured Parties may request further or different adequate protection.

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

(a) The DIP Agents, the DIP Lenders and the Prepetition Secured Parties are hereby authorized, but not required, to file or record (and to execute in the name of the DIP Loan Parties, as their true and lawful attorneys, with full power of substitution, to the maximum extent

permitted by law) financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over cash or securities or other property, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Agents (on behalf of the DIP Lenders) or the Prepetition Secured Parties shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over any cash or securities or other property, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination (subject to the priorities set forth in this Interim Order), at the time and on the date of entry of this Interim Order or thereafter. Upon the request of a DIP Agent, each of the Prepetition Secured Parties and the DIP Loan Parties, without any further consent of any party, is authorized to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the applicable DIP Agent to further validate, perfect, preserve and enforce the DIP Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date.

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

(c) To the extent that any Prepetition Secured Party is the secured party under any account control agreements, real property mortgages or as-extracted collateral filings, listed as loss payee or additional insured under any of the DIP Loan Parties' insurance policies or is the secured party under any other agreement, each of (i) the DIP ABL Agent, on behalf of the DIP ABL Secured Parties, and (ii) the Term DIP Agent, on behalf of the Term DIP Secured Parties, are also deemed to be the secured party under such account control agreements, real property mortgages or as-extracted collateral filings, loss payee or additional insured under the Prepetition Secured Parties' insurance policies and the secured party under each such agreement (in any such case with the same priority of liens and claims thereunder relative to the priority of (x) the Prepetition Liens and Adequate Protection Liens and (y) the DIP Liens, as set forth herein), and shall have all rights and powers in each case attendant to that position (including, without limitation, rights of enforcement, but subject in all respects to the terms of this Interim Order), and shall, subject to the terms of this Interim Order, act in that capacity and distribute any proceeds recovered or received in respect of any of the foregoing pursuant to the priorities set forth in **Exhibit A** hereto. In accordance with the terms of this Interim Order and the other DIP Documents, the Prepetition First Lien Term Loan Agent, the Prepetition Second Lien Term Loan Agent, or the Prepetition ABL Agent, as applicable, shall serve as agent for the applicable DIP Agent for purposes of perfecting such DIP Agent's security interests in and liens on all Collateral that is of a type such that perfection of a security interest therein may be accomplished only by possession or control by a secured party.

25. *Preservation of Rights Granted Under This Interim Order.*

(a) The relative priority of the liens expressly granted by this Interim Order shall be as set forth in **Exhibit A**.

(b) Other than the Carve-Out and other claims and liens expressly granted by this Interim Order, no claim or lien having a priority superior to or *pari passu* with those granted by this Interim Order to the DIP Agents and the DIP Lenders or the Prepetition Secured Parties shall be permitted while any of the DIP Obligations or the Adequate Protection Obligations remain outstanding, and, except as otherwise expressly provided in paragraph 12 of this Interim Order, the DIP Liens and the Adequate Protection Liens shall not be: (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the DIP Loan Parties' estates under section 551 of the Bankruptcy Code; (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise; (iii) subordinated to or made *pari passu* with any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the DIP Loan Parties; or (iv) subject or junior to any intercompany or affiliate liens or security interests of the DIP Loan Parties.

(c) It shall constitute an Event of Default (as defined below) (giving each DIP Agent the right to terminate the DIP Loan Parties' use of Cash Collateral, the right to terminate the applicable DIP Commitments and/or the right to accelerate the applicable DIP Obligations) if any of the DIP Loan Parties, without the prior written consent of the Required DIP Lenders, as applicable, seeks, proposes or supports (whether by way of motion or other pleadings filed with the Court or any other writing executed by any DIP Loan Party or by oral argument), or if there is entered or confirmed (in each case, as applicable), or if there occurs:

(i) a failure of the Debtors to make any payment under this Interim Order to any of the Prepetition Secured Parties when due;

(ii) a failure of the Debtors to (x) observe or perform any of the material terms or provisions contained in this Interim Order or (y)

comply with any covenant or agreement in this Interim Order in any material respect;

(iii) a failure of the Debtors to observe or perform any of the material terms or provisions contained in the RSA (as defined in the Term DIP Credit Agreement), subject to any applicable cure period set forth therein;

(iv) any modifications, amendments, or reversal of this Interim Order, and no such consent shall be implied by any other action, inaction or acquiescence by any party;

or

(v) any "Event of Default" or "DIP Event of Default" as defined in the DIP Credit Agreements.

Except as otherwise provided in this Interim Order, any material violation of any of the terms of this Interim Order or any occurrence of an "Event of Default" or "DIP Event of Default" under and as defined in the DIP Credit Agreements shall constitute an event of default under this Interim Order (each an "**Event of Default**") and upon any such Event of Default, interest, including, where applicable, default interest, shall accrue and be paid as set forth in the DIP Credit Agreements. Notwithstanding any order that may be entered dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered: (A) the DIP Superpriority Claims, the 507(b) Claims, the DIP Liens, and the Adequate Protection Liens, and any claims related to the foregoing, shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations and Adequate Protection Claims shall have been Paid in Full (and that such DIP Superpriority Claims, 507(b) Claims, DIP Liens and Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest); (B) the other rights granted by this Interim Order shall not be affected; and (C) this Court shall retain jurisdiction, notwithstanding such

dismissal, for the purposes of enforcing the claims, liens and security interests referred to in this paragraph and otherwise in this Interim Order.

(d) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect: (i) the validity, priority or enforceability of any DIP Obligations or Adequate Protection Claims incurred prior to the actual receipt of written notice by the DIP Agents or the Prepetition Agents, as applicable, of the effective date of such reversal, modification, vacation or stay; or (ii) the validity, priority or enforceability of the DIP Liens, the Adequate Protection Liens, the ABL Indemnification Liens, the Prepetition ABL Indemnification Obligations, the Prepetition Liens or the Prepetition Debt. Notwithstanding any such reversal, modification, vacation or stay of any use of Cash Collateral or Collateral, any DIP Obligations, DIP Liens, Adequate Protection or Adequate Protection Liens incurred by the DIP Loan Parties to the DIP Agents, the DIP Lenders or the Prepetition Secured Parties, as the case may be, prior to the actual receipt of written notice by the DIP Agents or the Prepetition Agents, as applicable, of the effective date of such reversal, modification, vacation or stay shall be governed in all respects by the original provisions of this Interim Order, and the DIP Agents, the DIP Lenders and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code (including, without limitation, in respect of any payments received in connection with the discharge of the Prepetition ABL Debt), this Interim Order and the DIP Documents with respect to all uses of Cash Collateral, the DIP Obligations and Adequate Protection.

(e) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the

ABL Indemnification Liens, the Prepetition ABL Indemnification Obligations, the Prepetition Liens, the Prepetition Debt, Adequate Protection Claims and the Adequate Protection and all other rights and remedies of the DIP Agents, the DIP Lenders and the Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by: (i) the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7, dismissing any of the Chapter 11 Cases, substantively consolidating any of the cases with another case, terminating the joint administration of these Chapter 11 Cases or by any other act or omission; (ii) the entry of an order approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents); or (iii) the entry of an order confirming a chapter 11 plan in any of the Chapter 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the DIP Loan Parties have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations and with respect to the Prepetition Debt and the Prepetition ABL Indemnification Obligations (to the extent the ABL Discharge has not occurred). The terms and provisions of this Interim Order and the DIP Documents shall continue in these Chapter 11 Cases, in any successor cases if these Chapter 11 Cases cease to be jointly administered and in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Prepetition ABL Indemnification Claims, the ABL Indemnification Liens, the Prepetition Debt, the Prepetition Liens and the Adequate Protection Claims and all other rights and remedies of the DIP Agents, the DIP Lenders and the Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall continue in full force and effect until the DIP Obligations are

Paid in Full, as set forth herein and in the DIP Documents, and the DIP Commitments have been terminated.

26. *Limitation on Use of DIP Financing Proceeds and Collateral*. Notwithstanding any other provision of this Interim Order or any other order entered by the Court, no DIP Loans, DIP Collateral, Cash Collateral, Prepetition Collateral or any portion of the Carve-Out, or any proceeds of the foregoing, may be used directly or indirectly by any Debtor, any Guarantor, any official committee appointed in the Chapter 11 Cases, or any trustee appointed in the Chapter 11 Cases or any successor case, including any chapter 7 case, or any other person, party or entity (i) in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (a) against any of the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties, or their respective predecessors-in-interest, agents, affiliates, representatives, attorneys, or advisors, or any action purporting to do the foregoing in respect of the Prepetition Debt, liens on the Prepetition Collateral, DIP Obligations, DIP Liens, DIP Superpriority Claims and/or the adequate protection, adequate protection liens and superpriority claims granted to the Prepetition Secured Parties under the Interim Order or the Final Order, as applicable, or (b) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset with respect to, the Prepetition Debt, the DIP Obligations and/or the liens, claims, rights, or security interests granted under this Interim Order, the Final Order, the DIP Documents or the Prepetition Credit Agreements including, in each case, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; (ii) to prevent, hinder, or otherwise delay the Prepetition Secured Parties', the DIP Agent's or the DIP Lenders', as applicable, enforcement or realization on the Prepetition Debt, Prepetition Collateral, DIP

Obligations, DIP Collateral, and the liens, claims and rights granted to such parties under this Interim Order or the Final Order, each in accordance with the DIP Documents, the Prepetition Credit Agreements or this Interim Order; (iii) to seek to modify any of the rights and remedies granted to the Prepetition Secured Parties, the DIP Agents or the DIP Lenders under this Interim Order, the Prepetition Credit Agreements or the DIP Documents, as applicable; (iv) to apply to the Court for authority to approve superpriority claims or grant liens (other than the liens permitted pursuant to the DIP Documents) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Liens, DIP Superpriority Claims, adequate protection liens and superpriority claims and liens granted to the Prepetition Secured Parties, unless all DIP Obligations, Prepetition Debt, adequate protection, and claims granted to the DIP Agents, DIP Lenders or Prepetition Secured Parties under this Interim Order, have been refinanced or Paid in Full or otherwise agreed to in writing by the DIP Lenders; or (v) to seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are agreed to in writing by the DIP Lenders in or are otherwise included in the "**Approved Budget**".

27. *Real Property Leases*. As a requirement and precondition to the DIP Lenders' willingness to lend and in furtherance of the DIP Superpriority Claims provided for in this Interim Order and pursuant to the DIP Documents, which are payable from and have recourse to all of the Debtors' pre- and post-petition property including, among other things, each Mining Lease, Real Property Lease or other Contractual Obligation (each as defined in the DIP Credit Agreements) to which a Debtor is a counterparty (each, a "**Real Property Lease**"), the DIP Lenders shall have the following protections with respect to the Debtors' Real Property Leases, regardless of whether any particular Real Property Lease or group of Real Property Leases

constitutes Collateral, which protections shall be enforced by the DIP Agents or DIP Lenders as authorized, approved, and granted pursuant to the provisions of this Interim Order and in accordance with the terms of the DIP Credit Agreements (and, after the indefeasible payment in full of the DIP Obligations, (i) the rights of the DIP Agents and the DIP Lenders shall automatically transfer and be available to the Prepetition Agents and the Prepetition Secured Parties, subject to the terms of the Prepetition Intercreditor Agreements, (ii) defined terms used in this Paragraph 27 relating to the DIP Facilities shall be deemed to be references to corresponding defined terms relating to the Prepetition Credit Facilities, (iii) any notice herein required to be delivered pursuant to this Paragraph 27 to the DIP Agents shall instead be required to be delivered to each of the Prepetition Agents, and (iv) the automatic stay provisions pursuant to section 362 of the Bankruptcy Code are vacated and modified to the extent necessary so as to permit the Prepetition Agents and the Prepetition Secured Parties to exercise any of their rights with respect to Real Property Leases under this Paragraph 27):

(a) Remedies Upon an Event of Default. If an Event of Default shall have occurred and be continuing, the Term DIP Agent for the benefit of the Term DIP Lenders shall, with respect to any Real Property Lease or group of Real Property Leases to which any of the Debtors are party that constitute DIP Term Loan Priority Collateral, and the DIP ABL Agent for the benefit of the DIP ABL Lenders shall, with respect to any Real Property Lease or group of Real Property Leases to which any of the Debtors are party that constitute DIP ABL Priority Collateral, be permitted, and are hereby authorized, approved, and granted the following rights and remedies:

(i) to exercise the Debtors' rights pursuant to section 365(f) of the Bankruptcy Code with respect to any such Real Property Lease(s) and, subject to this Court's approval after notice and hearing, assign any such Real Property Lease(s) in accordance with section 365 of the Bankruptcy

Code notwithstanding any language to the contrary in any of the applicable lease documents or executory contracts;

(ii) to require any Debtor to complete promptly, pursuant to section 363 of the Bankruptcy Code, subject to the rights of the applicable DIP Agent, applicable DIP Lenders or applicable Prepetition Secured Parties (if applicable) to credit bid, an Asset Sale[19] of any such Real Property Lease(s) in one or more parcels at public or private sales, at the applicable DIP Agent's offices or elsewhere, for cash, at such time or times and at such price or prices and upon such other terms as the applicable DIP Agent or applicable DIP Lenders may deem commercially reasonable;

(iii) to access the leasehold interests of the Debtors or debtors in possession in any such Real Property Lease(s) for the purpose of (A) marketing such property or properties for sale and (B) removing any Collateral thereon or arranging for the Asset Sale of any such Collateral except to the extent prohibited by the terms of the Real Property Lease (unless the applicable provision is rendered ineffective by applicable non-bankruptcy law or the Bankruptcy Code); provided that the foregoing shall not preclude any counterparty to a Real Property Lease from an opportunity to be heard in this Court on notice with respect to the foregoing, and provided, further, that, regardless of whether any such Real Property Lease or proceeds thereof constitute DIP ABL Priority Collateral, DIP ABL Agent for the benefit of the DIP ABL Lenders shall be entitled to enter or otherwise access the leasehold interests of the Debtors or debtors in possession in any such Real Property Lease(s), for the purpose of removing any Collateral that constitutes DIP ABL Priority Collateral, or arranging such Collateral for disposition, or to take possession of the Debtors' books and records or obtain access to the Debtors' data processing equipment, computer hardware and software relating to the DIP ABL Priority Collateral;

(iv) (A) to find an acceptable (in the applicable DIP Agent's or applicable Required DIP Lenders' good faith and reasonable discretion) replacement lessee, which may include the applicable DIP Agent, applicable DIP Lenders or any of their affiliates, to whom such Real Property Lease(s) may be assigned, (B) to hold, and manage all aspects of, an auction or other bidding process to find such acceptable replacement lessee, (C) in connection with any such auction, agree, on behalf of the Debtors, to reimburse reasonable fees and expenses of any stalking horse bidder, if

[19] "**Asset Sale**" shall mean (a) the sale, lease, transfer, assignment, conveyance or other disposition (including any sale and lease back transaction) of any assets or rights by the Company or any of its Restricted Subsidiaries (as defined in the DIP Credit Agreements); or (b) the issuance or sale of equity interests by any Restricted Subsidiary or the sale by the Company or any of its Restricted Subsidiaries of equity interests in any Restricted Subsidiary.

necessary, and/or (D) to notify the Debtors of the selection of any replacement lessee pursuant to this Paragraph 27, upon receipt of which the Debtors shall promptly (1) file a motion seeking, on an expedited basis, approval of the Debtors' assumption and assignment of such Real Property Lease(s) to such proposed assignee, and (2) cure any defaults, if any, that have occurred and are continuing under such Real Property Lease(s) to the extent required by the Court (subject to the applicable DIP Lenders' right to cure defaults as set forth in Paragraph 27(e) of this Interim Order); or

(v) to direct the Debtors to (A) assign any such Real Property Lease(s) to the applicable DIP Agent or applicable DIP Lenders as Collateral securing the applicable DIP Obligations, subject to clause (B), if applicable, (B) seek this Court's approval of the assumption of any such Real Property Lease(s) to the extent that this Court determines pursuant to a final order that an assumption is required in order to assign such lease or leases as Collateral, and (C) promptly cure any default that has occurred and is continuing under such Real Property Lease(s) to the extent required by the Court; provided that any assignment of any such Real Property Lease(s) as Collateral securing the applicable DIP Obligations shall not impair the Debtors' ability to subsequently assume (if not already assumed) and assign such Real Property Lease(s) pursuant to section 365 of the Bankruptcy Code or to enjoy the protections of section 365(f) of the Bankruptcy Code with respect to any such assignment.

(b) Right to Credit Bid. Prior to any assignment of any Real Property Lease or group of Real Property Leases, the Debtors shall first provide at least five (5) business days' prior written notice (the "**Initial Notice Period**") to the Term DIP Agent and Term DIP Lenders, with respect to DIP Term Loan Priority Collateral, and the DIP ABL Agent and DIP ABL Lenders, with respect to DIP ABL Priority Collateral, unless such notice provision is waived by the applicable DIP Agent and applicable Required DIP Lenders, which Initial Notice Period may be extended up to a further twenty-five (25) days by the applicable DIP Agent or applicable Required DIP Lenders in each of their sole discretion by delivering written notice of such extension to the Debtors prior to expiration of the Initial Notice Period, and by any further period as is mutually agreeable between the applicable DIP Agent or applicable Required DIP Lenders and the Company (such notice period being the "**Aggregate Notice Period**"). During such

notice period, the applicable DIP Agent shall be permitted to credit bid forgiveness of some or all of the outstanding applicable DIP Obligations (in an amount equal to at least the consideration offered by any other party in respect of such assignment) outstanding under the applicable DIP Facility as consideration in exchange for any such Real Property Lease(s) provided that to the extent the Company is entitled to retain a portion of the total consideration paid in respect of such assignment in accordance with the DIP Credit Agreements, the applicable portion of the consideration to be retained by Company shall be paid in cash (provided that such proceeds shall constitute DIP Collateral and Cash Collateral). In addition, in connection with the exercise of any of the applicable DIP Agent's or applicable Required DIP Lenders' rights pursuant to the applicable DIP Credit Agreement or this Interim Order to direct or compel a sale or other Asset Sale of any Real Property Lease(s), the applicable DIP Agent, on behalf of the applicable DIP Lenders, shall be permitted to credit bid forgiveness of some or all of the outstanding applicable DIP Obligations (in an amount equal to at least the consideration offered by any other party in respect of such sale or other Asset Sale) as consideration in exchange for such Real Property Lease(s). Pursuant to section 364(e) of the Bankruptcy Code, absent a stay pending appeal, the applicable DIP Lenders' right to credit bid shall not be affected by the reversal or modification on appeal of the Debtors' authorization pursuant to this Interim Order to obtain credit and incur debt as and in accordance with the terms set forth herein.

(c) Right of First Refusal with Respect to Proposed Assignments and Rejections of Real Property Leases. Unless all DIP Obligations shall have indefeasibly been satisfied pursuant to the DIP Credit Agreements, the Debtors shall not seek, and it shall constitute, an Event of Default and terminate the right of the Debtors under the DIP Credit Agreements and this Interim Order if any of the Debtors seeks, the sale or other Asset Sale of, or the rejection or other

termination of, or if there is entered an order pursuant to section 365 of the Bankruptcy Code assigning or rejecting, any Real Property Lease or group of Real Property Leases, or if any Real Property Lease or group of Real Property Leases is deemed rejected due to the expiration of the assumption period provided for in section 365(d)(4) (the "**Statutory Rejection Date**"), without the Debtors' first providing thirty (30) days' prior written notice to the DIP Agents and DIP Lenders, or if such notice is given more than thirty (30) days in advance of the Statutory Rejection Date, prior written notice at least equal to the Aggregate Notice Period; provided, however, that the right of first refusal of the DIP Agents as set forth in this Paragraph 27(c) shall not apply to (x) any assignment or sale of a Real Property Lease or group of Real Property Leases to a winning bidder at an auction authorized by this Court, and (y) so long as no Event of Default has occurred and is ongoing, or to the extent such action would result in an Event of Default, any assignment or sale of a Real Property Lease or group of Real Property Leases that are not Material Leases generating cash proceeds (net of reasonable costs, expenses, and any applicable taxes) up to $2,500,000 in the aggregate value for all such sales or assignments. During such notice period, the Term DIP Agent, with respect to DIP Term Loan Priority Collateral, and the DIP ABL Agent, with respect to DIP ABL Priority Collateral, shall be permitted to:

(i) (A) notify the Debtors that it elects to take action pursuant to this Paragraph, upon receipt of which the Debtors shall promptly withdraw any previously filed rejection motion, (B) find an acceptable (in the applicable DIP Agents' or applicable Required DIP Lenders' good faith and reasonable discretion) replacement lessee, which may include the applicable DIP Agent, applicable DIP Lenders or any of their affiliates, to whom any such any Real Property Lease or group of Real Property Leases may be assigned (subject to Court approval), (C) hold, and manage all aspects of, an auction or other bidding process to find such acceptable replacement lessee, (D) in connection with any such auction, agree, on behalf of the Debtors (and subject to Court approval) to reimburse the reasonable fees and expenses of any stalking horse bidder, if necessary,

and (E) notify the Debtors of the selection of any replacement lessee pursuant to this Paragraph, upon receipt of which the Debtors shall (1) not seek to reject any such Real Property Lease(s), (2) promptly withdraw any pending motion to reject any such Real Property Lease(s), (3) promptly file a motion seeking, on an expedited basis, approval of the Debtors' assumption and assignment of such Real Property Lease(s) to the applicable DIP Agent or applicable Required DIP Lenders' proposed assignee, and (4) promptly cure any defaults that have occurred and are continuing under such Real Property Lease(s) to the extent authorized by the Court; or

(ii) direct the Debtors to (A) assign any Real Property Lease or group of Real Property Leases as Collateral securing the applicable DIP Obligations (subject to Court approval), (B) seek the Court's approval of the assumption of any such Real Property Lease(s) if it is determined pursuant to a final order of this Court that an assumption is required in order to assign such lease(s) as Collateral, and (C) promptly cure any defaults that have occurred and are continuing under such Real Property Lease(s) (subject to the applicable DIP Lenders' right to cure defaults as set forth in Paragraph 27(e) of this Interim Order) to the extent authorized by the Court; provided that any assignment of any Real Property Lease(s) as Collateral securing the applicable DIP Obligations shall not impair the Debtors' ability to subsequently assume (if not already assumed) and assign any such Real Property Lease(s) pursuant to section 365 of the Bankruptcy Code or to enjoy the protections of section 365(f) of the Bankruptcy Code with respect to any such assignment.

(iii) Notwithstanding anything to the contrary herein, the foregoing rights of the DIP Agents set forth in this Paragraph shall not apply to Real Property Leases that are rejected, terminated, sold, or assigned on the effective date of any plan of reorganization in any of the Chapter 11 Cases that, among other things, indefeasibly repays the DIP Obligations in full on the effective date thereof. For the avoidance of doubt, on or prior to the thirtieth (30) day prior to the Statutory Rejection Date (as provided in section 365(d)(4) of the Bankruptcy Code), the Debtors shall have delivered written notice to the DIP Agents of each outstanding Real Property Lease that they intend to reject (including, without limitation, through statutory rejection on the Statutory Rejection Date) from and after the date of such notice (or, if applicable, notice that the Debtors have obtained the applicable landlord's consent to extension of the Statutory Rejection Date); provided that if the Debtors fail to deliver any such notice to the DIP Agents prior to such date with respect to any such Real Property Lease(s) (or a notice indicating that no such Real Property Lease(s) shall be rejected), the Debtors shall be deemed, for all purposes hereunder, to have delivered notice to the DIP Agents as of such date that they intend to reject all outstanding Real Property Leases.

(d) Assumption Orders. Any order of this Court approving the assumption of any Real Property Lease shall specifically provide that the applicable Debtor shall be authorized to assign such Real Property Lease pursuant to, and to enjoy the protections of, section 365(f) of the Bankruptcy Code subsequent to the date of such assumption. To the extent that such provision is for any reason not included in any order of the Court approving the assumption of any Real Property Lease, then such Real Property Lease may not be assumed by the applicable Debtor unless the order approving the assumption provides for the assignment of such Real Property Lease, on the date of such order, to an acceptable (in the applicable DIP Agents' or applicable Required DIP Lenders' good faith and reasonable discretion) replacement lessee (which may include the applicable DIP Agents, applicable DIP Lenders, or their respective affiliates).

(e) DIP Lenders' Right to Cure Defaults. If any of the Debtors are required to cure any monetary defaults under any Real Property Lease pursuant to any order of this Court or otherwise in connection with any assumption or assumption and assignment of any such Real Property Lease pursuant to section 365(f) of the Bankruptcy Code, and such monetary default is not, within five (5) business days of the receipt by such Debtor of notice from the applicable DIP Agent pursuant to the applicable provision(s) of the applicable DIP Credit Agreement or any other notice from the applicable DIP Agent requesting the cure of such monetary default, cured in accordance with the provisions of such applicable court order as arranged by the applicable DIP Agent, the applicable DIP Agent may cure any such monetary defaults on behalf of the applicable Debtor(s).

(f) Priorities. For the avoidance of doubt, nothing set forth in this Paragraph 27 shall affect the relative priorities of liens and claims set forth herein and on **Exhibit A** hereto.

Unless and until Payment in Full of the (A) DIP ABL Obligations and the Prepetition ABL Obligations, nothing set forth in this Paragraph 27 shall permit the Term DIP Agent or the Term DIP Lenders, or any of their designees or agents, to exercise any rights or remedies with respect to DIP ABL Priority Collateral or Prepetition ABL Priority Collateral and (B) DIP Term Loan Obligations and the Prepetition Term Loan Debt, nothing set forth in this Paragraph 27 shall permit the DIP ABL Agent or the DIP ABL Lenders, or any of their designees or agents, to exercise any rights or remedies with respect to DIP Term Loan Priority Collateral or Prepetition Term Loan Priority Collateral.

28. *Approved Budget*. The Approved Budget is approved on an interim basis. Proceeds of the DIP Facilities and Cash Collateral under this Interim Order shall only be used by the Loan Parties in accordance with the DIP Credit Agreements, this Interim Order, and the Approved Budget or as otherwise agreed by the DIP Agents. None of the DIP Secured Parties' consent (if any) to, or acknowledgment of, the Approved Budget shall be construed as consent to use of the proceeds of the DIP Facilities or Cash Collateral beyond the respective maturity dates set forth in the DIP Credit Agreements, regardless of whether the aggregate funds shown on the Approved Budget have been expended.

29. *Limits to Lender Liability*. Subject to entry of the Final Order, nothing in this Interim Order, the DIP Documents, or any other documents related to these transactions shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agents or any DIP Lender of any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their business, or in connection with their restructuring efforts. The DIP Agents and the DIP Lenders shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral, (ii) any loss or damage thereto

occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person and all risk of loss, damage or destruction of the Collateral shall be borne by the DIP Loan Parties.

30. *Effect of Stipulations on Third Parties*. The Debtors' stipulations, admissions, agreements and releases contained in this Interim Order, including, without limitation, in paragraph 6 of this Interim Order, shall be binding upon the Debtors and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors) in all circumstances and for all purposes. The Debtors' stipulations, admissions, agreements and releases contained in this Interim Order, including, without limitation, in paragraph 6 of this Interim Order, shall be binding upon all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, if any (a "**Committee**") and any other person or entity acting or seeking to act on behalf of the Debtors' estates unless: (a) such Committee, or any other party in interest, in each case with requisite standing (subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so), has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, *inter alia*, in this paragraph) by no later than (i) the earlier of (x) five (5) Business Days prior to the commencement of the hearing to confirm a chapter 11 plan, (y) 75 calendar days after entry of this Interim Order and (z) 60 calendar days after the appointment of any Committee or (ii) any such later date as has been agreed to, in writing, by the Prepetition Agents (with the consent of the DIP Lenders) as applicable (the time period established by the foregoing clauses (i) and (ii), the "**Challenge Period**"), (A) objecting to or challenging the amount, validity, perfection,

enforceability, priority or extent of the Prepetition Debt or the Prepetition Liens, or (B) otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "**Challenges**") against the Prepetition Secured Parties or their respective affiliates and each of their respective former, current or future officers, partners, directors, managers, members, principals, employees, agents, related funds, investors, financing sources, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case in their respective capacity as such (each a "**Representative**" and, collectively, the "**Representatives**") in connection with matters related to the Prepetition Credit Agreements, the Prepetition Debt, the Prepetition Liens and the Prepetition Collateral; and (b) there is a final non-appealable order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter; provided, however, that any pleadings filed in connection with any Challenge shall set forth with specificity the basis for such challenge or claim and any challenges or claims not so specified prior to the expiration of the Challenge Period shall be deemed forever, waived, released and barred. If no such Challenge is timely and properly filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such proceeding then: (a) the Debtors' stipulations, admissions, agreements and releases contained in this Interim Order, including, without limitation, those contained in paragraph 6 of this Interim Order, shall be binding on all parties in interest; (b) the obligations of the DIP Loan Parties under the Prepetition Credit Agreements, including the Prepetition Debt, shall constitute allowed claims not subject to defense, claim, counterclaim, recharacterization, subordination, offset or avoidance, for all purposes in the Chapter 11 Cases, and any subsequent chapter 7

case(s); (c) the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens, not subject to recharacterization, subordination, avoidance or other defense; and (d) the Prepetition Debt and the Prepetition Liens on the Prepetition Collateral shall not be subject to any other or further claim or challenge by any Committee, or any other party in interest acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors) and any defenses, claims, causes of action, counterclaims and offsets by any Committee, if any, or any other party acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors), whether arising under the Bankruptcy Code or otherwise, against any of the Prepetition Secured Parties and their Representatives arising out of or relating to any of the Prepetition Credit Agreements shall be deemed forever waived, released and barred. If any such Challenge is timely filed during the Challenge Period, the stipulations, admissions, agreements and releases contained in this Interim Order, including, without limitation, those contained in paragraph 6 of this Interim Order, shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on any Committee, if any, and on any other person or entity, except to the extent that such stipulations, admissions, agreements and releases were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in this Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including any Committee, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation,

Challenges with respect to the Prepetition Credit Agreements, the Prepetition Debt or the Prepetition Liens. For the avoidance of doubt, none of the foregoing challenge provisions set forth in this paragraph shall apply to any DIP Secured Party, in their capacities as such, and in no event shall the DIP Facilities, DIP Obligations or DIP Liens be subject to challenge pursuant to this paragraph on avoidance or any other grounds by any party.

31. *Postpetition Release*. In addition, subject to the entry of the Final Order, notwithstanding anything to the contrary set forth herein, upon the repayment of all DIP Obligations (as defined in the DIP Credit Agreements) owed to the DIP Agents and the DIP Lenders by Debtors and termination of the rights and obligations arising under the DIP Documents (which payment and termination shall be on terms and conditions acceptable to DIP Agents), DIP Agents and the DIP Lenders shall be released from any and all obligations, liabilities, actions, duties, responsibilities and causes of action arising or occurring, on or prior to the date of such repayment and termination, in connection with or related to the DIP Documents, or the Interim Order (including without limitation any obligation or responsibility (whether direct or indirect, absolute or contingent, due or not due, primary or secondary, liquidated or unliquidated) to pay or otherwise fund the Carve-Out on terms and conditions acceptable to the DIP Agents).

32. *Landlord Agreements; Access.* (a) All collateral access agreements to which the Prepetition ABL Agent or any of the Prepetition Agents is a party shall hereby continue to be deemed to be amended to include the relevant DIP Agent as a beneficiary thereunder, and such agreements shall thereafter be additionally enforceable by the relevant DIP Agent against, and binding upon, each landlord party thereto. Subject to the entry of the Final Order, any title, landlord's lien, right of distraint or levy, security interest or other interest that any landlord or

mortgagee may have in any DIP Collateral or Prepetition Collateral of the Debtors located on such leased premises, to the extent the same is not avoidable under sections 544, 545, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise, is hereby expressly subordinated to the liens of the DIP Lenders and the Prepetition Lenders.

(b) Without limiting any other rights or remedies of the DIP Agents or the other DIP Secured Parties set forth in this Interim Order, the DIP Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Documents, upon three (3) business days' written notice to counsel to the Debtors and any landlord, lienholder, licensor, or other third party owner of any leased or licensed premises or intellectual property, after the expiration of the Remedies Notice Period, that an Event of Default has occurred and is continuing, the DIP Agents, (i) may, unless otherwise expressly provided in any separate agreement by and between the applicable landlord or licensor and the DIP Agents, enter upon any leased or licensed premises of the Debtors for the purpose of exercising any remedy with respect to DIP Collateral located thereon, and (ii) shall be entitled to all of the Debtors' rights and privileges as lessee or licensee under the applicable license and to use any and all trademarks, trade names, copyrights, licenses, patents, or any other similar assets of the Debtors, which are owned by or subject to a lien of any third party and which are used by Debtors in their businesses, without unreasonable interference from landlords, lienholders, or licensors thereunder; provided, however, that the DIP Agents (on behalf of the applicable DIP Lenders) shall pay only rent and additional rent, fees, royalties, or other monetary obligations of the Debtors that first arise after the written notice referenced above from the DIP Agents and that accrue during the period of such occupancy or use by DIP Agents calculated on a per diem basis. For the avoidance of doubt, (A) all of the Debtors' obligations under any applicable lease or license shall not be affected, limited, or

otherwise modified by the rights granted to the DIP Agents pursuant to this paragraph and (B) any affected landlords, lienholders, and/or licensors shall retain all remedies available under applicable non-bankruptcy law. Nothing herein shall require the Debtors, the DIP Agents or the other DIP Secured Parties, to assume any lease or license under Bankruptcy Code section 365(a) as a precondition to the rights afforded to the DIP Agents and the other DIP Secured Parties herein.

33. *Interim Order Governs*. In the event of any inconsistency between the provisions of this Interim Order, the DIP Documents or any other order entered by this Court (other than the Final Order), the provisions of this Interim Order shall govern. Notwithstanding anything to the contrary in any other order entered by this Court, any payment made pursuant to, or authorization contained in, any other order entered by this Court shall be consistent with and subject to the requirements set forth in this Interim Order and the DIP Documents, including, without limitation, the Approved Budget.

34. *Binding Effect; Successors and Assigns*. The DIP Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in these Chapter 11 Cases, including, without limitation, the DIP Agents, the DIP Lenders, the Prepetition Secured Parties, any Committee, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Agents, the DIP Lenders, the Prepetition Secured Parties and the Debtors and their respective successors and assigns; *provided* that the DIP Agents, the DIP Lenders and the

Prepetition Secured Parties shall have no obligation to permit the use of the Prepetition Collateral (including Cash Collateral) by, or to extend any financing to, any chapter 7 trustee, chapter 11 trustee or similar responsible person appointed for the estates of the Debtors.

35. *Exculpation*. Nothing in this Interim Order, the DIP Documents, the existing agreements or any other documents related to the transactions contemplated hereby shall in any way be construed or interpreted to impose or allow the imposition upon any DIP Secured Party or any Prepetition Secured Party any liability for any claims arising from the prepetition or postpetition activities of the Credit Parties or Loan Parties (as defined in the respective DIP Credit Agreements) in the operation of their businesses, or in connection with their restructuring efforts. In addition, (a) the DIP Secured Parties and the Prepetition Secured Parties shall not, in any way or manner, be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency, or other person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by the DIP Loan Parties.

36. *Limitation of Liability*. In determining to make any loan or other extension of credit under the DIP Credit Agreements, to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents, none of the DIP Agents, the DIP Lenders or the Prepetition Secured Parties shall (i) be deemed to be in "control" of the operations or participating in the management of the Debtors; (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates; or (iii) be deemed to be acting as a "Responsible Person" or "Owner" or "Operator" with respect to the operation or management of the Debtors (as such terms or similar terms are used in the United

States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq., as amended, or any similar federal or state statute).

37. *Master Proof of Claim.* The Prepetition Agents shall not be required to file proofs of claim in the Chapter 11 Cases or any successor case in order to assert claims on behalf of itself and the Prepetition Secured Parties for payment of the Prepetition Debt arising under the Prepetition Documents, nor shall any other Prepetition Secured Party be required to file any proofs of claim in the Chapter 11 Cases or any successor case in order to assert claims on behalf of itself for payment of the Prepetition Debt arising under the Prepetition Credit Agreements. The statements of claim in respect of the Prepetition Debt set forth in this Interim Order, together with any evidence accompanying the Motion and presented at the Interim Hearing, are deemed sufficient to and do constitute proofs of claim in respect of such debt and such secured status. However, in order to facilitate the processing of claims, to ease the burden upon the Court and to reduce an unnecessary expense to the Debtors' estates, each Prepetition Agent and/or other Prepetition Secured Party is authorized to file in the Debtors' lead chapter 11 case *In re Blackhawk Mining LLC, et. al.*, Case No. 19-_____, a single, master proof of claim on behalf of the relevant Prepetition Secured Parties on account of any and all of their respective claims arising under the applicable Prepetition Documents and hereunder (each, a "**Master Proof of Claim**") against each of the Debtors. Upon the filing of a Master Proof of Claim against each of the Debtors, the Prepetition Agents and the Prepetition Secured Parties, and each of their respective successors and assigns, shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against each of the Debtors of any type or nature whatsoever with respect to the applicable Prepetition Credit Agreements, and the claim of each Prepetition Secured Party (and each of its respective successors and assigns), named in a

Master Proof of Claim shall be treated as if such entity had filed a separate proof of claim in each of these Chapter 11 Cases. The Master Proofs of Claim shall not be required to identify whether any Prepetition Secured Party acquired its claim from another party and the identity of any such party or to be amended to reflect a change in the holders of the claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from the transfer of all or any portion of such claims. The provisions of this paragraph 37 and each Master Proof of Claim are intended solely for the purpose of administrative convenience and shall not affect the right of each Prepetition Secured Party (or its successors in interest) to vote separately on any plan proposed in these Chapter 11 Cases. The Master Proofs of Claim shall not be required to attach any instruments, agreements or other documents evidencing the obligations owing by each of the Debtors to the applicable Prepetition Secured Parties, which instruments, agreements or other documents will be provided upon written request to counsel to the applicable Prepetition Agent.

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

39. *Modification of DIP Documents and Approved Budget*. The DIP Loan Parties are hereby authorized, without further order of this Court, to enter into agreements with the DIP Secured Parties providing for any consensual non-material modifications to the Approved

Budget or the DIP Documents, or of any other modifications to the DIP Documents necessary to conform the terms of the DIP Documents to this Interim Order, in each case consistent with the amendment provisions of the DIP Document. Notwithstanding the foregoing, updates and supplements to the Approved Budget required to be delivered by the DIP Loan Parties under the DIP Documents shall not be considered material amendments or modifications to the Approved Budget or the DIP Documents.

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

41. *Payments Held in Trust*. Except as expressly permitted in this Interim Order or the DIP Documents, in the event that any person or entity receives any payment on account of a security interest in DIP Collateral, receives any DIP Collateral or any proceeds of DIP Collateral or receives any other payment with respect thereto from any other source prior to Payment in Full of all DIP Obligations under the DIP Documents and termination of the Commitments in accordance with the DIP Documents, such person or entity shall be deemed to have received, and shall hold, any such payment or proceeds of Collateral in trust for the benefit of the DIP Agents and the DIP Lenders (as applicable based on the specific asset at issue) and shall immediately turn over such proceeds to the applicable DIP Agent, or as otherwise instructed by this Court, for application in accordance with the DIP Documents and this Interim Order.

42. *Credit Bidding*. (a) Each of the DIP Agents shall have the right to credit bid, in accordance with the DIP Documents, up to the full amount of the applicable DIP Obligations in any sale of the DIP Collateral, subject in all respects to the DIP ICA and the relative lien priorities set forth in **Exhibit A**; and (b) the Prepetition Secured Parties shall have the right to credit bid up to the full amount of their Prepetition Debt in any sale of the Prepetition Collateral,

subject in all respects to the Prepetition Intercreditor Agreements, as applicable, and the relative lien priorities set forth in **Exhibit A**, in each case of (a) and (b), as provided for in section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing the same and whether any such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

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

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

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

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

47. *Final Hearing*. The Final Hearing is scheduled for _____, 2019 at ____:____ __ prevailing Eastern Time before this Court.

48. *Objections*. Any party in interest objecting to the relief sought at the Final Hearing shall file and serve written objections, which objections shall be served upon:

(a) counsel to the Debtors, (i) Kirkland & Ellis LLP, 300 North LaSalle, Chicago, IL 60654 (attn.: Ross M. Kwasteniet, P.C. (rkwasteniet@kirkland.com), Joseph M. Graham (joe.graham@kirkland.com)); 601 Lexington Ave, New York, NY 10022 (attn.: Stephen E. Hessler (stephen.hessler@kirkland)) and (ii) Potter Anderson & Corroon LLP, 1313 N. Market St., 6th Floor, Wilmington, DE 19801 (attn.: Katherine L. Good (kgood@potteranderson.com));

(b) counsel to the DIP ABL Agent, (i) Hogan Lovells US LLP, 390 Madison Avenue, New York, NY 10017 (attn.: Deborah Staudinger (deborah.staudinger@hoganlovells.com), Alex Sher (alex.sher@hoganlovells.com)) and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, P.O. Box 1347, Wilmington, DE 19899-1347 (attn.: Matthew B. Harvey (mharvey@mnat.com), Eric D. Schwartz (eschwartz@mnat.com));

(c) counsel to the Term DIP Agent and Prepetition First Lien Term Loan Agent, Herrick Feinstein LLP, Two Park Ave, New York, NY 10016 (attn.: Eric A. Stabler (EStabler@herrick.com), Steven Smith (ssmith@herrick.com));;

(d) Counsel to the Prepetition Second Lien Term Loan Agent, Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, NY 10038 (attn..: Elizabeth A. Loonam (eloonam@stroock.com), Alex Cota (acota@stroock.com), Gabriel Sasson (gsasson@stroock.com); and

(e) Counsel to the Crossover Group, (i) Davis Polk & Wardwell LLP, 450 Lexington Ave, New York, NY 10017 (attn.: Brian Resnick (brian.resnick@davispolk.com), Dylan Consla (dylan.consla@davispolk.com) and Daniel Meyer (daniel.meyer@davispolk.com)); and (ii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, DE 19801 (attn.: Mark D. Collins (collins@rlf.com) and Paul N. Heath (heath@rlf.com));

(f) Counsel to the First Lien Group, Shearman & Sterling LLP, 599 Lexington Avenue, New York, NY 10022 (attn.: Fredric Sosnick (fsosnick@shearman.com), and Ned S. Schodek (ned.schodek@sheaman.com));

(g) the U.S. Trustee; and

(h) any other party that has filed a request for notices with this Court,

by the foregoing no later than _____, 2019 at ____:____ __ prevailing Eastern Time.

49. The Debtors shall within two (2) business days of its entry serve copies of this Interim Order (which shall constitute adequate notice of the Final Hearing, including, without limitation, notice that the Debtors will seek approval at the Final Hearing of a waiver of rights

under sections 506(c) and 552(b) of the Bankruptcy Code) to the parties having been given notice of the Interim Hearing, to any party that has filed a request for notices with this Court.

Dated: _____, 2019

Wilmington, Delaware

THE HONORABLE _____
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Lien Priority Schedule

	Prepetition ABL Priority Collateral	**Prepetition Term Loan Priority Collateral**	**Unencumbered Property of the Same Nature, Scope and Type as the Prepetition ABL Priority Collateral**	**Unencumbered Property of the Same Nature, Scope and Type as the Prepetition Term Loan Priority Collateral Other Than The Specified Excluded Unencumbered Property**	**Specified Excluded Unencumbered Property**
1	DIP ABL Liens	New Money Term DIP Liens	DIP ABL Liens	New Money Term DIP Liens	New Money Term DIP Liens
2	Prepetition ABL Adequate Protection Liens and ABL Indemnification Liens	Term DIP Roll-Up Liens	Prepetition ABL Adequate Protection Liens and ABL Indemnification Liens	Term DIP Roll-Up Liens	New Money DIP ABL Liens
3	Prepetition ABL Liens	Prepetition First Lien Term Loan Adequate Protection Liens	New Money Term DIP Liens	Prepetition First Lien Term Loan Adequate Protection Liens	
4	New Money Term DIP Liens	Prepetition First Lien Term Liens	Term DIP Roll-Up Liens	DIP ABL Liens	
5	Term DIP Roll-Up Liens	DIP ABL Liens	Prepetition First Lien Term Loan Adequate Protection Liens	Prepetition ABL Adequate Protection Liens and ABL Indemnification Liens	

6	Prepetition First Lien Term Loan Adequate Protection Liens	Prepetition ABL Adequate Protection Liens and ABL Indemnification Liens	Prepetition Second Lien Term Loan Adequate Protection Liens	Prepetition Second Lien Term Loan Adequate Protection Liens	
7	Prepetition First Lien Term Liens	Prepetition ABL Liens			
8	Prepetition Second Lien Term Loan Adequate Protection Liens	Prepetition Second Lien Term Loan Adequate Protection Liens			
9	Prepetition Second Lien Term Liens	Prepetition Second Lien Term Liens			

Schedule 1 to Exhibit A

Budget

Blackhawk Mining, LLC

Cash Flow Forecast

$ in Millions

Forecast Week **Week Ended (Friday)**	**1** **7/19/19** **Forecast**	**2** **7/26/19** **Forecast**	**3** **8/2/19** **Forecast**	**4** **8/9/19** **Forecast**	**5** **8/16/19** **Forecast**	**6** **8/23/19** **Forecast**	**7** **8/30/19** **Forecast**	**8** **9/6/19** **Forecast**	**9** **9/13/19** **Forecast**	**10** **9/20/19** **Forecast**	**11** **9/27/19** **Forecast**	**12** **10/4/19** **Forecast**	**13** **10/11/19** **Forecast**	**Cumulative** **07/19 thru 10/11**
Total Receipts	27.3	10.7	11.5	25.5	43.1	25.5	22.9	22.3	22.8	36.7	23.2	22.8	26.6	320.9
Total Disbursements	(14.9)	(32.2)	(23.7)	(23.6)	(18.6)	(24.0)	(27.0)	(20.0)	(20.3)	(24.0)	(23.1)	(19.8)	(19.8)	(290.9)
Net operating cash flow	**$ 12.4**	**$ (21.5)**	**$ (12.2)**	**$ 1.9**	**$ 24.5**	**$ 1.5**	**$ (4.1)**	**$ 2.3**	**$ 2.5**	**$ 12.7**	**$ 0.1**	**$ 3.0**	**$ 6.8**	**$ 30.0**
Other Cash Flows	(4.0)	33.0	(4.2)	7.9	(2.8)	(1.8)	(4.4)	(0.9)	-	(2.7)	-	(1.8)	-	18.2
Restructuring Expenses	(4.5)	-	-	-	-	-	(9.8)	-	-	-	(0.3)	-	-	(14.6)
Net cash receipts/(disbursements)	**$ 3.9**	**$ 11.5**	**$ (16.4)**	**$ 9.8**	**$ 21.7**	**$ (0.3)**	**$ (18.3)**	**$ 1.4**	**$ 2.5**	**$ 10.0**	**$ (0.2)**	**$ 1.3**	**$ 6.8**	**$ 33.6**
Beginning cash balance	1.4	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	1.4
Net cash receipts / (disbursements)	3.9	11.5	(16.4)	9.8	21.7	(0.3)	(18.3)	1.4	2.5	10.0	(0.2)	1.3	6.8	33.6
ABL draws / (repayments)	(0.3)	(11.5)	16.4	(9.8)	(21.7)	0.3	18.3	(1.4)	(2.5)	(10.0)	0.2	(1.3)	(6.8)	(30.0)
Ending cash balance	**5.0**	**5.0**	**5.0**	**5.0**	**5.0**	**5.0**	**5.0**	**5.0**	**5.0**	**5.0**	**5.0**	**5.0**	**5.0**	**5.0**
ABL Beginning Balance	85.0	84.7	73.2	89.6	79.8	58.1	58.4	76.8	75.4	72.9	62.9	63.1	61.8	85.0
ABL draws / (repayments)	(0.3)	(11.5)	16.4	(9.8)	(21.7)	0.3	18.3	(1.4)	(2.5)	(10.0)	0.2	(1.3)	(6.8)	(30.0)
ABL Ending Balance	**84.7**	**73.2**	**89.6**	**79.8**	**58.1**	**58.4**	**76.8**	**75.4**	**72.9**	**62.9**	**63.1**	**61.8**	**55.0**	**55.0**
ABL Availability	0.3	16.8	0.4	10.2	31.9	31.6	13.2	14.6	17.1	27.1	26.9	28.2	35.0	35.0
ABL commitment	85.0	90.0	90.0	90.0	90.0	90.0	90.0	90.0	90.0	90.0	90.0	90.0	90.0	90.0
Cash	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
less: Revolver Outstandings	(84.7)	(73.2)	(89.6)	(79.8)	(58.1)	(58.4)	(76.8)	(75.4)	(72.9)	(62.9)	(63.1)	(61.8)	(55.0)	(55.0)
Projected Availability Prior to Float:	5.3	21.8	5.4	15.2	36.9	36.6	18.2	19.6	22.1	32.1	31.9	33.2	40.0	40.0
Liquidity (Book)	**$ 5.3**	**$ 21.8**	**$ 5.4**	**$ 15.2**	**$ 36.9**	**$ 36.6**	**$ 18.2**	**$ 19.6**	**$ 22.1**	**$ 32.1**	**$ 31.9**	**$ 33.2**	**$ 40.0**	**$ 40.0**
Float	5.8	6.5	6.1	6.3	6.2	6.3	6.2	6.2	6.2	6.2	6.2	6.2	6.2	6.2
Adjusted Liquidity (Bank)	**$ 11.1**	**$ 28.3**	**$ 11.5**	**$ 21.5**	**$ 43.1**	**$ 42.9**	**$ 24.4**	**$ 25.9**	**$ 28.4**	**$ 38.3**	**$ 38.2**	**$ 39.4**	**$ 46.3**	**$ 46.3**

Exhibit B

DIP ABL Credit Agreement

Execution Version

SENIOR SECURED SUPERPRIORITY DEBTOR IN POSSESSION ABL CREDIT AGREEMENT

dated as of July __, 2019

by and among

BLACKHAWK MINING LLC and

ITS SUBSIDIARIES FROM TIME TO TIME PARTY HERETO,

each as a Borrower, and collectively as Borrowers,

and

MIDCAP FUNDING IV TRUST,

as DIP ABL Agent

MIDCAP FINANCIAL TRUST,

as a DIP ABL Lender,

and

THE ADDITIONAL LENDERS

FROM TIME TO TIME PARTY HERETO

TABLE OF CONTENTS

SENIOR SECURED SUPERPRIORITY DEBTOR IN POSSESSION ABL CREDIT AGREEMENT

This **SENIOR SECURED SUPERPRIORITY DEBTOR IN POSSESSION ABL CREDIT AGREEMENT,** (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Agreement**") is dated as of July __, 2019 by and among **BLACKHAWK MINING LLC,** a Kentucky limited liability company ("**Blackhawk Parent**"), certain subsidiaries of Blackhawk Parent set forth on Annex B hereto and any additional borrower that may hereafter be added to this Agreement (each individually as a "**Borrower**", and collectively as "**Borrowers**"), **MIDCAP FUNDING IV TRUST**, a Delaware statutory trust, as DIP ABL Agent, and **MIDCAP FINANCIAL TRUST**, a Delaware statutory trust, and the financial institutions or other entities from time to time parties hereto, each as a DIP ABL Lender.

RECITALS

WHEREAS, on July __, 2019 (the "**Petition Date**"), each Borrower filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (each a "**Chapter 11 Case**," and collectively, the "**Chapter 11 Cases**"; debtors and debtors-in-possession thereunder, the "**Debtors**" and each a "**Debtor**") in the United States Bankruptcy Court for the District of Delaware and is continuing to operate its business and manage its properties as a debtor and a debtor in possession under sections 1107 and 1108 of the Bankruptcy Code.

WHEREAS, Borrowers are party to (i) that certain Credit Agreement, dated as of September 6, 2017, by and among Blackhawk Parent, the other Borrowers, the financial institutions and other entities from time to time party thereto as lenders (the "**Prepetition ABL Lenders**") and MidCap Funding IV Trust as successor agent for the Prepetition ABL Lenders (the "**Prepetition ABL Agent**"), as amended by that certain Amendment No. 1 to Credit Agreement, dated as of February 27, 2018, and that certain Amendment No. 2 to Credit Agreement, dated as of October 10, 2018 (as so amended and as it may have been further amended, restated or otherwise modified from time to time, the "**Prepetition ABL Credit Agreement**"); (ii) that certain Security Agreement, dated as of September 6, 2017, by and among Blackhawk Parent, the other Borrowers and Prepetition ABL Agent (as each may have been further amended, restated or otherwise modified from time to time, and together with the Prepetition ABL Credit Agreement and each other security agreement, pledge agreement, subordination agreement, fee letter, note, guarantee, reservation of rights letter and protective advance letter, and each other agreement, document and instrument executed in connection with the obligations under the Prepetition ABL Credit Agreement, including the "Financing Documents" as defined therein, each as amended, restated or otherwise modified from time to time, collectively, the "**Prepetition ABL Financing Documents**"), pursuant to which, among other things, the Prepetition ABL Lenders have made certain loans and other financial accommodations to Borrowers (the "**Prepetition ABL Loans**"), and each of the Borrowers granted to Prepetition ABL Agent, for the benefit of itself and the Prepetition ABL Lenders, a security interest in and lien upon substantially all of its assets.

WHEREAS, one or more of the Borrowers are party to that certain First Lien Term Loan Credit Agreement, dated as of February 17, 2017, by and among Blackhawk Parent, as borrower, the financial institutions or other entities from time to time party thereto as lenders and Cantor Fitzgerald Securities ("**Cantor**"), as successor agent for such lenders (the "**Prepetition First Lien Term Loan Agent**") (together with each other security agreement, subordination agreement, fee letter, note, guarantee, reservation of rights letter and protective advance letter, and each other agreement, document and instrument executed in connection with the obligations thereunder, including the "Credit Documents" as defined therein, each as amended, restated or

otherwise modified from time to time, collectively, the "**Prepetition First Lien Term Loan Documents**"), pursuant to which, among other things, such lenders have made certain loans and other financial accommodations to Blackhawk Parent, and each of the Borrowers granted to Prepetition First Lien Term Loan Agent, for the benefit of itself and such lenders, a security interest in and lien upon substantially all of its assets.

WHEREAS, one or more of the Borrowers are party to that certain Second Lien Term Loan Credit Agreement, dated as of October 28, 2015, by and among Blackhawk Parent, as borrower, the financial institutions or other entities from time to time party thereto as lenders and Cortland, as agent for such lenders (the "**Prepetition Second Lien Term Loan Agent**") (together with each other security agreement, subordination agreement, fee letter, note, guarantee, reservation of rights letter and protective advance letter, and each other agreement, document and instrument executed in connection therewith, including the "Credit Documents" as defined therein, each as amended, restated or otherwise modified from time to time, collectively, the "**Prepetition Second Lien Term Loan Documents**"), pursuant to which, among other things, such lenders have made certain loans and other financial accommodations to Blackhawk Parent, and each of the Borrowers granted to Prepetition Second Lien Term Loan Agent, for the benefit of itself and such lenders, a security interest in and lien upon substantially all of its assets.

WHEREAS, the Prepetition ABL Agent, the Prepetition First Lien Term Loan Agent, and Blackhawk Parent and certain of its subsidiaries are parties to that certain ABL Intercreditor Agreement, dated as of September 6, 2017 (as amended, restated or otherwise modified from time to time, the "**Prepetition ABL Intercreditor Agreement**"), and the Prepetition ABL Agent, the Prepetition First Lien Term Loan Agent, and the Prepetition Second Lien Term Loan Agent, and Blackhawk Parent and certain of its subsidiaries are parties to that certain Amended and Restated Junior Priority Intercreditor Agreement, dated as of February 17, 2017 (as amended, restated or otherwise modified from time to time, the "**Prepetition Junior Lien Intercreditor Agreement**" and together with the Prepetition ABL Intercreditor Agreement, collectively, the "**Prepetition Intercreditor Agreements**"), pursuant to which, among other things, the Prepetition ABL Agent, the Prepetition First Lien Term Loan Agent, the Prepetition Second Lien Term Loan Agent set forth their agreements with respect to the relative priority of their respective Liens on the "Collateral" (as defined in the Prepetition Intercreditor Agreements) and certain other rights, priorities and interests.

WHEREAS, on the date hereof, one or more of the Borrowers will execute and deliver that certain DIP Term Loan Credit Agreement, by and among Blackhawk Parent, as borrower, and certain of its subsidiaries, as guarantors, the financial institutions or other entities from time to time party thereto as lenders (the "**DIP Term Loan Lenders**") and Cantor, as agent for such lenders (the "**DIP Term Loan Agent**") (as amended, restated, extend, supplemented or otherwise modified from time to time, the "**DIP Term Loan Agreement**" and together with each security agreement, subordination agreement, fee letter, note, guarantee, reservation of rights letter and protective advance letter, and each other agreement, document and instrument executed in connection with the obligations under the DIP Term Loan Agreement, including the "Credit Documents" as defined therein, each as amended, restated or otherwise modified from time to time (collectively, the "**DIP Term Loan Documents**"), pursuant to which, among other things, such lenders will make certain loans and other financial accommodations to Blackhawk Parent, the new money portion of which will be available to Blackhawk Parent in the principal amount of $35,000,000 upon entry of the Interim DIP Order and additional principal in the amount of $15,000,000 upon entry of the Final DIP Order, and each of the Borrowers granted to DIP Term Loan Agent, for the benefit of itself and such lenders, a security interest in and lien upon substantially all of its assets.

WHEREAS, Borrowers have requested that DIP ABL Lenders enter into this Agreement to provide Borrower with a senior secured super-priority debtor in possession revolving credit facility in the

principal amount of up to $90,000,000, pursuant to which, among other things, each Credit Party will grant to DIP ABL Agent, for the benefit of DIP ABL Lenders, Liens on substantially all of its assets and super-priority claims, the relative priority of which Liens and Indebtedness will be set forth in the Interim DIP Order and the Final DIP Order (each as defined below), as applicable, and DIP ABL Lenders have agreed to provide such debtor in possession credit facility subject to, and on the terms and conditions of, (i) this Agreement, (ii) the DIP Orders (as defined below), when entered, and (iii) sections 364(c)(1), 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code.

WHEREAS, the business of each Credit Party is a mutual and collective enterprise and the Borrowers and the Guarantors believe that the loans and other financial accommodations to the Borrowers under this Agreement will enhance the aggregate borrowing powers of the Borrowers and facilitate the administration of the Chapter 11 Cases and their loan relationship with the DIP ABL Agent and the DIP ABL Lenders, all to the mutual advantage of the Credit Parties.

WHEREAS, each Credit Party acknowledges that it will receive substantial direct and indirect benefits by reason of the making of loans and other financial accommodations to the Borrowers as provided in the Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, Borrowers, DIP ABL Lenders and DIP ABL Agent agree as follows:

ARTICLE 1 - DEFINITIONS

Section 1.1 Certain Defined Terms. The following terms have the following meanings:

"ABL Roll-up Loans" has the meaning set forth in the DIP Orders.

"**Acceleration Event**" means the occurrence of any DIP Event of Default (a) in respect of which DIP ABL Agent has declared all or any portion of the DIP ABL Obligations to be immediately due and payable pursuant to Section 10.2, (b) pursuant to Section 10.1(a), and in respect of which DIP ABL Agent has suspended or terminated the DIP Revolving Loan Commitment pursuant to Section 10.2, and/or (c) pursuant to Section 10.1(e).

"**Acceptable Chapter 11 Plan**" means a joint chapter 11 plan of the Borrowers, in form and substance reasonably acceptable to the DIP ABL Agent and Required DIP ABL Lenders and that, among other things, (i) contains a release in favor of DIP ABL Agent, DIP ABL Lenders, Prepetition ABL Agent and Prepetition ABL Lenders and their respective employees, affiliates and advisors, (ii) provides for the indefeasible payment in full in cash and full discharge of the DIP ABL Obligations at emergence, but excluding payment of contingent indemnity obligations, which shall survive confirmation of such a plan, (iii) contains the termination of the unused commitments hereunder, (iv) provides for Exit Financing on the terms of the Exit Credit Agreement and the other "Financing Documents" (as defined therein), including all commitment fees, expenses and obligations related to the Exit Financing, with such changes thereto as are reasonably acceptable to DIP ABL Agent, (iv) contains such other terms as DIP ABL Agent and DIP ABL Lenders may reasonably require.

"**Acceptable Disclosure Statement**" means the disclosure statement relating to the Acceptable Chapter 11 Plan in form and substance reasonably acceptable to the DIP ABL Agent and Required DIP ABL Lenders.

"**Account Debtor**" means "account debtor", as defined in Article 9 of the UCC, and any other obligor in respect of an Account.

"**Accounts**" means, collectively, (a) any "account" (as defined in the UCC), any accounts receivable (whether in the form of payments for services rendered or goods sold, rents, license fees or otherwise), (b) all accounts, "general intangibles" (as defined in the UCC), rights, remedies, Guarantees, "supporting obligations" (as defined in the UCC), "letter-of-credit rights" (as defined in the UCC) and security interests in respect of the foregoing, all rights of enforcement and collection, all books and records evidencing or related to the foregoing, and all rights under the DIP ABL Financing Documents in respect of the foregoing, (c) all information and data compiled or derived by any Borrower or to which any Borrower is entitled in respect of or related to the foregoing, and (d) all proceeds of any of the foregoing.

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control," as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; *provided* that Beneficial Ownership of 10% or more of the Voting Stock of a Person will be deemed to be control. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings. No DIP ABL Lender as of the Closing Date or any of their respective Affiliates shall be considered an Affiliate of any Borrower or any Subsidiary thereof.

"**Affiliate Transaction**" has the meaning provided in Section 5.6.

"**Anti-Terrorism Laws**" means any Requirement of Law related to terrorism financing, economic sanctions or money laundering including the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act ("***USA PATRIOT Act***") of 2001 (Title III of Pub. L. 107-56), The Currency and Foreign Transactions Reporting Act (also known as the "Bank Secrecy Act," 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959), the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) and Executive Order 13224 (effective September 24, 2001), the International Emergency Economic Powers Act and Executive Orders issued thereunder.

"**Applicable Margin**" means six percent (6.00%).

"**Applicable Subsidiary**" shall have the meaning provided in Section 10.1(e).

"**Approved Budget**" has the meaning set forth in Section 6.1(a).

"**Approved Fund**" means any (a) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business, or (b) any Person (other than a natural person) which temporarily warehouses loans for any DIP ABL Lender or any entity described in the preceding clause (a) and that, with respect to each of the preceding clauses (a) and (b), is administered or managed by (i) a DIP ABL Lender, (ii) an Affiliate of a DIP ABL Lender, or (iii) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a DIP ABL Lender.

"**As-Extracted Collateral**" means "as-extracted collateral" (as such term is defined in Article 9 of the UCC).

"**As-Extracted Collateral Filing**" means a completed UCC-1 financing statement with respect to as-extracted collateral which lies upon owned or leased Real Property of Blackhawk Parent or any of its Restricted Subsidiaries.

"**Asset Sale**" means:

(a) the sale, lease, transfer, assignment, conveyance or other disposition (including any license or sale and lease back transaction) of any assets or rights by Blackhawk Parent or any of its Restricted Subsidiaries; other than the sale, lease, conveyance or other disposition of all or substantially all of the assets of Blackhawk Parent and its Restricted Subsidiaries taken as a whole, which sale is subject to the requirements of Section 5.5; and

(b) the issuance or sale of Equity Interests by any Restricted Subsidiary or the sale by Blackhawk Parent or any of its Restricted Subsidiaries of Equity Interests in any Restricted Subsidiary.

"**Assignment Agreement**" means an assignment agreement in form and substance acceptable to DIP ABL Agent.

"**Attributable Indebtedness**" means, on any date, in respect of any Capital Lease Obligations of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

"**Automatic Rejection Date**" shall mean, with respect to any particular lease, the last day of the assumption period for the Credit Parties in the Chapter 11 Cases provided for in Section 365(d)(4) of the Bankruptcy Code, to the extent applicable (including as may have been extended in accordance with Section 365(d)(4)).

"**Avoidance Actions**" has the meaning assigned in the Interim DIP Order and the Final DIP Order, as applicable.

"**Bail-In Action**" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

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

"**Bankruptcy Code**" means the United States Bankruptcy Code, being Title 11 of the United States Code as enacted in 1978, as the same has heretofore been or may hereafter be amended, recodified, modified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

"**Bankruptcy Court**" means the United States Bankruptcy Court for the District of Delaware, or any United States bankruptcy court or district court having venue and jurisdiction over the Chapter 11 Cases pursuant to a transfer of venue or withdrawal of the reference.

"**Base LIBOR Rate**" means, for each Interest Period, the rate per annum, determined by DIP ABL Agent in accordance with its customary procedures, and utilizing such electronic or other quotation sources as it considers appropriate (rounded upwards, if necessary, to the next 1/100%), to be the rate at which Dollar deposits (for delivery on the first day of such Interest Period or, if such day is not a Business

Day on the preceding Business Day) in the amount of $1,000,000 are offered to major banks in the London interbank market on or about 11:00 a.m. (London time) two (2) Business Days prior to the commencement of such Interest Period, for a term comparable to such Interest Period, which determination shall be conclusive in the absence of manifest error (or, if DIP ABL Agent cannot determine such rate following a planned discontinuation of London interbank market rate, such other successor or alternative index rate as designated by DIP ABL Agent from time to time in consultation with Blackhawk Parent, which shall be consistent with successor or alternative index rates used for similar facilities).

"**Base Rate**" means the per annum rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its "prime rate," with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate; *provided, however,* that DIP ABL Agent may, upon prior written notice to Borrower, choose a reasonably comparable index or source to use as the basis for the Base Rate.

"**Beneficial Owner**" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" will be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only after the passage of time. The terms "***Beneficially Owns***", "***Beneficially Owned***" and "***Beneficial Ownership***" have a corresponding meaning.

"**Beneficial Ownership Certification**" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"**Beneficial Ownership Regulation**" means 31 C.F.R. § 1010.230, as amended, or any successor thereto.

"**Benefit Plan**" means, other than a Multiemployer Plan, an "employee benefit plan" (as defined in ERISA) that is subject to Title I or Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA with respect to which any Borrower or any of its Subsidiaries has any liability (including on account of an ERISA Affiliate).

"**Blackhawk Parent**" has the meaning set forth in the Recitals.

"**Board of Directors**" means:

(a) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;

(b) with respect to a partnership, the board of directors of the general partner of the partnership;

(c) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof; and

(d) with respect to any other Person, the board or committee of such Person serving a similar function.

"**Borrower**" and "**Borrowers**" means the entity(ies) described in the first paragraph of this Agreement and each of their successors and permitted assigns, including any trustee, responsible officer, examiner with expanded powers, or other fiduciary hereafter appointed as its legal representative or with respect to the property of the estate of such entity whether under any Chapter 11 Case or any Chapter 7 Case and its successor upon conclusion of such case.

"**Borrower Representative**" means Blackhawk Parent, in its capacity as Borrower Representative pursuant to the provisions of Section 2.9, or any successor Borrower Representative selected by Borrowers and approved by DIP ABL Agent (such approval not to be unreasonably withheld, conditioned or delayed).

"Borrowing Base" means:

(a) the product of (i) eighty-five percent (85%) *multiplied by* (ii) the aggregate net amount at such time of the Eligible Accounts, less the amount, if any, of the Dilution Reserve; *provided* that the Borrowing Base will be automatically adjusted down, if necessary, such that the aggregate availability from Foreign Accounts that are assured by a credit insurance policy as set forth in clause (s) of the definition of "Eligible Accounts" shall never exceed an amount equal to $25,000,000; *plus*

(b) the lesser of (i) the product of (A) sixty-five percent (65%) *multiplied by* (B) (1) the Orderly Liquidation Value of the Eligible Inventory *minus* (ii) the Rent Reserve and the Royalty Reserve, and (iii) the product of (A) sixty-five percent (65%) *multiplied by* (B)(1) the net realizable value of the Eligible Inventory as determined in accordance with the cost accounting methods employed by Borrower as of the Closing Date and consistent with GAAP *minus* the Rent Reserve and the Royalty Reserve; *provided* that the Borrowing Base will be automatically adjusted down, if necessary, such that the aggregate availability from Eligible Inventory (after giving effect to Reserves established pursuant to clause (c) above with respect to such Inventory) shall never exceed the Borrowing Base Inventory Limit; *minus*

(c) the amount of all other Reserves.

"**Borrowing Base Certificate**" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit C hereto.

"**Borrowing Base Inventory Limit**" means, as of any date of determination, an amount equal to twenty-five percent (25%) of the Borrowing Base; provided that, upon written request of Borrower Representative (such requests not to be more frequent than once per calendar month) and written consent of DIP ABL Agent (such consent to be given or withheld in DIP ABL Agent's sole discretion), such limit may be increased to an amount equal to thirty-three percent (33%) of the Borrowing Base for a period of seven (7) or fewer consecutive days during such calendar month.

"**Budget**" means (i) the initial budget projecting operations for the ensuing thirteen (13) week period, including cash flow, forecasts of receipts, and disbursements (including Carve Out estimates), attached hereto as Exhibit H, and together with backup information previously provided to the DIP ABL Agent and (ii) each subsequent thirteen (13) week cash flow forecast of receipts and disbursements (in substantially the same format as the prior monthly cash flow forecast of receipts and disbursements, including backup information), provided pursuant to Article 6 hereof and in form and substance acceptable to the DIP ABL Lenders, setting forth the Debtors' projected cash receipts and cash disbursements during such 13-week period.

"**Budget Variance Report**" means a variance report setting forth in each case (x) for the one-week period ended on the immediately preceding Friday prior to the delivery thereof (a "**Weekly Period**") and (y) for the period commencing on the Petition Date and ending on the immediately preceding Friday prior to the delivery thereof (a "**Budget Test Period**") (1) the negative variance (as compared to the Approved Budget) of the aggregate operating cash receipts of the Debtors, (2) the positive variance (as compared to the Approved Budget) of the aggregate operating disbursements (excluding professional fees) made by the Debtors and (3) an explanation, in reasonable detail, for any material variance, certified by an authorized officer of Blackhawk Parent.

"**Business Day**" means any day except a Saturday, Sunday or other day on which either the New York Stock Exchange is closed, or on which commercial banks in Washington, DC and New York City are authorized by law to close and, in the case of a Business Day which relates to a Loan bearing interest at a rate based on the LIBOR Rate, a day on which dealings are carried on in the London interbank eurodollar market.

"**Cantor**" has the meaning set forth in the Recitals.

"**Capital Lease Obligation**" means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with GAAP, and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty

"**Capital Stock**" means:

(a) in the case of a corporation, corporate stock;

(b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(c) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and

(d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

"**Carve Out**" has the meaning given to the term "Carve Out" as set forth in the Interim DIP Order or the Final DIP Order, as applicable.

"**Cash Collateral**" means all "cash collateral" as defined in section 363(a) of the Bankruptcy Code; all deposits subject to setoff and cash arising from the collection or other conversion to cash of property of Borrowers in which the Prepetition ABL Agent, Prepetition ABL Lenders, Prepetition Term Loan Agents or Prepetition Term Loan Lenders assert security interests, liens or mortgages, regardless of whether such security interests, liens, or mortgages existed as of the Petition Date or arose thereafter pursuant to the DIP Orders, and whether the property converted to cash existed as of the Petition Date or arose thereafter.

"**Cash Equivalents**" means:

(a) Dollars;

(b) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (***provided*** that the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than twelve months from the date of acquisition;

(c) certificates of deposit and eurodollar time deposits with maturities of six months or less from the date of acquisition, bankers' acceptances with maturities not exceeding twelve months and overnight bank deposits, in each case, with any domestic commercial bank having capital and surplus in excess of $500,000,000 and a Thomson Bank Watch Rating of "B" or better;

(d) repurchase obligations with a term of not more than seven days for underlying securities of the types described in **clauses (b)** and **(c)** above entered into with any financial institution meeting the qualifications specified in **clause (c)** above;

(e) commercial paper having one of the two highest ratings obtainable from Moody's or S&P and, in each case, maturing within six months after the date of acquisition; and

(f) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in **clauses (a)** through **(e)** of this definition.

"**Cash Management Obligations**" means obligations in respect of cash management services (including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements), including obligations for the payment of fees, interest, charges, expenses and disbursements in connection therewith to the extent provided for in the documents evidencing such cash management services

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

"**Change of Control**" means the occurrence of any of the following:

(a) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger, amalgamation or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Blackhawk Parent and its Subsidiaries taken as a whole to any Person (including any "person" or "group" (as such terms are used in Sections 13(d)(3) and 14(d), respectively, of the Exchange Act)); or

(b) the consummation of any transaction (including, without limitation, any merger, amalgamation or consolidation), the result of which is that the Permitted Holders cease to Beneficially Own, directly or indirectly, in the aggregate, a majority of the Voting Stock of Blackhawk Parent; or

(c) any "Change of Control" (or comparable term) in any DIP Term Loan Document.

"**Chapter 7 Case**" means a case with respect to one or more Borrowers commenced (by way of petition or conversion) or conducted under Chapter 7 of the Bankruptcy Code.

"**Chapter 11 Case**" shall have the meaning given to such term in the recitals.

"**Chapter 11 Confirmation Date**" means the date on which the Bankruptcy Court shall have entered an order, in form and substance reasonably acceptable to the DIP ABL Agent, confirming the Acceptable Chapter 11 Plan

"**Chapter 11 Plan Effective Date**" means the date on which the Acceptable Chapter 11 Plan shall take effect, which shall be a date on which: (a) no stay of the Bankruptcy Court's order confirming the Acceptable Chapter 11 Plan is in effect; and (b) all conditions precedent to the effectiveness of the Acceptable Chapter 11 Plan have been satisfied, or, if capable of being waived in accordance with the terms therein, waived, but only to the extent that any such waiver does not alter DIP ABL Agent and DIP ABL Lenders' satisfaction, in their sole discretion, with the form and substance of the Acceptable Chapter 11 Plan. The Chapter 11 Plan Effective Date shall be specified in a notice filed with the Bankruptcy Court in the Chapter 11 Cases.

"**Chattel Paper**" means "chattel paper" (as such term is defined in Article 9 of the UCC).

"**Closing Date**" means the date of this Agreement.

"**Coal**" means all types of solid naturally occurring hydrocarbons (other than oil shale or Gilsonite), including without limitation, bituminous and sub-bituminous coal, and lignite.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time (unless otherwise specified herein), and the regulations promulgated and rulings issued thereunder.

"**Commitment Annex**" means Annex A to this Agreement.

"**Commitment Expiry Date**" means October __[1], 2019.

"**Company**" means any corporation, limited liability company, partnership or other business entity (or the adjectival form thereof, where appropriate).

"**Compliance Certificate**" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit B hereto.

"**Consolidated Subsidiary**" means, at any date, any Subsidiary the accounts of which would be consolidated with those of Blackhawk Parent (or any other Person, as the context may require hereunder) in its consolidated financial statements if such statements were prepared as of such date.

[1] NTD: 90 days after commencement of the Chapter 11 Cases

"**continuing**", "**continue(s)**", "**continuance**", or derivations of the foregoing mean, with respect to any Default or DIP Event of Default, that such Default or DIP Event of Default has not been cured or waived.

"**Contract**" means, with respect to any Account, any and all contracts, instruments, agreements, leases, invoices, notes or other writings pursuant to which such Account arises or that evidence such Account or under which an obligor becomes or is obligated to make payment in respect of such Account.

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

"**Cortland**" means Cortland Capital Market Services LLC, in its individual capacity, and any successor corporation thereto by merger, consolidation or otherwise.

"**Credit Party**" means each Borrower and each Guarantor.

"**Default**" means any event, act or condition which with notice or lapse of time, or both, would constitute a DIP Event of Default.

"**Defaulted DIP ABL Lender**" means, so long as such failure shall remain in existence and uncured, any DIP ABL Lender which shall have failed to make any Loan or other credit accommodation, disbursement, settlement or reimbursement required pursuant to the terms of any DIP ABL Financing Document.

"**Deposit Account**" has the meaning set forth in the Security Agreement.

"**Deposit Account Control Agreement**" means an agreement, in form and substance satisfactory to DIP ABL Agent, among DIP ABL Agent, any Borrower and the applicable financial institution in which such Borrower maintains a Deposit Account (other than Excluded Accounts), which agreement provides that (a) such financial institution shall comply with instructions originated by DIP ABL Agent directing disposition of the funds in such Deposit Account without further consent by the applicable Borrower, and (b) such financial institution shall agree that it shall subordinate any Lien on, or right of setoff or recoupment against, such Deposit Account or the contents thereof, other than in respect of usual and customary service fees and returned items for which DIP ABL Agent has been given value, in each such case expressly consented to by DIP ABL Agent, and containing such other terms and conditions as DIP ABL Agent may reasonably require, including as to any such agreement pertaining to any Lockbox Account, providing that such financial institution shall wire, or otherwise transfer, in immediately available funds, on a daily basis to the Payment Account all funds received or deposited into such Lockbox or Lockbox Account. For the avoidance of doubt, Excluded Accounts shall not be subject to any Deposit Account Control Agreements and it being understood that the Deposit Account Control Agreements with respect to the Lockbox Accounts and other Deposit Accounts entered into on the Closing Date satisfy the requirements of this definition.

"**Dilution**" means, as of any date of determination, a percentage, based upon the experience during any prior period selected from time to time by DIP ABL Agent in its sole discretion, that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to Borrowers' Accounts during such period, by (b) Borrowers' billings with respect to Accounts during such period, in each case, other than Accounts owed by Xcoal to a Borrower that are, or would be, ineligible as a result of clause (c) of the definition of "Eligible Accounts".

"**Dilution Reserve**" means, as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts by one (1) percentage point for each percentage point by which Dilution is in excess of five (5%) percent.

"**DIP ABL Agent**" means MFT, in its capacity as administrative agent for itself and for DIP ABL Lenders hereunder, as such capacity is established in, and subject to the provisions of, Article 11, and the successors and assigns of MFT in such capacity.

"**DIP ABL Collateral**" shall have the meaning set forth in the DIP Orders and shall, in any event, include all property (whether real or personal) with respect to which any security interests have been granted (or purported to be granted) pursuant to any Security Document and/or any DIP Order, including, without limitation, all Security Agreement Collateral, all Mortgaged Properties and all cash and Cash Equivalents described in or delivered as collateral pursuant to the DIP ABL Financing Documents and/or DIP Orders.

"**DIP ABL Financing Documents**" means this Agreement, each Fee Letter, each Note, the Security Documents, the DIP Orders, any subordination or intercreditor agreement pursuant to which any Indebtedness and/or any Liens securing such Indebtedness is subordinated to all or any portion of the DIP ABL Obligations and all other documents, instruments and agreements (other than any Swap Contract) related to the DIP ABL Obligations and heretofore executed, executed concurrently herewith or executed at any time and from time to time hereafter, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"**DIP ABL Intercreditor Agreement"** means that certain Debtor-in-Possession ABL Intercreditor Agreement, dated as of the date hereof, among one or more of the Borrowers, the other Credit Parties party thereto, the DIP ABL Agent and the DIP Term Loan Agent, as the same may be amended, modified and/or supplemented from time to time in accordance with the terms thereof.

"**DIP ABL Lender**" means each of (a) MFT, in its capacity as a lender hereunder, (b) each other Person party hereto in its capacity as a lender hereunder, (c) each other Person that becomes a party hereto as DIP ABL Lender pursuant to Section 11.17, and (d) the respective successors of all of the foregoing, and "**DIP ABL Lenders**" means all of the foregoing.

"**DIP ABL Obligations**" means all obligations, liabilities and indebtedness (monetary (including, without limitation, the payment of interest and other amounts arising after the commencement of any case with respect to any Credit Party under the Bankruptcy Code or any similar statute which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case) or otherwise) of each Credit Party under this Agreement or any other DIP ABL Financing Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due.

"**DIP ABL Priority Collateral**" means all of the assets of the Borrowers constituting "DIP ABL Priority Collateral" under the DIP ABL Intercreditor Agreement, including without limitation, (a) all cash, accounts receivable, inventory, and accounts receivable-related and inventory-related items and proceeds and products thereof, and (b) all assets of the same kind or nature as such "DIP ABL Priority Collateral" acquired by any of the Borrowers after the commencement of the Chapter 11 Cases and all proceeds and products thereof, and (c) all proceeds of Avoidance Actions.

"**DIP ABL Termination Date**" means the earliest to occur of (a) the Commitment Expiry Date, (b) the date on which any DIP ABL Termination Event occurs, (c) the date on which DIP ABL Agent

accelerates the maturity of the Loans pursuant to Section 10.2, or (d) the termination date stated in any notice of termination of this Agreement provided by Borrowers in accordance with Section 2.12(b).

"**DIP ABL Termination Event**" means any one of the following events:

(a) the indefeasible payment in full of the DIP ABL Obligations;

(b) the entry of an order dismissing any of the Chapter 11 Cases or converting any of the Chapter 11 Cases to a Chapter 7 Case, or any Credit Party files a motion or other pleading seeking entry of such an order or supports or fails to promptly oppose such dismissal or conversion;

(c) the appointment in one or more of the Chapter 11 Cases of a trustee, responsible officer, or an examiner having expanded powers under section 1104 of the Bankruptcy Code (other than a fee examiner), or any Credit Party applies for, consents to, supports, acquiesces in or fails to promptly oppose, any such appointment, or the Bankruptcy Court shall have entered an order providing for such appointment, in each case without the prior written consent of DIP ABL Agent and DIP ABL Lenders;

(d) the failure of Borrowers to file with the Bankruptcy Court, on or before the date that is five (5) days after the Petition Date, (i) a motion requesting that the Bankruptcy Court enter the Interim DIP Order and (ii) a proposed Acceptable Chapter 11 Plan (together with the Acceptable Disclosure Statement);

(e) the failure of the Final DIP Order Entry Date to occur on or before the date is forty-five (45) days after the Petition Date (or such later date as may be agreed by DIP ABL Agent);

(f) the failure the Chapter 11 Confirmation Date to occur on or before the date that is seventy-five (75) days after the Petition Date (or such later date as may be agreed by DIP ABL Agent);

(g) the failure of the Chapter 11 Plan Effective Date to occur on a date that is on or before the date that is fourteen (14) days following the Chapter 11 Confirmation Date (or such later date as may be agreed by DIP ABL Agent); and

(h) the occurrence of the Chapter 11 Plan Effective Date.

"**DIP Credit Exposure**" means, at any time, any portion of the DIP Revolving Loan Commitment that remains outstanding or other DIP ABL Obligation that remains unpaid; *provided, however,* that no DIP Credit Exposure shall be deemed to exist solely due to the existence of contingent indemnification liability, absent the assertion of a claim, or the known existence of a claim reasonably likely to be asserted, with respect thereto.

"**DIP Event of Default**" has the meaning set forth in Section 10.1.

"**DIP Orders**" means, collectively, the Interim DIP Order and, once entered by the Bankruptcy Court, the Final DIP Order, as the same may be amended, modified or otherwise supplemented from time to time in compliance with this Agreement.

"**DIP Revolving Loan Availability**" means, at any time, the DIP Revolving Loan Limit *minus* the DIP Revolving Loan Outstandings.

"**DIP Revolving Loan Borrowing**" means a borrowing of a DIP Revolving Loan.

"**DIP Revolving Loan Commitment**" means, as of any date of determination, the aggregate DIP Revolving Loan Commitment Amounts of all DIP ABL Lenders as of such date; provided that DIP Revolving Loan Commitment may not be in excess of the maximum amount of credit under this Agreement allowable under the Interim DIP Order or the Final DIP Order, as applicable.

"**DIP Revolving Loan Commitment Amount**" means, as to any DIP ABL Lender, the dollar amount set forth opposite such DIP ABL Lender's name on the Commitment Annex under the column "DIP Revolving Loan Commitment Amount" (if such DIP ABL Lender's name is not so set forth thereon, then the dollar amount on the Commitment Annex for the DIP Revolving Loan Commitment Amount for such DIP ABL Lender shall be deemed to be $0), as such amount may be adjusted from time to time by any amounts assigned (with respect to such DIP ABL Lender's portion of DIP Revolving Loans outstanding and its commitment to make DIP Revolving Loans) pursuant to the terms of any and all effective assignment agreements to which such DIP ABL Lender is a party. For the avoidance of doubt, the aggregate DIP Revolving Loan Commitment Amount of all DIP ABL Lenders (a) for the period commencing on the Closing Date through the Final DIP Order Entry Date shall be the sum of (i) the amount of the Prepetition ABL Obligations that have been paid pursuant to Section 2.11 *plus* (ii) $5,000,000, and (b) on the Final DIP Order Entry Date, the aggregate DIP Revolving Loan Commitment Amount of all DIP ABL Lenders shall be increased automatically, without notice or any other action, to $90,000,000.

"**DIP Revolving Loan Commitment Percentage**" means, as to any DIP ABL Lender, (a) on the Closing Date, the percentage set forth opposite such DIP ABL Lender's name on the Commitment Annex under the column "DIP Revolving Loan Commitment Percentage" (if such DIP ABL Lender's name is not so set forth thereon, then, on the Closing Date, such percentage for such DIP ABL Lender shall be deemed to be zero), and (b) on any date following the Closing Date, the percentage equal to the DIP Revolving Loan Commitment Amount of such DIP ABL Lender on such date *divided by* the DIP Revolving Loan Commitment on such date.

"**DIP Revolving Loan Exposure**" means, with respect to any DIP ABL Lender on any date of determination, the percentage equal to the amount of such DIP ABL Lender's DIP Revolving Loan Outstandings on such date *divided by* the aggregate DIP Revolving Loan Outstandings of all DIP ABL Lenders on such date.

"**DIP Revolving Loan Limit**" means, at any time, the lesser of (a) the DIP Revolving Loan Commitment and (b) the Borrowing Base.

"**DIP Revolving Loan Outstandings**" means, at any time of calculation, (a) the then existing aggregate outstanding principal amount of DIP Revolving Loans, which, for the avoidance of doubt, will include amounts outstanding under the Prepetition ABL Credit Agreement and the other Prepetition ABL Financing Documents upon "roll-up" of such amounts (whether such "roll-up" is accomplished pursuant to Section 10.7 or upon the entry of the Final DIP Order), and (b) when used with reference to any single DIP ABL Lender, the then existing outstanding principal amount of DIP Revolving Loans advanced by such DIP ABL Lender.

"**DIP Revolving Loans**" has the meaning set forth in Section 2.1(b).

"**DIP Term Loan Agent**" has the meaning set forth in the Recitals.

"**DIP Term Loan Agreement**" has the meaning set forth in the Recitals.

"**DIP Term Loan Documents**" has the meaning set forth in the Recitals.

"**DIP Term Loan Lenders**" has the meaning set forth in the Recitals.

"**DIP Term Loan Priority Collateral**" means all of the assets of the Borrowers constituting "DIP Term Loan Priority Collateral" under the DIP ABL Intercreditor Agreement.

"**Disqualified Stock**" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is ninety-one (91) days after the Commitment Expiry Date. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require the issuer thereof to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale will not constitute Disqualified Stock if the terms of such Capital Stock provide that the issuer thereof may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with Section 5.3. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that Blackhawk Parent and its Restricted Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock, exclusive of accrued dividends.

"**Dollars**" and the sign "**$**"each mean freely transferable lawful money of the United States.

"**Domestic Subsidiary**" of any Person means any Subsidiary of such Person incorporated or organized under the laws of the United States, any State thereof or the District of Columbia.

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

"**EEA Member Country**" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution

"**Eligible Account**" means, subject to the criteria below, an Account of a Borrower, which was generated in the ordinary course of business, which was generated originally in the name of a Borrower and not acquired via assignment or otherwise (unless by assignment from another Credit Party to the extent such assignment is made in accordance with applicable law and the terms of any applicable agreement, instrument or document relating to such Account), and which DIP ABL Agent determines to be an Eligible Account based on the application of the eligibility criteria set forth in this definition. The net amount of an Eligible Account at any time shall be the face amount of such Eligible Account as originally billed *minus*, without duplication of any Reserves or the eligibility criteria, all cash collections and other proceeds of such Account received from or on behalf of the Account Debtor thereunder as of such date and any and all returns, rebates, discounts, credits, allowances or excise taxes of any nature at any time issued, owing, granted, outstanding or payable in connection with such Accounts at such time. Without limiting the generality of the foregoing, no Account shall be an Eligible Account if:

(a) the Account remains unpaid more than ninety (90) days past the claim or invoice date (but in no event more than one hundred and twenty (120) days after the applicable goods or services have been rendered or delivered);

(b) the Account is subject to any defense, set-off, recoupment, counterclaim, deduction, discount, credit, chargeback, freight claim, allowance, or adjustment of any kind (but only to the extent of such defense, set-off, recoupment, counterclaim, deduction, discount, credit, chargeback, freight claim, allowance, or adjustment (without duplication of clause (c) below)), or the applicable Borrower is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial process;

(c) the Account Debtor in respect of such Account is Xcoal Energy & Resources or any of its affiliates (collectively with Xcoal Energy & Resources, "**XCoal**") and Borrower or any of its Subsidiaries is obligated to repurchase (or has otherwise notified XCoal of its intention to repurchase) the Inventory sold to XCoal that originally generated such Account (but, in each case, only to the extent of such repurchase);

(d) if the Account arises from the sale of goods, any part of any goods the sale of which has given rise to the Account has been returned, rejected, lost, or damaged (but only to the extent that such goods have been so returned, rejected, lost or damaged);

(e) if the Account arises from the sale of goods, the sale was not an absolute, bona fide sale, or the sale was made on consignment or on approval or on a sale-or-return or bill-and-hold or progress billing basis, or the sale was made subject to any other repurchase or return agreement, or the goods have not been shipped to the Account Debtor or its designee or the sale was not made in compliance with applicable Requirements of Law;

(f) if the Account arises from the performance of services, the services have not actually been performed or the services were undertaken in violation of any Requirement of Law or the Account represents a progress billing for which services have not been fully and completely rendered;

(g) (i) the Account is subject to a Lien other than a Permitted Lien, (ii) DIP ABL Agent does not have a first priority, perfected Lien on such Account (but only to the extent the obligations secured by a Lien that primes the otherwise first priority Lien in favor of DIP ABL Agent, as determined by DIP ABL Agent), or (iii) such Account constitutes As-Extracted Collateral and the Bankruptcy Court has not entered an order granting Super-priority Claim status and Liens to DIP ABL Agent, for the benefit of DIP ABL Lenders on such Account or DIP ABL Agent has not received a completed As-Extracted Collateral Filing, in form and substance reasonably satisfactory to DIP ABL Agent, with respect to such As-Extracted Collateral together with evidence that counterparts of such As-Extracted Collateral Filings have been delivered to DIP ABL Agent or its designee for recording in the applicable jurisdiction;

(h) the Account is evidenced by Chattel Paper or an Instrument of any kind, or has been reduced to judgment, unless (i)(A) such tangible Chattel Paper or Instrument has been delivered to DIP ABL Agent and (B) no third party has been granted control with respect to such intangible Chattel Paper and (ii) in each case, DIP ABL Agent has a first priority perfected security interest in such Chattel Paper or Instrument;

(i) the Account Debtor in respect of such Account is an Affiliate or Subsidiary of a Credit Party or a Restricted Subsidiary;

(j) the Account Debtor holds any Indebtedness for borrowed money of a Credit Party or a Restricted Subsidiary;

(k) more than fifty percent (50%) of the aggregate balance of all Accounts owing from the Account Debtor obligated on the Account are ineligible under clause (a) above (in which case all Accounts from such Account Debtor shall be ineligible);

(l) without limiting the provisions of clause (k) above, fifty percent (50%) or more of the aggregate unpaid Accounts from the Account Debtor obligated on the Account are not deemed Eligible Accounts under this Agreement for any reason (other than solely because of clause (m) or (s) hereof);

(m) the total unpaid Accounts of the Account Debtor obligated on the Account exceed twenty percent (20%) (or, in the event that such unpaid Accounts are assured by a credit insurance policy that has been assigned and delivered to DIP ABL Agent and is satisfactory to DIP ABL Agent as to form, amount and issuer (it being understood that, without duplication of any reserves or the application of any other eligibility criteria, any deductible thereunder shall reduce the amount of such Account that is otherwise eligible by virtue of this parenthetical up to the amount of such deductible), thirty-five percent (35%)) of the net amount of all Eligible Accounts owing from all Account Debtors; provided that only the amount of the Accounts of such Account Debtor exceeding such twenty percent (20%) or thirty-five percent (35%) limitation, as applicable, shall be considered ineligible;

(n) any covenant, representation or warranty contained in the DIP ABL Financing Documents with respect to such Account has been breached in any material respect;

(o) the Account is unbilled or the Account has not been invoiced to the Account Debtor in accordance with the procedures and requirements of the applicable Account Debtor; *provided, however,* that unbilled or uninvoiced Accounts in an aggregate amount with respect to all such Accounts of up to the lesser of (i) $20,000,000 and (ii) an amount equal thirty-three and one third percent (33.33%) of the net amount of all billed Eligible Accounts owing from all Account Debtors will not be ineligible solely due to this clause (o) if such unbilled or uninvoiced Accounts (x) are not more than fifteen (15) days past the dates on which applicable goods or services have been rendered or delivered and (y) are, in any event, properly recorded on Borrowers' accounting systems in the ordinary course of business and billed or invoiced to the applicable Account Debtor in Borrower's ordinary course of business;

(p) the Account has not been invoiced to the Account Debtor in accordance with the procedures and requirements of the applicable Account Debtor;

(q) the Account is an obligation of an Account Debtor that is the federal, state or local government or any political subdivision thereof, unless DIP ABL Agent has agreed to the contrary in writing and, in the case of any such U.S. Account Debtor, DIP ABL Agent has received from the Account Debtor the acknowledgement of DIP ABL Agent's notice of assignment of such obligation pursuant to this Agreement (for the avoidance of doubt, the Accounts of the Tennessee Valley Authority (or any subsidiary (or similar entity) or other instrumentality thereof) shall not be ineligible as a result of this clause (q));

(r) the Account is an obligation of an Account Debtor that has suspended business, made a general assignment for the benefit of creditors, is unable to pay its debts as they become due or as to which a petition has been filed (whether voluntary or involuntary) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or the Account is an Account as to which any facts, events or occurrences exist which could reasonably be expected to impair the validity,

enforceability or collectability of such Account or reduce the amount payable or delay payment thereunder;

(s) the Account Debtor has its principal place of business or executive office outside the United States *unless* (i) payment of the Account (each a "**Foreign Account**") is assured by (x) a letter of credit that is confirmed by a U.S. depository institution and is otherwise satisfactory to DIP ABL Agent as to form, amount, issuer and confirmer and, in all cases, Borrower has either (A) arranged for the issuer and any confirmer of such letter of credit to consent to an assignment to DIP ABL Agent of the proceeds of any drawing under the letter of credit or (B) arranged for DIP ABL Agent to become the transferee beneficiary of such letter of credit, or (y) a credit insurance policy that has been assigned and delivered to DIP ABL Agent and is satisfactory to DIP ABL Agent as to form, amount and issuer and (ii) DIP ABL Agent, in each case, has approved such Account Debtor in writing (such approval not to be unreasonably withheld, conditioned or delayed);

(t) the Account is payable in a currency other than United States dollars;

(u) the Account Debtor is an individual;

(v) Blackhawk Parent has not certified that the applicable Account Debtor has been directed that such Account be paid to a Lockbox Account;

(w) the Account includes late charges or finance charges (but only such portion of the Account shall be ineligible); or

(x) the Account arises out of the sale of any Inventory upon which (following such sale) any other Person holds a Lien (other than a Permitted Lien).

"**Eligible Assignee**" means (a) a DIP ABL Lender, (b) an Affiliate of a DIP ABL Lender, (c) an Approved Fund, and (d) an Eligible Transferee; *provided, however*, (x) "**Eligible Assignee**" shall not include any Borrower, any Guarantor or any Affiliate or Subsidiary of any Borrower or Guarantor, and (y) no proposed assignee intending to assume all or any portion of the DIP Revolving Loan Commitment shall be an Eligible Assignee unless such proposed assignee either already holds a portion of such DIP Revolving Loan Commitment, or has been approved as an Eligible Assignee by DIP ABL Agent.

"**Eligible Inventory**" means Inventory owned by a Borrower and acquired and dispensed by such Borrower in the ordinary course of business that DIP ABL Agent determines to be Eligible Inventory based on the application of the eligibility criteria set forth in this definition. Without limiting the generality of the foregoing, no Inventory shall be Eligible Inventory if:

(a) such Inventory is not owned by a Borrower free and clear of all Liens and rights of any other Person (including the rights of a purchaser that has made progress payments and the rights of a surety that has issued a bond to assure such Borrower's performance with respect to that Inventory) (other than Permitted Liens);

(b) such Inventory is placed on consignment;

(c) such Inventory is in transit; *provided*, that such Inventory will be Eligible Inventory if such Inventory is in transit between (i) locations owned by one more Credit Parties, (ii) within the United States and is under control of one or more Credit Parties and, in the case of this clause (ii), with respect to which Reserves reasonably satisfactory to DIP ABL Agent have been established with respect thereto or (iii) locations described in clause (i), (ii) and, subject to the proviso thereof, clause (l)

below; *provided* further that, the amount of Eligible Inventory under the preceding provision shall not exceed an amount equal to the lesser of (x) five percent (5%) of the total aggregate amount of Inventory and (y) $7,500,000;

(d) such Inventory is covered by a negotiable document of title, unless such document has been delivered to DIP ABL Agent with all necessary endorsements, free and clear of all Liens except those in favor of DIP ABL Agent;

(e) such Inventory is obsolete, unsalable, unfit for sale, unfit for further processing or is not of good and merchantable quality;

(f) such Inventory consists of marketing materials, display items or packing or shipping materials, manufacturing supplies or Work-In-Process;

(g) such Inventory is not subject to a first priority Lien in favor of DIP ABL Agent (but only to the extent of the obligations secured by a Lien that primes the otherwise first priority Lien in favor of DIP ABL Agent, as determined by DIP ABL Agent);

(h) such Inventory consists of goods that can be transported or sold only with licenses that are not readily available or of any substances defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic substance, or similar term, by any Environmental Law or any Governmental Authority applicable to Borrowers or their business, operations or assets;

(i) such Inventory constitutes As-Extracted Collateral and the Bankruptcy Court has not entered an order granting Super-priority Claim status and Liens in favor of DIP ABL Agent, for the benefit of DIP ABL Lenders, or DIP ABL Agent has not received a completed As-Extracted Collateral Filing, in form and substance reasonably satisfactory to DIP ABL Agent, with respect to such As-Extracted Collateral together with evidence that counterparts of such As-Extracted Collateral Filings have been delivered to DIP ABL Agent or its designee for recording in the applicable jurisdiction;

(j) any covenant, representation or warranty contained in the DIP ABL Financing Documents with respect to such Inventory has been breached in any material respect;

(k) such Inventory is located (i) outside of the continental United States or (ii) on premises where the aggregate amount of all Inventory (valued at cost) of Borrowers located thereon is less than $10,000;

(l) such Inventory is located on premises leased or rented by a Credit Party or with a bailee or warehouseman at a location with respect to which DIP ABL Agent has not received a landlord, warehouseman, bailee or mortgagee letter acceptable in form and substance to DIP ABL Agent unless (i) such Inventory is located on a Mining Lease, in which case, unless DIP ABL Agent has established a Royalty Reserves reasonably satisfactory to DIP ABL Agent with respect thereto or (ii) if not located on a Mining Lease, DIP ABL Agent has established a Rent Reserve with respect thereto;

(m) [Reserved];

(n) such Inventory is not (i) clean goods, (ii) raw to wash goods; or (iii) direct shipment goods;

(o) such Inventory does not meet all standards imposed by any Governmental Authority, including with respect to its production, acquisition or importation (as the case may be);

(p) [Reserved];

(q) [Reserved];

(r) [Reserved]; or

(s) such Inventory is subject to any intellectual property licensing, patent, intellectual property royalty, trademark, trade name or copyright agreement with any third parties, which agreement restricts the ability of DIP ABL Agent or any DIP ABL Lender to sell or otherwise dispose of such Inventory.

Subject to Section 4.2, DIP ABL Agent and Borrowers agree that Inventory shall be subject to periodic appraisal by DIP ABL Agent and that valuation of Inventory shall be subject to adjustment pursuant to the results of such appraisal. Notwithstanding the foregoing, the valuation of Inventory shall be subject to any legal limitations on sale and transfer of such Inventory that would have a material adverse effect on the ability of DIP ABL Agent to realize a recovery in full through an orderly liquidation with respect to Loans advanced with respect to such Inventory.

"**Eligible Transferee**" means and includes a commercial bank, an insurance company, a finance company, a financial institution, any fund that invests in loans or any other "accredited investor" (as defined in Regulation D of the Securities Act), but in any event excluding the Borrowers, the Guarantors, and each Affiliate or Subsidiary of any Borrower or Guarantor.

"**Embargoed Person**" means any party that (a) is publicly identified on the most current list of "Specially Designated Nationals and Blocked Persons" published by the U.S. Treasury Department's Office of Foreign Assets Control ("***OFAC***") or resides, is organized or chartered, or has a place of business in a country or territory subject to OFAC sanctions or embargo programs or (b) is otherwise as prohibited from doing business with the United States under the International Emergency Economic Powers Act, the Trading With the Enemy Act, or any other Requirement of Law.

"**Employee Benefit Plan**" means any employee benefit plan (within the meaning of Section 3(3) of ERISA, other than a Multiemployer Plan) established or maintained by any Borrower or any of its Restricted Subsidiaries or, with respect to any such plan subject to Section 412 of the Code or Title IV of ERISA, an ERISA Affiliate.

"**Environmental Claims**" means any and all actions, suits, demands, demand letters, directives, claims, liens, notices of noncompliance or violation, by or from any Person relating in any way to any noncompliance with, or liability arising under, Environmental Law.

"**Environmental Law**" means any applicable Federal, state, local or foreign law (including to the extent related, Mining Laws and principles of common law), rule, regulation, ordinance, code, directive, judgment, order or agreement, now or hereafter in effect and in each case as amended, relating to the protection of the environment, or of human health (as it relates to the exposure to environmental hazards) or to Hazardous Materials.

"**Equity Holder**" means the direct or indirect holders of the Equity Interests of Blackhawk Parent.

"**Equity Interests**" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

"**ERISA**" means the U.S. Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"**ERISA Affiliate**" means any Person that for purposes of Title I or Title IV of ERISA or Section 412 of the Code would be deemed at any relevant time to be a single employer or otherwise aggregated with any Borrower or any of its Subsidiaries under Section 414(b), (c) or (m) of the Code or Section 4001 of ERISA.

"**ERISA Event**" means any one or more of the following:

(a) any Reportable Event;

(b) the filing of a notice of intent to terminate any Benefit Plan under Section 4041(b) of ERISA, if such termination would require material additional contributions in order to be considered a standard termination, the filing under Section 4041(c) of ERISA of a notice of intent to terminate any Benefit Plan or the termination of any Benefit Plan under Section 4041(c) of ERISA;

(c) the institution of proceedings, or the occurrence of an event or condition which would reasonably be expected to constitute grounds for the institution of proceedings, by the PBGC under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Benefit Plan;

(d) the failure to make a required contribution to any Benefit Plan that would result in the imposition of a lien or other encumbrance or the provision of security under Section 430 of the Code or Section 303 or 4068 of ERISA, or the arising of such a lien or encumbrance; the failure by any Benefit Plan to satisfy the minimum funding standard under Section 430 of the Code or Section 303 of ERISA, whether or not waived; the filing of any request for or receipt of a minimum funding waiver under Section 412 of the Code with respect to any Benefit Plan, or that such filing may be made; or the determination that any Benefit Plan is, or is expected to be, in "at-risk" status within the meaning of Section 430 of the Code or Section 303 of ERISA;

(e) a withdrawal by any Borrower, any Subsidiary, or any ERISA Affiliate from a Benefit Plan subject to Section 4063 of ERISA during a Benefit Plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA;

(f) engaging in a non-exempt prohibited transaction within the meaning of Section 4975 of the Code or Section 406 of ERISA with respect to any Benefit Plan;

(g) the complete or partial withdrawal of any Borrower, any of its Subsidiaries or any ERISA Affiliate from a Multiemployer Plan, the insolvency under Title IV of ERISA of any Multiemployer Plan; or the receipt by any Borrower or any of its Subsidiaries or any ERISA Affiliate, of any notice, that a Multiemployer Plan is insolvent within the meaning of Section 4245 of ERISA or in endangered or critical status under Section 305 of ERISA; or

(h) any Borrower, any of its Subsidiaries or an ERISA Affiliate incurring any liability under Title IV of ERISA with respect to any Benefit Plan (other than premiums due and not delinquent under Section 4007 of ERISA).

"**EU Bail-In Legislation Schedule**" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time

"Excess Availability" means, at a particular date, an amount equal to the DIP Revolving Loan Availability minus all amounts due and owing to any Borrower's trade creditors which are outstanding sixty (60) days or more past their due date (after giving effect to trade credit and trade terms extended by vendors).

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Excluded Accounts**" means "Excluded Accounts" as defined in the Security Agreement.

"**Excluded Assets**" means each of the following:

(a) any lease, license, contract, property right or agreement to which any Borrower or any Guarantor is a party or by which any Borrower or any Guarantor is bound or any right or interest of any Borrower or any Guarantor under any such lease, license, contract, property right or agreement, if and only for so long as the grant of a Lien under the Security Documents will constitute or result in a breach, termination or default under any such lease, license, contract, property right or agreement or require any consent thereunder (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction, the DIP Orders, or any other applicable law or principles of equity); *provided* that such lease, license, contract, property right or agreement will be an Excluded Asset only to the extent and for so long as the consequences specified above will result; *provided further*, unless such term has been rendered ineffective pursuant to the applicable DIP Order, (i) the Credit Parties are using or have used commercially reasonable efforts (in each case, for a period of up to sixty (60) days from the Closing Date) to obtain such consent or waiver as may be necessary to grant such a Lien except in the case of any lease, license, contract, property right or agreement which, when considered in the aggregate with all such other items requiring such consent or waiver, would not be material (provided that the obligation of the Borrowers and other Credit Parties to use commercially reasonable efforts shall not require the Borrowers or any other Credit Party to request any consent or waiver with respect to a restriction on assignment in any agreement which is imposed by any legal requirement or which the Borrowers or such other Credit Party reasonably determines would have a material adverse effect on such agreement or on the Borrower's or other Credit Party's relationship with the other party or parties to such agreement; *provided*, *further*, that the use of commercially reasonable efforts shall not require any payment or other consideration from the Borrowers or other Credit Parties) and (ii) such lease, license, contract, property right or agreement will cease to be an Excluded Asset and will become subject to the Lien granted under the Security Documents, immediately and automatically, at such time as such consent or waiver is obtained or such consequences will no longer result;

(b) [Reserved];

(c) any of the outstanding Voting Stock (within the meaning of Section 956 of the Code and the regulations promulgated thereunder) of a first tier Foreign Subsidiary or first tier FSHCO in excess of 65% of such Voting Stock;

(d) any application for a registration of a trademark filed in the United States Patent and Trademark Office on an intent-to-use basis, but only to the extent that the grant of a security interest in any such trademark application would adversely affect the validity or enforceability or result in a cancellation of such trademark application;

(e) [Reserved];

(f) property subject to Liens permitted under clause (h) of Section 5.1, to the extent the terms of the Indebtedness secured by such Liens prohibit any other Lien on such property;

(g) cash, certificates of deposit or similar instruments that are subject to Liens permitted under clause (g) of Section 5.1;

(h) cash securing reimbursement obligations with respect to letters of credit issued under or pursuant to the Prepetition LC Facility Agreement that are subject to Liens permitted under clause (f) of Section 5.1;

(i) [Reserved];

(j) [Reserved];

(k) [Reserved];

(l) Margin Stock to the extent a security interest therein would violate the provisions of the regulations of the Board of Governors (including Regulation T, Regulation U or Regulation X) and Equity Interests in any Person other than wholly owned Restricted Subsidiaries, which Equity Interests cannot be pledged without the consent of unaffiliated third parties;

(m) any property or assets to the extent the creation or perfection of pledges thereof or security interests therein, could reasonably be expected to result in material adverse tax consequences or material adverse regulatory consequences to Blackhawk Parent, any of its Subsidiaries or any Parent Company or other direct or indirect equity owner(s) of Borrower, as reasonably determined by the Borrower Representative in consultation with DIP ABL Agent;

(n) particular assets if and for so long as, if reasonably agreed by DIP ABL Agent and the Borrower Representative, the cost (including, without prejudice to clause (m) of this definition of Excluded Assets, any adverse tax consequences) of creating a pledge or security interest in such assets exceed the practical benefits to be obtained by DIP ABL Lenders therefrom;

(o) any "building" or "mobile home" (each as defined in Regulation H as promulgated by the Federal Reserve Board under the Flood Insurance Laws) presently or hereafter located on any land comprising part of any Real Property located in a flood zone, until the DIP ABL Agent has received the Flood Documentation in form and substance reasonably satisfactory to the DIP ABL Agent; and

(p) any assets specifically excluded from the DIP ABL Collateral in the DIP Orders;

provided, *however*, (x) at any time any property described in clauses (f), (g) or (h) of this definition of Excluded Assets is not subject to a Lien permitted by the applicable clause of Section 5.1, such property shall be deemed at all times from and after such time to constitute DIP ABL Collateral and (y) that Excluded Assets shall not include any proceeds (as defined in the UCC), substitutions or replacements of any Excluded Assets referred to in any of clauses (a)-(p) (unless such proceeds, substitutions or replacements would constitute Excluded Assets referred to in any of clauses (a)-(p)); *provided*, that clauses (a)-(p) shall only be Excluded Asset to the extent that such assets do not constitute collateral with respect to Indebtedness under the Prepetition ABL Financing Documents or the DIP Term Loan Agreement. For avoidance of doubt, while Specified Excluded Unencumbered Property (as defined in the DIP Orders) shall not be "Excluded Assets" and shall secure the DIP ABL Obligations, such Specified

Excluded Unencumbered Property will secure the DIP ABL Obligations only to the extent such DIP ABL Obligations do not constitute the ABL Roll-up Loans.

"**Excluded Subsidiary**" means each of BHM-WV, LLC, Fanco Plant Loadout, LLC, Campbell's Creek Mining, LLC, Black Oak Mining, LLC, Wells Prep Plant, LLC, Rock Lick Prep Plant, LLC and Gateway Eagle Mining, LLC so long as such Subsidiary does not (i) guarantee or provide a pledge of assets securing any Indebtedness, including any Indebtedness under the DIP Term Loan Documents, the Prepetition Term Loan Documents, or the Prepetition ABL Financing Documents, (ii) hold any material assets or (iii) become a debtor or debtor-in-possession under Chapter 11 of the Bankruptcy Code.

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to DIP ABL Agent, any DIP ABL Lender or any other recipient of any payment to be made by or on behalf of any obligation of Credit Parties hereunder or the DIP ABL Obligations or required to be withheld or deducted from a payment to DIP ABL Agent, such DIP ABL Lender or such recipient:

(a) Taxes imposed on or measured by net income (however denominated), branch profits Taxes, and franchise Taxes and similar Taxes, in each case, (i) imposed by the jurisdiction (or any political subdivision thereof) under which DIP ABL Agent, such DIP ABL Lender or such recipient is organized, has its principal office or in the case of any DIP ABL Lender, its lending office, or conducts business with respect to entering into any of the DIP ABL Financing Documents or taking any action thereunder or (ii) that are Other Connection Taxes;

(b) in the case of a DIP ABL Lender, United States withholding Taxes imposed on amounts payable to or for the account of such DIP ABL Lender with respect to an applicable interest in the Loans or DIP Revolving Loan Commitment pursuant to a law in effect on the date on which (i) such DIP ABL Lender becomes a party to this Agreement other than as a result of an assignment requested by a Credit Party under the terms of Section 11.17(c) hereof or (ii) such DIP ABL Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.8, amounts with respect to such Taxes were payable either to such DIP ABL Lender's assignor immediately before such DIP ABL Lender acquired the applicable interest in a Loan or DIP Revolving Loan Commitment or to such DIP ABL Lender immediately before it changed its lending office;

(c) Taxes attributable to such DIP ABL Lender's or DIP ABL Agent's failure to comply with Section 2.8(c) or Section 2.8(g), as applicable; and

(d) any withholding Taxes imposed under FATCA.

"**Existing Indebtedness**" has the meaning provided in Section 5.4(a).

"**Exit Credit Agreement**" means that certain draft Senior Secured ABL Credit Agreement, to be dated as of the Chapter 11 Plan Effective Date, among MidCap Funding IV Trust, as agent for the lenders, the lenders identified therein, Blackhawk Parent and the other borrowers identified therein, evidencing, the terms of the proposed Exit Financing, which terms shall include (a) a commitment of not less than $90,000,000, (b) a term of not less than 3-years, (c) an annual rate of reserve-adjusted interest equal to 90-day LIBOR (reset monthly), subject to a 0.25% floor, plus 600 basis points, and (d) no origination fee.

"**Exit Financing**" means, an asset-based revolving credit facility to be provided to Blackhawk Parent and the other obligors identified in the definitive documents evidencing such facility upon the Chapter 11 Plan Effective Date by MidCap Financial Trust (or a to be designated affiliate thereof) and the

other the financial institutions and other entities, if any, identified therein as lenders and MidCap Funding IV Trust, as agent for such lenders.

"**Fair Market Value**" means the value (which, for the avoidance of doubt, will take into account any liabilities associated with related assets) that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by the Borrower Representative.

"**FASB ASC**" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"**FATCA**" means Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty, or convention among Governmental Authorities and implementing such Sections of the Code.

"**FCPA**" has the meaning provided in Section 3.14.

"**Federal Funds Rate**" means, for any day, the rate of interest per annum (rounded upwards, if necessary, to the nearest whole multiple of 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, *provided, however*, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day, and (b) if no such rate is so published on such next preceding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to DIP ABL Agent on such day on such transactions as determined by DIP ABL Agent.

"**Fee Letter**" means each agreement between DIP ABL Agent and Borrower relating to fees payable to DIP ABL Agent in connection with the execution of this Agreement, or any amendment, restatement, or other modification thereto.

"**Final DIP Order**" means an order of the Bankruptcy Court authorizing and approving on a final basis, among other things, the Loans (including the full roll-up of any and all remaining Prepetition ABL Obligations) and the Transactions contemplated by this Agreement in the form of the Interim DIP Order (with only such modifications thereto as are necessary to convert the Interim DIP Order to a final order, including to grant on a final basis the interim relief set forth in the Interim DIP Order, grant any and all relief in the Interim DIP Order that is subject to entry of the Final DIP Order, along with such other modifications as are satisfactory to the DIP ABL Agent and Required DIP ABL Lenders in their sole discretion) (as the same may be amended, supplemented, or modified from time to time after entry thereof with the consent of the DIP ABL Agent and Required DIP ABL Lenders in their sole discretion) as to which no stay has been entered.

"**Final DIP Order Entry Date**" means the date on which the Bankruptcy Court enters the Final DIP Order.

"**First Day Motions**" means those motions listed on Exhibit A, attached hereto.

"**First Day Orders**" means orders of the Bankruptcy Court granting the First Day Motions, including interim and/or final orders entered in respect of the First Day Motions at the "first day" or "second day" hearings held in the Chapter 11 Cases.

"**Fiscal Quarter**" means, for any Fiscal Year,

(a) the fiscal period commencing on January 1 of such Fiscal Year and ending on March 31 of such Fiscal Year,

(b) the fiscal period commencing on April 1 of such Fiscal Year and ending on June 30 of such Fiscal Year

(c) the fiscal period commencing on July 1 of such Fiscal Year and ending on September 30 of such Fiscal Year and

(d) the fiscal period commencing on October 1 of such Fiscal Year and ending on December 31 of such Fiscal Year.

"**Fiscal Year**" means the fiscal year of Borrower and its Subsidiaries ending on December 31 of each calendar year.

"**Flood Documentation**" means, with respect to any fee interest in any real property improved by a "building" or a "mobile home" (each as defined in Regulation H as promulgated by the Federal Reserve Board under the Flood Insurance Laws) located in the United States or any territory thereof of any Credit Party, a completed "life-of-loan" Federal Emergency Management Agency Standard Flood Hazard Determination, and if such real property is located in a special flood hazard area, (1) a notice about special flood hazard area status and flood disaster assistance duly executed by Blackhawk Parent and each Credit Party relating thereto and (2) a copy of, or a certificate as to coverage under, and a declaration page relating to, the flood insurance policies required under the Prepetition Term Loan Documents or the DIP Term Loan Documents, which shall (A) be endorsed or otherwise amended to include a "standard" or "New York" lender's loss payable endorsement (as applicable); (B) name DIP ABL Agent, on behalf of the Secured Creditors, as additional insured and loss payee/mortgagee (as applicable); and (C) (I) identify the addresses of each property located in a special flood hazard area, (II) indicate the applicable flood zone designation, the flood insurance coverage and the deductible relating thereto and (III) provide that the insurer will endeavor to give DIP ABL Agent forty-five (45) days' written notice of cancellation or non-renewal and (IV) otherwise be in form and substance satisfactory to the DIP ABL Agent.

"**Flood Insurance Laws**" means, collectively,

(a) National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto,

(b) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and

(c) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

"**Foreign DIP ABL Lender**" has the meaning set forth in Section 2.8(c)(i).

"**Foreign Pension Plan**" means any plan, fund (including, without limitation, any superannuation fund) or other similar program established or maintained outside the United States by any Borrower or any one or more of its Restricted Subsidiaries primarily for the benefit of the employees residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

"**Foreign Subsidiary**" of any Person shall mean any Subsidiary of such Person that is not a Domestic Subsidiary.

"**FSHCO**" means any Subsidiary that has, directly or indirectly through Subsidiaries, no material assets other than the Equity Interests (or Equity Interests and debt securities) of one or more Foreign Subsidiaries that are controlled foreign corporations within the meaning of Section 957 of the Code.

"**GAAP**" means generally accepted accounting principles in the United States as in effect from time to time.

"**Governmental Authority**" means the government of the United States of America, any other nation or any political subdivision thereof, whether state, provincial or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"**Guarantee**" means a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take or pay or to maintain financial statement conditions or otherwise).

"**Guaranteed DIP ABL Obligations**" means the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of the principal and interest of the DIP ABL Obligations, and all Loans made to, the Borrowers under this Agreement, together with all the other obligations (including obligations which, but for the automatic stay under Section 362(a) of the Bankruptcy Code, would become due), indebtedness and liabilities (including, without limitation, indemnities, fees and interest (including all interest, fees, and other amounts accruing after the commencement of any bankruptcy, insolvency, receivership or similar proceeding at the rate provided for herein, whether or not such interest, fees and other amounts are allowed or allowable in any such proceeding) thereon) of Borrowers to DIP ABL Lenders and DIP ABL Agent now existing or hereafter incurred under, arising out of or in connection with this Agreement and each other DIP ABL Financing Document to which a Borrower is a party and the due performance and compliance by Borrowers with all the terms, conditions and agreements contained in this Agreement and in each such other DIP ABL Financing Document.

"**Guarantor**" means any Credit Party that has executed or delivered, or shall in the future execute or deliver, any Guarantee of any portion of the DIP ABL Obligations.

"**Hazardous Materials**" means any chemicals, materials, wastes, mining wastes, pollutants, contaminants or substances in any form that is prohibited, limited or regulated pursuant to any Environmental Law by virtue of their toxic or otherwise deleterious characteristics, including without limitation petroleum or petroleum products and by-products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls, and radon gas.

"**Hedging Obligations**" means, with respect to any specified Person, the obligations of such Person under any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement.

"**Indebtedness**" means, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables):

(a) in respect of borrowed money;

(b) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof), including, without limitation, Mining Financial Assurances;

(c) in respect of banker's acceptances;

(d) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(e) representing Capital Lease Obligations;

(f) Disqualified Stock;

(g) representing the balance deferred and unpaid of the purchase price of any property or services due more than six months after such property is acquired or such services are completed; or

(h) representing any Hedging Obligations,

if and to the extent any of the preceding items (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet of the specified Person in accordance with GAAP. In addition, the term "Indebtedness" includes all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) and, to the extent not otherwise included, the Guarantee by the specified Person of any Indebtedness of any other Person. Indebtedness shall be calculated without giving effect to the effects of FASB ASC 825 and FASB ASC 470-20 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness. The amount of any Capital Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date. The loans under the DIP Term Loan Agreement, the Prepetition Term Loan Documents, the Prepetition ABL Financing Documents and the Prepetition LC Facility Agreement, shall always be considered "Indebtedness" hereunder, whether or not such loans are treated as indebtedness for U.S. federal income tax purposes.

"**Indemnified Taxes**" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrowers or any other Credit Party under any DIP ABL Financing Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

"**Independent Auditors**" shall have the meaning provided in Section 4.1(b).

"**Instrument**" means "instrument" as defined in Article 9 of the UCC.

"**Intellectual Property**" has the meaning provided in Section 3.19.

"**Interest Period**" means any period commencing on the first day of a calendar month and ending on the date that is ninety (90) days thereafter.

"**Interim DIP Order**" means an order of the Bankruptcy Court, in the form set forth in Exhibit I, authorizing on an interim basis, among other things, the Loans (including the "creeping" roll-up of the Prepetition ABL Obligations) and the Transactions contemplated by this Agreement, with only such modifications as are satisfactory to Blackhawk Parent and the DIP ABL Agent in its sole discretion.

"**Interim DIP Order Entry Date**" shall mean the date on which the Interim DIP Order is entered by the Bankruptcy Court.

"**Inventory**" means "inventory" as defined in Article 9 of the UCC.

"**Investments**" means, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including Guarantees or other obligations), advances or capital contributions (excluding commission, travel and similar advances to officers and employees made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. The acquisition by Blackhawk Parent or any Restricted Subsidiary of a Person that holds an Investment in a third Person will be deemed to be an Investment by Blackhawk Parent or such Restricted Subsidiary in such third Person in an amount equal to the Fair Market Value as of the date of such acquisition of the Investments held by the acquired Person in such third Person. Except as otherwise provided in this Agreement, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value and net of any dividends, distributions, repayments or redemptions in cash received in respect of such Investment.

"**IRS**" has the meaning set forth in Section 2.8(c)(i).

"**Leaseholds**" of any Person means all the right, title and interest of such Person as lessee or licensee in, to and under leases or licenses of land, improvements and/or fixtures.

"**LIBOR Rate**" means, for each Loan, a per annum rate of interest equal to the greater of (a) one quarter of one percent (0.25%) and (b) the rate determined by DIP ABL Agent (rounded upwards, if necessary, to the next 1/100th%) by *dividing* (i) the Base LIBOR Rate for the Interest Period, *by* (ii) the sum of one *minus* the daily average during such Interest Period of the aggregate maximum reserve requirement (expressed as a decimal) then imposed under Regulation D of the Board of Governors of the Federal Reserve System (or any successor thereto) for "Eurocurrency Liabilities" (as defined therein).

"**Lien**" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), preference, priority or other security agreement of any kind or

nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing or similar statement or notice filed under the UCC or any other similar recording or notice statute, and any lease having substantially the same effect as any of the foregoing).

"**LLC Division**" means the statutory division of any limited liability company into two or more limited liability companies pursuant to Section 18-217 of the Delaware Limited Liability Company Act, or a comparable provision of a different jurisdiction's laws, as applicable.

"**Loan(s)**" means the DIP Revolving Loans.

"**Loan Account**" has the meaning set forth in Section 2.6(b).

"**Lockbox**" has the meaning set forth in Section 2.11.

"**Lockbox Account**" means an account or accounts maintained at the Lockbox Bank into which collections of Accounts are paid, which account or accounts shall be, if requested by DIP ABL Agent, opened in the name of DIP ABL Agent (or a nominee of DIP ABL Agent).

"**Lockbox Bank**" has the meaning set forth in Section 2.11.

"**Margin Stock**" has the meaning provided in Regulation U.

"**Material Adverse Effect**" means (a) a material adverse effect on the business, operations, property, assets or financial condition of the Borrowers and their Subsidiaries taken as a whole; *provided* that the mere filing or continuation of the Chapter 11 Cases or the events and conditions existing prior to the Petition Date related to, as a result of and/or leading up to such filing or continuation of the Chapter 11 Cases shall not be deemed to have caused a Material Adverse Effect in and of themselves, or (b) a material adverse effect (i) on the rights or remedies of DIP ABL Lenders and/or DIP ABL Agent hereunder or under any other DIP ABL Financing Document, (ii) on the ability of any Credit Party to perform its obligations to DIP ABL Lenders and/or DIP ABL Agent hereunder or under any other DIP ABL Financing Document.

"**Material Lease**" shall mean any Real Property Lease or other contractual obligations in respect of Material Leased Real Property.

"**Material Leased Real Property**" shall mean any Material Real Property subject to a Real Property Lease with a Credit Party, as lessee.

"**Material Real Property**" means (a) any Real Property with a Fair Market Value in excess of $2,500,000, which determination shall include the Fair Market Value of any improvements located on such owned or leased Real Property; (b) all of the owned or leased Real Property identified on Schedule 7.4(a) of the Prepetition ABL Credit Agreement; (c) in the case of any Real Property with coal reserves, any owned or leased Real Property which (i) contains more than 7,500,000 recoverable tons of coal, and (ii) is within Borrower's five-year mine plan and (d) any Material Real Property or similar term (as defined in the DIP Term Loan Agreement or the Prepetition ABL Documents).

"**Maximum Lawful Rate**" has the meaning set forth in Section 2.7.

"**MFT**" means MidCap Financial Trust, a Delaware statutory trust, and its successors and assigns.

"**Mine**" means any excavation or opening into the earth now and hereafter made from which Coal or other minerals are or can be extracted on or from any of the Real Properties in which any Credit Party holds an ownership, leasehold or other interest.

"**Mining Financial Assurances**" means performance bonds for reclamation or otherwise, surety bonds or escrow agreements and any payment or prepayment made with respect to, or certificates of deposit or other sums or assets required to be posted by Blackhawk Parent or any Subsidiary under Mining Laws for reclamation or otherwise.

"**Mining Laws**" means any and all applicable current or future foreign or domestic, Federal, state or local statutes, ordinances, orders, rules, regulations, judgments, governmental authorizations, or any other requirements of governmental authorities relating to surface or subsurface mining operations, activities, and reclamation including, but not limited to, the Federal Coal Leasing Amendments Act; the Surface Mining Control and Reclamation Act; all other applicable land reclamation and use statutes and regulations; the Federal Mine Safety Act of 1977; the Black Lung Act; and the Coal Act; each as amended, and any comparable state and local laws or regulations.

"**Mining Lease**" means a lease, license or other use agreement held on the Closing Date or thereafter acquired which provides Blackhawk Parent or any Restricted Subsidiary the real property and water rights, other interests in land, including Coal, mining and surface rights, easements, rights of way and options, and rights to timber and natural gas (including coalbed methane and gob gas) necessary to recover Coal from any Mine (a) currently operated by Blackhawk Parent or any Restricted Subsidiary or (b) part of any of Blackhawk Parent's mine plans. Leases which provide Blackhawk Parent or any Restricted Subsidiary the right to construct and operate a preparation plant and related facilities on the surface of the Real Property containing such reserves shall also be deemed a Mining Lease.

"**Mining Permits**" means any and all permits, licenses, registrations, notifications, exemptions and any other authorization required under any applicable Mining Law or otherwise necessary to recover Coal from any Mine being operated by Blackhawk Parent or any Restricted Subsidiary

"**Moody's**" means Moody's Investors Service, Inc.

"**Mortgage**" means a mortgage, leasehold mortgage, deed of trust, leasehold deed of trust, deed to secure debt, leasehold deed to secure debt, debenture or similar security instrument.

"**Mortgaged Property**" means any Real Property owned or leased by Blackhawk Parent or any of its Subsidiaries which is encumbered (or required to be encumbered) by the Interim DIP Order or the Final DIP Order, as applicable, and/or a Mortgage pursuant to the terms hereof.

"**Multiemployer Plan**" means any multiemployer plan as defined in Section 4001(a)(3) of ERISA, which is contributed to by (or to which there is an obligation to contribute of) any Borrower or any of its Subsidiaries or with respect to which any Borrower or any of its Subsidiaries has any liability (including on account of an ERISA Affiliate).

"**Notes**" has the meaning set forth in Section 2.3.

"**Notice of Borrowing**" means a notice of a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit D hereto.

"**OFAC**" has the meaning provided in the definition of "Embargoed Person."

"**Orderly Liquidation Value**" means the net amount (after all costs of sale), expressed in terms of money, which an unaffiliated valuation company reasonably acceptable to DIP ABL Agent after performance of an inventory valuation conducted in accordance with Section 4.2(a), estimates can be realized from a sale, as of a specific date, given a reasonable period to find a purchaser(s), with the seller being compelled to sell on an as-is/where-is basis.

"**Organizational Documents**" means, with respect to any Person, the charter, articles or certificate of organization or incorporation and by-laws or other organizational or governing documents of such Person (including any limited liability company or operating agreement)

"**Other Connection Taxes**" means Taxes imposed as a result of a present or former connection between DIP ABL Agent, any DIP ABL Lender, or any other recipient of any payment to be made by or on behalf of any obligation of Credit Parties hereunder and the jurisdiction imposing such Tax (other than connections arising from DIP ABL Agent, such DIP ABL Lender, or such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, engaged in any other transaction pursuant to or enforced any DIP ABL Financing Document, or sold or assigned an interest in any Loans or any DIP ABL Financing Document).

"**Other Taxes**" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any DIP ABL Financing Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 11.17(c)).

"**Parent Company**" means, with respect to any Person, any direct or indirect parent thereof who owns, directly or indirectly, 100% of the Equity Interests of such Person.

"**Patriot Trust RSA**" means that certain Restructuring Support Agreement, dated as of July __, 2019, among Blackhawk Parent and the trustee of the PCC Liquidating Trust established in connection with the jointly administered chapter 11 cases captioned *In re Patriot Coal Corporation*, Case No. 15-32450 (KLP), in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division.

"**Payment Account**" means the account specified on the signature pages hereof into which all payments by or on behalf of each Borrower to DIP ABL Agent under the DIP ABL Financing Documents shall be made, or such other account as DIP ABL Agent shall from time to time specify by notice to Borrower Representative.

"**PBGC**" means the U.S. Pension Benefit Guaranty Corporation or any successor agency, referred to and defined in ERISA.

"**Perfection Certificate**" means a certificate in a form approved by DIP ABL Agent, as the same shall be supplemented from time to time.

"**Perfection Certificate Supplement**" means a certificate in a form approved by DIP ABL Agent.

"**Permitted Asset Sale**" has the meaning set forth in Section 5.2.

"**Permitted Business**" means any business that is the same as, or reasonably related, ancillary or complementary to, or a reasonable extension of, any of the businesses in which Blackhawk Parent and its Restricted Subsidiaries are engaged on the Closing Date.

"**Permitted Encumbrance**" means, with respect to any Mortgaged Property, (a) those items described in Section 5.1(l) hereof and (b) such other exceptions to title not described in Section 5.1(l) hereof as are set forth in the mortgage policy delivered to Prepetition First Lien Term Loan Agent.

"**Permitted Holder**" means John Mitchell Potter, Thomas A. Potter, Nicholas Glancy, Jeffrey Sands, Daniel Moon and their respective Affiliates (including their successors, assigns, executors, administrators, personal representatives, heirs and legatees).

"**Permitted Investments**" means:

(a) any Investment in a Borrower or a Guarantor;

(b) any Investment in Cash Equivalents;

(c) [Reserved];

(d) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with Section 5.2;

(e) any Investments received in compromise or resolution of (i) obligations of trade creditors or customers that were incurred in the ordinary course of business of Blackhawk Parent or any of its Restricted Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (ii) litigation, arbitration or other disputes;

(f) Investments represented by Hedging Obligations permitted hereunder;

(g) [Reserved];

(h) loans or advances to employees, including advances to employees for moving and travel expenses and similar expenditures, made in the ordinary course of business of Blackhawk Parent or any Restricted Subsidiary in an aggregate principal amount not to exceed $500,000 at any one time outstanding in the aggregate;

(i) any Guarantee of Indebtedness to the extent such Guarantee is permitted to be incurred by Section 5.4, other than a Guarantee of Indebtedness of an Affiliate of Blackhawk Parent that is not a Restricted Subsidiary;

(j) letters of credit issued to support reclamation liabilities of Unrestricted Subsidiaries to the extent permitted by Section 5.4;

(k) to the extent constituting Investments, purchases and acquisitions of inventory, real property, equipment or supplies in the ordinary course of business; and

(l) (i) Investments in effect on the Closing Date and any Investment consisting of an extension, modification or renewal of any such Investment existing on the Closing Date in an amount not to exceed the amount of such Investment on the Closing Date and (ii) so long as no DIP Event of Default

is continuing at the time of such Investment, additional Investments after the date of this Agreement in an aggregate amount not to exceed, when taken together with all other Investments made pursuant to this clause (1), $1,000,000.

"**Permitted Liens**" has the meaning set forth in Section 5.1.

"**Person**" means any individual, partnership, joint venture, firm, corporation, association, limited liability company, trust or other enterprise or any Governmental Authority.

"**Petition Date**" shall have the meaning given to such term in the recitals.

"**Pledge Agreement**" means that certain Pledge Agreement, dated as of the Closing Date, by and among JMP Coal Holdings, LLC and JMP Blackhawk, LLC and DIP ABL Agent, as amended, supplemented, restated or otherwise modified from time to time in accordance with the terms hereof.

"**Prepetition ABL Adequate Protection Liens**" shall have the meaning given to such term in the DIP Orders.

"**Prepetition ABL Agent**" shall have the meaning given to such term in the recitals to this Agreement.

"**Prepetition ABL Collateral**" means, collectively, all "Collateral" (as defined in the Prepetition ABL Credit Agreement).

"**Prepetition ABL Credit Agreement**" shall have the meaning given to such term in the recitals to this Agreement.

"**Prepetition ABL Financing Documents**" has the meaning given to such term in the recitals to this Agreement.

"**Prepetition ABL Intercreditor Agreement**" has the meaning given to such term in the recitals to this Agreement.

"**Prepetition ABL Lenders**" shall have the meaning given to such term in the recitals to this Agreement.

"**Prepetition ABL Liens**" means the Liens securing the Prepetition ABL Obligations.

"**Prepetition ABL Loans**" shall have the meaning given to such term in the recitals to this Agreement.

"**Prepetition ABL Obligations**" means the Prepetition ABL Loans and all other obligations under the Prepetition ABL Financing Documents.

"**Prepetition First Lien Term Loan Agent**" shall have the meaning given to such term in the recitals to this Agreement.

"**Prepetition First Lien Term Loan Documents**" shall have the meaning given to such term in the recitals to this Agreement.

"**Prepetition Intercreditor Agreements**" has the meaning given to such term in the recitals to this Agreement.

"**Prepetition Junior Lien Intercreditor Agreement**" has the meaning given to such term in the recitals to this Agreement.

"**Prepetition LC Facility Agreement**" means that certain Letter of Credit and Reimbursement Agreement, dated as of February 17, 2017, by and between Blackhawk Parent and Jefferies Group LLC, as the same may be amended, amended and restated, modified and/or supplemented from time to time in accordance with the terms thereof.

"**Prepetition Second Lien Term Loan Agent**" shall have the meaning given to such term in the recitals to this Agreement.

"**Prepetition Second Lien Term Loan Documents**" shall have the meaning given to such term in the recitals to this Agreement.

"**Prepetition Term Loan Agents**" means the Prepetition First Lien Term Loan Agent and the Prepetition Second Lien Term Loan Agent.

"**Prepetition Term Loan Documents**" means the Prepetition First Lien Term Loan Documents and the Prepetition Second Lien Term Loan Documents.

"**Prepetition Term Loan Lenders**" means, collectively, the "Lenders" as defined in each of the Prepetition Term Loan Documents.

"**Prepetition Term Loan Obligations**" means the obligations under the Prepetition Term Loan Documents.

"**Pro Rata Share**" means (a) with respect to a DIP ABL Lender's obligation to make DIP Revolving Loans, such DIP ABL Lender's right to receive the unused line fee described in Section 2.2(b), (b) the DIP Revolving Loan Commitment Percentage of such DIP ABL Lender, (c) with respect to a DIP ABL Lender's right to receive payments of principal and interest with respect to DIP Revolving Loans, such DIP ABL Lender's DIP Revolving Loan Exposure with respect thereto; and (d) for all other purposes (including, without limitation, the indemnification obligations arising under Section 11.6) with respect to any DIP ABL Lender, the percentage obtained by *dividing* (i) the DIP Revolving Loan Commitment Amount of such DIP ABL Lender (or, in the event the DIP Revolving Loan Commitment shall have been terminated, such DIP ABL Lender's then existing DIP Revolving Loan Outstandings), *by* (ii) the sum of the DIP Revolving Loan Commitment (or, in the event the DIP Revolving Loan Commitment shall have been terminated, the then existing DIP Revolving Loan Outstandings) of all DIP ABL Lenders.

"**Professionals**" means professional retained by Borrowers and any official committee of unsecured creditors or equityholders appointed in the Chapter 11 Cases, other than ordinary course professionals.

"**Real Property**" of any Person means all the right, title and interest of such Person in and to land, improvements and fixtures, including Leaseholds.

"**Real Property Lease**" shall mean any lease, license, letting, concession, occupancy agreement, sublease, farm-in, farm-out, joint operating agreement, easement or right of way to which such Person is a

party and is granted a possessory interest in or a right to use or occupy all or any portion of the Real Property (including, without limitation, the right to extract Coal, minerals oil, natural gas and other hydrocarbons and their constituents from any portion of Real Property not owned in fee by such Person) and every amendment or modification thereof, including with respect to the Credit Parties, without limitation, the leases with respect to Real Property and any contractual obligation with respect to any of the foregoing.

"**Recipient**" means (a) DIP ABL Agent and (b), any DIP ABL Lender, as applicable.

"**Recovery Event**" means any event that gives rise to the receipt by any Borrower or any of its Restricted Subsidiaries of any cash insurance proceeds or condemnation awards payable (a) by reason of theft, loss, physical destruction, damage, taking or any other similar event with respect to any property or assets of Blackhawk Parent or any of its Restricted Subsidiaries and (b) under any policy of insurance required to be maintained under Section 4.3.

"**Regulation D**" means Regulation D of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof establishing reserve requirements.

"**Regulation T**" means Regulation T of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"**Regulation U**" means Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"**Regulation X**" means Regulation X of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"**Release**" means disposing, discharging, injecting, spilling, pumping, leaking, leaching, dumping, emitting, escaping, emptying, pouring, seeping, or migrating into, through or upon any land or water or air, or otherwise entering into the outdoor or indoor environment.

"**Rent Reserve"** means a reserve established by DIP ABL Agent in respect of rent payments (not to exceed three months' rent) made by a Credit Party for each location at which Inventory of a Credit Party is located that is not subject to a satisfactory landlord waiver or bailee letter or is a Mining Lease, as applicable (as reported to DIP ABL Agent by Blackhawk Parent from time to time as requested by DIP ABL Agent), as adjusted from time to time by DIP ABL Agent.

"**Reorganization Plan**" means a plan of reorganization or liquidation in any or all of the Chapter 11 Cases.

"**Reportable Event**" means an event described in Section 4043(c) of ERISA or the regulations issued thereunder with respect to a Benefit Plan that is subject to Title IV of ERISA other than those events as to which the 30-day notice period is waived under applicable regulations.

"**Required DIP ABL Lenders**" means at any time DIP ABL Lenders holding (a) fifty-one percent (51%) more of the DIP Revolving Loan Commitment, or (b) if the DIP Revolving Loan Commitment has been terminated, fifty-one percent (51%) or more of the then aggregate outstanding principal balance of the Loans.

"**Requirements of Law**" means, collectively, any and all applicable requirements of any Governmental Authority including any and all laws, judgments, orders, executive orders, decrees, ordinances, rules, regulations, statutes, case law or treaties.

"**Reserves**" means reserves, if any, established by DIP ABL Agent from time to time hereunder against the Borrowing Base, including without limitation, (a) sums that the Credit Parties are or will be required to pay (such as taxes, assessments royalties, and insurance premiums) and have not yet paid, (b) amounts owing by any Credit Party to any Person to the extent secured by a Lien on, or trust over, any DIP ABL Collateral (c) such other events, conditions or contingencies as to which DIP ABL Agent, determines reserves should be established from time to time hereunder, and (d) reserves for the estimated amount in respect of the Carve Out, senior liens and/or claims in or against the DIP ABL Priority Collateral that have priority over the liens and claims of DIP ABL Agent; *provided*, *however*, that (i) any Reserves shall have a reasonable relationship to the circumstances, conditions, events or contingencies which are the basis of such Reserve and (ii) such Reserves shall not duplicate any items that are otherwise expressly deducted or excluded through eligibility criteria in the definition of "Eligible Accounts" or "Eligible Inventory".

"**Responsible Officer**" means, with respect to (a) delivering Notices of Borrowing and similar notices, any person or persons that has or have been authorized by the Board of Directors of any Borrower to deliver such notices pursuant to this Agreement, (b) delivering financial information and officer's certificates pursuant to this Agreement, the chief financial officer, the treasurer or the principal accounting officer of Blackhawk Parent and (c) any other matter in connection with this Agreement or any other DIP ABL Financing Document, any officer (or a person or persons so designated by any two officers) of the applicable Borrower.

"**Restricted Payments**" means

(a) the declaration or payment of any dividend or making of any other payment or distribution (whether in cash, securities or other property) on account of any Borrower or any Restricted Subsidiary's Equity Interests (including, without limitation, any payment in connection with any merger, amalgamation or consolidation involving any Borrower or any of their Restricted Subsidiaries) or to the direct or indirect holders of any Borrower or any Restricted Subsidiary's Equity Interests in their capacity as such,

(b) the purchase, redemption, acquisition, retirement for value, acquisition, cancellation or termination (including, without limitation, in connection with any merger, amalgamation or consolidation involving any Borrower) of any Borrower or any Restricted Subsidiary's Equity Interests, or

(c) any payment or distribution (whether in cash, securities or other property) on account of any return of capital to any Borrower's or any Restricted Subsidiary's stockholders, partners or members (or the equivalent Person thereof).

"**Restricted Subsidiary**" of a Person means any Subsidiary of a Borrower that is not an Unrestricted Subsidiary.

"**Returns**" has the meaning set forth in Section 3.9.

"**Revised Prepetition Deferred Revolving Loan Origination Fee**" means a fee in an amount equal to one and one half percent (1.5%) of the "Revolving Loan Commitment" (as defined in the Prepetition ABL Credit Agreement) payable in lieu of the three percent (3%) Deferred Revolving Loan

Origination Fee that would otherwise be due pursuant to Section 2.2(g) of the Prepetition ABL Credit Agreement.

"**Revolving DIP ABL Lender**" means each DIP ABL Lender having a DIP Revolving Loan Commitment Amount in excess of $0 (or, in the event the DIP Revolving Loan Commitment shall have been terminated at any time, each DIP ABL Lender at such time having DIP Revolving Loan Outstandings in excess of $0).

"**Royalty Reserve"** means a reserve established by DIP ABL Agent in accordance with clause (l) of the definition of Eligible Inventory in an amount equal to the accrued royalty payments as of the end of the previous full fiscal month by a Borrower for each Mining Lease that is not subject to a satisfactory landlord waiver or bailee letter.

"**RSA**" means that that certain Restructuring Support Agreement, dated as of July 15, 2019 by and among the Borrowers, the Consenting First Lien Lenders (as defined therein), the Consenting Second Lien Lenders (as defined therein) and the creditor parties party thereto, as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"**S&P**" means Standard & Poor's Ratings Services, a division of McGraw-Hill Financial, Inc.

"**SEC**" has the meaning set forth in Section 4.1(g).

"**Secured Creditors**" means DIP ABL Agent and each DIP ABL Lender and their respective successors and assigns.

"**Securities Account**" means a "securities account" (as defined in Article 9 of the UCC).

"**Securities Account Control Agreement**" means an agreement, in form and substance satisfactory to DIP ABL Agent, among DIP ABL Agent, any applicable Borrower and the applicable securities intermediary in which such Borrower maintains a Securities Account pursuant to which DIP ABL Agent shall obtain "control" (as defined in Article 9 of the UCC) over such Securities Account.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"**Security Agreement**" means that certain Security Agreement, dated as of the Closing Date, among the Credit Parties and DIP ABL Agent in the form attached hereto as Exhibit E, as amended, supplemented, restated or otherwise modified from time to time in accordance with the terms hereof.

"**Security Agreement Collateral**" means all "Pledged Collateral" as defined in the Security Agreement.

"**Security Document**" means the Subsidiaries Guaranty, the Security Agreement, the Pledge Agreement, each Mortgage, the DIP ABL Intercreditor Agreement and any other agreement, document or instrument executed concurrently herewith or at any time hereafter pursuant to which one or more Credit Parties or any other Person either (a) Guarantees payment or performance of all or any portion of the DIP ABL Obligations, and/or (b) provides, as security for all or any portion of the DIP ABL Obligations, a Lien on any of its assets in favor of DIP ABL Agent for its own benefit and the benefit of DIP ABL Lenders, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time. The Security Documents shall supplement, and shall not limit, the security interests granted pursuant to the DIP Orders; *provided, however*, in the event of any conflict between the security interests

granted pursuant to the DIP Orders and the security interest granted pursuant to the Security Documents, the DIP Orders shall govern.

"**Stated Maturity**" means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal was scheduled to be paid in the documentation governing such Indebtedness, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

"**Subordinated Indebtedness**" means any Existing Indebtedness owed by the Borrower to any Equity Holder that is unsecured and subordinated to the DIP ABL Obligations on terms reasonably acceptable to the Required DIP ABL Lenders.

"**Subsidiaries Guaranty**" means that certain Subsidiaries Guaranty Agreement, entered into on or after the Closing Date, among DIP ABL Agent and certain Restricted Subsidiaries as guarantors, as the same is amended, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof.

"**Subsidiary**" means, with respect to any specified Person:

(a) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(b) any partnership or limited liability company of which (i) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general and limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, whether in the form of membership, general, special or limited partnership interests or otherwise, and (ii) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

"**Super-priority Claim**" means a claim against any Borrower in the Chapter 11 Cases that is expressly granted pursuant to this Agreement, the Interim DIP Order and/or Final DIP Order that is a allowed super-priority, administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code and which has priority, unless otherwise expressly indicated in this Agreement or the DIP Orders, over any or all administrative expenses, adequate protection claims and other claims against Borrowers (or any other debtors) in the Chapter 11 Cases, now existing or hereinafter arising, of any kind whatsoever, whether asserted or unasserted, including without limitation, all administrative expenses of the kind specified in section 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under any sections of the Bankruptcy Code (including sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b), 546(d) 726, 1113, 1114, and, upon entry of the Final DIP Order, section 506(c) of the Bankruptcy Code) whether or not such expenses or claims become secured by a judgment lien or other non-consensual lien, levy , or attachment, and that is subject only to the Carve Out and relative priorities of such claims as expressly set forth herein and in the DIP Orders.

"**Swap Contract**" means any "swap agreement", as defined in Section 101 of the Bankruptcy Code, that is obtained by Borrower to provide protection against fluctuations in interest or currency

exchange rates, but only if DIP ABL Agent provides its prior written consent to the entry into such "swap agreement".

"**Tax Distributions**" means, (a) any payment made by Blackhawk Parent to the holders of its Equity Interests, for any Fiscal Year (or portion thereof) ending after the Closing Date for which Blackhawk Parent is treated as a partnership (or disregarded as an entity separate from a partnership) for U.S. federal income tax purposes, in an aggregate amount with respect to any such Fiscal Year not to exceed the maximum combined marginal U.S. federal, state and local income tax rate (after taking into account applicable limitations on the deductibility of items and the character of income in question (i.e., long term capital gain, qualified dividend income, etc.)) applicable to any direct (or, where the direct equity holder is a pass-through entity, indirect) Equity Holder of Blackhawk Parent multiplied by the amount of Blackhawk Parent's net taxable income for the relevant Fiscal Year (taking into account any audit adjustment made after the Closing Date (with respect to any Fiscal Year) but, for the avoidance of doubt, without regard to any adjustments pursuant to Section 734 or 743 of the Code), reduced by any net taxable loss with respect to all Fiscal Years (or portion thereof) beginning after the Closing Date to the extent such net taxable loss was not previously taken into account in calculating the Tax Distribution and is of a character that would permit such loss to be deducted against the income of the Fiscal Year (or portions thereof) in question, or (b) for any Fiscal Year (or portion thereof) ending after the Closing Date for which Blackhawk Parent is disregarded as an entity separate from a corporate parent (a "**Corporate Parent**") for U.S. federal income tax purposes, or is treated as a corporation for U.S. federal income tax purposes and is a member of a consolidated, combined, unitary or similar income tax group of which a direct or indirect parent of Blackhawk Parent is the common parent (a "**Tax Group**"), in each case, distributions to such Corporate Parent (or other parent of the Blackhawk Parent), to pay the portion of the U.S. federal, state or local income Taxes of such Corporate Parent (or such Tax Group) that are attributable to the income of Blackhawk Parent and/or its Subsidiaries, in an aggregate amount not to exceed the amount of such Taxes that Blackhawk Parent and/or its applicable Subsidiaries would have paid had Blackhawk Parent and/or such Subsidiaries, as applicable, been a stand-alone corporate taxpayer (or a stand-alone corporate group); *provided*, that Tax Distributions in respect of any Fiscal Year may be paid throughout the Fiscal Year to cover estimated tax payments as reasonably determined by Blackhawk Parent; *provided*, *further*, that, to the extent the aggregate amount of estimated payments in respect of any Fiscal Year exceeds the actual amount of permitted Tax Distributions for such Fiscal Year, such excess shall reduce dollar for dollar the permitted Tax Distributions in respect of succeeding Fiscal Years (including, without duplication, any estimated payments); *provided, further,* that no Tax Distributions may be paid by any Borrower in respect of Taxes paid directly by any Borrower or any Subsidiary.

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

"**Transactions**" shall mean, collectively,

(a) the execution, delivery and performance by each Credit Party of the DIP ABL Financing Documents to which it is a party,

(b) the execution, delivery and performance by each Credit Party of the DIP Term Loan Documents, the incurrence loans thereunder and the use of the proceeds thereof, and

(c) the payment of all fees and expenses in connection with the foregoing.

"**UCC**" means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided*, *however*, that, at any time, if by reason of mandatory provisions of law, any or all of the

perfection or priority of any Secured Creditor's security interest in any item or portion of the DIP ABL Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" means the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

"**Unfunded Pension Liability**" of any Benefit Plan means the amount, if any, by which the value of the accumulated plan benefits under the Benefit Plan determined on a plan termination basis in accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the fair market value of all plan assets (excluding any accrued but unpaid contributions).

"**United States**" and "**U.S.**" each means the United States of America.

"**Unrestricted Subsidiary**" means any Subsidiary of a Borrower that is designated by the Board of Directors of Blackhawk Parent as an Unrestricted Subsidiary and approved by DIP ABL Agent.

"**USA PATRIOT Act**" has the meaning set forth in the definition of "Anti-Terrorism Laws."

"**Voting Stock**" of any specified Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"**Withholding Agent**" means any Borrower or DIP ABL Agent.

"**Work-In-Process**" means Inventory that is not a product that is finished and approved by a Borrower in accordance with applicable Requirements of Law and such Borrower's normal business practices for release and delivery to customers; *provided, however,* that in no event shall (i) clean goods, (ii) raw to wash goods; or (iii) direct shipment goods constitute Work-In-Process.

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

"**XCoal**" has the meaning set forth in clause (c) of the definition of "Eligible Account".

Section 1.2 Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including, without limitation, determinations made pursuant to the exhibits hereto) shall be made, and all financial statements required to be delivered hereunder shall be prepared on a consolidated basis in accordance with GAAP applied on a basis consistent with the most recent audited consolidated financial statements of each Borrower and its Consolidated Subsidiaries delivered to DIP ABL Agent and each of DIP ABL Lenders on or prior to the Closing Date. If at any time any change in GAAP would affect the computation of any financial ratio or financial requirement set forth in any DIP ABL Financing Document, and either Borrowers or the Required DIP ABL Lenders shall so request, DIP ABL Agent, DIP ABL Lenders and Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required DIP ABL Lenders); *provided*, *however*, that until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrowers shall provide to DIP ABL Agent and DIP ABL Lenders financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or

requirement made before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of any Credit Party or any Subsidiary of any Credit Party at "fair value", as defined therein.

Section 1.3 Other Definitional and Interpretive Provisions. References in this Agreement to "Articles", "Sections", "Annexes", "Exhibits", or "Schedules" shall be to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. "Include", "includes" and "including" shall be deemed to be followed by "without limitation". Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. References "from" or "through" any date mean, unless otherwise specified, "from and including" or "through and including", respectively. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be made in lawful money of the United States and in immediately available funds. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto. As used in this Agreement, the meaning of the term "material" or the phrase "in all material respects" is intended to refer to an act, omission, violation or condition which reflects or could reasonably be expected to result in a Material Adverse Effect. References to capitalized terms that are not defined herein, but are defined in the UCC, shall have the meanings given them in the UCC. All references herein to times of day shall be references to daylight or standard time, as applicable.

Section 1.4 Time is of the Essence. Time is of the essence in Borrower's and each other Credit Party's performance under this Agreement and all other DIP ABL Financing Documents.

Section 1.5 LLC Division. For all purposes under the DIP ABL Financing Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws, as applicable): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

Section 1.6 Covenants. For purposes of any calculation under Sections 5.1 and 5.4, if the Borrower Representative elects to give pro forma effect in such calculation to the entire committed amount of any proposed Indebtedness, whether or not then drawn, such committed amount may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with Section 5.1 or 5.4, but for so long as such commitment or Indebtedness is outstanding or in effect, the entire committed amount of such Indebtedness then in effect shall be deemed drawn and outstanding for all purposes hereunder.

ARTICLE 2 - LOANS

Section 2.1 Loans.

(a) [Reserved].

(b) DIP Revolving Loans.

(i) DIP Revolving Loans and Borrowings. On the terms and subject to the conditions set forth herein, the Interim DIP Order, the Final DIP Order and the Approved Budget, as applicable, each DIP ABL Lender severally agrees to make loans to Borrowers from time to time as set forth herein (each a "**DIP Revolving Loan**", and collectively, "**DIP Revolving Loans**") equal to such DIP ABL Lender's DIP Revolving Loan Commitment Percentage of DIP Revolving Loans requested by Borrowers hereunder, *provided*, *however*, that (i) after giving effect thereto, the DIP Revolving Loan Outstandings shall not exceed the DIP Revolving Loan Limit and (ii) Borrowers shall not have available cash, including Cash Collateral, in excess of $10,000,000 on either of (A) the date on which any Notice of Borrowing is delivered and/or (B) the date of the proposed borrowing. Borrowers shall deliver to DIP ABL Agent a Notice of Borrowing with respect to each proposed DIP Revolving Loan Borrowing, such Notice of Borrowing to be delivered before 11:00 a.m. (Eastern time) on the date of such proposed borrowing. Each Borrower and each Revolving DIP ABL Lender hereby authorizes DIP ABL Agent to make DIP Revolving Loans on behalf of Revolving DIP ABL Lenders, at any time in its sole discretion, to pay principal owing in respect of the Loans and interest, fees, expenses and other charges payable by any Credit Party from time to time arising under this Agreement or any other DIP ABL Financing Document. The Borrowing Base shall be determined by DIP ABL Agent based on (A) the most recent Borrowing Base Certificate and such other information as is delivered to DIP ABL Agent pursuant to Section 4.1(c) or otherwise provided to DIP ABL Agent in accordance with this Agreement and (B) in connection with any Dilution Reserves, Royalty Reserves, Rent Reserves or other Reserves, such other applicable information as may be available to DIP ABL Agent.

(ii) Mandatory DIP Revolving Loan Repayments and Prepayments.

(A) The DIP Revolving Loan Commitment shall terminate on the DIP ABL Termination Date. On such DIP ABL Termination Date, there shall become due, and Borrowers shall pay, the entire outstanding principal amount of each DIP Revolving Loan, together with accrued and unpaid DIP ABL Obligations pertaining thereto incurred to, but excluding the DIP ABL Termination Date; *provided, however*, that such payment is made not later than 12:00 Noon (Eastern time) on the DIP ABL Termination Date.

(B) If at any time the DIP Revolving Loan Outstandings exceed the DIP Revolving Loan Limit, then, on the next succeeding Business Day, Borrowers shall repay the DIP Revolving Loans in an aggregate amount equal to such excess.

(C) Principal payable on account of DIP Revolving Loans shall be payable by Borrowers to DIP ABL Agent (I) immediately upon the receipt by any Borrower or DIP ABL Agent of any payments on or proceeds from any of the Accounts, to the extent of such payments or proceeds, as further described in Section 2.11 below, and (II) in full on the DIP ABL Termination Date.

(iii) Optional Prepayments. Borrowers may from time to time prepay the DIP Revolving Loans in whole or in part; *provided*, *however*, that any such partial prepayment shall be in an amount equal to $100,000 or a higher integral multiple of

$25,000. For the avoidance of doubt, nothing in this clause shall permit termination of the DIP Revolving Loan Commitment by Borrower other than in accordance with Section 2.12.

(iv) LIBOR Rate.

(A) Except as provided in Section 2.14 or 2.15, DIP Revolving Loans shall accrue interest at the LIBOR Rate *plus* the Applicable Margin.

(B) Anything to the contrary contained herein notwithstanding, neither DIP ABL Agent nor any DIP ABL Lender is required actually to acquire eurodollar deposits to fund or otherwise match fund any DIP ABL Obligation as to which interest accrues based on the LIBOR Rate.

(v) Confirmation, Conversion or Dismissal. No confirmation, conversion or dismissal order entered in the Chapter 11 Cases shall discharge or otherwise affect in any way any of the DIP ABL Obligations of any Borrower to DIP ABL Agent and DIP ABL Lenders hereunder or under any other DIP ABL Financing Document, other than (A) after indefeasible payment in full in cash to DIP ABL Lenders and DIP ABL Agent of all DIP ABL Obligations on or before Chapter 11 Plan Effective Date or entry of any conversion or dismissal order and (B) the termination of the DIP Revolving Loan Commitment.

Section 2.2 Interest, Interest Calculations and Certain Fees.

(a) Interest. From and following the Closing Date, except as expressly set forth in this Agreement, Loans and the other DIP ABL Obligations shall bear interest at the sum of the LIBOR Rate *plus* the Applicable Margin. Interest on the Loans shall be paid in arrears on the first (1st) day of each month and on the maturity of such Loans, whether by acceleration or otherwise. Interest on all other DIP ABL Obligations shall be payable upon demand.

(b) Unused Line Fee. From and following the Closing Date, Borrowers shall pay DIP ABL Agent, for the benefit of all DIP ABL Lenders committed to make DIP Revolving Loans (other than any DIP ABL Lender that is a Defaulted DIP ABL Lender), in accordance with their respective Pro Rata Shares, a fee in an amount equal to (i) (A) the DIP Revolving Loan Commitment *minus* (B) the average daily balance of the sum of the DIP Revolving Loan Outstandings during the preceding month, *multiplied by* (ii) one half of one percent (0.5%) per annum. Such fee is to be paid monthly in arrears on the first day of each month.

(c) [Reserved].

(d) Exit Fee. The Borrowers agree to pay to DIP ABL Agent for the ratable account of DIP ABL Lenders under this Agreement, payable upon the occurrence of any DIP ABL Termination Date, a fully earned, non-refundable exit fee in an amount equal to one and one half percent (1.5%) of the DIP Revolving Loan Commitment Amount *plus* all or any portion of the Revised Prepetition Deferred Revolving Loan Origination Fee that was not paid upon termination or roll up, as the case may be, of the obligations under the Prepetition ABL Credit Agreement and the other Prepetition ABL Financing Documents.

(e) [Reserved].

(f) [Reserved].

(g) [Reserved].

(h) [Reserved].

(i) [Reserved].

(j) Audit Fees. Subject to the limitations set forth in Section 4.2, Borrowers shall pay to DIP ABL Agent, for its own account and not for the benefit of any other DIP ABL Lenders, all reasonable fees and expenses in connection with audits and inspections of Borrowers' books and records, audits, valuations or appraisals of the DIP ABL Collateral, audits of Borrowers' compliance with applicable laws and such other matters as DIP ABL Agent shall deem appropriate, which shall be due and payable within seven (7) days after the date of issuance by DIP ABL Agent of a written request for payment thereof to Borrowers.

(k) Wire Fees. Borrowers shall pay to DIP ABL Agent, for its own account and not for the account of any other DIP ABL Lenders, on written demand, fees for incoming and outgoing wires made for the account of Borrowers; *provided* that such fees shall not in any event exceed $10 per wire.

(l) Late Charges. If payments of principal (other than a final installment of principal upon the DIP ABL Termination Date), interest due on the DIP ABL Obligations, or any other amounts due hereunder or under the other DIP ABL Financing Documents are not timely made or remain overdue for a period of five (5) days, Borrowers, without notice or demand by DIP ABL Agent, shall pay to DIP ABL Agent, for its own account and not for the benefit of any other DIP ABL Lenders, as additional compensation to DIP ABL Agent in administering the DIP ABL Obligations, an amount equal to two percent of each delinquent payment. Any amount paid under this Section 2.2(l) shall be offset by any default interest required to be paid under Section 10.5.

(m) Computation of Interest and Related Fees. All interest and fees under each DIP ABL Financing Document shall be calculated on the basis of a 360-day year for the actual number of days elapsed. The date of funding of a Loan shall be included in the calculation of interest. The date of payment of a Loan shall be excluded from the calculation of interest. If a Loan is repaid on the same day that it is made, one (1) day's interest shall be charged. Collections of cash pursuant to Section 2.11 shall be credited to the Prepetition ABL Obligations or the DIP ABL Obligations, as applicable, on a daily basis, subject in all cases to one (1) Business Day clearance and all interest accruing on such funds during such clearance period shall accrue for the benefit of DIP ABL Agent (and not for the benefit of DIP ABL Lenders).

Section 2.3 Notes. The portion of the Loans made by each DIP ABL Lender shall be evidenced, if so requested by such DIP ABL Lender, by one or more promissory notes executed by Borrowers on a joint and several basis (each, a "**Note**") in an original principal amount equal to such DIP ABL Lender's DIP Revolving Loan Commitment Amount.

Section 2.4 [Reserved].

Section 2.5 [Reserved].

Section 2.6 General Provisions Regarding Payment; Loan Account.

(a) All payments to be made by each Borrower under any DIP ABL Financing Document, including payments of principal and interest made hereunder and pursuant to any other DIP ABL Financing Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension (it being understood and agreed that, solely for purposes of calculating financial covenants and computations contained herein and determining compliance therewith, if payment is made, in full, on any such extended due date, such payment shall be deemed to have been paid on the original due date without giving effect to any extension thereto). Any payments received in the Payment Account before 12:00 Noon (Eastern time) on any date shall be deemed received by DIP ABL Agent on such date, and any payments received in the Payment Account at or after 12:00 Noon (Eastern time) on any date shall be deemed received by DIP ABL Agent on the next succeeding Business Day.

(b) DIP ABL Agent shall maintain a loan account (the "**Loan Account**") on its books to record Loans and other extensions of credit made by DIP ABL Lenders hereunder or under any other DIP ABL Financing Document, and all payments thereon made by each Borrower. All entries in the Loan Account shall be made in accordance with DIP ABL Agent's customary accounting practices as in effect from time to time. The balance in the Loan Account, as recorded in DIP ABL Agent's books and records at any time shall be conclusive and binding evidence of the amounts due and owing to DIP ABL Agent by each Borrower absent manifest error; *provided*, *however*, that any failure to so record or any error in so recording shall not limit or otherwise affect any Borrower's duty to pay all amounts owing hereunder or under any other DIP ABL Financing Document. DIP ABL Agent shall endeavor to provide Borrowers with a monthly statement regarding the Loan Account (but neither DIP ABL Agent nor any DIP ABL Lender shall have any liability if DIP ABL Agent shall fail to provide any such statement). Unless any Borrower notifies DIP ABL Agent of any objection to any such statement (specifically describing the basis for such objection) within thirty (30) days after the date of receipt thereof, it shall be deemed final, binding and conclusive upon Borrowers in all respects as to all matters reflected therein.

Section 2.7 Maximum Interest. In no event shall the interest charged with respect to the Loans or any other DIP ABL Obligations of any Borrower under any DIP ABL Financing Document exceed the maximum amount permitted under the laws of the State of New York or of any other applicable jurisdiction. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable hereunder or under any Note or other DIP ABL Financing Document (the "**Stated Rate**") would exceed the highest rate of interest permitted under any applicable law to be charged (the "**Maximum Lawful Rate**"), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable shall be equal to the Maximum Lawful Rate; *provided*, *however*, that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, each Borrower shall, to the extent permitted by law, continue to pay interest at the Maximum Lawful Rate until such time as the total interest received is equal to the total interest which would have been received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply. In no event shall the total interest received by any DIP ABL Lender exceed the amount which it could lawfully have received had the interest been calculated for the full term hereof at the Maximum Lawful Rate. If, notwithstanding the prior sentence, any DIP ABL Lender has received interest hereunder in excess of the Maximum Lawful Rate, such excess amount shall be applied to the reduction of the principal balance of the Loans or to other amounts (other than interest) payable hereunder, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining shall be paid to Borrowers. In computing interest payable with reference to the

Maximum Lawful Rate applicable to any DIP ABL Lender, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate *divided by* the number of days in the year in which such calculation is made.

Section 2.8 Taxes.

(a) All payments by or on account of the Borrowers of principal and interest on the Loans and all other amounts payable hereunder by or on account of the Borrowers shall be made free and clear of and without deduction for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law, and if any such Tax is an Indemnified Tax, then the Borrowers shall pay such additional amount or amounts as is necessary to ensure that the amount received by DIP ABL Agent and/or any applicable DIP ABL Lender, as applicable, will equal the full amount DIP ABL Agent and/or such DIP ABL Lender would have received had no such withholding or deduction been required (including, without limitation, such withholdings and deductions applicable to additional sums payable under this Section 2.8). After payment of any Tax by a Borrower to a Governmental Authority pursuant to this Section 2.8, such Borrower shall promptly forward to DIP ABL Agent the original or a certified copy of an official receipt, a copy of the return reporting such payment, or other documentation reasonably satisfactory to DIP ABL Agent evidencing such payment to such authority. Borrowers shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of DIP ABL Agent timely reimburse it for the payment of, any Other Taxes.

(b) The Borrowers shall indemnify DIP ABL Agent and DIP ABL Lenders, within ten (10) days after demand thereof, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.8) payable or paid by DIP ABL Agent or any DIP ABL Lender or required to be withheld or deducted from a payment to DIP ABL Agent or any DIP ABL Lender and all expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate in reasonable detail as to the amount of such payment or liability delivered to Borrowers by a DIP ABL Lender (with a copy to DIP ABL Agent), or by DIP ABL Agent on its own behalf or on behalf of a DIP ABL Lender, shall be conclusive absent manifest error.

(c) Any DIP ABL Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments made under any DIP ABL Financing Document shall deliver to Borrower Representative and DIP ABL Agent, at the time or times prescribed by applicable law or reasonably requested by Borrower Representative or DIP ABL Agent, such properly completed and executed documentation reasonably requested by Borrower Representative or DIP ABL Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any DIP ABL Lender, if reasonably requested by Borrower Representative or DIP ABL Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrowers or DIP ABL Agent as will enable Borrowers or DIP ABL Agent to determine whether or not such DIP ABL Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.8(c)(i), 2.8(c)(ii) and 2.8(e) below) shall not be required if in such DIP ABL Lender's reasonable judgment such completion, execution or submission would subject such DIP ABL Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such DIP ABL Lender.

(i) Each DIP ABL Lender that is not a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes and is a party hereto on the Closing Date or purports to become a DIP ABL Lender after the Closing Date (each such DIP ABL Lender a "**Foreign DIP ABL Lender**") shall, to the extent permitted by applicable law, execute and deliver to Borrower Representative and DIP ABL Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign DIP ABL Lender becomes a DIP ABL Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or DIP ABL Agent) whichever of the following is applicable: (A) in the case of a Foreign DIP ABL Lender claiming the benefits of an income tax treaty to which the United States is a party, (x) with respect to payments of interest under any DIP ABL Financing Document, two (2) properly completed and executed copies of United States Internal Revenue Service ("**IRS**") Forms W-8BEN or W-8BEN-E (or successor form) establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any DIP ABL Financing Documents, two (2) properly completed and executed copies of IRS Forms W-8BEN or W-8BEN-E (or successor form) establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "business profits" or "other income" article of such tax treaty; (B) two (2) properly completed and executed copies of Form W-8ECI (or successor form); (C) in the case of a Foreign DIP ABL Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Foreign DIP ABL Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "**U.S. Tax Compliance Certificate**") and (y) two (2) properly completed and executed copies of IRS Forms W-8BEN or W-8BEN-E (or successor form); (D) to the extent a Foreign DIP ABL Lender is not the beneficial owner, two (2) properly completed and executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E (or successor form), a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-3, IRS Form W-9 (or successor form), and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign DIP ABL Lender is a partnership and one or more direct or indirect partners of such Foreign DIP ABL Lender are claiming the portfolio interest exemption, such Foreign DIP ABL Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-4 on behalf of each such direct and indirect partner; or (E) other applicable forms, certificates or documents prescribed by the IRS. Each DIP ABL Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower Representative and DIP ABL Agent in writing of its legal inability to do so. In addition, to the extent permitted by applicable law, such forms shall be delivered by each Foreign DIP ABL Lender upon the obsolescence or invalidity of any form previously delivered by such Foreign DIP ABL Lender. Each Foreign DIP ABL Lender shall promptly notify Borrower Representative at any time it determines that it is no longer in a position to provide any previously delivered certificate to Borrower Representative (or any other form of certification adopted by the U.S. taxing authorities for such purpose).

(ii) Each DIP ABL Lender that is a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes and is a party hereto on the Closing Date or purports to become a DIP ABL Lender after the Closing Date shall, to the extent permitted by law, provide to Borrower Representative and DIP ABL Agent on or prior to the date on which such DIP ABL Lender becomes a DIP ABL Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower

Representative or DIP ABL Agent), a properly completed and executed IRS Form W-9 or any successor form certifying as to such DIP ABL Lender's entitlement to an exemption from U.S. backup withholding and other applicable forms, certificates or documents prescribed by the IRS or reasonably requested by Borrower Representative or DIP ABL Agent. Each DIP ABL Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower Representative and DIP ABL Agent in writing of its legal inability to do so.

(iii) Any Foreign DIP ABL Lender shall, to the extent it is legally entitled to do so, deliver to Borrower Representative and DIP ABL Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign DIP ABL Lender becomes a DIP ABL Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or DIP ABL Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrowers or DIP ABL Agent to determine the withholding or deduction required to be made.

(d) If any DIP ABL Lender or DIP ABL Agent determines, in its sole discretion exercised in good faith, that it has received a refund in respect of any Taxes as to which it has been indemnified by any Borrower pursuant to this Section 2.8 (including by the payment of additional amounts pursuant to this Section 2.8), then it shall promptly pay an amount equal to such refund to Borrowers, net of all reasonable out-of-pocket expenses of such DIP ABL Lender or of DIP ABL Agent with respect thereto, including any Taxes; *provided*, *however*, that Borrowers, upon the written request of such DIP ABL Lender or DIP ABL Agent, agree to repay any amount paid over to Borrowers to such DIP ABL Lender or to DIP ABL Agent (plus any related penalties, interest or other charges imposed by the relevant Governmental Authority) in the event such DIP ABL Lender or DIP ABL Agent is required, for any reason, to disgorge or otherwise repay such refund. Notwithstanding anything to the contrary in this Section 2.8, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.8(d) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.8 shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(e) If a payment made to a DIP ABL Lender under any DIP ABL Financing Document would be subject to U.S. federal withholding tax imposed by FATCA if such DIP ABL Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such DIP ABL Lender shall deliver to Borrower Representative and DIP ABL Agent at the time or times prescribed by any Requirements of Law and at such time or times reasonably requested by Borrower Representative or DIP ABL Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower Representative or DIP ABL Agent as may be necessary for Borrowers and DIP ABL Agent to comply with their obligations under FATCA and to determine that such DIP ABL Lender has complied with such DIP ABL Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. For purposes of this Section 2.8, the term "applicable law" includes FATCA.

(f) Each DIP ABL Lender shall severally indemnify DIP ABL Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such DIP ABL Lender (but only to the extent that any Credit Party has not already indemnified DIP ABL Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such DIP ABL Lender's failure to comply with the provisions of Section 11.17(b) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such DIP ABL Lender, in each case, that are payable or paid by DIP ABL Agent in connection with any DIP ABL Financing Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any DIP ABL Lender by DIP ABL Agent shall be conclusive absent manifest error. Each DIP ABL Lender hereby authorizes DIP ABL Agent to set off and apply any and all amounts at any time owing to such DIP ABL Lender under any DIP ABL Financing Document or otherwise payable by DIP ABL Agent to such DIP ABL Lender from any other source against any amount due to DIP ABL Agent under this paragraph (f).

(g) On or before the date DIP ABL Agent becomes a party to the Agreement, DIP ABL Agent shall provide to the Borrower Representative two duly executed copies of either (i) IRS Form W-9 (or any subsequent versions thereof or successor thereto) or (ii) IRS Form W-8ECI and a U.S. branch withholding certificate on IRS Form W-8IMY (in each case, or any subsequent versions thereof or successor thereto) evidencing its agreement with the Borrower Representative to be treated as a U.S. person, as applicable; ***provided*** that no DIP ABL Agent shall be required to provide any documentation pursuant to this Section 2.8(g) that DIP ABL Agent is unable to deliver as a result of a Change in Law after such DIP ABL Agent becomes DIP ABL Agent under this Agreement.

(h) Each party's obligations under Section 2.8(a) through (g) shall survive the resignation or replacement of DIP ABL Agent or any assignment of rights by, or the replacement of, a DIP ABL Lender, and the repayment, satisfaction or discharge of all DIP ABL Obligations hereunder.

Section 2.9 Appointment of Borrower Representative.

(a) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent and attorney-in-fact to request and receive Loans in the name or on behalf of such Borrower and any other Borrowers, deliver Notices of Borrowing and Borrowing Base Certificates, give instructions with respect to the disbursement of the proceeds of the Loans, giving and receiving all other notices and consents hereunder or under any of the other DIP ABL Financing Documents and taking all other actions (including in respect of compliance with covenants) in the name or on behalf of any Borrower or Borrowers pursuant to this Agreement and the other DIP ABL Financing Documents. DIP ABL Agent and DIP ABL Lenders may disburse the Loans to such bank account of Borrower Representative or a Borrower or otherwise make such Loans to a Borrower, in each case as Borrower Representative may designate or direct, without notice to any other Borrower. Notwithstanding anything to the contrary contained herein, DIP ABL Agent may at any time and from time to time require that Loans to or for the account of any Borrower be disbursed directly to an operating account of such Borrower.

(b) Borrower Representative hereby accepts the appointment by Borrowers to act as the agent and attorney-in-fact of Borrowers pursuant to this Section 2.9. Borrower Representative shall ensure that the disbursement of any Loans that are at any time requested by or to be remitted to or for the account of a Borrower, shall be remitted or issued to or for the account of such Borrower.

(c) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent to receive statements on account and all other notices from DIP ABL Agent,

DIP ABL Lenders with respect to the DIP ABL Obligations or otherwise under or in connection with this Agreement and the other DIP ABL Financing Documents.

(d) Any notice, election, representation, warranty, agreement or undertaking made or delivered by or on behalf of any Borrower by Borrower Representative shall be deemed for all purposes to have been made or delivered by such Borrower, as the case may be, and shall be binding upon and enforceable against such Borrower to the same extent as if made or delivered directly by such Borrower.

(e) No resignation by or termination of the appointment of Borrower Representative as agent and attorney-in-fact as aforesaid shall be effective, except after ten (10) Business Days' prior written notice to DIP ABL Agent. If the Borrower Representative resigns under this Agreement, Borrowers shall be entitled to appoint a successor Borrower Representative (which shall be a Borrower and shall be reasonably acceptable to DIP ABL Agent as such successor). Upon the acceptance of its appointment as successor Borrower Representative hereunder, such successor Borrower Representative shall succeed to all the rights, powers and duties of the retiring Borrower Representative and the term "Borrower Representative" means such successor Borrower Representative for all purposes of this Agreement and the other DIP ABL Financing Documents, and the retiring or terminated Borrower Representative's appointment, powers and duties as Borrower Representative shall be thereupon terminated.

Section 2.10 Joint and Several Liability; Rights of Contribution; Subordination and Subrogation.

(a) Borrowers are defined collectively to include all Persons named as one of the Borrowers herein; *provided*, *however*, that any references herein to "any Borrower", "each Borrower" or similar references, shall be construed as a reference to each individual Person named as one of the Borrowers herein. Each Person so named shall be jointly and severally liable for all of the obligations of Borrowers under this Agreement. Each Borrower, individually, expressly understands, agrees and acknowledges, that the credit facilities would not be made available on the terms herein in the absence of the collective credit of all of the Persons named as the Borrowers herein, the joint and several liability of all such Persons, and the cross-collateralization of the collateral of all such Persons. Accordingly, each Borrower individually acknowledges that the benefit to each of the Persons named as one of the Borrowers as a whole constitutes reasonably equivalent value, regardless of the amount of the credit facilities actually borrowed by, advanced to, or the amount of collateral provided by, any individual Borrower. In addition, each entity named as one of the Borrowers herein hereby acknowledges and agrees that all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Agreement shall be applicable to and shall be binding upon and measured and enforceable individually against each Person named as one of the Borrowers herein as well as all such Persons when taken together. By way of illustration, but without limiting the generality of the foregoing, the terms of Section 10.1 of this Agreement are to be applied to each individual Person named as one of the Borrowers herein (as well as to all such Persons taken as a whole), such that the occurrence of any of the events described in Section 10.1 of this Agreement as to any Person named as one of the Borrowers herein shall constitute a DIP Event of Default even if such event has not occurred as to any other Persons named as the Borrowers or as to all such Persons taken as a whole.

(b) Notwithstanding any provisions of this Agreement to the contrary, it is intended that the joint and several nature of the liability of each Borrower for the DIP ABL Obligations and the Liens granted by Borrowers to secure the DIP ABL Obligations, not constitute a Fraudulent Conveyance (as defined below). Consequently, DIP ABL Agent, DIP ABL Lenders and each Borrower agree that if the liability of a Borrower for the DIP ABL Obligations, or any Liens granted by such Borrower securing the DIP ABL Obligations would, but for the application of this sentence, constitute a Fraudulent

Conveyance, the liability of such Borrower and the Liens securing such liability shall be valid and enforceable only to the maximum extent that would not cause such liability or such Lien to constitute a Fraudulent Conveyance, and the liability of such Borrower and this Agreement shall automatically be deemed to have been amended accordingly. For purposes hereof, the term "Fraudulent Conveyance" means a fraudulent conveyance under Section 548 of the Bankruptcy Code or a fraudulent conveyance or fraudulent transfer under the applicable provisions of any fraudulent conveyance or fraudulent transfer law or similar law of any state, nation or other governmental unit, as in effect from time to time.

(c) DIP ABL Agent is hereby authorized, without notice or demand (except as otherwise specifically required under this Agreement) and without affecting the liability of any Borrower hereunder, at any time and from time to time, to (i) renew, extend or otherwise increase the time for payment of the DIP ABL Obligations; (ii) with the written agreement of any Borrower, and Bankruptcy Court approval obtained by the Borrowers if required, change the terms relating to the DIP ABL Obligations or otherwise modify, amend or change the terms of any Note or other agreement, document or instrument now or hereafter executed by any Borrower and delivered to DIP ABL Agent for any DIP ABL Lender; (iii) accept partial payments of the DIP ABL Obligations; (iv) take and hold any DIP ABL Collateral for the payment of the DIP ABL Obligations or for the payment of any guaranties of the DIP ABL Obligations and exchange, enforce, waive and release any such DIP ABL Collateral; (v) apply any such DIP ABL Collateral, as permitted under the Bankruptcy Code, and direct the order or manner of sale thereof as DIP ABL Agent, in its sole discretion, may determine; and (vi) settle, release, compromise, collect or otherwise liquidate the DIP ABL Obligations and any DIP ABL Collateral therefor, as permitted under the Bankruptcy Code, in any manner, all guarantor and surety defenses being hereby waived by each Borrower. Without limitations of the foregoing, with respect to the DIP ABL Obligations, each Borrower hereby makes and adopts each of the agreements and waivers set forth in each Guarantee, the same being incorporated hereby by reference. Except as specifically provided in this Agreement or any of the other DIP ABL Financing Documents, DIP ABL Agent shall have the exclusive right to determine the time and manner of application of any payments or credits, whether received from any Borrower or any other source, and such determination shall be binding on all Borrowers. All such payments and credits may be applied, reversed and reapplied, in whole or in part, to any of the DIP ABL Obligations that DIP ABL Agent shall determine, in its sole discretion, without affecting the validity or enforceability of the DIP ABL Obligations of the other Borrower.

(d) Each Borrower hereby agrees that, except as hereinafter provided, its obligations hereunder shall be unconditional, irrespective of (i) the absence of any attempt to collect the DIP ABL Obligations from any obligor or other action to enforce the same; (ii) the waiver or consent by DIP ABL Agent with respect to any provision of any instrument evidencing the DIP ABL Obligations, or any part thereof, or any other agreement heretofore, now or hereafter executed by a Borrower and delivered to DIP ABL Agent; (iii) failure by DIP ABL Agent to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the DIP ABL Obligations; (iv) the institution of any proceeding (or conversion of one proceeding to another) under the Bankruptcy Code or DIP ABL Agent's election in any such proceeding of the application of Section 1111(b)(2) of the Bankruptcy Code; (v) any additional borrowing or grant of a security interest by a Borrower as debtor in possession, under Section 364 of the Bankruptcy Code; (vi) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of DIP ABL Agent's claim(s) for repayment of any of the DIP ABL Obligations; or (vii) any other circumstance other than indefeasible payment in full of the DIP ABL Obligations which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety.

(e) The Borrowers hereby agree, as between themselves, that to the extent that DIP ABL Agent, on behalf of DIP ABL Lenders, shall have received from any Borrower any Recovery Amount (as defined below), then the paying Borrower shall have a right of contribution against each other Borrower in an amount equal to such other Borrower's contributive share of such Recovery Amount;

provided, *however*, that in the event any Borrower suffers a Deficiency Amount (as defined below), then the Borrower suffering the Deficiency Amount shall be entitled to seek and receive contribution from and against the other Borrowers in an amount equal to the Deficiency Amount; and *provided*, *further*, that in no event shall the aggregate amounts so reimbursed by reason of the contribution of any Borrower equal or exceed an amount that would, if paid, constitute or result in Fraudulent Conveyance. Until all DIP ABL Obligations have been paid and satisfied in full, no payment made by or for the account of a Borrower including, without limitation, (i) a payment made by such Borrower on behalf of the liabilities of any other Borrower, or (ii) a payment made by any other Guarantor under any Guarantee, shall entitle such Borrower, by subrogation or otherwise, to any payment from such other Borrower or from or out of such other Borrower's property. The right of each Borrower to receive any contribution under this Section 2.10(e) or by subrogation or otherwise from any other Borrower shall be subordinate in right of payment to the DIP ABL Obligations and such Borrower shall not exercise any right or remedy against such other Borrower or any property of such other Borrower by reason of any performance of such Borrower of its joint and several obligations hereunder, until the DIP ABL Obligations have been indefeasibly paid and satisfied in full, and no Borrower shall exercise any right or remedy with respect to this Section 2.10(e) until the DIP ABL Obligations have been indefeasibly paid and satisfied in full. As used in this Section 2.10(e), the term "Recovery Amount" means the amount of proceeds received by or credited to DIP ABL Agent from the exercise of any remedy of DIP ABL Lenders under this Agreement or the other DIP ABL Financing Documents, including, without limitation, the sale of any DIP ABL Collateral. As used in this Section 2.10(e), the term "Deficiency Amount" means any amount that is less than the entire amount a Borrower is entitled to receive by way of contribution or subrogation from, but that has not been paid by, the other Borrowers in respect of any Recovery Amount attributable to the Borrower entitled to contribution, until the Deficiency Amount has been reduced to $0 through contributions and reimbursements made under the terms of this Section 2.10(e) or otherwise.

Section 2.11 Collections and Lockbox Account.

(a) Borrowers shall maintain a lockbox or lockboxes (the "**Lockbox**") with a United States depository institution or institutions designated from time to time by DIP ABL Agent (the "**Lockbox Bank**"), subject to the provisions of this Agreement, and shall execute with the Lockbox Bank a Deposit Account Control Agreement and such other agreements related to such Lockbox as DIP ABL Agent may reasonably require, it being understood and agreed that the cash management provisions set forth in Section 2.11 of the Prepetition ABL Credit Agreement shall satisfy the foregoing requirements of this Section 2.11(a). Borrowers shall ensure that all collections of Accounts that are owed by a customer Account Debtor or that otherwise constitute Eligible Accounts are paid directly from such Account Debtors (i) into the Lockbox for deposit into the Lockbox Account and/or (ii) directly into the Lockbox Account; *provided, however*, unless DIP ABL Agent shall otherwise direct by written notice to Borrowers, Borrowers shall be permitted to cause Account Debtors who are individuals to pay Accounts directly to Borrowers, which Borrowers shall then administer and apply in the manner required below. All funds deposited into a Lockbox Account shall be transferred into the Payment Account by the close of each Business Day.

(b) [Reserved].

(c) Notwithstanding anything in any lockbox agreement or Deposit Account Control Agreement to the contrary, Borrowers agree that they shall be liable for any fees and charges in effect from time to time and charged by the Lockbox Bank in connection with the Lockbox, the Lockbox Account, and that DIP ABL Agent shall have no liability therefor, except to the extent such fees and charges arise from DIP ABL Agent's gross negligence or willful misconduct. Subject to the limitations set forth in Section 12.14, Borrowers hereby indemnify and agree to hold DIP ABL Agent harmless from any and all liabilities, claims, losses and demands whatsoever, including reasonable attorneys' fees and

expenses, arising from or relating to actions of DIP ABL Agent or the Lockbox Bank pursuant to this Section or any lockbox agreement or Deposit Account Control Agreement or similar agreement, except to the extent of such losses arising solely from DIP ABL Agent's gross negligence or willful misconduct.

(d) DIP ABL Agent shall apply, on a daily basis, all funds transferred into the Payment Account pursuant to this Section 2.11:

(i) from the Closing Date until the earlier to occur of (A) the Final DIP Order Entry Date (at which time, for the avoidance of doubt, all of the Prepetition ABL Obligations shall have been "rolled-up" and converted into the DIP ABL Obligations) and (B) satisfaction in full of the Prepetition ABL Obligations, to reduce the Prepetition ABL Obligations in accordance with Section 10.7(b) of the Prepetition ABL Credit Agreement; and

(ii) thereafter, to reduce the outstanding DIP Revolving Loans in such order of application as DIP ABL Agent shall elect.

If as the result of collections of Accounts pursuant to the terms and conditions of this Section 2.11, a credit balance exists with respect to the Loan Account, DIP ABL Agent shall, so long as (i) DIP Revolving Loan Outstandings, after giving effect to the application of funds pursuant to the first sentence of this Section 2.11(d), are zero, (ii) all other DIP ABL Obligations then due and owing have been paid in full, and (iii) no Default or DIP Event of Default exists under Section 10.1(a), transfer such funds representing a credit balance that have been received by DIP ABL Agent by 12:00 p.m. (Eastern time) on any Business Day into an account designated by Borrower Representative on the next Business Day thereafter; *provided* that in no event shall any such credit balance accrue interest in favor of Borrowers.

(e) To the extent that any collections of Accounts that are owed by a customer Account Debtor or that otherwise constitute Eligible Accounts or proceeds of Inventory are not sent directly to the Lockbox or Lockbox Account but are received by any Borrower, such collections shall be held in trust for the benefit of DIP ABL Agent pursuant to an express trust created hereby and immediately remitted, in the form received, to the applicable Lockbox or Lockbox Account. No such funds received by any Borrower shall be commingled with other funds of the Borrowers unless remitted to a Borrower pursuant to Section 2.11. If any funds received by any Borrower are commingled with other funds of the Borrowers, or are required to be deposited to a Lockbox or Lockbox Account and are not so deposited within two (2) Business Days, then Borrowers shall pay to DIP ABL Agent, for its own account and not for the account of any other DIP ABL Lenders, a compliance fee equal to $500 for each day that any such conditions exist.

(f) Borrowers acknowledge and agree that compliance with the terms of this Section 2.11 is essential, and that DIP ABL Agent and DIP ABL Lenders will suffer immediate and irreparable injury and have no adequate remedy at law, if any Borrower, through acts or omissions, causes or permits customer or other third-party Account Debtors to send payments other than to the Lockbox or Lockbox Accounts or if any Borrower fails to promptly deposit collections of such Accounts or proceeds of Inventory in the Lockbox Account as herein required. Accordingly, in addition to all other rights and remedies of DIP ABL Agent and DIP ABL Lenders hereunder, DIP ABL Agent shall have the right, during the continuation of a DIP Event of Default, to seek specific performance of the Borrowers' obligations under this Section 2.11, and any other equitable relief as DIP ABL Agent may deem necessary or appropriate, and Borrowers waive any requirement for the posting of a bond in connection with such equitable relief.

(g) Borrowers shall not, and Borrowers shall not suffer or permit any Credit Party to, (i) withdraw any amounts from any Lockbox Account, (ii) without the consent of DIP ABL Agent (such consent not to be unreasonably withheld, conditioned or delayed), change the procedures or sweep instructions under the agreements governing any Lockbox Accounts, or (iii) send to or deposit in any Lockbox Account any funds other than payments made with respect to and proceeds of DIP ABL Priority Collateral. Borrowers shall, and shall cause each Credit Party to, cooperate with DIP ABL Agent in the reasonable identification and reconciliation on a month-end basis of all material amounts received in or required to be deposited into the Lockbox Accounts. If any such amount cannot be identified or reconciled to the reasonable satisfaction of DIP ABL Agent, DIP ABL Agent may utilize its own staff or, if it deems necessary, engage an outside auditor at Borrowers' expense, to make such examination and report as may be necessary to identify and reconcile such amount.

Section 2.12 Termination; Restriction on Termination.

(a) Termination by DIP ABL Lenders. In addition to the rights set forth in Section 10.2, DIP ABL Agent may, and at the direction of Required DIP ABL Lenders shall, terminate this Agreement without notice during a continuing DIP Event of Default.

(b) Termination by Borrowers. Upon at least five (5) Business Days' prior written notice to DIP ABL Agent and DIP ABL Lenders, Borrowers may, at its option, terminate this Agreement; *provided, however,* that no such termination shall be effective until Borrowers have paid or collateralized to DIP ABL Agent's satisfaction all of the DIP ABL Obligations in immediately available funds. Any notice of termination given by Borrowers shall be irrevocable unless all DIP ABL Lenders otherwise agree in writing; *provided* that, the Borrowers' notice may state that such notice is conditioned upon (i) a transaction in connection with the refinancing in full of the Loans, or (ii) a transaction resulting in a Change of Control, to the extent such transaction is not consummated, in which case such notice may be revoked by the Borrowers (by notice to DIP ABL Agent on or prior to the specified effective date) if such condition is not satisfied. Borrowers may elect to terminate this Agreement in its entirety only. No section of this Agreement or type of Loan available hereunder may be terminated singly.

(c) Effectiveness of Termination. All of the DIP ABL Obligations shall be immediately due and payable upon the DIP ABL Termination Date. All undertakings, agreements, covenants, warranties and representations of Borrowers contained in the DIP ABL Financing Documents shall survive any such termination and DIP ABL Agent shall retain its Liens in the DIP ABL Collateral and DIP ABL Agent and each DIP ABL Lender shall retain all of its rights and remedies under the DIP ABL Financing Documents notwithstanding such termination until all DIP ABL Obligations have been discharged or paid, in full, in immediately available funds, including, without limitation, the requirements of each fee letter. Notwithstanding the foregoing or the payment in full of the DIP ABL Obligations, DIP ABL Agent shall not be required to terminate its Liens in the DIP ABL Collateral unless, with respect to any loss or damage DIP ABL Agent may incur as a result of dishonored checks or other items of payment received by DIP ABL Agent from Borrower or any Account Debtor and applied to the DIP ABL Obligations, DIP ABL Agent shall, upon its request, have received cash collateral from Borrower in a minimum amount of $50,000 to protect DIP ABL Agent and each DIP ABL Lender from any such loss or damage for period of at least 90 days after the payment in full of the DIP ABL Obligations.

Section 2.13 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account

of, or credit extended or participated in by, any DIP ABL Lender (except any reserve requirement reflected in the LIBOR Rate);

(ii) subject any Recipient to any additional Taxes (other than Indemnified Taxes and any Excluded Taxes) on its loans, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any DIP ABL Lender any other condition, cost or expense (other than with respect to Taxes) affecting this Agreement or DIP Revolving Loans made by such DIP ABL Lender;

and the result of any of the foregoing shall be to increase the cost to such DIP ABL Lender of making, converting to, continuing or maintaining any DIP Revolving Loan, or of maintaining its obligation to make any such DIP Revolving Loan, or to reduce the amount of any sum received or receivable by such DIP ABL Lender hereunder (whether of principal, interest or any other amount), then, upon request of such DIP ABL Lender, the Borrowers will pay to such DIP ABL Lender such additional amount or amounts as will compensate such DIP ABL Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any DIP ABL Lender determines that any Change in Law affecting such DIP ABL Lender or any lending office of such DIP ABL Lender or such DIP ABL Lender's parent company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such DIP ABL Lender's capital or on the capital of such DIP ABL Lender's parent company, if any, as a consequence of this Agreement, the DIP Revolving Loan Commitments of such DIP ABL Lender or the DIP Revolving Loans made by such DIP ABL Lender to a level below that which such DIP ABL Lender or such DIP ABL Lender's parent company could have achieved but for such Change in Law (taking into consideration such DIP ABL Lender's policies and the policies of such DIP ABL Lender's parent company with respect to capital adequacy), then from time to time the Borrowers will pay to such DIP ABL Lender such additional amount or amounts as will compensate such DIP ABL Lender or such DIP ABL Lender's parent company for any such reduction suffered.

(c) Certificates for Reimbursement. Any DIP ABL Lender requesting compensation under this Section 2.13 shall deliver to the Borrowers a certificate setting forth, in reasonable detail, the amount or amounts necessary to compensate such DIP ABL Lender or its parent company, as the case may be, as specified in subsection (a) or (b) of this Section 2.13 and the basis for calculating such amounts, which certificate shall be conclusive absent manifest error. The Borrowers shall pay such DIP ABL Lender the amount shown as due on any such certificate promptly after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any DIP ABL Lender to demand compensation pursuant to the foregoing provisions of this Section 2.13 shall not constitute a waiver of such DIP ABL Lender's right to demand such compensation, *provided* that the Borrowers shall not be required to compensate a DIP ABL Lender pursuant to the foregoing provisions of this Section 2.13 for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such DIP ABL Lender notifies the Borrowers of the Change in Law giving rise to such increased costs or reductions and of such DIP ABL Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

Section 2.14 Illegality. If any DIP ABL Lender determines that any Requirement of Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any DIP

ABL Lender or its applicable lending office to perform any of its obligations hereunder or make, maintain or fund, continue or charge interest with respect to any Loan or to determine or charge interest rates based upon the LIBOR Rate, or any Governmental Authority has imposed material restrictions on the authority of such DIP ABL Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such DIP ABL Lender to the Borrowers through DIP ABL Agent, any obligation of such DIP ABL Lender to issue, make, maintain, fund, continue or charge interest with respect to any such Loan shall be suspended until such DIP ABL Lender notifies DIP ABL Agent and the Borrowers that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrowers shall, upon demand from such DIP ABL Lender (with a copy to DIP ABL Agent), (a) prepay all Loans based on the LIBOR Rate of such DIP ABL Lender immediately or (b) (x) all Loans based on the LIBOR Rate of such DIP ABL Lender, the date specified in such DIP ABL Lender's notice shall be deemed to be the last day of the Interest Period of such Loans, and interest upon such DIP ABL Lender's Loans thereafter shall accrue interest at Base Rate plus the Applicable Margin, and (y) all such Loans shall continue to accrue interest at Base Rate plus the Applicable Margin until such DIP ABL Lender determines that it would no longer be unlawful or impractical to maintain such Loans at the LIBOR Rate. Upon any such prepayment as set forth in clause (a) above, the Borrowers shall also pay accrued interest on the amount so prepaid.

Section 2.15 Inability to Determine Rates. If in connection with any request for a Loan based on the LIBOR Rate or continuation thereof, (a) DIP ABL Agent determines (which determination shall be deemed conclusive absent manifest error) that (i) Dollar deposits are not being offered to banks in the London interbank market for the applicable amount and Interest Period of such Loan based on the LIBOR Rate, or (ii) adequate and reasonable means do not exist for determining the LIBOR Rate for the Interest Period with respect to a proposed Loan based on the LIBOR Rate, or (b) DIP ABL Agent or the Required DIP ABL Lenders determine (which determination shall be deemed conclusive absent manifest error) that for any reason the LIBOR Rate for the Interest Period with respect to a proposed Loan based on the LIBOR Rate does not adequately and fairly reflect the cost to such DIP ABL Lenders of funding such Loan, DIP ABL Agent will as promptly as practicable so notify the Borrower Representative and each DIP ABL Lender, and until DIP ABL Agent provides notice to the Borrower Representative and DIP ABL Lenders that the circumstances giving rise to such notice no longer exist, (x) any pending request for a continuation of Loans based on the LIBOR Rate shall be ineffective and (y) any requested borrowing of Loans based on the LIBOR Rate shall instead be made as a Loan based on the Base Rate, and shall accrue interest at the Base Rate plus the Applicable Margin.

Section 2.16 No Discharge. Each of the Credit Parties agrees that to the extent that its DIP ABL Obligations have not been satisfied in full in cash (or as otherwise agreed by the Credit Parties, the DIP ABL Agent, and the DIP ABL Lenders), (i) its obligations under the DIP ABL Financing Documents shall not be discharged by any chapter 11 plan or any order confirming a chapter 11 plan (and each of the Credit Parties, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) as to the DIP ABL Obligations and (ii) the Superpriority Claim granted to the DIP ABL Agent and the DIP ABL Lenders pursuant to the DIP Orders and the Liens granted to them pursuant to the DIP Orders shall not be affected in any manner by any such plan or order.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

To induce DIP ABL Agent and DIP ABL Lenders to enter into this Agreement and to make the Loans and other credit accommodations contemplated hereby, each Borrower hereby represents and warrants to DIP ABL Agent and each DIP ABL Lender that:

Section 3.1 Company Status. Each of the Borrowers and each of their Restricted Subsidiaries (a) is a duly organized and validly existing Company in good standing under the laws of the

jurisdiction of its organization, (b) has the Company power and authority, and all necessary material authorizations and consents, to own its property and assets and to transact the business in which it is engaged and presently proposes to engage and (c) is duly qualified and is authorized to do business and is in good standing in each jurisdiction where the ownership, leasing or operation of its property or the conduct of its business requires such qualifications except for failures to (x) be so qualified or authorized, (y) be in good standing or (z) obtain authorizations and consents which, either individually or in the aggregate for clauses (x) through (z), could not reasonably be expected to have a Material Adverse Effect.

Section 3.2 Power and Authority; Enforceability. Subject to entry of the Interim DIP Order or the Final DIP Order, as applicable, (a) each Credit Party has the Company power and authority to execute, deliver and perform the terms and provisions of each of the DIP ABL Financing Documents to which it is party and to consummate the other Transactions and has taken all necessary Company action to authorize the execution, delivery and performance by it of each of such DIP ABL Financing Documents and consummation of the other Transactions, and (b) each Credit Party has duly executed and delivered each of the DIP ABL Financing Documents to which it is party, and each of such DIP ABL Financing Documents constitutes its legal, valid and binding obligation enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

Section 3.3 No Violation; No Default. (a) Giving effect to the applicable DIP Orders, neither the execution, delivery or performance by any Credit Party of the DIP ABL Financing Documents to which it is a party, nor compliance by it with the terms and provisions thereof,

(i) will materially contravene any provision of any law, statute, rule or regulation or any order, writ, injunction or decree of any court or Governmental Authority (including, without limitation, any Mining Law), other than violations arising as a result of the commencement of the Chapter 11 Cases and except as otherwise excused by the Bankruptcy Court,

(ii) will conflict with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien (except pursuant to the Security Documents) upon any of the property or assets of any Credit Party or any of its Restricted Subsidiaries pursuant to the terms of any Contractual Obligation (including, without limitation, any Mining Lease), to which any Credit Party or any of its Restricted Subsidiaries is a party or by which it or any its property or assets is bound or to which it may be subject, except for any such conflict, breach or default which, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, other than violations arising as a result of the commencement of the Chapter 11 Cases and except as otherwise excused by the Bankruptcy Court, or

(iii) will violate any provision of any Organizational Document of any Credit Party or any of its Restricted Subsidiaries.

(b) Other than violations arising as a result of the commencement of the Chapter 11 Cases and except as otherwise excused by the Bankruptcy Court, no Borrower or any of its Restricted Subsidiaries is in default in any manner under any provision of any Contractual Obligation, where such default could reasonably be expected to result in a Material Adverse Effect, and no condition exists which, with the giving of notice or the lapse of time or both, would constitute such a default.

(c) No Default or DIP Event of Default has occurred and is continuing.

Section 3.4 Approvals. Subject to the Interim DIP Order and the Final DIP Order, no order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except for those that have otherwise been obtained or made on or prior to the Closing Date), or exemption by, any Governmental Authority is required to be obtained or made by, or on behalf of, any Credit Party to authorize, or is required to be obtained or made by, or on behalf of, any Credit Party in connection with, (a) the execution, delivery and performance of any DIP ABL Financing Document, or (b) the legality, validity, binding effect or enforceability of any such DIP ABL Financing Document.

Section 3.5 Financial Statements; Financial Condition; Undisclosed Liabilities; Projections.

(a) The audited consolidated balance sheets of Blackhawk Parent at December 31, 2016 and 2017 and the related consolidated statements of income and cash flows and changes in shareholders' equity of Blackhawk Parent for the years ended on such dates, in each case furnished to DIP ABL Lenders prior to the Closing Date, present fairly in all material respects the consolidated financial position of the Borrowers at the date of said financial statements and the results for the respective periods covered thereby and the unaudited consolidated balance sheet of Blackhawk Parent at March 31, 2019, and the related consolidated statements of income and cash flows and changes in shareholders' equity of Blackhawk Parent for the three months ended on such date, furnished to DIP ABL Lenders prior to the Closing Date, present fairly in all material respects the consolidated financial condition of the Borrowers at the date of said financial statements and the results for the period covered thereby, subject to normal year-end adjustments. All such financial statements have been prepared in accordance with GAAP consistently applied except to the extent provided in the notes to said financial statements and subject, in the case of the unaudited financial statements, to normal year-end audit adjustments and the absence of footnotes.

(b) All projections, including the Budget, delivered to DIP ABL Agent and DIP ABL Lenders on or prior to the Closing Date have been prepared in good faith and are based on reasonable assumptions, and there are no statements or conclusions in such projections which are based upon or include information known to Borrowers to be misleading in any material respect or which fail to take into account material information known to Borrowers regarding the matters reported therein.

(c) Since December 31, 2018, nothing has occurred that has had, or could reasonably be expected to have, a Material Adverse Effect.

(d) The calculation by the Borrowers of the Borrowing Base as set forth in each Borrowing Base Certificate and the valuation thereunder is complete and accurate in all material respects

Section 3.6 Litigation. Other than the Chapter 11 Cases, there are no actions, suits or proceedings pending or, to the knowledge of Borrowers, threatened (i) with respect to any DIP ABL Financing Document, Prepetition ABL Financing Document, DIP Term Loan Document, Prepetition First Lien Term Loan Document, or Prepetition Second Lien Term Loan Document, or (ii) that have had, or could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

Section 3.7 True and Complete Disclosure. All factual information (taken as a whole) furnished by or on behalf of any Borrower or any of its Subsidiaries in writing to DIP ABL Agent or any DIP ABL Lender for purposes of or in connection with this Agreement, the other DIP ABL Financing Documents or any transaction contemplated herein or therein is, and all other such factual information (taken as a whole) hereafter furnished by or on behalf of any Borrower or any of its Subsidiaries in

writing to DIP ABL Agent or any DIP ABL Lender will be, true and accurate in all material respects on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided, it being understood and agreed that for purposes of this Section 3.7, such factual information shall not include any projections or any pro forma financial information or information of a general economic or industry specific nature.

Section 3.8 Margin Regulations. No part of any borrowing of the Loans (or the proceeds thereof) will be used to purchase or carry any Margin Stock or to extend credit for the purpose of purchasing or carrying any Margin Stock. Neither the making of any DIP Revolving Loan nor the use of the proceeds thereof nor the occurrence of any other borrowing under this Agreement will violate or be inconsistent with the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System. Not more than 25% of the value of the assets of the Borrowers and their Restricted Subsidiaries taken as a whole is represented by Margin Stock.

Section 3.9 Tax Returns and Payments. Each Borrower and each of its Restricted Subsidiaries (a) has timely filed or caused to be timely filed with the appropriate taxing authority all returns, statements, forms and reports for Taxes (the "**Returns**") required to be filed by them, including with respect to the income, properties or operations of, each Borrower and/or any of its Restricted Subsidiaries and (b) has timely paid all Taxes payable by it which have become due, other than those that are being contested in good faith and provided for on the financial statements of each Borrower and its Restricted Subsidiaries to the extent required in accordance with GAAP, except, in the case of clauses (a) and (b), (x) for where the failure to file any such Returns or pay such Taxes would not reasonably be expected to have a Material Adverse Effect, or (y) to the extent otherwise excused or prohibited by the Bankruptcy Code and for which payment has not otherwise been required by the Bankruptcy Court.

Section 3.10 Compliance with ERISA.

(a) Each Employee Benefit Plan is in compliance in form and operation with its terms and with ERISA and the Code (including without limitation the Code provisions compliance with which is necessary for any intended favorable tax treatment) and all other applicable laws and regulations, except where any failure to comply would not reasonably be expected to have a Material Adverse Effect. Except as would not have a Material Adverse Effect: each Employee Benefit Plan (and each related trust, if any) which is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the IRS to the effect that it meets the requirements of Sections 401(a) and 501(a) of the Code covering all applicable tax law changes or is comprised of a master or prototype plan that has received a favorable opinion letter from the IRS, and to the knowledge of any Borrower or any of their Restricted Subsidiaries, nothing has occurred since the date of such determination that would reasonably be expected to adversely affect such determination (or, in the case of an Employee Benefit Plan with no determination, to the knowledge of any Borrower or any of their Restricted Subsidiaries, nothing has occurred that would reasonably be expected to materially adversely affect the issuance of a favorable determination letter or otherwise materially adversely affect such qualification). No ERISA Event has occurred or is reasonably expected to occur other than as would not, individually or in the aggregate, have a Material Adverse Effect.

(b) There exists no Unfunded Pension Liability with respect to any Benefit Plan that would have a Material Adverse Effect.

(c) None of the Borrowers or any of their Restricted Subsidiaries or any ERISA Affiliate has incurred a complete or partial withdrawal from any Multiemployer Plan, and, if one or more of the Borrowers, their Restricted Subsidiaries or their ERISA Affiliates were to withdraw in a complete

withdrawal as of the date this assurance is given or deemed given, the aggregate withdrawal liability that would be incurred would not reasonably be expected to result in a Material Adverse Effect.

(d) There are no actions, suits or claims pending against or involving an Employee Benefit Plan (other than routine claims for benefits) or, to the knowledge of any Borrower or any of its Restricted Subsidiaries, threatened, which would reasonably be expected to be asserted successfully against any Employee Benefit Plan and, if so asserted successfully, would reasonably be expected either singly or in the aggregate to have a Material Adverse Effect.

(e) Each Borrower, its Restricted Subsidiaries and any ERISA Affiliate have made all material contributions to or under each Benefit Plan and Multiemployer Plan required by law within the applicable time limits prescribed thereby, the terms of such Benefit Plan or Multiemployer Plan, respectively, or any contract or agreement requiring contributions to a Benefit Plan or Multiemployer Plan save where any failure to comply, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(f) Except as would not, individually or in the aggregate, have a Material Adverse Effect, (i) each Borrower, its Restricted Subsidiaries and each ERISA Affiliate have not ceased operations at a facility so as to become subject to the provisions of Section 4062(e) of ERISA, withdrawn as a substantial employer so as to become subject to the provisions of Section 4063 of ERISA or ceased making contributions to any Benefit Plan subject to Section 4064 of ERISA to which it made contributions, (ii) no lien imposed under the Code or ERISA on the assets of any Borrower, its Restricted Subsidiaries or any ERISA Affiliate exists or is likely to arise on account of any Benefit Plan and (iii) none of the Borrowers, their Restricted Subsidiaries or any ERISA Affiliate has any liability under Section 4069 or 4212(c) of ERISA.

(g) Except as would not individually or in the aggregate, have a Material Adverse Effect, (i) each Foreign Pension Plan has been maintained in compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities, (ii) all contributions required to be made with respect to a Foreign Pension Plan have been timely made, (iii) no Borrower or any of their Restricted Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Foreign Pension Plan and (iv) the present value of the accrued benefit liabilities (whether or not vested) under each Foreign Pension Plan, determined as of the end of each Borrower's most recently ended Fiscal Year on the basis of actuarial assumptions, each of which is reasonable, did not exceed the current value of the assets of such Foreign Pension Plan allocable to such benefit liabilities.

Section 3.11 Security Documents.

(a) Subject to, and upon the entry of the DIP Orders, the DIP Orders and the Security Agreement are effective to create in favor of DIP ABL Agent for the benefit of the Secured Creditors a legal, valid and enforceable security interest in all right, title and interest of the Credit Parties in the Security Agreement Collateral. Subject to, and upon the entry of the DIP Orders, the DIP Orders, DIP ABL Agent, for the benefit of the Secured Creditors, has a fully perfected security interest in all right, title and interest in all of the Security Agreement Collateral and the other assets of the Borrowers described in the Interim DIP Order and, upon entry, the Final DIP Order, subject to no other Liens other than Permitted Liens.

(b) Subject to, and upon the entry of the DIP Orders, the DIP Orders are sufficient to create, as security for the obligations purported to be secured thereby, a valid and enforceable perfected

security interest in the Real Property constituting DIP ABL Collateral in favor of DIP ABL Agent (or such other trustee as may be required or desired under local law) for the benefit of the Secured Creditors, superior and prior to the rights of all third Persons (except that the security interest created on such Real Property may be subject to the Permitted Encumbrances related thereto) and subject to no other Liens (other than Permitted Encumbrances related thereto).

(c) Irrespective of anything to the contrary in any Security Document, the Liens securing the DIP ABL Obligations shall be effective and perfected automatically and without further action by DIP ABL Agent, DIP ABL Lenders or any Borrower pursuant to and upon entry of the Interim DIP Order (prior to the Final DIP Order Entry Date) and the Final DIP Order (on and after the Final DIP Order Entry Date). No filing or registration of any kind shall be required in order to perfect the Liens granted herein or in any other Security Document. Nevertheless, DIP ABL Agent or the Required DIP ABL Lenders may elect in their sole discretion, and Borrower hereby authorizes DIP ABL Agent, to file or record financing statements, mortgages, deeds of trust, deeds to secure debt, pledge agreements, affidavits, security agreements (including intellectual property security agreements), fixture filings, assignments, memoranda or other documents, instruments or evidences of perfection with respect to the DIP ABL Collateral as DIP ABL Agent or the Required DIP ABL Lenders may deem appropriate. Such financing statements may be filed without the signature of such Borrower and may list DIP ABL Agent as the "secured party" and such Borrower as the "debtor" and may describe and indicate the collateral covered thereby as all or any part of the DIP ABL Collateral under the DIP ABL Financing Documents (including an indication of the collateral covered by any such financing statement as "all assets" of such Borrower now owned or hereafter acquired), in such jurisdictions as DIP ABL Agent from time to time determines are appropriate, and to file without the signature of such Borrower any continuations of or corrective amendments to any such financing statements, in any such case in order for DIP ABL Agent to perfect, preserve or protect the Liens, rights and remedies of DIP ABL Agent with respect to the DIP ABL Collateral. Each Borrower also ratifies its authorization for DIP ABL Agent to have filed in any jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof. Any financing statement may include a notice that any disposition of the DIP ABL Collateral in contravention of this Agreement, by either Borrower or any other Person, shall be deemed to violate the rights of DIP ABL Agent and DIP ABL Lenders under the Bankruptcy Code. The Credit Parties acknowledge and agree that no such filing or recording, or lack thereof, shall in any manner alter, diminish or otherwise limit the automatic perfection of all Liens granted to DIP ABL Agent and DIP ABL Lenders under the DIP Orders.

Section 3.12 Properties.

(a) All Real Property owned or leased by Blackhawk Parent or any of its Restricted Subsidiaries as of the Closing Date, and the nature of the interest therein, is correctly set forth in Schedule 5(a) to the Perfection Certificate. Each Borrower and each of its Restricted Subsidiaries has good and indefeasible title to all material Real Property (and to all buildings, fixtures and improvements located thereon) owned by it, including all material property reflected in the most recent historical balance sheets referred to in Section 3.5(a) (except as sold or otherwise disposed of since the date of such balance sheet in the ordinary course of business or as permitted by the terms of this Agreement), free and clear of all Liens, other than Permitted Liens. Each Borrower and each of its Restricted Subsidiaries has a valid leasehold interest in the material properties leased by it free and clear of all Liens other than Permitted Liens. Blackhawk Parent and the Restricted Subsidiaries have maintained or caused to be maintained, in all respects and in accordance with normal mining industry practice, all of the machinery, equipment, vehicles, preparation plants or other Coal processing facilities, loadout and other transportation facilities and other tangible personal property now owned or leased by Borrowers and the Restricted Subsidiaries that is necessary to conduct their business as it is now conducted at such properties, except where the failure to maintain would not reasonably be expected to have a Material Adverse Effect.

(b) All leases (including, without limitation, Mining Leases) to which any Borrower or any of its Restricted Subsidiaries is a party are in full force and effect, except leases in respect of which the failure to be in full force and effect would not reasonably be expected to have a Material Adverse Effect. Each of Blackhawk Parent and the Restricted Subsidiaries enjoys peaceful and undisturbed possession under all such leases, in each case other than leases in respect of which the failure to enjoy peaceful and undisturbed possession would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) As of the Closing Date, except as set forth on Schedule 3.12(c), no Borrower nor any of the Restricted Subsidiaries has received written or, to the knowledge of Blackhawk Parent and the Restricted Subsidiaries, other notice of claims that any Borrower or any Restricted Subsidiary has mined any Coal that it did not have the right to mine on any Mortgaged Property or mined any Coal in such a manner as to give rise to any claims for loss, waste or trespass on any Mortgaged Property, and, to the knowledge of Blackhawk Parent and the Restricted Subsidiaries, no facts exist upon which such a claim could be based other than claims that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(d) As of the Closing Date, no Borrower nor any Restricted Subsidiary has received any written or, to the knowledge of Borrowers, other notice of any pending or contemplated condemnation proceeding affecting any of the Mortgaged Properties or any sale or disposition thereof in lieu of condemnation that remains unresolved as of the Closing Date, except where such condemnation proceeding would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(e) No Borrower nor any Restricted Subsidiary is obligated on the Closing Date under any right of first refusal, option or other contractual right to sell, assign or otherwise dispose of any Mortgaged Property or any interest therein, other than customary buy-back provisions following the termination of mining operations, satisfaction of reclamation obligations and release of applicable Mining Permits with respect to a Mortgaged Property, except where such right of first refusal, option or other contractual right would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(f) With respect to each Mortgaged Property on which significant surface improvements are located, including, without limitation, surface Mines, refuse areas and haulroads, there are no rights or claims of parties in possession not shown by the public records, encroachments, overlaps, boundary line disputes or other matters which would be disclosed by an accurate survey or inspection of the premises except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 3.13 Subsidiaries. On and as of the Closing Date, Blackhawk Parent has no Subsidiaries other than those Subsidiaries listed on Schedule 6(a) to the Perfection Certificate. Schedule 6(a) to the Perfection Certificate sets forth, as of the Closing Date, the percentage ownership (direct and indirect) of Blackhawk Parent in each class of Capital Stock or other Equity Interests of each of its Subsidiaries and also identifies the direct owner thereof. All outstanding shares of Equity Interests of each Borrower and each Restricted Subsidiary have been duly and validly issued, are fully paid and non-assessable and have been issued free of preemptive rights. No Restricted Subsidiary has outstanding any securities convertible into or exchangeable for its Equity Interests or outstanding any right to subscribe for or to purchase, or any options or warrants for the purchase of, or any agreement providing for the issuance (contingent or otherwise) of or any calls, commitments or claims of any character relating to, its Equity Interests or any stock appreciation or similar rights. There are no Unrestricted Subsidiaries as of the Closing Date.

Section 3.14 Compliance with Laws, etc. Each Borrower and each of its Restricted Subsidiaries is in compliance with all applicable Requirements of Law, statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities in respect of the conduct of its business and the ownership of its property, including all applicable laws administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury and the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations promulgated thereunder ("**FCPA**"), except such non-compliances as (i) could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or (ii) is excused by the Bankruptcy Court. No Borrower nor any Restricted Subsidiary has been notified in writing, or, to the knowledge of any Borrower or Restricted Subsidiary, otherwise notified, by the Federal Office of Surface Mining, the Environmental Protection Agency, the U.S. Army Corps of Engineers or the agency of any state administering the Surface Mining Control and Reclamation Act of 1977, as amended, or any comparable state statute or any other Mining Law that it is (a) ineligible to receive additional surface mining permits; or (b) under investigation to determine whether their eligibility to receive any Mining Permit should be revoked (e.g., "permit blocked"), not transferred to any Credit Party or not renewed; and to the knowledge of the Borrower Representative, no facts exist that presently or upon the giving of notice or the lapse of time or otherwise would render any Borrower or any Restricted Subsidiary ineligible for the receipt or renewal of any Mining Permit.

Section 3.15 Investment Company Act. No Borrower or any of their Restricted Subsidiaries is an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

Section 3.16 Insurance. Each Borrower and its Restricted Subsidiaries is insured against such losses and risks and in such amount as are prudent and customary in the businesses in which it is engaged.

Section 3.17 Environmental Matters. In each case, except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect,

(a) each Borrower and each of its Restricted Subsidiaries is in compliance with all Environmental Laws and has obtained and is in compliance with the terms of any permits required under such Environmental Laws to conduct their respective operations as currently conducted;

(b) there are no Environmental Claims pending against any Borrower or any of its Restricted Subsidiaries and, to the knowledge of any Borrower, no such Environmental Claims are either threatened or are reasonably expected to result from any pending investigation or proceeding;

(c) no Lien, other than a Permitted Lien, has been recorded, or to the knowledge of any Borrower, threatened under any Environmental Law with respect to any Real Property owned or operated by any Borrower or any Restricted Subsidiary;

(d) no Borrower nor any of its Restricted Subsidiaries has agreed to assume or accept responsibility, for any liability of any other Person under any Environmental Law;

(e) there are no existing facts, circumstances, conditions or occurrences with respect to the business, operations, properties or facilities of any Borrower or any of its Restricted Subsidiaries, or, to the knowledge of any Borrower, any of their respective predecessors, that could reasonably be expected to give rise to any Environmental Claim; and

(f) there are no current, or reasonably anticipated future, requirements under Environmental Law (including without limitation, permit requirements, operational restrictions, clean-up or reclamation costs) that would result in expenditures other than expenditures for which there is a current financial reserve or other appropriate allocation in any Borrower's or its Restricted Subsidiaries' operating or capital expenditure budgets.

Section 3.18 Employment and Labor Relations. No Borrower or any of their Restricted Subsidiaries is engaged in any unfair labor practice that would reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect. There is

(a) no unfair labor practice complaint pending against any Borrower or Restricted Subsidiary or, to the knowledge of any Borrower, threatened against any of them, before the National Labor Relations Board, and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement is so pending against any Borrower or Restricted Subsidiary or, to the knowledge of any Borrower, threatened against any of them,

(b) on the Closing Date, no strike, labor dispute, slowdown or stoppage pending against any Borrower or Restricted Subsidiary or, to the knowledge of any Borrower, threatened against any Borrower or Restricted Subsidiary,

(c) no equal employment opportunity charges or other claims of employment discrimination are pending or, to any Borrower's knowledge, threatened against any Borrower or Restricted Subsidiary, and

(d) no wage and hour department investigation has been made of any Borrower or Restricted Subsidiary, except (with respect to any matter specified in clauses (a) through (d) above, either individually or in the aggregate) such as would not reasonably be expected to have a Material Adverse Effect.

Section 3.19 Intellectual Property, etc. Each Borrower and each of its Restricted Subsidiaries owns or has the right to use all the patents, trademarks, permits, domain names, service

marks, trade names, copyrights, licenses, franchises, inventions, trade secrets, technology, data, proprietary information and know-how of any type, whether or not written (including, but not limited to, rights in computer programs and databases) and formulas, or rights with respect to the foregoing (collectively, "**Intellectual Property**"), and has obtained assignments of all leases, licenses and other rights of whatever nature, necessary for the present conduct of its business, without any known conflict with the rights of others which, or the failure to own or have which, as the case may be, could reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect. The conduct of each Borrower's and each of its Restricted Subsidiaries' respective businesses does not infringe, violate or other conflict with, in any material respect, the proprietary rights of any third party. No Borrower nor any Restricted Subsidiaries has received any notice, or is otherwise aware, of any infringement or violation of or conflict with the proprietary rights of any third party, which infringement, violation or conflict, if the subject of an unfavorable decision, would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or materially interfere with the operation of their respective businesses by any Borrower or its Restricted Subsidiaries.

Section 3.20 Anti-Terrorism Laws; Sanctions.

(a) No Credit Party, none of its Restricted Subsidiaries and, to the knowledge of each Credit Party, none of its Affiliates and none of the respective officers, directors, brokers or agents of such Credit Party, such Restricted Subsidiary or Affiliate (i) has violated or is in violation of Anti-Terrorism Laws or (ii) has engaged or engages in any transaction, investment, undertaking or activity that conceals the identity, source or destination of the proceeds from any category of offenses designated in the "Forty Recommendations" and "Nine Special Recommendations" published by the Organisation for Economic Cooperation and Development's Financial Action Task Force on Money Laundering.

(b) No Credit Party, none of its Restricted Subsidiaries and, to the knowledge of each Credit Party, none of its Affiliates and none of the respective officers, directors, brokers or agents of such Credit Party, such Restricted Subsidiary or such Affiliate that is acting or benefiting in any capacity in connection with the DIP Revolving Loans is an Embargoed Person.

(c) No Credit Party, none of its Restricted Subsidiaries and, to the knowledge of each Credit Party, none of its Affiliates and none of the respective officers, directors, brokers or agents of such Credit Party, such Restricted Subsidiary or such Affiliate acting or benefiting in any capacity in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Embargoed Person, (ii) deals in, or otherwise engages in any transaction related to, any property or interests in property blocked pursuant to any Anti-Terrorism Law or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(d) Neither the use of the DIP Revolving Loans or any other proceeds by any Borrower and its Subsidiaries, nor any other transaction contemplated by this Agreement, will violate the FCPA or Anti-Terrorism Laws.

(e) As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

Section 3.21 Flood Zone. No Mortgage encumbers improved Real Property that is located in an area that has been identified by the Federal Emergency Management Agency (or any successor agency) as an area having special flood hazards within the meaning of the Flood Insurance Laws unless

flood insurance available under such Flood Insurance Laws has been obtained in accordance with Section 4.3(b).

Section 3.22 [Reserved].

Section 3.23 Senior Indebtedness. The DIP ABL Obligations constitute "Senior Obligations" (or such other term of comparable meaning) of the Borrowers under and as defined in the Prepetition Junior Lien Intercreditor Agreement.

Section 3.24 Brokers. Except for fees payable to DIP ABL Agent, DIP ABL Lenders, Prepetition ABL Agent, Prepetition ABL Lenders and Cantor, no broker, finder or other intermediary has brought about the obtaining, making or closing of the transactions contemplated by the DIP ABL Financing Documents, and no Credit Party has or will have any obligation to any Person in respect of any finder's or brokerage fees, commissions or other expenses in connection herewith or therewith.

Section 3.25 Budget. The initial Budget, which was delivered to DIP ABL Agent and DIP ABL Lenders on or prior to the Closing Date, and each subsequent Budget was prepared in good faith based upon assumptions the Borrowers believed to be reasonable assumptions on the date of delivery of such Budget.

Section 3.26 Chapter 11 Cases; Orders.

(a) The Chapter 11 Cases were commenced on the Petition Date in accordance with applicable laws and proper notice thereof was given for (i) the motion seeking approval of the DIP ABL Financing Documents and the DIP Orders, (ii) the hearing for the entry of the Interim DIP Order and (iii) the hearing for the entry of the Final DIP Order (provided that notice of the final hearing will be given as soon as reasonably practicable after such hearing has been scheduled). The Borrowers shall give, on a timely basis as specified in the Interim DIP Order or Final DIP Order, as applicable, all notices required to be given to all parties specified in the Interim DIP Order or Final DIP Order, as applicable.

(b) After the entry of the Interim DIP Order, and pursuant to and to the extent permitted in the DIP Orders, the DIP ABL Obligations will constitute allowed Super-priority Claims in the Chapter 11 Cases having priority over all administrative expense claims and unsecured claims against the Borrowers now existing or hereafter arising, of any kind whatsoever, whether asserted or unasserted, including all administrative expense claims of the kind specified in sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under Section 364(c)(l) of the Bankruptcy Code, subject only to (i) the Carve Out and (ii) the priorities set forth in the DIP Orders, as applicable.

(c) After the entry of the Interim DIP Order and pursuant to and to the extent provided in the DIP Orders, the DIP ABL Obligations will be secured by a valid and perfected Lien on all of the DIP ABL Collateral (except with respect to Liens on proceeds of Avoidance Actions, which shall be subject to entry of the Final DIP Order), and, as to priority, subject only to the Carve Out or as otherwise set forth in the DIP Orders.

(d) The Interim DIP Order (with respect to the period on and after entry of the Interim DIP Order and prior to entry of the Final DIP Order) or the Final DIP Order (with respect to the period on and after entry of the Final DIP Order), as the case may be, is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), vacated, or, without the DIP ABL Agent's and Required DIP ABL Lenders' consent, modified or amended. The Borrowers are in compliance in all material respects with the DIP Orders.

(e) Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Interim DIP Order and the Final DIP Order, as the case may be, upon the DIP ABL Termination Date (whether by acceleration or otherwise) of any of the DIP ABL Obligations, DIP ABL Agent and DIP ABL Lenders shall be entitled to immediate payment of such DIP ABL Obligations and to enforce the remedies provided for hereunder or under applicable laws, without further notice, motion or application to, hearing before, or order from, the Bankruptcy Court.

ARTICLE 4 - AFFIRMATIVE COVENANTS

Each Borrower agrees that, so long as any DIP Credit Exposure exists:

Section 4.1 Information Covenants. Borrowers shall furnish to DIP ABL Agent, on behalf of each DIP ABL Lender:

(a) Monthly and Quarterly Financial Statements.

(i) Within thirty-five (35) days after the end of the first two calendar months of each Fiscal Quarter in each Fiscal Year of Blackhawk Parent, the consolidated balance sheet of Blackhawk Parent and its Subsidiaries as at the end of such monthly accounting period and the related consolidated statements of income and retained earnings and statement of cash flows (together with a detailed reconciliation, reflecting such financial information for Borrowers and their Restricted Subsidiaries, on the one hand, and Borrowers' Unrestricted Subsidiaries, on the other hand) for such monthly accounting period and for the elapsed portion of the Fiscal Year ended with the last day of such monthly accounting period, in each case setting forth comparative figures for the corresponding monthly accounting period in the prior Fiscal Year and comparable budgeted figures for such monthly accounting period as set forth in the respective budget delivered pursuant to Section 4.1(d), all of which shall be certified by an Responsible Officer of the Blackhawk Parent that they fairly present in all material respects in accordance with GAAP the financial condition of the Borrower and its Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to normal year-end audit adjustments and the absence of footnotes.

(ii) Within 45 days after the close of each of the first three Fiscal Quarters in each Fiscal Year of Blackhawk Parent, (x) the consolidated balance sheet of Blackhawk Parent and its Subsidiaries as at the end of such quarterly accounting period and the related consolidated statements of income and retained earnings and statement of cash flows (together with a detailed reconciliation, reflecting such financial information for Borrowers and their Restricted Subsidiaries, on the one hand, and Borrowers' Unrestricted Subsidiaries, on the other hand) for such quarterly accounting period and for the elapsed portion of the Fiscal Year ended with the last day of such quarterly accounting period, in each case setting forth comparative figures for the corresponding quarterly accounting period in the prior Fiscal Year and comparable budgeted figures for such quarterly accounting period as set forth in the respective budget delivered pursuant to Section 4.1(d), all of which shall be certified by an Responsible Officer of the Blackhawk Parent that they fairly present in all material respects in accordance with GAAP the financial condition of Blackhawk Parent and its Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to normal year-end audit adjustments and the absence of footnotes, and (y) management's discussion and analysis of the consolidated financial condition of the Borrowers and their

Subsidiaries and important operational and financial developments during such quarterly accounting period.

(b) Annual Financial Statements. Within 90 days after the close of each Fiscal Year of Blackhawk Parent, (i) the consolidated balance sheet of Blackhawk Parent and its Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of income and retained earnings, and statement of cash flows (together with a detailed reconciliation, reflecting such financial information for Borrowers and their Restricted Subsidiaries, on the one hand, and the Borrowers' Unrestricted Subsidiaries, on the other hand) for such Fiscal Year setting forth comparative figures for the preceding Fiscal Year and certified by KPMG LLP or other independent certified public accountants of recognized national standing reasonably acceptable to DIP ABL Agent (the "**Independent Auditors**"), accompanied by a report of such accounting firm (which report shall be without a "going concern" or like qualification or exception and without any qualification or exception as to scope of audit other than a "going concern" qualification resulting solely from (i) an upcoming maturity under this Agreement or the Prepetition ABL Credit Agreement or the DIP Term Loan Agreement or (ii) an anticipated breach of any financial covenant the Prepetition ABL Credit Agreement or the DIP Term Loan Agreement or any refinancing thereof) stating that in the course of its regular audit of the financial statements of the Borrowers and their Subsidiaries, which audit was conducted in accordance with generally accepted auditing standards, such accounting firm obtained no knowledge of any Default or a DIP Event of Default relating to financial or accounting matters which has occurred and is continuing or, if in the opinion of such accounting firm such a Default or a DIP Event of Default has occurred and is continuing, a statement as to the nature thereof, and (ii) management's discussion and analysis of the consolidated financial condition of the Borrowers and their Subsidiaries and important operational and financial developments during such Fiscal Year.

(c) Borrowing Base Certificates. Within fifteen (15) days after the last day of each month, a duly completed Borrowing Base Certificate signed by a Responsible Officer, with aged listings of accounts receivable and accounts payable (by invoice date) and such other supporting information as may be reasonably requested from time to time by DIP ABL Agent. Borrowers shall, concurrent with the delivery of financial statements pursuant to Section 4.1(a)(ii) or (b) deliver to DIP ABL Agent a schedule of Eligible Accounts denoting, for the thirty (30) largest Account Debtors during the quarter for which such financial statements are provided or, in the case of financial statements provided pursuant to Section 4.1(b), the last fiscal quarter of the applicable fiscal year.

(d) Budgets. In addition to the Budgets and Budget Variance Reports required under Article 6, no later than 60 days following the first day of each Fiscal Year of the Blackhawk Parent, a budget in form reasonably satisfactory to the DIP ABL Agent for each such Fiscal Year prepared in detail and which shall include (i) budgeted statements of income, sources and uses of cash and balance sheets for the Blackhawk Parent and its Subsidiaries on a consolidated basis (with a reasonably detailed breakdown by mining complex) and (ii) a description in reasonable detail of the principal assumptions upon which such budget is based.

(e) Compliance Certificates. At the time of the delivery of the financial statements provided for in Sections 4.1(a) and (b), a Compliance Certificate from a Responsible Officer certifying on behalf of Borrowers that, to such officer's knowledge after due inquiry, no Default or DIP Event of Default has occurred and is continuing or, if any Default or DIP Event of Default has occurred and is continuing, specifying the nature and extent thereof, which certificate shall, if delivered with the financial statements required by Section 4.1(b), certify that there have been no changes to the Perfection Certificate since the Closing Date or, if later, since the date of the most recent certificate delivered pursuant to this Section 4.1(e), or if there have been any such changes, include a Perfection Certificate Supplement and

certify whether the Credit Parties have otherwise taken all actions required to be taken by them pursuant to the Security Documents in connections with any such changes.

(f) Notice of Default, Litigation, Material Adverse Effect and Returns and Recoveries.

(i) Promptly, and in any event within five (5) Business Days after any Responsible Officer of any Borrower or any of its Restricted Subsidiaries obtains actual knowledge thereof, notice of

(A) the occurrence of any event which constitutes a Default or a DIP Event of Default.

(B) any litigation or governmental investigation or proceeding pending against any Borrower or any of its Restricted Subsidiaries (x) which, either individually or in the aggregate, has had, or could reasonably be expected to have, a Material Adverse Effect or (y) with respect to any DIP ABL Financing Document,

(C) any other event, change or circumstance that has had, or could reasonably be expected to have, a Material Adverse Effect, or

(D) of any disputes and claims that involve Accounts owed by customer Account Debtors or other Accounts that are Eligible Accounts, in each case, in excess of $5,000,000.

(ii) Borrower Representative shall deliver to DIP ABL Agent, DIP ABL Lenders, and their respective counsel any and all information and developments in connection with any proposed transaction or Change of Control and any other event or condition which is reasonably likely to have a Material Adverse Effect with respect to Borrowers, the rights and obligations under this Agreement and the other DIP ABL Financing Documents or the Chapter 11 Cases, including the progress of any proposed or confirmed chapter 11 plan and/or disclosure statement, including the Acceptable Chapter 11 Plan and the Acceptable Disclosure Statement. Notwithstanding anything to the contrary in this Agreement, all accounts that constitute DIP ABL Collateral shall be opened and maintained in accordance with the DIP Orders and all cash management and similar orders entered by the Bankruptcy Court in the Chapter 11 Cases (all such orders to be in form and substance acceptable to DIP ABL Agent and DIP ABL Lenders).

(g) Other Reports and Filings. Promptly after the filing or delivery thereof, copies of all financial information, proxy materials, registration statements and reports, if any, which any Borrower or any of its Subsidiaries shall publicly file with the Securities and Exchange Commission or any successor thereto (the "**SEC**") or deliver to holders (or any trustee, agent or other representative therefor) of any of its material Indebtedness pursuant to the terms of the documentation governing the same.

(h) Environmental Matters. Promptly after any Responsible Officer of any Borrower or any of its Restricted Subsidiaries obtains actual knowledge thereof, notice of the following environmental matters to the extent that such environmental matters, either individually or aggregated with all other such environmental matters, could reasonably be expected to have a Material Adverse Effect:

(i) any pending or threatened Environmental Claim against any Borrower or any of its Restricted Subsidiaries;

(ii) any condition or occurrence on or arising from any Real Property owned, leased or operated by any Borrower or any of its Restricted Subsidiaries that (A) results in noncompliance by any Borrower or any of its Restricted Subsidiaries with any Environmental Law or (B) could reasonably be expected to form the basis of an Environmental Claim against any Borrower or any of its Restricted Subsidiaries or any such Real Property;

(iii) any condition or occurrence on any Real Property owned, leased or operated by any Borrower or any of its Restricted Subsidiaries that could reasonably be expected to cause such Real Property to be subject to any restrictions on the ownership, lease, occupancy, use or transferability by any Borrower or any of its Restricted Subsidiaries of such Real Property under any Environmental Law;

(iv) the taking of any removal or remedial action to the extent required by any Environmental Law or any Governmental Authority in response to the Release or threatened Release of any Hazardous Material on any Real Property owned, leased or operated by any Borrower or any of its Restricted Subsidiaries; or

(v) any material delay, or material conditions imposed, in connection with the issuance, transfer or renewal of any mining permit or other governmental authorization.

All such notices shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence or removal or remedial action and such Borrower's or such Restricted Subsidiary's response thereto.

(i) Insurance. By the last day of each Fiscal Year (commencing with the Fiscal Year ending December 31, 2019), a certificate from Blackhawk Parent's insurance broker(s) as to Blackhawk Parent's satisfaction of the requirements of Section 4.3 as of the date of such certificate.

(j) Payroll. Together with the delivery of each Compliance Certificate, evidence of payment and satisfaction of all material payroll, withholding and similar taxes due and owing by the Borrowers with respect to the payroll period(s) occurring during the applicable Fiscal Quarters (it being understood that reports from a Borrower's payroll service provider shall be deemed to satisfactory evidence).

(k) Other Information. From time to time, such other business, financial or corporate information or documents with respect to any Borrower or any of its Subsidiaries as DIP ABL Agent or any DIP ABL Lender (through DIP ABL Agent) may reasonably request.

Section 4.2 Books, Records and Inspections; Quarterly Conference Calls.

(a) Each Borrower will keep, and will cause each Subsidiary to keep, proper books of record substantially in accordance with GAAP in which full, true and correct entries shall be made consistent with existing business practices; and will permit, and will cause each Subsidiary to permit, at the sole cost of the applicable Borrower or any Restricted Subsidiary, representatives of DIP ABL Agent and of any DIP ABL Lender (i) (A) to visit and inspect any of their respective properties, to examine any of their respective books and records and (B) to conduct a collateral audit and analysis of their respective

operations and the DIP ABL Collateral; (ii) to verify the amount and age of the Accounts of a customer Account Debtors, the identity and credit of such respective Account Debtors, to review the billing practices of Borrowers, (iii) to reasonably discuss their respective affairs, finances, cash and liquidity management, restructuring activities and accounts with their respective officers and senior employees and, so long as an officer or other senior employee is afforded an opportunity to be present during such discussions, their independent public accountants, in each case, during normal business hours and as often as may reasonably be desired and (iv) to conduct an Inventory appraisal. Notwithstanding anything to the contrary in this Section 4.2 or Section 4.12, none of the Borrowers or any of the Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discuss, any document, information or other matter that (x) constitutes non-financial trade secrets or non-financial propriety information, (y) in respect of which disclosure to DIP ABL Agent or DIP ABL Lender (or their respective representatives) is prohibited or restricted by applicable law or, to extent not entered into contemplation of this Agreement, binding agreements or obligations or (z) is subject to attorney-client or similar privilege or constitutes attorney work product; *provided*, the Borrowers shall use commercially reasonable efforts (to the extent permitted) to disclose the requested information without disclosing the information described in the foregoing clauses (x) through (z).

(b) At the request of DIP ABL Agent, Blackhawk Parent will within ten (10) days (or such later time as may be agreed by DIP ABL Agent) after the date of the delivery (or, if later, required delivery) of the quarterly and annual financial information pursuant to Sections 4.1(a)(ii) and (b), hold a conference call or teleconference, at a time selected by Blackhawk Parent and reasonably acceptable to DIP ABL Agent, with all of DIP ABL Lenders that choose to participate, to review the financial results of the previous Fiscal Quarter or Fiscal Year, as the case may be, and the financial condition of Blackhawk Parent and its Subsidiaries and the budgets presented for the current Fiscal Year of Blackhawk Parent and its Subsidiaries.

Section 4.3 Payment and Performance of DIP ABL Obligations.

(a) Each Borrower will, and will cause each of its Restricted Subsidiaries to,

(i) keep all property necessary to the business of each Borrower and its Restricted Subsidiaries in good working order and condition, ordinary wear and tear excepted and subject to the occurrence of casualty events,

(ii) maintain with financially sound and reputable insurance companies insurance on all such property and against all such risks as is consistent and in accordance with industry practice for companies similarly situated owning similar properties and engaged in similar businesses as such Borrower and its Restricted Subsidiaries, and

(iii) furnish to DIP ABL Agent, upon its request therefor, full information as to the insurance carried.

Such insurance shall include physical damage insurance on all real and personal property (whether now owned or hereafter acquired) on an all risk basis (subject to customary exceptions) and business interruption insurance on coal preparation plants and rail load-outs (subject to customary exceptions). The provisions of this Section 4.3 shall be deemed supplemental to, but not duplicative of, the provisions of any Security Documents that require the maintenance of insurance.

(b) If any "building" or "mobile home" (each as defined in Regulation H as promulgated by the Federal Reserve Board under the Flood Insurance Laws) constituting DIP ABL

Collateral is at any time located on Real Property in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the Flood Insurance Laws, then Borrowers shall, or shall cause each Credit Party to

(i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and

(ii) deliver to DIP ABL Agent executed borrower notices as required by the Flood Insurance Laws and evidence of such compliance both in form and substance reasonably acceptable to DIP ABL Agent.

(c) All policies or certificates (or certified copies thereof) with respect to the insurance required by Sections 4.3(a) and (b) (and any other insurance maintained by such Borrower and/or such Restricted Subsidiaries) (i) shall be endorsed (solely to the extent such policies permit endorsement) to DIP ABL Agent's satisfaction for the benefit of DIP ABL Agent (including, without limitation, by naming DIP ABL Agent as loss payee and/or additional insured (solely to the extent such policies permit such designation)), and (ii) shall state that the respective insurer shall use commercially reasonable efforts to provide DIP ABL Agent with at least thirty (30) days' prior written notice of cancellation thereof.

(d) If any Borrower or any Restricted Subsidiary shall fail to maintain insurance in accordance with this Section 4.3, or if any Borrower or any Restricted Subsidiaries shall fail to so endorse and deposit all policies or certificates with respect thereto, DIP ABL Agent shall have the right (but shall be under no obligation) to procure such insurance and the Borrowers agree to reimburse DIP ABL Agent for all costs and expenses of procuring such insurance.

Section 4.4 Existence; Franchises. Each Borrower will, and will cause each of its Restricted Subsidiaries to, do or cause to be done, all things necessary to preserve and keep in full force and effect its existence and its material rights, franchises, licenses, permits and Intellectual Property, necessary to its business; *provided*, *however*, that nothing in this Section 4.4 shall prevent (i) sales of assets and other transactions by Blackhawk Parent or any of its Restricted Subsidiaries in accordance with Section 5.2 or 5.5 or (ii) the withdrawal by Blackhawk Parent or any of its Restricted Subsidiaries of its qualification as a foreign Company in any jurisdiction if such withdrawal could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 4.5 Compliance with Laws, etc.. Except as otherwise excused or prohibited by the Bankruptcy Code, and subject to any required approval by the Bankruptcy Court, each Borrower will, and will cause each of its Restricted Subsidiaries to, comply with all applicable Requirements of Law, statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities in respect of the conduct of its business and the ownership of its property (owned or leased) (including all Mining Laws, Mining Permits, applicable statutes, regulations and orders), except such non-compliances as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 4.6 Compliance with Environmental Laws.

(a) Subject to any required approval by the Bankruptcy Court, each Borrower will comply, and will cause each of its Restricted Subsidiaries to comply, with all Environmental Laws and

permits applicable to or required in respect of the conduct of its business or operations or by the ownership, lease or use of any Real Property now or hereafter owned, leased or operated by a Borrower or any of its Restricted Subsidiaries, except for such noncompliance as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and will promptly pay or cause to be paid all costs and expenses incurred in connection with such compliance, and will keep or cause to be kept all such Real Property free and clear of any Liens imposed pursuant to Environmental Laws.

(b) (i) After the receipt by DIP ABL Agent or any DIP ABL Lender of any notice of the type described in Section 4.1(h), (ii) at any time that any Borrower or any of its Restricted Subsidiaries is not in compliance with Section 4.6(a) or (iii) in the event that DIP ABL Agent or DIP ABL Lenders have exercised any of the remedies pursuant to the last paragraph of Section 10.2, the Borrowers will (in each case) provide, at the sole expense of such Borrower and at the request of DIP ABL Agent, an environmental report concerning any relevant Real Property owned, leased or operated by any Borrower or any of its Restricted Subsidiaries, prepared by an environmental consulting firm reasonably approved by DIP ABL Agent, evaluating the identified noncompliance or potential liability and indicating, if relevant, the presence or absence of Hazardous Materials and the estimated cost of any removal or remedial action in connection with such Hazardous Materials on such Real Property. If any Borrower fails to take diligent efforts to commence preparation of such report or fails to provide the same within a reasonable time (not to exceed sixty (60) days, unless a longer time is required to complete the required investigations or assessments) after such request was made, DIP ABL Agent may after written notice to such Borrower, retain an environmental consulting firm to prepare such report, the cost of which shall be borne by such Borrower, and such Borrower shall and hereby does grant to DIP ABL Agent and DIP ABL Lenders and their respective agents access to such Real Property, and specifically grants DIP ABL Agent and DIP ABL Lenders an irrevocable non-exclusive license, subject to the rights of tenants, to undertake such an assessment at any reasonable time upon reasonable notice to such Borrower, all at the sole expense of such Borrower; *provided*, *however*, that such environmental assessment shall not include the taking of soil, groundwater, surface water, air, or building material samples or other invasive testing unless such Borrower has provided its prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

Section 4.7 ERISA. Borrowers shall supply to DIP ABL Agent (in sufficient copies for all DIP ABL Lenders, if DIP ABL Agent so requests):

(a) promptly and in any event within 15 days after receiving a request from DIP ABL Agent a copy of IRS Form 5500 (including the Schedule S) with respect to a Benefit Plan;

(b) promptly and in any event within thirty (30) days after any Borrower, any Restricted Subsidiary or any ERISA Affiliate knows or has reason to know that any ERISA Event has occurred that would reasonably be expected to result in a Material Adverse Effect, a certificate of an Responsible Officer of the Borrower Representative describing such ERISA Event and the action, if any, proposed to be taken with respect to such ERISA Event and a copy of any notice filed with the PBGC or the IRS pertaining to such ERISA Event and any notices received by any Borrower, any Restricted Subsidiary or any ERISA Affiliate from the PBGC or any other Governmental Authority with respect thereto; provided that, in the case of ERISA Events under paragraph (d) of the definition thereof, the 30-day period set forth above shall be a 10-day period, and, in the case of ERISA Events under paragraph (b) of the definition thereof, in no event shall notice be given later than ten (10) days after the occurrence of the ERISA Event; and

(c) to the extent it is reasonably expected to result in a Material Adverse Effect, promptly, and in any event within thirty (30) days, after becoming aware that there has been

(i) an increase in Unfunded Pension Liabilities (taking into account only Benefit Plans with positive Unfunded Pension Liabilities),

(ii) an increase since the date the representations hereunder are given or deemed given, or from any prior notice, as applicable, in potential withdrawal liability under Section 4201 of ERISA, if any Borrower, any Subsidiary and/or any ERISA Affiliate were to withdraw completely from any and all Multiemployer Plans, or

(iii) the adoption of any amendment to a Benefit Plan which results in an increase in contribution obligations of any Borrower or any Subsidiary, a detailed written description thereof from a Responsible Officer of Borrower Representative.

Section 4.8 End of Fiscal Years; Fiscal Quarters. Each Borrower will cause (i) its fiscal year to end on December 31 of each calendar year and (ii) its fiscal quarters to end on the last day of each period described in the definition of "Fiscal Quarter."

Section 4.9 Performance of DIP ABL Obligations. Each Borrower will, and will cause each of its Restricted Subsidiaries to, perform all of its obligations under the terms of each mortgage, indenture, security agreement, loan agreement or credit agreement and each other Contractual Obligation by which it is bound (including all Mining Leases), except such non-performances as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 4.10 Payment of Taxes. Each Borrower will pay and discharge, and will cause each of its Restricted Subsidiaries to pay and discharge, all Taxes required to be paid by them, prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid, might become a Lien or charge upon any properties of the Borrower or any of its Restricted Subsidiaries not otherwise permitted under Section 5.1(j); *provided* that neither the Borrower nor any of its Restricted Subsidiaries shall be required to pay any such Tax (i) which is being contested in good faith and by proper proceedings if it has maintained adequate reserves with respect thereto in accordance with GAAP, (ii) the nonpayment of which could not reasonably be expected to cause a Material Adverse Effect, or (iii) to the extent otherwise excused or prohibited by the Bankruptcy Code and for which payment has not otherwise been required by the Bankruptcy Court.

Section 4.11 Use of Proceeds.

(a) Borrowers shall use the proceeds of DIP Revolving Loans solely in accordance with the terms of the DIP Orders and the Approved Budget, including: (i) to pay (1) all reasonable fees due to DIP ABL Lenders and DIP ABL Agent, (2) all professional fees and expenses (including reasonable fees and expenses of attorneys (including counsel for Borrowers, Kirkland & Ellis LLP, and counsel to DIP ABL Agent and DIP ABL Lenders, Hogan Lovells US LLP and their bankruptcy counsel Morris, Nichols, Arsht & Tunnell LLP), local counsel to DIP ABL Agent and DIP ABL Lenders, and financial advisors) incurred by DIP ABL Lenders and DIP ABL Agent, including those incurred in connection with the preparation, negotiation, documentation and Bankruptcy Court approval of the rights and obligations under this Agreement and the other DIP ABL Financing Documents, and (3) adequate protection payments as set forth in DIP Orders, and (ii) to provide working capital, and for other general corporate purposes of Borrowers and their Subsidiaries, and to pay administration costs of the Chapter 11 Cases and claims or amounts approved by the Bankruptcy Court as set forth in the Approved Budget. Notwithstanding the foregoing, DIP ABL Lenders agree that any amounts needed to fund the Carve Out may be applied for such purpose on terms set forth herein and in the DIP Orders. No portion of the proceeds of the Loans will be used for family, personal, agricultural or household use or otherwise not in accordance with Section 3.8.

(b) Notwithstanding the foregoing, no portion of Borrowers' Cash Collateral, if any, the DIP Revolving Loans, the DIP ABL Collateral, the Prepetition ABL Loans, the Prepetition ABL Collateral, or the Carve Out may be used for any purpose that is prohibited under the Bankruptcy Code or a DIP Order

Section 4.12 Additional Borrowers, Guarantees and Security; Further Assurances; etc.

(a) If any Borrower or any Restricted Subsidiaries acquires or creates another Subsidiary (other than an Excluded Subsidiary) on or after the Closing Date or if a Subsidiary ceases to be an Excluded Subsidiary, then Borrowers shall cause:

(i) the Capital Stock or other Equity Interests of such Subsidiary to be pledged pursuant to, and to the extent required by, this Agreement and the Security Documents and the certificates, if any, representing such stock or other Equity Interests, together with stock or other appropriate powers duly executed in blank, to be delivered to DIP ABL Agent (or the bailee for the Agent pursuant to the DIP ABL Intercreditor Agreement) within thirty (30) Business Days (or such later date as determined by DIP ABL Agent in its sole discretion) of the date on which such Subsidiary was acquired or created,

(ii) each such Subsidiary to become a Debtor and a Borrower hereunder and under all other applicable DIP ABL Financing Documents such that such Subsidiary is jointly and severally liable for all obligations of Borrowers hereunder and under the other DIP ABL Financing Documents pursuant to a joinder agreement or other similar agreement in form and substance reasonably satisfactory to DIP ABL Agent or (if DIP ABL Agent shall so elect, in its reasonable discretion) to become a Guarantor of the obligations of Borrowers hereunder and under the other DIP ABL Financing Documents pursuant to the Subsidiaries Guaranty and, in each case, to execute a counterpart to the Security Agreement within 30 Business Days (or such later date as determined by DIP ABL Agent in its sole discretion) of the date on which such Subsidiary was acquired or created, and

(iii) each such Subsidiary, to the extent reasonably requested by DIP ABL Agent or the Required DIP ABL Lenders, to take all actions required pursuant to the other provisions of this Section 4.12 within the time periods set forth in such other provisions of this Section 4.12.

In addition, each such Subsidiary that is required to execute any DIP ABL Financing Document shall, if requested by DIP ABL Agent, execute and deliver, or cause to be executed and delivered, all other relevant documentation (including opinions of counsel) of the type described in Section 7.1 as such Subsidiary would have had to deliver if such Subsidiary were a Credit Party on the Closing Date.

(b) The Borrowers will, and will cause each other Credit Party to, grant to DIP ABL Agent for the benefit of the Secured Creditors security interests in any after-acquired assets (other than (i) Real Property, which is addressed in subsection (c) below, and (ii) Excluded Assets) of any Borrower and such other Credit Party that are not covered by the Security Documents then in effect or that cease to be Excluded Assets (or as otherwise required at such time pursuant to any applicable intercreditor or similar agreement or any DIP Order, as the case may be), in each case, within sixty (60) days (or such later date as determined by DIP ABL Agent in its sole discretion) after the close of the fiscal quarter of Blackhawk Parent in which the relevant acquisition occurred or the relevant asset ceased to be an Excluded Asset. All such security interests shall be granted pursuant to documentation (collectively, the

"**Additional Security Documents**") in substantially the same form as the original Security Documents and shall constitute valid and enforceable perfected security interests superior to and, subject to the any applicable intercreditor or similar agreement or the Interim DIP Order or the Final DIP Order (as applicable), as the case may be, prior to the rights of all third Persons and enforceable against third parties and subject to no other Liens except for Permitted Liens and subject to the DIP Orders. Within thirty (30) days after the grant of any such security interest (or such later date as determined by DIP ABL Agent in its sole discretion), the Additional Security Documents or instruments related thereto shall be duly recorded or filed in such manner and in such places as are required by law to establish, perfect, preserve and protect the Liens in favor of DIP ABL Agent required to be granted pursuant to the Additional Security Documents and all taxes, fees and other charges payable in connection therewith shall be paid in full.

(c) Within sixty (60) days (or such later date as determined by DIP ABL Agent in its sole discretion) after (x) the close of the fiscal quarter of Borrower in which any Material Real Property (other than Excluded Assets) is acquired or ceases to be an Excluded Asset (collectively, "**After-Acquired Real Property**"), and (y) the reasonable request of the DIP ABL Agent with respect to any Material Real Property existing on the Closing Date (together with the After-Acquired Real Property, collectively, the "**Applicable Real Property**"), in each case if reasonably requested by DIP ABL Agent, DIP ABL Agent shall have received:

(i) fully executed counterparts of Mortgages and corresponding UCC fixture filings and As-Extracted Collateral Filings, in substantially the same form as the applicable security documents under the Prepetition ABL Loan Documents, which Mortgages, UCC fixture filings and As-Extracted Collateral Filings, shall cover each Applicable Real Property, together with evidence that counterparts of such Mortgages, UCC fixture filings and As-Extracted Collateral Filings have been delivered to DIP ABL Agent or its designee for recording;

(ii) subject to subsection (d) below, such material consents and approvals as shall be reasonably deemed necessary by DIP ABL Agent in order for the owner or holder of the fee or leasehold interest constituting such Applicable Real Property to grant the Lien contemplated by the Mortgage with respect to the Applicable Real Property;

(iii) to the extent requested by DIP ABL Agent, copies of all leases in which any Borrower or any of its Subsidiaries holds the lessor's interest or other agreements relating to possessory interests, if any; *provided* that, to the extent any of the foregoing affect such Applicable Real Property, to the extent requested by DIP ABL Agent, such agreements shall be subordinate to the Lien of the Mortgage to be recorded against such Applicable Real Property, either expressly by its terms or pursuant to a subordination, non-disturbance and attornment agreement (with any such agreement being reasonably acceptable to DIP ABL Agent);

(iv) with respect to each After-Acquired Real Property improved by a "building" or "mobile home" (each as defined in Regulation H as promulgated by the Federal Reserve Board under the Flood Insurance Laws), to the extent such building or mobile home is required to be included in the DIP ABL Collateral, Flood Documentation reasonably satisfactory in form and substance to the DIP ABL Agent; and

(v) from local counsel in each state in which Applicable Real Property is located, an opinion in form and substance reasonably satisfactory to the DIP ABL Agent.

(d) Each Borrower will, and will cause each other Credit Party to, at the request of DIP ABL Agent, use commercially reasonable efforts to obtain the consent or waiver of any Person necessary to permit each Borrower and other Credit Parties to grant to DIP ABL Agent, for the benefit of the Secured Creditors, security interests and Mortgages in such assets and Real Property (whether owned or leased on the date hereof or subsequently acquired by such Borrower or the other Credit Parties) as would otherwise constitute Excluded Assets under this Agreement; *provided* that the obligation of such Borrower and other Credit Parties to use commercially reasonable efforts shall not require such Borrower or any other Credit Party to request any consent or waiver with respect to a restriction on assignment in any agreement which is imposed by any legal requirement or which such Borrower or such other Credit Party reasonably determines would have a material adverse effect on such agreement or on such Borrower's or other Credit Party's relationship with the other party or parties to such agreement; *provided*, *further*, that the use of commercially reasonable efforts shall not require any payment or other consideration from such Borrower or other Credit Parties; *provided*, *further*, that any such use of commercially reasonable efforts with respect to any such assets may be terminated by Borrowers sixty (60) days after the commencement of such commercially reasonable efforts. When negotiating the terms of any lease or other agreement entered into after the date of this Agreement, each Borrower will, and will cause each other Credit Party to, use commercially reasonable efforts (as described above) to eliminate any restriction on the assignment and/or granting of a Lien in such lease or other agreement.

(e) Subject to the terms of the Security Documents and the DIP Orders, Borrowers will, and will cause each other Credit Party to, execute any and all further documents, financing statements, agreements, and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust, and other documents) that may be required under any applicable law, or that DIP ABL Agent or Required DIP ABL Lenders may reasonably request, in order to grant, preserve, protect, and perfect the validity and priority of the security interests created or intended to be created by the applicable Security Documents, all at the expense of Borrowers and the Restricted Subsidiaries.

(f) Upon the request of DIP ABL Agent, Borrowers shall (i) obtain a landlord's agreement or mortgagee agreement, as applicable, from the lessor of each leased property or mortgagee of owned property where the records relating to DIP ABL Collateral and/or software and equipment relating to such records or DIP ABL Collateral is stored or located, (ii) use commercially reasonable efforts to obtain a landlord's agreement or mortgage agreement, as applicable, from the lessor of each other leased property or mortgagee of other owned property with respect to any business location where any portion of the DIP ABL Collateral included in or proposed to be included in the Borrowing Base is stored or located, which agreement or letter, in each case, shall be reasonably satisfactory in form and substance to DIP ABL Agent; *provided* that, the requirement set forth in clause (ii) above shall only apply to the extent such DIP ABL Collateral has a value in excess of $500,000, and (iii) upon DIP ABL Agent's request, use commercially reasonable efforts to deliver to DIP ABL Agent warehouse receipts, consignment agreements or bailee lien waivers (as applicable) reasonably satisfactory to DIP ABL Agent with respect to Inventory or other DIP ABL Collateral upon which the Borrowing Base is calculated in the possession or control of any warehouse, consignee, bailee or any of Borrowers' agents or processors; *provided* that, the requirement set forth in clause (ii) above shall only apply to the extent such DIP ABL Collateral has a value in excess of $500,000.

Section 4.13 Certain Long Term Liabilities and Environmental Reserves. To the extent required by GAAP, Borrowers will, and will cause each of their Restricted Subsidiaries to, maintain adequate reserves for (a) future costs associated with any lung disease claim alleging pneumoconiosis or silicosis or arising out of exposure or alleged exposure to coal dust or the coal mining environment, (b) future costs associated with retiree and health care benefits, (c) future costs associated with reclamation of

disturbed acreage, removal of facilities and other closing costs in connection with its mining operations and (d) future costs associated with other potential environmental liabilities.

Section 4.14 Designation of Subsidiaries.

(a) The Board of Directors of Blackhawk Parent with the consent of the DIP ABL Agent and Required DIP ABL Lenders may designate a Subsidiary of a Borrower as an Unrestricted Subsidiary; *provided* that (i) in no event will Blackhawk Parent or any Subsidiary of Blackhawk Parent that is a "Restricted Subsidiary" (or similar term as defined in the Prepetition ABL Credit Agreement and/or the DIP Term Loan Agreement) be designated as an Unrestricted Subsidiary, and (ii) the requirements set forth in the definition of "Unrestricted Subsidiary", as defined in the Prepetition ABL Credit Agreement, shall be satisfied for each such entity. As of the Closing Date, there are no Unrestricted Subsidiaries.

(b) On and after the Closing Date, Borrower may not designate any entity that is a Restricted Subsidiary as an Unrestricted Subsidiary without the consent, in its sole discretion, of DIP ABL Agent and Required DIP ABL Lenders. If, at any time, any Unrestricted Subsidiary would fail to meet the requirements of clause (a) above as an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of this Agreement and any Indebtedness, Liens or Investments of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary of a Borrower as of such date and, if such Indebtedness, Liens or Investments is not permitted to be incurred as of such date under the terms of this Agreement, Borrowers will be in default of such covenant.

(c) Blackhawk Parent may at any time, with the consent of the DIP ABL Agent, designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that such designation will be deemed to be an incurrence of Indebtedness, Liens and Investments by a Restricted Subsidiary of the outstanding Indebtedness, Liens and Investments, as the case may be, of such Unrestricted Subsidiary, and such designation will only be permitted if (x) such Indebtedness, Liens and Investments are permitted under the terms of this Agreement, calculated on a pro forma basis as if such designation had occurred at the beginning of the most recent four consecutive fiscal quarters of Blackhawk Parent then last ended for which financial statements have been delivered or were required to have been delivered pursuant to Section 4.1(a)-(c); and (y) no Default or DIP Event of Default would be in existence following such designation.

Section 4.15 Estoppel Certificates. After written request by DIP ABL Agent which, so long as no DIP Event of Default has occurred and is continuing, shall be limited to one (1) such request per Fiscal Year, Borrowers, within fifteen (15) Business Days' of such request and at their expense, will furnish DIP ABL Agent with a statement, duly acknowledged and certified, setting forth (a) the amount of the original principal amount of the Notes, and the unpaid principal amount of the Notes, (b) the rate of interest of the Notes, (c) the date payments of interest and/or principal were last paid, (d) that the Notes and this Agreement have not been modified or if modified, giving particulars of such modification by the Credit Parties, and (e) that there has occurred and is then continuing no Default or if such Default exists, the nature thereof, the period of time it has existed, and the action being taken to remedy such Default; *provided* that DIP ABL Agent shall have provide the above information to Borrower concurrent with such request and the Borrowers may rely on such information and no Default or DIP Event of Default shall arise to the extent any Borrower so relies on such information provided by DIP ABL Agent.

Section 4.16 Power of Attorney. Each of the authorized representatives of DIP ABL Agent is hereby irrevocably made, constituted and appointed the true and lawful attorney for each Borrower (without requiring any of them to act as such) with full power of substitution to do the following during the continuance of a DIP Event of Default: (a) endorse the name of such Borrower upon any and all

checks, drafts, money orders, and other instruments for the payment of money that are payable to such Borrower and constitute collections on such Borrower's Accounts; (b) perform the same and such Borrower has failed to take such action, execute in the name of such Borrower any schedules, assignments, instruments, documents, and statements that the Borrowers are obligated to give DIP ABL Agent under this Agreement; (c) take any action the Borrowers are required to take under this Agreement; (d) do such other and further acts and deeds in the name of such Borrower that DIP ABL Agent may deem necessary or desirable to enforce any Account or other DIP ABL Collateral or perfect DIP ABL Agent's security interest or Lien in any DIP ABL Collateral; and (e) do such other and further acts and deeds in the name of the Borrowers that DIP ABL Agent may deem necessary or desirable to enforce its rights with regard to any Account or other DIP ABL Collateral. So long any DIP Credit Exposure exists, this power of attorney shall be irrevocable and coupled with an interest and shall automatically terminate upon the termination of this Agreement in accordance with Section 2.12.

Section 4.17 Borrowing Base DIP ABL Collateral Administration.

(a) All data and other information relating to Accounts from third-party Account Debtors or other intangible DIP ABL Collateral shall at all times be kept by Borrowers, at their respective principal offices and shall not be moved from such locations without (i) providing prior written notice to DIP ABL Agent, and (ii) obtaining the prior written consent of DIP ABL Agent, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) Each Borrower will use commercially reasonable efforts to at all times keep its Eligible Inventory in good and marketable condition.

(c) Borrowers will conduct inventory surveys once per Fiscal Quarter in the ordinary course of business and consistent with Borrower's practices as of the Closing Date, and Borrowers shall provide to DIP ABL Agent such inventory survey.

Section 4.18 Payroll Accounts, Etc. At all times that any DIP ABL Obligations remain outstanding, Borrowers shall maintain one or more separate Deposit Accounts to hold any and all amounts to be used for payroll, payroll taxes and other employee wage and benefit payments, and shall not commingle any monies allocated for such purposes with funds in any other Deposit Account.

Section 4.19 Contest Motions. Upon the request of DIP ABL Agent, Borrowers will contest, using their best efforts, any motion or other application or proceeding seeking entry of an order or other relief that is materially adverse to the interests of DIP ABL Agent, DIP ABL Lenders, the Prepetition ABL Agent and/or the Prepetition ABL Lenders and/or their material rights and remedies under this Agreement or any other DIP ABL Financing Documents in any of the Chapter 11 Cases.

Section 4.20 Bankruptcy Related Matters. Without limiting Borrowers' other obligations under the DIP ABL Financing Documents, Borrowers shall:

(a) cause all proposed (i) First Day Motions, (ii) First Day Orders, (iii) orders related to or affecting the DIP ABL Agent, DIP ABL Lenders, DIP Revolving Loans, DIP ABL Collateral, the Liens securing the DIP ABL Obligations, the Prepetition ABL Agent, the Prepetition ABL Lenders, the Prepetition ABL Collateral, the Prepetition ABL Liens or the Prepetition ABL Obligations, any other financing or use of Cash Collateral, any sale or other disposition of DIP ABL Collateral outside the ordinary course, or adequate protection, (iv) any chapter 11 plan and/or any disclosure statement related thereto, (v) orders concerning the financial condition of any Borrower, and (vi) orders establishing procedures for administering Chapter 11 Cases or approving significant transactions submitted to the Bankruptcy Court (collectively, the "**Chapter 11 Documents**"), in each case, proposed by the Borrowers

to be in accordance with and permitted by the terms of this Agreement and reasonably acceptable to DIP ABL Agent and DIP ABL Lenders (other than (A) the Interim DIP Order, which shall be in the form set forth in Exhibit I with only such modifications as are satisfactory to Blackhawk Parent and the DIP ABL Agent in its sole discretion, and (B) the Final DIP Order, which shall be in the form of the Interim DIP Order with only such modifications thereto as are necessary to convert the Interim DIP Order to a final order, including to grant on a final basis the interim relief set forth in the Interim DIP Order, grant any and all relief in the Interim DIP Order that is subject to entry of the Final DIP Order, along with such other modifications as are satisfactory to the DIP ABL Agent and Required DIP ABL Lenders in their sole discretion);

(b) provide at least five (5) Business Days' (or such shorter notice acceptable to DIP ABL Agent in its sole discretion) prior written notice to DIP ABL Agent and its advisors prior to any assumption or rejection of any Credit Party's material contracts or material nonresidential real property leases pursuant to section 365 of the Bankruptcy Code, and no such contract or lease shall be assumed or rejected, if such assumption or rejection adversely impacts the DIP ABL Collateral, the Prepetition ABL Collateral, any Liens on the foregoing or any Super-priority Claims payable from the foregoing (including, without limitation, any sale or other disposition of DIP ABL Collateral or Prepetition ABL Collateral or the priority of any Liens or Super-priority Claims), if the DIP ABL Agent informs Borrowers in writing within three (3) Business Days of receipt of the notice from the Borrowers referenced above that it objects to such assumption or rejection, as applicable;

(c) deliver to the DIP ABL Agent (for distribution to the DIP ABL Lenders) and to counsel to DIP ABL Agent by no later than two (2) Business Days prior to filing, or soon as reasonably practicable thereafter based on the circumstances, copies of all material proposed pleadings, motions, applications, orders, financial information and other documents to be filed by or on behalf of Borrowers with the Bankruptcy Court in the Chapter 11 Cases, or distributed by or on behalf of Borrowers to any official or unofficial committee appointed or appearing in the Chapter 11 Cases or any other party in interest, and shall consult in good faith with the DIP ABL Agent and its advisors regarding the form and substance of any such document. DIP ABL Agent will, promptly and without unreasonable delay in light of the deadlines included in this Agreement or set by the Bankruptcy Court, provide comments to or acceptance of such Chapter 11 Documents;

(d) if not otherwise provided through the Bankruptcy Court's electronic docketing system or by any noticing agent appointed by the Bankruptcy Court noticing agent, deliver to DIP ABL Agent (for distribution to the DIP ABL Lenders) and to counsel to DIP ABL Agent and DIP ABL Lenders promptly as soon as available, copies of all final pleadings, motions, applications, orders, financial information and other documents filed by or on behalf of Borrowers with the Bankruptcy Court in the Chapter 11 Cases, or distributed by or on behalf of Borrowers to any official or unofficial committee appointed or appearing in the Chapter 11 Cases; and

(e) deliver to DIP ABL Agent, DIP ABL Lenders, and their respective counsel, promptly after the same is available, copies of any paper filed or threatened to be filed (of which Borrowers become aware) in the Chapter 11 Cases by any party other than a Borrower that (i) if filed or granted, may materially and adversely affect the DIP ABL Agent, DIP ABL Lenders, DIP Revolving Loans, DIP ABL Collateral, the Liens securing the DIP ABL Obligations, the Prepetition ABL Agent, the Prepetition ABL Lenders, the Prepetition ABL Collateral, the Prepetition ABL Liens or the Prepetition ABL Obligations, or (ii) relates or pertains to any other financing or use of Cash Collateral, any sale or other disposition of DIP ABL Collateral outside the ordinary course, or adequate protection.

Section 4.21 Chapter 11 Milestones. The Borrowers shall comply with the following milestones in connection with the Chapter 11 Cases (collectively, the "**Chapter 11 Milestones**"), unless waived or extended with the consent of the Required DIP ABL Lenders and the DIP ABL Agent:

(a) no later than one (1) day after the Petition Date, filing of a motion, in form and substance satisfactory to the Required DIP ABL Lenders, seeking entry of the Interim DIP Order, including approval of the DIP ABL Credit Agreement and the other DIP ABL Financing Documents.

(b) no later than five (5) days after the Petition Date, entry of the Interim DIP Order and filing of an Acceptable Disclosure Statement and an Acceptable Chapter 11 Plan;

(c) no later than forty-five (45) days after the Petition Date, the Bankruptcy Court shall have entered the Final DIP Order;

(d) no later than seventy-five (75) days after the Petition Date, the Chapter 11 Confirmation Date shall have occurred; and

(e) no later than fourteen (14) days after the Chapter 11 Confirmation Date, the Chapter 11 Plan Effective Date shall have occurred.

Section 4.22 Other Bankruptcy Related Matters. The Borrowers will and will cause each Restricted Subsidiary to:

(a) comply in all material respects with the DIP Orders; and

(b) comply in all material respects with each chapter 11 order in connection with the Chapter 11 Cases (other than the DIP Orders).

ARTICLE 5 - NEGATIVE COVENANTS

Each Borrower agrees that, so long as any DIP Credit Exposure exists:

Section 5.1 Liens. The Borrowers will not, and will not permit any of their Restricted Subsidiaries to, directly or indirectly, create, incur, assume or suffer to exist any Lien of any kind securing Indebtedness or trade payables on any asset now owned or hereafter acquired, except Permitted Liens. For purposes of this Agreement, "**Permitted Liens**" means:

(a) Liens on DIP ABL Collateral held by the Prepetition ABL Agent securing Prepetition ABL Obligations; *provided* that in the case of any such Liens held by the Prepetition ABL Agent on any DIP ABL Collateral, such Liens shall be junior in priority to the Liens on such DIP ABL Collateral that secure the DIP ABL Obligations;

(b) Liens on DIP ABL Collateral held by the Prepetition First Lien Term Loan Agent securing obligations under the Prepetition First Lien Term Loan Documents incurred pursuant to Section 5.4(c); *provided* that in the case of any such Liens held by the Prepetition First Lien Term Loan Agent (i) on any DIP ABL Priority Collateral, such Liens shall be junior in priority to the Liens on such DIP ABL Priority Collateral that secure (A) the DIP ABL Obligations; and (B) the Prepetition ABL Obligations; and (ii) on any DIP ABL Collateral other than DIP ABL Priority Collateral, such Liens may be senior in priority to the Liens that secure (A) the DIP ABL Obligations and (B) Prepetition ABL Obligations, in each case, only to the extent such Liens would have been senior to the Liens securing the Prepetition ABL Obligations pursuant to the terms of the Prepetition Intercreditor Agreements;

(c) Liens on DIP ABL Collateral held by the Prepetition Second Lien Term Loan Agent securing obligations under the Prepetition Second Lien Loan Documents incurred pursuant to Section 5.4(a); *provided* that such Liens shall be junior in priority to the Liens on such DIP ABL Collateral that secure (i) the DIP ABL Obligations and (ii) the Prepetition ABL Obligations; to the extent such Liens would have been senior to the Liens securing the Prepetition ABL Obligations pursuant to the terms of the Prepetition Intercreditor Agreements;

(d) Liens on DIP ABL Collateral held by the DIP Term Loan Agent securing obligations under the DIP Term Loan Documents incurred pursuant to Section 5.4(c); *provided* that in the case of any such Liens held by the DIP Term Loan Agent (i) on any DIP ABL Priority Collateral, such Liens shall be junior in priority to the Liens on such DIP ABL Priority Collateral that secure (A) the DIP ABL Obligations; and (B) the Prepetition ABL Obligations; and (ii) on any DIP ABL Collateral other than DIP ABL Priority Collateral, such Liens may be senior in priority to the Liens that secure (A) the DIP ABL Obligations, but only to the extent such Liens would have been senior to the Liens securing the DIP ABL Obligations pursuant to the terms of the DIP ABL Intercreditor Agreement and (B) Prepetition ABL Obligations, but only to the extent such Liens would have been senior to the Liens securing the Prepetition ABL Obligations pursuant to the terms of the Prepetition Intercreditor Agreements;

(e) Liens held by DIP ABL Agent, on behalf of DIP ABL Lenders, securing the DIP ABL Obligations;

(f) Liens on cash and Cash Equivalents securing Indebtedness under the Prepetition LC Facility Agreement and in an amount not to exceed 105% of the aggregate Letter of Credit Exposure (as defined in the Prepetition LC Facility Agreement on the Closing Date) at any time;

(g) Liens to secure the performance of Mining Financial Assurances, statutory obligations, insurance, performance obligations under coal sales agreements (which performance obligations may only be secured by Liens on cash and deposit accounts, either directly or by securing letters of credit or performance bonds permitted under this Agreement issued to assure such performance obligations), return of money bonds, surety or appeal bonds (including surety bonds obtained as required in connection with federal coal leases), workers compensation obligations, unemployment insurance and other types of social security and deposits securing liability to insurance carriers under insurance or self-insurance arrangements, performance bonds or other obligations of a like nature (*provided* that to the extent such obligations constitute Indebtedness, they are permitted under Section 5.4) incurred in the ordinary course of business and consistent with past practices (including Liens to secure letters of credit permitted under this Agreement issued to assure payment of such obligations); *provided*, in each case, that such secured performance obligations shall not constitute prepaid amounts or other advances of cash or other value for future delivery of coal; *provided, further,* that no such Liens shall encumber any DIP ABL Priority Collateral except for Liens on cash and Cash Equivalents that are held in segregated Deposit Accounts or Securities Account (other than, for the avoidance of doubt, any Lockbox Account), which contain only such cash and Cash Equivalents as are reasonably required secure the obligations of Borrower set forth in this Section 5.1(g).

(h) Liens to secure Indebtedness (including but not limited to Capital Lease Obligations) permitted by Section 5.4(d), *provided* that such Liens do not at any time encumber any property other than the property acquired with or financed by such Indebtedness;

(i) Liens existing on the Closing Date and set forth on Schedule 5.1;

(j) Liens for Taxes that are not yet delinquent or that are being contested in good faith by appropriate proceedings diligently pursued; *provided* that, any reserve as is required in

conformity with GAAP or other appropriate provision therefor under an Acceptable Chapter 11 Plan has been made, or that are attributable to Taxes the nonpayment of which is required pursuant to the Bankruptcy Code;

(k) Liens imposed by law, such as carriers', warehousemen's, landlord's and mechanics' Liens (including Liens imposed by law in favor of lessors of coal reserves (which shall only be on assets located on or under the leased premises covered by the applicable lease) securing payment of unpaid royalties, and similar liens imposed by contract), in each case, incurred in the ordinary course of business;

(l) survey exceptions, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property that were not incurred in connection with Indebtedness and that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(m) Liens on insurance policies and proceeds thereof, or other deposits, to secure insurance premium financings;

(n) notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;

(o) Liens on specific items of inventory or other goods (and the proceeds thereof) of any Person securing such Person's obligations in respect of bankers' acceptances issued or created in the ordinary course of business for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods; *provided*, that such inventory shall not constitute Eligible Inventory to the extent subject to such Liens;

(p) (x) licenses to mine on behalf of Borrowers or their Restricted Subsidiaries granted under contract mining agreements and (y) leases granted to third parties, in each case, in the ordinary course of business and consistent with past practices and that do not interfere with the ordinary conduct of business of Borrowers or their Restricted Subsidiaries;

(q) the Carve Out;

(r) Liens securing judgments for the payment of money not constituting a DIP Event of Default, so long as such Liens are adequately bonded;

(s) Liens arising from protective filings of UCC financing statements (or the equivalent) regarding operating leases entered into by Borrowers and their Restricted Subsidiaries in the ordinary course of business;

(t) Liens in favor of banking institutions arising as a matter of law or contract encumbering deposits (including the right of set-off) which are within the general parameters customary in the banking industry and, as applicable, subject to customary restrictions set forth in any required Deposit Account Control Agreement or Securities Account Control Agreement;

(u) subject to the terms of any applicable Deposit Account Control Agreement (if any), Liens on cash and deposit accounts to secure Cash Management Obligations;

(v) additional Liens to secured Indebtedness permitted pursuant to Section 5.4 in an aggregate principal amount not to exceed $500,000 at any one time outstanding; and

(w) Liens on the DIP ABL Collateral granted to provide adequate protection pursuant to the Interim DIP Order or the Final DIP Order, if applicable.

Section 5.2 Asset Sales. The Borrowers will not, and will not permit any of their Restricted Subsidiaries to, consummate an Asset Sale, except for the following (collectively, "**Permitted Assets Sales**"):

(a) Asset Sales of used, worn out, obsolete or surplus property by any Borrower or any of their Restricted Subsidiaries in the ordinary course of business or the abandonment in the ordinary course of business that is, in the reasonable judgment of Blackhawk Parent, no longer economically practicable to maintain or useful in the conduct of the Borrowers and their Restricted Subsidiaries in their respective businesses taken as a whole;

(b) Asset Sales of inventory in the ordinary course of business;

(c) Asset Sales of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Asset Sale are reasonably promptly (but in no event later than 60 days after the Asset Sale) applied to the purchase price of such replacement property;

(d) Asset Sales of property by any Restricted Subsidiary or any Borrower to another Borrower or to a wholly-owned Restricted Subsidiary; *provided*, that if the transferor of such property is a Credit Party, the transferee thereof must either be a Borrower or another Credit Party and, to the extent such property is DIP ABL Collateral, such property shall remain DIP ABL Collateral (for the avoidance of doubt, for the benefit of all Secured Creditors) after giving effect to such Asset Sale;

(e) Asset Sales permitted by Section 5.5 and Restricted Payments permitted by Section 5.3;

(f) [Reserved];

(g) so long as no Default or DIP Event of Default shall occur and be continuing, the grant of any option or other right to purchase any asset in a transaction that would be permitted under the provisions of this Section 5.2;

(h) leases (including operating and capital leases), subleases, assignments, licenses, sublicenses of real or personal property in the ordinary course of business and in accordance with the applicable Security Documents (excluding, for the avoidance of doubt, sale-leaseback agreements);

(i) sales or discounts (without recourse) of accounts receivable (other than accounts receivable owing from an Affiliate of the Borrower) in the ordinary course of business in connection with the collection thereof;

(j) transfers of property subject to casualty or condemnation events upon receipt of net cash proceeds from a Recovery Event in respect thereof;

(k) to the extent constituting an Asset Sale, the granting of Permitted Liens under Section 5.1 (but not the sale or other Asset Sale of the property subject to such Permitted Liens);

(l) dispositions in the ordinary course of business of cash and Cash Equivalents in transactions not otherwise prohibited by any DIP ABL Financing Document

Provided that if the aggregate Fair Market Value of all such Permitted Asset Sales (other than clauses (b), (c) (but solely with respect to equipment) and (d) above) since the Closing Date exceeds $1,000,000, such Permitted Asset Sales shall require the consent of the Required DIP ABL Lenders.

Section 5.3 Restricted Payments. The Borrowers will not, and will not permit any of their Restricted Subsidiaries to, declare or make, directly or indirectly, any Restricted Payment, except the following, in each case, in accordance with the Approved Budget:

(a) dividends or distributions payable to any Borrower or any Credit Party; and;

(b) payments of Tax Distributions;

The amount of all Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by such Borrower or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment.

Section 5.4 Indebtedness. The Borrowers will not, and will not permit any of their Restricted Subsidiaries to create, incur, assume or suffer to exist any Indebtedness, except for the following:

(a) the incurrence by any Borrower and their Restricted Subsidiaries of (i) Indebtedness existing as of the Closing Date as set forth on Schedule 5.4(a) ("**Existing Indebtedness**") and (ii) outstanding on the Petition Date under the Prepetition ABL Credit Agreement, the Prepetition Term Loan Documents or Prepetition LC Facility Agreement; *provided* that any such Existing Indebtedness owed to any Equity Holder shall be Subordinated Indebtedness;

(b) the incurrence by any Borrower and any Guarantor of Indebtedness under the DIP ABL Financing Documents;

(c) the incurrence by the Borrowers and any Guarantor of Indebtedness under the DIP Term Loan Documents in an aggregate principal amount not to exceed $150,000,000 consisting of $50,000,000 of new money loans and $100,000,000 of Prepetition Term Loan Obligations;

(d) the incurrence by any Borrower or any of their Restricted Subsidiaries of Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations or other Indebtedness, in each case, incurred for the purpose of financing all or any part of the purchase price or cost of design, construction, installation or improvement of property (real or personal), plant or equipment used in the business of any Borrower or any of their Restricted Subsidiaries, in an aggregate principal amount not to exceed $500,000 at any time outstanding;

(e) [Reserved];

(f) Indebtedness of (x) any Borrower or any Guarantor to any other Credit Party or any Restricted Subsidiary that is a non-Credit Party and (y) any Restricted Subsidiary that is a non-Credit Party to any other Restricted Subsidiary that is a non-Credit Party; *provided* that, any Indebtedness incurred under sub-clause (x) that is owed to a non-Credit Party must be unsecured and expressly subordinated to the prior indefeasible payment in full in cash of all DIP ABL Obligations, in the case of

any Borrower, or all Guaranteed DIP ABL Obligations, in the case of a Guarantor, in each case, on terms reasonably acceptable to DIP ABL Agent;

(g) the incurrence by any Borrower or any of their Restricted Subsidiaries of Indebtedness in respect of Mining Financial Assurances, reclamation liabilities, water treatment, workers' compensation claims, payment obligations in connection with health or social security benefits, unemployment or other insurance obligations, statutory obligations, bankers' acceptances, performance under coal sales agreements (which Indebtedness shall be in the form of letters of credit or performance bonds), letters of credit, or completion or performance guarantees (including, without limitation, performance guarantees pursuant to coal supply agreements or equipment leases) and surety bonds in the ordinary course of business; *provided*, Indebtedness in respect of performance obligations shall not constitute prepaid amounts or other advances of cash or other value for future delivery of coal;

(h) the incurrence by any Borrower or any of their Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five (5) Business Days;

(i) Indebtedness of any Borrower or any of their Restricted Subsidiaries incurred prior to the Petition Date in connection with agreements providing for indemnification, adjustment of purchase price or similar obligations incurred in connection with any disposition of any business, assets or Restricted Subsidiary of any Borrower, so long as the principal amount does not exceed the gross proceeds actually received by such Borrower or any of the Guarantors in connection with such disposition;

(j) [Reserved];

(k) Indebtedness incurred by any Borrower or any of their Restricted Subsidiaries in respect of netting services, overdraft protections and otherwise in respect of deposit accounts;

(l) any Guarantee of Indebtedness of any Borrower or a Restricted Subsidiary to the extent that the guaranteed Indebtedness was permitted to be incurred by another provision of this Section 5.4; *provided* that if the Indebtedness being guaranteed is subordinated to or *pari passu* with the DIP ABL Obligations or Guaranteed DIP ABL Obligations, then the Guarantee must be subordinated or *pari passu*, as applicable, to the same extent as the Indebtedness guaranteed;

(m) Indebtedness which may be deemed to exist pursuant to any guaranties, performance, surety, statutory, appeal or similar obligations incurred in the ordinary course of business;

(n) guarantees in the ordinary course of business of the obligations of suppliers and licensees (other than suppliers and licensees that are Affiliates of any Borrower) of the Borrowers and their Restricted Subsidiaries;

(o) the incurrence by any Borrower or any Guarantor of additional Indebtedness in an aggregate principal amount not to exceed $500,000 at any time outstanding; and

(p) the incurrence by any Borrower or any of their Restricted Subsidiaries of Hedging Obligations in the ordinary course of business and on a non-speculative basis.

The Borrowers will not incur, and will not permit any Guarantor to incur, any Indebtedness that is contractually subordinated in right of payment to any other Indebtedness of such Borrower or such

Guarantor unless such Indebtedness is also contractually subordinated in right of payment to the DIP ABL Obligations and the applicable Subsidiaries Guaranty on substantially identical terms; *provided*, *however*, that no Indebtedness will be deemed to be contractually subordinated in right of payment to any other Indebtedness of any Borrower or any Guarantor solely by virtue of being unsecured or by virtue of being secured on a junior priority basis.

Section 5.5 Merger, Consolidation or Sale of Assets. Borrowers will not, and will not permit any of their Restricted Subsidiaries to, directly or indirectly, merge, dissolve, liquidate, consolidate with or into another Person, or sell, assign, lease, transfer, convey or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of their assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default or DIP Event of Default exists or would result therefrom:

(a) any Restricted Subsidiary may merge with (i) any Borrower, *provided* that such Borrower shall be the continuing or surviving Person, or (ii) any one or more other Restricted Subsidiaries, *provided* that when any Restricted Subsidiary that is a Credit Party is merging with another Restricted Subsidiary, the Credit Party shall be the continuing or surviving Person;

(b) any Restricted Subsidiary may sell, assign, lease, transfer, convey or otherwise dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to any Borrower or to another Restricted Subsidiary that is a Debtor; *provided* that, if the transferor in such a transaction is a Credit Party, then the transferee must either be a Borrower or another Credit Party that is a Debtor; and

(c) any Borrower and any Restricted Subsidiaries may consummate any transaction that would be permitted as an Investment under Section 5.11.

Section 5.6 Transactions with Affiliates. No Borrower will, nor will it permit any of its Restricted Subsidiaries to, make any payment to or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate (each, an "**Affiliate Transaction**"), unless the Affiliate Transaction is (i) not prohibited by this Agreement and (ii) on terms that are not materially less favorable to such Borrower or the relevant Restricted Subsidiary than those that would have been obtained in a comparable arm's length transaction by such Borrower or such Restricted Subsidiary with a Person other than an Affiliate (or if, in the good faith judgment of Blackhawk Parent's Board of Directors, no comparable transaction is available with which to compare any such transaction, such transaction is otherwise fair to such Borrower or the relevant Restricted Subsidiary from a financial point of view). The foregoing restrictions shall not apply to the following:

(a) transactions between or among the Borrowers or among the Borrowers and their Restricted Subsidiaries;

(b) [Reserved];

(c) [Reserved];

(d) combined insurance programs and 401(k) plans with JMP Coal Holdings, LLC, in each case, consistent with past practice;

(e) Restricted Payments that do not violate the provisions of Section 5.3 (Restricted Payments) or "Permitted Investments";

(f) transactions (including payments and performance) pursuant to agreements or arrangements in effect on the date of this Agreement and set forth on Schedule 5.6 or any amendment, replacement, extension or renewal thereof (so long as such agreement or arrangement as so amended, replaced, extended or renewed is not materially less advantageous, taken as a whole, to DIP ABL Lenders than the original agreement or arrangement as in effect on the date of this Agreement); and

(g) the execution of the Transactions, the performance of the obligations under the DIP ABL Financing Documents, entry into the RSA, the transactions specifically contemplated by the RSA, the Acceptable Disclosure Statement and the Acceptable Chapter 11 Plan, the payment of all fees and expenses related to the Transactions, and any other transaction approved by the Bankruptcy Court pursuant to an order in form and substance reasonably satisfactory to the DIP ABL Agent.

Section 5.7 Limitation on Certain Restrictions on Subsidiaries; Negative Pledge. The Borrowers will not, and will not permit any of their Restricted Subsidiaries to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Borrower or any Restricted Subsidiary to:

(a) pay dividends or make any other distributions on its Capital Stock to any Borrower or any of their Restricted Subsidiaries, or with respect to any other interest or participation in, or measured by, its profits, or pay any indebtedness owed to any Borrower or any of its Restricted Subsidiaries;

(b) make loans or advances to any Borrower or any of their Restricted Subsidiaries; or

(c) sell, lease or transfer any of its properties or assets to any Borrower or any of their Restricted Subsidiaries.

(d) clause (a) above will not apply to encumbrances or restrictions existing under or by reason of:

(i) Existing Indebtedness, the Prepetition Term Loan Documents, the Prepetition ABL Financing Documents and the Prepetition LC Facility Agreement as in effect on the Closing Date;

(ii) this Agreement and the other DIP ABL Financing Documents and the DIP Term Loan and the other DIP Term Loan Documents;

(iii) agreements governing other Indebtedness permitted to be incurred or issued under Section 5.4; *provided* that the restrictions therein are (x) customary for instruments of such type and (y) will not materially adversely impact the ability of the Borrowers to make any payments required to be made under this Agreement;

(iv) applicable Requirements of Law;

(v) any instrument governing Indebtedness or Capital Stock of a Person acquired by any Borrower or any of its Restricted Subsidiaries as in effect at the time of such acquisition (except to the extent such Indebtedness or Capital Stock was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other

than the Person, or the property or assets of the Person, so acquired; *provided* that, in the case of Indebtedness, such Indebtedness was permitted by this Agreement;

(vi) customary non-assignment provisions in contracts, leases, sub-leases and licenses entered into in the ordinary course of business;

(vii) (x) purchase money obligations for property acquired in the ordinary course of business and Capital Lease Obligations that impose restrictions on the property purchased or leased of the nature described in clause (e)(iii) above;

(viii) Liens, including real property mortgages, permitted to be incurred under Section 5.1 that limit the right of the debtor to dispose of the assets subject to such Liens;

(ix) customary provisions limiting the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements entered into in the ordinary course of business and permitted to be entered into pursuant to this Agreement, which limitation is applicable only to the assets that are the subject of such agreements;

(x) customary restrictions and conditions contained in agreements relating to the sale of a Restricted Subsidiary or assets pending such sale; *provided* that such restrictions and conditions apply only to such Restricted Subsidiary or such assets that are to be sold and such sale is permitted hereunder; and

(xi) restrictions on cash or other deposits or net worth imposed by customers (other than customers that are Affiliates of the Borrowers) under contracts entered into in the ordinary course of business;

(e) In addition, no Borrower will, nor will it permit any of its Restricted Subsidiaries to, enter into any Contractual Obligation which prohibits or limits the ability of any Credit Party to create, incur, assume or suffer to exist any Lien upon any of their respective properties or revenues, whether now owned or hereafter acquired, or which requires the grant of any security for an obligation if security is granted for another obligation, except the following:

(i) this Agreement, the other DIP ABL Financing Documents, the DIP Term Loan Documents, the Prepetition LC Facility Agreement, the Prepetition Term Loan Documents and the Prepetition ABL Financing Documents;

(ii) covenants in documents creating Liens permitted by Section 5.1 to the extent such covenants relate solely to the assets (and any proceeds in respect thereof) which are the subject of such Liens;

(iii) any other agreement that does not restrict in any manner (directly or indirectly) Liens created pursuant to the DIP ABL Financing Documents on any DIP ABL Collateral securing the DIP ABL Obligations and does not require the direct or indirect granting of any Lien securing any Indebtedness or other obligation by virtue of the granting of Liens on or pledge of property of any Credit Party to secure the DIP ABL Obligations; and

(iv) any prohibition or limitation that

(A) exists pursuant to applicable Requirements of Law,

(B) consists of customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under Section 5.2 pending the consummation of such sale,

(C) restricts subletting, assignment or other transfer of interests contained in any lease, license or similar agreement of any Borrower or any of its Restricted Subsidiaries,

(D) exists in any agreement in effect at the time such Restricted Subsidiary becomes a Restricted Subsidiary of any Borrower, so long as such agreement was not entered into in contemplation of such person becoming a Restricted Subsidiary or

(E) is imposed by any amendments or refinancings that are otherwise permitted by the DIP ABL Financing Documents of the contracts, instruments or obligations referred to in clause (iv)(D); *provided* that such amendments and refinancings are no more restrictive with respect to such prohibitions and limitations in any material respect than those prior to such amendment or refinancing.

Section 5.8 Business Activities. Borrowers will not, and will not permit any of their Restricted Subsidiaries to, engage directly or indirectly in any business other than Permitted Businesses.

Section 5.9 Amendments, etc. of Organizational Documents and Prepetition Term Loan Documents. Borrowers will not, and will not permit any of their Restricted Subsidiaries to, (a) terminate, amend, waive or otherwise modify any of its Organizational Documents in a manner materially adverse to any Credit Party or to DIP ABL Lenders (in their capacity as DIP ABL Lenders), (b) amend or otherwise modify any term or condition or give any consent, waiver or approval of or waive any default under or any breach of any term or condition of (i) any Prepetition Term Loan Document or (ii) any DIP Term Loan Document, in each case, without the consent of the Required DIP ABL Lenders, except to the extent such amendment, modification or waiver would not be materially adverse to DIP ABL Lenders.

Section 5.10 [Reserved].

Section 5.11 Investments. Borrowers will not, and will not permit any of their Restricted Subsidiaries to, make or hold any Investments, except for Permitted Investments.

Section 5.12 [Reserved].

Section 5.13 Prepayments, Etc. of Indebtedness. Borrowers will not, and will not permit any Guarantor or Restricted Subsidiary to, directly or indirectly, make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value (a) any Indebtedness of any Credit Party that is contractually subordinated (or required to be subordinated) to the DIP ABL Obligations or Prepetition ABL Obligations, (b) any Indebtedness of any Borrower or any Guarantor (other than the obligations under the DIP Term Loan Documents) that is secured by Liens on all or any portion of the DIP ABL Collateral that are junior (or are required to be junior) to the Liens on the DIP ABL Collateral securing the DIP ABL Obligations (including Indebtedness under the Prepetition Term Loan Documents) or (c) any other unsecured Indebtedness for borrowed money of any Borrower or any Restricted Subsidiary, including Borrowers' obligations under the Patriot Trust RSA, other than (x) adequate protection payments thereof pursuant to the DIP Orders and (y) Indebtedness owed to any Borrower.

Notwithstanding the foregoing, this Section 5.13 shall not prohibit the Term Loan Roll-Up (as defined in the DIP Orders).

Section 5.14 Accounting Changes. Blackhawk Parent will not change its federal tax identification number without providing at least fifteen (15) days' prior written notice to DIP ABL Agent.

Section 5.15 Agreements Regarding Receivables. No Borrower may backdate, postdate or redate any of its invoices.

Section 5.16 Bankruptcy Case Prohibitions. Notwithstanding anything else herein to the contrary, no Credit Party shall, without the reasonable consent of the DIP ABL Agent, (a) file with the Bankruptcy Court a motion to approve or otherwise seek approval of or pay any incentive or retention plan outside of the ordinary course of business of Blackhawk Parent or its Restricted Subsidiaries or (b) file with the Bankruptcy Court a motion to approve or otherwise seek to assume, assign or reject any material executory contract.

ARTICLE 6 - BUDGET

Section 6.1 Budget.

(a) Budget and Approvals. Attached hereto as Exhibit H is the initial Budget, which shall have been approved by the DIP ABL Agent. Commencing on the last Wednesday following every four-week anniversary (commencing with the fourth Wednesday following the Petition Date) (or, to the extent such Wednesday is not a Business Day, the next Business Day thereafter), Blackhawk Parent shall deliver to the DIP ABL Agent a Budget. Each Budget shall be acceptable to the DIP ABL Agent and the Required DIP ABL Lenders and no such Budget shall be effective until so approved; *provided* that the DIP ABL Agent and the Required DIP ABL Lenders shall be deemed to have approved a Budget delivered after the Closing Date pursuant to this Section 6.1(a) unless DIP ABL Agent and DIP ABL Lenders constituting the Required Lenders shall have objected to such Budget within five (5) Business Days after delivery thereof. To the extent any such updated Budget is approved pursuant to this Section 6.1(a), the line item amounts set forth therein shall only be used to calculate the projected line items commencing with the week in which such updated Budget is approved by the DIP ABL Agent and Required DIP ABL Lenders and for subsequent weeks set forth therein, and any prior weeks tested as part of any then applicable cumulative period shall be calculated using the projected line items set forth in the previously Approved Budget in which such prior weeks were first forecasted. Upon such approval or deemed approval by the Required Lenders pursuant to this Section 6.1(a), a Budget delivered pursuant to this Section 6.1(a) shall constitute an "**Approved Budget**".Payment of Allowed Professional Fees Prior to the DIP ABL Termination Date. Any payment or reimbursement made prior to the occurrence of the DIP ABL Termination Date in respect of any allowed Professionals' fees shall not reduce the Carve Out.Payment of Carve Out on or After the DIP ABL Termination Date. Any payment made on or after the occurrence of the DIP ABL Termination Date in respect of any allowed fees and expenses of Professionals shall permanently reduce the Carve Out on a dollar-for-dollar basis. Any funding of the Carve Out shall be added to, and made a part of the DIP ABL Obligations secured by the DIP ABL Collateral and shall be otherwise entitled to the protections granted under the DIP Orders, the DIP ABL Financing Documents, the Bankruptcy Code, and applicable laws.

Section 6.2 Budget Variance Report. No later than 5:00 p.m. on the Wednesday of every week (commencing with the second Wednesday following the Petition Date) (or, to the extent such Wednesday is not a Business Day, the next Business Day thereafter), a Budget Variance Report for the immediately preceding Weekly Period and the cumulative Budget Test Period. Each such report shall be

certified by an authorized officer of the Borrower as being prepared in good faith and fairly presenting in all material respects the information set forth therein.

Section 6.3 Variance Covenant. Beginning with the delivery of the initial Budget Variance Report, as of the last day of each applicable Budget Test Period, (i) the negative variance (as compared to the Approved Budget) of the actual operating cash receipts of the Debtors shall not exceed 20% and (ii) the positive variance (as compared to the Approved Budget) of the aggregate operating disbursements (excluding professional fees and expenses) made by the Debtors shall not exceed 10%.

ARTICLE 7 - CONDITIONS

Section 7.1 Conditions to Closing. The obligation of each DIP ABL Lender to make the initial Loans on the Closing Date shall be subject to the receipt (or written waiver) by DIP ABL Agent of each agreement, document and instrument set forth below and on the closing checklist attached hereto as Exhibit F, each in form and substance reasonably satisfactory to DIP ABL Agent, and such other closing deliverables reasonably requested by DIP ABL Agent and DIP ABL Lenders, and to the satisfaction (or waiver) of the following conditions precedent, each to the reasonable satisfaction of DIP ABL Agent and DIP ABL Lenders and their respective counsel:

(a) the receipt by DIP ABL Agent of executed counterparts of this Agreement, the DIP ABL Intercreditor Agreement and the other DIP ABL Financing Documents;

(b) the payment of all fees, expenses and other amounts due and payable on or prior to the Closing Date (including the fees and disbursements of Hogan Lovells US LLP and Morris, Nichols, Arsht & Tunnell LLP, both as counsel to DIP ABL Agent and DIP ABL Lenders), including reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid under any DIP ABL Financing Document;

(c) the payment of any amounts owed to the Prepetition ABL Agent payable under the Prepetition ABL Financing Documents;

(d) since December 31, 2018, the absence of any material adverse change in any aspect of the business, operations, properties, prospects or condition (financial or otherwise) of any Credit Party or any seller of any assets or business to be purchased by any Borrower contemporaneous with the Closing Date, or any event or condition which could reasonably be expected to result in such a material adverse change;

(e) the receipt of the initial Borrowing Base Certificate, prepared as of the Closing Date;

(f) Evidence that Borrowers have Excess Availability *plus* cash and Cash Equivalents that are (i) owned by any Borrower and (ii) subject to a first priority perfected Lien in favor of DIP ABL Agent, of at least $5,000,000 on the Closing Date;

(g) On or prior to the Closing Date, all governmental (domestic and foreign) and material third party approvals and/or consents, including, without limitation, the consents listed on Schedule 7.1(g), in each case that are necessary in connection with the DIP ABL Financing Documents, the other transactions contemplated hereby and the granting of Liens under the DIP Financing Documents shall have been obtained and remain in effect, and all applicable waiting periods with respect thereto shall have expired without any action being taken by any competent authority which restrains, prevents or imposes materially adverse conditions upon the transactions contemplated by the DIP ABL

Financing Documents or otherwise referred to herein or therein. On the Closing Date, there shall not exist any judgment, order, injunction or other restraint issued or filed or a hearing seeking injunctive relief or other restraint pending or notified prohibiting or imposing materially adverse conditions upon the transactions contemplated by the DIP ABL Financing Documents or otherwise referred to herein or therein;

(h) On, prior to or substantially simultaneously with the closing hereunder the Credit Parties shall have entered into the DIP Term Loan Agreement and the other DIP Term Loan Documents on terms and conditions consistent in all material respects the term sheet therefor (as previously delivered to the DIP ABL Agent) and evidence reasonably satisfactory to DIP ABL Agent that Borrowers have received the proceeds thereof;

(i) [Reserved];

(j) DIP ABL Agent shall have received and shall be satisfied with (i) a legal opinion issued by Kirkland & Ellis LLP, the Credit Parties' counsel, dated as of the Closing Date, covering such matters incident to the transactions contemplated herein as the DIP ABL Agent may reasonably request, and (ii) a legal opinions issued by Frost Brown Todd LLC, special Kentucky and Indiana counsel to the Credit Parties, in form and substance reasonably satisfactory to the DIP ABL Agent, addressed to the DIP ABL Agent and each of the DIP ABL Lenders and dated the Closing Date covering such matters incident to the transactions contemplated herein as the DIP ABL Agent may reasonably request;

(k) the Chapter 11 Cases shall have been commenced in the Bankruptcy Court, the Interim DIP Order shall have been entered by the Bankruptcy Court in a manner consistent with the DIP ABL Financing Documents and in a form and substance satisfactory to DIP ABL Agent and DIP ABL Lenders in their sole discretion and all First Day Motions shall have been filed and First Day Orders intended to be entered on or prior to the Interim DIP Order Entry Date entered;

(l) DIP ABL Agent shall have received the first Budget in compliance with Article 6 and such Budget shall be satisfactory to the DIP ABL Agent and DIP ABL Lenders in their sole discretion; and

(m) DIP ABL Agent shall have received a copy of the Interim DIP Order as entered by the Bankruptcy Court.

Each DIP ABL Lender, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to and approved, each DIP ABL Financing Document, and each other document, agreement and/or instrument required to be approved by DIP ABL Agent, Required DIP ABL Lenders or DIP ABL Lenders, as applicable, on the Closing Date.

Section 7.2 Conditions to Each Loan. The obligation of DIP ABL Lenders to make a Loan or an advance in respect of any Loan, is subject to the satisfaction (or written waiver) of the following conditions:

(a) receipt by Agent of a Notice of Borrowing (or telephonic notice if permitted by this Agreement) together with an updated Borrowing Base Certificate reflecting the Borrowing Base as of borrowing date or any date that is not more than five (5) Business Days prior to such borrowing date;

(b) immediately after such borrowing and after application of the proceeds thereof or after such issuance, the DIP Revolving Loan Outstandings will not exceed the DIP Revolving Loan Limit;

(c) immediately before and after such advance or issuance, no Default or DIP Event of Default shall have occurred and be continuing;

(d) the representations and warranties of each Credit Party contained in the DIP ABL Financing Documents shall be true and correct on and as of the date of such borrowing or issuance, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date; *provided* that any representation and warranty that is qualified by "materiality", "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects;

(e) no material adverse change in the condition (financial or otherwise), properties, business, prospects, or operations of Borrowers or any other Credit Party shall have occurred and be continuing with respect to Borrowers or any Credit Party since the date of this Agreement; and

(f) no Borrower nor any of its Restricted Subsidiaries is in default in any manner under any provision of any Contractual Obligation, where such default could reasonably be expected to result in a Material Adverse Effect, and no condition exists which, with the giving of notice or the lapse of time or both, would constitute such a default (other than with respect to any default (i) arising on account of the mere filing of the Chapter 11 Cases or (ii) under any coal lease agreement and/or any equipment lease or finance agreements).

Each giving of a Notice of Borrowing hereunder and each acceptance by any Borrower of the proceeds of any Loan made hereunder shall be deemed to be (y) a representation and warranty by each Borrower on the date of such notice or acceptance as to the facts specified in this Section, and (z) a restatement by each Borrower that each and every one of the representations made by it in any of the DIP ABL Financing Documents is true and correct as of such date (except to the extent that such representations and warranties expressly relate solely to an earlier date).

Section 7.3 Searches. Following the Closing Date (as and when determined by DIP ABL Agent in its reasonable discretion), DIP ABL Agent shall have the right to perform, all at Borrowers' reasonable expense, the searches described in clauses (a), (b), and (c) below against Borrowers and any other Credit Party, the results of which shall reveal no Liens or judgments on any of the assets of the Credit Parties, except for Permitted Liens or Liens and judgments to be terminated on the Closing Date pursuant to documentation reasonably satisfactory to DIP ABL Agent: (a) UCC searches with the Secretary of State of the jurisdiction in which the applicable Person is organized; (b) judgment, pending litigation, federal tax lien, personal property tax lien, and corporate and partnership tax lien searches, in each jurisdiction searched under clause (a) above; and (c) searches of applicable corporate, limited liability company, partnership and related records to confirm the continued existence, organization and good standing of the applicable Person and the exact legal name under which such Person is organized. Notwithstanding the foregoing in the absence of the occurrence and continuation of a DIP Event of Default if DIP ABL Agent undertakes such searched more than once in any 12 month period, then such additional searched shall be at DIP ABL Agent's expense (*provided* that such limitation shall not apply with respect to the searches to reflect the As-Extracted Collateral Filings until after the initial search to confirm such filings have been completed).

Section 7.4 Post Closing Requirements. Borrowers shall complete each of the post-closing obligations and/or provide to DIP ABL Agent each of the documents, instruments, agreements and information listed on Schedule 7.4 attached hereto on or before the date set forth for each such item thereon (or such later date as DIP ABL Agent may agree), each of which shall be completed or provided in form and substance reasonably satisfactory to DIP ABL Agent.

ARTICLE 8 - REAL PROPERTY LEASES

Section 8.1 Special Rights with Respect to Real Property Leases

(a) No Credit Party shall, nor shall it permit any of its Subsidiaries to, pursuant to Section 365 of the Bankruptcy Code, reject or otherwise terminate (including, without limitation, as a result of the expiration of the assumption period provided for in Section 365(d)(4) of the Bankruptcy Code to the extent applicable) (x) a Material Lease or (y) during the continuance of a DIP Event of Default, a Real Property Lease, in each case, without first providing 30 days' prior written notice to the DIP ABL Agent (or such shorter time to which DIP ABL Agent may agree) during which time, subject to the rights of the DIP Term Loan Agent and DIP Term Loan Lenders under Article 12 of the DIP Term Loan Documents, the DIP ABL Agent shall be permitted to find, in good faith and acting in its reasonable discretion, an acceptable replacement lessee (which may include the DIP ABL Agent, any DIP ABL Lender or their respective Affiliates) to whom such lease may be assigned. If a prospective assignee is not found within such 30-day notice period, the Credit Parties may proceed to reject such lease. If such a prospective assignee is timely found, the Credit Parties shall (i) not seek to reject such lease, (ii) promptly withdraw any previously filed rejection motion, (iii) promptly file a motion seeking expedited relief and a hearing on the earliest court date available for purposes of assuming such lease and assigning it to such prospective assignee and (iv) cure any defaults that have occurred and are continuing under such lease unless the Borrowers and the DIP ABL Agent agree that any such cure obligation is overly burdensome on the cash position of the Debtors with such agreement not to be unreasonably withheld; provided that this Section 8.1(a) shall not apply to Real Property Leases that are rejected on the effective date of an Acceptable Chapter 11 Plan. For the avoidance of doubt, it is understood and agreed that on or prior to the 30th day prior to the Automatic Rejection Date, the Credit Parties shall have delivered (and hereby agree to deliver) written notice to the DIP ABL Agent of each outstanding Real Property Lease that they intend to reject (including, without limitation, through automatic rejection on the Automatic Rejection Date, to the extent applicable) from and after the date of such notice (or, if applicable, notice that the Credit Parties will seek to extend the Automatic Rejection Date as provided in Section 365(d)(4) of the Bankruptcy Code); provided that if the Credit Parties fail to deliver any such notice to the DIP ABL Agent prior to such date with respect to any such Real Property Lease (or a notice indicating that no such Real Property Leases shall be rejected), the Credit Parties shall be deemed, for all purposes hereunder, to have delivered notice to the DIP ABL Agent as of such date that it intends to reject all outstanding Real Property Leases.

(b) If a DIP Event of Default shall have occurred and be continuing, subject to the rights of the DIP Term Loan Agent and the Lenders under Article 12 of the DIP Term Loan Agreement, the DIP ABL Agent may exercise any Debtor's rights pursuant to section 365(f) of the Bankruptcy Code with respect to any Real Property Lease or group of Real Property Leases and, subject to the Bankruptcy Court's approval after notice and hearing, assign any such Real Property Lease in accordance with section 365 of the Bankruptcy Code notwithstanding any language to the contrary in any of the applicable lease documents or executory contracts. In connection with the exercise of such rights, the DIP ABL Agent may (w) access the leasehold interests of the Credit Parties in any such Real Property Lease(s) for the purposes of marketing such property or properties for sale, (x) find an acceptable (in the DIP ABL Agent's good faith and reasonable discretion (with the consent of the Required DIP ABL Lenders)) replacement lessee (which may include the DIP ABL Agent or its designee, any DIP ABL Lender or their respective Affiliates) to whom a Real Property Lease may be assigned, (y) hold, and manage all aspects of, an auction or other bidding process to find such reasonably acceptable replacement lessee, and (z) in connection with any such auction, agree, on behalf of the Credit Parties and subject to Bankruptcy Court approval, to a break-up fee or to reimburse fees and expenses of any stalking horse bidder up to an amount not to exceed 3.00% of the purchase price of such Real Property Lease and may make any such payments on behalf of such Credit Party and any amount used by the DIP ABL Agent to make such

payments shall, at the election of the DIP ABL Agent, be deemed a borrowing of DIP Revolving Loans hereunder. Upon receipt of notice that the DIP ABL Agent elects to exercise its rights under this Section 8.1(b), the Credit Parties shall promptly file a motion seeking expedited relief and a hearing on the earliest court date available for purposes of assuming such Real Property Lease and assigning it to such assignee and cure any defaults that have occurred and are continuing under such Real Property Lease. Notwithstanding the foregoing, this Section 8.1(b) shall not apply to Real Property Leases that are rejected on the effective date of an Acceptable Chapter 11 Plan.

(c) If a DIP Event of Default shall have occurred and be continuing, subject to the rights of the DIP Term Loan Agent and DIP Term Loan Lenders under Article 12 of the DIP Term Loan Documents, the DIP ABL Agent shall have the right to direct any Debtor that is a lessee under a Real Property Lease to assign such Real Property Lease to the DIP ABL Agent or its designee, on behalf of the DIP ABL Agent and the DIP ABL Lenders, as collateral for the DIP ABL Obligations and to direct such Debtor lessee to assume such Real Property Lease to the extent assumption is required under the Bankruptcy Code as a prerequisite to such assignment. Upon receipt of notice that the DIP ABL Agent elects to exercise its rights under this Section 8.1(c), the Credit Parties shall (i) promptly file a motion seeking expedited relief and a hearing on the earliest court date available for purposes of, if necessary, assuming such Real Property Lease and assigning it to the DIP ABL Agent and (ii) cure any defaults that have occurred and are continuing under such Real Property Lease. Notwithstanding the foregoing, this Section 8.1(c) shall not apply to Real Property Leases that are rejected on the effective date of an Acceptable Chapter 11 Plan.

(d) Any order of the Bankruptcy Court approving the assumption (but not the assignment) of any Real Property Lease shall specifically provide that the applicable Debtor shall be authorized to assign such Real Property Lease pursuant to section 365(f) of the Bankruptcy Code subsequent to the date of such assumption designated by the DIP ABL Agent.

(e) No Credit Party shall, nor shall it permit any of its Subsidiaries to, pursuant to section 365 of the Bankruptcy Code, sell or assign a Real Property Lease without first providing fifteen (15) days' prior written notice to the DIP ABL Agent (or such shorter period to which DIP ABL Agent may agree) of any hearing in the Bankruptcy Court seeking approval of a sale or assignment, and the DIP ABL Agent, on behalf of the DIP ABL Agent and the DIP ABL Lenders, subject to the rights of the DIP Term Loan Agent and DIP Term Loan Lenders under Article 12 of the DIP Term Loan Documents, shall be permitted to credit bid forgiveness of some or all of the outstanding DIP ABL Obligations (in an amount equal to at least the consideration offered by any other party in respect of such assignment) as consideration in exchange for any such Real Property Lease. In connection with the exercise of any of the DIP ABL Agent's rights under Sections 8.1(b) and 8.1(c) to direct or compel a sale or assignment of any Real Property Lease, the DIP ABL Agent, on behalf of the DIP ABL Agent and the DIP ABL Lenders, shall be permitted to credit bid forgiveness of a portion of the Indebtedness (in an amount equal to at least the consideration offered by any other party in respect of such sale or assignment) outstanding under the DIP Revolving Loans in exchange for such Real Property Lease.

If any Credit Party is required to cure any monetary default under any Real Property Lease under this Section 8.1, or otherwise in connection with any assumption of such Real Property Lease pursuant to section 365 of the Bankruptcy Code, and such monetary default is not cured within five (5) Business Days of the receipt by such Credit Party of notice from the DIP ABL Agent under Section 8.1(a), (b) or (c) or any other notice from the DIP ABL Agent requesting the cure of such monetary default, then the DIP ABL Agent may, but shall not be obligated to, cure any such monetary default on behalf of such Credit Party and any such payments shall, at the election of the DIP ABL Agent, be deemed a borrowing of DIP Revolving Loans hereunder.

ARTICLE 9 - [RESERVED]

ARTICLE 10 - DIP EVENTS OF DEFAULT

Section 10.1 DIP Events of Default. For purposes of the DIP ABL Financing Documents, the occurrence of any of the following conditions and/or events, whether voluntary or involuntary, by operation of law or otherwise, shall constitute a "**DIP Event of Default**":

(a) Payments. Any Borrower or other Credit Party shall fail to pay (i) any principal of any Loan when due or (ii) any interest, premium or fee under any DIP ABL Financing Document or any other amount payable under any DIP ABL Financing Document within three (3) Business Days after any such interest or other amount becomes due; or

(b) Covenants. Any Borrower or any Restricted Subsidiaries shall (i) default in the due performance or observance by it of any term, covenant or agreement contained in Section 2.11, Section 4.1(f)(i), Section 4.4 (with respect to the existence of the Borrowers and their Restricted Subsidiaries), Section 4.8, Section 4.11, Section 4.19, Section 4.20, Section 4.21, Section 4.22, Article 5, Article 6 or Section 7.4 or (ii) default in the due performance or observance by it of any other term, covenant or agreement contained in this Agreement (other than those set forth in this Section 10.1) or any other DIP ABL Financing Document and, in the case of this clause (ii), such default shall continue unremedied for a period of thirty (30) days after the date on which written notice thereof is given to the defaulting party by DIP ABL Agent or the Required DIP ABL Lenders; or

(c) Representations, etc. Any representation, warranty or statement made or deemed made by any Credit Party herein or in any other DIP ABL Financing Document or in any certificate delivered to DIP ABL Agent or any DIP ABL Lender pursuant hereto or thereto shall prove to be untrue in any material respect (or, in the case of any such representation, warranty or statement that is qualified as to "materiality," "Material Adverse Effect" or similar language, shall prove to be untrue in any respect) on the date as of which made or deemed made; or

(d) Default Under Other Agreements.

(i) Any Borrower or any of its Subsidiaries shall (x) default in any payment of Indebtedness (other than the DIP ABL Obligations and any Indebtedness of any Debtor that was incurred prior to the Petition Date) (including, without limitation, any Indebtedness under the DIP Term Loan Documents and/or Indebtedness incurred prior to the Petition Date that is required to be paid under the Bankruptcy Code or by an order of the Bankruptcy Court) beyond the period of grace, if any, provided in an instrument or agreement under which such Indebtedness was created (or, in respect of Indebtedness required to be paid by Bankruptcy Court order, the period set forth in such order) or (y) default in the observance or performance of any agreement or condition relating to any Indebtedness (other than the DIP ABL Obligations and any Indebtedness of any Debtor that was incurred prior to the Petition Date) (including, without limitation, any Indebtedness under the DIP Term Loan Documents and/or any agreement or condition relating to any Indebtedness incurred prior to the Petition Date that is required to be observed or performed under the Bankruptcy Code or by an order of the Bankruptcy Court) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, in the case of this clause (y), the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to

cause (determined without regard to whether any notice is required), any such Indebtedness to become due prior to its Stated Maturity, or

(ii) any Indebtedness (other than the DIP ABL Obligations and any Indebtedness of any Debtor that was incurred prior to the Petition Date (or, if later, the date on which such Person became a Debtor)) of the Borrower or any of its Subsidiaries shall be declared to be (or shall become) due and payable, or required to be prepaid other than by a regularly scheduled required prepayment, prior to the Stated Maturity thereof;

provided that it shall not be a Default or a DIP Event of Default under clauses (i) or (ii) of this Section 10.1(d) unless the aggregate principal amount of all Indebtedness to which a circumstance described in such clauses applies is at least $10,000,000; or

(e) Bankruptcy, etc. Any Restricted Subsidiary that is not a Debtor (any such Restricted Subsidiary, an "**Applicable Subsidiary**") shall commence a voluntary case concerning itself under the Bankruptcy Code and such Applicable Subsidiary shall fail to become a Guarantor pursuant to Section 4.12 within ten (10) Business Days; or an involuntary case is commenced against an Applicable Subsidiary, and the petition is not controverted within ten (10) days, or is not dismissed within forty-five (45) days after the filing thereof, *provided, however,* that during the pendency of such period, each DIP ABL Lender shall be relieved of its obligation to extend credit hereunder; or a custodian (as defined in the Bankruptcy Code) is appointed for, or takes charge of, all or substantially all of the property of an Applicable Subsidiary, to operate all or any substantial portion of the business of an Applicable Subsidiary, commences any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to an Applicable Subsidiary, or there is commenced against an Applicable Subsidiary any such proceeding which remains undismissed for a period of forty-five (45) days after the filing thereof, or an Applicable Subsidiary is adjudicated insolvent or bankrupt; or any order of relief or other order approving any such case or proceeding is entered; or an Applicable Subsidiary makes a general assignment for the benefit of creditors; or any Company action is taken by an Applicable Subsidiary for the purpose of effecting any of the foregoing; or

(f) ERISA. One or more ERISA Events shall have occurred and the liability of any or all of the Borrower, any Subsidiary of any Borrower or any ERISA Affiliate contemplated by the foregoing either individually or in the aggregate, has had or would be reasonably expected to have, a Material Adverse Effect; or

(g) Security Documents.

(i) Any of the Security Documents that extend to assets constituting a material portion of the DIP ABL Collateral or any of the DIP Orders shall cease to be in full force and effect (other than in accordance with its terms), or shall cease to give DIP ABL Agent for the benefit of the Secured Creditors the Liens, Super-priority Claims, rights, powers and privileges purported to be created thereby (including, without limitation, a perfected security interest in, and Lien on, any material portion of the DIP ABL Collateral, in favor of DIP ABL Agent, superior to and prior to the rights of all third Persons (except as permitted by Section 5.1 and, with respect to perfection, except as otherwise expressly provided in the applicable Security Document)); or

(ii) Any Borrower or any other Credit Party, or any Person acting for or on behalf of such Credit Party, shall deny or disaffirm in writing such Credit Party's obligations under any Security Document to which it is a party or otherwise; or

(h) Guaranties. The Subsidiaries Guaranty (if any is in effect) or any provision thereof shall cease to be in full force or effect as to any Guarantor (except as a result of a release of any Guarantor in accordance with the terms thereof), or any Guarantor or any Person acting for or on behalf of such Guarantor shall deny or disaffirm in writing such Guarantor's obligations under the Subsidiaries Guaranty to which it is a party; or

(i) Judgments. One or more (i) judgments or decrees shall be entered against any Borrower or any Restricted Subsidiary of a Borrower (which, in the case of the Debtors only, arose after the Petition Date) involving in the aggregate for Borrowers and their Restricted Subsidiaries a liability (not paid or to the extent not covered by a reputable and solvent insurance company) and such judgments and decrees either shall be final and non-appealable or shall not be vacated, discharged or stayed or bonded pending appeal for any period of 30 consecutive days, and the aggregate amount of all such judgments equals or exceeds $10,000,000 or (ii) judgments or orders shall have been rendered against any Restricted Subsidiary of the Borrower (which, in the case of the Debtors only, arose following the Petition Date), and such judgment or order shall not have been stayed (including as a result of the automatic stay of the Chapter 11 Cases), and which shall cause or could reasonably be expected to cause a Material Adverse Effect, and in each case, such action shall not be effectively stayed (including as a result of the automatic stay under the Chapter 11 Cases).

(j) Change of Control. Any Change of Control shall have occurred; or

(k) DIP ABL Intercreditor Agreement. The DIP ABL Intercreditor Agreement or any provision thereof shall, as a result of any act or omission of any Credit Party, cease to be in full force and effect other than in accordance with its terms, or any Lien securing or purporting to secure Indebtedness or other obligations owing under the DIP Term Loan Documents shall cease to be subordinated (to the extent required to be subordinated under the DIP ABL Intercreditor Agreement, the Security Documents or the DIP Orders) to all Liens created under the Security Documents and the DIP Orders securing the DIP ABL Obligations; or

(l) Inability to Pay Debts. Any Restricted Subsidiary (other than a Debtor) becomes unable or admits in writing its inability or fails generally to pay its debts as they become due; or

(m) Chapter 11 Case Defaults

(i) Dismissal or Conversion of Chapter 11 Cases; Appointment of Trustee or Examiner; Cash Collateral Use:

(A) Any of the Chapter 11 Cases of any of the Credit Parties shall be dismissed or converted to a Chapter 7 Case;

(B) a trustee or an examiner having expanded powers (beyond those set forth under sections 1106(a)(3) and (4) of the Bankruptcy Code) (other than a fee examiner) is appointed or elected in the any of the Chapter 11 Cases, or the Bankruptcy Court shall have entered an order providing for such appointment;

(C) an order of the Bankruptcy Court shall be entered denying or terminating use of Cash Collateral by the Credit Parties and the Credit Parties shall have not obtained use of Cash Collateral pursuant to an order consented to by, and in form and substance reasonably acceptable to, the Required DIP ABL Lenders;

(D) any Credit Party shall file a motion or other pleading seeking, or otherwise consenting to, any of the matters set forth in clauses (A) through (C) above or the granting of any other relief that if granted would give rise to an DIP Event of Default except to the extent that such motion, proceeding or consent shall have been withdrawn; or

(E) any Credit Party or any of its Subsidiaries, or any person claiming by or through any Credit Party or any of its Subsidiaries, with any Credit Party's or any Subsidiary's consent, shall obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding against (A) the DIP ABL Agent or any of the DIP ABL Lenders relating to the DIP ABL Facility (as defined in the DIP Orders), or (B) the Prepetition ABL Agent or any of the Prepetition ABL Lenders related to any of the Prepetition ABL Financing Documents;

(ii) the existence of any claims or charges, or the entry of any order of the Bankruptcy Court authorizing (i) any claims or charges, other than in respect of the DIP Facilities (as defined in the DIP Orders) and the Carve Out or as otherwise permitted under the applicable DIP ABL Financing Documents or the DIP Orders, entitled to superpriority administrative expense claim status in any Chapter 11 Case pursuant to Section 364(c)(1) of the Bankruptcy Code that are *pari passu* with or senior to the claims of the DIP ABL Agent and the DIP ABL Lenders under the DIP ABL Facility (as defined in the DIP Orders), or there shall arise or be granted by the Bankruptcy Court any claim having priority over any or all administrative expenses of the kind specified in clause (b) of Section 503 or clause (b) of Section 507 of the Bankruptcy Code (other than the Carve Out), or (ii) any Lien on the DIP ABL Collateral having a priority senior to or *pari passu* with the Liens and security interests granted herein, except, in each case, as expressly provided in the DIP ABL Financing Documents or in the DIP Orders then in effect (but only in the event specifically consented to by the Required DIP ABL Lenders (or the DIP ABL Agent with the consent of the Required DIP ABL Lenders)), whichever is in effect;

(iii) the Bankruptcy Court shall enter an order or orders granting relief from any stay of proceeding (including, the automatic stay applicable under Section 362 of the Bankruptcy Code to the holder or holders of any security interest) to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of any of the Credit Parties which have a value in excess of $3,000,000 in the aggregate or to permit any other action or actions that would result in a Material Adverse Effect with respect to any Credit Party or its estate;

(iv) Certain Orders:

(A) an order of the Bankruptcy Court shall be entered reversing, amending, supplementing, staying, vacating or otherwise amending, supplementing or modifying the Interim DIP Order or the Final DIP Order, without the prior written consent of the Required DIP ABL Lenders, or a Credit Party shall apply for the authority to do so except to the extent such application shall have been withdrawn or shall support or fail to promptly oppose any other party's application for entry of such an order;

(B) the Interim DIP Order (prior to the Final DIP Order Entry Date) or the Final DIP Order (on and after the Final DIP Order Entry Date) shall cease

to create a valid and perfected Lien on the DIP ABL Collateral or to be in full force and effect, shall have been reversed, modified, amended, stayed, vacated, or subject to stay pending appeal, in the case of modification or amendment, without prior written consent of the Required DIP ABL Lenders (or the DIP ABL Agent with the consent of the Required DIP ABL Lenders);

(C) an order shall have been entered by the Bankruptcy Court avoiding or requiring disgorgement by the DIP ABL Agent or any DIP ABL Lender of any amounts received in respect of the DIP ABL Obligations or by the Prepetition ABL Agent or any Prepetition ABL Lender in respect of Prepetition ABL Obligations;

(D) any of the Credit Parties shall fail to comply with any material provision of the Interim DIP Order (prior to the Final DIP Order Entry Date) or the Final DIP Order (on and after the Final DIP Order Entry Date); or

(E) an order in the Chapter 11 Cases shall be entered charging any of the DIP ABL Collateral under section 506(c) of the Bankruptcy Code against the DIP ABL Lenders or the commencement of other action that is materially adverse to DIP ABL Agent, the DIP ABL Lenders or their respective rights and remedies under the DIP ABL Facility (as defined in the DIP Orders) in any of the Chapter 11 Cases or inconsistent with any of the DIP ABL Financing Documents;

(v) a Reorganization Plan that is not an Acceptable Chapter 11 Plan shall be filed, solicited, or confirmed in any of the Chapter 11 Cases of the Credit Parties, or any order shall be entered which dismisses any of the Chapter 11 Cases of the Credit Parties and which order does not provide for payment in full in cash of the DIP ABL Obligations (other than contingent indemnification obligations not yet due and payable), or any of the Credit Parties and their Subsidiaries shall seek, support or fail to contest in good faith the filing or confirmation of any such Reorganization Plan or entry of any such order;

(vi) failure to satisfy any of the Milestones in accordance with the terms relating to such Milestone (unless waived or extended with the consent of the Required DIP ABL Lenders (or the DIP ABL Agent with the consent of the Required DIP ABL Lenders));

(vii) any Credit Party or any Subsidiary thereof shall take any action in support of any matter set forth in clauses xii through xvii (inclusive) of this Section 10.1(m) or any other Person shall do so and such application is not contested in good faith by the Credit Parties and the relief requested is granted in an order that is not stayed pending appeal;

(viii) any Credit Party or any Subsidiary thereof shall obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding seeking, or otherwise consenting to (i) the invalidation, subordination or other challenging of the Super-priority Claims and Liens granted to secure the DIP ABL Obligations or the Prepetition ABL Obligations or any other rights granted to the DIP ABL Agent, the DIP ABL Lenders, the Prepetition ABL Agent or Prepetition ABL Lenders in the DIP Orders or this Agreement or (ii) any

relief under section 506(c) of the Bankruptcy Code with respect to any DIP ABL Collateral or Prepetition ABL Collateral;

(ix) any Credit Party shall file a pleading in support of a challenge of any payments made to the DIP ABL Agent or any DIP ABL Lender with respect to the DIP ABL Obligations or the Prepetition ABL Agent or any Prepetition ABL Lender with respect to the Prepetition ABL Obligations, other than to challenge the occurrence of a Default or DIP Event of Default;

(x) without the consent of the Required DIP ABL Lenders, the filing of any motion by the Credit Parties seeking approval of (or the entry of an order by the Bankruptcy Court approving) adequate protection to any prepetition agent or lender that is inconsistent with the Interim DIP Order (prior to the Final DIP Order Entry Date) or the Final DIP Order (on and after the Final DIP Order Entry Date);

(xi) without the Required DIP ABL Lenders' consent, the entry of any order by the Bankruptcy Court granting, or the filing by any Credit Party or any of its Subsidiaries of any motion or other request with the Bankruptcy Court (in each case, other than the DIP Orders and motions seeking entry thereof or permitted amendments or modifications thereto) seeking, authority to use any Cash Collateral or cash proceeds of any of the DIP ABL Collateral without the DIP ABL Agent's and the Required DIP ABL Lenders' consent or to obtain any financing under section 364 of the Bankruptcy Code other than the DIP Facilities (as defined in the DIP Orders) unless such motion or order contemplates payment in full in cash of the DIP ABL Obligations and the Prepetition ABL Obligations (if any) immediately upon consummation of the transactions contemplated thereby;

(xii) if any Credit Party or any of its Subsidiaries is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any part of the business affairs of the Credit Parties and their Subsidiaries, taken as a whole, which could reasonably be expected to have a Material Adverse Effect; *provided*, that the Credit Parties shall have ten (10) Business Days after the entry of such an order to obtain a court order vacating, staying or otherwise obtaining relief from the Bankruptcy Court or another court to address any such court order;

(xiii) any Credit Party shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any prepetition Indebtedness or payables other than as otherwise not prohibited under this Agreement and to the extent authorized by one or more First Day Orders, the Interim DIP Order or the Final DIP Order and consistent with the Approved Budget;

(xiv) if, unless otherwise approved by the DIP ABL Agent and the Required DIP ABL Lenders, an order of the Bankruptcy Court shall be entered providing for a change in venue with respect to the Chapter 11 Cases and such order shall not be reversed or vacated within ten (10) days;

(xv) without the Required DIP ABL Lenders' consent, any Credit Party or any Subsidiary thereof shall file any motion or other request with the Bankruptcy Court seeking the, or the Bankruptcy Court shall enter an order, (i) granting or imposing, under section 364 of the Bankruptcy Code or otherwise, liens or security interests in any DIP ABL Collateral, whether senior, equal or subordinate to the DIP ABL Agent's liens and

security interests except to the extent permitted by this Agreement; (ii) permitting the use, or seeking the use, of Cash Collateral; or (iii) modifying or affecting any of the rights of the DIP ABL Agent, or the DIP ABL Lenders under the DIP Orders or the DIP ABL Financing Documents, by any Reorganization Plan confirmed in the Chapter 11 Cases or subsequent order entered in the Chapter 11 Cases;

(xvi) the RSA shall cease to be in full force and effect,

(xvii) without the Required DIP ABL Lenders' consent, an order shall have been entered by the Bankruptcy Court terminating the exclusive right of any Credit Party or any Subsidiary thereof to file a chapter 11 plan or solicit a disclosure statement,

(xviii) without the Required DIP ABL Lenders' consent, any Credit Party or any Subsidiary thereof shall move or otherwise apply in the Chapter 11 Cases for authority to (i) sell all or substantially all of the assets or equity of any Credit Party or any Subsidiary thereof pursuant to section 363 of the Bankruptcy Code or otherwise, or (ii) consummate a sale of assets or equity of any Credit Party or any Subsidiary thereof or DIP ABL Collateral having a value in excess of $500,000 outside of the ordinary course of business and not otherwise permitted hereunder.

All cure periods provided for in this Section 10.1 shall run concurrently with any cure period provided for in Section 10.2 or any applicable DIP ABL Financing Documents under which the default occurred.

Section 10.2 Acceleration and Suspension or Termination of DIP Revolving Loan Commitment.

(a) Upon the occurrence and during the continuance of a DIP Event of Default, DIP ABL Agent may, and shall if requested by Required DIP ABL Lenders, (a) by notice to Borrower Representative suspend or terminate the DIP Revolving Loan Commitment and the obligations of DIP ABL Agent and DIP ABL Lenders with respect thereto, in whole or in part (and, if in part, each DIP ABL Lender's DIP Revolving Loan Commitment shall be reduced in accordance with its Pro Rata Share), and/or (b) by notice to Borrower Representative declare all or any portion of the DIP ABL Obligations to be, and the DIP ABL Obligations shall thereupon become, immediately due and payable, with accrued interest thereon, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same; *provided*, *however*, that in the case of any of the DIP Events of Default specified in Section 10.1(e) above, without any notice to any Borrower or any other act by DIP ABL Agent or the DIP ABL Lenders, the DIP Revolving Loan Commitment and the obligations of DIP ABL Agent and the DIP ABL Lenders with respect thereto shall thereupon immediately and automatically terminate and all of the DIP ABL Obligations shall become immediately and automatically due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same.

(b) Following the occurrence of a DIP Event of Default, DIP ABL Agent and DIP ABL Lenders may enforce any or all of their rights and remedies set forth in the DIP Orders, this Agreement and the other DIP ABL Financing Documents in accordance with the DIP Orders.

Section 10.3 UCC Remedies.

(a) Upon the occurrence of and during the continuance of a DIP Event of Default under this Agreement or the other DIP ABL Financing Documents, DIP ABL Agent, in addition to all other rights, options, and remedies granted to DIP ABL Agent under this Agreement or at law or in

equity, may exercise, either directly or through one or more assignees or designees, all rights and remedies granted to it under all DIP ABL Financing Documents, the DIP Orders, the UCC in effect in the applicable jurisdiction(s) and any other applicable law; including, without limitation:

(i) the right to take possession of, send notices regarding, and collect directly the DIP ABL Collateral, with or without judicial process;

(ii) the right to (by its own means or with judicial assistance) enter any of Borrowers' premises and take possession of the DIP ABL Collateral, or render it unusable, or to render it usable or saleable, or dispose of the DIP ABL Collateral on such premises in compliance with subsection (iii) below and to take possession of Borrowers' original books and records, to obtain access to Borrowers' data processing equipment, computer hardware and software relating to the DIP ABL Collateral and to use all of the foregoing and the information contained therein in any manner DIP ABL Agent deems appropriate, without any liability for rent, storage, utilities, or other sums, and Borrowers shall not resist or interfere with such action (if Borrowers' books and records are prepared or maintained by an accounting service, contractor or other third party agent, Borrowers hereby irrevocably authorize such service, contractor or other agent, upon notice by DIP ABL Agent to such Person that a DIP Event of Default has occurred and is continuing, to deliver to DIP ABL Agent or its designees such books and records, and to follow DIP ABL Agent's instructions with respect to further services to be rendered);

(iii) the right to require Borrowers at Borrowers' expense to assemble all or any part of the DIP ABL Collateral and make it available to DIP ABL Agent at any place designated by DIP ABL Lender;

(iv) the right to notify postal authorities to change the address for delivery of Borrowers' mail to an address designated by DIP ABL Agent and to receive, open and dispose of all mail addressed to any Borrower; and/or

(v) the right to enforce Borrowers' rights against Account Debtors and other obligors, including, without limitation, (i) the right to collect Accounts directly in DIP ABL Agent's own name (as agent for DIP ABL Lenders) and to charge the collection costs and expenses, including attorneys' fees, to Borrowers, and (ii) the right, in the name of DIP ABL Agent or any designee of DIP ABL Agent or Borrowers, to verify the validity, amount or any other matter relating to any Accounts by mail, telephone, telegraph or otherwise, including, without limitation, verification of Borrowers' compliance with applicable Requirements of Law. Borrowers shall cooperate fully with DIP ABL Agent in an effort to facilitate and promptly conclude such verification process. Such verification may include contacts between DIP ABL Agent and applicable federal, state and local regulatory authorities having jurisdiction over the Borrowers' affairs, all of which contacts Borrowers hereby irrevocably authorize.

(b) Each Borrower agrees that a notice received by it at least ten (10) days before the time of any intended public sale, or the time after which any private sale or other disposition of the DIP ABL Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable law, any perishable DIP ABL Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by DIP ABL Agent without prior notice to Borrowers. At any sale or disposition of DIP ABL Collateral, DIP ABL Agent may (to the extent permitted by applicable law) purchase all or any part of the DIP ABL Collateral, free from any right of redemption by Borrowers, which right is hereby waived and released. Each Borrower covenants

and agrees not to interfere with or impose any obstacle to DIP ABL Agent's exercise of its rights and remedies with respect to the DIP ABL Collateral. DIP ABL Agent shall have no obligation to clean-up or otherwise prepare the DIP ABL Collateral for sale. DIP ABL Agent may comply with any applicable state or federal law requirements in connection with a disposition of the DIP ABL Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the DIP ABL Collateral. DIP ABL Agent may sell the DIP ABL Collateral without giving any warranties as to the DIP ABL Collateral. DIP ABL Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the DIP ABL Collateral. If DIP ABL Agent sells any of the DIP ABL Collateral upon credit, Borrowers will be credited only with payments actually made by the purchaser, received by DIP ABL Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the DIP ABL Collateral, DIP ABL Agent may resell the DIP ABL Collateral and Borrowers shall be credited with the proceeds of the sale. Borrowers shall remain liable for any deficiency if the proceeds of any sale or disposition of the DIP ABL Collateral are insufficient to pay all DIP ABL Obligations.

(c) Without restricting the generality of the foregoing and for the purposes aforesaid, each Borrower hereby appoints and constitutes DIP ABL Agent its lawful attorney-in-fact with full power of substitution in the DIP ABL Collateral, upon the occurrence and during the continuance of a DIP Event of Default, to (i) use unadvanced funds remaining under this Agreement or which may be reserved, escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Notes, (ii) pay, settle or compromise all existing bills and claims, which may be Liens or security interests, or to avoid such bills and claims becoming Liens against the DIP ABL Collateral, (iii) execute all applications and certificates in the name of such Borrower and to prosecute and defend all actions or proceedings in connection with the DIP ABL Collateral, and (iv) do any and every act required under the terms of the DIP ABL Financing Documents which such Borrower might do in its own behalf; it being understood and agreed that this power of attorney in this subsection (c) shall be a power coupled with an interest and cannot be revoked.

(d) DIP ABL Agent and each DIP ABL Lender are each hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrowers' labels, mask works, rights of use of any name, any other Intellectual Property and advertising matter, and any similar property as it pertains to the DIP ABL Collateral, in completing production of, advertising for sale, and selling any DIP ABL Collateral and, in connection with DIP ABL Agent's exercise of its rights under this Article, Borrowers' rights under all licenses (whether as licensor or licensee) and all franchise agreements inure to DIP ABL Agent's and each DIP ABL Lender's benefit.

Section 10.4 Credit Bid.

Borrowers and DIP ABL Lenders hereby irrevocably authorize DIP ABL Agent, upon the direction of the Required DIP ABL Lenders, to (a) credit bid and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the DIP ABL Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including under section 363 of the Bankruptcy Code or any similar laws in any other jurisdictions to which Borrower is subject, or (b) credit bid and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the DIP ABL Collateral at any other sale or foreclosure conducted by DIP ABL Agent (whether by judicial action or otherwise) in accordance with applicable Requirements of Law. In connection with any such credit bid and purchase, the DIP ABL Obligations owed to DIP ABL Lenders shall be entitled to be, and shall be, credit bid on a ratable basis (with DIP ABL Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not unduly delay the ability of DIP ABL Agent to credit bid and purchase at such sale or other disposition of the DIP ABL Collateral and, if such claims cannot be estimated without unduly delaying

the ability of DIP ABL Agent to credit bid, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the asset or assets purchased by means of such credit bid) and DIP ABL Lenders whose DIP ABL Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their DIP ABL Obligations credit bid in relation to the aggregate amount of DIP ABL Obligations so credit bid) in the asset or assets so purchased (or in the Capital Stock of the acquisition vehicle or vehicles that are used to consummate such purchase).

Section 10.5 Default Rate of Interest. At the election of DIP ABL Agent or Required DIP ABL Lenders, after the occurrence of a DIP Event of Default and for so long as it continues, the Loans and other DIP ABL Obligations shall bear interest at rates that are two percent (2.0%) per annum in excess of the rates otherwise payable under this Agreement; *provided, however*, that in the case of any DIP Event of Default specified in Section 10.1(e) above, such default rates shall apply immediately and automatically without the need for any election or action of any kind on the part of DIP ABL Agent or any DIP ABL Lender.

Section 10.6 Setoff Rights. During the continuance of any DIP Event of Default, each DIP ABL Lender is hereby authorized by each Borrower at any time or from time to time, with reasonably prompt subsequent notice to such Borrower to set off and to appropriate and to apply any and all (a) balances held by such DIP ABL Lender or any of such DIP ABL Lender's Affiliates at any of its offices for the account of such Borrower or any of its Subsidiaries (regardless of whether such balances are then due to such Borrower or its Subsidiaries), and (b) other property at any time held or owing by such DIP ABL Lender to or for the credit or for the account of such Borrower or any of its Subsidiaries, against and on account of any of the DIP ABL Obligations; except that no DIP ABL Lender shall exercise any such right without the prior written consent of DIP ABL Agent. Any DIP ABL Lender exercising a right to set off shall purchase for cash (and the other DIP ABL Lenders shall sell) interests in each of such other DIP ABL Lender's Pro Rata Share of the DIP ABL Obligations as would be necessary to cause all DIP ABL Lenders to share the amount so set off with each other DIP ABL Lender in accordance with their respective Pro Rata Share of the DIP ABL Obligations. Each Borrower agrees, to the fullest extent permitted by law, that any DIP ABL Lender and any of such DIP ABL Lender's Affiliates may exercise its right to set off with respect to the DIP ABL Obligations as provided in this Section 10.6.

Section 10.7 Application of Proceeds.

(a) Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of a DIP Event of Default, each Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by DIP ABL Agent from or on behalf of such Borrower or any Guarantor of all or any part of the DIP ABL Obligations, and, as between Borrowers on the one hand and DIP ABL Agent and DIP ABL Lenders on the other, DIP ABL Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the DIP ABL Obligations in such manner as DIP ABL Agent may deem advisable notwithstanding any previous application by DIP ABL Agent.

(b) Notwithstanding anything to the contrary contained in this Agreement,

(i) Prior to the Final DIP Order Entry Date, and so long as no DIP Event of Default has occurred and is continuing, DIP ABL Agent shall apply any and all payments received by DIP ABL Agent in respect of the DIP ABL Obligations, and any and all proceeds of DIP ABL Collateral received by DIP ABL Agent, in the following order: *first*, to the outstanding Prepetition ABL Obligations; *second*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to DIP ABL Agent with respect to this Agreement, the other DIP ABL Financing Documents or the DIP

ABL Collateral; *third,* to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any DIP ABL Lender with respect to this Agreement, the other DIP ABL Financing Documents or the DIP ABL Collateral; *fourth*, to accrued and unpaid interest on the DIP ABL Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); *fifth,* to any other indebtedness or obligations of Borrowers owing to DIP ABL Agent or any DIP ABL Lender under the DIP ABL Financing Documents. Any balance remaining shall be delivered to the Borrowers or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (y) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (z) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its Pro Rata Share of amounts available to be applied pursuant thereto for such category.

(ii) Upon and after the Final DIP Order Entry Date or any occurrence and continuance of a DIP Event of Default, but absent the occurrence and continuance of an Acceleration Event, DIP ABL Agent shall apply any and all payments received by DIP ABL Agent in respect of the DIP ABL Obligations, and any and all proceeds of DIP ABL Collateral received by DIP ABL Agent, in such order as DIP ABL Agent may from time to time elect.

(iii) Upon and after the occurrence of an Acceleration Event, and so long as it continues, DIP ABL Agent shall apply any and all payments received by DIP ABL Agent in respect of the DIP ABL Obligations, and any and all proceeds of DIP ABL Collateral received by DIP ABL Agent, in the following order: *first*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to DIP ABL Agent with respect to this Agreement, the other DIP ABL Financing Documents or the DIP ABL Collateral; *second*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any DIP ABL Lender with respect to this Agreement, the other DIP ABL Financing Documents or the DIP ABL Collateral; *third*, to accrued and unpaid interest on the DIP ABL Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); *fourth* to any other indebtedness or obligations of Borrowers owing to DIP ABL Agent or any DIP ABL Lender under the DIP ABL Financing Documents; *fifth* to the outstanding Prepetition ABL Obligations and Prepetition Term Loan Obligations in a manner consistent with the priorities agreed under the Prepetition Intercreditor Agreements. Any balance remaining shall be delivered to the Borrowers or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (y) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (z) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its Pro Rata Share of amounts available to be applied pursuant thereto for such category.

Section 10.8 Waivers.

(a) Except as otherwise provided for in this Agreement and to the fullest extent permitted by applicable law, each Borrower waives: (i) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all DIP ABL Financing Documents, the Notes or any other notes, commercial paper, accounts, contracts, documents, Instruments, Chattel Paper and

Guarantees at any time owed to DIP ABL Lenders on which any Borrower may in any way be liable; (ii) all rights to notice and a hearing prior to DIP ABL Agent's or any DIP ABL Lender's taking possession or control of, or to DIP ABL Agent's or any DIP ABL Lender's replevy, attachment or levy upon, any DIP ABL Collateral or any bond or security which might be required by any court prior to allowing DIP ABL Agent or any DIP ABL Lender to exercise any of its remedies; and (iii) the benefit of all valuation, appraisal and exemption laws. Each Borrower acknowledges that it has been advised by counsel of its choices and decisions with respect to this Agreement, the other DIP ABL Financing Documents and the transactions evidenced hereby and thereby.

(b) Each Borrower for itself and all its successors and assigns, (i) agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by DIP ABL Lender; (ii) consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by DIP ABL Agent or any DIP ABL Lender with respect to the payment or other provisions of the DIP ABL Financing Documents, and to any substitution, exchange or release of the DIP ABL Collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any Borrower, endorsers, guarantors, or sureties, or whether primarily or secondarily liable, without notice to any other Borrower and without affecting its liability hereunder; (iii) agrees that its liability shall be unconditional and without regard to the liability of any other Borrower, DIP ABL Agent or any DIP ABL Lender for any tax on the indebtedness; and (iv) to the fullest extent permitted by law, expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(c) To the extent that DIP ABL Agent or any DIP ABL Lender may have acquiesced in any noncompliance with any requirements or conditions precedent to the closing of the Loans or to any subsequent disbursement of Loan proceeds, such acquiescence shall not be deemed to constitute a waiver by DIP ABL Agent or any DIP ABL Lender of such requirements with respect to any future disbursements of Loan proceeds and DIP ABL Agent may at any time after such acquiescence require Borrowers to comply with all such requirements. Any forbearance by DIP ABL Agent or DIP ABL Lender in exercising any right or remedy under any of the DIP ABL Financing Documents, or otherwise afforded by applicable law, including any failure to accelerate the maturity date of the Loans, shall not be a waiver of or preclude the exercise of any right or remedy nor shall it serve as a novation of the Notes or as a reinstatement of the Loans or a waiver of such right of acceleration or the right to insist upon strict compliance of the terms of the DIP ABL Financing Documents. DIP ABL Agent's or any DIP ABL Lender's acceptance of payment of any sum secured by any of the DIP ABL Financing Documents after the due date of such payment shall not be a waiver of DIP ABL Agent's and such DIP ABL Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other Liens or charges by DIP ABL Agent as the result of a DIP Event of Default shall not be a waiver of DIP ABL Agent's right to accelerate the maturity of the Loans, nor shall DIP ABL Agent's receipt of any condemnation awards, insurance proceeds, or damages under this Agreement operate to cure or waive any Credit Party's default in payment of sums secured by any of the DIP ABL Financing Documents.

(d) Without limiting the generality of anything contained in this Agreement or the other DIP ABL Financing Documents, to the fullest extent permitted by applicable law, each Borrower agrees that if a DIP Event of Default is continuing (i) DIP ABL Agent and DIP ABL Lenders shall not be subject to any "one action" or "election of remedies" law or rule, and (ii) all Liens and other rights, remedies or privileges provided to DIP ABL Agent or DIP ABL Lenders shall remain in full force and effect until DIP ABL Agent or DIP ABL Lenders have exhausted all remedies against the DIP ABL Collateral and any other properties owned by Borrowers and the DIP ABL Financing Documents and

other security instruments or agreements securing the Loans have been foreclosed, sold and/or otherwise realized upon in satisfaction of Borrowers' obligations under the DIP ABL Financing Documents.

(e) Nothing contained herein or in any other DIP ABL Financing Document shall be construed as requiring DIP ABL Agent or any DIP ABL Lender to resort to any part of the DIP ABL Collateral for the satisfaction of any of Borrowers' obligations under the DIP ABL Financing Documents in preference or priority to any other DIP ABL Collateral, and DIP ABL Agent may seek satisfaction out of all of the DIP ABL Collateral or any part thereof, in its absolute discretion in respect of Borrowers' obligations under the DIP ABL Financing Documents. In addition, DIP ABL Agent shall have the right from time to time to partially foreclose upon any DIP ABL Collateral in any manner and for any amounts secured by the DIP ABL Financing Documents then due and payable as determined by DIP ABL Agent in its sole discretion, including, without limitation, the following circumstances: (i) in the event any Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, DIP ABL Agent may foreclose upon all or any part of the DIP ABL Collateral to recover such delinquent payments, or (ii) in the event DIP ABL Agent elects to accelerate less than the entire outstanding principal balance of the Loans, DIP ABL Agent may foreclose all or any part of the DIP ABL Collateral to recover so much of the principal balance of the Loans as DIP ABL Lender may accelerate and such other sums secured by one or more of the DIP ABL Financing Documents as DIP ABL Agent may elect. Notwithstanding one or more partial foreclosures, any unforeclosed DIP ABL Collateral shall remain subject to the DIP ABL Financing Documents to secure payment of sums secured by the DIP ABL Financing Documents and not previously recovered.

(f) To the fullest extent permitted by law, each Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the DIP ABL Collateral any equitable right otherwise available to any Credit Party which would require the separate sale of any of the DIP ABL Collateral or require DIP ABL Agent or DIP ABL Lenders to exhaust their remedies against any part of the DIP ABL Collateral before proceeding against any other part of the DIP ABL Collateral; and further in the event of such foreclosure each Borrower does hereby expressly consent to and authorize, at the option of DIP ABL Agent, the foreclosure and sale either separately or together of each part of the DIP ABL Collateral.

Section 10.9 Injunctive Relief. The parties acknowledge and agree that, in the event of a breach or threatened breach of any Credit Party's obligations under any DIP ABL Financing Documents, DIP ABL Agent and DIP ABL Lenders may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction (including, without limitation, a temporary restraining order, preliminary injunction, writ of attachment, or order compelling an audit) against such breach or threatened breach, including, without limitation, maintaining any cash management and collection procedure described herein. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach or threatened breach of any provision of this Agreement. Each Credit Party waives, to the fullest extent permitted by law, the requirement of the posting of any bond in connection with such injunctive relief. By joining in the DIP ABL Financing Documents as a Credit Party, each Credit Party specifically joins in this Section as if this Section were a part of each DIP ABL Financing Document executed by such Credit Party.

Section 10.10 Marshalling; Payments Set Aside. Neither DIP ABL Agent nor any DIP ABL Lender shall be under any obligation to marshal any assets in payment of any or all of the DIP ABL Obligations. To the extent that Borrower makes any payment or DIP ABL Agent enforces its Liens or DIP ABL Agent or any DIP ABL Lender exercises its right of set-off, and such payment or the proceeds of such enforcement or set-off is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid by anyone, then to the extent of such recovery, the DIP ABL Obligations or

part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred.

ARTICLE 11 - AGENT

Section 11.1 Appointment and Authorization. Each DIP ABL Lender hereby irrevocably appoints and authorizes DIP ABL Agent to enter into each of the DIP ABL Financing Documents to which it is a party (other than this Agreement) on its behalf and to take such actions as DIP ABL Agent on its behalf and to exercise such powers under the DIP ABL Financing Documents as are delegated to DIP ABL Agent by the terms thereof, together with all such powers as are reasonably incidental thereto. Subject to the terms of Section 11.16 and to the terms of the other DIP ABL Financing Documents, DIP ABL Agent is authorized and empowered to amend, modify, or waive any provisions of this Agreement or the other DIP ABL Financing Documents on behalf of DIP ABL Lenders. The provisions of this Article 11 are solely for the benefit of DIP ABL Agent and DIP ABL Lenders and neither any Borrower nor any other Credit Party shall have any rights as a third party beneficiary of any of the provisions hereof (other than as expressly provided herein). In performing its functions and duties under this Agreement, DIP ABL Agent shall act solely as agent of DIP ABL Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for any Borrower or any other Credit Party. DIP ABL Agent may perform any of its duties hereunder, or under the DIP ABL Financing Documents, by or through its agents, servicers, trustees, investment managers or employees.

Section 11.2 DIP ABL Agent and Affiliates. DIP ABL Agent shall have the same rights and powers under the DIP ABL Financing Documents as any other DIP ABL Lender and may exercise or refrain from exercising the same as though it were not DIP ABL Agent, and DIP ABL Agent and its Affiliates may lend money to, invest in and generally engage in any kind of business with each Credit Party or Affiliate of any Credit Party as if it were not DIP ABL Agent hereunder.

Section 11.3 Action by DIP ABL Agent. The duties of DIP ABL Agent shall be mechanical and administrative in nature. DIP ABL Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any DIP ABL Lender. Nothing in this Agreement or any of the DIP ABL Financing Documents is intended to or shall be construed to impose upon DIP ABL Agent any obligations in respect of this Agreement or any of the DIP ABL Financing Documents except as expressly set forth herein or therein.

Section 11.4 Consultation with Experts. DIP ABL Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 11.5 Liability of DIP ABL Agent. Neither DIP ABL Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be liable to any DIP ABL Lender for any action taken or not taken by it in connection with the DIP ABL Financing Documents, except that DIP ABL Agent shall be liable with respect to its specific duties set forth hereunder but only to the extent of its own gross negligence or willful misconduct in the discharge thereof as determined by a final non-appealable judgment of a court of competent jurisdiction. Neither DIP ABL Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be responsible for or have any duty to ascertain, inquire into or verify (a) any statement, warranty or representation made in connection with any DIP ABL Financing Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements specified in any DIP ABL Financing Document;

(c) the satisfaction of any condition specified in any DIP ABL Financing Document; (d) the validity, effectiveness, sufficiency or genuineness of any DIP ABL Financing Document, any Lien purported to be created or perfected thereby or any other instrument or writing furnished in connection therewith; (e) the existence or non-existence of any Default or DIP Event of Default; or (f) the financial condition of any Credit Party. DIP ABL Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a bank wire, facsimile or electronic transmission or similar writing) believed by it to be genuine or to be signed by the proper party or parties. DIP ABL Agent shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any DIP ABL Lender to whom payment was due but not made, shall be to recover from other DIP ABL Lenders any payment in excess of the amount to which they are determined to be entitled (and such other DIP ABL Lenders hereby agree to return to such DIP ABL Lender any such erroneous payments received by them). Notwithstanding anything to the contrary contained herein or otherwise, it is hereby acknowledged and agreed by each of the parties hereto that DIP ABL Agent shall not (i) be deemed to be a party to any Prepetition ABL Financing Documents or Prepetition Term Loan Documents or have any duties, responsibilities or obligations thereunder or in respect thereof and (ii) shall not be deemed to be an agent or other fiduciary for any Prepetition ABL Lender, Prepetition Term Loan Lender or other Person in respect of the Prepetition ABL Financing Documents or Prepetition Term Loan Documents or the Indebtedness and other obligations owing thereunder.

Section 11.6 Indemnification. Each DIP ABL Lender shall, in accordance with its Pro Rata Share, indemnify DIP ABL Agent (to the extent not reimbursed by Borrowers) upon demand against any cost, expense (including counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from DIP ABL Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction) that DIP ABL Agent may suffer or incur in connection with the DIP ABL Financing Documents or any action taken or omitted by DIP ABL Agent hereunder or thereunder. If any indemnity furnished to DIP ABL Agent for any purpose shall, in the opinion of DIP ABL Agent, be insufficient or become impaired, DIP ABL Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against even if so directed by Required DIP ABL Lenders until such additional indemnity is furnished.

Section 11.7 Right to Request and Act on Instructions. DIP ABL Agent may at any time request instructions from DIP ABL Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the DIP ABL Financing Documents DIP ABL Agent is permitted or desires to take or to grant, and if such instructions are promptly requested, DIP ABL Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the DIP ABL Financing Documents until it shall have received such instructions from Required DIP ABL Lenders or all or such other portion of DIP ABL Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, no DIP ABL Lender shall have any right of action whatsoever against DIP ABL Agent as a result of DIP ABL Agent acting or refraining from acting under this Agreement or any of the other DIP ABL Financing Documents in accordance with the instructions of Required DIP ABL Lenders (or all or such other portion of DIP ABL Lenders as shall be prescribed by this Agreement) and, notwithstanding the instructions of Required DIP ABL Lenders (or such other applicable portion of DIP ABL Lenders), DIP ABL Agent shall have no obligation to take any action if it believes, in good faith, that such action would violate applicable law or exposes DIP ABL Agent to any liability for which it has not received satisfactory indemnification in accordance with the provisions of Section 11.6.

Section 11.8 Credit Decision. Each DIP ABL Lender acknowledges that it has, independently and without reliance upon DIP ABL Agent or any other DIP ABL Lender, and based on

such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each DIP ABL Lender also acknowledges that it will, independently and without reliance upon DIP ABL Agent or any other DIP ABL Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under the DIP ABL Financing Documents.

Section 11.9 DIP ABL Collateral Matters. DIP ABL Lenders irrevocably authorize DIP ABL Agent, at its option and in its discretion, to (a) release any Lien granted to or held by DIP ABL Agent under any Security Document (i) upon termination of the DIP Revolving Loan Commitment and indefeasible payment in full of all DIP ABL Obligations, and, to the extent required by DIP ABL Agent in its sole discretion, the expiration, termination or cash collateralization (to the satisfaction of DIP ABL Agent) of all Swap Contracts secured, in whole or in part, by any DIP ABL Collateral; or (ii) constituting property sold or disposed of as part of or in connection with any disposition permitted under any DIP ABL Financing Document (it being understood and agreed that DIP ABL Agent may conclusively rely without further inquiry on a certificate of a Responsible Officer as to the sale or other disposition of property being made in full compliance with the provisions of the DIP ABL Financing Documents); and (b) subordinate any Lien granted to or held by DIP ABL Agent under any Security Document to a Permitted Lien that is allowed to have priority over the Liens granted to or held by DIP ABL Agent pursuant to the definition of "Permitted Liens". Upon request by DIP ABL Agent at any time, DIP ABL Lenders will confirm DIP ABL Agent's authority to release and/or subordinate particular types or items of DIP ABL Collateral pursuant to this Section 11.9.

Section 11.10 Agency for Perfection. DIP ABL Agent and each DIP ABL Lender hereby appoint each other DIP ABL Lender as agent for the purpose of perfecting DIP ABL Agent's security interest in assets which, in accordance with the Uniform Commercial Code in any applicable jurisdiction, can be perfected by possession or control. Should any DIP ABL Lender (other than DIP ABL Agent) obtain possession or control of any such assets, such DIP ABL Lender shall notify DIP ABL Agent thereof, and, promptly upon DIP ABL Agent's request therefor, shall deliver such assets to DIP ABL Agent or in accordance with DIP ABL Agent's instructions or transfer control to DIP ABL Agent in accordance with DIP ABL Agent's instructions. Each DIP ABL Lender agrees that it will not have any right individually to enforce or seek to enforce any Security Document or to realize upon any DIP ABL Collateral for the Loan unless instructed to do so by DIP ABL Agent (or consented to by DIP ABL Agent), it being understood and agreed that such rights and remedies may be exercised only by DIP ABL Agent.

Section 11.11 Notice of Default. DIP ABL Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or DIP Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to DIP ABL Agent for the account of DIP ABL Lenders, unless DIP ABL Agent shall have received written notice from a DIP ABL Lender or a Borrower referring to this Agreement, describing such Default or DIP Event of Default and stating that such notice is a "notice of default". DIP ABL Agent will notify each DIP ABL Lender of its receipt of any such notice. DIP ABL Agent shall take such action with respect to such Default or DIP Event of Default as may be requested by Required DIP ABL Lenders (or all or such other portion of DIP ABL Lenders as shall be prescribed by this Agreement) in accordance with the terms hereof. Unless and until DIP ABL Agent has received any such request, DIP ABL Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or DIP Event of Default as it shall deem advisable or in the best interests of DIP ABL Lenders.

Section 11.12 Assignment by DIP ABL Agent; Resignation of DIP ABL Agent; Successor DIP ABL Agent.

(a) DIP ABL Agent may, upon ten (10) days' written notice to DIP ABL Lenders and Borrowers (or, in the case of an assignment to an Affiliate, contemporaneous notice), at any time assign its rights, powers, privileges and duties hereunder to (i) another DIP ABL Lender, or (ii) any Person to whom DIP ABL Agent, in its capacity as a DIP ABL Lender, has assigned (or will assign, in conjunction with such assignment of agency rights hereunder) 50% or more of its Loan, in each case without the consent of DIP ABL Lenders or Borrowers. An assignment by DIP ABL Agent pursuant to this subsection (a) shall not be deemed a resignation by DIP ABL Agent for purposes of subsection (b) below.

(b) Without limiting the rights of DIP ABL Agent to designate an assignee pursuant to subsection (a) above, DIP ABL Agent may at any time give notice of its resignation to DIP ABL Lenders and Borrowers. Upon receipt of any such notice of resignation, Required DIP ABL Lenders shall have the right to appoint a successor DIP ABL Agent. If no such successor shall have been so appointed by Required DIP ABL Lenders and shall have accepted such appointment within ten (10) Business Days after the retiring DIP ABL Agent gives notice of its resignation, then the retiring DIP ABL Agent may on behalf of DIP ABL Lenders, appoint a successor DIP ABL Agent; *provided, however,* that if DIP ABL Agent shall notify Borrowers and DIP ABL Lenders that no Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice from DIP ABL Agent that no Person has accepted such appointment and, from and following delivery of such notice, (i) the retiring DIP ABL Agent shall be discharged from its duties and obligations hereunder and under the other DIP ABL Financing Documents, and (ii) all payments, communications and determinations provided to be made by, to or through DIP ABL Agent shall instead be made by or to each DIP ABL Lender directly, until such time as Required DIP ABL Lenders appoint a successor DIP ABL Agent as provided for above in this paragraph.

(c) Upon (i) an assignment permitted by subsection (a) above, or (ii) the acceptance of a successor's appointment as DIP ABL Agent pursuant to subsection (b) above, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) DIP ABL Agent, and the retiring DIP ABL Agent shall be discharged from all of its duties and obligations hereunder and under the other DIP ABL Financing Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by Borrowers to a successor DIP ABL Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrowers and such successor. After the retiring DIP ABL Agent's resignation hereunder and under the other DIP ABL Financing Documents, the provisions of this Article 11 and this Section 11.12 shall continue in effect for the benefit of such retiring DIP ABL Agent and its sub-agents in respect of any actions taken or omitted to be taken by any of them while the retiring DIP ABL Agent was acting or was continuing to act as DIP ABL Agent.

Section 11.13 Payment and Sharing of Payment.

(a) DIP Revolving Loan Advances, Payments and Settlements; Interest and Fee Payments.

(i) DIP ABL Agent shall have the right, on behalf of Revolving DIP ABL Lenders to disburse funds to Borrowers for all DIP Revolving Loans requested or deemed requested by Borrowers pursuant to the terms of this Agreement. DIP ABL Agent shall be conclusively entitled to assume, for purposes of the preceding sentence, that each Revolving DIP ABL Lender will fund its Pro Rata Share of all DIP Revolving Loans requested by Borrowers. Each Revolving DIP ABL Lender shall reimburse DIP ABL Agent on demand, in accordance with the provisions of the immediately following paragraph, for all funds disbursed on its behalf by DIP ABL Agent pursuant to the first

sentence of this clause (i), or if DIP ABL Agent so requests, each Revolving DIP ABL Lender will remit to DIP ABL Agent its Pro Rata Share of any DIP Revolving Loan before DIP ABL Agent disburses the same to a Borrower. If DIP ABL Agent elects to require that each Revolving DIP ABL Lender make funds available to DIP ABL Agent, prior to a disbursement by DIP ABL Agent to a Borrower, DIP ABL Agent shall advise each Revolving DIP ABL Lender by telephone, facsimile or e-mail of the amount of such Revolving DIP ABL Lender's Pro Rata Share of the DIP Revolving Loan requested by such Borrower no later than noon (Eastern time) on the date of funding of such DIP Revolving Loan, and each such Revolving DIP ABL Lender shall pay DIP ABL Agent on such date such Revolving DIP ABL Lender's Pro Rata Share of such requested DIP Revolving Loan, in same day funds, by wire transfer to the Payment Account, or such other account as may be identified by DIP ABL Agent to Revolving DIP ABL Lenders from time to time. If any DIP ABL Lender fails to pay the amount of its Pro Rata Share of any funds advanced by DIP ABL Agent pursuant to the first sentence of this clause (i) within one (1) Business Day after DIP ABL Agent's demand, DIP ABL Agent shall promptly notify Borrower Representative, and Borrowers shall immediately repay such amount to DIP ABL Agent. Any repayment required by Borrowers pursuant to this Section 11.13 shall be accompanied by accrued interest thereon from and including the date such amount is made available to a Borrower to but excluding the date of payment at the rate of interest then applicable to DIP Revolving Loans. Nothing in this Section 11.13 or elsewhere in this Agreement or the other DIP ABL Financing Documents shall be deemed to require DIP ABL Agent to advance funds on behalf of any DIP ABL Lender or to relieve any DIP ABL Lender from its obligation to fulfill its commitments hereunder or to prejudice any rights that DIP ABL Agent or any Borrower may have against any DIP ABL Lender as a result of any default by such DIP ABL Lender hereunder.

(ii) On a Business Day of each week as selected from time to time by DIP ABL Agent, or more frequently (including daily), if DIP ABL Agent so elects (each such day being a "**Settlement Date**"), DIP ABL Agent will advise each Revolving DIP ABL Lender by telephone, facsimile or e-mail of the amount of each such Revolving DIP ABL Lender's percentage interest of the DIP Revolving Loan balance as of the close of business of the Business Day immediately preceding the Settlement Date. In the event that payments are necessary to adjust the amount of such Revolving DIP ABL Lender's actual percentage interest of the DIP Revolving Loans to such DIP ABL Lender's required percentage interest of the DIP Revolving Loan balance as of any Settlement Date, the Revolving DIP ABL Lender from which such payment is due shall pay DIP ABL Agent, without setoff or discount, to the Payment Account before 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date the full amount necessary to make such adjustment. Any obligation arising pursuant to the immediately preceding sentence shall be absolute and unconditional and shall not be affected by any circumstance whatsoever. In the event settlement shall not have occurred by the date and time specified in the second preceding sentence, interest shall accrue on the unsettled amount at the rate of interest then applicable to DIP Revolving Loans.

(iii) On each Settlement Date, DIP ABL Agent shall advise each Revolving DIP ABL Lender by telephone, facsimile or e-mail of the amount of such Revolving DIP ABL Lender's percentage interest of principal, interest and fees paid for the benefit of Revolving DIP ABL Lenders with respect to each applicable DIP Revolving Loan, to the extent of such Revolving DIP ABL Lender's DIP Revolving Loan Exposure with respect thereto, and shall make payment to such Revolving DIP ABL Lender before 1:00 p.m.

(Eastern time) on the Business Day following the Settlement Date of such amounts in accordance with wire instructions delivered by such Revolving DIP ABL Lender to DIP ABL Agent, as the same may be modified from time to time by written notice to DIP ABL Agent; *provided, however,* that, in the case such Revolving DIP ABL Lender is a Defaulted DIP ABL Lender, DIP ABL Agent shall be entitled to set off the funding short-fall against that Defaulted DIP ABL Lender's respective share of all payments received from any Borrower.

(iv) On the Closing Date, DIP ABL Agent, on behalf of DIP ABL Lenders, may elect to advance to Borrowers the full amount of the initial Loans to be made on the Closing Date prior to receiving funds from DIP ABL Lenders, in reliance upon each DIP ABL Lender's commitment to make its Pro Rata Share of such Loans to Borrowers in a timely manner on such date. If DIP ABL Agent elects to advance the initial Loans to Borrower in such manner, DIP ABL Agent shall be entitled to receive all interest that accrues on the Closing Date on each DIP ABL Lender's Pro Rata Share of such Loans unless DIP ABL Agent receives such DIP ABL Lender's Pro Rata Share of such Loans before 3:00 p.m. (Eastern time) on the Closing Date.

(v) It is understood that for purposes of advances to Borrowers made pursuant to this Section 11.13, DIP ABL Agent will be using the funds of DIP ABL Agent, and pending settlement, (A) all funds transferred from the Payment Account to the outstanding DIP Revolving Loans shall be applied first to advances made by DIP ABL Agent to Borrowers pursuant to this Section 11.13, and (B) all interest accruing on such advances shall be payable to DIP ABL Agent.

(vi) The provisions of this Section 11.13(a) shall be deemed to be binding upon DIP ABL Agent and DIP ABL Lenders notwithstanding the occurrence of any Default or DIP Event of Default, or any insolvency or bankruptcy proceeding pertaining to any Borrower or any other Credit Party.

(b) [Reserved].

(c) Return of Payments.

(i) If DIP ABL Agent pays an amount to a DIP ABL Lender under this Agreement in the belief or expectation that a related payment has been or will be received by DIP ABL Agent from a Borrower and such related payment is not received by DIP ABL Agent, then DIP ABL Agent will be entitled to recover such amount from such DIP ABL Lender on demand without setoff, counterclaim or deduction of any kind, together with interest accruing on a daily basis at the Federal Funds Rate.

(ii) If DIP ABL Agent determines at any time that any amount received by DIP ABL Agent under this Agreement must be returned to any Borrower or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other DIP ABL Financing Document, DIP ABL Agent will not be required to distribute any portion thereof to any DIP ABL Lender. In addition, each DIP ABL Lender will repay to DIP ABL Agent on demand any portion of such amount that DIP ABL Agent has distributed to such DIP ABL Lender, together with interest at such rate, if any, as DIP ABL Agent is required to pay to any Borrower or such other Person, without setoff, counterclaim or deduction of any kind.

(d) Defaulted DIP ABL Lenders. The failure of any Defaulted DIP ABL Lender to make any payment required by it hereunder shall not relieve any other DIP ABL Lender of its obligations to make payment, but neither any other DIP ABL Lender nor DIP ABL Agent shall be responsible for the failure of any Defaulted DIP ABL Lender to make any payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Defaulted DIP ABL Lender shall not have any voting or consent rights under or with respect to any DIP ABL Financing Document or constitute a "DIP ABL Lender" (or be included in the calculation of "Required DIP ABL Lenders" hereunder) for any voting or consent rights under or with respect to any DIP ABL Financing Document.

(e) Sharing of Payments. If any DIP ABL Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Loan (other than pursuant to the terms of Section 2.8(d)) in excess of its Pro Rata Share of payments entitled pursuant to the other provisions of this Section 11.13, such DIP ABL Lender shall purchase from the other DIP ABL Lenders such participations in extensions of credit made by such other DIP ABL Lenders (without recourse, representation or warranty) as shall be necessary to cause such purchasing DIP ABL Lender to share the excess payment or other recovery ratably with each of them; *provided, however,* that if all or any portion of the excess payment or other recovery is thereafter required to be returned or otherwise recovered from such purchasing DIP ABL Lender, such portion of such purchase shall be rescinded and each DIP ABL Lender which has sold a participation to the purchasing DIP ABL Lender shall repay to the purchasing DIP ABL Lender the purchase price to the ratable extent of such return or recovery, without interest. Each Borrower agrees that any DIP ABL Lender so purchasing a participation from another DIP ABL Lender pursuant to this clause (e) may, to the fullest extent permitted by law, exercise all its rights of payment (including pursuant to Section 10.6) with respect to such participation as fully as if such DIP ABL Lender were the direct creditor of Borrowers in the amount of such participation). If under any applicable bankruptcy, insolvency or other similar law, any DIP ABL Lender receives a secured claim in lieu of a setoff to which this clause (e) applies, such DIP ABL Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of DIP ABL Lenders entitled under this clause (e) to share in the benefits of any recovery on such secured claim.

Section 11.14 Right to Perform, Preserve and Protect. If any Credit Party fails to perform any obligation hereunder or under any other DIP ABL Financing Document, DIP ABL Agent itself may, during the continuance of a DIP Event of Default, but shall not be obligated to, cause such obligation to be performed at Borrowers' expense subject to limitations set forth in Section 12.14. During the continuance of a DIP Event of Default, DIP ABL Agent is further authorized by Borrowers and DIP ABL Lenders to make expenditures from time to time which DIP ABL Agent, in its reasonable business judgment, deems necessary or desirable to (a) preserve or protect the business conducted by Borrowers, the DIP ABL Collateral, or any portion thereof, and/or (b) enhance the likelihood of, or maximize the amount of, repayment of the Loan and other DIP ABL Obligations. Subject to the limitations set forth in Section 12.14, each Borrower hereby agrees to reimburse DIP ABL Agent on demand for any and all costs, liabilities and obligations incurred by DIP ABL Agent pursuant to this Section 11.14. Each DIP ABL Lender hereby agrees to indemnify DIP ABL Agent upon demand for any and all costs, liabilities and obligations incurred by DIP ABL Agent pursuant to this Section 11.14, in accordance with the provisions of Section 11.6.

Section 11.15 Additional Titled DIP ABL Agents. Except for rights and powers, if any, expressly reserved under this Agreement to any bookrunner, arranger or to any titled agent named on the cover page of this Agreement, other than DIP ABL Agent (collectively, the "Additional Titled DIP ABL Agents"), and except for obligations, liabilities, duties and responsibilities, if any, expressly assumed under this Agreement by any Additional Titled DIP ABL Agent, no Additional Titled DIP ABL Agent, in such capacity, has any rights, powers, liabilities, duties or responsibilities hereunder or under any of the

other DIP ABL Financing Documents. Without limiting the foregoing, no Additional Titled DIP ABL Agent shall have nor be deemed to have a fiduciary relationship with any DIP ABL Lender. At any time that any DIP ABL Lender serving as an Additional Titled DIP ABL Agent shall have transferred to any other Person (other than any Affiliates) all of its interests in the Loan, such DIP ABL Lender shall be deemed to have concurrently resigned as such Additional Titled DIP ABL Agent.

Section 11.16 Amendments and Waivers.

(a) No provision of this Agreement or any other DIP ABL Financing Document may be materially amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by Borrowers, the Required DIP ABL Lenders and any other DIP ABL Lender to the extent required under Section 11.16(b); *provided*, *however*, that (i) DIP ABL Agent shall be entitled, in its sole and absolute discretion, to provide its written consent to a proposed Swap Contract, in each case without the consent of any other DIP ABL Lender and (ii) any Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

(b) In addition to the required signatures under Section 11.16(a), no provision of this Agreement or any other DIP ABL Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by the following Persons:

(i) if any amendment, waiver or other modification would increase a DIP ABL Lender's funding obligations in respect of any Loan, by such DIP ABL Lender; and/or

(ii) if the rights or duties of DIP ABL Agent are affected thereby, by DIP ABL Agent;

provided, however, that, in each of (i) and (ii) above, no such amendment, waiver or other modification shall, unless signed or otherwise approved in writing by all DIP ABL Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Loan; (B) postpone the date fixed for, or waive, any payment (other than any mandatory prepayment pursuant to Section 2.1(b)(ii)) of principal of any Loan, or of interest on any Loan (other than default interest) or any fees provided for hereunder (other than late charges) or postpone the date of termination of any commitment of any DIP ABL Lender hereunder; (C) change the definition of the term Required DIP ABL Lenders or the percentage of DIP ABL Lenders which shall be required for DIP ABL Lenders to take any action hereunder; (D) release all or substantially all of the DIP ABL Collateral, authorize any Borrower to sell or otherwise dispose of all or substantially all of the DIP ABL Collateral or release any Guarantor of all or any portion of the DIP ABL Obligations or its Guarantee obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be provided in this Agreement or the other DIP ABL Financing Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 11.16(b) or the definitions of the terms used in this Section 11.16(b) insofar as the definitions affect the substance of this Section 11.16(b); (F) consent to the assignment, delegation or other transfer by any Credit Party of any of its rights and obligations under any DIP ABL Financing Document or release any Borrower of its payment obligations under any DIP ABL Financing Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; or (G) amend any of the provisions of Section 10.7 or amend any of the definitions Pro Rata Share, DIP Revolving Loan Commitment, DIP Revolving Loan Commitment Amount, DIP Revolving Loan Commitment Percentage, or that provide for DIP ABL

Lenders to receive their Pro Rata Shares of any fees, payments, setoffs, increased costs or proceeds of DIP ABL Collateral hereunder. It is hereby understood and agreed that all DIP ABL Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F) and (G) of the preceding sentence.

Section 11.17 Assignments and Participations.

(a) Assignments.

(i) Any DIP ABL Lender may at any time assign to one or more Eligible Assignees all or any portion of such DIP ABL Lender's Loan together with all related obligations of such DIP ABL Lender hereunder. Except as DIP ABL Agent may otherwise agree, the amount of any such assignment (determined as of the date of the applicable Assignment Agreement or, if a "**Trade Date**" is specified in such Assignment Agreement, as of such Trade Date) shall be in a minimum aggregate amount equal to $1,000,000 or, if less, the assignor's entire interests in the outstanding Loan; *provided, however,* that, in connection with simultaneous assignments to two or more related Approved Funds, such Approved Funds shall be treated as one assignee for purposes of determining compliance with the minimum assignment size referred to above. Borrowers and DIP ABL Agent shall be entitled to continue to deal solely and directly with such DIP ABL Lender in connection with the interests so assigned to an Eligible Assignee until DIP ABL Agent shall have received and accepted an effective Assignment Agreement executed, delivered and fully completed by the applicable parties thereto and a processing fee of $3,500 to be paid by the assigning DIP ABL Lender; *provided, however,* that only one processing fee shall be payable in connection with simultaneous assignments to two or more related Approved Funds. Substantially concurrent with any assignment, DIP ABL Agent shall provide notice of such assignment to the Borrower Representative. Without limiting the foregoing, on or prior to the date on which any assignee becomes a DIP ABL Lender under this Agreement, such assignee shall have provided all documentation to Borrower Representative as is required to be delivered by it pursuant to Section 2.8(c) and/or 2.8(e).

(ii) From and after the date on which the conditions described above have been met, (A) such Eligible Assignee shall be deemed automatically to have become a party hereto and, to the extent of the interests assigned to such Eligible Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a DIP ABL Lender hereunder, and (B) the assigning DIP ABL Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights and obligations hereunder (other than those that survive termination pursuant to Section 12.1). Upon the request of the Eligible Assignee (and, as applicable, the assigning DIP ABL Lender) pursuant to an effective Assignment Agreement, each Borrower shall execute and deliver to DIP ABL Agent for delivery to the Eligible Assignee (and, as applicable, the assigning DIP ABL Lender) Notes in the aggregate principal amount of the Eligible Assignee's Loan (and, as applicable, Notes in the principal amount of that portion of the principal amount of the Loan retained by the assigning DIP ABL Lender). Upon receipt by the assigning DIP ABL Lender of such Note, the assigning DIP ABL Lender shall return to Borrower Representative any prior Note held by it.

(iii) DIP ABL Agent, acting solely for this purpose as an agent of Borrower, shall maintain at the office of its servicer located in Bethesda, Maryland a copy of each

Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each DIP ABL Lender, and the commitments of, and principal amount (and stated interest) of the Loan owing to, such DIP ABL Lender pursuant to the terms hereof from time to time. The entries in such register shall be conclusive, and Borrower, DIP ABL Agent and DIP ABL Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a DIP ABL Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such register shall be available for inspection by Borrower and any DIP ABL Lender, at any reasonable time upon reasonable prior notice to DIP ABL Agent. No assignment of a Loan or commitment will be effective unless and until it is recorded in such register.

(iv) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, any DIP ABL Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such DIP ABL Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided, however,* that no such pledge or assignment shall release such DIP ABL Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such DIP ABL Lender as a party hereto.

(v) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, DIP ABL Agent has the right, but not the obligation, to effectuate assignments of Loan via an electronic settlement system acceptable to DIP ABL Agent as designated in writing from time to time to DIP ABL Lenders by DIP ABL Agent (the "**Settlement Service**"). At any time when DIP ABL Agent elects, in its sole discretion, to implement such Settlement Service, each such assignment shall be effected by the assigning DIP ABL Lender and proposed assignee pursuant to the procedures then in effect under the Settlement Service, which procedures shall be consistent with the other provisions of this Section 11.17(a), including the registration requirement of Section 11.17(a)(iv). Each assigning DIP ABL Lender and proposed Eligible Assignee shall comply with the requirements of the Settlement Service in connection with effecting any assignment of Loan pursuant to the Settlement Service. With the prior written approval of DIP ABL Agent, DIP ABL Agent's approval of such Eligible Assignee shall be deemed to have been automatically granted with respect to any transfer effected through the Settlement Service. Assignments and assumptions of the Loan shall be effected by the provisions otherwise set forth herein until DIP ABL Agent notifies DIP ABL Lenders of the Settlement Service as set forth herein.

(b) Participations.

(i) Any DIP ABL Lender may at any time, without the consent of, or notice to, any Borrower or DIP ABL Agent, sell to one or more Persons (other than any Borrower or any Borrower's Affiliates) participating interests in its Loan, commitments or other interests hereunder (any such Person, a "**Participant**"). In the event of a sale by a DIP ABL Lender of a participating interest to a Participant, (i) such DIP ABL Lender's obligations hereunder shall remain unchanged for all purposes, (ii) Borrowers and DIP ABL Agent shall continue to deal solely and directly with such DIP ABL Lender in connection with such DIP ABL Lender's rights and obligations hereunder, and (iii) all amounts payable by each Borrower shall be determined as if such DIP ABL Lender had not sold such participation and shall be paid directly to such DIP ABL Lender. Each Borrower agrees that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the

right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a DIP ABL Lender under this Agreement; *provided, however*, that such right of set-off shall be subject to the obligation of each Participant to share with DIP ABL Lenders, and DIP ABL Lenders agree to share with each Participant, as provided in Section 11.13.

(ii) Any agreement or instrument pursuant to which a DIP ABL Lender sells a participation shall provide that such DIP ABL Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such DIP ABL Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the proviso to Section 11.16(b) that affects such Participant. The Borrowers agree that each Participant shall be entitled to the benefits of Sections 2.8 and 2.13 (it being understood that the documentation required under Section 2.8(c) or 2.8(e) shall be delivered to the participating DIP ABL Lender) to the same extent as if it were a DIP ABL Lender and had acquired its interest by assignment pursuant to Section 11.17(a); *provided* that such Participant (A) agrees to be subject to the provisions of Section 11.17(c) as if it were an assignee under Section 11.17(a), subject to the requirements and limitations therein; and (B) shall not be entitled to receive any greater payment under Sections 2.8 and 2.13 with respect to any participation than its participating DIP ABL Lender would have been entitled to receive. Each DIP ABL Lender that sells participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 11.17(c) with respect to any Participant. Each DIP ABL Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the DIP ABL Financing Documents (the "**Participant Register**"); provided that no DIP ABL Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, or its other obligations under any DIP ABL Financing Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such DIP ABL Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt DIP ABL Agent (in its capacity as DIP ABL Agent) shall have no responsibility for maintaining a Participant Register.

(c) Replacement of DIP ABL Lenders. Within thirty (30) days after: (i) receipt by DIP ABL Agent of notice and demand from any DIP ABL Lender for payment of additional costs as provided in Sections 2.8 and 2.13, which demand shall not have been revoked, (ii) any Borrower is required to pay any additional amount to any DIP ABL Lender or any Governmental Authority for the account of any DIP ABL Lender pursuant to Section 2.8(a) through (g), (iii) any DIP ABL Lender is a Defaulted DIP ABL Lender, and the circumstances causing such status shall not have been cured or waived; or (iv) any failure by any DIP ABL Lender to consent to a requested amendment, waiver or modification to any DIP ABL Financing Document in which Required DIP ABL Lenders have already consented to such amendment, waiver or modification but the consent of each DIP ABL Lender, or each

DIP ABL Lender affected thereby, is required with respect thereto (each relevant DIP ABL Lender in the foregoing clauses (i) through (iv) being an "**Affected DIP ABL Lender**") each of Borrower Representative and DIP ABL Agent may, at its option, notify such Affected DIP ABL Lender and, in the case of Borrowers' election, DIP ABL Agent, of such Person's intention to obtain, at Borrowers' expense, a replacement DIP ABL Lender ("**Replacement DIP ABL Lender**") for such DIP ABL Lender, which Replacement DIP ABL Lender shall be an Eligible Assignee and, in the event the Replacement DIP ABL Lender is to replace an Affected DIP ABL Lender described in the preceding clause (iv), such Replacement DIP ABL Lender consents to the requested amendment, waiver or modification making the replaced DIP ABL Lender an Affected DIP ABL Lender. In the event Borrowers or DIP ABL Agent, as applicable, obtains a Replacement DIP ABL Lender within ninety (90) days following notice of its intention to do so, the Affected DIP ABL Lender shall sell, at par, and assign all of its Loan and funding commitments hereunder to such Replacement DIP ABL Lender in accordance with the procedures set forth in Section 11.17(a); *provided, however,* that (A) Borrowers shall have reimbursed such DIP ABL Lender for its increased costs and additional payments for which it is entitled to reimbursement under Sections 2.8 and 2.13, as applicable, of this Agreement through the date of such sale and assignment, and (B) Borrowers or, at the Borrowers' option, Replacement DIP ABL Lender shall pay to DIP ABL Agent the $3,500 processing fee in respect of such assignment. In the event that a replaced DIP ABL Lender does not execute an Assignment Agreement pursuant to Section 11.17(a) within three (3) Business Days after receipt by such replaced DIP ABL Lender of notice of replacement pursuant to this Section 11.17(c) and presentation to such replaced DIP ABL Lender of an Assignment Agreement evidencing an assignment pursuant to this Section 11.17(c), such replaced DIP ABL Lender shall be deemed to have consented to the terms of such Assignment Agreement, and any such Assignment Agreement executed by DIP ABL Agent, the Replacement DIP ABL Lender and, to the extent required pursuant to Section 11.17(a), Borrowers, shall be effective for purposes of this Section 11.17(c) and Section 11.17(a). Upon any such assignment and payment, such replaced DIP ABL Lender shall no longer constitute a "DIP ABL Lender" for purposes hereof, other than with respect to such rights and obligations that survive termination as set forth in Section 12.1.

(d) Credit Party Assignments. No Credit Party may assign, delegate or otherwise transfer any of its rights or other obligations hereunder or under any other DIP ABL Financing Document without the prior written consent of DIP ABL Agent and each DIP ABL Lender.

Section 11.18 Buy-Out Upon Refinancing. MFT shall have the right to purchase from the other DIP ABL Lenders all of their respective interests in the Loan at par in connection with any refinancing of the Loan upon one or more new economic terms, but which refinancing is structured as an amendment and restatement of the Loan rather than a payoff of the Loan.

ARTICLE 12 - MISCELLANEOUS

Section 12.1 Survival. All agreements, representations and warranties made herein and in every other DIP ABL Financing Document shall survive the execution and delivery of this Agreement and the other DIP ABL Financing Documents. The provisions of Section 2.8, Section 2.9, Section 2.13, Article 11 (other than Sections 11.14 (other than the last sentence thereof) and Sections 11.16 through 11.18), and Section 12.8, Section 12.14 and Section 12.16 (and any other provision herein expressly stated to survive termination) shall survive the payment of the DIP ABL Obligations (both with respect to any DIP ABL Lender and all DIP ABL Lenders collectively) and any termination of this Agreement and any judgment with respect to any DIP ABL Obligations, including any final foreclosure judgment with respect to any Security Document, and no unpaid or unperformed, current or future, DIP ABL Obligations will merge into any such judgment.

Section 12.2 No Waivers. No failure or delay by DIP ABL Agent or any DIP ABL Lender in exercising any right, power or privilege under any DIP ABL Financing Document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein and therein provided shall be cumulative and not exclusive of any rights or remedies provided by law. Any reference in any DIP ABL Financing Document to the "continuing" nature of any DIP Event of Default shall not be construed as establishing or otherwise indicating that any Borrower or any other Credit Party has the independent right to cure any such DIP Event of Default, but is rather presented merely for convenience should such DIP Event of Default be waived in accordance with the terms of the applicable DIP ABL Financing Documents.

Section 12.3 Notices.

(a) All notices, requests and other communications to any party hereunder shall be in writing (including prepaid overnight courier, facsimile transmission or similar writing) and shall be given to such party at its address, facsimile number or e-mail address set forth on the signature pages hereof (or, in the case of any such DIP ABL Lender who becomes a DIP ABL Lender after the date hereof, in an assignment agreement or in a notice delivered to Borrower Representative and DIP ABL Agent by the assignee DIP ABL Lender forthwith upon such assignment) or at such other address, facsimile number or e-mail address as such party may hereafter specify for the purpose by notice to DIP ABL Agent and Borrower Representative; provided, however, that notices, requests or other communications shall be permitted by electronic means only in accordance with the provisions of Section 12.3(b) and (c). Each such notice, request or other communication shall be effective (i) if given by facsimile, when such notice is transmitted to the facsimile number specified by this Section 12.3 and the sender receives a confirmation of transmission from the sending facsimile machine, or (ii) if given by mail, prepaid overnight courier or any other means, when received or when receipt is refused at the applicable address specified by this Section 12.3(a).

(b) Notices and other communications to the parties hereto may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved from time to time by DIP ABL Agent, provided, however, that the foregoing shall not apply to notices sent directly to any DIP ABL Lender if such DIP ABL Lender has notified DIP ABL Agent that it is incapable of receiving notices by electronic communication. DIP ABL Agent or Borrower Representative may, in their discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by it, *provided*, *however*, that approval of such procedures may be limited to particular notices or communications.

(c) Unless DIP ABL Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor, provided, however, that if any such notice or other communication is not sent or posted during normal business hours, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day.

Section 12.4 Severability. In case any provision of or obligation under this Agreement or any other DIP ABL Financing Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 12.5 Headings. Headings and captions used in the DIP ABL Financing Documents (including the Exhibits, Schedules and Annexes hereto and thereto) are included for convenience of reference only and shall not be given any substantive effect.

Section 12.6 Confidentiality.

(a) Each Credit Party agrees (i) not to transmit or disclose provisions of any DIP ABL Financing Document to any Person (other than to each Credit Party's current and prospective direct and indirect financing sources, acquirors and holders of Indebtedness of Credit Parties and the Credit Parties' direct and indirect equityholders, and its and their respective attorneys, advisors, directors, managers and officers on a need-to-know basis or as otherwise may be required by law, subpoena, judicial order or similar order or in connection with any litigation) without DIP ABL Agent's prior written consent, and (ii) to inform all Persons of the confidential nature of the DIP ABL Financing Documents and to direct them not to disclose the same to any other Person and to require each of them to be bound by these provisions, in each case within the foregoing clauses (i) and (ii), without limiting the Credit Parties' and their direct and indirect equityholders' right to incorporate any terms of the DIP ABL Financing Documents into their financial statements and other financial materials.

(b) DIP ABL Agent and each DIP ABL Lender shall hold all non-public information regarding the Credit Parties and their respective businesses obtained by DIP ABL Agent or any DIP ABL Lender in connection with the DIP ABL Financing Documents in accordance with how such Person customarily requires a third-party to handle its non-public information, except that disclosure of such information may be made (i) to their respective agents, employees, Subsidiaries, Affiliates, attorneys, auditors, professional consultants, rating agencies, insurance industry associations and portfolio management services (in each case, on a need-to-know basis), (ii) to prospective transferees or purchasers of any interest in the Loans, DIP ABL Agent or a DIP ABL Lender, and to prospective contractual counterparties (or the professional advisors thereto) in Swap Contracts permitted hereby, *provided*, *however*, that any such Persons are bound by customary obligations of confidentiality, (iii) as required by Requirements of Law, subpoena, judicial order or similar order and in connection with any litigation, (iv) as may be required in connection with the examination, audit or similar investigation of such Person, and (v) to a Person that is a trustee, investment advisor or investment manager, collateral manager, servicer, noteholder or secured party in a Securitization (as hereinafter defined) in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For the purposes of this Section, "**Securitization**" means (A) the pledge of the Loans as collateral security for loans to a DIP ABL Lender, or (B) a public or private offering by a DIP ABL Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans; *provided*, that such person are bound by customary obligations of confidentiality. Confidential information shall not include information that: (x) has been identified in writing as public by the Borrower Representative, (y) is in the public domain, or becomes part of the public domain after disclosure to such Person through no fault of such Person or such Person's agents, employees, Subsidiaries, Affiliates, attorneys, auditors, professional consultants, rating agencies, insurance industry associations and portfolio management services or (z) is disclosed to such Person by a Person other than a Credit Party, *provided*, *however*, DIP ABL Agent does not have actual knowledge that such Person is prohibited from disclosing such information. The obligations of DIP ABL Agent and DIP ABL Lenders under this Section 12.6 shall supersede and replace the obligations of DIP ABL Agent and DIP ABL Lenders under any confidentiality agreement in respect of this financing executed and delivered by DIP ABL Agent or any DIP ABL Lender prior to the date hereof. Notwithstanding the foregoing, DIP ABL Agent or the respective DIP ABL Lender shall use commercially reasonable efforts to ensure any Person that is controlled by or acts at the direction of such DIP ABL Agent or DIP ABL Lender maintains the confidentiality of information provided to such Person by DIP ABL Agent or DIP ABL Lender, as applicable.

Section 12.7 Other Damages. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other DIP ABL Financing Documents or the transactions contemplated hereby or thereby, except to the extent the liability of such Indemnitee results from such Indemnitee's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable judgment).

Section 12.8 GOVERNING LAW; SUBMISSION TO JURISDICTION.

(a) THIS AGREEMENT, EACH NOTE AND EACH OTHER DIP ABL FINANCING DOCUMENT, AND ALL DISPUTES AND OTHER MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) EACH PARTY CONSENTS AND AGREES THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION (OR IF THE BANKRUPTCY COURT DOES NOT HAVE OR DOES NOT EXERCISE JURISDICTION, ANY FEDERAL OR STATE COURT OF COMPETENT JURISDICTION LOCATED IN THE STATE OF NEW YORK, IN EACH CASE WHICH ARE LOCATED IN THE COUNTY OF NEW YORK) TO HEAR AND DETERMINE ANY SUCH CLAIMS OR DISPUTES; PROVIDED THAT EACH PARTY ACKNOWLEDGES THAT ANY APPEALS FROM THE BANKRUPTCY COURT MAY HAVE TO BE HEARD BY A COURT OTHER THAN THE BANKRUPTCY COURT. EACH BORROWER EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH BORROWER HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH BORROWER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH BORROWER AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

Section 12.9 WAIVER OF JURY TRIAL. EACH BORROWER, DIP ABL AGENT AND DIP ABL LENDERS HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE DIP ABL FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH BORROWER, DIP ABL AGENT AND EACH DIP ABL LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER DIP ABL FINANCING DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH BORROWER, DIP ABL AGENT AND EACH DIP ABL LENDER WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

Section 12.10 Publication; Advertisement.

(a) Publication. No Credit Party will directly or indirectly publish, disclose or otherwise use in any public disclosure, advertising material, promotional material, press release or

interview, any reference to the name, logo or any trademark of MFT or any of its Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except (i) as required by Requirements of Law, subpoena or judicial or similar order, in which case the applicable Credit Party shall, to the extent permitted, give DIP ABL Agent prior written notice of such publication or other disclosure, (ii) in the ordinary course of business when describing the capital structure of the Credit Parties, (iii) in connection with debt or equity financing by the Credit Parties (including any marketing or other efforts to obtain such financing) or (iv) with MFT's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed).

(b) Advertisement. Each DIP ABL Lender and each Credit Party hereby authorizes MFT to publish, at MFT's sole expense, the name of such DIP ABL Lender and Credit Party, the existence of the financing arrangements referenced under this Agreement, the primary purpose and/or structure of those arrangements, the amount of credit extended under each facility, the title and role of each party to this Agreement, and the total amount of the financing evidenced hereby in any "tombstone", comparable advertisement or press release which MFT elects to submit for publication. In addition, each DIP ABL Lender and each Credit Party agrees that, at MFT's sole expense, MFT may provide lending industry trade organizations with information necessary and customary for inclusion in league table measurements after the Closing Date. With respect to any of the foregoing, MFT shall provide Borrowers with an opportunity to review and confer with MFT regarding the contents of any such tombstone, advertisement or information, as applicable, prior to its submission for publication and, following such review period, MFT may, from time to time, publish, at MFT's sole expense, such information in any media form desired by MFT, until such time that Borrowers shall have requested MFT cease any such further publication.

Section 12.11 Counterparts; Integration. This Agreement and the other DIP ABL Financing Documents may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version of any executed signature page shall bind the parties hereto. This Agreement and the other DIP ABL Financing Documents constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 12.12 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement. To the extent that there is a conflict between this Agreement and the Interim DIP Order or the Final DIP Order, as applicable, then the Interim DIP Order or the Final DIP Order, as applicable, shall control.

Section 12.13 DIP ABL Lender Approvals. Unless expressly provided herein to the contrary, any approval, consent, waiver or satisfaction of DIP ABL Agent or DIP ABL Lenders with respect to any matter that is the subject of this Agreement, the DIP Orders, or the other DIP ABL Financing Documents may be granted or withheld by DIP ABL Agent and DIP ABL Lenders in their good faith discretion and credit judgment.

Section 12.14 Expenses; Indemnity; Waiver of Consequential Damages, etc.

(a) Borrowers hereby agree to promptly pay (i) all reasonable and documented costs and expenses of DIP ABL Agent (including, without limitation, the reasonable and documented fees, costs and expenses of counsel to, and independent appraisers and consultants retained by DIP ABL Agent

(which shall exclude any fees, costs or expenses of in-house counsel and shall be limited to one firm of counsel, and, if necessary, one firm of local counsel in each appropriate jurisdiction, and one specialist counsel for each appropriate specialty, and which include initially as of the Closing Date, Hogan Lovells US LLP, as counsel, and Morris, Nichols, Arsht & Tunnell LLO as bankruptcy counsel and Delaware local counsel) in connection with the examination, review, due diligence investigation, documentation, negotiation, closing and syndication of the transactions contemplated by the DIP ABL Financing Documents), in connection with the performance by DIP ABL Agent of its rights and remedies under the DIP ABL Financing Documents and in connection with the continued administration of the DIP ABL Financing Documents including (A) any amendments, modifications, consents and waivers to and/or under any and all DIP ABL Financing Documents, and (B) any reasonable periodic public record searches conducted by or at the request of DIP ABL Agent (including, without limitation, title investigations, UCC searches, fixture filing searches, judgment, pending litigation and tax lien searches and searches of applicable corporate, limited liability, partnership and related records concerning the continued existence, organization and good standing of certain Persons); (ii) without limitation of the preceding clause (i), all reasonable and documented costs and expenses of DIP ABL Agent in connection with the creation, perfection and maintenance of Liens pursuant to the DIP ABL Financing Documents; (iii) without limitation of the preceding clause (i), all costs and expenses of DIP ABL Agent in connection with (A) protecting, storing, insuring, handling, maintaining or selling any DIP ABL Collateral, (B) any litigation, dispute, suit or proceeding relating to any DIP ABL Financing Document, and (C) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the DIP ABL Financing Documents; (iv) without limitation of the preceding clause (i), all reasonable and documented costs and expenses of DIP ABL Agent in connection with DIP ABL Agent's reservation of funds in anticipation of the funding of the initial Loans to be made hereunder; and (v) all costs and expenses incurred by DIP ABL Lenders in connection with any litigation, dispute, suit or proceeding relating to any DIP ABL Financing Document and in connection with any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all DIP ABL Financing Documents, whether or not DIP ABL Agent or DIP ABL Lenders are a party thereto and, in each case, excluding any costs and expenses (x) arising from the gross negligence, bad faith or willful misconduct of DIP ABL Agent, as determined by a final non-appealable judgment of a court of competent jurisdiction, (y) arising out of, or in connection with, any proceeding or other matter that does not involve an act or omission by the Credit Parties or any of their affiliates and that is brought by DIP ABL Agent, in its capacity not as DIP ABL Agent or (z) arising from a material breach of the obligations of DIP ABL Agent or any of its affiliates under any DIP ABL Financing Document (as determined by a court of competent jurisdiction in a final and non-appealable decision).

(b) Each Borrower hereby agrees to indemnify, pay and hold harmless DIP ABL Agent and DIP ABL Lenders and the officers, directors, employees, trustees, agents, investment advisors and investment managers, collateral managers, servicers, and counsel of DIP ABL Agent and DIP ABL Lenders (collectively called the "**Indemnitees**") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (excluding any costs of in house counsel and including the reasonable fees and disbursements of counsel for such Indemnitee, which shall be limited to one firm of counsel for all similarly situated Indemnitees and if necessary, one firm of local counsel in each appropriate jurisdiction, one specialist counsel for each appropriate specialty and, in the case of an actual conflict of interest, one additional firm of counsel for such affected Indemnitees and one firm of local counsel in each appropriate jurisdiction) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnitee shall be designated a party thereto and including any such proceeding initiated by or on behalf of a Credit Party, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel retained by DIP ABL Agent or DIP ABL Lenders and any commission, fee or compensation claimed by Cantor in connection with arranging this financing facility, which may be imposed on, incurred by or asserted against such Indemnitee as a

result of or in connection with the transactions contemplated hereby or by the other DIP ABL Financing Documents (including (i)(A) as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from, any property now or previously owned, leased or operated by Borrower, any Subsidiary or any other Person of any Hazardous Materials, (B) arising out of or relating to the offsite disposal of any materials generated or present on any such property, or (C) arising out of or resulting from the environmental condition of any such property or the applicability of any governmental requirements relating to Hazardous Materials, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of Borrower or any Subsidiary, and (ii) proposed and actual extensions of credit under this Agreement) and the use or intended use of the proceeds of the Loans, except that Borrower shall have no obligation hereunder to an Indemnitee with respect to any liability (x) resulting from the gross negligence, bad faith or willful misconduct of such Indemnitee, as determined by a final non-appealable judgment of a court of competent jurisdiction or (y) arising out of, or in connection with, any proceeding or other matter that does not involve an act or omission by the Credit Parties or any of their affiliates and that is brought by an Indemnitee against any other Indemnitee (other than in its capacity as DIP ABL Agent) or (z) arising from a material breach of the obligations of such Indemnitees or any of its affiliates under this Agreement or any DIP ABL Financing Document (as determined by a court of competent jurisdiction in a final non-appealable decision). To the extent that the undertaking set forth in the immediately preceding sentence may be unenforceable, each Borrower shall contribute the maximum portion which it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all such indemnified liabilities incurred by the Indemnitees or any of them. This Section 12.14 shall not apply with respect to Taxes other than any Taxes that represent losses, damages, etc. arising from any non-Tax claim.

(c) Notwithstanding any contrary provision in this Agreement, the obligations of Borrowers under this Section 12.14 shall survive the payment in full of the DIP ABL Obligations and the termination of this Agreement. NO PARTY HEREUNDER SHALL BE RESPONSIBLE OR LIABLE TO ANY OTHER PARTY TO ANY DIP ABL FINANCING DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES UNDER THIS AGREEMENT OR ANY OTHER DIP ABL FINANCING DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER; *PROVIDED*, THAT NOTHING CONTAINED IN THIS SENTENCE SHALL LIMIT THE CREDIT PARTIES' INDEMNIFICATION OBLIGATIONS TO THE EXTENT SET FORTH HEREIN TO THE EXTENT SUCH SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARE INCLUDED IN ANY THIRD PARTY CLAIM IN CONNECTION WITH WHICH SUCH INDEMNITEE IS ENTITLED TO INDEMNIFICATION HEREUNDER OR PURSUANT TO THE DIP ORDERS.

(d) It is understood and agreed that the indemnification obligations under the Prepetition ABL Financing Documents shall survive the Closing Date and the repayment of any Indebtedness thereunder and exercise of any remedies in connection therewith and shall continue as indemnification obligations hereunder following the Closing Date or exercise of any such remedies subject to the terms hereof and thereof.

Section 12.15 Reserved.

Section 12.16 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against any Credit Party for liquidation or reorganization, should any Credit Party become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of any Credit Party's assets, and shall continue to be effective

or to be reinstated, as the case may be, if at any time payment and performance of the DIP ABL Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the DIP ABL Obligations, whether as a fraudulent preference reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the DIP ABL Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 12.17 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrowers and DIP ABL Agent and each DIP ABL Lender and their respective successors and permitted assigns.

Section 12.18 USA PATRIOT Act Notification, Beneficial Ownership Certificate. DIP ABL Agent (for itself and not on behalf of any DIP ABL Lender) and each DIP ABL Lender hereby notifies Borrowers that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record certain information and documentation that identifies Borrowers, which information includes the name and address of Borrower and such other information that will allow DIP ABL Agent or such DIP ABL Lender, as applicable, to identify Borrowers in accordance with the USA PATRIOT Act. Promptly following any request therefor, Borrowers shall provide any and all such information and documentation as may be reasonably requested by the DIP ABL Agent or any DIP ABL Lender for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the USA PATRIOT Act and the Beneficial Ownership Regulation. To the extent a Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, such information and documentation shall include a Beneficial Ownership Certification in relation to such Borrower, including, for the avoidance of doubt, a duly executed IRS Form W-9.

Section 12.19 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any DIP ABL Financing Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any DIP ABL Financing Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other DIP ABL Financing Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

Section 12.20 Modification of Prepetition ABL Financing Documents. Nothing herein is intended to or shall modify, waive or amend any obligations of Borrower or any DIP ABL Lender under the Prepetition ABL Financing Documents or Prepetition Term Loan Documents or the rights, relative priority or interests of the Prepetition ABL Agent or Prepetition Term Loan Agents (on behalf of themselves and the Prepetition ABL Lenders and Prepetition Term Loan Lenders, as applicable) under the Prepetition ABL Financing Documents or Prepetition Term Loan Documents, as applicable.

Section 12.21 Incorporation of DIP Orders by Reference. Each of Borrower, DIP ABL Agent, and DIP ABL Lenders agrees that any reference contained herein to the DIP Orders include all terms, conditions, and provisions of such DIP Order and that the DIP Order is incorporated herein for all purposes. To the extent there is any inconsistency between the terms of this Agreement and the terms of the DIP Orders, the terms of the DIP Orders shall govern.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

(Signature Page to Credit Agreement)

IN WITNESS WHEREOF, intending to be legally bound, each of the parties have caused this Agreement to be executed the day and year first above mentioned.

BORROWERS:

BLACKHAWK MINING LLC
BLACKHAWK COAL SALES, LLC
BLACKHAWK LAND AND RESOURCES, LLC
BLACKHAWK RIVER LOGISTICS, LLC
BLUE CREEK MINING, LLC
BLUE DIAMOND MINING, LLC
EAGLE SHIELD, LLC
FCDC COAL, INC.
GUYANDOTTE MINING, LLC
HAMPDEN COAL, LLC
KANAWHA EAGLE MINING, LLC
LOGAN & KANAWHA, LLC
PANTHER CREEK MINING, LLC
PINE BRANCH LAND, LLC
PINE BRANCH MINING, LLC
PINE BRANCH RESOURCES, LLC
REDHAWK MINING, LLC
ROCKWELL MINING, LLC
SPRUCE PINE LAND COMPANY
SPURLOCK MINING, LLC
TRIAD MINING, LLC
TRIAD TRUCKING, LLC

By: _____
Name:
Title:

AGENT:

MIDCAP FUNDING IV TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: _____
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for Blackhawk transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

Payment Account Designation

Bank Name: Wells Fargo Bank
Bank Address: 420 Montgomery Street, San Francisco, CA 94163
ABA Number: 121000248
Account Number: 4509127528
Account Name: MIDCAP FUNDING IV TRUST- Collections
Ref: Blackhawk facility

LENDER:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: _____
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for Blackhawk transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

ANNEXES, EXHIBITS AND SCHEDULES

ANNEXES

Annex A	Commitment Annex
Annex B	Subsidiary Borrowers

EXHIBITS

Exhibit A	First Day Motions
Exhibit B	Form of Compliance Certificate
Exhibit C	Borrowing Base Certificate
Exhibit D	Form of Notice of Borrowing
Exhibit E	Form of Security Agreement
Exhibit F	Closing Checklist
Exhibit G-1	Form of U.S. Tax Compliance Certificate
Exhibit G -2	Form of U.S. Tax Compliance Certificate
Exhibit G -3	Form of U.S. Tax Compliance Certificate
Exhibit G -4	Form of U.S. Tax Compliance Certificate
Exhibit H	Budget
Exhibit I	Interim DIP Order

SCHEDULES

Schedule 3.12(c)	Certain Properties
Schedule 5.1	Liens
Schedule 5.4(a)	Indebtedness
Schedule 5.6	Transactions with Affiliates
Schedule 7.1(g)	Closing Date Consents
Schedule 7.4	Post-Closing DIP ABL Obligations

ANNEX A TO DIP ABL CREDIT AGREEMENT (COMMITMENT ANNEX)

DIP ABL Lender	DIP Revolving Loan Commitment Amount (from the Closing Date through the Final DIP Order Entry Date)	DIP Revolving Loan Commitment Percentage (from the Closing Date through the Final DIP Order Entry Date)	DIP Revolving Loan Commitment Amount (immediately after the Final DIP Order Entry Date)	DIP Revolving Loan Commitment Percentage (immediately after the Final DIP Order Entry Date)
MidCap Financial Trust	The sum of (1) the amount of the Prepetition ABL Obligations that have been paid pursuant to Section 2.11 plus (2) $5,000,000	100%	$90,000,000.00	100%
TOTALS	**The sum of (1) the amount of the Prepetition ABL Obligations that have been paid pursuant to Section 2.11 plus (2) $5,000,000**	**100%**	**$90,000,000.00**	**100%**

ANNEX B TO DIP ABL CREDIT AGREEMENT (SUBSIDIARY BORROWER ANNEX)

Blue Diamond Mining, LLC, a Delaware limited liability company

Triad Mining, LLC, a Delaware limited liability company

Triad Trucking, LLC, an Indiana limited liability company

Hampden Coal, LLC, a Delaware limited liability company

Logan & Kanawha, LLC, a Delaware limited liability company

Spurlock Mining, LLC, a Kentucky limited liability company

Redhawk Mining, LLC, a Kentucky limited liability company

Spruce Pine Land Company, a Kentucky corporation

Pine Branch Mining, LLC, a Kentucky limited liability company

Pine Branch Resources, LLC, a Delaware limited liability company

Pine Branch Land, LLC, a Delaware limited liability company

FCDC Coal, Inc., a Delaware corporation

Eagle Shield, LLC, a Kentucky limited liability company

Blackhawk Coal Sales, LLC, a Delaware limited liability company

Blackhawk Land and Resources, LLC, a Delaware limited liability company

Blue Creek Mining, LLC, a Delaware limited liability company

Panther Creek Mining, LLC, a Delaware limited liability company

Rockwell Mining, LLC, a Delaware limited liability company

Guyandotte Mining, LLC, a Delaware limited liability company

Kanawha Eagle Mining, LLC, a Delaware limited liability company

Blackhawk River Logistics, LLC, a Delaware limited liability company

EXHIBIT A TO DIP ABL CREDIT AGREEMENT (RESERVED)

EXHIBIT B TO DIP ABL CREDIT AGREEMENT (COMPLIANCE CERTIFICATE)

COMPLIANCE CERTIFICATE

Date: _____, 201__

This Compliance Certificate is given by _____, a Responsible Officer of LLC, a Kentucky limited liability company (the "**Borrower Representative**"), pursuant to that certain Senior Secured Superpriority Debtor In Possession ABL Credit Agreement, dated as of July __, 2019 among the Borrower Representative, certain subsidiaries of the Borrower Representative set forth on Annex B thereto and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Funding IV Trust, a Delaware statutory trust, as DIP ABL Agent, and Midcap Financial Trust, a Delaware statutory trust, and the financial institutions or other entities from time to time parties hereto, each as a DIP ABL Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**DIP ABL Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the DIP ABL Credit Agreement.

The undersigned Responsible Officer hereby certifies to DIP ABL Agent and DIP ABL Lenders that:

(a) the financial statements delivered with this certificate in accordance with Section 4.1[(a)]/[(b)] of the DIP ABL Credit Agreement fairly present in all material respects the results of operations and financial condition of Borrowers and their Consolidated Subsidiaries as of the dates and the accounting period covered by such financial statements;

(b) I have reviewed the terms of the DIP ABL Credit Agreement and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and conditions of Borrowers and their Consolidated Subsidiaries during the accounting period covered by such financial statements and such review has not disclosed the existence during or at the end of such accounting period, and I have no knowledge of the existence as of the date hereof, of any condition or event that constitutes a Default or a DIP Event of Default, except as set forth in Schedule 1 hereto, which includes a description of the nature and period of existence of such Default or a DIP Event of Default and what action Borrowers have taken, are undertaking and propose to take with respect thereto;

(c) except as noted on Perfection Certificate Supplement attached hereto as Schedule 2, there have been no changes to the Perfection Certificate since the Closing Date or, if later, since the date of the most recent certificate delivered pursuant Section 4.1(e), and Credit Parties have otherwise taken all actions required to be taken by them pursuant to the Security Documents in connections with any such changes set forth in such Perfection Certificate Supplement; and

The foregoing certifications and computations are made as of _____, 201__ (end of month) and as of _____, 20____.

Sincerely,

BLACKHAWK MINING LLC, a Kentucky limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT C TO DIP ABL CREDIT AGREEMENT (BORROWING BASE CERTIFICATE)

EXHIBIT D TO DIP ABL CREDIT AGREEMENT (NOTICE OF BORROWING)

NOTICE OF BORROWING

This Notice of Borrowing is given by _____, a Responsible Officer of **BLACKHAWK MINING LLC**, a Kentucky limited liability company (the "**Borrower Representative**"), pursuant to that certain Senior Secured Superpriority Debtor In Possession ABL Credit Agreement, dated as of July __, 2019 among the Borrower Representative, certain subsidiaries of the Borrower Representative set forth on Annex B thereto and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Funding IV Trust, a Delaware statutory trust, as DIP ABL Agent, and Midcap Financial Trust, a Delaware statutory trust, and the financial institutions or other entities from time to time parties hereto, each as a DIP ABL Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**DIP ABL Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the DIP ABL Credit Agreement.

The undersigned Responsible Officer hereby gives notice to DIP ABL Agent of Borrower Representative's request to on _____, 201__ borrow $_____ of Loans on _____ _____, 201___. Attached is a Borrowing Base Certificate complying in all respects with the DIP ABL Credit Agreement and confirming that, after giving effect to the requested advance, the DIP Revolving Loan Outstandings will not exceed the DIP Revolving Loan Limit.

The undersigned officer hereby certifies that, both before and after giving effect to the request above (a) each of the conditions precedent set forth in Section 7.2 have been satisfied, (b) all of the representations and warranties contained in the DIP ABL Credit Agreement and the other DIP ABL Financing Documents are true, correct and complete as of the date hereof, except to the extent such representation or warranty relates to a specific date, in which case such representation or warranty is true, correct and complete as of such earlier date, (c) no Default or DIP Event of Default has occurred and is continuing on the date hereof, and (d) Borrowers shall not have available cash, including Cash Collateral, in excess of $10,000,000 on either of (A) the date of this request and/or (B) the date of the proposed borrowing.

IN WITNESS WHEREOF, the undersigned officer has executed and delivered this Notice of Borrowing this ____ day of _____, 201__.

Sincerely,

BLACKHAWK MINING LLC, a Kentucky limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT E TO DIP ABL CREDIT AGREEMENT (FORM OF SECURITY AGREEMENT)

EXHIBIT F TO DIP ABL CREDIT AGREEMENT (CLOSING CHECKLIST)

Exhibit G-1 to DIP ABL Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign DIP ABL Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Senior Secured Superpriority Debtor In Possession ABL Credit Agreement, dated as of July __, 2019 among the Borrower Representative, the other Borrowers listed therein and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Funding IV Trust, a Delaware statutory trust, as DIP ABL Agent, and Midcap Financial Trust, a Delaware statutory trust, and the financial institutions or other entities from time to time parties hereto, each as a DIP ABL Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**DIP ABL Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the DIP ABL Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the DIP ABL Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished DIP ABL Agent and the Borrower Representative with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower Representative and DIP ABL Agent, and (2) the undersigned shall have at all times furnished the Borrower Representative and DIP ABL Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF DIP ABL LENDER]

By:_____

Name:

Title:

Date: _____ __, 20[ ]

Exhibit G-2 to DIP ABL Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Senior Secured Superpriority Debtor In Possession ABL Credit Agreement, dated as of July __, 2019 among the Borrower Representative, the other Borrowers listed therein and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Funding IV Trust, a Delaware statutory trust, as DIP ABL Agent, and Midcap Financial Trust, a Delaware statutory trust, and the financial institutions or other entities from time to time parties hereto, each as a DIP ABL Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**DIP ABL Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the DIP ABL Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the DIP ABL Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating DIP ABL Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such DIP ABL Lender in writing, and (2) the undersigned shall have at all times furnished such DIP ABL Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

By:_____

Name:

Title:

Date: _____ __, 20[ ]

Exhibit G-3 to DIP ABL Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Senior Secured Superpriority Debtor In Possession ABL Credit Agreement, dated as of July __, 2019 among the Borrower Representative, the other Borrowers listed therein and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Funding IV Trust, a Delaware statutory trust, as DIP ABL Agent, and Midcap Financial Trust, a Delaware statutory trust, and the financial institutions or other entities from time to time parties hereto, each as a DIP ABL Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**DIP ABL Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the DIP ABL Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the DIP ABL Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating DIP ABL Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such DIP ABL Lender and (2) the undersigned shall have at all times furnished such DIP ABL Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

By:_____

Name:

Title:

Date: _____ __, 20[ ]

Exhibit G-4 to DIP ABL Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign DIP ABL Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Senior Secured Superpriority Debtor In Possession ABL Credit Agreement, dated as of July __, 2019 among the Borrower Representative, the other Borrowers listed therein and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Funding IV Trust, a Delaware statutory trust, as DIP ABL Agent, and Midcap Financial Trust, a Delaware statutory trust, and the financial institutions or other entities from time to time parties hereto, each as a DIP ABL Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**DIP ABL Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the DIP ABL Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the DIP ABL Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this DIP ABL Credit Agreement or any other DIP ABL Financing Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished DIP ABL Agent and the Borrower Representative with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower Representative and DIP ABL Agent, and (2) the undersigned shall have at all times furnished the Borrower Representative and DIP ABL Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF DIP ABL LENDER]

By: _____

Name: _____

Title: _____

Date: _____ __, 20[ ]

EXHIBIT H TO DIP ABL CREDIT AGREEMENT (BUDGET)

EXHIBIT I TO DIP ABL CREDIT AGREEMENT (INTERIM DIP ORDER)

Schedule 3.12(c) – Certain Properties

None

Schedule 5.1 – Liens

Schedule 5.4(a) – Indebtedness

Schedule 5.6 – Transactions with Affiliates

Schedule 7.1(g) – Closing Date Consents

Schedule 7.4 – Post Closing Requirements

Borrowers shall satisfy and complete each of the following obligations, or provide DIP ABL Agent each of the items listed below, as applicable, on or before the date indicated below, all to the satisfaction of DIP ABL Agent in its sole and absolute discretion:

1. [TBD]

Borrower's failure to complete and satisfy any of the above obligations on or before the date indicated above, or Borrower's failure to deliver any of the above listed items on or before the date indicated above (or such later date as may be agreed by DIP ABL Agent), shall constitute an immediate an automatic DIP Event of Default.

Exhibit C

Term DIP Credit Agreement

EXECUTION VERSION

SENIOR SECURED DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT

AMONG

BLACKHAWK MINING LLC,
AS A DEBTOR AND DEBTOR-IN-POSSESSION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE,

THE LENDERS PARTY HERETO

AND

CANTOR FITZGERALD SECURITIES,
AS ADMINISTRATIVE AGENT

DATED AS OF [ ], 2019

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SENIOR SECURED DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT, dated as of [ ], 2019, among BLACKHAWK MINING LLC, a Kentucky limited liability company and a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code (the "***Borrower***"), the Lenders party hereto from time to time, and CANTOR FITZGERALD SECURITIES, as Administrative Agent. All capitalized terms used herein and defined in **Section 1.01** are used herein as therein defined.

W I T N E S S E T H:

WHEREAS, on [ ], 2019 (the "***Petition Date***"), the Borrower and certain of the Borrower's Subsidiaries filed voluntary petitions with the Bankruptcy Court initiating their respective cases that are pending under chapter 11 of the Bankruptcy Code (the "***Cases***"; the debtors and debtors-in-possession thereunder, the "***Debtors***" and each a "***Debtor***") and have continued in the possession of their assets and the management of their business pursuant to Section 1107 and 1108 of the Bankruptcy Code;

WHEREAS, all of the claims and the Liens granted under the Orders and the Credit Documents to the Administrative Agent and the Lenders in respect of the DIP Term Facility shall be subject to the Carve-Out;

WHEREAS, the relative priority of the DIP Term Facility with respect to the Collateral granted to secure the Obligations shall be as set forth in the Interim Order and the Final Order, as applicable, in each case, upon entry thereof by the Bankruptcy Court, and in the DIP ABL Intercreditor Agreement;

WHEREAS, the Borrower and the Guarantors are engaged in related businesses, and each Guarantor will derive substantial direct and indirect benefit from the making of the extensions of credit under this Agreement;

WHEREAS, the Borrower has requested that (i) the Lenders provide a delayed draw term loan facility denominated in U.S. Dollars in an aggregate principal amount of up to $150,000,000 (the "***DIP Term Facility***") comprised of (x) New Money Loans (as defined herein) in an aggregate principal amount of up to $50,000,000, to be funded hereunder (A) in an aggregate principal amount of up to $35,000,000 on the Closing Date and (B) in an aggregate principal amount of up to $15,000,000 on the Delayed Draw Borrowing Date and (y) the roll-up of a portion of the existing Pre-Petition First Lien Term Loans into Term Loans hereunder in an aggregate principal amount of up to $100,000,000, to be deemed funded hereunder (A) in an aggregate principal amount of up to $70,000,000 on the Closing Date and (B) in an aggregate principal amount of up to $35,000,000 on the Delayed Draw Borrowing Date and (ii) certain other lenders extend credit to the Borrower and certain of its Subsidiaries in the form of an asset-based revolving facility in an aggregate principal amount of up to $90,000,000 pursuant to the DIP ABL Credit Agreement (the "***DIP ABL Facility***" and, together with the DIP Term Facility, the "***DIP Facilities***"), with all of each borrower's obligations under the DIP Facilities to be guaranteed by each applicable guarantor; and

WHEREAS, subject to and upon the terms and conditions set forth herein, the Lenders are willing to make available to the Borrower the DIP Term Facility provided for herein.

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

ARTICLE I.
DEFINITIONS AND ACCOUNTING TERMS.

Section 1.01 Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"***Acceptable Disclosure Statement***" shall mean the disclosure statement relating to the Acceptable Plan of Reorganization in form and substance consistent with the RSA, with any such changes thereto as are acceptable to the Required Lenders.

"***Acceptable Plan of Reorganization***" shall mean a Reorganization Plan for each of the Cases in form and substance consistent with the RSA, with any such changes thereto as are acceptable to the Required Lenders.

"***Ad Hoc Crossholder Lender Group***" shall have the meaning provided in the Orders.

"***Ad Hoc First Lien Lender Group***" shall have the meaning provided in the Orders.

"***Additional Roll-Up Loans***" shall have the meaning provided in **Section 2.01(b)**.

"***Additional Security Documents***" shall have the meaning provided in **Section 7.12(b)**.

"***Administrative Agent***" shall mean Cantor Fitzgerald Securities, in its capacity as Administrative Agent for the Lenders hereunder and under the other Credit Documents, and shall include any successor to the Administrative Agent appointed pursuant to **Section 10.09**.

"***Affiliate***" of any specified Person shall mean any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control," as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; ***provided*** that Beneficial Ownership of 10% or more of the Voting Stock of a Person will be deemed to be control. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings. No Lender as of the Closing Date or any of their respective Affiliates shall be considered an Affiliate of the Borrower or any Subsidiary thereof.

"***Affiliate Transaction***" shall have the meaning provided in **Section 8.06**.

"***After-Acquired Real Property***" shall have the meaning provided in **Section 7.12(c)**.

"***Agent Fee Letter***" means that certain Agency Fee Letter, dated the date hereof, between the Borrower and the Administrative Agent.

"***Agents***" shall mean the Administrative Agent and the Collateral Agent.

"***Agreement***" shall mean this Senior Secured Debtor-In-Possession Term Loan Credit Agreement, as modified, supplemented, amended, restated (including any amendment and restatement hereof), extended or renewed from time to time, including any joinders thereto.

"***Anti-Terrorism Laws***" shall mean any Requirement of Law related to terrorism financing, economic sanctions or money laundering including the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act ("***USA PATRIOT Act***") of 2001 (Title III of Pub. L. 107-56), The Currency and Foreign Transactions Reporting Act (also known as the "Bank Secrecy Act," 31 U.S.C. §§ 5311-5314 and 5316-5332 and 12 U.S.C. §§ 1829b and 1951-1959), the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) and Executive Order 13224 (effective September 24, 2001), the International Emergency Economic Powers Act and Executive Orders issued thereunder.

"***Applicable Margin***" shall mean a percentage per annum equal to, in the case of Term Loans maintained as (i) Base Rate Loans, 8.50% and (ii) LIBOR Loans, 9.50%.

"***Applicable Real Property***" shall have the meaning provided in **Section 7.12(c)**.

"***Applicable Subsidiary***" shall have the meaning provided in **Section 9.05**.

"***Approved Budget***" shall have the meaning provided in **Section 7.01(f)**.

"***Approved Fund***" shall mean any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"***As-Extracted Collateral Filing***" shall mean a completed UCC-1 financing statement with respect to as-extracted collateral which lies upon owned or leased Real Property of the Borrower or any of its Subsidiaries.

"***Asset Sale***" shall mean:

(a) the sale, lease, transfer, assignment, conveyance or other disposition (including any sale and lease back transaction) of any assets or rights by the Borrower or any of its Restricted Subsidiaries; ***provided*** that the sale, lease, conveyance or other disposition of all or substantially all of the assets of the Borrower and its Restricted Subsidiaries taken as a whole will be governed by the provisions of **Section 8.05**; and

(b) the issuance or sale of Equity Interests by any Restricted Subsidiary or the sale by the Borrower or any of its Restricted Subsidiaries of Equity Interests in any Restricted Subsidiary.

"***Assignment and Assumption Agreement***" shall mean an Assignment and Assumption Agreement substantially in the form of **Exhibit F** or such other form as may be agreed between the Borrower and the Administrative Agent (in each case, appropriately completed).

"***Attributable Indebtedness***" shall mean, on any date, in respect of any Capital Lease Obligations of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

"***Authorized Officer***" shall mean, with respect to (a) delivering Notices of Borrowing and Notices of Conversion/Continuation and similar notices, any person or persons that has or have been authorized by the board of directors of the Borrower to deliver such notices pursuant to this Agreement, (b) delivering financial information and officer's certificates pursuant to this Agreement, the chief financial officer, the treasurer or the principal accounting officer of the Borrower and (c) any other matter in connection with this Agreement or any other Credit Document, any officer (or a person or persons so designated by any two officers) of the Borrower.

"***Automatic Rejection Date***" shall mean, with respect to any particular lease, the last day of the assumption period for the Credit Parties in the Cases provided for in Section 365(d)(4) of the Bankruptcy Code, to the extent applicable (including as may have been extended in accordance with Section 365(d)(4)).

"***Avoidance Action***" shall mean the Debtors' claims and causes of action under sections 502(d), 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code.

"***Avoidance Proceeds***" shall mean any proceeds or property recovered, unencumbered or otherwise in connection with successful Avoidance Actions, whether by judgment, settlement or otherwise.

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

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

"***Bankruptcy Code***" shall have the meaning provided in **Section 9.05**.

"***Bankruptcy Court***" shall mean, the United States Bankruptcy Court for the District of Delaware or any other court having jurisdiction over the Cases from time to time.

"***Base Rate***" shall mean, at any time, the highest of

(a) the Prime Lending Rate at such time,

(b) ½ of 1% per annum in excess of the overnight Federal Funds Rate at such time and

(c) the LIBO Rate for a LIBOR Loan with a one month interest period commencing on such day plus 1.00%.

For purposes of this definition, the LIBO Rate shall be determined using the LIBO Rate as otherwise determined by the Administrative Agent in accordance with the definition of LIBO Rate, except that (x) if a given day is a Business Day, such determination shall be made on such day (rather than two Business Days prior to the commencement of an Interest Period) or (y) if a given day is not a Business Day, the LIBO Rate for such day shall be the rate determined by the Administrative Agent pursuant to preceding **clause (x)** for the most recent Business Day preceding such day. Any change in the Base Rate due to a change in the Prime Lending Rate, the Federal Funds Rate or such LIBO Rate shall be effective as of the opening of business on the day of such change in the Prime Lending Rate, the Federal Funds Rate or such LIBO Rate, respectively.

"***Base Rate Loan***" shall mean each Loan designated or deemed designated as such by the Borrower at the time of the incurrence thereof or conversion thereto.

"***Beneficial Ownership Certification***" shall mean a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"***Beneficial Ownership Regulation***" shall mean 31 C.F.R. § 1010.230, as amended, or any successor thereto.

"***Beneficial Owner***" shall have the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" will be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only after the passage of time. The terms "***Beneficially Owns***", "***Beneficially Owned***" and "***Beneficial Ownership***" have a corresponding meaning.

"***Benefit Plan***" means, other than a Multiemployer Plan, an "employee benefit plan" (as defined in ERISA) that is subject to Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA with respect to which the Borrower or any of its Restricted Subsidiaries has any liability (including on account of an ERISA Affiliate).

"***Board of Directors***" shall mean:

(a) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;

(b) with respect to a partnership, the board of directors of the general partner of the partnership;

(c) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof; and

(d) with respect to any other Person, the board or committee of such Person serving a similar function.

"***Borrower***" shall have the meaning provided in the first paragraph of this Agreement.

"***Borrowing***" shall mean the borrowing of one Type of Term Loans on a given date (or resulting from a conversion or conversions on such date) having in the case of LIBOR Loans, the same Interest Period.

"***Borrowing Date***" shall mean the date occurring on the Closing Date on which the Borrowing of the Initial Loans occurred, or the Delayed Draw Borrowing Date, as applicable.

"***Budget Variance Report***" shall mean a variance report setting forth in each case (x) for the one-week period ended on the immediately preceding Friday prior to the delivery thereof (a "***Weekly Period***") and (y) for the period commencing on the Petition Date and ending on the immediately preceding Friday prior to the delivery thereof (a "**Test Period**") (1) the negative variance (as compared to the Approved Budget) of the aggregate operating cash receipts of the Debtors, (2) the positive variance (as compared to the Approved Budget) of the aggregate operating disbursements (excluding professional fees) made by the Debtors and (3) an explanation, in reasonable detail, for any material variance, certified by an Authorized Officer of the Borrower.

"***Business Day***" shall mean (a) for all purposes other than as covered by **clause (b)** below, any day except Saturday, Sunday and any day which shall be in New York, New York, a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close and (b) with respect to all notices and determinations in connection with, and payments of principal and interest on, LIBOR Loans, any day which is a Business Day described in **clause (a)** above and which is also a day for trading by and between banks in U.S. dollar deposits in the London interbank market.

"***Cantor***" shall mean Cantor Fitzgerald Securities, in its individual capacity, and any successor company thereto by merger, consolidation or otherwise.

"***Capital Lease Obligation***" shall mean, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with GAAP, and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.

"***Capital Stock***" shall mean:

(a) in the case of a corporation, corporate stock;

(b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(c) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and

(d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding

from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

"***Carve-Out***" shall have the meaning set forth in the Interim Order or the Final Order, as applicable.

"***Cases***" shall have the meaning provided in the recitals to this Agreement.

"***Cash Collateral***" shall have the meaning set forth in the Interim Order or the Final Order, as applicable.

"***Cash Equivalents***" shall mean:

(a) Dollars;

(b) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (***provided*** that the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than twelve months from the date of acquisition;

(c) certificates of deposit and eurodollar time deposits with maturities of six months or less from the date of acquisition, bankers' acceptances with maturities not exceeding twelve months and overnight bank deposits, in each case, with any domestic commercial bank having capital and surplus in excess of $500,000,000 and a Thomson Bank Watch Rating of "B" or better;

(d) repurchase obligations with a term of not more than seven days for underlying securities of the types described in **clauses (b)** and **(c)** above entered into with any financial institution meeting the qualifications specified in **clause (c)** above;

(e) commercial paper having one of the two highest ratings obtainable from Moody's or S&P and, in each case, maturing within six months after the date of acquisition; and

(f) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in **clauses (a)** through **(e)** of this definition.

"***Cash Management Obligations***" shall mean obligations in respect of cash management services (including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements), including obligations for the payment of fees, interest, charges, expenses and disbursements in connection therewith to the extent provided for in the documents evidencing such cash management services.

"***Change in Law***" shall mean the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; ***provided*** that notwithstanding anything herein to the contrary,

(x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

"***Change of Control***" shall mean the occurrence of any of the following:

(a) any direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger, amalgamation or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Borrower and its Subsidiaries taken as a whole to any Person (including any "person" or "group" (as such terms are used in Sections 13(d)(3) and 14(d), respectively, of the Exchange Act)); and

(b) any "Change of Control" (or comparable term) in any document pertaining to the DIP ABL Facility.

"***Closing Date***" shall mean [ ], 2019, which is the date on which the conditions specified in **Section 5.01** are satisfied (or waived in accordance with **Section 11.12**).

"***Coal***" shall mean all types of solid naturally occurring hydrocarbons (other than oil shale or Gilsonite), including without limitation, bituminous and sub-bituminous coal, and lignite.

"***Code***" shall mean the Internal Revenue Code of 1986, as amended from time to time (unless otherwise specified herein), and the regulations promulgated and rulings issued thereunder.

"***Collateral***" shall have the meaning provided for the term "DIP Term Collateral" in the Orders and shall include all property (whether real or personal) with respect to which any security interests have been granted (or purported to be granted) pursuant to any Security Document, including, without limitation, all Security Agreement Collateral, all Mortgaged Properties and all cash and Cash Equivalents delivered as collateral pursuant to **Article IX**.

"***Collateral Agent***" shall mean Cantor Fitzgerald Securities, in its capacity as collateral agent for the Secured Creditors pursuant to the Security Documents and shall include any successor appointed pursuant to **Section 10.09**.

"***Commitment***" shall mean individually or collectively, as the context may require, the Initial Commitment and the Delayed Draw Commitment. The aggregate amount of the Lenders' Commitments on the Closing Date is $50,000,000.

"***Commitment Schedule***" means the Schedule attached hereto as **Schedule 2.01(a)**.

"***Company***" shall mean any corporation, limited liability company, partnership or other business entity (or the adjectival form thereof, where appropriate).

"***Confirmation Date***" shall have the meaning provided in **Section 7.16(d)**.

"***continuing***" shall mean, with respect to any Default or Event of Default, that such Default or Event of Default has not been cured or waived.

"***Contractual Obligation***" shall mean, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"***Control Agreement***" shall mean, with respect to any deposit account, any securities account, commodity account, securities entitlement or commodity contract, an agreement, in form and substance reasonably satisfactory to the Collateral Agent, among the Collateral Agent, the financial institution or other Person at which such account is maintained or with which such entitlement or contract is carried and the Credit Party maintaining such account, effective to grant "control" (as defined under the applicable UCC) over such account to the Collateral Agent.

"***Credit Documents***" shall mean this Agreement, each Note, the Subsidiary Guaranty, the Security Agreement, each other Security Document, the DIP ABL Intercreditor Agreement and, except for purposes of **Section 11.12**, the Agent Fee Letter.

"***Credit Party***" shall mean the Borrower and each Guarantor.

"***Default***" shall mean any event, act or condition which with notice or lapse of time, or both, would constitute an Event of Default.

"***Delayed Draw Borrowing Date***" means the date on which Delayed Draw Loans are made, which shall be within one Business Day following the Final Order Entry Date (or such later date as agreed to by the Required Lenders).

"***Delayed Draw Commitment***" means, with respect to each Lender, the commitment of such Lender to make Delayed Draw Loans to the Borrower in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name on the Commitment Schedule, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate amount of the Lenders' Delayed Draw Commitments on (i) the Closing Date is $15,000,000 and (ii) the Delayed Draw Commitment Termination Date will be $0.

"***Delayed Draw Commitment Termination Date***" means the earlier to occur of (a) the Delayed Draw Borrowing Date and (b) the Termination Date.

"***Delayed Draw Loans***" has the meaning assigned to such term in **Section 2.01**.

"***DIP ABL Asset Priority Lien Documents***" shall mean, collectively, (i) the credit agreements or other agreements providing for the DIP ABL Facility Commitments and pursuant to which the Borrower or any Guarantor will incur the DIP ABL Asset Priority Lien Obligations and (ii) the security documents, intercreditor agreements (including the DIP ABL Intercreditor Agreement), guarantees, joinders and other agreements or instruments executed in connection with such credit agreements or other agreements.

"***DIP ABL Asset Priority Lien Obligations***" shall mean all Indebtedness and other obligations of the Borrower or any Guarantor outstanding under the DIP ABL Asset Priority Lien Documents, together with guarantees thereof that are secured, or intended to be secured, under the DIP ABL Asset Priority Lien Documents; ***provided*** that, on or before the date on which such Indebtedness is incurred by the Borrower or any Guarantor:

(a) such Indebtedness is designated by the Borrower, in an officer's certificate delivered to the Administrative Agent and the Collateral Agent, as a "DIP ABL Asset Priority Lien Obligation" for purposes of the DIP ABL Asset Priority Lien Documents;

(b) the DIP ABL Agent shall have duly executed and delivered to the Administrative Agent and the Collateral Agent the DIP ABL Intercreditor Agreement; and

(c) such Indebtedness and such guarantees thereof are permitted to be incurred and secured under each applicable ABL Asset Priority Lien Document and under this Agreement.

"***DIP ABL Asset Priority Liens***" shall mean Liens granted to the collateral agent under any DIP ABL Asset Priority Lien Documents, at any time, upon DIP ABL Priority Collateral of the Borrower or any Guarantor to secure DIP ABL Asset Priority Lien Obligations.

"***DIP ABL Credit Agreement***" shall mean the Credit Agreement, dated as of the date hereof, among the Borrower, the other Credit Parties party thereto, MidCap Funding IV Trust, a Delaware statutory trust, as agent, and the lenders party thereto from time to time, as the same may be amended, amended and restated, modified and/or supplemented prior to the date hereof in accordance with the terms thereof.

"***DIP ABL Agent***" shall mean MidCap Funding IV Trust, a Delaware statutory trust, as administrative agent and collateral agent under the DIP ABL Credit Agreement, together with its successors and assigns.

"***DIP ABL Facility***" shall have the meaning provided in the recitals to this Agreement.

"***DIP ABL Facility Commitments***" shall mean the commitments of the lenders under the DIP ABL Facility.

"***DIP ABL Intercreditor Agreement***" shall mean that certain Debtor-in-Possession ABL Intercreditor Agreement, dated as of the date hereof, among the Borrower, the other Credit Parties party thereto, the DIP ABL Agent and the Collateral Agent, as the same may be amended, modified and/or supplemented from time to time in accordance with the terms thereof.

"***DIP ABL Priority Collateral***" shall have the meaning provided in the DIP ABL Intercreditor Agreement.

"***DIP Budget***" shall mean a rolling 13-week cash flow forecast delivered on or prior to the Closing Date and every four weeks after the Petition Date in accordance with **Section 7.01(f)**, setting forth the Debtors' projected cash receipts and cash disbursements during such 13-week period (i) initially, covering the period commencing on or about the Closing Date and (ii) thereafter, covering the period commencing on the first day of each four-week anniversary

thereafter, it being understood that no changes shall be made in any such updated DIP Budget with respect to any periods that were included in a previously delivered DIP Budget.

"***DIP Term Facility***" shall have the meaning provided in the recitals to this Agreement.

"***DIP Term Loan Priority Collateral***" shall have the meaning provided in the DIP ABL Intercreditor Agreement.

"***Disqualified Stock***" shall mean any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the Maturity Date. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require the issuer thereof to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale will not constitute Disqualified Stock if the terms of such Capital Stock provide that the issuer thereof may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with **Section 8.03**. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that the Borrower and its Restricted Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock, exclusive of accrued dividends.

"***Dollars***" and the sign "***$***" shall each mean freely transferable lawful money of the United States.

"***Domestic Subsidiary***" of any Person shall mean any Subsidiary of such Person incorporated or organized under the laws of the United States, any State thereof or the District of Columbia.

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

"***EEA Member Country***" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

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

"***Eligible Transferee***" shall mean and include a commercial bank, an insurance company, a finance company, a financial institution, any fund that invests in loans or any other "accredited investor" (as defined in Regulation D of the Securities Act), but in any event excluding any

natural person, the Borrower and its Subsidiaries and Affiliates and the Persons listed on **Schedule 1.01(b)**.

"***Embargoed Person***" shall mean any party that (a) is publicly identified on the most current list of "Specially Designated Nationals and Blocked Persons" published by the U.S. Treasury Department's Office of Foreign Assets Control ("***OFAC***") or resides, is organized or chartered, or has a place of business in a country or territory subject to OFAC sanctions or embargo programs or (b) is otherwise prohibited from doing business with the United States under the International Emergency Economic Powers Act, the Trading With the Enemy Act, or any other Requirement of Law.

"***Employee Benefit Plan***" shall mean any employee benefit plan (within the meaning of Section 3(3) of ERISA, other than a Multiemployer Plan) established or maintained by the Borrower or any of its Restricted Subsidiaries or, with respect to any such plan subject to Section 412 of the Code or Title IV of ERISA, an ERISA Affiliate.

"***Environmental Claims***" shall mean any and all actions, suits, demands, demand letters, directives, claims, liens, notices of noncompliance or violation, by or from any Person relating in any way to any noncompliance with, or liability arising under, Environmental Law.

"***Environmental Law***" shall mean any applicable Federal, state, local or foreign law (including to the extent related, Mining Laws and principles of common law), rule, regulation, ordinance, code, directive, judgment, order or agreement, now or hereafter in effect and in each case as amended, relating to the protection of the environment, or of human health (as it relates to the exposure to environmental hazards) or to Hazardous Materials.

"***Equity Interests***" shall mean Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

"***ERISA***" shall mean the U.S. Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"***ERISA Affiliate***" shall mean any Person that for purposes of Title I or Title IV of ERISA or Section 412 of the Code would be deemed at any relevant time to be a single employer or otherwise aggregated with the Borrower or any of its Restricted Subsidiaries under Section 414(b), (c) or (m) of the Code or Section 4001 of ERISA.

"***ERISA Event***" shall mean any one or more of the following:

(a) any Reportable Event;

(b) the filing of a notice of intent to terminate any Benefit Plan under Section 4041(b) of ERISA, if such termination would require material additional contributions in order to be considered a standard termination, the filing under Section 4041(c) of ERISA of a notice of intent to terminate any Benefit Plan or the termination of any Benefit Plan under Section 4041(c) of ERISA;

(c) the institution of proceedings, or the occurrence of an event or condition which would reasonably be expected to constitute grounds for the institution of proceedings, by the PBGC under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Benefit Plan;

(d) the failure to make a required contribution to any Benefit Plan that would result in the imposition of a lien or other encumbrance or the provision of security under Section 430 of the Code or Section 303 or 4068 of ERISA, or the arising of such a lien or encumbrance; the failure by any Benefit Plan to satisfy the minimum funding standard under Section 430 of the Code or Section 303 of ERISA, whether or not waived; the filing of any request for or receipt of a minimum funding waiver under Section 412 of the Code with respect to any Benefit Plan, or that such filing may be made; or the determination that any Benefit Plan is, or is expected to be, in "at-risk" status within the meaning of Section 430 of the Code or Section 303 of ERISA;

(e) a withdrawal by the Borrower or any ERISA Affiliate from a Benefit Plan subject to Section 4063 of ERISA during a Benefit Plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA;

(f) engaging in a non-exempt prohibited transaction within the meaning of Section 4975 of the Code or Section 406 of ERISA with respect to any Benefit Plan;

(g) the complete or partial withdrawal of the Borrower, any of its Restricted Subsidiaries or any ERISA Affiliate from a Multiemployer Plan, the insolvency under Title IV of ERISA of any Multiemployer Plan; or the receipt by the Borrower or any of its Restricted Subsidiaries or any ERISA Affiliate, of any notice that a Multiemployer Plan is insolvent within the meaning of Section 4245 of ERISA or in endangered or critical status under Section 305 of ERISA; or

(h) the Borrower, any of its Restricted Subsidiaries or an ERISA Affiliate incurring any liability under Title IV of ERISA with respect to any Benefit Plan (other than premiums due and not delinquent under Section 4007 of ERISA).

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

"***Event of Default***" shall have the meaning provided in **Article IX**.

"***Exchange Act***" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"***Excluded Assets***" shall mean each of the following:

(a) any lease, license, contract, property right or agreement to which the Borrower or any Guarantor is a party or by which the Borrower or any Guarantor is bound or any right or interest of the Borrower or any Guarantor under any such lease, license, contract, property right or agreement, if and only for so long as the grant of a Lien under the Security Documents will

constitute or result in a breach, termination or default under any such lease, license, contract, property right or agreement or require any consent thereunder (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction, the Orders, or any other applicable law or principles of equity); ***provided*** that such lease, license, contract, property right or agreement will be an Excluded Asset only to the extent and for so long as the consequences specified above will result; ***provided, further,*** unless such term has been rendered ineffective pursuant to the applicable Order, (i) the Credit Parties are using or have used commercially reasonable efforts (in each case, for a period of up to sixty (60) days from the Closing Date) to obtain such consent or waiver as may be necessary to grant such a Lien except in the case of any lease, license, contract, property right or agreement which, when considered in the aggregate with all such other items requiring such consent or waiver, would not be material (***provided*** that the obligation of the Borrower and other Credit Parties to use commercially reasonable efforts shall not require the Borrower or any other Credit Party to request any consent or waiver with respect to a restriction on assignment in any agreement which is imposed by any legal requirement or which the Borrower or such other Credit Party reasonably determines would have a material adverse effect on such agreement or on the Borrower's or other Credit Party's relationship with the other party or parties to such agreement; ***provided***, ***further***, that the use of commercially reasonable efforts shall not require any payment or other consideration from the Borrower or other Credit Parties) and (ii) such lease, license, contract, property right or agreement will cease to be an Excluded Asset and will become subject to the Lien granted under the Security Documents, immediately and automatically, at such time as such consent or waiver is obtained or such consequences will no longer result;

(b) [reserved];

(c) any of the outstanding voting stock (within the meaning of Section 956 of the Code and the regulations promulgated thereunder) of a first tier Foreign Subsidiary or first tier FSHCO in excess of 65% of such voting stock;

(d) any application for a registration of a trademark filed in the United States Patent and Trademark Office on an intent-to-use basis, but only to the extent that the grant of a security interest in any such trademark application would adversely affect the validity or enforceability or result in a cancellation of such trademark application;

(e) property subject to Liens permitted under **clause (c)** of **Section 8.01**, but only to the extent that the grant of a Lien under the Security Documents will constitute or result in a breach, termination or default under the agreements governing such acquired property;

(f) property subject to Liens permitted under **clause (e)** of **Section 8.01**, to the extent the terms of the Indebtedness secured by such Liens prohibit any other Lien on such property;

(g) cash, certificates of deposit or similar instruments that are subject to Liens permitted under **Section 8.01(d)**;

(h) cash securing reimbursement obligations with respect to letters of credit issued under or pursuant to the Pre-Petition LC Facility Agreement that are subject to Liens permitted under **Section 8.01(a)**;

(i) [reserved];

(j) [reserved];

(k) [reserved];

(l) margin stock to the extent a security interest therein would violate the provisions of the regulations of the Board of Governors, including Regulation T, Regulation U or Regulation X) and Equity Interests in any Person other than wholly owned Restricted Subsidiaries that cannot be pledged without the consent of unaffiliated third parties;

(m) any property or assets to the extent the creation or perfection of pledges thereof or security interests therein could reasonably be expected to result in material adverse tax consequences or material adverse regulatory consequences to the Borrower, any of its Subsidiaries or any direct or indirect equity owner(s) of the Borrower, as reasonably determined by the Borrower in consultation with the Administrative Agent;

(n) particular assets if and for so long as, if reasonably agreed by the Administrative Agent and the Borrower, the cost (including, without prejudice to **clause (m)** of this definition of Excluded Assets, any adverse tax consequences) of creating a pledge or security interest in such assets exceed the practical benefits to be obtained by the Lenders therefrom;

(o) [reserved];

(p) any "building" or "mobile home" (each as defined in Regulation H as promulgated by the Federal Reserve Board under the Flood Insurance Laws) presently or hereafter located on any land comprising part of any Real Property located in a flood zone, until the Administrative Agent has received the Flood Documentation in form and substance reasonably satisfactory to the Administrative Agent; and

(q) any assets specifically excluded from the Collateral in the Orders;

provided, ***however***, (x) at any time any property described in **clauses (e)**, **(f)** or **(g)** of this definition of Excluded Assets is not subject to a Lien permitted by the applicable clause of **Section 8.01**, such property shall be deemed at all times from and after the Closing Date to constitute Collateral and (y) Excluded Assets shall not include any proceeds (as defined in the UCC), substitutions or replacements of any Excluded Assets referred to in any of **clauses (a)**-**(p)** (unless such proceeds, substitutions or replacements would constitute Excluded Assets referred to in any of **clauses (a)**-**(p)**); ***provided,*** that **clauses (a)** through **(p)** shall only be Excluded Assets to the extent that such assets do not constitute collateral with respect to Indebtedness under the Pre-Petition Credit Documents or the DIP ABL Facility. For avoidance of doubt, while Specified Excluded Unencumbered Property (as defined in the Orders) shall not be "Excluded Collateral" and shall secure the Obligations, such Specified Excluded Unencumbered Property will secure the Obligations only to the extent such Obligations do not constitute Roll-Up Loans.

"***Excluded Subsidiary***" shall mean each of BHM-WV, LLC, Fanco Plant Loadout, LLC, Campbell's Creek Mining, LLC, Black Oak Mining, LLC, Wells Prep Plant, LLC, Rock Lick Prep Plant, LLC and Gateway Eagle Mining, LLC so long as such Subsidiary does not (i) guarantee or provide a pledge of assets securing any Indebtedness, including any Indebtedness under the Pre-Petition Credit Documents or the DIP ABL Facility, (ii) hold any material assets or (iii) become a debtor or debtor-in-possession under Chapter 11 of the Bankruptcy Code.

"***Excluded Taxes***" shall mean any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient,

(a) Taxes imposed on or measured by net income (however denominated), franchise Taxes imposed in lieu of net income Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes,

(b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan pursuant to a law in effect on the date on which such Lender (i) becomes a party to this Agreement (other than pursuant to an assignment request by the Borrower under **Section 2.10**) or (ii) if applicable, changes its lending office (other than pursuant to a request by the Borrower under **Section 2.09**), except in each case to the extent that, pursuant to **Section 4.04**, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office,

(c) any Taxes attributable to the applicable Lender's or Administrative Agent's failure to comply with **Section 4.04(e)** or **Section 4.04(g)**, as applicable, and

(d) any withholding Taxes imposed under FATCA.

"***Existing Indebtedness***" shall have the meaning provided in **Section 8.04(a)**.

"***Exit Fee***" shall have the meaning provided in **Section 3.01(c)**.

"***Fair Market Value***" shall mean the value (which, for the avoidance of doubt, will take into account any liabilities associated with related assets) that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by the Borrower.

"***FASB ASC***" shall mean the Accounting Standards Codification of the Financial Accounting Standards Board.

"***FATCA***" shall mean Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations thereunder or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, any intergovernmental agreement, treaty, or convention entered into in connection with any of

the foregoing and any law, fiscal or regulatory legislation, rule, regulation or other official written practice implementing such intergovernmental agreement, treaty, or convention.

"***FCPA***" shall have the meaning provided in **Section 6.14**.

"***Federal Funds Rate***" shall mean, for any period, a fluctuating interest rate equal for each day during such period to the weighted average of the rates on overnight Federal Funds transactions with members of the Federal Reserve System, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal Funds brokers of recognized standing selected by the Administrative Agent.

"***Fees***" shall mean all amounts payable pursuant to or referred to in **Section 3.01**.

"***Final Order***" shall mean an order of the Bankruptcy Court authorizing and approving on a final basis, among other things, the Term Loans (including the Roll-Up Loans) and the Transactions contemplated by this Agreement in the form of the Interim Order (with only such modifications thereto as are necessary to convert the Interim Order to a final order and such other modifications as are satisfactory to the Required Lenders in their sole discretion) (as the same may be amended, supplemented, or modified from time to time after entry thereof with the consent of the Required Lenders in their sole discretion) as to which no stay has been entered.

"***Final Order Entry Date***" shall mean the date on which the Final Order is entered by the Bankruptcy Court.

"***Fiscal Quarter***" shall mean, for any Fiscal Year,

(a) the fiscal period commencing on January 1 of such Fiscal Year and ending on March 31 of such Fiscal Year,

(b) the fiscal period commencing on April 1 of such Fiscal Year and ending on June 30 of such Fiscal Year

(c) the fiscal period commencing on July 1 of such Fiscal Year and ending on September 30 of such Fiscal Year and

(d) the fiscal period commencing on October 1 of such Fiscal Year and ending on December 31 of such Fiscal Year.

"***Fiscal Year***" shall mean the fiscal year of the Borrower and its Subsidiaries ending on December 31 of each calendar year.

"***Flood Documentation***" shall mean, with respect to any fee interest in any real property improved by a "building" or a "mobile home" (each as defined in Regulation H as promulgated by the Federal Reserve Board under the Flood Insurance Laws) located in the United States or any territory thereof of any Credit Party, a completed "life-of-loan" Federal Emergency Management Agency Standard Flood Hazard Determination, and if such real property is located

in a special flood hazard area, (1) a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower and each Credit Party relating thereto and (2) a copy of, or a certificate as to coverage under, and a declaration page relating to, the flood insurance policies required by **Section 7.03(b)** of this Agreement, which shall (A) be endorsed or otherwise amended to include a "standard" or "New York" lender's loss payable endorsement (as applicable); (B) name the Collateral Agent, on behalf of the Secured Creditors, as additional insured and loss payee/mortgagee (as applicable); and (C) (I) identify the addresses of each property located in a special flood hazard area, (II) indicate the applicable flood zone designation, the flood insurance coverage and the deductible relating thereto and (III) provide that the insurer will endeavor to give the Collateral Agent forty-five (45) days' written notice of cancellation or non-renewal and (IV) otherwise be in form and substance satisfactory to the Administrative Agent.

"***Flood Insurance Laws***" shall mean, collectively,

(a) National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto,

(b) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and

(c) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

"***Foreign Lender***" shall mean a Lender that is not a U.S. Person.

"***Foreign Pension Plan***" shall mean any plan, fund (including, without limitation, any superannuation fund) or other similar program established or maintained outside the United States by the Borrower or any one or more of its Restricted Subsidiaries primarily for the benefit of the employees residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

"***Foreign Subsidiary***" of any Person shall mean any Subsidiary of such Person that is not a Domestic Subsidiary.

"***FSHCO***" shall mean any Subsidiary that has, directly or indirectly through Subsidiaries, no material assets other than the Equity Interests (or Equity Interests and debt securities) of one or more Foreign Subsidiaries that are controlled foreign corporations within the meaning of Section 957 of the Code.

"***Fund***" shall mean any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"***GAAP***" shall mean generally accepted accounting principles in the United States as in effect from time to time.

"***Governmental Authority***" shall mean the government of the United States of America, any other nation or any political subdivision thereof, whether state, provincial or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"***Guarantee***" shall mean a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take or pay or to maintain financial statement conditions or otherwise).

"***Guaranteed Obligations***" shall mean the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of the principal and interest on each Note issued by, and all Loans made to, the Borrower under this Agreement, together with all the other obligations (including obligations which, but for the automatic stay under Section 362(a) of the Bankruptcy Code, would become due), indebtedness and liabilities (including, without limitation, indemnities, fees and interest (including all interest, fees, and other amounts accruing after the commencement of any bankruptcy, insolvency, receivership or similar proceeding at the rate provided for herein, whether or not such interest, fees and other amounts are allowed or allowable in any such proceeding) thereon) of the Borrower to the Lenders, the Administrative Agent and the Collateral Agent now existing or hereafter incurred under, arising out of or in connection with this Agreement and each other Credit Document to which the Borrower is a party and the due performance and compliance by the Borrower with all the terms, conditions and agreements contained in this Agreement and in each such other Credit Document.

"***Guarantor***" shall mean each direct or indirect wholly-owned Domestic Subsidiary of the Borrower (for the avoidance of doubt, excluding each Excluded Subsidiary), whether currently existing or hereafter acquired, that executes the Subsidiary Guaranty, unless and until such time as the respective Subsidiary is released from all of its obligations under the Subsidiary Guaranty in accordance with the terms and provisions thereof.

"***Hazardous Materials***" shall mean any chemicals, materials, wastes, mining wastes, pollutants, contaminants or substances in any form that is prohibited, limited or regulated pursuant to any Environmental Law by virtue of their toxic or otherwise deleterious characteristics, including without limitation petroleum or petroleum products and by-products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls, and radon gas.

"***Hedging Obligations***" shall mean, with respect to any specified Person, the obligations of such Person under any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions,

interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement.

"***Impacted Loans***" shall have the meaning provided in **Section 2.17(a)(ii)**.

"***Indebtedness***" shall mean, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables):

(a) in respect of borrowed money;

(b) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof), including, without limitation, Mining Financial Assurances;

(c) in respect of banker's acceptances;

(d) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(e) representing Capital Lease Obligations;

(f) Disqualified Stock;

(g) representing the balance deferred and unpaid of the purchase price of any property or services due more than six months after such property is acquired or such services are completed; or

(h) representing any Hedging Obligations,

if and to the extent any of the preceding items (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet of the specified Person in accordance with GAAP. In addition, the term "Indebtedness" includes all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) and, to the extent not otherwise included, the Guarantee by the specified Person of any Indebtedness of any other Person. Indebtedness shall be calculated without giving effect to the effects of FASB ASC 825 and FASB ASC 470-20 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness. The amount of any Capital Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date. The loans under the Pre-Petition Credit Agreements, the Pre-Petition LC Facility Agreement and the DIP ABL Facility shall always be considered

"Indebtedness" hereunder, whether or not such loans are treated as indebtedness for U.S. federal income tax purposes.

"***Indemnified Person***" shall have the meaning provided in **Section 11.01(a)(ii)**.

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

"***Independent Auditors***" shall have the meaning provided in **Section 7.01(c)**.

"***Initial Commitment***" shall mean, with respect to each Lender, the commitment of such Lender to make an Initial Loan to the Borrower in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name on the Commitment Schedule, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate amount of the Lenders' Initial Commitments on (i) the Closing Date is $35,000,000 and (ii) upon the funding of the Initial Loan, will be $0.

"***Initial Loan***" has the meaning assigned to such term in **Section 2.01(a)**.

"***Initial Roll-Up Loans***" shall have the meaning provided in **Section 2.01(b).**

"***Intellectual Property***" shall have the meaning provided in **Section 6.19**.

"***Interest Determination Date***" shall mean, with respect to any LIBOR Loan, the second Business Day prior to the commencement of any Interest Period relating to such LIBOR Loan.

"***Interest Period***" shall have the meaning provided in **Section 2.14**.

"***Interim Order***" shall mean an order of the Bankruptcy Court, in the form set forth in Exhibit D, authorizing on an interim basis, among other things, the Term Loans (including the Roll-Up Loans) and the Transactions contemplated by this Agreement, with only such modifications as are satisfactory to the Borrower and the Required Lenders in their sole discretion.

"***Interim Order Entry Date***" shall mean the date on which the Interim Order is entered by the Bankruptcy Court.

"***Investments***" shall mean, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including Guarantees or other obligations), advances or capital contributions (excluding commission, travel and similar advances to officers and employees made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. The acquisition by the Borrower or any Restricted Subsidiary of a Person that holds an Investment in a third Person will be deemed to be an Investment by the Borrower or such Restricted Subsidiary in such third Person in an amount equal to the Fair Market Value as of the date of such acquisition of the Investments held by the

acquired Person in such third Person. Except as otherwise provided in this Agreement, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value and net of any dividends, distributions, repayments or redemptions in cash received in respect of such Investment.

"***IRS***" shall mean the United States Internal Revenue Service.

"***Leaseholds***" of any Person shall mean all the right, title and interest of such Person as lessee or licensee in, to and under leases or licenses of land, improvements and/or fixtures.

"***Lenders***" shall mean each financial institution listed on **Schedule 2.01**, as well as any Person that becomes a "Lender" hereunder pursuant to **Sections 2.10** or **11.04(b)** or any amendment to this Agreement.

"***LIBO Base Rate***" shall mean, with respect to any Borrowing of LIBOR Loans for any Interest Period, the rate per annum determined by the Administrative Agent at approximately 11:00 a.m. (London time) on the date that is two (2) Business Days prior to the commencement of such Interest Period by reference to the Reuters Screen LIBOR01 for deposits in Dollars (or such other comparable page as may, in the opinion of the Administrative Agent, replace such page for the purpose of displaying such rates) for a period equal to such Interest Period; ***provided*** that to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the "LIBO Rate" shall be the interest rate per annum determined by the Administrative Agent to be the average of the rates per annum at which deposits in Dollars are offered for such relevant Interest Period to major banks in the London interbank market in London, England by the Administrative Agent at approximately 11:00 a.m. (London time) on the date that is two (2) Business Days prior to the beginning of such Interest Period; ***provided***, ***further***, that if any such rate determined pursuant to this definition is below 2.00%, the LIBO Base Rate will be deemed 2.00%.

"***LIBO Rate***" shall mean, with respect to any Borrowing of LIBOR Loans for any Interest Period, (a) the rate per annum (rounded upwards, if necessary, to the nearest 1/100th of 1%) determined by the Administrative Agent to be equal to the LIBO Base Rate for such Loan for such Interest Period divided by (b) a percentage equal to 100% minus the then stated maximum rate of all reserve requirements (including, without limitation, any marginal, emergency, supplemental, special or other reserves required by applicable law) applicable to any member bank of the Federal Reserve System in respect of Eurocurrency funding or liabilities as defined in Regulation D (or any successor category of liabilities under Regulation D).

"***LIBOR Loan***" shall mean each Loan designated as such by the Borrower at the time of the incurrence thereof or conversion thereto.

"***Lien***" shall mean any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), preference, priority or other security agreement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing or similar statement or notice filed under the UCC or any other similar recording or notice statute, and any lease having substantially the same effect as any of the foregoing).

"***LLC Division***" shall mean the statutory division of any limited liability company into two or more limited liability companies pursuant to Section 18-217 of the Delaware Limited Liability Company Act or a comparable provision of a different jurisdiction's laws, as applicable.

"***Loan***" shall mean any Term Loan.

"***Margin Stock***" shall have the meaning provided in Regulation U.

"***Material Adverse Effect***" shall mean (a) a material adverse effect on the business, operations, property, assets or financial condition of the Borrower and its Subsidiaries taken as a whole; ***provided*** that the mere filing or continuation of the Cases or the events and conditions existing prior to the Petition Date related to, as a result of and/or leading up to such filing or continuation of the Cases shall not be deemed to have caused a Material Adverse Effect in and of themselves or (b) a material adverse effect (i) on the rights or remedies of the Lenders, the Administrative Agent or the Collateral Agent hereunder or under any other Credit Document or (ii) on the ability of any Credit Party to perform its obligations to the Lenders, the Administrative Agent or the Collateral Agent hereunder or under any other Credit Document.

"***Material Real Property***" shall mean (a) any Real Property with a Fair Market Value in excess of $2,500,000, which determination shall include the Fair Market Value of any improvements located on such owned or leased Real Property; (b) all of the owned or leased Real Property identified on **Schedule 5.01(k)(i)**; (c) in the case of any Real Property with coal reserves, any owned or leased Real Property which (i) contains more than 7,500,000 recoverable tons of coal, and (ii) is within Borrower's five-year mine plan and (d) any Material Real Property or similar term (as defined in the Pre-Petition Credit Documents or the DIP ABL Facility).

"***Material Lease***" shall mean any Real Property Lease or other contractual obligations in respect of Material Leased Real Property.

"***Material Leased Real Property***" shall mean any Material Real Property subject to a Real Property Lease with a Credit Party, as lessee.

"***Material Surface Property***" shall have the meaning provided in **Section 7.12(c)(ii)**.

"***Maturity Date***" shall mean [ ], 2019[1]; ***provided***, ***however***, that if such date is not a Business Day, the Maturity Date shall be the immediately preceding Business Day.

"***Maximum Rate***" shall have the meaning provided in **Section 11.18**.

"***Milestone***" shall have the meaning provided in **Section 7.16**.

"***Mine***" shall mean any excavation or opening into the earth now and hereafter made from which Coal or other minerals are or can be extracted on or from any of the Real Properties in which any Credit Party holds an ownership, leasehold or other interest.

[1] To be the date that is six (6) months after the commencement of the Cases.

"***Minimum Borrowing Amount***" shall mean (a) for the Initial Loans made on the Closing Date, prior to the Final Order Entry Date, the lesser of (x) $35,000,000 and (y) the maximum amount of Loans authorized by the Interim Order and (b) for the Delayed Draw Loans made on the Delayed Draw Borrowing Date, $15,000,000.

"***Mining Financial Assurances***" shall mean performance bonds for reclamation or otherwise, surety bonds or escrow agreements and any payment or prepayment made with respect to, or certificates of deposit or other sums or assets required to be posted by the Borrower or any Subsidiary under Mining Laws for reclamation or otherwise.

"***Mining Laws***" shall mean any and all applicable current or future foreign or domestic, Federal, state or local statutes, ordinances, orders, rules, regulations, judgments, governmental authorizations, or any other requirements of governmental authorities relating to surface or subsurface mining operations, activities, and reclamation including, but not limited to, the Federal Coal Leasing Amendments Act; the Surface Mining Control and Reclamation Act; all other applicable land reclamation and use statutes and regulations; the Federal Mine Safety Act of 1977; the Black Lung Act; and the Coal Act; each as amended, and any comparable state and local laws or regulations.

"***Mining Lease***" shall mean a lease, license or other use agreement held on the Closing Date or thereafter acquired which provides the Borrower or any Restricted Subsidiary the real property and water rights, other interests in land, including Coal, mining and surface rights, easements, rights of way and options, and rights to timber and natural gas (including coalbed methane and gob gas) necessary to recover Coal from any Mine (a) currently operated by the Borrower or any Restricted Subsidiary or (b) part of any of the Borrower's mine plans. Leases which provide the Borrower or any Restricted Subsidiary the right to construct and operate a preparation plant and related facilities on the surface of the Real Property containing such reserves shall also be deemed a Mining Lease.

"***Mining Permits***" shall mean any and all permits, licenses, registrations, notifications, exemptions and any other authorization required under any applicable Mining Law or otherwise necessary to recover Coal from any Mine being operated by the Borrower or any Restricted Subsidiary.

"***Moody's***" shall mean Moody's Investors Service, Inc.

"***Mortgage***" shall mean a mortgage, leasehold mortgage, deed of trust, leasehold deed of trust, deed to secure debt, leasehold deed to secure debt, debenture or similar security instrument.

"***Mortgage Policy***" shall mean a Lender's title insurance policy (Form 2006).

"***Mortgaged Property***" shall mean any Real Property owned or leased by the Borrower or any of its Subsidiaries which is encumbered (or required to be encumbered) by the Interim Order (or, if applicable, the Final Order) or by a Mortgage pursuant to the terms hereof.

"***Multiemployer Plan***" shall mean any multiemployer plan as defined in Section 4001(a)(3) of ERISA, which is contributed to by (or to which there is an obligation to contribute of) the Borrower or any of its Restricted Subsidiaries or with respect to which the

Borrower or any of its Restricted Subsidiaries has any liability (including on account of an ERISA Affiliate).

"***Net Cash Proceed***s" shall mean

(a) for any event, requiring a repayment of Loans pursuant to **Section 4.02(c)** or **(e)**, the gross cash proceeds (including any cash received by way of deferred payment pursuant to a promissory note, receivable or otherwise, but only as and when received) received from such event, net of reasonable transaction costs of the Debtors (including, as applicable, any underwriting, brokerage or other customary commissions and reasonable legal, advisory and other fees and expenses associated therewith) received from any such event; ***provided*** that, with respect to **clauses (d)** and **(e)** of **Section 4.02**, no proceeds shall constitute Net Cash Proceeds until the aggregate amount of all such proceeds shall exceed $1,000,000; and

(b) for any issuance of Equity Interests, the cash proceeds received from such issuance net of attorneys' fees, investment banking fees, accountants' fees, consulting fees, underwriting discounts and commissions and other fees and expenses of the Debtors actually incurred in connection therewith.

"***Net Sale Proceeds***" shall mean for any sale or other disposition of assets, the gross cash proceeds (including any cash received by way of deferred payment pursuant to a promissory note, receivable or otherwise, but only as and when received) received from such sale or other disposition of assets, net of

(a) reasonable transaction costs (including, without limitation, any underwriting, brokerage or other customary selling commissions, reasonable legal, advisory and other fees and expenses (including title and recording expenses), associated therewith and sales, VAT and transfer Taxes arising therefrom),

(b) payments of unassumed liabilities relating to the assets sold or otherwise disposed of at the time of, or within 30 days after, the date of such sale or other disposition,

(c) the amount of such gross cash proceeds required to be used to permanently repay any Indebtedness (other than Indebtedness of the Lenders pursuant to this Agreement) which is secured by the respective assets which were sold or otherwise disposed of, and

(d) the estimated net marginal increase in income Taxes payable or Tax Distributions made by the Borrower or any Restricted Subsidiary of the Borrower with respect to the Fiscal Year of the Borrower in which the sale or other disposition occurs as a result of such sale or other disposition;

provided, ***however***, that such gross proceeds shall not include any portion of such gross cash proceeds which the Borrower determines in good faith should be reserved for post-closing adjustments (to the extent the Borrower delivers to the Lenders a certificate signed by an Authorized Officer as to such determination), it being understood and agreed that on the day that all such post-closing adjustments have been determined (which shall not be later than a time period following the date of the respective asset sale as agreed to by the Required Lenders), the amount (if any) by which the reserved amount in respect of such sale or disposition exceeds the

actual post-closing adjustments payable by the Borrower or any of its Restricted Subsidiaries shall constitute Net Sale Proceeds on such date received by the Borrower and/or any of its Restricted Subsidiaries from such sale or other disposition; ***provided***, ***further***, that no proceeds shall constitute Net Sale Proceeds until the aggregate amount of such proceeds shall exceed $1,000,000.

"***New Money Loans***" shall have the meaning provided in **Section 2.01(a)**.

"***Note***" shall have the meaning provided in **Section 2.04(b)**.

"***Notice of Borrowing***" shall have the meaning provided in **Section 2.02(a)**.

"***Notice of Conversion/Continuation***" shall have the meaning provided in **Section 2.13**.

"***Notice Office***" shall mean the office of the Administrative Agent located at Cantor, 900 West Trade Street, Suite 725, Charlotte, North Carolina 28202, with a copy to Cantor, 55 Water Street, 28th Floor, New York, NY 10041, or such other office or person as the Administrative Agent may hereafter designate in writing as such to the other parties hereto.

"***Obligations***" shall mean all amounts owing from time to time by the Borrower and the other Credit Parties to the Administrative Agent, the Collateral Agent, any Lender or any other Secured Creditor pursuant to the terms of this Agreement or any other Credit Document (including all interest, fees and other amounts which accrue after the commencement of any bankruptcy, insolvency, receivership or similar proceeding whether or not allowed or allowable in any such proceeding).

"***OFAC***" shall have the meaning provided in the definition of "Embargoed Person."

"***Orders***" shall mean, collectively, the Interim Order and the Final Order.

"***Organizational Documents***" shall mean, with respect to any Person, the charter, articles or certificate of organization or incorporation and by-laws or other organizational or governing documents of such Person (including any limited liability company or operating agreement).

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

"***Other Taxes***" shall mean all present or future stamp, court or documentary, intangible, recording, filing or other similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Credit Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 2.10**).

"***Participant***" shall have the meaning provided in **Section 11.04(a)**.

"***Participant Register***" shall have the meaning provided in **Section 11.04(e)**.

"***Patriot Trust RSA***" shall mean that certain Restructuring Support Agreement, dated as of July 15, 2019, among the Borrower and the trustee of the PPC Liquidating Trust established in connection with the jointly administered chapter 11 cases captioned *In re Patriot Coal Corporation*, Case No. 15-32450 (KLP), in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division.

"***Payment Office***" shall mean the office of the Administrative Agent located at Cantor, 900 West Trade Street, Suite 725, Charlotte, North Carolina 28202, or such other office or person as the Administrative Agent may hereafter designate in writing as such to the other parties hereto.

"***PBGC***" shall mean the U.S. Pension Benefit Guaranty Corporation or any successor agency, referred to and defined in ERISA.

"***Perfection Certificate***" shall mean a certificate in a form approved by the Collateral Agent, as the same shall be supplemented from time to time.

"***Perfection Certificate Supplement***" shall mean a certificate in a form approved by the Collateral Agent.

"***Permitted Asset Sale***" shall have the meaning provided in Section 8.02.

"***Permitted Business***" shall mean any business that is the same as, or reasonably related, ancillary or complementary to, or a reasonable extension of, any of the businesses in which the Borrower and its Restricted Subsidiaries are engaged on the Closing Date.

"***Permitted Encumbrance***" shall mean, with respect to any Mortgaged Property, (i) those items described in **Section 8.01(i)** hereof and (ii) such other exceptions to title not described in **Section 8.01(i)** hereof as are set forth in the Mortgage Policy delivered with respect thereto which such other exceptions described in this **clause (ii)** must be acceptable to the Administrative Agent in its reasonable discretion.

"***Permitted Investments***" shall mean:

(a) any Investment in the Borrower or a Guarantor;

(b) any Investment in Cash Equivalents;

(c) [reserved];

(d) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with **Section 8.02**;

(e) any Investments received in compromise or resolution of (i) obligations of trade creditors or customers that were incurred in the ordinary course of business of the Borrower or any of its Restricted Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (ii) litigation, arbitration or other disputes;

(f) Investments represented by Hedging Obligations permitted hereunder;

(g) [reserved];

(h) loans or advances to employees, including advances to employees for moving and travel expenses and similar expenditures, made in the ordinary course of business of the Borrower or any Restricted Subsidiary in an aggregate principal amount not to exceed $100,000 at any one time outstanding;

(i) any Guarantee of Indebtedness to the extent such Guarantee is permitted to be incurred by **Section 8.04**, other than a Guarantee of Indebtedness of an Affiliate of the Borrower that is not a Restricted Subsidiary;

(j) letters of credit issued to support reclamation liabilities of Unrestricted Subsidiaries to the extent permitted by **Section 8.04**;

(k) to the extent constituting Investments, purchases and acquisitions of inventory, real property, equipment or supplies in the ordinary course of business;

(l) (i) Investments in effect on the Closing Date and any Investment consisting of an extension, modification or renewal of any such Investment existing on the Closing Date in an amount not to exceed the amount of such Investment on the Closing Date and (ii) so long as no Event of Default is continuing at the time of such Investment, additional investments after the date of this Agreement in an amount, together with all other Investments made pursuant to clause (ii) of this clause (l) not to exceed $500,000.

"***Permitted Liens***" shall have the meaning provided in **Section 8.01**.

"***Person***" shall mean any individual, partnership, joint venture, firm, corporation, association, limited liability company, trust or other enterprise or any Governmental Authority.

"***Pledge Agreement***" shall mean that certain Pledge Agreement, dated as of the date hereof, by and among JMP Coal Holdings, LLC, JMP Blackhawk, LLC, and the Collateral Agent, as the same may be amended, amended and restated, modified and/or supplemented from time to time.

"***Pre-Petition ABL Asset Priority Liens***" shall mean Liens granted to the collateral agent under the Pre-Petition ABL Credit Agreement and the collateral documents relating thereto upon the ABL Priority Collateral (as defined in the ABL Credit Agreement) as amended and as in effect on the Petition Date.

"***Pre-Petition ABL Asset Priority Lien Obligations***" shall mean the Obligations (as defined in the Pre-Petition ABL Credit Agreement).

"***Pre-Petition ABL Credit Agreement***" shall mean the Credit Agreement, dated as of September 6, 2017, among the Borrower, the other Credit Parties party thereto, Midcap Financial Trust, as agent and the other lenders party thereto from time to time, as the same may be amended, amended and restated, modified and/or supplemented from time to time in accordance with the terms thereof and as in effect on the Petition Date.

"***Pre-Petition ABL Credit Agreement Documents***" shall mean, the collective reference to the Pre-Petition ABL Credit Agreement, any notes issued pursuant thereto and the guarantees thereof, the collateral documents relating thereto, and the other Credit Documents (as defined therein) as amended and as in effect on the Petition Date.

"***Pre-Petition ABL Intercreditor Agreement***" shall mean that certain ABL Intercreditor Agreement, dated as of September 6, 2017, among the Borrower, the other Credit Parties party thereto, Midcap Financial Trust, as Collateral Agent, and each other agent or representative party thereto from time to time, as the same may be amended, modified and/or supplemented from time to time in accordance with the terms thereof.

"***Pre-Petition Credit Agreements***" shall mean the Pre-Petition First Lien Term Loan Credit Agreement and the Pre-Petition Second Lien Term Loan Credit Agreement.

"***Pre-Petition Credit Documents***" shall mean the Pre-Petition First Lien Term Loan Credit Agreement Documents and the Pre-Petition Second Lien Term Loan Credit Agreement Documents.

"***Pre-Petition First Lien Term Lenders***" shall mean the Lenders (as defined in the Pre-Petition First Lien Term Loan Credit Agreement).

"***Pre-Petition First Lien Term Loans***" shall mean the Loans (as defined in the Pre-Petition First Lien Term Loan Credit Agreement).

"***Pre-Petition First Lien Term Loan Credit Agreement***" shall mean the First Lien Term Loan Credit Agreement, dated as of February 17, 2017, among the Borrower, the other credit parties party thereto, Cantor Fitzgerald Securities, as successor administrative agent, and the other lenders party thereto from time to time, as the same may be amended, amended and restated, modified and/or supplemented from time to time in accordance with the terms thereof and as in effect on the Petition Date.

"***Pre-Petition First Lien Term Loan Credit Agreement Documents***" shall mean, the collective reference to the Pre-Petition First Lien Term Loan Credit Agreement, any notes issued pursuant thereto and the guarantees thereof, the collateral documents relating thereto, and the other Credit Documents (as defined therein), as amended and as in effect on the Petition Date.

"***Pre-Petition LC Facility Agreement***" shall mean that certain Letter of Credit and Reimbursement Agreement, dated as of February 17, 2017, by and between the Borrower and

Jefferies Group LLC, as the same may be amended, amended and restated, modified and/or supplemented from time to time in accordance with the terms thereof.

"***Pre-Petition Second Lien Term Loan Credit Agreement***" shall mean the First Lien Term Loan Credit Agreement, dated as of October 8, 2015, among the Borrower, the other credit parties party thereto, Cortland Capital Market Services LLC as successor administrative agent, and the other lenders party thereto from time to time, as the same may be amended, amended and restated, modified and/or supplemented from time to time in accordance with the terms thereof and as in effect on the Petition Date.

"***Pre-Petition Second Lien Term Loan Credit Agreement Documents***" shall mean, the collective reference to the Pre-Petition Second Lien Term Loan Credit Agreement, any notes issued pursuant thereto and the guarantees thereof, and the collateral documents relating thereto, as amended and as in effect on the Petition Date.

"***Prime Lending Rate***" shall mean, for any day, the prime rate published in The Wall Street Journal for such day; ***provided*** that, if The Wall Street Journal ceases to publish for any reason such rate of interest, "Prime Lending Rate" shall mean the prime lending rate as set forth on the Bloomberg page PRIMBB Index (or successor page) for such day (or such other service as determined by the Administrative Agent from time to time for purposes of providing quotations of prime lending interest rates); each change in the Prime Lending Rate shall be effective on the date such change is effective.

"***PTE***" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"***Quarterly Payment Date***" shall mean the last Business Day of each March, June, September and December occurring after the Closing Date.

"***Real Property***" of any Person shall mean all the right, title and interest of such Person in and to land, improvements and fixtures, including Leaseholds.

"***Real Property Lease***" shall mean any lease, license, letting, concession, occupancy agreement, sublease, farm-in, farm-out, joint operating agreement, easement or right of way to which such Person is a party and is granted a possessory interest in or a right to use or occupy all or any portion of the Real Property (including, without limitation, the right to extract Coal, minerals oil, natural gas and other hydrocarbons and their constituents from any portion of Real Property not owned in fee by such Person) and every amendment or modification thereof, including with respect to the Credit Parties, without limitation, the leases with respect to Real Property and any contractual obligation with respect to any of the foregoing.

"***Recipient***" shall mean (a) the Administrative Agent and (b) any Lender, as applicable.

"***Recovery Event***" shall mean any event that gives rise to the receipt by the Borrower or any of its Restricted Subsidiaries of any cash insurance proceeds or condemnation awards payable (a) by reason of theft, loss, physical destruction, damage, taking or any other similar event with respect to any property or assets of the Borrower or any of its Restricted Subsidiaries and (b) under any policy of insurance required to be maintained under **Section 7.03**.

"***Register***" shall have the meaning provided in **Section 11.15**.

"***Regulation D***" shall mean Regulation D of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof establishing reserve requirements.

"***Regulation T***" shall mean Regulation T of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"***Regulation U***" shall mean Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"***Regulation X***" shall mean Regulation X of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"***Release***" shall mean disposing, discharging, injecting, spilling, pumping, leaking, leaching, dumping, emitting, escaping, emptying, pouring, seeping, or migrating into, through or upon any land or water or air, or otherwise entering into the outdoor or indoor environment.

"***Reorganization Plan***" shall mean a plan of reorganization or liquidation in any or all of the Cases.

"***Replaced Lender***" shall have the meaning provided **Section 2.10**.

"***Replacement Lender***" shall have the meaning provided in **Section 2.10**.

"***Reportable Event***" shall mean an event described in Section 4043(c) of ERISA or the regulations issued thereunder with respect to a Benefit Plan that is subject to Title IV of ERISA other than those events as to which the 30-day notice period is waived under applicable regulations.

"***Required Lenders***" shall mean, at any time, Lenders the sum of whose outstanding Loans and Commitments, without duplication, at such time represents a majority of the sum of all outstanding Loans and Commitments at such time.

"***Requirements of Law***" shall mean, collectively, any and all applicable requirements of any Governmental Authority including any and all laws, judgments, orders, executive orders, decrees, ordinances, rules, regulations, statutes, case law or treaties.

"***Restricted Junior Debt Payment***" shall mean any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value (a) any Indebtedness of the Borrower or any Guarantor that is contractually subordinated (or required to be subordinated) to the Obligations or any Guaranteed Obligations, (b) any Indebtedness of the Borrower or any Guarantor (other than DIP ABL Asset Priority Lien Obligations) that is secured by Liens on all or any portion of the Collateral that are junior to the Liens on such Collateral securing the Obligations (including Indebtedness under the Pre-Petition Credit Documents) or (c) any other unsecured Indebtedness for borrowed money of the Borrower or any Restricted Subsidiary including the Patriot Trust RSA.

"***Restricted Payments***" shall mean

(a) the declaration or payment of any dividend or making of any other payment or distribution (whether in cash, securities or other property) on account of the Borrower or any Restricted Subsidiary's Equity Interests (including, without limitation, any payment in connection with any merger, amalgamation or consolidation involving the Borrower or any of its Restricted Subsidiaries) or to the direct or indirect holders of the Borrower or any Restricted Subsidiary's Equity Interests in their capacity as such,

(b) the purchase, redemption, acquisition, retirement for value, acquisition, cancellation or termination (including, without limitation, in connection with any merger, amalgamation or consolidation involving the Borrower) of the Borrower or any Restricted Subsidiary's Equity Interests or

(c) any payment or distribution (whether in cash, securities or other property) on account of any return of capital to the Borrower's or any Restricted Subsidiary's stockholders, partners or members (or the equivalent Person thereof).

"***Restricted Subsidiary***" of a Person shall mean any Subsidiary of the Borrower that is not an Unrestricted Subsidiary.

"***Returns***" shall have the meaning provided in **Section 6.09**.

"***Roll-Up***" shall have the meaning provided in **Section 2.01(b)**.

"***Roll-Up Loan***" shall have the meaning provided in **Section 2.01(b)**.

"***RSA***" shall mean that certain Restructuring Support Agreement, dated as of July 15, 2019 by and among the Credit Parties, and the creditor parties party thereto, as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"***S&P***" shall mean Standard & Poor's Ratings Services, a division of McGraw-Hill Financial, Inc.

"***SEC***" shall have the meaning provided in **Section 7.01(i)**.

"***Secured Creditors***" shall mean the Administrative Agent, the Collateral Agent and the Lenders and their respective successors and assigns.

"***Securities Act***" shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"***Security Agreement***" shall have the meaning provided in **Section 5.01(j)**.

"***Security Agreement Collateral***" shall mean all "Pledged Collateral" as defined in the Security Agreement.

"***Security Document***" shall mean and include each of the Security Agreement, the Pledge Agreement, each Mortgage with respect to a Mortgaged Property, the DIP ABL Intercreditor Agreement, any Control Agreement and, after the execution and delivery thereof, each Additional Security Document, and any other related document, agreement or grant pursuant to which the Borrower or any of its Subsidiaries grants, perfects or continues a security interest in favor of the Collateral Agent for the benefit of the Secured Creditors. The Security Documents shall supplement, and shall not limit, the security interests granted pursuant to the Orders, but in the event of any conflict between the security interests granted pursuant to the Orders and the security interest granted pursuant to the Security Documents, the Orders shall govern.

"***Stated Maturity***" shall mean, with respect to any installment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal was scheduled to be paid in the documentation governing such Indebtedness, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

"***Subsidiary Guaranty***" shall have the meaning provided in **Section 5.01(i)**.

"***Subsidiary***" shall mean, with respect to any specified Person:

(a) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(b) any partnership or limited liability company of which (i) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general and limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, whether in the form of membership, general, special or limited partnership interests or otherwise, and (ii) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

"***Superpriority Claim***" shall mean any administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code in the case of any Credit Party having priority over any and all other administrative expenses, diminution claims and all other priority claims against the Debtors, subject only to the Carve-Out, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 365, 503(b), 506(c) (subject only to and effective upon entry of the Final Order), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code.

"***Tax Distributions***" shall mean, (a) any payment made by the Borrower to the holders of its Equity Interests, for any Fiscal Year (or portion thereof) ending after the Closing Date for which the Borrower is treated as a partnership (or disregarded as an entity separate from a partnership) for U.S. federal income tax purposes, in an aggregate amount with respect to any such Fiscal Year not to exceed the maximum combined marginal U.S. federal, state and local income tax rate (after taking into account applicable limitations on the deductibility of items and the character of income in question (i.e., long term capital gain, qualified dividend income, etc.)) applicable to any direct (or, where the direct equity holder is a pass-through entity, indirect) equity holder of the Borrower multiplied by the amount of the Borrower's net taxable income for the relevant Fiscal Year (taking into account any audit adjustment made after the Closing Date (with respect to any Fiscal Year) but, for the avoidance of doubt, without regard to any adjustments pursuant to Section 734 or 743 of the Code), reduced by any net taxable loss with respect to all Fiscal Years (or portion thereof) beginning after the Closing Date to the extent such net taxable loss was not previously taken into account in calculating the Tax Distribution and is of a character that would permit such loss to be deducted against the income of the Fiscal Year (or portions thereof) in question, or (b) for any Fiscal Year (or portion thereof) ending after the Closing Date for which the Borrower is disregarded as an entity separate from a corporate parent (a "***Corporate Parent***") for U.S. federal income tax purposes, or is treated as a corporation for U.S. federal income tax purposes and is a member of a consolidated, combined, unitary or similar income tax group of which a direct or indirect parent of the Borrower is the common parent (a "***Tax Group***"), in each case, distributions to such Corporate Parent (or other parent of the Borrower), to pay the portion of the U.S. federal, state or local income Taxes of such Corporate Parent (or such Tax Group) that are attributable to the income of the Borrower and/or its Subsidiaries, in an aggregate amount not to exceed the amount of such Taxes that the Borrower and/or its applicable Subsidiaries would have paid had the Borrower and/or such Subsidiaries, as applicable, been a stand-alone corporate taxpayer (or a stand-alone corporate group); provided, that Tax Distributions in respect of any Fiscal Year may be paid throughout the Fiscal Year to cover estimated tax payments as reasonably determined by the Borrower; provided, further, that, to the extent the aggregate amount of estimated payments in respect of any Fiscal Year exceeds the actual amount of permitted Tax Distributions for such Fiscal Year, such excess shall reduce dollar for dollar the permitted Tax Distributions in respect of succeeding Fiscal Years (including, without duplication, any estimated payments); provided, further, that no Tax Distributions may be paid by the Borrower in respect of Taxes payable or paid directly by the Borrower or any Subsidiary.

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

"***Term Loan***" shall mean a loan made pursuant to **Section 2.01**.

"***Termination Date***" shall mean the earliest of (a) the Maturity Date, (b) the effective date of the Acceptable Plan of Reorganization (the "***Plan Effective Date***") or any other Reorganization Plan, (c) the consummation of a sale or other disposition of all or substantially all assets of the Debtors under section 363 of the Bankruptcy Code, (d) the date of acceleration of the Loans and the termination of the Commitments with respect to the DIP Term Facility in

accordance with the terms of this Agreement upon and during the continuance of an Event of Default and (e) the date that is 45 days after the entry of the Interim Order (or such later date as may be agreed by the Required Lenders), unless the Final Order has been entered by the Bankruptcy Court on or prior to such date.

"***Transactions***" shall mean, collectively,

(a) the execution, delivery and performance by each Credit Party of the Credit Documents to which it is a party, the incurrence of Term Loans (including, without limitation, the Roll-Up Loans) and the use of proceeds thereof,

(b) the execution, delivery and performance by each Credit Party of the DIP ABL Facility and the other loan documents thereunder, the incurrence of loans thereunder and the use of the proceeds thereof, and

(c) the payment of all fees and expenses in connection with the foregoing.

"***Type***" when used in respect of any Loan or Borrowing, shall refer to the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term "***Rate***" shall mean the LIBO Rate and the Base Rate.

"***U.S. Person***" shall mean any Person that is a "United States person" as defined in Section 7701(a)(30) of the Code.

"***U.S. Tax Compliance Certificate***" shall have the meaning provided to such term in **Section 4.04(e)(ii)(B)(3)**.

"***UCC***" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; ***provided***, ***however***, that, at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of any Secured Creditor's security interest in any item or portion of the Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

"***Unfunded Pension Liability***" of any Plan shall mean the amount, if any, by which the value of the accumulated plan benefits under the Plan determined on a plan termination basis in accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the fair market value of all plan assets (excluding any accrued but unpaid contributions).

"***United States***" and "***U.S.***" shall each mean the United States of America.

"***Unrestricted Subsidiary***" shall mean any Subsidiary of the Borrower that is designated by the Board of Directors of the Borrower as an Unrestricted Subsidiary and approved by the Required Lenders.

"***Unused Commitment Fee***" shall have the meaning set forth in **Section 3.01(a)**.

"***Unused Commitment Fee Rate***" shall mean 1.00% per annum.

"***Upfront Fee***" shall have the meaning set forth in **Section 3.01(b)**.

"***USA PATRIOT Act***" shall have the meaning provided in the definition of "Anti-Terrorism Laws."

"***Voting Stock***" of any specified Person as of any date shall mean the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

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

Section 1.02 Other Definitional Provisions.

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Credit Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Credit Documents, and any certificate or other document made or delivered pursuant hereto or thereto, (i) accounting terms not defined in **Section 1.01** shall have the respective meanings given to them under GAAP, (ii) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," (iii) the word "incur" shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words "incurred" and "incurrence" shall have correlative meanings), (iv) unless the context otherwise requires, the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, Equity Interests, securities, revenues, accounts, leasehold interests and contract rights, (v) the word "will" shall be construed to have the same meaning and effect as the word "shall," (vi) any definition of or reference to any Credit Document, agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein) and (vii) unless the context otherwise requires, any reference herein (A) to any Person shall be construed to include such Person's successors and assigns and (B) to the Borrower or any other Credit Party shall be construed to include the Borrower or such Credit Party as debtor and debtor-in-possession and any receiver or trustee for the Borrower or any other Credit Party, as the case may be, in any insolvency or liquidation proceeding.

(c) The words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular

provision of this Agreement, and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(e) For purposes of this Agreement, Loans and Borrowings may be classified and referred to by Type (e.g., a "LIBOR Loan").

Section 1.03 LLC Division.

For all purposes under the Credit Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws, as applicable): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

Section 1.04 Covenants.

For purposes of any calculation under **Sections 8.01** and **8.04**, if the Borrower elects to give pro forma effect in such calculation to the entire committed amount of any proposed Indebtedness, whether or not then drawn, such committed amount may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with **Section 8.01** or **8.04**, but for so long as such commitment or Indebtedness is outstanding or in effect, the entire committed amount of such Indebtedness then in effect shall be deemed drawn and outstanding for all purposes hereunder.

ARTICLE II.
AMOUNT AND TERMS OF CREDIT.

Section 2.01 Commitments.

(a) **New Money Loans**. Subject to the terms and conditions set forth herein and in the Orders, each Lender agrees, severally and not jointly, (a) following entry of the Interim Order and satisfaction of the conditions to Borrowing set forth in **Section 5.01**, to make a term loan to the Borrower in a single Borrowing on the Closing Date (the "***Initial Loan***") in a principal amount not to exceed such Lender's Initial Commitment amounts and (b) following satisfaction of the conditions to Borrowing set forth in **Section 5.02**, to make a term loan to the Borrower in a single Borrowing on the Delayed Draw Borrowing Date (the "***Delayed Draw Loan***" and, together with the Initial Loan, the "***New Money Loans***") in a principal amount not to exceed such Lenders' Delayed Draw Commitment. Once funded each Initial Loan and each Delayed Draw Loan shall be a "***Loan***" and a "***Term Loan***" for all purposes under this Agreement and the other Credit Documents.

(b) **Roll-Up Loans**. Subject to the terms and conditions set forth herein, (i) subject to entry of the Interim Order, on the Closing Date, Pre-Petition First Lien Term Loans held by Pre-

Petition First Lien Term Lenders who are also Lenders or Affiliates of Lenders hereunder, shall be automatically substituted and exchanged for (and prepaid by) loans hereunder (the "***Initial Roll-Up Loans***"), on a pro rata basis (based on the Initial Loans that such Pre-Petition First Lien Term Lender or its Affiliate funded to the Borrower on the Closing Date pursuant to **Section 2.01(a)**), in a principal amount equal to $2.00 of Pre-Petition First Lien Term Loans of such Lender or such Affiliate of such Lender for each $1.00 of the Initial Loans funded hereunder on the Closing Date by such Lender and (ii) subject to entry of the Final Order, on the Delayed Draw Borrowing Date, Pre-Petition First Lien Term Loans held by Pre-Petition First Lien Term Lenders who are also Lenders or Affiliates of Lenders hereunder, shall be automatically substituted and exchanged for (and prepaid by) loans hereunder (the "***Additional Roll-Up Loans***" and, together with the Initial Roll-Up Loans, the "***Roll-Up Loans***"), on a pro rata basis (based on the Delayed Draw Loans that such Pre-Petition First Lien Term Lender or its Affiliate funded to the Borrower on the Delayed Draw Borrowing Date pursuant to **Section 2.01(a)**) in a principal amount equal to $2.00 of Pre-Petition First Lien Term Loans of such Lender or Affiliate of such Lender for each $1.00 of Delayed Draw Loans funded hereunder by such Lender on the Delayed Draw Borrowing Date (the Initial Roll-Up Loans shall be deemed funded on the Closing Date and the Additional Roll-Up Loans shall be deemed funded on the Delayed Draw Borrowing Date and each shall constitute and be deemed to be a "***Loan***" and a "***Term Loan***" hereunder) (the foregoing substitution and exchange of Pre-Petition First Lien Term Loans into Roll-Up Loans shall be defined herein, generally, as the "***Roll-Up***").

(c) Amounts borrowed (or deemed borrowed) under **Section 2.01** and paid or prepaid in respect of the Term Loans may not be reborrowed.

(d) For the avoidance of doubt, solely with respect to the applicable calculations in determining the Lenders constituting "Required Lenders" hereunder, the New Money Loans and the Roll-Up Loans shall constitute a single class of Loans.

Section 2.02 Notice of Borrowing.

(a) When the Borrower desires to incur Term Loans hereunder, the Borrower shall give the Administrative Agent at the Notice Office at least one Business Day's prior notice of each Term Loan to be incurred hereunder, ***provided*** that (in each case) any such notice shall be deemed to have been given on a certain day only if given before 11:00 A.M. (New York City time) (or such later time as may be agreed by the Administrative Agent in its sole discretion) on such day. Each such notice (each, a "***Notice of Borrowing***") shall be irrevocable and shall be in writing, or by telephone promptly confirmed in writing, in the form of **Exhibit A-1**, appropriately completed to specify: (i) the aggregate principal amount of the Term Loans to be incurred pursuant to such Borrowing, (ii) the date of such Borrowing (which shall be a Business Day) and (iii) whether the Term Loans being incurred pursuant to such Borrowing are to be initially maintained as Base Rate Loans or LIBO Rate Loans and, if LIBO Rate Loans, the initial Interest Period to be applicable thereto. The Administrative Agent shall promptly give each Lender which is required to make Term Loans notice of such proposed Borrowing, of such Lender's proportionate share thereof and of the other matters required by the immediately preceding sentence to be specified in the Notice of Borrowing.

(b) Without in any way limiting the obligation of the Borrower to confirm in writing any telephonic notice of any Borrowing or prepayment of Term Loans, the Administrative Agent may act without liability upon the basis of telephonic notice of such Borrowing or prepayment, as the case may be, believed by the Administrative Agent in good faith to be from an Authorized Officer of the Borrower, prior to receipt of written confirmation. In each such case, the Borrower hereby waives the right to dispute the Administrative Agent's record of the terms of such telephonic notice of such Borrowing or prepayment of Term Loans, as the case may be, absent manifest error.

Section 2.03 Disbursement of Funds.

No later than 1:00 P.M. (New York City time) on the date specified in each Notice of Borrowing, each Lender will make available its pro rata portion (determined in accordance with **Section 2.05**) of each such Borrowing requested to be made on such date. All such amounts will be made available in Dollars and in immediately available funds at the Payment Office, and the Administrative Agent will make available to the Borrower at the Payment Office, or to such other account as the Borrower may specify in writing prior to a Borrowing Date, the aggregate of the amounts so made available by the Lenders. Unless the Administrative Agent shall have been notified by any Lender prior to the date of Borrowing that such Lender does not intend to make available to the Administrative Agent such Lender's portion of any Borrowing to be made on such date, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date of Borrowing and the Administrative Agent may (but shall not be obligated to), in reliance upon such assumption, make available to the Borrower a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender on such Borrowing Date. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower and the Borrower shall immediately pay such corresponding amount to the Administrative Agent. The Administrative Agent also shall be entitled to recover on demand from such Lender or the Borrower, as the case may be, interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to the Borrower until the date such corresponding amount is recovered by the Administrative Agent, at a rate per annum equal to (i) if recovered from such Lender, the overnight Federal Funds Rate for the first three days and at the interest rate otherwise applicable to such Term Loans for each day thereafter and (ii) if recovered from the Borrower, the rate of interest applicable to the respective Borrowing, as determined pursuant to **Section 2.06**. Nothing in this **Section 2.03** shall be deemed to relieve any Lender from its obligation to make Term Loans hereunder or to prejudice any rights which the Borrower may have against any Lender as a result of any failure by such Lender to make Term Loans hereunder.

Section 2.04 Repayment of Loans; Notes.

(a) The Borrower hereby unconditionally promises to (i) subject to clause (e) below, repay in full in cash the outstanding Loans to the Administrative Agent for the account of each Lender on the Termination Date, together with accrued and unpaid interest on the principal

amount to be paid to but excluding the date of such payment and (ii) to pay all fees under and in accordance with **Section 3.01**.

(b) The Borrower's obligation to pay the principal of, and interest on, the Loans made by each Lender shall be evidenced in the Register maintained by the Administrative Agent pursuant to **Section 11.15** and shall, if requested by such Lender, also be evidenced by a promissory note duly executed and delivered by the Borrower substantially in the form of **Exhibit B**, with blanks appropriately completed in conformity herewith (each, a "***Note***" and, collectively, the "***Notes***").

(c) Each Lender will note on its internal records the amount of each Loan made by it and each payment in respect thereof and prior to any transfer of any of its Notes will endorse on the reverse side thereof the outstanding principal amount of Loans evidenced thereby. Failure to make any such notation or any error in such notation shall not affect the Borrower's obligations in respect of such Loans.

(d) Notwithstanding anything to the contrary contained above in this **Section 2.04** or elsewhere in this Agreement, Notes shall only be delivered to Lenders which at any time specifically request the delivery of such Notes. No failure of any Lender to request or obtain, maintain or produce a Note evidencing its Loans to the Borrower shall affect or in any manner impair the obligations of the Borrower to pay the Loans (and all related Obligations) incurred by the Borrower which would otherwise be evidenced thereby in accordance with the requirements of this Agreement, and shall not in any way affect the security or guaranties therefor provided pursuant to any Credit Document. Any Lender which does not have a Note evidencing its outstanding Loans shall in no event be required to make the notations otherwise described in the preceding **clause (c)**. At any time when any Lender requests the delivery of a Note to evidence any of its Loans, the Borrower shall promptly execute and deliver to the respective Lender the requested Note in the appropriate amount or amounts to evidence such Loans.

(e) The Loans shall mature, and shall be due and payable without any further notice, on the Termination Date; provided that if the Termination Date occurs due to the occurrence of the Plan Effective Date, notwithstanding anything contained herein or any other Credit Document, the principal amount of Loans shall not be repaid by the Borrower in cash but shall be repaid by means of conversion of such principal amount of Loans on a dollar for dollar basis into exit term loans in accordance with the Acceptable Plan of Reorganization and the RSA and otherwise upon terms satisfactory to the Required Lenders, and the principal amount of the Loans and other Obligations (other than interest and Obligations which, by the terms of any Credit Document, expressly survive the repayment in full of the Loans) shall be deemed fully satisfied by such conversion.

Section 2.05 Pro Rata Borrowings.

All Borrowings shall be incurred from the Lenders pro rata on the basis of their applicable Commitments. It is understood that no Lender shall be responsible for any default by any other Lender of its obligation to make Loans hereunder and that each Lender shall be obligated to make the Loans provided to be made by it hereunder, regardless of the failure of any other Lender to make its Loans hereunder.

Section 2.06 Interest.

(a) The Borrower agrees to pay interest in respect of the unpaid principal amount of each Base Rate Loan from the date of Borrowing thereof until the earlier of (i) the maturity thereof (whether by acceleration or otherwise) and (ii) the conversion of such Base Rate Loan to a LIBOR Loan pursuant to **Section 2.13** or **2.14**, as applicable, at a rate per annum which shall be equal to the sum of the Applicable Margin for Base Rate Loans plus the Base Rate, each as in effect from time to time.

(b) The Borrower agrees to pay interest in respect of the unpaid principal amount of each LIBOR Loan from the date of Borrowing thereof until the earlier of (i) the maturity thereof (whether by acceleration or otherwise) and (ii) the conversion of such LIBOR Loan to a Base Rate Loan pursuant to **Section 2.07**, **2.13** or **2.14**, as applicable, at a rate per annum which shall, during each Interest Period applicable thereto, be equal to the sum of the Applicable Margin for LIBOR Loans as in effect from time to time during such Interest Period plus the LIBO Rate for such Interest Period.

(c) Overdue principal and, to the extent permitted by law, overdue interest in respect of each Loan shall, in each case, bear interest at a rate per annum equal to the rate which is 2.00% in excess of the rate then borne by such Loans, and all other overdue amounts payable hereunder and under any other Credit Document shall bear interest at a rate per annum equal to the rate which is 2.00% in excess of the rate applicable to Loans. Interest that accrues under this **Section 2.06(c)** shall be payable on demand.

(d) Accrued (and theretofore unpaid) interest shall be payable (i) in respect of each Base Rate Loan, (x) quarterly in arrears on each Quarterly Payment Date, (y) on the date of any repayment or prepayment (on the amount repaid or prepaid) of such Base Rate Loan, and (z) at maturity (whether by acceleration or otherwise) and, after such maturity, on demand and (ii) in respect of each LIBOR Loan, (x) on the last day of each Interest Period applicable thereto and, in the case of an Interest Period in excess of three months, on each date occurring at three month intervals after the first day of such Interest Period, (y) on the date of any repayment or prepayment (on the amount repaid or prepaid) of such LIBOR Loan and (z) at maturity (whether by acceleration or otherwise) and, after such maturity, on demand.

(e) Upon each Interest Determination Date, the Administrative Agent shall determine the LIBO Rate for each Interest Period applicable to the respective LIBOR Loans and shall promptly notify the Borrower and the Lenders thereof. Each such determination shall, absent manifest error, be final and conclusive and binding on all parties hereto.

Section 2.07 Increased Costs.

(a) **Increased Costs Generally**. If any Change in Law shall:

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

(ii) subject any Recipient to any additional Taxes (other than (A) Indemnified Taxes, (B) Taxes described in **clauses (b)** through **(d)** of the definition of Excluded Taxes and (C) Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender any other condition, cost or expense (other than with respect to Taxes) affecting this Agreement or Term Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Term Loan, or of maintaining its obligation to make any such Term Loan, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount), then, upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) **Capital Requirements**. If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's parent company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's parent company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Term Loans made by such Lender to a level below that which such Lender or such Lender's parent company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's parent company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's parent company for any such reduction suffered.

(c) **Certificates for Reimbursement**. Any Lender requesting compensation under this **Section 2.07** shall deliver to the Borrower a certificate setting forth, in reasonable detail, the amount or amounts necessary to compensate such Lender or its parent company, as the case may be, as specified in **subsection (a)** or **(b)** of this **Section 2.07** and the basis for calculating such amounts, which certificate shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate promptly after receipt thereof.

(d) **Delay in Requests**. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this **Section 2.07** shall not constitute a waiver of such Lender's right to demand such compensation, ***provided*** that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this **Section 2.07** for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

Section 2.08 [Reserved].

Section 2.09 Designation of a Different Lending Office.

If any Lender requests compensation under **Section 2.07**, or if any Lender gives a notice pursuant to **Section 2.16** or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 4.04**, then at the request of the Borrower such Lender shall, as applicable, use reasonable efforts to designate a different lending office for funding or booking its Term Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to **Section 2.07** or **4.04**, as the case may be, in the future, or eliminate the need for the notice pursuant to **Section 2.16**, as applicable and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

Section 2.10 Replacement of Lenders.

(a) (x) Upon the occurrence of any event giving rise to the operation of **Section 2.07** with respect to any Lender which results in such Lender charging to the Borrower increased costs in excess of those being generally charged by the other Lenders, or of **Section 4.04** with respect to any Lender which results in the Borrower paying any Indemnified Taxes or additional amounts to such Lender or any Governmental Authority for the account of such Lender, or (y) in the case of a refusal by a Lender to consent to a proposed change, waiver, discharge or termination with respect to this Agreement which has been approved by the Required Lenders as (and to the extent) provided in **Section 11.12(b)**, the Borrower shall have the right, in accordance with **Section 11.04(b)**, if no Default or Event of Default then exists or would exist after giving effect to such replacement, to replace such Lender (the "***Replaced Lender***") with one or more other Eligible Transferees (collectively, the "***Replacement Lender***") and each of which shall be reasonably acceptable to the Administrative Agent; ***provided*** that:

(i) at the time of any replacement pursuant to this **Section 2.10**, the Replacement Lender shall enter into one or more Assignment and Assumption Agreements pursuant to **Section 11.04(b)** (and with all fees payable pursuant to said **Section 11.04(b)** to be paid by the Replacement Lender and/or the Replaced Lender (as may be agreed to at such time by and among the Borrower, the Replacement Lender and the Replaced Lender)) pursuant to which the Replacement Lender shall acquire all of the Term Loan Commitments and outstanding Term Loans of the Replaced Lender and, in connection therewith, shall pay to the Replaced Lender in respect thereof an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Term Loans of the respective Replaced Lender and (B) an amount equal to all accrued, but theretofore unpaid, Fees owing to the Replaced Lender pursuant to **Section 3.01**; and

(ii) all obligations of the Borrower then owing to the Replaced Lender (other than those specifically described in **clause (i)** above in respect of which the assignment

purchase price has been, or is concurrently being, paid but including all amounts, if any, owing under **Section 2.15**) shall be paid in full to such Replaced Lender concurrently with such replacement.

(b) Upon receipt by the Replaced Lender of all amounts required to be paid to it pursuant to this **Section 2.10**, the Administrative Agent shall be entitled (but not obligated) and is authorized (which authorization is coupled with an interest) to execute an Assignment and Assumption Agreement on behalf of such Replaced Lender, and any such Assignment and Assumption Agreement so executed by the Administrative Agent and the Replacement Lender shall be effective for purposes of this **Section 2.10** and **Section 11.04**. Upon the execution of the respective Assignment and Assumption Agreement, the payment of amounts referred to in **clauses (i)** and **(ii)** of the proviso in **Section 2.10(a)**, recordation of the assignment on the Register by the Administrative Agent pursuant to **Section 11.15**, the Replacement Lender shall become a Lender hereunder and the Replaced Lender shall cease to constitute a Lender hereunder, except with respect to indemnification provisions under this Agreement (including, without limitation, **Sections 2.07**, **4.04**, **10.06**, **11.01** and **11.06**), which shall survive as to such Replaced Lender. To the extent requested by any Replacement Lender, a Note will be promptly issued, at the Borrower's expense, to such Replacement Lender in conformity with the requirements of **Section 2.04**.

Section 2.11 [Reserved].

Section 2.12 [Reserved].

Section 2.13 Conversions. The Borrower shall have the option to convert, on any Business Day, all or a portion equal to at least $5,000,000 of the outstanding principal amount of Loans made pursuant to one or more Borrowings of one or more Types of Loans into a Borrowing of another Type of Loan; ***provided*** that,

(a) except as otherwise provided in **Sections 2.15** or **2.16**, LIBOR Loans may be converted into Base Rate Loans only on the last day of an Interest Period applicable to the Loans being converted and no such partial conversion of LIBOR Loans shall reduce the outstanding principal amount of such LIBOR Loans made pursuant to a single Borrowing to less than $5,000,000,

(b) unless the Required Lenders otherwise agree, Base Rate Loans may only be converted into LIBOR Loans if no Default or Event of Default is in existence on the date of the conversion, and

(c) no conversion pursuant to this **Section 2.13** shall result in a greater number of Borrowings of LIBOR Loans than is permitted under **Section 2.16**.

Each such conversion shall be effected by the Borrower by giving the Administrative Agent at the Notice Office prior to 11:00 A.M. (New York City time) at least (x) in the case of conversions of Base Rate Loans into LIBOR Loans, three Business Days' prior notice and (y) in the case of conversions of LIBOR Loans into Base Rate Loans, one Business Day's prior notice (each, a "***Notice of Conversion/Continuation***"), in each case in the form of **Exhibit A-2**, appropriately completed to specify the Loans to be so converted, the Borrowing or Borrowings

pursuant to which such Loans were incurred and, if to be converted into LIBOR Loans, the Interest Period to be initially applicable thereto. The Administrative Agent shall give each Lender prompt notice of any such proposed conversion affecting any of its Loans.

Section 2.14 Interest Periods.

At the time the Borrower gives any Notice of Borrowing or Notice of Conversion/Continuation in respect of the making of, or conversion into, any LIBOR Loan (in the case of the initial Interest Period applicable thereto) or prior to 11:00 A.M. (New York City time) on the third Business Day prior to the expiration of an Interest Period applicable to such LIBOR Loan (in the case of any subsequent Interest Period), the Borrower shall have the right to elect the interest period (each, an "***Interest Period***") applicable to such LIBOR Loan, which Interest Period shall, at the option of the Borrower, be (x) a one, two, three or six month period or, if approved by each Lender that holds such Loans (or commitments with respect thereto), a twelve month period or (y) if agreed by the Administrative Agent and each Lender that holds such Loans (or commitments with respect thereto) in its sole discretion, such other period; ***provided*** that (in each case):

(a) all LIBOR Loans comprising a Borrowing shall at all times have the same Interest Period;

(b) the initial Interest Period for any LIBOR Loan shall commence on the date of Borrowing of such LIBOR Loan (including the date of any conversion thereto from a Base Rate Loan) and each Interest Period occurring thereafter in respect of such LIBOR Loan shall commence on the day on which the next preceding Interest Period applicable thereto expires;

(c) if any Interest Period for a LIBOR Loan begins on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period, such Interest Period shall end on the last Business Day of such calendar month;

(d) if any Interest Period for a LIBOR Loan would otherwise expire on a day which is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; ***provided***, ***however***, that if any Interest Period for a LIBOR Loan would otherwise expire on a day which is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the next preceding Business Day;

(e) unless the Required Lenders otherwise agree, no Interest Period may be selected at any time when a Default or an Event of Default is then in existence (and, upon the expiration of any Interest Period then in effect, such LIBOR Loan shall be converted to a Base Rate Loan); and

(f) no Interest Period in respect of any Borrowing shall be selected which extends beyond the Maturity Date.

If by 11:00 A.M. (New York City time) on the third Business Day prior to the expiration of any Interest Period applicable to a Borrowing of LIBOR Loans, the Borrower has failed to elect, or is not permitted to elect, a new Interest Period to be applicable to such LIBOR Loans as provided above, the Borrower shall be deemed to have elected to convert such LIBOR Loans into LIBOR

Loans with an Interest Period of one month effective as of the expiration date of such current Interest Period unless a Default or an Event of Default is then in existence, in which case, such expiring LIBOR Loans shall be converted in to Base Rate Loans.

Section 2.15 Compensation.

Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any LIBOR Loan on a day other than the last day of the Interest Period for such LIBOR Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any LIBOR Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a LIBOR Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to **Section 2.10**;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such LIBOR Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this **Section 2.15**, each Lender shall be deemed to have funded each LIBOR Loan made by it at the LIBO Base Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such LIBOR Loan was in fact so funded.

Section 2.16 Illegality.

If any Lender determines that any Requirement of Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to perform any of its obligations hereunder or make, maintain or fund or charge interest with respect to any Loan or to determine or charge interest rates based upon the LIBO Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (a) any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to any such Loan or continue LIBOR Loans or to convert Base Rate Loans to LIBOR Loans shall be suspended, and (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the LIBO Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the LIBO Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent

and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all LIBOR Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the LIBO Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBOR Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBOR Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the LIBO Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the LIBO Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the LIBO Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

Section 2.17 Inability to Determine Rates.

If in connection with any request for a LIBOR Loan or a conversion to or continuation thereof, (a) the Administrative Agent determines that (i) Dollar deposits are not being offered to banks in the London interbank market for the applicable amount and Interest Period of such LIBOR Loan, or (ii) adequate and reasonable means do not exist for determining the LIBO Rate for any requested Interest Period with respect to a proposed LIBOR Loan or in connection with an existing or proposed Base Rate Loan (in each case with respect to **clause (a)(i)** above, "***Impacted Loans***"), or (b) the Administrative Agent or the Required Lenders determine that for any reason the LIBO Rate for any requested Interest Period with respect to a proposed LIBOR Loan does not adequately and fairly reflect the cost to such Lenders of funding such LIBOR Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain LIBOR Loans shall be suspended (to the extent of the affected LIBOR Loans or Interest Periods) and (y) in the event of a determination described in the preceding sentence with respect to the LIBO Rate component of the Base Rate, the utilization of the LIBO Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent upon the instruction of the Required Lenders revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of LIBOR Loans (to the extent of the affected LIBOR Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

Notwithstanding the foregoing, if the Administrative Agent has made the determination described in **clause (a)(i)** of the preceding paragraph, the Administrative Agent, in consultation with the Borrower and the affected Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (1) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under **clause (a)** of the first sentence of this section, (2) the Administrative Agent or the Required Lenders notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding

the Impacted Loans, or (3) any Lender determines that any Requirement of Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.

Section 2.18 Minimum Amount of Each Borrowing.

The aggregate principal amount of each Borrowing of Loans of a specific Type shall not be less than the Minimum Borrowing Amount applicable thereto. More than one Borrowing may occur on the same date, but at no time shall there be outstanding more than four Borrowings of LIBOR Loans in the aggregate for all Loans (or such greater number of Borrowings of LIBOR Loans as may be agreed to from time to time by the Administrative Agent and the Required Lenders).

Section 2.19 No Discharge.

Each of the Credit Parties agrees that to the extent that its obligations under the Credit Documents have not been satisfied in full in cash or otherwise satisfied as set forth in **Section 2.04(e)**, (i) its obligations under the Credit Documents shall not be discharged by any Reorganization Plan or any order confirming a Reorganization Plan (and each of the Credit Parties, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) as to the Obligations and (ii) the Superpriority Claim granted to the Agents and the Lenders pursuant to the Orders and the Liens granted to the Agents and the Lenders pursuant to the Orders shall not be affected in any manner by any Reorganization Plan or any order confirming a Reorganization Plan.

ARTICLE III.
FEES

Section 3.01 Fees.

The Borrower agrees to pay to the Administrative Agent and any Lender such fees as may be agreed to in writing from time to time by the Borrower and the Administrative Agent and any Lender, including the following fees:

(a) The Borrower agrees to pay to the Administrative Agent for the account of each Lender according to its pro rata share of the Delayed Draw Commitments a nonrefundable commitment fee (the "***Unused Commitment Fee***") for each day from and including the Closing Date until but excluding the Delayed Draw Commitment Termination Date equal to the Unused Commitment Fee Rate (computed on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed) multiplied by the average daily amount of unused Delayed Draw Commitments. All Unused Commitment Fees shall be payable in arrears for each month (x) on the last Business Day of such month ending after the Closing Date and (y) on the Delayed Draw Borrowing Date;

(b) The Borrower agrees to pay to the Administrative Agent for the account of each Lender, an upfront fee (the "***Upfront Fee***") in an amount equal to 1.00% of (i) the principal amount of each such Lender's aggregate Initial Commitment on the Closing Date, payable on the Closing Date upon the funding of the Initial Loan and (ii) the principal amount of each such Lender's aggregate Delayed Draw Commitment on the Delayed Draw Borrowing Date, payable on the Delayed Draw Borrowing Date upon the funding of the Delayed Draw Loans, in each case, which may, at the option of the Required Lenders, be in the form of original issue discount;

(c) The Borrower agrees to pay to the Lenders an exit fee (the "***Exit Fee***") in an aggregate amount equal to 1.00% of the aggregate principal amount of the New Money Loans made by each such Lender under this Agreement, which shall be due and payable in cash on the Termination Date or, in the case of New Money Loans prepaid in whole or in part prior to the Termination Date pursuant to Sections **4.01** or **4.02**, if any, shall be due and payable in cash on the date of such prepayment; and

(d) The Borrower shall pay to the Agents such other fees as shall have been separately agreed upon in writing for its own account fees in the amounts and at the times so specified, including the fees specified in the Agent Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the Administrative Agent).

Section 3.02 Reduction of Commitments.

(a) The Initial Commitment of each Lender shall terminate in its entirety on the Closing Date after giving effect to the making of the Initial Loans on such date.

(b) The Delayed Draw Commitment of each Lender shall terminate in its entirety on the Delayed Draw Borrowing Date after giving effect to the making of the Delayed Draw Loans on such date.

ARTICLE IV.
PREPAYMENTS; PAYMENTS; TAXES.

Section 4.01 Voluntary Prepayments.

(a) Subject to **Section 3.01(c)**, the Borrower shall have the right to prepay the Loans, without premium or penalty, in whole or in part at any time and from time to time on the following terms and conditions:

(i) the Borrower shall give the Administrative Agent prior to 12:00 Noon (New York City time) at the Notice Office (A) at least one Business Day's prior written notice (or telephonic notice promptly confirmed in writing) of its intent to prepay Base Rate Loans and (B) at least three Business Days' prior written notice (for telephonic notice promptly confirmed in writing) of its intent to prepay LIBOR Loans, which notice (in each case) shall specify the amount of such prepayment and the Types of Loans to be prepaid and, in the case of LIBOR Loans, the specific Borrowing or Borrowings pursuant to which such LIBOR Loans were made, and which notice the Administrative Agent shall promptly transmit to each of the Lenders;

(ii) each partial prepayment of Term Loans pursuant to this **Section 4.01(a)** shall be in an aggregate principal amount of at least $1,000,000 (or such lesser amount as is acceptable to the Administrative Agent in any given case); and

(iii) each prepayment of Term Loans pursuant to this **Section 4.01(a)** shall be applied (A) first, pro rata among the New Money Loans then outstanding until such New Money Loans are repaid in full and (B) thereafter, pro rata among the Roll-Up Loans then outstanding until such Roll-Up Loans are repaid in full.

Section 4.02 Mandatory Repayments.

(a) [Reserved].

(b) [Reserved].

(c) **Indebtedness**. Subject to **Section 3.01(c)**, on each date upon which the Borrower or any of its Restricted Subsidiaries receives any Net Cash Proceeds from any issuance or incurrence by the Borrower or any of its Restricted Subsidiaries of Indebtedness (other than Indebtedness permitted to be incurred pursuant to **Section 8.04**), an amount equal to 100% of the Net Cash Proceeds of the respective incurrence of Indebtedness shall be applied on such date as a mandatory repayment in accordance with the requirements of **Section 4.02(g)**.

(d) **Asset Sales**. Subject to **Section 3.01(c)**, if the Borrower or any Restricted Subsidiary receives any Net Sale Proceeds from an Asset Sale (other than any Permitted Asset Sale), on the fifth Business Day following the receipt of such Net Sale Proceeds, the Borrower shall apply an amount equal to 100% of the Net Sale Proceeds therefrom on such date as a mandatory repayment in accordance with the requirements of **Section 4.02(g)**.

(e) **Recovery Events**. Subject to **Section 3.01(c)**, if the Borrower or any Restricted Subsidiary receives any Net Cash Proceeds from a Recovery Event, on the fifth Business Day following the receipt of such Net Cash Proceeds, the Borrower shall apply an amount equal to 100% of the Net Cash Proceeds therefrom on such date as a mandatory repayment in accordance with the requirements of **Section 4.02(g)**.

(f) [Reserved].

(g) Application. Subject to the Orders and the DIP ABL Intercreditor Agreement, each amount required to be applied pursuant to Section 4.02(c), (d) or (e) in accordance with this Section 4.02(g) shall be applied (i) first, pro rata among the New Money Loans then outstanding until such New Money Loans are repaid in full and (ii) thereafter, pro rata among the Roll-Up Loans then outstanding until such Roll-Up Loans are repaid in full.

(h) In addition to any other mandatory repayments pursuant to this **Section 4.02**, for the avoidance of doubt all then outstanding Term Loans shall be repaid in full on the Termination Date.

Section 4.03 Method and Place of Payment.

(a) Except as otherwise specifically provided herein, all payments under this Agreement and under any Note shall be made to the Administrative Agent for the account of the Lender or Lenders entitled thereto not later than 12:00 Noon (New York City time) on the date when due and shall be made in Dollars in immediately available funds at the Payment Office. Whenever any payment to be made hereunder or under any Note shall be stated to be due on a day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest shall be payable at the applicable rate during such extension.

(b) All payments made by the Borrower hereunder and under any Note will be made without setoff, counterclaim or other defense.

Section 4.04 Taxes.

(a) **Payments Free of Taxes**. Any and all payments by or on account of any obligation of any Credit Party under any Credit Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment, then the applicable withholding agent shall make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, to the extent such deduction or withholding is on account of an Indemnified Tax, then the sum payable by the applicable Credit Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this **Section 4.04**) the applicable Lender (or, in the case of any amount received by the Administrative Agent for its own account, the Administrative Agent) receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) **Payment of Other Taxes by the Borrower**. The Credit Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law or, at the option of the Administrative Agent, reimburse it for the payment of, any Other Taxes.

(c) **Indemnification by the Borrower**. The Borrower shall indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 4.04**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and all expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) **Evidence of Payments**. As soon as practicable after any payment of Taxes by any Credit Party to a Governmental Authority pursuant to this **Section 4.04**, such Credit Party

shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) **Status of Lenders**.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent, certifying as to any entitlement of such Lender to an exemption from, or a reduced rate of, withholding Tax. In addition, each Lender shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraph (e)(ii)(A), (ii)(B)(1) - (4) and (ii)(C)) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender. Each Lender shall, whenever a lapse in time or change in circumstances renders such documentation (including any specific documents required below in this **Section 4.04(e)**) expired, obsolete or inaccurate in any material respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and the Administrative Agent in writing of its inability to do so.

(ii) Without limiting the generality of the foregoing:

(A) each Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two duly executed copies of IRS Form W-9 (or any subsequent versions thereof or successor thereto) certifying that such Lender is exempt from U.S. federal backup withholding;

(B) each Foreign Lender shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) duly executed, properly completed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, (or any subsequent versions thereof or successor thereto) claiming eligibility for benefits of an income tax treaty to which the United States is a party;

(2) duly executed, properly completed copies of IRS Form W-8ECI (or any subsequent versions thereof or successor thereto);

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of **Exhibit C-1** to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a "Controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code (a "***U.S. Tax Compliance Certificate***") and (y) duly executed, properly completed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any subsequent versions thereof or successor thereto);

(4) to the extent a Foreign Lender is not the beneficial owner, duly executed, properly completed copies of IRS Form W-8IMY of the Foreign Lender, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E (or applicable successor form), a U.S. Tax Compliance Certificate substantially in the form of **Exhibit C-2** or **Exhibit C-3**, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; ***provided*** that if the Foreign Lender is a partnership and one or more partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of **Exhibit C-4** on behalf of each such direct or indirect partner; or

(5) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(C) if a payment made to a Lender under any Credit Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine whether such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this **Section 4.04(e)(ii)(C)**, "***FATCA***" shall include any amendment made to FATCA after the date of this Agreement.

Notwithstanding any other provision of this **Section 4.04(e)**, a Lender shall not be required to deliver any form that such Lender is not legally entitled to deliver.

(iii) Each Lender hereby authorizes the Administrative Agent to deliver to the Credit Parties and to any successor Administrative Agent any documentation provided by such Lender to the Administrative Agent pursuant to this **Section 4.04(e)**.

(f) **Treatment of Certain Refunds**. If a Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by a Credit Party or with respect to which a Credit Party has paid additional amounts pursuant to this **Section 4.04**, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Credit Party under this **Section 4.04** with respect to the Indemnified Taxes or Other Taxes giving rise to such refund) net of all out-of-pocket expenses (including any Taxes) of such Recipient and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), ***provided*** that the Borrower, upon the request of the Recipient, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require a Recipient to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrower or any other Person.

(g) **Status of Administrative Agent**. On or before the date the Administrative Agent becomes a party to the Agreement, the Administrative Agent shall provide to the Borrower two duly executed copies of either (i) IRS Form W-9 (or any subsequent versions thereof or successor thereto) or (ii) IRS Form W-8ECI and a U.S. branch withholding certificate on IRS Form W-8IMY (in each case, or any subsequent versions thereof or successor thereto) evidencing its agreement with the Borrower to be treated as a U.S. person, as applicable; ***provided*** that the Administrative Agent shall not be required to provide any documentation pursuant to this **Section 4.04(g)** that the Administrative Agent is unable to deliver as a result of a Change in Law after such Administrative Agent becomes the Administrative Agent under this Agreement.

(h) **Applicable Law**. For the avoidance of doubt, for purposes of this **Section 4.04**, the "applicable law" includes FATCA.

(i) **Survival**. Each party's obligations under this **Section 4.04** shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Credit Document.

ARTICLE V.
CONDITIONS PRECEDENT

Section 5.01 Conditions Precedent to the Closing Date and the making of the Initial Loans.

The occurrence of the Closing Date and the obligation of each Lender to make the Initial Loans on the Closing Date are subject to the satisfaction of the following conditions precedent.

(a) **Credit Documents; Perfection Certificate**. On or prior to the Closing Date, the Administrative Agent shall have received a counterpart of (i) this Agreement signed on behalf of the Borrower, (ii) the executed DIP ABL Intercreditor Agreement, acknowledged and agreed to on behalf of each of the Credit Parties and signed on behalf of each party thereto (other than the Administrative Agent) substantially in the form of Exhibit I, (iii) each Note (to the extent requested at least three Business Days prior to the Closing Date) signed on behalf of the Borrower, (iv) a Perfection Certificate signed on behalf of each Credit Party and (v) each other Credit Document to be executed on the Closing Date, signed on behalf of each Credit Party party thereto.

(b) **Officer's Certificate**. On the Closing Date, the Administrative Agent shall have received a certificate, dated the Closing Date and signed on behalf of the Borrower by the Chairman of the Board, the Chief Executive Officer, the President or any Vice President of the Borrower, certifying on behalf of the Borrower that all of the conditions in **Sections 5.01(g)**, **(h)**, **(m)**, **(t)**, and **(v)** have been satisfied on such date.

(c) **Opinions of Counsel.** On the Closing Date, the Administrative Agent shall have received:

(i) from Kirkland & Ellis LLP, counsel to the Credit Parties, an opinion addressed to the Administrative Agent, the Collateral Agent and each of the Lenders and dated the Closing Date covering such matters incident to the transactions contemplated herein as the Administrative Agent may reasonably request,

(ii) from Frost Brown Todd LLC, special Kentucky counsel to the Credit Parties, an opinion, in form and substance reasonably satisfactory to the Administrative Agent, addressed to the Administrative Agent and each of the Lenders and dated the Borrowing Date covering such matters incident to the transactions contemplated herein as the Administrative Agent may reasonably request, and

(iii) from Frost Brown Todd LLC, special Indiana counsel to the Credit Parties, an opinion, in form and substance reasonably satisfactory to the Administrative Agent, addressed to the Administrative Agent and each of the Lenders and dated the Borrowing Date covering such matters incident to the transactions contemplated herein as the Administrative Agent may reasonably request.

(d) **Company Documents**. On the Closing Date, the Administrative Agent shall have received a certificate from each Credit Party, dated the Closing Date, signed by the Secretary or

any Assistant Secretary of such Credit Party, together with copies of the Organizational Documents of such Credit Party and the resolutions of such Credit Party referred to in such certificate, and each of the foregoing shall be in form and substance reasonably acceptable to the Administrative Agent.

(e) **Good Standing Certificate**. On the Closing Date, the Administrative Agent shall have received all good standing certificates and bring-down telegrams or facsimiles, if any, which the Administrative Agent (or the primary counsel to the Required Lenders) reasonably may have requested in connection therewith, such documents and papers where appropriate to be certified by proper Company personnel or Governmental Authorities.

(f) **Historical Financial Statements; DIP Budget**. On or prior to the Closing Date, the Administrative Agent and each Lender shall have received true and correct copies of the historical financial statements and DIP Budget referred to in **Sections 6.05(a)**, **(b)** and **(c)**, which historical financial statements and DIP Budget shall be in form and substance reasonably satisfactory to the Required Lenders.

(g) **Material Adverse Effect**. Since December 31, 2018, nothing shall have occurred which has had, or could reasonably be expected to have, a Material Adverse Effect.

(h) **Approvals**. On or prior to the Closing Date, subject to the Orders and the terms thereof, all necessary governmental (domestic and foreign) and material third party approvals and/or consents, including, without limitation, the consents listed on **Schedule 5.01(h)**, in connection with the Transactions, the other transactions contemplated hereby and the granting of Liens under the Credit Documents shall have been obtained and remain in effect, and all applicable waiting periods with respect thereto shall have expired without any action being taken by any competent authority which restrains, prevents or imposes materially adverse conditions upon the consummation of the Transactions or the other transactions contemplated by the Credit Documents or otherwise referred to herein or therein. On the Closing Date, there shall not exist any judgment, order, injunction or other restraint issued or filed or a hearing seeking injunctive relief or other restraint pending or notified prohibiting or imposing materially adverse conditions upon the Transactions or the other transactions contemplated by the Credit Documents or otherwise referred to herein or therein.

(i) **Subsidiary Guaranty**. On the Closing Date, each Guarantor shall have duly authorized, executed and delivered the Subsidiary Guaranty in the form of Exhibit J (as amended, modified and/or supplemented from time to time, the "**Subsidiary Guaranty**"), and the Subsidiary Guaranty shall be in full force and effect.

(j) **Security Agreement**. On the Closing Date, each Credit Party shall have duly authorized, executed and delivered the Security Agreement in the form of Exhibit H (as amended, modified, restated and/or supplemented from time to time, the "Security Agreement") covering all of such Credit Party's Security Agreement Collateral, together with:

(i) proper financing statements (Form UCC-1, Form UCC-3 or such other form as may be appropriate) for filing under the UCC or other appropriate filing offices of each jurisdiction as may be necessary or, in the reasonable opinion of the Collateral

Agent, desirable, to perfect the security interests purported to be created by the Security Agreement;

(ii) certified copies of requests for information or copies (Form UCC-11), or equivalent reports as of a recent date, listing all effective financing statements that name the Borrower or any other Credit Party as debtor and that are filed in the jurisdictions referred to in **clause (i)** above and in such other jurisdictions in which Collateral is located on the Closing Date, together with copies of such other financing statements that name the Borrower or any other Credit Party as debtor, and such other searches that are required by the Perfection Certificate or that the Collateral Agent deems necessary or advisable (none of which shall cover any of the Collateral except (x) to the extent evidencing Permitted Liens or (y) those in respect of which the Collateral Agent shall have received termination statements (Form UCC-3) or such other termination statements as shall be required by local law fully executed for filing);

(iii) evidence that all other recordings and filings of, or with respect to, the Security Agreement as may be necessary or, in the reasonable opinion of the Collateral Agent, desirable, to perfect the security interests intended to be created by the Security Agreement have been (or, substantially concurrently with the Closing Date, will be) taken;

(iv) evidence that all other actions necessary or, in the reasonable opinion of the Collateral Agent, desirable to perfect and protect the security interests purported to be created by the Security Agreement have been (or, substantially concurrently with the Closing Date, will be) taken, and the Security Agreement shall be in full force and effect;

(v) (x) evidence that all promissory notes constituting Collateral together with undated endorsements executed in blank have been delivered to and are in the possession of the Collateral Agent and (y) evidence that Equity Interests constituting certificated Collateral together with undated stock powers executed in blank have been (or, substantially concurrently with the Closing Date, will be) delivered to and are in the possession of the Collateral Agent; and

(vi) a Perfection Certificate duly executed by the Borrower and each other Credit Party.

(k) **Insurance Certificates**. On or prior to the Closing Date, the Administrative Agent shall have received, except as otherwise set forth on **Schedule 7.14**, certificates of insurance complying with the requirements of **Section 7.03** for the business and properties of the Borrower and its Subsidiaries, in form and substance reasonably satisfactory to the Administrative Agent and naming the Collateral Agent as an additional insured and/or as loss payee, and stating that such insurance provider shall use commercially reasonable efforts to provide the Collateral agent with at least 30 days' prior written notice of any cancellation or material revision to such insurance.

(l) **Fees and Expenses**. On or prior to the Closing Date, the Borrower shall have paid to the Administrative Agent (and its relevant Affiliates), the Collateral Agent and each Lender all

costs, fees and expenses (including, without limitation, legal fees and expenses) and other compensation contemplated hereby payable to the Administrative Agent, the Collateral Agent or such Lender to the extent then due.

(m) **No Default; Representations and Warranties**. On the Closing Date, and after giving effect to the Borrowing of Initial Loans on the Closing Date, (i) there shall exist no Default or Event of Default and (ii) all representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects with the same effect as though such representations and warranties had been made on the date of such Borrowing (it being understood and agreed that (x) any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date and (y) any representation or warranty that is qualified as to "materiality", "Material Adverse Effect" or similar language shall be true and correct in all respects on such date).

(n) **Notice of Borrowing**. Prior to the making of the Initial Loans, the Administrative Agent shall have received a Notice of Borrowing meeting the requirements of **Section 2.02**.

(o) **Petition Date**. The Petition Date shall have occurred, and the Borrower and each Guarantor shall be a debtor and debtor-in-possession in the Cases.

(p) **Restructuring Support Agreement**. The RSA shall have become effective and binding pursuant to Section [ ] thereof, and shall not have been terminated.

(q) **Acceptable Plan of Reorganization**. The Acceptable Plan of Reorganization, the Acceptable Disclosure Statement and a motion, in form and substance satisfactory to the Required Lenders, seeking approval of the DIP Term Facility, shall have been filed in each of the Cases within one (1) day of the Petition Date.

(r) **First Day Orders**. All "first day" orders and all related pleadings intended to be entered on or prior to the Interim Order Entry Date shall have been entered by the Bankruptcy Court and shall be acceptable in form and substance to the Required Lenders (it being understood that drafts approved by the primary counsel to the Required Lenders prior to the Petition Date are acceptable).

(s) **No Trustee**. No trustee under chapter 7 or chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in any of the Cases.

(t) **Other Litigation**. There shall exist no unstayed action, suit, investigation, litigation or proceeding pending or (to the knowledge of the Credit Parties) threatened in any court or before any arbitrator or governmental instrumentality (other than the Cases) that would reasonably be expected to have a Material Adverse Effect.

(u) **Interim Order**. The Interim Order Entry Date shall have occurred not later than five calendar days following the Petition Date, and the Interim Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the prior written consent of the Required

Lenders or the Administrative Agent (with the consent of the Required Lenders), and the Administrative Agent shall have received a certified copy of the Interim Order entered by the Bankruptcy Court; ***provided***, for the avoidance of doubt, no Lender holding Initial Commitments shall be required to fund any Initial Loans to the extent that the Interim Order does not approve the Roll-Up that is to be consummated on the Closing Date pursuant to **Section 2.01(b)**.

(v) **DIP ABL Facility**. On the Closing Date, the DIP ABL Facility shall be effective and shall be in form and substance reasonably satisfactory to the Required Lenders.

(w) **Pledge Agreement**. On the Closing Date, JMP Coal Holdings, LLC and JMP Blackhawk, LLC shall have executed the Pledge Agreement in form and substance satisfactory to the Administrative Agent.

(x) **USA PATRIOT Act; Beneficial Ownership Certification.** No later than three days prior to the Closing Date, the Administrative Agent shall have received all documentation and other information reasonably requested by it in writing at least 10 days in advance of the Closing Date, which documentation or other information is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and, to the extent the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, a Beneficial Ownership Certification in relation to the Borrower, including, for the avoidance of doubt, a duly executed IRS Form W-9.

In determining the satisfaction of the conditions specified in this **Article V**, (x) to the extent any item is required to be satisfactory to any Lender, such item shall be deemed satisfactory to each Lender which has not notified the Administrative Agent in writing prior to the occurrence of the Closing Date that the respective item or matter does not meet its satisfaction and (y) in determining whether any Lender is aware of any fact, condition or event that has occurred and which could reasonably be expected to have a Material Adverse Effect or a material adverse effect of the type described in **Section 5.01(g)**, each Lender which has not notified the Administrative Agent in writing prior to the occurrence of the Closing Date of such fact, condition or event shall be deemed not to be aware of any such fact, condition or event on the Closing Date.

Section 5.02 Conditions Precedent to the Delayed Draw Borrowing. The obligations of the Lenders to make Delayed Draw Loans hereunder shall not become effective until the date on which each of the following conditions are satisfied) as otherwise agreed or waived pursuant to **Section 11.12**:

(a) **Closing Date**. The Closing Date shall have occurred.

(b) **Notice of Borrowing**. Prior to the making of the Delayed Draw Loans, the Administrative Agent shall have received a Notice of Borrowing meeting the requirements of **Section 2.02**.

(c) **Interim Order**. At any time prior to the Final Order Entry Date, the Interim Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the prior

written consent of the Required Lenders or the Administrative Agent (with the consent of the Required Lenders).

(d) **Final Order**. The Final Order Entry Date shall have occurred no later than 45 days after the Petition Date (unless such period is extended by the Required Lenders or the Administrative Agent (with the consent of the Required Lenders)) and the Final Order shall be in full force and effect, shall not have been vacated or reversed, and shall not be subject to any stay and shall not have been modified or amended other than as acceptable to the Required Lenders (or the Administrative Agent at the direction of the Required Lenders); ***provided***, for the avoidance of doubt, no Lender holding Delayed Draw Commitments shall be required to fund any Delayed Draw Loans to the extent that the Final Order does not approve the Roll-Up that is to be consummated on the Delayed Draw Borrowing Date pursuant to **Section 2.01(b)**.

(e) **No Default; Representations and Warranties**. At the time of and immediately after giving effect to the Delayed Draw Loans, no Default or Event of Default shall have occurred and be continuing. On the Delayed Draw Borrowing Date, all representations and warranties made by any Credit Party contained herein or in the other Credit Documents shall be true and correct (with respect to representations and warranties that contain a materiality qualification), or true and correct in all material respects (with respect to representations and warranties that do not contain a materiality qualification) with the same effect as though such representations and warranties had been made on and as of such date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date).

(f) **Second Day Orders**. With respect to Borrowings on or after the Final Order Entry Date, all material "second day orders" approving on a final basis any first day orders intended to be entered on or prior to the date of entry of the Final Order shall have been entered by the Bankruptcy Court, shall be acceptable to the Required Lenders, shall be in full force and effect, shall not have been vacated or reversed, shall not be subject to a stay and shall not have been modified or amended other than as acceptable to the Required Lenders (or the Administrative Agent at the direction of the Required Lenders).

ARTICLE VI.
REPRESENTATIONS AND WARRANTIES.

In order to induce the Lenders to enter into this Agreement and to make the Term Loans, the Borrower makes the following representations, warranties and agreements, in each case after giving effect to the Transactions and the applicable Borrowing Date, all of which shall survive the execution and delivery of this Agreement and the Notes and the making of the Term Loans.

Section 6.01 Company Status.

Each of the Borrower and each of its Restricted Subsidiaries (a) is a duly organized and validly existing Company in good standing under the laws of the jurisdiction of its organization, (b) has the Company power and authority, and all necessary material authorizations and consents, to own its property and assets and to transact the business in which it is engaged and

presently proposes to engage and (c) is duly qualified and is authorized to do business and is in good standing in each jurisdiction where the ownership, leasing or operation of its property or the conduct of its business requires such qualifications except for failures to (x) be so qualified or authorized, (y) be in good standing or (z) obtain authorizations and consents which, either individually or in the aggregate for **clauses (x)** through **(z)**, could not reasonably be expected to have a Material Adverse Effect.

Section 6.02 Power and Authority; Enforceability.

Subject to the entry of the Orders and the terms thereof, each Credit Party has the Company power and authority to execute, deliver and perform the terms and provisions of each of the Credit Documents to which it is party and to consummate the other Transactions and has taken all necessary Company action to authorize the execution, delivery and performance by it of each of such Credit Documents and consummation of the other Transactions. Subject to the entry of the Orders and the terms thereof, each Credit Party has duly executed and delivered each of the Credit Documents to which it is party, and each of such Credit Documents constitutes its legal, valid and binding obligation enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors' rights (in each case, other than with respect to the Debtors) and by equitable principles (regardless of whether enforcement is sought in equity or at law).

Section 6.03 No Violation; No Default.

(a) Neither the execution, delivery or performance by any Credit Party of the Credit Documents to which it is a party, nor compliance by it with the terms and provisions thereof,

(i) will materially contravene any provision of any law, statute, rule or regulation or any order, writ, injunction or decree of any court or Governmental Authority (including, without limitation, any Mining Law), other than violations arising as a result of the commencement of the Cases and except as otherwise excused by the Bankruptcy Court,

(ii) will conflict with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien (except pursuant to the Security Documents) upon any of the property or assets of any Credit Party or any of its Restricted Subsidiaries pursuant to the terms of any Contractual Obligation (including, without limitation, any Mining Lease), to which any Credit Party or any of its Restricted Subsidiaries is a party or by which it or any its property or assets is bound or to which it may be subject, except for any such conflict, breach or default which, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, other than violations arising as a result of the commencement of the Cases and except as otherwise excused by the Bankruptcy Court, or

(iii) will violate any provision of any Organizational Document of any Credit Party or any of its Restricted Subsidiaries.

(b) Other than violations arising as a result of the commencement of the Cases and except as otherwise excused by the Bankruptcy Court, neither the Borrower nor any of its Restricted Subsidiaries is in default in any manner under any provision of any Contractual Obligation, where such default could reasonably be expected to result in a Material Adverse Effect, and no condition exists which, with the giving of notice or the lapse of time or both, would constitute such a default.

(c) No Default or Event of Default has occurred and is continuing.

Section 6.04 Approvals.

Subject to the Orders and the terms thereof, no order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except for (x) those that have otherwise been obtained or made on or prior to the Closing Date and which remain in full force and effect on the Closing Date and (y) filings which are necessary to perfect the security interests created under the Security Documents, which filings will be made within ten days following the Closing Date or such other applicable period specified in the Security Documents), or exemption by, any Governmental Authority is required to be obtained or made by, or on behalf of, any Credit Party to authorize, or is required to be obtained or made by, or on behalf of, any Credit Party in connection with, (a) the execution, delivery and performance of any Credit Document, (b) the legality, validity, binding effect or enforceability of any such Credit Document or (c) the consummation of the other Transactions.

Section 6.05 Financial Statements; Financial Condition; Undisclosed Liabilities; DIP Budget.

(a) The audited consolidated balance sheets of the Borrower at December 31, 2018, 2017, 2016 and 2015 and the related consolidated statements of income and cash flows and changes in shareholders' equity of the Borrower for the years ended on such dates, in each case furnished to the Lenders prior to the Closing Date, present fairly in all material respects the consolidated financial position of the Borrower at the date of said financial statements and the results for the respective periods covered thereby and the unaudited consolidated balance sheet of the Borrower at March 31, 2019 and the related consolidated statements of income and cash flows and changes in shareholders' equity of the Borrower for the three months ended on such date, in each case, furnished to the Lenders prior to the Closing Date, present fairly in all material respects the consolidated financial condition of the Borrower at the date of said financial statements and the results for the period covered thereby, subject to normal year-end adjustments. All such financial statements have been prepared in accordance with GAAP consistently applied except to the extent provided in the notes to said financial statements and subject, in the case of the unaudited financial statements, to normal year-end audit adjustments and the absence of footnotes.

(b) **Closing Date**. The DIP Budget delivered to the Administrative Agent and the Lenders on or prior to the Closing Date has been prepared in good faith and is based on reasonable assumptions, and there are no statements or conclusions in the DIP Budget which are based upon or include information known to the Borrower to be misleading in any material

respect or which fail to take into account material information known to the Borrower regarding the matters reported therein.

(c) Since December 31, 2018, nothing has occurred that has had, or could reasonably be expected to have, a Material Adverse Effect.

Section 6.06 Litigation.

Except for the Cases, there are no actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened (i) with respect to the Transactions or any Credit Document or (ii) that have had, or could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

Section 6.07 True and Complete Disclosure.

All factual information (taken as a whole) furnished by or on behalf of the Borrower or any of its Subsidiaries in writing to the Administrative Agent or any Lender for purposes of or in connection with this Agreement, the other Credit Documents or any transaction contemplated herein or therein is, and all other such factual information (taken as a whole) hereafter furnished by or on behalf of the Borrower or any of its Subsidiaries in writing to the Administrative Agent or any Lender will be, true and accurate in all material respects on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided, it being understood and agreed that for purposes of this **Section 6.07**, such factual information shall not include the Projections or any pro forma financial information or information of a general economic or industry specific nature.

Section 6.08 Use of Proceeds; Margin Regulations.

(a) All proceeds of the Term Loans will be used by the Borrower (i) for the general corporate purposes of the Borrower and its Restricted Subsidiaries, (ii) to pay the fees, costs and expenses of the Administrative Agent and the Lenders, (iii) to pay fees and expenses of professionals associated with the Cases, (iv) to effect the Roll-Up and (v) to provide certain adequate protection payments permitted by the Orders.

(b) No part of any Borrowing (or the proceeds thereof) will be used to purchase or carry any Margin Stock or to extend credit for the purpose of purchasing or carrying any Margin Stock. Neither the making of any Term Loan nor the use of the proceeds thereof nor the occurrence of any other Borrowing will violate or be inconsistent with the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System. Not more than 25% of the value of the assets of the Borrower and its Restricted Subsidiaries taken as a whole is represented by Margin Stock.

Section 6.09 Tax Returns and Payments.

Each of the Borrower and each of its Restricted Subsidiaries (a) has timely filed or caused to be timely filed with the appropriate taxing authority all returns, statements, forms and

reports for Taxes (the "***Returns***") required to be filed by them, including with respect to the income, properties or operations of, the Borrower and/or any of its Restricted Subsidiaries and (b) has timely paid all Taxes payable by it which have become due, other than those that are being contested in good faith and provided for on the financial statements of the Borrower and its Restricted Subsidiaries to the extent required in accordance with GAAP, except, in the case of **clauses (a)** and **(b)**, (x) where the failure to file any such Returns or pay such Taxes would not reasonably be expected to have a Material Adverse Effect, or (y) to the extent otherwise excused or prohibited by the Bankruptcy Code and for which payment has not otherwise been required by the Bankruptcy Court.

Section 6.10 Compliance with ERISA.

(a) Each Employee Benefit Plan is in compliance in form and operation with its terms and with ERISA and the Code (including without limitation the Code provisions compliance with which is necessary for any intended favorable tax treatment) and all other applicable laws and regulations, except where any failure to comply would not reasonably be expected to have a Material Adverse Effect. Except as would not have a Material Adverse Effect: each Employee Benefit Plan (and each related trust, if any) which is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the IRS to the effect that it meets the requirements of Sections 401(a) and 501(a) of the Code covering all applicable tax law changes or is comprised of a master or prototype plan that has received a favorable opinion letter from the IRS, and to the knowledge of the Borrower or any of its Restricted Subsidiaries, nothing has occurred since the date of such determination that would reasonably be expected to adversely affect such determination (or, in the case of an Employee Benefit Plan with no determination, to the knowledge of the Borrower or any of its Restricted Subsidiaries, nothing has occurred that would reasonably be expected to materially adversely affect the issuance of a favorable determination letter or otherwise materially adversely affect such qualification). No ERISA Event has occurred or is reasonably expected to occur other than as would not, individually or in the aggregate, have a Material Adverse Effect.

(b) There exists no Unfunded Pension Liability with respect to any Benefit Plan that would have a Material Adverse Effect.

(c) None of the Borrower or any of its Restricted Subsidiaries or any ERISA Affiliate has incurred a complete or partial withdrawal from any Multiemployer Plan, and, if each of the Borrower, any of its Restricted Subsidiaries and each ERISA Affiliate were to withdraw in a complete withdrawal as of the date this assurance is given or deemed given, the aggregate withdrawal liability that would be incurred would not reasonably be expected to result in a Material Adverse Effect.

(d) There are no actions, suits or claims pending against or involving an Employee Benefit Plan (other than routine claims for benefits) or, to the knowledge of the Borrower or any of its Restricted Subsidiaries, threatened, which would reasonably be expected to be asserted successfully against any Employee Benefit Plan and, if so asserted successfully, would reasonably be expected either singly or in the aggregate to have a Material Adverse Effect.

(e) The Borrower, its Restricted Subsidiaries and any ERISA Affiliate have made all material contributions to or under each Benefit Plan and Multiemployer Plan required by law within the applicable time limits prescribed thereby, the terms of such Benefit Plan or Multiemployer Plan, respectively, or any contract or agreement requiring contributions to a Benefit Plan or Multiemployer Plan save where any failure to comply, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(f) Except as would not, individually or in the aggregate, have a Material Adverse Effect, (i) the Borrower, its Restricted Subsidiaries and each ERISA Affiliate have not ceased operations at a facility so as to become subject to the provisions of Section 4062(e) of ERISA, withdrawn as a substantial employer so as to become subject to the provisions of Section 4063 of ERISA or ceased making contributions to any Benefit Plan subject to Section 4064 of ERISA to which it made contributions, (ii) no lien imposed under the Code or ERISA on the assets of the Borrower, its Restricted Subsidiaries or any ERISA Affiliate exists or is likely to arise on account of any Benefit Plan and (iii) none of the Borrower, its Restricted Subsidiaries or any ERISA Affiliate has any liability under Section 4069 or 4212(c) of ERISA.

(g) Except as would not individually or in the aggregate, have a Material Adverse Effect, (i) each Foreign Pension Plan has been maintained in compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities, (ii) all contributions required to be made with respect to a Foreign Pension Plan have been timely made, (iii) neither the Borrower nor any of its Restricted Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Foreign Pension Plan and (iv) the present value of the accrued benefit liabilities (whether or not vested) under each Foreign Pension Plan, determined as of the end of the Borrower's most recently ended fiscal year on the basis of actuarial assumptions, each of which is reasonable, did not exceed the current value of the assets of such Foreign Pension Plan allocable to such benefit liabilities.

Section 6.11 Security Documents.

(a) Subject to, and upon the entry of the Orders, the Orders and the Security Documents are effective to create in favor of the Collateral Agent for the benefit of the Secured Creditors a legal, valid and enforceable security interest in all right, title and interest of the Credit Parties in the Collateral described therein, and:

(i) when financing statements and other filings in appropriate form are filed in the offices specified in **Schedule 4** to the Perfection Certificate (or **Schedule 4** to any Perfection Certificate Supplement),

(ii) when all promissory notes and certificated Equity Interests, together with undated endorsements or stock powers, as applicable, duly executed in blank, have been delivered to the Collateral Agent, and

(iii) when all Control Agreements required pursuant to the terms of the Security Agreement have been entered into, or in each case, upon the entry of the Orders, the Collateral Agent, for the benefit of the Secured Creditors, has a fully perfected

security interest in all right, title and interest in all of the Security Agreement Collateral described therein, subject to no other Liens other than Permitted Liens.

(b) The Orders are sufficient to create, as security for the obligations purported to be secured thereby, a valid and enforceable perfected security interest in the Real Property constituting Collateral in favor of the Collateral Agent (or such other trustee as may be required or desired under local law) for the benefit of the Secured Creditors, superior and prior to the rights of all third Persons (except that the security interest created on such Real Property may be subject to the Permitted Encumbrances related thereto) and subject to no other Liens (other than Permitted Encumbrances related thereto).

Section 6.12 Properties.

(a) All Real Property owned or leased by the Borrower or any of its Restricted Subsidiaries as of the Closing Date, and the nature of the interest therein, is correctly set forth in **Schedule 5(a)** to the Perfection Certificate. Each of the Borrower and each of its Restricted Subsidiaries has good and indefeasible title to all material Real Property (and to all buildings, fixtures and improvements located thereon) owned by it, including all material property reflected in the most recent historical balance sheets referred to in **Section 6.05(a)** (except as sold or otherwise disposed of since the date of such balance sheet in the ordinary course of business or as permitted by the terms of this Agreement), free and clear of all Liens, other than Permitted Liens. Each of the Borrower and each of its Restricted Subsidiaries has a valid leasehold interest in the material properties leased by it free and clear of all Liens other than Permitted Liens. The Borrower and the Restricted Subsidiaries have maintained or caused to be maintained, in all respects and in accordance with normal mining industry practice, all of the machinery, equipment, vehicles, preparation plants or other Coal processing facilities, loadout and other transportation facilities and other tangible personal property now owned or leased by the Borrower and the Restricted Subsidiaries that is necessary to conduct their business as it is now conducted at such properties, except where the failure to maintain would not reasonably be expected to have a Material Adverse Effect.

(b) All leases (including, without limitation, Mining Leases) to which the Borrower or any of its Restricted Subsidiaries is a party are in full force and effect, except leases in respect of which the failure to be in full force and effect would not reasonably be expected to have a Material Adverse Effect. Each of the Borrower and the Restricted Subsidiaries enjoys peaceful and undisturbed possession under all such leases, in each case other than leases in respect of which the failure to enjoy peaceful and undisturbed possession would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) As of the Closing Date, except as set forth on **Schedule 6.12(c)**, none of the Borrower or any of the Restricted Subsidiaries has received written or, to the knowledge of the Borrower and the Restricted Subsidiaries, other notice of claims that the Borrower or any Restricted Subsidiary has mined any Coal that it did not have the right to mine on any Mortgaged Property or mined any Coal in such a manner as to give rise to any claims for loss, waste or trespass on any Mortgaged Property, and, to the knowledge of the Borrower and the Restricted Subsidiaries, no facts exist upon which such a claim could be based other than claims that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(d) As of the Closing Date, none of the Borrower and its Restricted Subsidiaries has received any written or, to the knowledge of the Borrower, other notice of any pending or contemplated condemnation proceeding affecting any of the Mortgaged Properties or any sale or disposition thereof in lieu of condemnation that remains unresolved as of the Closing Date, except where such condemnation proceeding would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(e) None of the Borrower and its Restricted Subsidiaries is obligated on the Closing Date under any right of first refusal, option or other contractual right to sell, assign or otherwise dispose of any Mortgaged Property or any interest therein, other than customary buy-back provisions following the termination of mining operations, satisfaction of reclamation obligations and release of applicable Mining Permits with respect to a Mortgaged Property, except where such right of first refusal, option or other contractual right would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(f) With respect to each Mortgaged Property on which significant surface improvements are located, including, without limitation, surface Mines, refuse areas and haulroads, there are no rights or claims of parties in possession not shown by the public records, encroachments, overlaps, boundary line disputes or other matters which would be disclosed by an accurate survey or inspection of the premises except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.13 Subsidiaries.

On and as of the Closing Date after giving effect to the Transactions, the Borrower has no Subsidiaries other than those Subsidiaries listed on **Schedule 6(a)** to the Perfection Certificate. **Schedule 6(a)** to the Perfection Certificate sets forth, as of the Closing Date, the percentage ownership (direct and indirect) of the Borrower in each class of capital stock or other Equity Interests of each of its Subsidiaries and also identifies the direct owner thereof. All outstanding shares of Equity Interests of each Restricted Subsidiary of the Borrower have been duly and validly issued, are fully paid and non-assessable and have been issued free of preemptive rights. No Restricted Subsidiary of the Borrower has outstanding any securities convertible into or exchangeable for its Equity Interests or outstanding any right to subscribe for or to purchase, or any options or warrants for the purchase of, or any agreement providing for the issuance (contingent or otherwise) of or any calls, commitments or claims of any character relating to, its Equity Interests or any stock appreciation or similar rights. There are no Unrestricted Subsidiaries as of the Closing Date.

Section 6.14 Compliance with Laws, etc.

Each of the Borrower and each of its Restricted Subsidiaries is in compliance with all applicable Requirements of Law, statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities in respect of the conduct of its business and the ownership of its property, including all applicable laws administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury and the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations promulgated thereunder ("***FCPA***"), except such non-compliances as (i) could not, either individually or in the aggregate, reasonably

be expected to have a Material Adverse Effect (ii) or is excused by the Bankruptcy Court. None of the Borrower or any Restricted Subsidiary has been notified in writing, or, to the knowledge of the Borrower and the Restricted Subsidiaries, otherwise notified, by the Federal Office of Surface Mining, the Environmental Protection Agency, the U.S. Army Corps of Engineers or the agency of any state administering the Surface Mining Control and Reclamation Act of 1977, as amended, any comparable state statute or any other Mining Law that it is (i) ineligible for the receipt or renewal of any Mining Permit; or (ii) under investigation to determine whether their eligibility for the receipt or renewal of any Mining Permit should be revoked (*e.g.*, "permit blocked"), not transferred to any Credit Party or not renewed; and to the knowledge of the Borrower, no facts exist that presently or upon the giving of notice or the lapse of time or otherwise would render any of the Borrower or any Restricted Subsidiary ineligible for the receipt or renewal of any Mining Permit.

Section 6.15 Investment Company Act.

Neither the Borrower nor any of its Restricted Subsidiaries is an "investment company" or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended.

Section 6.16 Insurance.

The Borrower and its Restricted Subsidiaries is insured against such losses and risks and in such amount as are prudent and customary in the businesses in which it is engaged.

Section 6.17 Environmental Matters.

In each case, except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect,

(a) each of the Borrower and each of its Restricted Subsidiaries is in compliance with all Environmental Laws and has obtained and is in compliance with the terms of any permits required under such Environmental Laws to conduct their respective operations as currently conducted;

(b) there are no Environmental Claims pending against the Borrower or any of its Restricted Subsidiaries and, to the knowledge of the Borrower, no such Environmental Claims are either threatened or are reasonably expected to result from any pending investigation or proceeding;

(c) no Lien, other than a Permitted Lien, has been recorded, or to the knowledge of the Borrower, threatened under any Environmental Law with respect to any Real Property owned or operated by the Borrower or any Restricted Subsidiary;

(d) neither the Borrower nor any of its Restricted Subsidiaries has agreed to assume or accept responsibility, for any liability of any other Person under any Environmental Law;

(e) there are no existing facts, circumstances, conditions or occurrences with respect to the business, operations, properties or facilities of the Borrower or any of its Restricted Subsidiaries, or, to the knowledge of the Borrower, any of their respective predecessors, that could reasonably be expected to give rise to any Environmental Claim; and

(f) there are no current, or reasonably anticipated future, requirements under Environmental Law (including without limitation, permit requirements, operational restrictions, clean-up or reclamation costs) that would result in expenditures other than expenditures for which there is a current financial reserve or other appropriate allocation in the Borrower's or its Restricted Subsidiaries' operating or capital expenditure budgets.

Section 6.18 Employment and Labor Relations.

Neither the Borrower nor any of its Restricted Subsidiaries is engaged in any unfair labor practice that would reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect. There is:

(a) no unfair labor practice complaint pending against the Borrower or any of its Restricted Subsidiaries or, to the knowledge of the Borrower, threatened against any of them, before the National Labor Relations Board, and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement is so pending against the Borrower or any of its Restricted Subsidiaries or, to the knowledge of the Borrower, threatened against any of them,

(b) on the Closing Date, no strike, labor dispute, slowdown or stoppage pending against the Borrower or any of its Restricted Subsidiaries or, to the knowledge of the Borrower, threatened against the Borrower or any of its Restricted Subsidiaries,

(c) no equal employment opportunity charges or other claims of employment discrimination are pending or, to the Borrower's knowledge, threatened against the Borrower or any of its Restricted Subsidiaries, and

(d) no wage and hour department investigation has been made of the Borrower or any of its Restricted Subsidiaries,

except (with respect to any matter specified in **clauses (a)** through **(d)** above, either individually or in the aggregate) such as would not reasonably be expected to have a Material Adverse Effect.

Section 6.19 Intellectual Property, etc.

Each of the Borrower and each of its Restricted Subsidiaries owns or has the right to use all the patents, trademarks, permits, domain names, service marks, trade names, copyrights, licenses, franchises, inventions, trade secrets, technology, data, proprietary information and know-how of any type, whether or not written (including, but not limited to, rights in computer programs and databases) and formulas, or rights with respect to the foregoing (collectively, "***Intellectual Property***"), and has obtained assignments of all leases, licenses and other rights of whatever nature, necessary for the present conduct of its business, without any known conflict

with the rights of others which, or the failure to own or have which, as the case may be, could reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect. The conduct of the Borrower's and each of its Restricted Subsidiaries' respective businesses does not infringe, violate or otherwise conflict with, in any material respect, the proprietary rights of any third party. None of the Borrower or any of its Restricted Subsidiaries has received any notice, or is otherwise aware, of any infringement or violation of or conflict with the proprietary rights of any third party, which infringement, violation or conflict, if the subject of an unfavorable decision, would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or materially interfere with the operation of their respective businesses by the Borrower or its Restricted Subsidiaries.

Section 6.20 [Reserved].

Section 6.21 Anti-Terrorism Laws; Sanctions.

(a) No Credit Party, none of its Restricted Subsidiaries and, to the knowledge of each Credit Party, none of its Affiliates and none of the respective officers, directors, brokers or agents of such Credit Party, such Restricted Subsidiary or Affiliate (i) has violated or is in violation of Anti-Terrorism Laws or (ii) has engaged or engages in any transaction, investment, undertaking or activity that conceals the identity, source or destination of the proceeds from any category of offenses designated in the "Forty Recommendations" and "Nine Special Recommendations" published by the Financial Action Task Force on Money Laundering.

(b) No Credit Party, none of its Restricted Subsidiaries and, to the knowledge of each Credit Party, none of its Affiliates and none of the respective officers, directors, brokers or agents of such Credit Party, such Restricted Subsidiary or such Affiliate that is acting or benefiting in any capacity in connection with the Term Loans is an Embargoed Person.

(c) No Credit Party, none of its Restricted Subsidiaries and, to the knowledge of each Credit Party, none of its Affiliates and none of the respective officers, directors, brokers or agents of such Credit Party, such Restricted Subsidiary or such Affiliate acting or benefiting in any capacity in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Embargoed Person, (ii) deals in, or otherwise engages in any transaction related to, any property or interests in property blocked pursuant to any Anti-Terrorism Law or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(d) Neither the use of the Borrowing or any other proceeds by the Borrower and its Subsidiaries, nor any other transaction contemplated by this Agreement, will violate the FCPA or Anti-Terrorism Laws.

Section 6.22 Flood Zone.

No Mortgage and no lien granted under the Orders encumbers improved Real Property that is located in an area that has been identified by the Federal Emergency Management Agency (or any successor agency) as an area having special flood hazards within the meaning of the

Flood Insurance Laws unless flood insurance available under such Flood Insurance Laws has been obtained in accordance with **Section 7.03(b)**.

Section 6.23 Beneficial Ownership Certificate.

As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

ARTICLE VII.
AFFIRMATIVE COVENANTS.

The Borrower hereby covenants and agrees that on and after the Closing Date and until the Term Loans and Notes (in each case together with interest thereon), Fees and all other Obligations (other than indemnities described in **Section 11.13** and reimbursement obligations under **Section 11.01** which, in either case, are not then due and payable) incurred hereunder and under any other Credit Document, are paid in full:

Section 7.01 Information Covenants.

The Borrower will furnish to the Administrative Agent, on behalf of each Lender:

(a) **Monthly Financial Statements**. On or before the date that is 30 days after the end of each calendar month the consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such monthly accounting period and the related consolidated statements of income and retained earnings and statement of cash flows (together with a detailed reconciliation, reflecting such financial information for the Borrower and its Restricted Subsidiaries, on the one hand, and the Borrower's Unrestricted Subsidiaries, on the other hand) for such monthly accounting period and for the elapsed portion of the Fiscal Year ended with the last day of such monthly accounting period, in each case setting forth comparative figures for the corresponding monthly accounting period in the prior Fiscal Year and comparable budgeted figures for such monthly accounting period as set forth in the respective budget delivered pursuant to **Section 7.01(d)**, all of which shall be certified by an Authorized Officer of the Borrower that they fairly present in all material respects in accordance with GAAP the financial condition of the Borrower and its Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to normal year-end audit adjustments and the absence of footnotes,

(b) **Quarterly Financial Statements**. Within 45 days after the close of each of the first three Fiscal Quarters in each Fiscal Year of the Borrower commencing with the quarter ending June 30, 2019, (i) the consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such quarterly accounting period and the related consolidated statements of income and retained earnings and statement of cash flows (together with a detailed reconciliation, reflecting such financial information for the Borrower and its Restricted Subsidiaries, on the one hand, and the Borrower's Unrestricted Subsidiaries, on the other hand) for such quarterly accounting period and for the elapsed portion of the Fiscal Year ended with the last day of such quarterly accounting period, in each case setting forth comparative figures for the corresponding quarterly accounting period in the prior Fiscal Year and comparable budgeted figures for such quarterly accounting period as set forth in the respective budget delivered pursuant to **Section**

7.01(d), all of which shall be certified by an Authorized Officer of the Borrower that they fairly present in all material respects in accordance with GAAP the financial condition of the Borrower and its Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to normal year-end audit adjustments and the absence of footnotes, and (ii) management's discussion and analysis of the consolidated financial condition of the Borrower and its Subsidiaries and important operational and financial developments during such quarterly accounting period.

(c) **Annual Financial Statements**. Within 90 days after the close of each Fiscal Year of the Borrower, (i) the consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of income and retained earnings, and statement of cash flows (together with a detailed reconciliation, reflecting such financial information for the Borrower and its Restricted Subsidiaries, on the one hand, and the Borrower's Unrestricted Subsidiaries, on the other hand) for such Fiscal Year setting forth comparative figures for the preceding Fiscal Year and certified by KPMG LLP or other independent certified public accountants of recognized national standing reasonably acceptable to the Administrative Agent (the "***Independent Auditors***"), accompanied by a report of such accounting firm (which report shall be without any qualification or exception as to scope of audit) stating that in the course of its regular audit of the financial statements of the Borrower and its Subsidiaries, which audit was conducted in accordance with generally accepted auditing standards, such accounting firm obtained no knowledge of any Default or an Event of Default relating to financial or accounting matters which has occurred and is continuing or, if in the opinion of such accounting firm such a Default or an Event of Default has occurred and is continuing, a statement as to the nature thereof, and (ii) management's discussion and analysis of the consolidated financial condition of the Borrower and its Subsidiaries and important operational and financial developments during such Fiscal Year.

(d) **DIP ABL Facility Borrowing Base.** (i) Promptly upon delivery to DIP ABL Agent, copies of all borrowing base certificates delivered pursuant to Section 4.1(c)of the DIP ABL Credit Agreement and (ii) promptly upon obtaining knowledge thereof, the imposition of any new reserves and any changes in the eligibility criteria set forth in the borrowing base (or the components thereof) in the DIP ABL Credit Agreement.

(e) **Budget Variance Reports.** No later than 5:00 p.m. on the Wednesday of every week (commencing with the second Wednesday following the Petition Date) (or, to the extent such Wednesday is not a Business Day, the next Business Day thereafter), a Budget Variance Report for the immediately preceding Weekly Period and the cumulative Test Period. Each such report shall be certified by an Authorized Officer of the Borrower as being prepared in good faith and fairly presenting in all material respects the information set forth therein.

(f) **DIP Budgets**. On or prior to the Closing Date and on the last Wednesday of every four-week anniversary (commencing with the fourth Wednesday following the Petition Date) (or, to the extent such Wednesday is not a Business Day, the next Business Day thereafter), a DIP Budget. Each DIP Budget shall be reasonably acceptable to the Required Lenders and no such DIP Budget shall be effective until so approved; ***provided*** that the Required Lenders shall be deemed to have approved a DIP Budget delivered after the Closing Date pursuant to this **Section 7.01(f)** unless Lenders constituting the Required Lenders shall have

objected to such DIP Budget within 5 Business Days after delivery thereof. To the extent any such updated DIP Budget is approved pursuant to this **Section 7.01(f)**, the line item amounts set forth therein shall only be used to calculate the projected line items commencing with the week in which such updated DIP Budget is approved by the Required Lenders and for subsequent weeks set forth therein, and any prior weeks tested as part of any then applicable cumulative period shall be calculated using the projected line items set forth in the previously Approved Budget in which such prior weeks were first forecasted. Upon such approval or deemed approval by the Required Lenders pursuant to this **Section 7.01(f)**, a DIP Budget delivered pursuant to this **Section 7.01(f)** and the DIP Budget delivered pursuant to **Section 5.01(f)** shall constitute an "***Approved Budget***".

(g) **Officer's Certificates**. At the time of the delivery of the financial statements provided for in **Sections 7.01(a)**, **(b)** and **(c)**, a compliance certificate from an Authorized Officer of the Borrower in the form of **Exhibit E** certifying on behalf of the Borrower that, to such officer's knowledge after due inquiry, no Default or Event of Default has occurred and is continuing or, if any Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof, which certificate shall if delivered with the financial statements required by **Section 7.01(c)**, certify that there have been no changes to the Perfection Certificate since the Closing Date or, if later, since the date of the most recent certificate delivered pursuant to this **Section 7.01(g)**, or if there have been any such changes, include a Perfection Certificate Supplement and certify whether the Credit Parties have otherwise taken all actions required to be taken by them pursuant to the Security Documents in connections with any such changes.

(h) **Notice of Default, Litigation and Material Adverse Effect**. Promptly, and in any event within five Business Days after any Authorized Officer of the Borrower or any of its Restricted Subsidiaries obtains actual knowledge thereof, notice of:

(i) the occurrence of any event which constitutes a Default or an Event of Default,

(ii) any litigation or governmental investigation or proceeding pending against the Borrower or any of its Restricted Subsidiaries (x) which, either individually or in the aggregate, has had, or could reasonably be expected to have, a Material Adverse Effect or (y) with respect to any Credit Document, or

(iii) any other event, change or circumstance that has had, or could reasonably be expected to have, a Material Adverse Effect.

(i) **Other Reports and Filings**. Promptly after the filing or delivery thereof, copies of all financial information, proxy materials, registration statements and reports, if any, which the Borrower or any of its Subsidiaries shall publicly file with the Securities and Exchange Commission or any successor thereto (the "***SEC***") or deliver to holders (or any trustee, agent or other representative therefor) of any of its material Indebtedness pursuant to the terms of the documentation governing the same.

(j) **Environmental Matters**. Promptly after any Authorized Officer of the Borrower or any of its Restricted Subsidiaries obtains actual knowledge thereof, notice of the following

environmental matters to the extent that such environmental matters, either individually or aggregated with all other such environmental matters, could reasonably be expected to have a Material Adverse Effect:

(i) any pending or threatened Environmental Claim against the Borrower or any of its Restricted Subsidiaries;

(ii) any condition or occurrence on or arising from any Real Property owned, leased or operated by the Borrower or any of its Restricted Subsidiaries that (A) results in noncompliance by the Borrower or any of its Restricted Subsidiaries with any Environmental Law or (B) could reasonably be expected to form the basis of an Environmental Claim against the Borrower or any of its Restricted Subsidiaries or any such Real Property;

(iii) any condition or occurrence on any Real Property owned, leased or operated by the Borrower or any of its Restricted Subsidiaries that could reasonably be expected to cause such Real Property to be subject to any restrictions on the ownership, lease, occupancy, use or transferability by the Borrower or any of its Restricted Subsidiaries of such Real Property under any Environmental Law;

(iv) the taking of any removal or remedial action to the extent required by any Environmental Law or any Governmental Authority in response to the Release or threatened Release of any Hazardous Material on any Real Property owned, leased or operated by the Borrower or any of its Restricted Subsidiaries; or

(v) any material delay, or material conditions imposed, in connection with the issuance, transfer or renewal of any mining permit or other governmental authorization.

All such notices shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence or removal or remedial action and the Borrower's or such Restricted Subsidiary's response thereto.

(k) **Insurance**. By the last day of each Fiscal Year (commencing with the Fiscal Year ending December 31, 2019), a certificate from the Borrower's insurance broker(s) as to the Borrower's satisfaction of the requirements of **Section 7.03** as of the date of such certificate.

(l) **Other Information**. From time to time, such other business, financial or corporate information or documents with respect to the Borrower or any of its Subsidiaries as the Administrative Agent or any Lender may reasonably request.

Section 7.02 Books, Records and Inspections; Conference Calls.

(a) The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and accounts in which full, true and correct entries in conformity with GAAP and all requirements of law shall be made in relation to its business and activities. The Borrower will, and will cause each of its Restricted Subsidiaries to, permit officers and designated representatives of the Administrative Agent, or, if an Event of Default has occurred and is continuing, any Lender, to visit and inspect, under guidance of officers of the Borrower or such

Restricted Subsidiary, any of the properties of the Borrower or such Restricted Subsidiary, and to examine the books of account of the Borrower or such Restricted Subsidiary and discuss the affairs, finances, cash and liquidity management, restructuring activities and accounts of the Borrower or such Restricted Subsidiary with, and be advised as to the same by, its and their officers and Independent Auditors, all upon reasonable prior notice and at such reasonable times and intervals and to such reasonable extent as the Administrative Agent, the Required Lenders or any such Lender may reasonably request; ***provided*** that, unless an Event of Default has occurred and is continuing, the Borrower shall be subject to one such inspection during any twelve-month period.

(b) At the request of the Administrative Agent or the Required Lenders, the Borrower will within 10 days (or such later time as may be agreed by the Administrative Agent or the Required Lenders, if applicable) after the date of the delivery (or, if later, required delivery) of the monthly, quarterly and annual financial information pursuant to **Sections 7.01(a)**, **(b)**, and **(c)** hold a conference call or teleconference, at a time selected by the Borrower and reasonably acceptable to the Administrative Agent or the Required Lenders, if applicable, with all of the Lenders that choose to participate, to review the financial results of the previous Fiscal Quarter or Fiscal Year, as the case may be, and the financial condition of the Borrower and its Subsidiaries and the budgets presented for the current Fiscal Year of the Borrower and its Subsidiaries.

Section 7.03 Maintenance of Property; Insurance.

(a) The Borrower will, and will cause each of its Restricted Subsidiaries to,

(i) keep all property necessary to the business of the Borrower and its Restricted Subsidiaries in good working order and condition, ordinary wear and tear excepted and subject to the occurrence of casualty events,

(ii) maintain with financially sound and reputable insurance companies insurance on all such property and against all such risks as is consistent and in accordance with industry practice for companies similarly situated owning similar properties and engaged in similar businesses as the Borrower and its Restricted Subsidiaries, and

(iii) furnish to the Administrative Agent, upon its request therefor, full information as to the insurance carried.

Such insurance shall include physical damage insurance on all real and personal property (whether now owned or hereafter acquired) on an all risk basis (subject to customary exceptions) and business interruption insurance on coal preparation plants and rail load-outs (subject to customary exceptions). The provisions of this **Section 7.03** shall be deemed supplemental to, but not duplicative of, the provisions of any Security Documents that require the maintenance of insurance.

(b) If any "building" or "mobile home" (each as defined in Regulation H as promulgated by the Federal Reserve Board under the Flood Insurance Laws) constituting Collateral is at any time located on Real Property in an area identified by the Federal Emergency

Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the Flood Insurance Laws, then the Borrower shall, or shall cause each Credit Party to:

(i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and

(ii) deliver to the Collateral Agent executed borrower notices as required by the Flood Insurance Laws and evidence of such compliance both in form and substance reasonably acceptable to the Collateral Agent.

(c) All policies or certificates (or certified copies thereof) with respect to the insurance required by **Sections 7.03(a)** and **(b)** (and any other insurance maintained by the Borrower and/or such Restricted Subsidiaries) (i) shall be endorsed (solely to the extent such policies permit endorsement) to the Collateral Agent's satisfaction for the benefit of the Collateral Agent (including, without limitation, by naming the Collateral Agent as loss payee and/or additional insured (solely to the extent such policies permit such designation)), and (ii) shall state that the respective insurer shall use commercially reasonable efforts to provide the Collateral Agent with at least 30 days' prior written notice of cancellation thereof.

(d) If the Borrower or any of its Restricted Subsidiaries shall fail to maintain insurance in accordance with this **Section 7.03**, or if the Borrower or any of its Restricted Subsidiaries shall fail to so endorse and deposit all policies or certificates with respect thereto, the Administrative Agent shall have the right (but shall be under no obligation) to procure such insurance and the Borrower agrees to reimburse the Administrative Agent for all costs and expenses of procuring such insurance.

Section 7.04 Existence; Franchises.

The Borrower will, and will cause each of its Restricted Subsidiaries to, do or cause to be done, all things necessary to preserve and keep in full force and effect its existence and its material rights, franchises, licenses, permits and Intellectual Property, necessary to its business; ***provided***, ***however***, that nothing in this **Section 7.04** shall prevent (i) sales of assets and other transactions by the Borrower or any of its Restricted Subsidiaries in accordance with **Section 8.02** or **8.05** or (ii) the withdrawal by the Borrower or any of its Restricted Subsidiaries of its qualification as a foreign Company in any jurisdiction if such withdrawal could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 7.05 Compliance with Laws, etc.

Except as otherwise excused or prohibited by the Bankruptcy Code, and subject to any required approval by the Bankruptcy Court, the Borrower will, and will cause each of its Restricted Subsidiaries to, comply with all applicable Requirements of Law, statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities in respect of the conduct of its business and the ownership of its property (owned or leased) (including all Mining Laws, Mining Permits, applicable statutes, regulations and orders), except such non-

compliances as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 7.06 Compliance with Environmental Laws.

(a) Subject to any required approval by the Bankruptcy Court, the Borrower will comply, and will cause each of its Restricted Subsidiaries to comply, with all Environmental Laws and permits applicable to or required in respect of the conduct of its business or operations or by the ownership, lease or use of any Real Property now or hereafter owned, leased or operated by the Borrower or any of its Restricted Subsidiaries, except for such noncompliance as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and will promptly pay or cause to be paid all costs and expenses incurred in connection with such compliance, and will keep or cause to be kept all such Real Property free and clear of any Liens imposed pursuant to Environmental Laws.

(b) (i) After the receipt by the Administrative Agent or any Lender of any notice of the type described in **Section 7.01(h)**, (ii) at any time that the Borrower or any of its Restricted Subsidiaries is not in compliance with **Section 7.06(a)** or (iii) in the event that the Administrative Agent or the Lenders have exercised any of the remedies pursuant to the last paragraph of **Article IX**, the Borrower will (in each case) provide, at the sole expense of the Borrower and at the request of the Administrative Agent, an environmental report concerning any relevant Real Property owned, leased or operated by the Borrower or any of its Restricted Subsidiaries, prepared by an environmental consulting firm reasonably approved by the Administrative Agent, evaluating the identified noncompliance or potential liability and indicating, if relevant, the presence or absence of Hazardous Materials and the estimated cost of any removal or remedial action in connection with such Hazardous Materials on such Real Property. If the Borrower fails to take diligent efforts to commence preparation of such report or fails to provide the same within a reasonable time (not to exceed 60 days, unless a longer time is required to complete the required investigations or assessments) after such request was made, the Administrative Agent may after written notice to Borrower, retain an environmental consulting firm to prepare such report, the cost of which shall be borne by the Borrower, and the Borrower shall and hereby does grant to the Administrative Agent and the Lenders and their respective agents access to such Real Property, and specifically grants the Administrative Agent and the Lenders an irrevocable non-exclusive license, subject to the rights of tenants, to undertake such an assessment at any reasonable time upon reasonable notice to the Borrower, all at the sole expense of the Borrower; ***provided***, ***however***, that such environmental assessment shall not include the taking of soil, groundwater, surface water, air, or building material samples or other invasive testing unless the Borrower has provided its prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

Section 7.07 ERISA.

The Borrower shall supply to the Administrative Agent (in sufficient copies for all Lenders, if the Administrative Agent so requests):

(a) promptly and in any event within 15 days after receiving a request from the Administrative Agent a copy of IRS Form 5500 (including the Schedule S) with respect to a Plan;

(b) promptly and in any event within 30 days after the Borrower, any Restricted Subsidiary of the Borrower or any ERISA Affiliate knows or has reason to know that any ERISA Event has occurred that would reasonably be expected to result in a Material Adverse Effect, a certificate of an Authorized Officer of the Borrower describing such ERISA Event and the action, if any, proposed to be taken with respect to such ERISA Event and a copy of any notice filed with the PBGC or the IRS pertaining to such ERISA Event and any notices received by the Borrower, any Restricted Subsidiary of the Borrower or any ERISA Affiliate from the PBGC or any other Governmental Authority with respect thereto; ***provided*** that, in the case of ERISA Events under **paragraph (d)** of the definition thereof, the 30-day period set forth above shall be a 10-day period, and, in the case of ERISA Events under **paragraph (b)** of the definition thereof, in no event shall notice be given later than 10 days after the occurrence of the ERISA Event; and

(c) to the extent it is reasonably expected to result in a Material Adverse Effect, promptly, and in any event within 30 days, after becoming aware that there has been:

(i) an increase in Unfunded Pension Liabilities (taking into account only Benefit Plans with positive Unfunded Pension Liabilities),

(ii) an increase since the date the representations hereunder are given or deemed given, or from any prior notice, as applicable, in potential withdrawal liability under Section 4201 of ERISA, if the Borrower, any Restricted Subsidiary or any ERISA Affiliate were to withdraw completely from any and all Multiemployer Plans, or

(iii) the adoption of any amendment to a Benefit Plan which results in an increase in contribution obligations of the Borrower or Restricted Subsidiary, a detailed written description thereof from an Authorized Officer of the Borrower.

Section 7.08 End of Fiscal Years; Fiscal Quarters.

The Borrower will cause (i) its fiscal year to end on December 31 of each calendar year and (ii) its fiscal quarters to end on the last day of each period described in the definition of "Fiscal Quarter".

Section 7.09 Performance of Obligations.

The Borrower will, and will cause each of its Restricted Subsidiaries to, perform all of its obligations under the terms of each mortgage, indenture, security agreement, loan agreement or credit agreement and each other Contractual Obligation by which it is bound (including all Mining Leases), except such non-performances as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 7.10 Payment of Taxes.

In accordance with the Bankruptcy Code and subject to any required approval by the Bankruptcy Court (it being understood that no Debtor shall be obligated to make any payments hereunder that may, in its reasonable judgment, result in a violation of any applicable law, including the Bankruptcy Code, without an order of the Bankruptcy Court authorizing such payments), the Borrower will pay and discharge, and will cause each of its Restricted Subsidiaries to pay and discharge, all Taxes required to be paid by them, prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid, might become a Lien or charge upon any properties of the Borrower or any of its Restricted Subsidiaries not otherwise permitted under **Section 8.01(g)**; ***provided*** that neither the Borrower nor any of its Restricted Subsidiaries shall be required to pay any such Tax (i) which is being contested in good faith and by proper proceedings if it has maintained adequate reserves with respect thereto in accordance with GAAP, (ii) the nonpayment of which could not reasonably be expected to cause a Material Adverse Effect, or (iii) to the extent otherwise excused or prohibited by the Bankruptcy Code and for which payment has not otherwise been required by the Bankruptcy Court.

Section 7.11 Use of Proceeds.

The Borrower will use the proceeds of the Term Loans only as provided in **Section 6.08**.

Section 7.12 Additional Guarantees and Security; Further Assurances; etc.

(a) If the Borrower or any of its Restricted Subsidiaries acquires or creates another Subsidiary (other than an Excluded Subsidiary) after the Closing Date (which acquisition or creation may occur only with the consent of the Required Lenders) or if a Subsidiary ceases to be an Excluded Subsidiary, then the Borrower shall cause:

(i) the capital stock or other Equity Interests of such Subsidiary to be pledged pursuant to, and to the extent required by, this Agreement and the Security Agreement and the certificates, if any, representing such stock or other Equity Interests, together with stock or other appropriate powers duly executed in blank, to be delivered to the Collateral Agent within 30 days (or such later date as determined by the Administrative Agent in its sole discretion) of the date on which such Subsidiary was acquired or created,

(ii) each such Subsidiary to become a Debtor and to execute a counterpart of the Subsidiary Guaranty and the Security Agreement within 30 days (or such later date as determined by the Administrative Agent in its sole discretion) of the date on which such Subsidiary was acquired or created and upon such execution such Subsidiary shall automatically become a Guarantor and each such Subsidiary's assets shall automatically be subject to the Liens created by the Orders and **Section 7.18**, and

(iii) each such Subsidiary, to the extent reasonably requested by the Administrative Agent or the Required Lenders, to take all actions required pursuant to the other provisions of this **Section 7.12** within the time periods set forth in such other provisions of this **Section 7.12**.

In addition, each such Subsidiary that is required to execute any Credit Document shall, if requested by the Administrative Agent, execute and deliver, or cause to be executed and delivered, all other relevant documentation (including opinions of counsel) of the type described in **Article V** as such Subsidiary would have had to deliver if such Subsidiary were a Credit Party on the Closing Date.

(b) The Borrower will, and will cause each other Credit Party to, grant to the Collateral Agent for the benefit of the Secured Creditors security interests in any after-acquired assets (other than (i) Real Property, which is addressed in **subsection (c)** below, and (ii) Excluded Assets) of the Borrower and such other Credit Party that are not covered by the Security Documents then in effect or that cease to be Excluded Assets (or as otherwise required at such time pursuant to the DIP ABL Intercreditor Agreement or the Orders), in each case, within 60 days (or such later date as determined by the Collateral Agent in its sole discretion) after the close of the fiscal quarter of Borrower in which the relevant acquisition occurred or the relevant asset ceased to be an Excluded Asset. All such security interests shall be granted pursuant to documentation (collectively, the "***Additional Security Documents***") in substantially the same form as the original Security Documents and shall constitute valid and enforceable perfected security interests and hypothecations superior to and, subject to the DIP ABL Intercreditor Agreement and the Orders, prior to the rights of all third Persons and enforceable against third parties and subject to no other Liens except for Permitted Liens and subject to the Orders. Within 30 days after the grant of any such security interest (or such later date as determined by the Collateral Agent in its sole discretion), the Additional Security Documents or instruments related thereto shall be duly recorded or filed in such manner and in such places as are required by law to establish, perfect, preserve and protect the Liens in favor of the Collateral Agent required to be granted pursuant to the Additional Security Documents and all taxes, fees and other charges payable in connection therewith shall be paid in full.

(c) Within 60 days (or such later date as determined by the Collateral Agent in its sole discretion) after (x) the close of the fiscal quarter of Borrower in which any Material Real Property (other than Excluded Assets) is acquired or ceases to be an Excluded Asset (collectively, "***After-Acquired Real Property***") and (y) the reasonable request of the Required Lenders with respect to any Material Real Property existing on the Closing Date (together with the After-Acquired Real Property, collectively, the "***Applicable Real Property***"), in each case if reasonably requested by the Required Lenders, the Collateral Agent shall have received:

(i) fully executed counterparts of Mortgages and corresponding UCC fixture filings and As-Extracted Collateral Filings, in substantially the same form as the applicable security documents under the Pre-Petition First Lien Term Loan Credit Agreement, which Mortgages, UCC fixture filings and As-Extracted Collateral Filings, shall cover each Applicable Real Property, together with evidence that counterparts of such Mortgages, UCC fixture filings and As-Extracted Collateral Filings have been delivered to the Collateral Agent or its designee for recording;

(ii) a Mortgage Policy relating to each Applicable Real Property that consists of surface tracts with improvements valued in excess of $10,000,000 ("***Material Surface Property***"), issued by a title insurer reasonably satisfactory to the Collateral Agent, in an insured amount satisfactory to the Collateral Agent (but in each case not to exceed 100%

of the Fair Market Value of such Material Surface Property) and insuring the Collateral Agent that the Mortgage on each such Material Surface Property is a valid and enforceable first priority mortgage lien on such Material Surface Property, free and clear of all defects and encumbrances except Permitted Encumbrances, with each such Mortgage Policy (1) to be in form and substance reasonably satisfactory to the Collateral Agent, (2) to include, to the extent available in the applicable jurisdiction, the same or comparable supplemental endorsements as those included in the mortgage policies delivered pursuant to the Pre-Petition First Lien Term Loan Credit Agreement, (3) to not include the "standard" title exceptions and (4) to provide for affirmative insurance and such reinsurance or coinsurance as the Collateral Agent in its discretion may reasonably request;

(iii) to induce the title company to issue the mortgage policies referred to in the Pre-Petition First Lien Term Loan Credit Agreement and as deemed prudent by the Collateral Agent with respect to confirming each applicable Credit Parties' title to the Applicable Real Property, such affidavits, certificates, information and instruments of indemnification (including, without limitation, a so-called "gap" indemnification) as shall be required by the title company, together with payment by the Borrower of all Mortgage Policy premiums, search and examination charges, mortgage recording taxes, fees, charges, costs and expenses required for the recording of such Mortgages and issuance of such Mortgage Policies;

(iv) subject to **subsection (d)** below, such material consents and approvals as shall be reasonably deemed necessary by the Collateral Agent in order for the owner or holder of the fee or leasehold interest constituting such Applicable Real Property to grant the Lien contemplated by the Mortgage with respect to the Applicable Real Property;

(v) to the extent requested by the Administrative Agent, copies of all leases in which the Borrower or any of its Subsidiaries holds the lessor's interest or other agreements relating to possessory interests, if any; ***provided*** that, to the extent any of the foregoing affect such Applicable Real Property, to the extent requested by the Administrative Agent, such agreements shall be subordinate to the Lien of the Mortgage to be recorded against such Applicable Real Property, either expressly by its terms or pursuant to a subordination, non-disturbance and attornment agreement (with any such agreement being reasonably acceptable to the Administrative Agent);

(vi) with respect to each After-Acquired Real Property improved by a "building" or "mobile home" (each as defined in Regulation H as promulgated by the Federal Reserve Board under the Flood Insurance Laws), to the extent such building or mobile home is required to be included in the Collateral, Flood Documentation reasonably satisfactory in form and substance to the Administrative Agent; and

(vii) from local counsel in each state in which Applicable Real Property is located, an opinion in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders.

(d) The Borrower will, and will cause each other Credit Party to, use commercially reasonable efforts to obtain the consent or waiver of any Person necessary to permit the Borrower and other Credit Parties to grant to the Collateral Agent, for the benefit of the Secured Creditors, security interests and/or Mortgages in such assets and Real Property (whether owned or leased on the date hereof or subsequently acquired by the Borrower or the other Credit Parties) as would otherwise constitute Excluded Assets under this Agreement; ***provided*** that the obligation of the Borrower and other Credit Parties to use commercially reasonable efforts shall not require the Borrower or any other Credit Party to request any consent or waiver with respect to a restriction on assignment in any agreement which is imposed by any legal requirement or which the Borrower or such other Credit Party reasonably determines would have a material adverse effect on such agreement or on the Borrower's or other Credit Party's relationship with the other party or parties to such agreement; ***provided***, ***further***, that the use of commercially reasonable efforts shall not require any payment or other consideration from the Borrower or other Credit Parties; ***provided***, ***further***, that any such use of commercially reasonable efforts with respect to any such assets may be terminated by the Borrower sixty (60) days after the commencement of such commercially reasonable efforts. When negotiating the terms of any lease or other agreement entered into after the date of this Agreement, the Borrower will, and will cause each other Credit Party to, use commercially reasonable efforts (as described above) to eliminate any restriction on the assignment and/or granting of a Lien in such lease or other agreement.

(e) Subject to the terms of the Security Documents and the Orders, the Borrower will, and will cause each other Credit Party to, execute any and all further documents, financing statements, agreements, and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust, and other documents) that may be required under any applicable law, or that the Administrative Agent, the Collateral Agent or the Required Lenders may reasonably request, in order to grant, preserve, protect, and perfect the validity and priority of the security interests created or intended to be created by the applicable Security Documents, all at the expense of the Borrower and the Restricted Subsidiaries.

Section 7.13 Certain Long-Term Liabilities and Environmental Reserves.

To the extent required by GAAP, the Borrower will, and will cause each of its Restricted Subsidiaries to, maintain adequate reserves for (a) future costs associated with any lung disease claim alleging pneumoconiosis or silicosis or arising out of exposure or alleged exposure to coal dust or the coal mining environment, (b) future costs associated with retiree and healthcare benefits, (c) future costs associated with reclamation of disturbed acreage, removal of facilities and other closing costs in connection with its mining operations and (d) future costs associated with other potential environmental liabilities.

Section 7.14 Post-Closing Actions.

Notwithstanding anything to the contrary contained in this Agreement or the other Credit Documents, the parties hereto acknowledge and agree that the Borrower and its Restricted Subsidiaries shall be required to take the actions specified in **Schedule 7.14** as promptly as practicable, and in any event within the time periods set forth in **Schedule 7.14**. The provisions

of **Schedule 7.14** shall be deemed incorporated by reference herein as fully as if set forth herein in its entirety.

Section 7.15 Designation of Subsidiaries.

(a) The Board of Directors of the Borrower may, with the consent of the Required Lenders, designate any Restricted Subsidiary to be an Unrestricted Subsidiary if that designation would not cause a Default or Event of Default (and so long as no Default or Event of Default is then continuing); ***provided*** that (i) in no event will the Borrower or any Subsidiary of the Borrower that is a Restricted Subsidiary (or similar term as defined in the Pre-Petition Credit Agreements and/or the DIP ABL Credit Agreement) be designated as an Unrestricted Subsidiary and (ii) the requirements set forth in the definition of "Unrestricted Subsidiary" shall be satisfied. If a Restricted Subsidiary is designated as an Unrestricted Subsidiary, the aggregate Fair Market Value of all outstanding Investments owned by the Borrower and its Restricted Subsidiaries in the Subsidiary designated as an Unrestricted Subsidiary will be deemed to be an Investment made as of the time of the designation and will utilize the amount available under **clause (l)(ii)** of the definition of "***Permitted Investments***"; ***provided*** that the redesignation of any such Unrestricted Subsidiary as a Restricted Subsidiary shall increase the amount of Investments permitted pursuant to **clause (l)(ii)** of the definition of "Permitted Investments" by the Fair Market Value of outstanding Investments in such Subsidiary on the date of such redesignation up to an aggregate amount of such original Investment. That designation will only be permitted if the Investment would be permitted at that time and if the Restricted Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. As of the Closing Date, there are no Unrestricted Subsidiaries.

(b) Any designation of a Subsidiary of the Borrower as an Unrestricted Subsidiary will be evidenced to the Administrative Agent by an officer's certificate of an Authorized Officer of the Borrower certifying that such designation complied with the preceding conditions and was permitted by **Section 8.11**. If, at any time, any Unrestricted Subsidiary would fail to meet the preceding requirements as an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of this Agreement and any Indebtedness, Liens or Investments of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary of the Borrower as of such date and, if such Indebtedness, Liens or Investments is not permitted to be incurred as of such date under the terms of this Agreement, the Borrower will be in default of such covenant.

(c) The Borrower may at any time, with the consent of the Required Lenders, designate any Unrestricted Subsidiary to be a Restricted Subsidiary of the Borrower; ***provided*** that such designation will be deemed to be an incurrence of Indebtedness, Liens and Investments by a Restricted Subsidiary of the Borrower of any outstanding Indebtedness of such Unrestricted Subsidiary, and such designation will only be permitted if (x) such Indebtedness, Liens and Investments are permitted under the terms of this Agreement, calculated on a pro forma basis as if such designation had occurred at the beginning of the most recent four consecutive fiscal quarters of the Borrower then last ended for which financial statements have been delivered or were required to have been delivered pursuant to Section 7.01(b) or 7.01(c); and (y) no Default or Event of Default would be in existence following such designation.

Section 7.16 Milestones.

The Credit Parties shall ensure the satisfaction of the following milestones (collectively, the "***Milestones***", and each, a "***Milestone***"), unless waived or extended with the consent of the Required Lenders or the Administrative Agent (with the consent of the Required Lenders):

(a) No later than one day after the Petition Date, filing of a motion, in form and substance satisfactory to the Required Lenders, seeking approval of the DIP Term Facility;

(b) No later than five days after the Petition Date, entry of the Interim Order and filing of an Acceptable Disclosure Statement and an Acceptable Plan of Reorganization;

(c) No later than 45 days after the Petition Date, entry of the Final Order;

(d) No later than 75 days after the Petition Date, approval of an Acceptable Disclosure Statement and approval of the Acceptable Plan of Reorganization (the "***Confirmation Date***"); and

(e) No later than 14 days after the Confirmation Date, effectiveness of the Acceptable Plan of Reorganization.

The Milestones may be amended, modified or extended, in each case, only by (i) order of the Bankruptcy Court or (ii) the prior written consent of the Required Lenders.

Section 7.17 Bankruptcy-Related Matters.

The Borrower will and will cause each of the Guarantors and Restricted Subsidiaries to:

(a) comply in all material respects with the Orders; and

(b) comply in all material respects with each chapter 11 order in connection with the Cases (other than the Orders).

Section 7.18 Priority of Liens.

Each Credit Party hereby covenants, represents and warrants that, upon the execution of this Agreement and entry of the Interim Order (and when applicable, the Final Order), the Obligations of each Credit Party hereunder and under the Credit Documents:

(a) pursuant to Section 364(c)(1) of the Bankruptcy Code, shall at all times constitute allowed Superpriority Claims payable from and have recourse to all pre- and post-petition property of the Credit Parties and all proceeds thereof (excluding Avoidance Actions but, subject only to and effective upon entry of the Final Order, including Avoidance Proceeds), subordinated and subject only to the Carve-Out and any payments or proceeds on account of such Superpriority Claims shall be distributed in accordance with **Section 2.19**;

(b) pursuant to Section 364(c)(2) of the Bankruptcy Code and subject to the Carve-Out to the extent provided in the Interim Order or Final Order, as applicable, shall be secured by

(i) a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest and Lien on all of the assets of the Credit Parties, whether currently existing or thereafter acquired, of the same nature, scope and type as the DIP Term Loan Priority Collateral and (ii) a junior security interest in and Lien on all assets of the Credit Parties of the same nature, scope and type as the DIP ABL Priority Collateral, in each case that are not subject to (x) valid, perfected and non-avoidable Liens as of the Petition Date or (y) valid Liens in existence as of the Petition Date that are perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code, excluding Avoidance Actions but including, subject to entry of the Final Order, Avoidance Proceeds;

(c) pursuant to section 364(d)(1) of the Bankruptcy Code and subject only to the Carve-Out to the extent provided in the applicable Order, shall at all times be secured by (i) a valid, binding, continuing, enforceable, fully-perfected first priority priming security interest in and Lien upon the property of the Credit Parties of the same nature, scope and type as the DIP Term Loan Priority Collateral to the extent that such Collateral is subject to existing Liens that secure the obligations of the applicable Credit Party under the Pre-Petition First Lien Term Loan Credit Agreement Documents and the Pre-Petition Second Lien Term Loan Credit Agreement Documents and (ii) such priming liens shall be senior in all respects to any Prepetition ABL Adequate Protection Liens and Prepetition Term Adequate Protection Liens (each, as defined in the Orders), but as to the Prepetition ABL Adequate Protection Liens only as it relates to unencumbered property of the same nature, scope and type as the Prepetition Term Priority Loan Collateral (as defined in the Orders);

(d) pursuant to Section 364(c)(3) of the Bankruptcy Code and subject only to the Carve-Out to the extent provided in the applicable Order, shall be secured by a valid, binding, continuing, enforceable, fully-perfected junior security interest in and Lien on (i) the DIP Term Loan Priority Collateral, which is subject to (A) valid, perfected and non-avoidable senior Liens in existence at the time of the commencement of the Cases and (B) valid senior Liens in existence at the time of such commencement that are perfected subsequent to such commencement as permitted by Section 546(b) of the Bankruptcy Code and (ii) the DIP ABL Priority Collateral with the priority of the Liens in respect of the DIP Facilities (relative to the Liens in respect of the DIP Term Facility) as set forth in the Orders and the DIP ABL Intercreditor Agreement;

(e) shall not be subject or subordinate to or made pari passu with (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, (ii) unless otherwise provided for in the Credit Documents or an order of the Bankruptcy Court in form and substance approved by the Required Lenders, any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors, (iii) any intercompany affiliate liens of the Credit Parties or security interests of the Credit Parties, or (iv) any other lien or security interest under section 363 or 364 of the Bankruptcy Code granted after the date hereof; and

(f) for the avoidance of doubt, the Collateral shall exclude Avoidance Actions, but shall, subject only to and effective upon entry of the Final Order, include Avoidance Proceeds.

Subject to and effective only upon entry of the Final Order, except to the extent of the Carve-Out, no costs or expenses of administration of the Cases or any future proceeding that may result therefrom, including a case under chapter 7 of the Bankruptcy Code, shall be charged against or recovered from the Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, the enhancement of collateral provisions of section 552 of the Bankruptcy Code, or any other legal or equitable doctrine (including, without limitation, unjust enrichment) or any similar principle of law, without the prior written consent of the Required Lenders, as the case may be with respect to their respective interests, and no consent shall be implied from any action, inaction or acquiescence by the Lenders. Subject to and effective only upon entry of the Final Order, in no event shall the Administrative Agent or the Lenders be subject to the "equities of the case" exception contained in section 552(b) of the Bankruptcy Code (subject only to and effective upon entry of the Final Order). In no event shall the Administrative Agent, the Lenders or the Prepetition Secured Parties (as defined in the applicable Order) be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral.

Except for the Carve-Out and as otherwise set forth in the applicable Order and herein, the Superpriority Claims shall at all times be senior to the rights of the Borrower, any chapter 11 trustee and, subject to section 726 of the Bankruptcy Code, any chapter 7 trustee, or any other creditor (including, without limitation, post-petition counterparties and other post-petition creditors) in the Cases or any subsequent proceedings under the Bankruptcy Code, including, without limitation, any chapter 7 cases (if any of the Cases are converted to cases under chapter 7 of the Bankruptcy Code).

Section 7.19 USA PATRIOT ACT, Beneficial Ownership Regulation.

Promptly following any request therefor, information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the USA PATRIOT Act and the Beneficial Ownership Regulation.

ARTICLE VIII.
NEGATIVE COVENANTS.

The Borrower hereby covenants and agrees that on and after the Closing Date and until the Loans and Notes (in each case together with interest thereon), Fees and all other Obligations (other than any indemnities described in **Section 11.13** and reimbursement obligations under **Section 11.01** which, in either case, are not then due and payable) incurred hereunder and under any other Credit Documents, are paid in full:

Section 8.01 Liens.

The Borrower will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume or suffer to exist any Lien of any kind securing Indebtedness or trade payables on any asset now owned or hereafter acquired, except Permitted Liens. For purposes of this Agreement, "***Permitted Liens***" shall mean:

(a) Liens securing Indebtedness incurred pursuant to Section 8.04(c), with such Indebtedness incurred under (x) the DIP ABL Asset Priority Loan Documents subject to the

terms of the DIP ABL Intercreditor Agreement and (y) the Pre-Petition ABL Credit Agreement Documents subject to the terms of the Pre-Petition ABL Intercreditor Agreement; ***provided*** that (i) in the case of any such Liens on Collateral (other than DIP ABL Asset Priority Liens and the Pre-Petition ABL Asset Priority Liens), such Liens shall be junior in priority to the Liens that secure the Obligations and (ii) in the case of any such DIP ABL Asset Priority Liens or Pre-Petition ABL Asset Priority Liens, such Liens may be senior in priority to the Liens that secure the Obligations and the Obligations shall be secured by Liens on the applicable DIP ABL Collateral that are pari passu with or junior to such DIP ABL Asset Priority Liens;

(b) Liens held by the Collateral Agent securing the Obligations, including any Liens created pursuant to the Orders in favor of the Collateral Agent securing the Obligations;

(c) the Carve-Out;

(d) Liens to secure the performance of Mining Financial Assurances, statutory obligations, insurance, performance obligations under coal sales agreements (which performance obligations may only be secured by Liens on cash and deposit accounts, either directly or by securing letters of credit or performance bonds permitted under this Agreement issued to assure such performance obligations), return of money bonds, surety or appeal bonds (including surety bonds obtained as required in connection with federal coal leases), workers compensation obligations, unemployment insurance and other types of social security and deposits securing liability to insurance carriers under insurance or self-insurance arrangements, performance bonds or other obligations of a like nature (***provided*** that to the extent such obligations constitute Indebtedness, they are permitted under **Section 8.04**) incurred in the ordinary course of business and consistent with past practices (including Liens to secure letters of credit permitted under this Agreement issued to assure payment of such obligations); ***provided***, in each case, that such secured performance obligations shall not constitute prepaid amounts or other advances of cash or other value for future delivery of coal;

(e) Liens to secure Indebtedness (including but not limited to Capital Lease Obligations) permitted by **Section 8.04(d)**, ***provided*** that such Liens do not at any time encumber any property other than the property acquired with or financed by such Indebtedness;

(f) Liens existing on the Closing Date and set forth on **Schedule 8.01**;

(g) Liens for Taxes that are not yet delinquent, or that are being contested in good faith by appropriate proceedings diligently pursued, ***provided*** that, any reserve as is required in conformity with GAAP or other appropriate provision therefor under an Acceptable Plan of Reorganization has been made, or that are attributable to Taxes the nonpayment of which is required pursuant to the Bankruptcy Code;

(h) Liens imposed by law, such as carriers', warehousemen's, landlord's and mechanics' Liens (including Liens imposed by law in favor of lessors of coal reserves (which shall only be on assets located on or under the leased premises covered by the applicable lease) securing payment of unpaid royalties, and similar liens imposed by contract), in each case, incurred in the ordinary course of business;

(i) survey exceptions, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property that were not incurred in connection with Indebtedness and that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(j) Liens on insurance policies and proceeds thereof, or other deposits, to secure insurance premium financings;

(k) notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;

(l) Liens on specific items of inventory or other goods (and the proceeds thereof) of any Person securing such Person's obligations in respect of bankers' acceptances issued or created in the ordinary course of business for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(m) (x) licenses to mine on behalf of the Borrower or its Restricted Subsidiaries granted under contract mining agreements and (y) leases granted to third parties, in each case, in the ordinary course of business and consistent with past practices and that do not interfere with the ordinary conduct of business of the Borrower or its Restricted Subsidiaries;

(n) [reserved];

(o) Liens securing judgments for the payment of money not constituting an Event of Default, so long as such Liens are adequately bonded;

(p) Liens arising from protective filings of Uniform Commercial Code financing statements (or the equivalent) regarding operating leases entered into by the Borrower and its Restricted Subsidiaries in the ordinary course of business;

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

(r) [reserved];

(s) [reserved];

(t) Liens on cash and deposit accounts to secure Cash Management Obligations;

(u) [reserved];

(v) [reserved];

(w) additional Liens to secure Indebtedness permitted pursuant to **Section 8.04** in an aggregate principal amount not to exceed $500,000 at any one time outstanding;

(x) [reserved]; and

(y) Liens on the Collateral granted to provide adequate protection pursuant to the Interim Order (or the Final Order, if applicable).

Section 8.02 Asset Sales.

The Borrower will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale, except for the following ("***Permitted Asset Sales***"):

(a) Asset Sales of used, worn out, obsolete or surplus property by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business or the abandonment in the ordinary course of business that is, in the reasonable judgment of the Borrower, no longer economically practicable to maintain or useful in the conduct of the Borrower and its Restricted Subsidiaries in their respective businesses taken as a whole;

(b) Asset Sales of inventory in the ordinary course of business;

(c) Asset Sales of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Asset Sale are reasonably promptly (but in no event later than 60 days after the Asset Sale) applied to the purchase price of such replacement property;

(d) Asset Sales of property by any Restricted Subsidiary to the Borrower or to a wholly-owned Restricted Subsidiary; ***provided***, that if the transferor of such property is a Credit Party, the transferee thereof must either be the Borrower or another Credit Party and, to the extent such property is Collateral, such property shall remain Collateral (for the avoidance of doubt, for the benefit of all Secured Creditors) after giving effect to such Asset Sale;

(e) Asset Sales permitted by **Section 8.05** and Restricted Payments permitted by **Section 8.03**;

(f) [reserved];

(g) so long as no Default or Event of Default shall occur and be continuing, the grant of any option or other right to purchase any asset in a transaction that would be permitted under the provisions of this **Section 8.02**;

(h) leases (including operating and capital leases), subleases, assignments, licenses, sublicenses of real or personal property in the ordinary course of business and in accordance with the applicable Security Documents (excluding, for the avoidance of doubt, sale-leaseback agreements);

(i) [reserved];

(j) transfers of property subject to casualty or condemnation events upon receipt of Net Cash Proceeds from a Recovery Event in respect thereof;

(k) to the extent constituting an Asset Sale, the granting of Permitted Liens under **Section 8.01** (but not the sale or other Asset Sale of the property subject to such Permitted Liens);

(l) dispositions in the ordinary course of business of cash and Cash Equivalents in transactions not otherwise prohibited by any Credit Document; and

(m) [reserved].

Provided that if the aggregate Fair Market Value of all such Permitted Asset Sales (other than clauses (b), (c) (but solely with respect to equipment) and (d) above) since the Closing Date exceeds $1,000,000, such Permitted Asset Sales shall require the consent of the Required Lenders.

Section 8.03 Restricted Payments.

The Borrower will not, and will not permit any of its Restricted Subsidiaries to, declare or make, directly or indirectly, any Restricted Payment, except:

(a) dividends or distributions payable to the Borrower or any Credit Party; and

(b) payments of Tax Distributions;

The amount of all Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Borrower or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment.

Section 8.04 Indebtedness.

The Borrower will not, and will not permit any of its Restricted Subsidiaries to create, incur, assume or suffer to exist any Indebtedness, except for the following:

(a) the incurrence by the Borrower and its Restricted Subsidiaries of Indebtedness (i) existing as of the Closing Date and set forth on **Schedule 8.04** ("***Existing Indebtedness***") and (ii) outstanding on the Petition Date under the Pre-Petition Credit Agreements or Pre-Petition LC Facility Agreement; ***provided*** that any such Existing Indebtedness owed to any Equity Holder shall be Subordinated Indebtedness;

(b) the incurrence by the Borrower and any Guarantor of Indebtedness under the Credit Documents;

(c) the incurrence by the Borrower and any Guarantor of Indebtedness under the DIP ABL Asset Priority Loan Documents and the Pre-Petition ABL Credit Agreement Documents in an aggregate principal amount not to exceed $90,000,000;

(d) the incurrence by the Borrower or any of its Restricted Subsidiaries of Indebtedness represented by Capital Lease Obligations or purchase money obligations or other

Indebtedness, in each case, incurred for the purpose of financing all or any part of the purchase price or cost of design, construction, installation or improvement of property (real or personal), plant or equipment used in the business of the Borrower or any of its Restricted Subsidiaries, in an aggregate principal amount, not to exceed the aggregate principal amount of $500,000 in the aggregate at any time outstanding;

(e) [reserved];

(f) Indebtedness of (x) the Borrower or any Guarantor to any other Credit Party that is a Debtor or any Restricted Subsidiary that is a non-Credit Party and (y) any Restricted Subsidiary that is a non-Credit Party to any other Restricted Subsidiary that is a non-Credit Party; ***provided*** that, any Indebtedness incurred under **sub-clause (x)** that is owed to a non-Credit Party must be unsecured and expressly subordinated to the prior payment in full in cash of all Obligations, in the case of the Borrower, or all Guaranteed Obligations, in the case of a Guarantor, in each case, on terms reasonably acceptable to the Administrative Agent;

(g) the incurrence by the Borrower or any of its Restricted Subsidiaries of Indebtedness in respect of Mining Financial Assurances, reclamation liabilities, water treatment, workers' compensation claims, payment obligations in connection with health or social security benefits, unemployment or other insurance obligations, statutory obligations, bankers' acceptances, performance under coal sales agreements (which Indebtedness shall be in the form of letters of credit or performance bonds), letters of credit, or completion or performance guarantees (including, without limitation, performance guarantees pursuant to coal supply agreements or equipment leases) and surety bonds in the ordinary course of business; ***provided***, Indebtedness in respect of performance obligations shall not constitute prepaid amounts or other advances of cash or other value for future delivery of coal;

(h) the incurrence by the Borrower or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five Business Days;

(i) Indebtedness of the Borrower or the Guarantors incurred prior to the Petition Date in connection with agreements providing for indemnification, adjustment of purchase price or similar obligations incurred in connection with any disposition of any business, assets or Restricted Subsidiary of the Borrower (other than Guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Restricted Subsidiary for the purpose of financing such acquisition), so long as the principal amount does not exceed the gross proceeds actually received by the Borrower or any of the Guarantors in connection with such disposition;

(j) [reserved];

(k) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in respect of netting services, overdraft protections and otherwise in respect of deposit accounts;

(l) any Guarantee of Indebtedness of the Borrower or a Restricted Subsidiary to the extent that the guaranteed Indebtedness was permitted to be incurred by another provision of this

Section 8.04; ***provided*** that if the Indebtedness being guaranteed is subordinated to the Obligations or Guaranteed Obligations, then the Guarantee must be subordinated, as applicable, to the same extent as the Indebtedness guaranteed;

(m) Indebtedness which may be deemed to exist pursuant to any guaranties, performance, surety, statutory, appeal or similar obligations incurred in the ordinary course of business;

(n) guarantees in the ordinary course of business of the obligations of suppliers and licensees (other than suppliers and licensees that are Affiliates of the Borrower) of Borrower and its Restricted Subsidiaries;

(o) the incurrence by any Borrower or any Guarantor of additional Indebtedness in an aggregate principal amount not to exceed $500,000 at any time outstanding; and

(p) the incurrence by the Borrower or any of its Restricted Subsidiaries of (x) Hedging Obligations in the ordinary course of business and on a non-speculative basis and (y) Cash Management Obligations in the ordinary course of business.

The Borrower will not incur, and will not permit any Guarantor to incur, any Indebtedness that is contractually subordinated in right of payment to any other Indebtedness of the Borrower or such Guarantor unless such Indebtedness is also contractually subordinated in right of payment to the Obligations and the applicable Subsidiary Guaranty on substantially identical terms; ***provided***, ***however***, that no Indebtedness will be deemed to be contractually subordinated in right of payment to any other Indebtedness of the Borrower or any Guarantor solely by virtue of being unsecured or by virtue of being secured on a junior priority basis.

Section 8.05 Merger, Consolidation or Sale of Assets.

The Borrower will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, merge, dissolve, liquidate, consolidate with or into another Person, or sell, assign, lease, transfer, convey or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default or Event of Default exists or would result therefrom:

(a) any Restricted Subsidiary may merge with (i) the Borrower, ***provided*** that the Borrower shall be the continuing or surviving Person, or (ii) any one or more other Restricted Subsidiaries, ***provided*** that when any Restricted Subsidiary that is a Credit Party is merging with another Restricted Subsidiary, the Credit Party shall be the continuing or surviving Person;

(b) any Restricted Subsidiary may sell, assign, lease, transfer, convey or otherwise dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Restricted Subsidiary that is a Debtor; ***provided*** that, if the transferor in such a transaction is a Credit Party, then the transferee must either be the Borrower or another Credit Party that is a Debtor;

(c) [reserved]; and

(d) the Borrower and its Restricted Subsidiaries may consummate any transaction that would be permitted as an Investment under **Section 8.11**.

Section 8.06 Transactions with Affiliates.

The Borrower will not, and will not permit any of its Restricted Subsidiaries to, make any payment to or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate (each, an "***Affiliate Transaction***"), unless the Affiliate Transaction is (i) not prohibited by this Agreement and (ii) on terms that are not materially less favorable to the Borrower or the relevant Restricted Subsidiary than those that would have been obtained in a comparable arm's-length transaction by the Borrower or such Restricted Subsidiary with a Person other than an Affiliate (or if, in the good faith judgment of the Borrower's Board of Directors, no comparable transaction is available with which to compare any such transaction, such transaction is otherwise fair to the Borrower or the relevant Restricted Subsidiary from a financial point of view). The foregoing restrictions shall not apply to the following:

(a) transactions between or among the Borrower and its Restricted Subsidiaries that are Debtors;

(b) [reserved];

(c) [reserved];

(d) combined insurance programs and 401(k) plans with JMP Coal Holdings, LLC, in each case, consistent with past practice;

(e) Restricted Payments that do not violate the provisions of **Section 8.03** and Permitted Investments;

(f) transactions (including payments and performance) pursuant to agreements or arrangements in effect on the date of this Agreement and set forth on **Schedule 8.06**; or any amendment, replacement, extension or renewal thereof (so long as such agreement or arrangement as so amended, replaced, extended or renewed is not materially less advantageous, taken as a whole, to the Lenders than the original agreement or arrangement as in effect on the date of this Agreement);

(g) [reserved];

(h) [reserved]; and

(i) the execution of the Transactions, the performance of the obligations under the Credit Documents, the entering into the RSA, the transactions specifically contemplated by the RSA and the Acceptable Plan of Reorganization, the payment of all fees and expenses related to the Transactions, the RSA and the Acceptable Plan of Reorganization, and any other transaction approved by the Bankruptcy Court pursuant to an order in form and substance satisfactory to the Required Lenders.

Section 8.07 Limitation on Certain Restrictions on Subsidiaries; Negative Pledge.

(a) The Borrower will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to:

(i) pay dividends or make any other distributions on its Capital Stock to the Borrower or any of its Restricted Subsidiaries, or with respect to any other interest or participation in, or measured by, its profits, or pay any indebtedness owed to the Borrower or any of its Restricted Subsidiaries;

(ii) make loans or advances to the Borrower or any of its Restricted Subsidiaries; or

(iii) sell, lease or transfer any of its properties or assets to the Borrower or any of its Restricted Subsidiaries.

(b) **Clause (a)** above will not apply to encumbrances or restrictions existing under or by reason of:

(i) Existing Indebtedness, the DIP ABL Asset Priority Lien Documents, the Pre-Petition LC Facility Agreement and the Pre-Petition Credit Documents as in effect on the Closing Date;

(ii) this Agreement and the other Credit Documents;

(iii) agreements governing other Indebtedness permitted to be incurred or issued under **Section 8.04(d)**; ***provided*** that the restrictions therein are (x) customary for instruments of such type and (y) will not materially adversely impact the ability of the Borrower to make any payments required to be made under this Agreement;

(iv) applicable Requirements of Law;

(v) any instrument governing Indebtedness or Capital Stock of a Person acquired by the Borrower or any of its Restricted Subsidiaries as in effect at the time of such acquisition (except to the extent such Indebtedness or Capital Stock was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired; ***provided*** that, in the case of Indebtedness, such Indebtedness was permitted by this Agreement;

(vi) customary non-assignment provisions in contracts, leases, sub-leases and licenses entered into in the ordinary course of business;

(vii) purchase money obligations for property acquired in the ordinary course of business and Capital Lease Obligations;

(viii) Liens, including real property mortgages, permitted to be incurred under **Section 8.01** that limit the right of the debtor to dispose of the assets subject to such Liens;

(ix) customary provisions limiting the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements entered into in the ordinary course of business and permitted to be entered into pursuant to this Agreement, which limitation is applicable only to the assets that are the subject of such agreements;

(x) customary restrictions and conditions contained in agreements relating to the sale of a Restricted Subsidiary or assets pending such sale; ***provided*** that such restrictions and conditions apply only to such Restricted Subsidiary or such assets that are to be sold and such sale is permitted hereunder; and

(xi) restrictions on cash or other deposits or net worth imposed by customers (other than customers that are Affiliates of the Borrower) under contracts entered into in the ordinary course of business.

(c) In addition, the Borrower will not, and will not permit any of its Restricted Subsidiaries to, enter into any Contractual Obligation which prohibits or limits the ability of any Credit Party to create, incur, assume or suffer to exist any Lien upon any of their respective properties or revenues, whether now owned or hereafter acquired, or which requires the grant of any security for an obligation if security is granted for another obligation, except the following:

(i) this Agreement, the other Credit Documents, the DIP ABL Asset Priority Lien Documents, the Pre-Petition LC Facility Agreement and the Pre-Petition Credit Agreements;

(ii) covenants in documents creating Liens permitted by **Section 8.01** to the extent such covenants relate solely to the assets (and any proceeds in respect thereof) which are the subject of such Liens;

(iii) any other agreement that does not restrict in any manner (directly or indirectly) Liens created pursuant to the Credit Documents on any Collateral securing the Obligations and does not require the direct or indirect granting of any Lien securing any Indebtedness or other obligation by virtue of the granting of Liens on or pledge of property of any Credit Party to secure the Obligations; and

(iv) any prohibition or limitation that:

(A) exists pursuant to applicable Requirements of Law,

(B) consists of customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under **Section 8.02** pending the consummation of such sale,

(C) restricts subletting, assignment or other transfer of interests contained in any lease, license or similar agreement of the Borrower or any of its Restricted Subsidiaries,

(D) exists in any agreement in effect at the time such Restricted Subsidiary becomes a Restricted Subsidiary of the Borrower, so long as such agreement was not entered into in contemplation of such person becoming a Restricted Subsidiary or

(E) is imposed by any amendments or refinancings that are otherwise permitted by the Credit Documents of the contracts, instruments or obligations referred to in **clause (iv)(D)**;

provided that such amendments and refinancings are no more restrictive with respect to such prohibitions and limitations in any material respect than those prior to such amendment or refinancing.

Section 8.08 Business Activities.

The Borrower will not, and will not permit any of its Restricted Subsidiaries to, engage directly or indirectly in any business other than Permitted Businesses.

Section 8.09 Amendments, etc. of Organizational Documents and Pre-Petition Credit Documents.

The Borrower will not, and will not permit any of its Restricted Subsidiaries to (a) terminate, amend, waive or otherwise modify any of its Organizational Documents in a manner materially adverse to any Credit Party or to the Lenders (in their capacity as Lenders) or (b) amend or otherwise modify any term or condition of any Pre-Petition Credit Document or the Pre-Petition LC Facility Agreement Documents or give any consent, waiver or approval thereunder, or waive any default under or any breach of any term or condition of any Pre-Petition Credit Document without the consent of the Required Lenders.

Section 8.10 [Reserved].

Section 8.11 Investments.

The Borrower will not, and will not permit any of its Restricted Subsidiaries to, make or hold any Investments, except for Permitted Investments.

Section 8.12 [Reserved].

Section 8.13 Prepayments, etc. of Indebtedness.

The Borrower will not, and will not permit any Guarantor to, make any Restricted Junior Debt Payment, except:

(a) adequate protection payments thereof pursuant to the Orders;

(b) [reserved], and

(c) any Indebtedness owed to the Borrower or any wholly-owned Restricted Subsidiary that is a Debtor.

Section 8.14 Accounting Changes.

The Borrower will not change its federal tax identification number without providing at least 15 days' prior written notice to the Administrative Agent.

Section 8.15 [Reserved].

Section 8.16 Variance Covenant.

Beginning with the delivery of the initial Budget Variance Report, as of the last day of each applicable Test Period, (i) the negative variance (as compared to the Approved Budget) of the actual operating cash receipts of the Debtors shall not exceed 20% and (ii) the positive variance (as compared to the Approved Budget) of the aggregate operating disbursements (excluding professional fees and expenses) made by the Debtors shall not exceed 10%.

Section 8.17 Bankruptcy Case Prohibitions.

Notwithstanding anything else herein to the contrary, no Credit Party shall, without the reasonable consent of the Required Lenders, file with the Bankruptcy Court a motion to approve or otherwise seek to assume, assign or reject any material executory contract.

ARTICLE IX.
EVENTS OF DEFAULT.

Upon the occurrence of any of the following specified events (each, an "***Event of Default***"):

Section 9.01 Payments.

The Borrower shall (a) default in the payment when due of any principal of any Loan or any Note or (b) default, and such default shall continue unremedied for three or more Business Days, in the payment when due of any interest on any Loan or Note or any Fees or any other amounts owing hereunder or under any other Credit Document; or

Section 9.02 Representations, etc.

Any representation, warranty or statement made or deemed made by any Credit Party herein or in any other Credit Document or in any certificate delivered to the Administrative Agent or any Lender pursuant hereto or thereto shall prove to be untrue in any material respect (or, in the case of any such representation, warranty or statement that is qualified as to

"materiality", "Material Adverse Effect" or similar language, shall prove to be untrue in any respect) on the date as of which made or deemed made; or

Section 9.03 Covenants.

The Borrower or any of its Restricted Subsidiaries shall (a) default in the due performance or observance by it of any term, covenant or agreement contained in **Sections 7.01(h)**, **7.04** (with respect to the existence of the Borrower and its Restricted Subsidiaries), **7.08**, **7.11**, **7.16**, **7.17**, **7.18**, or **Article VIII** or (b) default in the due performance or observance by it of any other term, covenant or agreement contained in this Agreement (other than those set forth in **Sections 9.01** and **9.02**) or any other Credit Document and, in the case of this **clause (b)**, such default shall continue unremedied for a period of 30 days after the date on which written notice thereof is given to the defaulting party by the Administrative Agent or the Required Lenders; or

Section 9.04 Default Under Other Agreements.

(a) The Borrower or any of its Subsidiaries shall (x) default in any payment of Indebtedness (other than the Obligations and any Indebtedness of any Debtor that was incurred prior to the Petition Date) (including, without limitation, any Indebtedness under the DIP ABL Asset Priority Lien Documents and/or Indebtedness incurred prior to the Petition Date that is required to be paid under the Bankruptcy Code or by an order of the Bankruptcy Court) beyond the period of grace, if any, provided in an instrument or agreement under which such Indebtedness was created (or, in respect of Indebtedness required to be paid by Bankruptcy Court order, the period set forth in such order) or (y) default in the observance or performance of any agreement or condition relating to any Indebtedness (other than the Obligations and any Indebtedness of any Debtor that was incurred prior to the Petition Date) (including, without limitation, any Indebtedness under the DIP ABL Asset Priority Lien Documents and/or any agreement or condition relating to any Indebtedness incurred prior to the Petition Date that is required to be observed or performed under the Bankruptcy Code or by an order of the Bankruptcy Court) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, in the case of this **clause (y)**, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause (determined without regard to whether any notice is required), any such Indebtedness to become due prior to its Stated Maturity or the commitments thereunder to be terminated; or

(b) any Indebtedness (other than the Obligations and any Indebtedness of any Debtor that was incurred prior to the Petition Date (or, if later, the date on which such Person became a Debtor)) of the Borrower or any of its Subsidiaries shall be declared to be (or shall become) due and payable, or required to be prepaid other than by a regularly scheduled required prepayment, prior to the Stated Maturity thereof;

provided that it shall not be a Default or an Event of Default under **clauses (a)** or **(b)** of this **Section 9.04** unless the aggregate principal amount of all Indebtedness to which a circumstance described in such clauses applies is at least $10,000,000.

Section 9.05 Bankruptcy, etc.

Any Restricted Subsidiary that is not a Debtor (any such Restricted Subsidiary, an "***Applicable Subsidiary***") shall commence a voluntary case concerning itself under Title 11 of the United States Code entitled "Bankruptcy", as now or hereafter in effect, or any successor thereto (the "***Bankruptcy Code***") and such Applicable Subsidiary shall fail to become a Guarantor pursuant to **Section 7.12** within 10 Business Days; or an involuntary case is commenced against an Applicable Subsidiary, and the petition is not controverted within 10 days, or is not dismissed within 45 days after the filing thereof, ***provided***, ***however***, that during the pendency of such period, each Lender shall be relieved of its obligation to extend credit hereunder; or a custodian (as defined in the Bankruptcy Code) is appointed for, or takes charge of, all or substantially all of the property of an Applicable Subsidiary, to operate all or any substantial portion of the business of an Applicable Subsidiary, commences any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to an Applicable Subsidiary, or there is commenced against an Applicable Subsidiary any such proceeding which remains undismissed for a period of 45 days after the filing thereof, or an Applicable Subsidiary is adjudicated insolvent or bankrupt; or any order of relief or other order approving any such case or proceeding is entered; or an Applicable Subsidiary makes a general assignment for the benefit of creditors; or any Company action is taken by an Applicable Subsidiary for the purpose of effecting any of the foregoing; or

Section 9.06 ERISA.

One or more ERISA Events shall have occurred and the liability of any or all of the Borrower, any Restricted Subsidiary of the Borrower and the ERISA Affiliates contemplated by the foregoing either individually or in the aggregate, has had or would be reasonably expected to have, a Material Adverse Effect; or

Section 9.07 Security Documents.

(a) Any of the Security Documents that extend to assets constituting a material portion of the Collateral shall cease to be in full force and effect (other than in accordance with its terms), or shall cease to give the Collateral Agent for the benefit of the Secured Creditors the Liens, rights, powers and privileges purported to be created thereby (including, without limitation, a perfected security interest in, and Lien on, any material portion of the Collateral, in favor of the Collateral Agent, superior to and prior to the rights of all third Persons (except as permitted by **Section 8.01** and, with respect to perfection, except as otherwise expressly provided in the applicable Security Document)); or

(b) the Borrower or any other Credit Party, or any Person acting for or on behalf of such Credit Party, shall deny or disaffirm in writing such Credit Party's obligations under any Security Document to which it is a party; or

Section 9.08 Guaranties.

Any Subsidiary Guaranty or any provision thereof shall cease to be in full force or effect as to any Guarantor (except as a result of a release of any Guarantor in accordance with the terms

thereof), or any Guarantor or any Person acting for or on behalf of such Guarantor shall deny or disaffirm in writing such Guarantor's obligations under the Subsidiary Guaranty to which it is a party; or

Section 9.09 Judgments.

(a) One or more judgments or decrees shall be entered against the Borrower or any Restricted Subsidiary of the Borrower (which, in the case of the Debtors only, arose after the Petition Date) involving in the aggregate for the Borrower and its Restricted Subsidiaries a liability (not paid or to the extent not covered by a reputable and solvent insurance company) and such judgments and decrees either shall be final and non-appealable or shall not be vacated, discharged or stayed or bonded pending appeal for any period of 30 consecutive days, and the aggregate amount of all such judgments equals or exceeds $10,000,000; or

(b) One or more judgments or orders shall have been rendered against any Restricted Subsidiary of the Borrower (which, in the case of the Debtors only, arose following the Petition Date), and such judgment or order shall not have been stayed (including as a result of the automatic stay of the Cases), and which shall cause or could reasonably be expected to cause a Material Adverse Effect, and in each case, such action shall not be effectively stayed (including as a result of the automatic stay under the Cases); or

Section 9.10 Change of Control.

Any Change of Control shall have occurred, other than pursuant to the Acceptable Plan of Reorganization; or

Section 9.11 DIP ABL Intercreditor Agreement.

The DIP ABL Intercreditor Agreement or any provision thereof shall, as a result of any act or omission of any Credit Party, cease to be in full force and effect other than in accordance with its terms, or any Lien securing or purporting to secure Indebtedness or other obligations owing under the DIP ABL Asset Priority Lien Documents shall cease to be subordinated (to the extent required to be subordinated under the Security Documents or the Orders) to all Liens created under the Security Documents and the Orders securing the Obligations; or

Section 9.12 Inability to Pay Debt.

Any Restricted Subsidiary (other than a Debtor) becomes unable or admits in writing its inability or fails generally to pay its debts as they become due; or

Section 9.13 Certain Bankruptcy Matters.

(a) **Dismissal or Conversion of Cases; Appointment of Trustee or Examiner; Cash Collateral Use.**

(i) Any of the Cases of the Credit Parties shall be dismissed or converted to a case under chapter 7 of the Bankruptcy Code;

(ii) a trustee or an examiner having expanded powers (beyond those set forth under sections 1106(a)(3) and (4) of the Bankruptcy Code) (other than a fee examiner) is appointed or elected in the any of the Cases, or the Bankruptcy Court shall have entered an order providing for such appointment;

(iii) an order of the Bankruptcy Court shall be entered denying or terminating use of Cash Collateral by the Credit Parties and the Credit Parties shall have not obtained use of Cash Collateral pursuant to an order consented to by, and in form and substance reasonably acceptable to, the Required Lenders;

(iv) any Credit Party shall file a motion or other pleading seeking, or otherwise consenting to, any of the matters set forth in **clauses (i)** through **(iii)** above or the granting of any other relief that if granted would give rise to an Event of Default except to the extent that such motion, proceeding or consent shall have been withdrawn; or

(v) any Credit Party or any of its Subsidiaries, or any person claiming by or through any Credit Party or any of its Subsidiaries, with any Credit Party's or any Subsidiary's consent, shall obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding against (A) the Administrative Agent, the Collateral Agent, or any of the Lenders relating to the DIP Term Facility, or (B) the administrative agent, the collateral agent or any lender relating to any of the Pre-Petition Credit Agreements;

(b) the existence of any claims or charges, or the entry of any order of the Bankruptcy Court authorizing (i) any claims or charges, other than in respect of the DIP Facilities and the Carve-Out or as otherwise permitted under the applicable Credit Documents or the Orders, entitled to superpriority administrative expense claim status in any chapter 11 case pursuant to Section 364(c)(1) of the Bankruptcy Code that are *pari passu* with or senior to the claims of the Administrative Agent, the Collateral Agent and the Lenders under the DIP Term Facility, or there shall arise or be granted by the Bankruptcy Court any claim having priority over any or all administrative expenses of the kind specified in clause (b) of Section 503 or clause (b) of Section 507 of the Bankruptcy Code (other than the Carve-Out), or (ii) any Lien on the Collateral having a priority senior to or *pari passu* with the Liens and security interests granted herein, except, in each case, as expressly provided in the Credit Documents or in the Orders then in effect (but only in the event specifically consented to by the Required Lenders (or the Administrative Agent with the consent of the Required Lenders)), whichever is in effect;

(c) the Bankruptcy Court shall enter an order or orders granting relief from any stay of proceeding (including, the automatic stay applicable under Section 362 of the Bankruptcy Code to the holder or holders of any security interest) to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of any of the Credit Parties which have a value in excess of $3,000,000 in the aggregate;

(d) Certain Orders.

(i) an order of the Bankruptcy Court shall be entered reversing, amending, supplementing, staying, vacating or otherwise amending, supplementing or modifying the

Interim Order or the Final Order, without the prior written consent of the Required Lenders, or a Credit Party shall apply for the authority to do so except to the extent such application shall have been withdrawn or shall support or fail to promptly oppose any other party's application for entry of such an order;

(ii) the Interim Order (prior to the Final Order Entry Date) or the Final Order (on and after the Final Order Entry Date) shall cease to create a valid and perfected Lien on the Collateral or to be in full force and effect, shall have been reversed, modified, amended, stayed, vacated, or subject to stay pending appeal, in the case of modification or amendment, without prior written consent of the Required Lenders (or the Administrative Agent with the consent of the Required Lenders);

(iii) an order shall have been entered by the Bankruptcy Court avoiding or requiring disgorgement by the Administrative Agent or any of the Lenders of any amounts received in respect of the Obligations;

(iv) any of the Credit Parties shall fail to comply with any material provision of the Interim Order (prior to the Final Order Entry Date) or the Final Order (on and after the Final Order Entry Date); or

(v) an order in the Cases shall be entered charging any of the Collateral under Section 506(c) of the Bankruptcy Code against the Lenders or the commencement of other actions that is materially adverse to Administrative Agent, the Collateral Agent, the Lenders or their respective rights and remedies under the DIP Term Facility in any of the Cases or inconsistent with any of the Credit Documents;

(e) a Reorganization Plan that is not an Acceptable Plan of Reorganization shall be confirmed in any of the Cases of the Credit Parties, or any order shall be entered which dismisses any of the Cases of the Credit Parties and which order does not provide for the Obligations (other than contingent indemnification obligations not yet due and payable) to be satisfied in full in cash or otherwise satisfied pursuant to **Section 2.04(e)**, or any of the Credit Parties and their Subsidiaries shall seek, support or fail to contest in good faith the filing or confirmation of any such Reorganization Plan or entry of any such order;

(f) failure to satisfy any of the Milestones in accordance with the terms relating to such Milestone (unless waived or extended with the consent of the Required Lenders);

(g) any Credit Party or any Subsidiary thereof shall take any action in support of any matter set forth in **clauses (l)** through **(p)** (inclusive) of this **Section 9.13** or any other Person shall do so and such application is not contested in good faith by the Credit Parties and the relief requested is granted in an order that is not stayed pending appeal;

(h) any Credit Party or any Subsidiary thereof shall obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding seeking, or otherwise consenting to (i) the invalidation, subordination or other challenging of the Superpriority Claims and Liens granted to secure the Obligations or any other rights granted to the Administrative Agent, the Collateral Agent and the Lenders in the

Orders or this Agreement or (ii) any relief under section 506(c) of the Bankruptcy Code with respect to any Collateral;

(i) any Credit Party shall file a pleading in support of a challenge of any payments made to the Administrative Agent, the Collateral Agent or any Lender with respect to the Obligations or the administrative agent, the collateral agent or any lender under any Pre-Petition Credit Agreement with respect to the obligations thereunder, other than to challenge the occurrence of a Default or Event of Default;

(j) without the consent of the Required Lenders, the filing of any motion by the Credit Parties seeking approval of (or the entry of an order by the Bankruptcy Court approving) adequate protection to any pre-petition agent or lender that is inconsistent with the Interim Order (prior to the Final Order Entry Date) or the Final Order (on and after the Final Order Entry Date);

(k) without the Required Lenders' consent, the entry of any order by the Bankruptcy Court granting, or the filing by any Credit Party or any of its Subsidiaries of any motion or other request with the Bankruptcy Court (in each case, other than the Orders and motions seeking entry thereof or permitted amendments or modifications thereto) seeking, authority to use any cash proceeds of any of the Collateral without the Administrative Agent's and the Required Lenders' consent or to obtain any financing under section 364 of the Bankruptcy Code other than the facility hereunder unless such motion or order contemplates payment in full in cash of the Obligations immediately upon consummation of the transactions contemplated thereby;

(l) if any Credit Party or any of its Subsidiaries is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any part of the business affairs of the Credit Parties and their Subsidiaries, taken as a whole, which could reasonably be expected to have a Material Adverse Effect; *provided*, that the Credit Parties shall have 10 Business Days after the entry of such an order to obtain a court order vacating, staying or otherwise obtaining relief from the Bankruptcy Court or another court to address any such court order;

(m) any Credit Party shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any pre-petition Indebtedness or payables other than payments in respect of any Pre-Petition Credit Agreement or as otherwise not prohibited under this Agreement, in each case, to the extent authorized by one or more "first day" orders, the Interim Order or the Final Order and consistent with the Approved Budget;

(n) if, unless otherwise approved by the Administrative Agent and the Required Lenders, an order of the Bankruptcy Court shall be entered providing for a change in venue with respect to the Cases and such order shall not be reversed or vacated within 10 days;

(o) without the Required Lenders' consent, any Credit Party or any Subsidiary thereof shall file any motion or other request with the Bankruptcy Court seeking (i) to grant or impose, under section 364 of the Bankruptcy Code or otherwise, liens or security interests in any Collateral, whether senior, equal or subordinate to the Administrative Agent's or Collateral Agent's liens and security interests except to the extent permitted by this Agreement; (ii) to use, or seek to use, Cash Collateral (as defined in the Orders); or (iii) to modify or affect any of the rights of the Administrative Agent, the Collateral Agent, or the Lenders under the Orders or the

Credit Documents, by any Reorganization Plan confirmed in the Cases or subsequent order entered in the Cases;

(p) the RSA shall cease to be in full force and effect;

(q) without the Required Lenders' consent, an order shall have been entered by the Bankruptcy Court terminating the exclusive right of any Credit Party or any Subsidiary thereof to file a chapter 11 plan or solicit a disclosure statement; or

(r) without the Required Lenders' consent, any Credit Party or any Subsidiary thereof shall move or otherwise apply in the Cases for authority to (i) sell all or substantially all of the assets or equity of any Credit Party or any Subsidiary thereof pursuant to section 363 of the Bankruptcy Code or otherwise, or (ii) consummate a sale of assets or equity of any Credit Party or any Subsidiary thereof or Collateral having a value in excess of $500,000 outside of the ordinary course of business and not otherwise permitted hereunder;

then, and in any such event, and at any time thereafter, if any Event of Default shall then be continuing, the Administrative Agent, upon the written request of the Required Lenders, shall by written notice to the Borrower, take any or all of the following actions, without prejudice to the rights of the Administrative Agent, the Collateral Agent and any Lender or the holder of any Note to enforce its claims against any Credit Party:

(a) declare all of the Commitments terminated, whereupon all Commitments of each Lender shall forthwith terminate immediately without any other notice of any kind;

(b) declare the principal of and any accrued interest in respect of all Loans and the Notes and all Obligations owing hereunder and thereunder to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Credit Party;

(c) enforce, as Collateral Agent, all of the Liens and security interests created pursuant to the Security Documents or the Orders; and

(d) enforce each Subsidiary Guaranty.

Following the occurrence of an Event of Default, the Administrative Agent and Lenders may enforce any or all of their rights and remedies set forth in the Orders, this Agreement and the other Credit Documents in accordance with the Orders.

ARTICLE X.
THE ADMINISTRATIVE AGENT

Section 10.01 Appointment.

(a) The Lenders hereby irrevocably designate and appoint Cantor as Administrative Agent and Collateral Agent (for purposes of this **Article X** (other than **Section 10.09**) and **Section 11.01**, the term "Administrative Agent" also shall include Cantor in its capacity as

Collateral Agent pursuant to the Security Documents) to act as specified herein and in the other Credit Documents. Each Lender hereby irrevocably authorizes, and each holder of any Note by the acceptance of such Note shall be deemed irrevocably to authorize, the Administrative Agent to take such action on its behalf under the provisions of this Agreement, the other Credit Documents and any other instruments and agreements referred to herein or therein and to exercise such powers and to perform such duties hereunder and thereunder as are specifically delegated to or required of the Administrative Agent by the terms hereof and thereof and such other powers as are reasonably incidental thereto. The Administrative Agent may perform any of its respective duties hereunder by or through its officers, directors, agents, employees or affiliates.

Section 10.02 Nature of Duties; Exculpatory Provisions

(a) The Administrative Agent's duties hereunder and under the other Credit Documents are solely mechanical and administrative in nature and the Administrative Agent shall not have any duties or responsibilities except those expressly set forth in this Agreement and in the other Credit Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(i) Shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) Shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Credit Documents that the Administrative Agent is required to exercise upon the written direction of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Credit Documents); ***provided*** that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent or any of its Affiliates to liability or that is contrary to any Credit Document or applicable law; ***provided further*** that the Administrative Agent shall not be required to take any action unless the written direction of the Required Lenders with respect to such action includes an agreement to indemnify the Administrative Agent with respect to such action; and

(iii) Except as expressly set forth herein and in the other Credit Documents, the Administrative Agent shall not have any duty to disclose or be liable for the failure to disclose, any information relating to the Credit Parties or any of their Affiliates that is communicated to or obtained by the Administrative Agent or any of its Affiliates in any capacity.

(b) Neither the Administrative Agent, nor any of its officers, directors, agents, employees, attorneys or affiliates, shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in **Section 11.12** or in **Article IX** or (ii) in the absence of its own gross negligence or willful misconduct, in each case, as determined by a court

of competent jurisdiction in a final non-appealable judgment. The Administrative Agent shall not be deemed to have knowledge of any Default or the event or events that give or may give rise to any Default unless and until notice describing such Default, identified as a "notice of default", and such event or events is given to the Administrative Agent by the Credit Parties or any Lender.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Credit Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness of genuineness of this Agreement, any other Credit Document or any other agreement, instrument or document or the perfection or priority of any Lien or security interest created or purported to be created by the Credit Documents or (v) the satisfaction of any condition set forth in Article V or elsewhere herein, other than (but subject to the foregoing clause (ii)) to confirm receipt of items expressly required to be delivered to the Administrative Agent. Neither the Administrative Agent nor any of its related parties shall be responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Administrative Agent or any other Person given in, pursuant to or in connection with any Credit Documents.

(d) Nothing in this Agreement or any other Credit Document shall require the Administrative Agent to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Administrative Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Administrative Agent.

Section 10.03 Lack of Reliance on the Administrative Agent.

(a) Each Lender confirms to the Administrative Agent, each other Lender and each of their respective related parties that it (i) possesses such knowledge and experience in financial and business matters that it is capable, without reliance on the Administrative Agent, any other Lender or any of their respective related parties, of evaluating the merits and risks (including tax, legal, regulatory, accounting and other financial matters) of entering into this Agreement, making advances and other extensions of credit hereunder and under the other Credit Documents and in taking or not taking actions hereunder and thereunder, (ii) is financially able to bear such risk and (iii) has determined that entering into this Agreement and making advances and other extensions of credit hereunder and under the other Credit Documents is suitable and appropriate for it.

(b) Each Lender acknowledges that it is solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with this Agreement and the other Credit Documents and that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their respective related parties and based on such documents and information, as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will,

independently and without reliance upon the Administrative Agent or any other Lender or any of their related parties and based on such documents and information as it shall from time to time deem appropriate, continue to be solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with this Agreement and the other Credit Agreements, including but not limited to:

(i) The financial condition, status and capitalization of the Borrower and each other Credit Party;

(ii) The legality, validity, effectiveness, adequacy or enforceability of this Agreement and each other Credit Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Credit Document;

(iii) Determining compliance or non-compliance with any condition hereunder to the making of advances or the issuance of Letters of Credit; and

(iv) The adequacy, accuracy and/or completeness of any of the information delivered by the Administrative Agent, any other Lender or by any other Person under or in connection with this Agreement and the other Credit Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Credit Document.

Section 10.04 Certain Rights of the Administrative Agent.

If the Administrative Agent requests instructions from the Required Lenders with respect to any act or action (including failure to act) in connection with this Agreement or any other Credit Document, the Administrative Agent shall be entitled to refrain from such act or taking such action unless and until the Administrative Agent shall have received instructions from the Required Lenders; and the Administrative Agent shall not incur liability to any Lender by reason of so refraining. Without limiting the foregoing, neither any Lender nor the holder of any Note shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting hereunder or under any other Credit Document in accordance with the instructions of the Required Lenders.

Section 10.05 Reliance.

The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document, note, resolution, telex, teletype or telecopier message, cablegram, radiogram, order, or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of any advances, or the issuance of a letter of credit, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the

Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such advances or the issuance of such letter of credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower or any other Credit Party), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. No Lender shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting hereunder or under any other Credit Document in accordance with the instructions of the Required Lenders or refraining from acting hereunder or under any other Credit Document in accordance with the instructions of the Required Lenders other than with respect to the Administrative Agent's gross negligence or willful misconduct.

Section 10.06 Indemnification

(a) To the extent the Administrative Agent (or any Affiliate thereof in such capacity) is not promptly reimbursed and indemnified by the Borrower, each Lender severally agrees to indemnify the Administrative Agent (and any Affiliate thereof in such capacity) from and against such Lender's ratable share (determined provided below) of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Administrative Agent in any way relating to or arising out if the Credit Documents (collectively, the "***Indemnified Costs***"); ***provided, however***, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's gross negligence or willful misconduct as found in a final, non-appealable judgment by a court of competent jurisdiction; ***provided, further***, that, no action taken or refrained from in accordance with the directions or consent of the Required Lenders (or such other number or percentage of the Lenders as shall be required by the Credit Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this **Section 11.08**. Without limitation of the foregoing, each Lender agrees to reimburse the Administrative Agent promptly upon demand for its ratable share of any costs and expenses (including, without limitation, fees and expenses of counsel) payable by the Borrower under **Section 11.01**, to the extent that the Administrative Agent is not promptly reimbursed for such costs and expenses by the Borrower. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Costs, this **Section 11.08** applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person and whether or not the Administrative Agent is a party to such investigation, litigation or proceeding.

(b) For purposes of this **Section 10.06**, each Lender's ratable share of any amount shall be determined, at any time, according to the sum of (i) the aggregate principal amount of the advances outstanding at such time and owing to such Lender, (ii) such Lender's pro rata share of the aggregate available amount of all letters of credit outstanding at such time, and (iii) the aggregate unused portions of such Lender's term commitments at such time. The failure of any Lender to promptly reimburse the Administrative Agent upon demand for its ratable share of any amount required to be paid by the Lender parties to the Administrative Agent, as provided herein, shall not relieve any other Lender of its obligation hereunder to reimburse the Administrative Agent for its ratable share of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse the Administrative Agent for such other Lender's ratable share of such amount. Without prejudice to the survival of any other agreement of any

Lender hereunder, the agreement and obligations of each Lender contained in this **Section 10.06** shall survive the payment in full of principal, interest and all other amounts hereunder and under the other Credit Documents.

Section 10.07 The Administrative Agent in Its Individual Capacity.

(a) With respect to its obligation to make Loans under this Agreement, the Administrative Agent shall have the rights and powers specified herein for a "***Lender***" and may exercise the same rights and powers as though it were not performing the duties specified herein; and the term "***Lender***", "***Required Lenders***", or any similar terms shall, unless the context clearly indicates otherwise, include the Administrative Agent in its respective individual capacities. The Administrative Agent and its affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, investment banking, trust or other business with, or provide debt financing, equity capital or other services (including financial advisory services) to any Credit Party or any Affiliate of any Credit Party (or any Person engaged in a similar business with any Credit Party or any Affiliate thereof) as if they were not performing the duties specified herein, and may accept fees and other consideration from any Credit Party or any Affiliate of any Credit Party for services in connection with this Agreement and otherwise without having to account for the same to the Lenders.

(b) Each Lender acknowledges that Cantor Fitzgerald Securities and its respective Affiliates are engaged in wide range of financial services and businesses (including investment management, financing, securities, trading, corporate and investment banking and research) (such services and business are collectively referred to in this **Section 10.07** as "***Activities***") and may engage in the Activities with or on behalf of one or more of the Credit Parties or their respective Affiliates. Furthermore, Cantor Fitzgerald Securities and its respective Affiliates may, in undertaking the Activities, engage in trading in financial products or undertake other investment businesses for their own account or on behalf of others (including the Credit Parties and their Affiliates and including holding, for their own account or on behalf of others, equity and similar positions in the Borrower, another Credit Party or their respective Affiliates), including trading in or holding long, short or derivative positions in securities, loans or other financial products of one or more of the Credit Parties or their Affiliates. Each Lender understands and agrees that in engaging in the Activities, Cantor Fitzgerald Securities and its respective Affiliates may receive or otherwise obtain information concerning the Credit Parties or their Affiliates (including information concerning the ability of the Credit Parties to perform their respective obligations hereunder and under the other Financing Agreements), which information may not be available to any of the Lender parties that are not Affiliates of Cantor Fitzgerald Securities and its respective Affiliates. Except for documents expressly required by any Financing Agreement to be transmitted by the Administrative Agent to the Lender parties, neither the Administrative Agent nor any of its respective Affiliates shall have any duty or responsibility to provide, and shall not be liable for the failure to provide, any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Credit Party or any Affiliate of any Credit Party that may come into the possession of any Administrative Age or any Affiliate thereof or any employee of Administrative Agent thereof.

Section 10.08 Holders.

The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes hereof unless and until a written notice of the assignment, transfer or endorsement thereof, as the case may be, shall have been filed with the Administrative Agent. Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is the holder of any Note shall be conclusive and binding on any subsequent holder, transferee, assignee or endorsee, as the case may be, of such Note or of any Note or Notes issued in exchange therefor.

Section 10.09 Resignation by the Agents.

(a) Either Agent may resign from the performance of all its respective functions and duties hereunder and/or under the other Credit Documents at any time by giving 10 Business Days' prior written notice to the Lenders and, unless a Default or an Event of Default under **Section 9.05** then exists, the Borrower; ***provided*** that such resignation shall only take effect upon the appointment of a successor Agent pursuant to **clauses (b)** and **(c)** below or as otherwise provided below. In addition, the Required Lenders shall have the right, at any time, with or without cause, to remove the Administrative Agent.

(b) Upon receipt of any such notice of resignation by either Agent, the Required Lenders shall have the right to appoint a successor Agent hereunder or thereunder who shall be reasonably acceptable to the Borrower, which acceptance shall not be unreasonably withheld, conditioned or delayed (***provided*** that the Borrower's approval shall not be required if an Event of Default under **Section 9.01** then exists).

(c) If a successor Agent shall not have been so appointed within such 10 Business Day period, the applicable Agent, with the consent of the Borrower (which consent shall not be unreasonably withheld, conditioned or delayed, provided that the Borrower's consent shall not be required if an Event of Default under **Section 9.01** or **9.05** then exists), may (but shall not be obligated to) then appoint a successor Agent who shall serve as Administrative Agent or Collateral Agent, as applicable, hereunder and/or thereunder until such time, if any, as the Required Lenders appoint a successor Agent as provided above.

(d) If no successor Agent has been appointed pursuant to **clause (b)** or **(c)** above by the 20th Business Day after the date such notice of resignation was given by the applicable Agent, such Agent's resignation shall become effective (unless a later effective time is agreed to by the resigning Agent) and the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents; ***provided*** that, in the case of collateral security or other Liens (if any) held by the retiring Agent on behalf of the Lenders under any of the Credit Documents, the retiring Agent shall continue to hold such collateral security or other Liens until such time as a successor Agent is appointed. After the effectiveness of any such resignation and until such time, if any, as the Required Lenders appoint a successor Agent as provided above, (i) all payments and communications to be made by, to or through such resigning Agent shall instead be made by or to each applicable Lender directly and (ii) the Required Lenders shall perform all the duties of the resigning Agent, as applicable, hereunder and/or under any other Credit Document.

(e) Upon the acceptance of a successor's appointment as an Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided above in this paragraph). Upon a resignation of either Agent pursuant to this **Section 10.09**, such Agent shall remain indemnified to the extent provided in this Agreement and the other Credit Documents and the provisions of this **Article X** (and the analogous provisions of the other Credit Documents) and **Section 11.01** of this Agreement shall continue in effect for the benefit of such Agent, its sub agents and their respective related parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Administrative Agent under this Agreement.

Section 10.10 Collateral Matters.

(a) Each Lender authorizes and directs the Collateral Agent to enter into the Security Documents for the benefit of the Lenders and the other Secured Creditors. Each Lender hereby agrees, and each holder of any Note by the acceptance thereof will be deemed to agree, that, except as otherwise set forth herein or in the applicable Intercreditor Agreement, any action taken by the Required Lenders in accordance with the provisions of this Agreement or the Security Documents, and the exercise by the Required Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. The Collateral Agent is hereby authorized on behalf of all of the Lenders, without the necessity of any notice to or further consent from any Lender, from time to time prior to an Event of Default, to take any action with respect to any Collateral or Security Documents which may be necessary to perfect and maintain perfected the security interest in and liens upon the Collateral granted pursuant to the Security Documents. The Lenders also hereby authorize the Administrative Agent and Collateral Agent to enter into the DIP ABL Intercreditor Agreement and any other intercreditor agreement contemplated by **Section 8.01** on behalf of the Lenders and to comply with the terms thereof.

(b) The Lenders hereby authorize and direct the Collateral Agent to release any Lien granted to or held by the Collateral Agent upon any Collateral:

(i) upon termination of the Commitments and payment and satisfaction of all of the Obligations (other than inchoate indemnification obligations) at the time arising under or in respect of this Agreement or the Credit Documents or the transactions contemplated hereby or thereby,

(ii) constituting property being sold or otherwise disposed of (to Persons other than a Credit Party) upon the sale or other disposition thereof in compliance with **Section 8.02**,

(iii) if approved, authorized or ratified in writing by the Required Lenders (or all of the Lenders hereunder, to the extent required by **Section 11.12**),

(iv) to the extent constituting Excluded Assets,

(v) to the extent provided in the DIP ABL Intercreditor Agreement, or

(vi) as otherwise may be expressly provided in the relevant Security Documents or the last sentence of **Section 8.01**.

Upon request by the Administrative Agent at any time, subject to the DIP ABL Intercreditor Agreement and the Orders, the Lenders will confirm in writing the Collateral Agent's authority to release particular types or items of Collateral pursuant to this **Section 10.10**.

(c) The Collateral Agent shall have no obligation whatsoever to the Lenders or to any other Person to assure that the Collateral exists or is owned by any Credit Party or is cared for, protected or insured or that the Liens granted to the Collateral Agent herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Collateral Agent in this **Section 10.10** or in any of the Security Documents, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Collateral Agent may act in any manner it may deem appropriate, in its sole discretion, given the Collateral Agent's own interest in the Collateral as one of the Lenders and that the Collateral Agent shall have no duty or liability whatsoever to the Lenders, except for its gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final, non-appealable decision).

Section 10.11 Delivery of Information.

The Administrative Agent shall not be required to deliver to any Lender originals or copies of any documents, instruments, notices, communications or other information received by the Administrative Agent from any Credit Party, any Subsidiary, the Required Lenders, any Lender or any other Person under or in connection with this Agreement or any other Credit Document except (i) as specifically provided in this Agreement or any other Credit Document and (ii) as specifically requested from time to time in writing by any Lender with respect to a specific document, instrument, notice or other written communication received by and in the possession of the Administrative Agent at the time of receipt of such request and then only in accordance with such specific request.

Section 10.12 Delegation of Duties.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Documents by or through any one or more sub agents appointed by the Administrative Agent. The Administrative Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective related parties. Each such sub agent and the related parties of the Administrative Agent and each such sub agent shall be entitled to the benefits of all provisions of this Article X and Article XI (as though such sub-agents were the "Agent" under the Credit Documents) as if set forth in full herein with respect thereto; ***provided*** that the Administrative Agent shall not be responsible for the gross negligence or misconduct of any sub agents.

Section 10.13 Withholding.

To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any withholding tax applicable to such payment. Without limiting or expanding the provisions of **Section 4.04**, each Lender shall severally indemnify and hold harmless the Administrative Agent, within 10 days after demand therefor, for any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the IRS or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction in the rate of, withholding Tax ineffective, or because of a Lender's failure to comply with the provisions of **Section 11.04** relating to the maintenance of a Participant Register). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Credit Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this **Section 10.12**. The agreements in this **Section 10.12** shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

ARTICLE XI.
MISCELLANEOUS.

Section 11.01 Payment of Expenses, etc.

(a) The Borrower hereby agrees to:

(i) whether or not the transactions herein contemplated are consummated, pay all reasonable out-of-pocket costs and expenses of the Administrative Agent (including, without limitation, the reasonable fees and disbursements of the Administrative Agent's advisors and the Lenders' advisors, but, prior to an Event of Default, limited, in the case of outside legal counsel, to reasonable fees and disbursements of each of (u) Davis Polk & Wardwell LLP as primary counsel to the Ad Hoc Crossholder Lender Group, (v) Herrick, Feinstein LLP as primary counsel to the Administrative Agent and to the Collateral Agent, (w) Simpson Thacher & Bartlett LLP as primary counsel to Solus Alternative Asset Management LP, (x) Shearman & Sterling LLP as primary counsel to the Ad Hoc First Lien Lender Group, (y) one additional local counsel in each applicable jurisdiction and (z) one specialist counsel for each applicable specialty) in connection with the preparation, execution, delivery and administration of this Agreement and the other Credit Documents and the documents and instruments referred to herein and therein and any amendment, waiver or consent relating hereto or thereto, of the Administrative Agent and its Affiliates in connection with its or their syndication efforts with respect to

this Agreement and of the Administrative Agent and, after the occurrence of an Event of Default, each of the Lenders in connection with the enforcement of this Agreement and the other Credit Documents and the documents and instruments referred to herein and therein or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or pursuant to any insolvency or bankruptcy proceedings (including, in each case without limitation, the reasonable fees and disbursements of (v) Davis Polk & Wardwell LLP as primary counsel to the the Ad Hoc Crossholder Lender Group, (w) Simpson Thacher & Bartlett LLP as primary counsel to Solus Alternative Asset Management LP, (x) Shearman & Sterling LLP as primary counsel to the Ad Hoc First Lien Lender Group, (y) counsel and consultants for the Administrative Agent and, (z) after the occurrence of an Event of Default, counsel for each of the Lenders); and

(ii) indemnify the Administrative Agent, the Collateral Agent and each Lender, and each of their respective affiliates and the respective officers, directors, employees, representatives, agents, affiliates, trustees and investment advisors of the foregoing (each, an "***Indemnified Person***") from and hold each of them harmless against any and all liabilities, obligations (including removal or remedial actions), losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements (including reasonable advisors' fees and disbursements, but limited, in the case of outside legal counsel, to the reasonable fees and disbursements of one counsel for all similarly situated Indemnified Persons, plus, in each case for all similarly situated Indemnified Persons, one additional local counsel in each applicable jurisdiction, one specialist counsel for each applicable specialty and one additional conflict counsel in the event of any actual or perceived conflict of interest between Indemnified Persons) incurred by, imposed on or assessed against any of them as a result of, or arising out of, or in any way related to, or by reason of,

(A) any investigation, litigation or other proceeding (whether or not the Administrative Agent, the Collateral Agent or any Lender is a party thereto and whether or not such investigation, litigation or other proceeding is brought by or on behalf of any Credit Party) related to the entering into and/or performance of this Agreement or any other Credit Document or the proceeds of any Term Loans hereunder or the consummation of the Transactions or any other transactions contemplated herein or in any other Credit Document or the exercise of any of their rights or remedies provided herein or in the other Credit Documents, or

(B) any Environmental Claim or any liability arising under Environmental Law in connection with the Borrower, any of its Subsidiaries or any of their respective current or former properties (but excluding any losses, liabilities, claims, damages or expenses to the extent incurred by reason of the gross negligence or willful misconduct of the Indemnified Person (as determined by a court of competent jurisdiction in a final and non-appealable decision)); or

(C) the execution or delivery of this Agreement, any other Credit Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or

thereunder or the consummation of the transactions contemplated hereby or thereby; or

(D) any Loan or the use or proposed use of the proceeds therefrom.

To the extent that the undertaking to indemnify, pay or hold harmless the Administrative Agent, the Collateral Agent or any Lender set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, the Borrower shall make the maximum contribution to the payment and satisfaction of each of the indemnified liabilities which is permissible under applicable law. This **Section 11.01(a)** shall not apply with respect to Taxes other than any Taxes that represent liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements arising from any non-Tax claim.

(b) To the full extent permitted by applicable law, each party hereto agrees not to assert, and hereby waives, any claim against any other party hereto and any Indemnified Person, on any theory of liability, for special, indirect, consequential or incidental damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Term Loan or the use of the proceeds thereof; ***provided*** that the foregoing shall not limit the Borrower's indemnification and other obligations pursuant to **Section 11.01(a)** above. No Indemnified Person shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby, except to the extent the liability of such Indemnified Person results from such Indemnified Person's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).

Section 11.02 Right of Setoff.

In addition to any rights now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, upon the occurrence and during the continuance of an Event of Default, the Administrative Agent, the Collateral Agent and each Lender is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to any Credit Party or to any other Person, any such notice being hereby expressly waived to the extent permitted by the Orders, to set off and to appropriate and apply any and all deposits (general or special) and any other Indebtedness at any time held or owing by the Administrative Agent, the Collateral Agent or such Lender (including, without limitation, by branches and agencies of the Administrative Agent, the Collateral Agent or such Lender wherever located) to or for the credit or the account of the Borrower or any of its Subsidiaries against and on account of the Obligations and liabilities of the Credit Parties to the Administrative Agent, the Collateral Agent or such Lender under this Agreement or under any of the other Credit Documents, including, without limitation, all interests in Obligations purchased by such Lender pursuant to **Section 11.04(b)**, and all other claims of any nature or description arising out of or connected with this Agreement or any other Credit Document, irrespective of

whether or not the Administrative Agent, the Collateral Agent or such Lender shall have made any demand hereunder and although said Obligations, liabilities or claims, or any of them, shall be contingent or unmatured. To the extent permitted by law, each Participant also shall be entitled to the benefits of this **Section 11.02** as though it were a Lender; ***provided*** that such Participant agrees to be subject to **Section 11.06(b)** as though it were a Lender.

Section 11.03 Notices.

(a) Except as otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing (including telegraphic, telecopier or cable communication) and mailed, telegraphed, telecopied, cabled or delivered: if to any Credit Party, at the address specified opposite its signature below or in the other relevant Credit Documents; if to any Lender, at its address on file with the Administrative Agent; and if to the Administrative Agent, at the Notice Office; or, as to any Credit Party or the Administrative Agent, at such other address as shall be designated by such party in a written notice to the other parties hereto and, as to each Lender, at such other address as shall be designated by such Lender in a written notice to the Borrower and the Administrative Agent. All such notices and communications shall, when mailed, telegraphed, telecopied, or cabled or sent by overnight courier, be effective when deposited in the mails, delivered to the telegraph company, cable company or overnight courier, as the case may be, or sent by telecopier, except that notices and communications to the Administrative Agent and the Borrower shall not be effective until received by the Administrative Agent or the Borrower, as the case may be.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; ***provided*** that the foregoing shall not apply to notices pursuant to **Article II** unless otherwise agreed by the Administrative Agent and the applicable Lender. Each of the Administrative Agent and the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; ***provided*** that approval of such procedures may be limited to particular notices or communications.

Section 11.04 Benefit of Agreement; Assignments; Participations.

(a) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; ***provided***, ***however***, the Borrower may not assign or transfer any of its rights, obligations or interests hereunder without the prior written consent of the Lenders and, ***provided***, ***further***, that, although any Lender may grant participations to any Person (other than any natural person, the Borrower or any of its Subsidiaries or Affiliates) (each, a "***Participant***") in its rights hereunder, such Lender shall remain a "Lender" for all purposes hereunder (and may not transfer or assign all or any portion of its Commitments or Loans hereunder except as provided in **Sections 2.10** and **11.04(b)**) and the Participant shall not constitute a "Lender" hereunder and, ***provided***, ***further***, that any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and any other Credit Document and to approve any amendment, modification or waiver of any provision of this Agreement or any other Credit Document; ***provided***, ***further***, that such agreement or instrument may provide

that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver to the extent such amendment, modification or waiver would:

(i) extend the final scheduled maturity of any Loan or Note in which such Participant is participating, or reduce the rate or extend the time of payment of interest or Fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the Participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the total Commitments or a mandatory prepayment of the Loans shall not constitute a change in the terms of such participation, and that an increase in any Commitment (or the available portion thereof) or Loan shall be permitted without the consent of any Participant if the Participant's participation is not increased as a result thereof),

(ii) consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement or

(iii) release all or substantially all of the Collateral under all of the Security Documents (except as expressly provided in the Credit Documents) supporting the Loans and Commitments hereunder in which such Participant is participating.

In the case of any such participation, except as otherwise set forth in **Section 11.04(e)**, the Participant shall not have any rights under this Agreement or any of the other Credit Documents (the Participant's rights against such Lender in respect of such participation to be those set forth in the agreement executed by such Lender in favor of the Participant relating thereto) and all amounts payable by the Borrower hereunder shall be determined as if such Lender had not sold such participation.

(b) Notwithstanding the foregoing, any Lender (or any Lender together with one or more other Lenders) may (x) assign all or a portion of its Commitments and related outstanding Obligations (or, if the Commitments have terminated, outstanding Obligations) hereunder to any Lender, an Affiliate of any Lender or an Approved Fund; or (y) assign all, or if less than all, a portion equal to at least $1,000,000 (or such lesser amount as the Administrative Agent and, so long as no Event of Default then exists and is continuing, the Borrower may otherwise agree) in the aggregate for the assigning Lender or assigning Lenders, of such Commitments and related outstanding Obligations (or, if the Commitments have terminated, outstanding Obligations) hereunder to one or more Eligible Transferees (treating any fund that invests in loans and any other fund that invests in loans and is managed or advised by the same investment advisor of such fund or by an Affiliate of such investment advisor as a single assignor or Eligible Transferee (as applicable) (if any)), each of which assignees shall become a party to this Agreement as a Lender by execution of an Assignment and Assumption Agreement, ***provided*** that:

(i) at such time, **Schedule 2.01** shall be deemed modified to reflect the Commitments and/or outstanding Loans, as the case may be, of such new Lender and of the existing Lenders,

(ii) upon the surrender of the relevant Notes by the assigning Lender (or, upon such assigning Lender's indemnifying the Borrower for any lost Note pursuant to a customary indemnification agreement) new Notes will be issued, at the Borrower's expense, to such new Lender and to the assigning Lender upon the request of such new Lender or assigning Lender, such new Notes to be in conformity with the requirements of **Section 2.04** (with appropriate modifications) to the extent needed to reflect the revised Commitments and/or outstanding Loans, as the case may be,

(iii) the consent of the Administrative Agent shall be required in connection with any such assignment pursuant to **clause (y)** above (such consent, in any case, not to be unreasonably withheld, delayed or conditioned),

(iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption Agreement via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and shall pay to the Administrative Agent a processing and recordation fee of $3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent) and

(v) no such transfer or assignment will be effective until recorded by the Administrative Agent on the Register pursuant to **Section 11.15**.

To the extent of any assignment pursuant to this **Section 11.04(b)**, the assigning Lender shall be relieved of its obligations hereunder with respect to its assigned Commitments and outstanding Loans. To the extent that an assignment of all or any portion of a Lender's Commitments and related outstanding Obligations pursuant to **Section 2.10** or this **Section 11.04(b)** would, at the time of such assignment, result in increased costs under **Section 2.07** from those being charged by the respective assigning Lender prior to such assignment, then the Borrower shall not be obligated to pay such increased costs (although the Borrower, in accordance with and pursuant to the other provisions of this Agreement, shall be obligated to pay any other increased costs of the type described above resulting from changes after the date of the respective assignment).

(c) Nothing in this Agreement shall prevent or prohibit any Lender from pledging its Term Loans and Notes hereunder to a Federal Reserve Bank or other central bank in support of borrowings made by such Lender from such Federal Reserve Bank or other central bank, any Lender which is a fund may pledge all or any portion of its Term Loans and Notes to its trustee or to a collateral agent providing credit or credit support to such Lender in support of its obligations to such trustee, such collateral agent or a holder of such obligations, as the case may be. No pledge pursuant to this **clause (c)** shall release the transferor Lender from any of its obligations hereunder.

(d) Any Lender which assigns all of its Commitments and/or Loans hereunder in accordance with **Section 11.04(b)** shall cease to constitute a "Lender" for all purposes hereunder; ***provided*** that the indemnification provisions under this Agreement (including, without limitation, **Sections 2.07**, **4.04**, **10.06**, **10.12**, **11.01** and **11.06**) shall survive as to such Lender solely with respect to the period of time that such Person constituted a Lender.

(e) The Borrower agrees that each Participant shall be entitled to the benefits of **Sections 2.07** and **4.04** (subject to the requirements and limitations therein (it being understood that the documentation required under **Section 4.04(e)** shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment; ***provided*** that such Participant (A) agrees to be subject to the provisions of **Section 2.10** as if it were an assignee under **paragraph (b)** of this Section; and (B) shall not be entitled to receive any greater payment under **Sections 2.07** or **4.04**, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Term Loans or other obligations under the Credit Documents (the "***Participant Register***"); ***provided*** that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary in connection with a Tax audit or other proceeding to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

Section 11.05 No Waiver; Remedies Cumulative.

No failure or delay on the part of the Administrative Agent, the Collateral Agent or any Lender in exercising any right, power or privilege hereunder or under any other Credit Document and no course of dealing between the Borrower or any other Credit Party and the Administrative Agent, the Collateral Agent or any Lender shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights, powers and remedies herein or in any other Credit Document expressly provided are cumulative and not exclusive of any rights, powers or remedies which the Administrative Agent, the Collateral Agent or any Lender would otherwise have. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Administrative Agent, the Collateral Agent or any Lender to any other or further action in any circumstances without notice or demand.

Section 11.06 Payments Pro Rata.

(a) Except as otherwise provided in this Agreement, the Administrative Agent agrees that promptly after its receipt of each payment from or on behalf of the Borrower in respect of any Obligations hereunder, the Administrative Agent shall distribute such payment to the Lenders entitled thereto (other than any Lender that has consented in writing to waive its pro rata

share of any such payment) pro rata based upon their respective shares, if any, of the Obligations with respect to which such payment was received.

(b) Each of the Lenders agrees that, if it should receive any amount hereunder (whether by voluntary payment, by realization upon security, by the exercise of the right of setoff or banker's lien, by counterclaim or cross action, by the enforcement of any right under the Credit Documents, or otherwise), which is applicable to the payment of the principal of, or interest on, the Loans, of a sum which with respect to the related sum or sums received by other Lenders is in a greater proportion than the total of such Obligation then owed and due to such Lender bears to the total of such Obligation then owed and due to all of the Lenders immediately prior to such receipt, then such Lender receiving such excess payment shall purchase for cash without recourse or warranty from the other Lenders an interest in the Obligations of the respective Credit Party to such Lenders in such amount as shall result in a proportional participation by all the Lenders in such amount; ***provided*** that (i) if all or any portion of such excess amount is thereafter recovered from such Lenders, such purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest and (ii) the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant.

Section 11.07 Computations.

All computations of interest and other Fees hereunder shall be made on the basis of a year of 360 days (except for interest calculated by reference to the Prime Lending Rate, which shall be based on a year of 365 days or 366 days, as applicable) for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or Fees are payable.

Section 11.08 GOVERNING LAW; SUBMISSION TO JURISDICTION; VENUE; WAIVER OF JURY TRIAL.

(a) THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL, EXCEPT AS OTHERWISE PROVIDED IN ANY MORTGAGE, BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES) AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT MAY BE BROUGHT IN THE BANKRUPTCY COURT AND, IF THE BANKRUPTCY COURT DOES NOT HAVE, OR ABSTAINS FROM, JURISDICTION, THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, IN EACH CASE WHICH ARE LOCATED IN THE COUNTY OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, THE BORROWER HEREBY IRREVOCABLY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION OF THE

AFORESAID COURTS. THE BORROWER HEREBY FURTHER IRREVOCABLY WAIVES ANY CLAIM THAT ANY SUCH COURTS LACK PERSONAL JURISDICTION OVER THE BORROWER, AND AGREES NOT TO PLEAD OR CLAIM, IN ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT BROUGHT IN ANY OF THE AFOREMENTIONED COURTS, THAT SUCH COURTS LACK PERSONAL JURISDICTION OVER THE BORROWER. THE BORROWER FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE BORROWER AT ITS ADDRESS SET FORTH OPPOSITE ITS SIGNATURE BELOW, SUCH SERVICE TO BECOME EFFECTIVE 30 DAYS AFTER SUCH MAILING. THE BORROWER HEREBY IRREVOCABLY WAIVES ANY OBJECTION TO SUCH SERVICE OF PROCESS AND FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY ACTION OR PROCEEDING COMMENCED HEREUNDER OR UNDER ANY OTHER CREDIT DOCUMENT THAT SERVICE OF PROCESS WAS IN ANY WAY INVALID OR INEFFECTIVE. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE ADMINISTRATIVE AGENT, ANY LENDER OR THE HOLDER OF ANY NOTE TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST THE BORROWER IN ANY OTHER JURISDICTION.

(b) THE BORROWER HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT BROUGHT IN THE COURTS REFERRED TO IN **CLAUSE (a)** ABOVE AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER CREDIT DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

(d) For the avoidance of doubt, each of the parties to this Agreement hereby agrees and acknowledges that (i) it is the intention of the parties hereto that the execution and performance of this Agreement is intended to be governed by the laws of the State of New York, (ii) the choice of New York law was bona fide and there was no collusion or fraud in respect of such choice of law, and (iii) significant negotiations with respect to this Agreement and the other Credit Documents have taken place in the State of New York.

Section 11.09 Counterparts.

This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. A set of counterparts executed by all the parties hereto shall be lodged with the Borrower and the Administrative Agent. Delivery of an executed signature page to this Agreement by facsimile transmission or in electronic (e.g., "pdf" or "tif") format shall be as effective as delivery of a manually signed counterpart of this Agreement.

Section 11.10 [Reserved].

Section 11.11 Headings Descriptive.

The headings of the several sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 11.12 Amendment or Waiver; etc.

(a) Neither this Agreement nor any other Credit Document nor any terms hereof or thereof may be changed, waived, discharged or terminated unless such change, waiver, discharge or termination is in writing signed by the respective Credit Parties party hereto or thereto and the Required Lenders (with a copy to the Administrative Agent if not a party thereto) (or the Administrative Agent with the consent of and at the direction of such Required Lenders) (although additional parties may be added to (and annexes may be modified to reflect such additions), and Subsidiaries of the Borrower may be released from, the Subsidiary Guaranty and the Security Documents in accordance with the provisions thereof without the consent of the other Credit Parties party thereto or the Required Lenders), ***provided*** that no such change, waiver, discharge or termination shall, without the consent of each Lender (with Obligations being directly affected in the case of following **clauses (i)(y)**, **(vii)** and **(ix)** or whose Obligations are being extended in the case of following **clause (i)(x)**) (or the Administrative Agent with the consent of and at the direction of such Lender):

(i) (x) extend the final scheduled maturity of any Loan or Note or (y) reduce the rate or extend the time of payment of interest or Fees thereon (except in connection with the waiver of applicability of any post-default increase in interest rates), or reduce (or forgive) the principal amount thereof;

(ii) release all or substantially all of the Collateral (except as expressly provided in the Credit Documents) under all the Security Documents;

(iii) release all or substantially all of the value of the Subsidiary Guaranty (except to the extent the release of any Subsidiary from its Guaranteed Obligations is expressly permitted hereunder);

(iv) amend, modify or waive any provision of this **Section 11.12(a)** or any other provision of this Agreement expressly requiring consent of all Lenders;

(v) reduce the "majority" voting threshold specified in, or otherwise amend or modify, the definition of "Required Lenders";

(vi) consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement;

(vii) increase the Commitment of such Lender;

(viii) amend, modify or waive any provision of **Section 4.01(a)** (with respect to pro rata payments), **Section 4.02(g)** (with respect to pro rata payments) or **11.06** or any other pro rata sharing provision;

(ix) amend, modify or waive any provision of **Section 9.1(a)** of the Security Agreement in a manner that would alter the order of payments specified therein; or

(x) amend, modify or waive any provision of **Section 11.04(b)** in any manner that adversely affects a Lender's ability to assign its Loans or Commitments;

provided, ***further***, that no such change, waiver, discharge or termination shall (1) increase the Commitments of any Lender over the amount thereof then in effect without the consent of such Lender (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the total Commitments or a mandatory repayment of the Loans shall not constitute an increase of the Commitment of any Lender, and that an increase in the available portion of any Commitment of any Lender shall not constitute an increase of the Commitment of such Lender), (2) without the consent of the Administrative Agent, amend, modify or waive any provision of **Article X** or any other provision of this Agreement or any other Credit Document as same relates to the rights or obligations of the Administrative Agent, (3) without the consent of the Collateral Agent, amend, modify or waive any provision relating to the rights or obligations of the Collateral Agent, (4) except as provided by operation of any Requirement of Law or in the DIP ABL Intercreditor Agreement, subordinate the Liens granted hereunder or under the other Credit Documents to any other Lien, in each case without the prior written consent of each Lender, (5) except as provided by operation of law or otherwise permitted hereunder, amend or modify the Superpriority Claims status of the Obligations under the Orders or under any Credit Document; or extend the effective date of any Acceptable Plan of Reorganization set forth in **Section 7.16**, without the consent of the Required Lenders.

(b) Notwithstanding anything to the contrary contained in this **Section 11.12**, (x) Security Documents (including any Additional Security Documents) and related documents executed by Subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be amended, supplemented and waived with the consent of the Administrative Agent, the Collateral Agent and the Borrower without the need to obtain the consent of any other Person if such amendment, supplement or waiver is delivered in order (i) to cure ambiguities, omissions, mistakes or defects or (ii) to cause such Security Document or other document to be consistent with this Agreement and the other Credit Documents and (y) if following the Closing Date, the Administrative Agent and any Credit Party

shall have jointly identified an ambiguity, inconsistency, obvious error or any error or omission of a technical or immaterial nature, in each case, in any provision of the Credit Documents (other than the Security Documents), then the Administrative Agent and the Credit Parties shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Credit Documents if, solely in the case of **clause (y)**, the same is not objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof.

Section 11.13 Survival.

All indemnities (other than those provided under **Section 4.04**) set forth herein including, without limitation, in **Sections 2.07**, **10.06** and **11.01**, shall survive the execution, delivery and termination of this Agreement and the Notes and the making and repayment of the Obligations. For the avoidance of doubt, the indemnity set forth in **Section 4.04** shall survive as described in **Section 4.04(i)**.

Section 11.14 Domicile of Loans.

Each Lender may transfer and carry its Loans or Commitments at, to or for the account of any office, Subsidiary or Affiliate of such Lender.

Section 11.15 Register.

The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain a register (the "***Register***") on which it will record the Commitments from time to time of each of the Lenders, the Loans made by each of the Lenders, the stated interest, and each repayment in respect of the principal amount of the Loans of each Lender. Failure to make any such recordation, or any error in such recordation, shall not affect the Borrower's obligations in respect of such Loans. With respect to any Lender, the transfer of the Commitments of such Lender and the rights to the principal of, and interest on, any Loan made pursuant to such Commitments shall not be effective until such transfer is recorded on the Register maintained by the Administrative Agent with respect to ownership of such Commitments and Loans and prior to such recordation all amounts owing to the transferor with respect to such Commitments and Loans shall remain owing to the transferor. The registration of assignment or transfer of all or part of any Commitments and Loans shall be recorded by the Administrative Agent on the Register upon and only upon the acceptance by the Administrative Agent of a properly executed and delivered Assignment and Assumption Agreement pursuant to **Section 11.04(b)**. The entries in the Register shall be conclusive absent manifest error, and the Borrower and the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable times and from time to time upon reasonable prior notice. Upon such acceptance and recordation, the assignee specified therein shall be treated as a Lender for all purposes of this Agreement. Coincident with the delivery of such an Assignment and Assumption Agreement to the Administrative Agent for acceptance and registration of assignment or transfer of all or part of a Loan, or as soon thereafter as practicable, the assigning or transferor Lender shall surrender the Note (if any) evidencing such Loan, and thereupon one or more new Notes in the same

aggregate principal amount shall be issued to the assigning or transferor Lender and/or the new Lender at the request of any such Lender. The Borrower agrees to indemnify the Administrative Agent from and against any and all losses, claims, damages and liabilities of whatsoever nature which may be imposed on, asserted against or incurred by the Administrative Agent in performing its duties under this **Section 11.15**, unless caused by the Administrative Agent's gross negligence or willful misconduct (in each case as determined by a court of competent jurisdiction in a final and non-appealable decision).

Section 11.16 Confidentiality.

(a) Subject to the provisions of **clause (b)** of this **Section 11.16**, each of the Administrative Agent, the Collateral Agent and each Lender (solely for purposes of this **Section 11.16**, the Administrative Agent, the Collateral Agent and each Lender are collectively referred to as the "***Lenders***") agrees that it will not disclose without the prior consent of the Borrower (other than to its employees, auditors, advisors or counsel or to another Lender if such Lender or such Lender's holding or parent company in its sole discretion determines that any such party should have access to such information, provided that such Persons shall be subject to the provisions of this **Section 11.16** to the same extent as such Lender) any information with respect to the Borrower or any of its Subsidiaries which is now or in the future furnished pursuant to this Agreement or any other Credit Document, provided that any Lender (including, in the case of Agents, their counsel) may disclose any such information:

(i) as has become generally available to the public other than by virtue of a breach of this **Section 11.16(a)** by the respective Lender,

(ii) as may be required or appropriate in any report, statement or testimony submitted to any municipal, state or federal regulatory body having or claiming to have jurisdiction over such Lender or to the Federal Reserve Board or the Federal Deposit Insurance Corporation or similar organizations (whether in the United States or elsewhere) or their successors,

(iii) as may be required or appropriate in respect to any summons or subpoena or in connection with any litigation (***provided*** that, unless specifically prohibited by applicable law, such Lender shall make reasonable efforts to notify the Borrower promptly of any such request or requirement),

(iv) in order to comply with any law, order, regulation or ruling applicable to such Lender (***provided*** that, unless specifically prohibited by applicable law, such Lender shall make reasonable efforts to notify the Borrower promptly of any such request or requirement),

(v) to the Administrative Agent or the Collateral Agent, and

(vi) to any prospective or actual transferee or participant in connection with any contemplated transfer or participation of any of the Notes, Loans or Commitments or any interest therein by such Lender, ***provided*** that such prospective transferee agrees to be bound by the confidentiality provisions contained in this **Section 11.16**.

(b) The Borrower hereby acknowledges and agrees that each Lender may share with any of its affiliates and agents, and such affiliates and agents may share with such Lender, any information related to the Borrower or any of its Subsidiaries (including, without limitation, any non-public customer information regarding the creditworthiness of the Borrower and its Subsidiaries), provided that such Persons shall be subject to the provisions of this **Section 11.16** to the same extent as such Lender.

Section 11.17 PATRIOT Act; Beneficial Ownership Certification.

Each Lender subject to the USA PATRIOT Act hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrower and the other Credit Parties and other information that will allow such Lender to identify the Borrower and the other Credit Parties in accordance with the USA PATRIOT Act and, to the extent the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, a Beneficial Ownership Certification in relation to the Borrower, including, for the avoidance of doubt, a duly executed IRS Form W-9.

Section 11.18 Interest Rate Limitation.

Notwithstanding anything to the contrary contained in any Credit Document, the interest paid or agreed to be paid under the Credit Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "***Maximum Rate***"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 11.19 DIP ABL Intercreditor Agreement.

Reference is made to the DIP ABL Intercreditor Agreement. Each Lender hereby agrees that it will be bound by and will take no actions contrary to the provisions of the DIP ABL Intercreditor Agreement and authorizes and instructs the Administrative Agent and the Collateral Agent to enter into the DIP ABL Intercreditor Agreement on behalf of such Lender. The foregoing provisions are intended as an inducement to the Lenders under this Agreement to extend credit and such Lender are intended as third party beneficiaries of such provisions and the DIP ABL Intercreditor Agreement. Each Credit Party understands that the DIP ABL Intercreditor Agreement will be for the sole benefit of the ABL Claimholders or similar term (as defined in the DIP ABL Intercreditor Agreement) and the Term Loan Claimholders or similar term (as defined in the DIP ABL Intercreditor Agreement) and their respective successors and assigns, and that such Credit Party is not an intended beneficiary or third party beneficiary thereof (except as expressly provided therein).

Section 11.20 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.

Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

Section 11.21 Certain ERISA Matters

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more ERISA Plans in connection with the Loans or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable, and the conditions of such exemption have been satisfied, with respect to

such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, and (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (a) through (g) of Part I of PTE 84-14.

(b) In addition, unless **sub-clause (i)** in the immediately preceding **clause (a)** is true with respect to a Lender, such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that none of the Administrative Agent or any of its Affiliates is a fiduciary with respect to the assets of such Lender involved in the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Credit Document or any documents related to hereto or thereto).

The Administrative Agent hereby informs the Lenders that it is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans or the Commitments for an amount less than the amount being paid for an interest in the Loans or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Credit Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term-out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

For purposes of this **Section 11.21**, "ERISA Plan" shall mean any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in Section 4975 of the Code that is subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

ARTICLE XII.
Real Property Leases

Section 12.01 Special Rights with Respect to Real Property Leases.

(a) No Credit Party shall, nor shall it permit any of its Subsidiaries to, pursuant to Section 365 of the Bankruptcy Code, reject or otherwise terminate (including, without limitation, as a result of the expiration of the assumption period provided for in Section 365(d)(4) of the Bankruptcy Code to the extent applicable) (x) a Material Lease or (y) during the continuance of an Event of Default, a Real Property Lease, in each case, without first providing 30 days' prior written notice to the Administrative Agent (unless such notice provision is waived by the Administrative Agent (with the consent of the Required Lenders) during which time the Administrative Agent shall be permitted to find an acceptable (in the Administrative Agent's good faith and reasonable discretion (with the consent of the Required Lenders)) replacement lessee (which may include the Administrative Agent, any Lender or their respective Affiliates) to whom such lease may be assigned. If a prospective assignee is not found within such 30-day notice period, the Credit Party may proceed to reject such lease If such a prospective assignee is timely found, the Credit Parties shall (i) not seek to reject such lease, (ii) promptly withdraw any previously filed rejection motion, (iii) promptly file a motion seeking expedited relief and a hearing on the earliest court date available for purposes of assuming such lease and assigning it to such prospective assignee and (iv) cure any defaults that have occurred and are continuing under such lease unless the Borrower and the Administrative Agent (with the consent of the Required Lenders) agree that any such cure obligation is overly burdensome on the cash position of the Debtors with such agreement not to be unreasonably withheld; *provided* that this Section 12.01(a) shall not apply to Real Property Leases that are rejected on the effective date of an Acceptable Plan of Reorganization. For the avoidance of doubt, it is understood and agreed that on or prior to the 30th day prior to the Automatic Rejection Date, the Credit Parties shall have delivered (and hereby agree to deliver) written notice to the Administrative Agent of each outstanding Real Property Lease that they intend to reject (including, without limitation, through automatic rejection on the Automatic Rejection Date, to the extent applicable) from and after the date of such notice (or, if applicable, notice that the Credit Parties will seek to extend the Automatic Rejection Date as provided in Section 365(d)(4) of the Bankruptcy Code); *provided* that if the Credit Parties fail to deliver any such notice to the Administrative Agent prior to such date with respect to any such Real Property Lease (or a notice indicating that no such Real Property Leases shall be rejected), the Credit Parties shall be deemed, for all purposes hereunder, to have delivered notice to the Administrative Agent as of such date that it intends to reject all outstanding Real Property Leases.

(b) If an Event of Default shall have occurred and be continuing, the Administrative Agent may exercise any Debtor's rights pursuant to section 365(f) of the Bankruptcy Code with respect to any Real Property Lease or group of Real Property Leases and, subject to the Bankruptcy Court's approval after notice and hearing, assign any such Real Property Lease in accordance with section 365 of the Bankruptcy Code notwithstanding any language to the contrary in any of the applicable lease documents or executory contracts. In connection with the exercise of such rights, the Administrative Agent may (w) access the leasehold interests of the Credit Parties in any such Real Property Lease(s) for the purposes of marketing such property or properties for sale, (x) find an acceptable (in the Administrative Agent's good faith and reasonable discretion (with the consent of the Required Lenders)) replacement lessee (which may include the Adminis-

trative Agent or its designee, any Lender or their respective Affiliates) to whom a Real Property Lease may be assigned, (y) hold, and manage all aspects of, an auction or other bidding process to find such reasonably acceptable replacement lessee, and (z) in connection with any such auction, agree, on behalf of the Credit Parties and subject to Bankruptcy Court approval, to a break-up fee or to reimburse fees and expenses of any stalking horse bidder up to an amount not to exceed 3.00% of the purchase price of such Real Property Lease and may make any such payments on behalf of such Credit Party and any amount used by the Administrative Agent to make such payments shall, at the election of the Administrative Agent, at the written direction of the Required Lenders in their reasonable discretion and subject to satisfaction of the conditions in Section 7.03, be deemed a borrowing of Term Loans hereunder. Upon receipt of notice that the Administrative Agent elects to exercise its rights under this Section 12.01(b), the Credit Parties shall promptly file a motion seeking expedited relief and a hearing on the earliest court date available for purposes of assuming such Real Property Lease and assigning it to such assignee and cure any defaults that have occurred and are continuing under such Real Property Lease. Notwithstanding the foregoing, this Section 12.01(b) shall not apply to Real Property Leases that are rejected on the effective date of an Acceptable Reorganization Plan. Notwithstanding anything to the contrary in this Section 11.01(b), or any consent or direction of the Required Lenders, in no event shall any Real Property Lease be assigned to the Administrative Agent without the express written consent of the Administrative Agent in its sole discretion.

(c) If an Event of Default shall have occurred and be continuing, the Administrative Agent shall have the right, at the written direction of the Required Lenders, to direct any Debtor that is a lessee under a Real Property Lease to assign such Real Property Lease to the Administrative Agent or its designee, on behalf of the Administrative Agent and the Lenders, as collateral for the Obligations and to direct such Debtor lessee to assume such Real Property Lease to the extent assumption is required under the Bankruptcy Code as a prerequisite to such assignment. Upon receipt of notice that the Administrative Agent elects to exercise its rights under this **Section 12.01(c)**, the Credit Parties shall (i) promptly file a motion seeking expedited relief and a hearing on the earliest court date available for purposes of, if necessary, assuming such Real Property Lease and assigning it to the Administrative Agent and (ii) cure any defaults that have occurred and are continuing under such Real Property Lease. Notwithstanding the foregoing, this Section 12.01(c) shall not apply to Real Property Leases that are rejected on the effective date of an Acceptable Reorganization Plan. Notwithstanding anything to the contrary in this Section 11.01(c), or any consent or direction of the Required Lenders, in no event shall any Real Property Lease be assigned to the Administrative Agent without the express written consent of the Administrative Agent in its sole discretion.

(d) Any order of the Bankruptcy Court approving the assumption (but not the assignment) of any Real Property Lease shall specifically provide that the applicable Debtor shall be authorized to assign such Real Property Lease pursuant to section 365(f) of the Bankruptcy Code subsequent to the date of such assumption designated by the Administrative Agent.

(e) No Credit Party shall, nor shall it permit any of its Subsidiaries to, pursuant to section 365 of the Bankruptcy Code, sell or assign a Real Property Lease without first providing fifteen (15) days' prior written notice to the Administrative Agent (unless such notice provision is waived by the Administrative Agent (with the consent of the Required Lenders)) of any hearing in the Bankruptcy Court seeking approval of a sale or assignment, and the Administrative

Agent, on behalf of the Administrative Agent and the Lenders, shall be permitted to credit bid forgiveness of some or all of the outstanding Obligations in respect of the DIP Term Facility (in an amount equal to at least the consideration offered by any other party in respect of such assignment) as consideration in exchange for any such Real Property Lease. In connection with the exercise of any of the Administrative Agent's rights under Sections 12.01(b) and 12.01(c) to direct or compel a sale or assignment of any Real Property Lease, the Administrative Agent, on behalf of the Administrative Agent and the Lenders, shall be permitted to credit bid forgiveness of a portion of the Indebtedness (in an amount equal to at least the consideration offered by any other party in respect of such sale or assignment) outstanding under the Term Loans in exchange for such Real Property Lease.

If any Credit Party is required to cure any monetary default under any Real Property Lease under this Section 11.01, or otherwise in connection with any assumption of such Real Property Lease pursuant to section 365 of the Bankruptcy Code, and such monetary default is not cured within five (5) Business Days of the receipt by such Credit Party of notice from the Administrative Agent under Section 12.01(a), (b) or (c) or any other notice from the Administrative Agent requesting the cure of such monetary default, then the Administrative Agent (with the consent of the Required Lenders) may, but shall not be obligated to, cure any such monetary default on behalf of such Credit Party and any such payments shall, at the election of the Administrative Agent, at the written direction of the Required Lenders in their reasonable discretion and subject to satisfaction of the conditions in Section 5.02, be deemed a borrowing of Term Loans hereunder.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Agreement as of the date first above written.

Address:

Blackhawk Mining LLC
3228 Summit Square Place, Suite 180
Lexington, KY 40509

BLACKHAWK MINING LLC

By: _____
Name:
Title:

[Signature Page to Senior Secured Debtor-in-Possession Term Loan Credit Agreement]

CANTOR FITZGERALD SECURITIES,
as Administrative Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

[ ],
as Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

Exhibit D

DIP Term Fee Letter

EXECUTION VERSION

CANTOR FITZGERALD SECURITIES
110 E. 59th Street
New York, NY 10022

July ____, 2019

Blackhawk Mining LLC
3228 Summit Square Place, Suite 180
Lexington, KY 40509

Re: Blackhawk Mining LLC Agency Fee Letter

Ladies and Gentlemen:

Reference is made to the Senior Secured Debtor-In-Possession Term Loan Credit Agreement, dated as of the date hereof (as amended, supplemented, restated and otherwise modified from time to time, the "DIP Credit Agreement"), by and among Blackhawk Mining LLC, as borrower ("you" or the "Borrower"), the Lenders from time to time parties thereto, and Cantor Fitzgerald Securities ("us" or "CFS"), as the Administrative Agent. In connection with the DIP Credit Agreement, CFS is pleased to announce that it shall act as the sole administrative agent (in such capacity, the "Administrative Agent") and the sole collateral agent (in such capacity, the "Collateral Agent" and together with the Administrative Agent, the "Agent") under the Credit Documents. Capitalized terms not otherwise defined in this fee letter (the "Fee Letter") shall have the same meanings as specified therefor in the DIP Credit Agreement, unless otherwise specified.

In connection with, and in consideration of the agreements contained in, this Fee Letter and the DIP Credit Agreement and the other Credit Documents, you agree as follows:

1. you will pay to CFS, in immediately available funds, for its own account as Agent for the Lenders under the Credit Documents, an annual administrative and collateral agent fee of $50,000 (the "Agency Fee"), which fee shall be due and payable annually in advance, with the first payment due on the Closing Date, and on each anniversary of the Closing Date until the Loans are paid in full; provided, that if CFS or any of its affiliates acts as agent, administrative agent or collateral agent, or in any similar role, with respect to any exit credit facility provided to the Borrower in its exit from the Cases (the "Exit Credit Facility"), then, with respect to the Agency Fee paid by you for the Loan Year (defined below) in which the Exit Credit Facility is entered into, the full amount of such Agency Fee shall be credited against any agency fee (or comparable fee) payable by you to CFS or such affiliate of CFS in respect of such Exit Credit Facility. As used herein, "Loan Year" shall mean each one-year period commencing on the Closing Date and each numerically corresponding date in each subsequent calendar year, and ending, as to each such Loan Year, on the date that is one day prior to the numerically corresponding date in the subsequent calendar year.

In addition to the Agency Fee and Section 11.01 of the Credit Agreement (and without limiting such Section provided there shall be no duplication of any costs and expenses), you agree to pay or reimburse CFS and its affiliates for all reasonable out-of-pocket costs and expenses (including such expenses incurred prior to CFS' formal appointment) incurred by CFS and its affiliates in connection with the preparation, execution, delivery and administration of this Fee Letter, the DIP Credit Agreement and the other Credit Documents and the documents and instruments referred to therein, and any amendment, waiver, consent or other modification of any of the provisions thereof, including, but not limited to (i) all reasonable fees, expenses and disbursements of counsel to the Agent, and (ii) if necessary, all reasonable out-of-pocket costs and expenses associated with creating and maintaining an electronic document delivery service (*e.g.* IntraLinks or similar services) and providing accounting for the Lenders (including such expenses incurred prior to the Closing Date). All provisions of the DIP Credit Agreement and any other Credit Document providing for the payment of fees, costs and expenses of, and providing indemnities for the benefit of, the Agent shall apply to fees, costs and expenses set forth herein for the benefit of CFS.

All of the fees described above in this Fee Letter shall be fully earned upon becoming due and payable in accordance with the terms hereof, shall be nonrefundable for any reason whatsoever (subject, however, to the proviso in paragraph number 1 above pertaining to the Agency Fee) and shall be in addition to any other fees, costs and expenses payable pursuant to the Credit Documents. Your obligation to pay the foregoing fees will not be subject to counterclaim or setoff for, or be otherwise affected by, any claim or dispute you may have.

The parties hereto hereby agree that the Borrower's obligations under this Fee Letter shall constitute Obligations. It is understood and agreed that this Fee Letter shall not constitute or give rise to any obligation to provide any financing.

You acknowledge that CFS and its affiliates (the term "CFS" being understood hereinafter in this paragraph to include such affiliates) may be providing debt financing, equity capital or other services (including financial advisory services) to other companies in respect of which you may have conflicting interests regarding the transactions described herein and otherwise. CFS will not use confidential information obtained from you by virtue of the transactions contemplated by this Fee Letter or any other Credit Document or its other relationships with you in connection with the performance by CFS of services for other companies, and CFS will not furnish any such information to other companies. CFS shall have no obligation to use in connection with the transactions contemplated by this Fee Letter, or to furnish to you, confidential information obtained from other companies. CFS is a full service securities firm and CFS may from time to time effect transactions, for its own or its affiliates' account or the account of customers, and hold positions in loans, securities or options on loans or securities of the Borrowers, their subsidiaries and their respective affiliates and of other companies that may be the subject of the transactions contemplated by this Fee Letter. CFS may employ the services of its affiliates in providing certain services hereunder and, in connection with the provision of such services, may exchange with such affiliates information concerning you and the other companies that may be the subject of the transactions contemplated by this Fee Letter, and, to the extent so employed, such affiliates shall be entitled to the benefits afforded CFS hereunder.

This Fee Letter is delivered to you on the understanding that neither this Fee Letter nor any of its terms or substance shall be (subject to the next sentence) disclosed by you, directly or indirectly, to any other person except (a) you and your officers, directors, employees, affiliates, members, partners, stockholders, attorneys, accountants, agents, and advisors, in each case on a confidential and need-to-know basis, and (b) in any legal, judicial or administrative proceeding or as otherwise required by law or regulation or as requested by a governmental authority (in which case you agree, to the extent permitted by law, to inform us promptly in advance thereof and the parties agree to take reasonable actions as shall

be necessary to prevent, if practicable, the terms of this Fee Letter from becoming publicly available. The confidentiality provisions contained herein shall remain in full force and effect notwithstanding the termination of this Fee Letter.

This Fee Letter and the Credit Documents state the entire agreement and supersede all prior agreements, written or verbal, between the parties hereto with respect to the subject matter hereof and may not be amended, nor any provision hereof waived or modified, except in writing signed by a duly authorized representative of each of the respective parties hereto.

No delay or failure on the part of any party hereto in exercising any right, power or remedy hereunder shall effect or operate as a waiver thereof, nor shall any single or partial exercise thereof or any abandonment or discontinuance of steps to enforce such right, power or remedy preclude any further exercise thereof or of any other right, power or remedy.

Each party hereto hereby irrevocably and unconditionally: (a) submits for itself and its property in any legal action or proceeding relating to this Fee Letter, or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the Bankruptcy Court and, if the Bankruptcy Court does not have (or abstains from) jurisdiction, to the exclusive general jurisdiction of any New York State court or federal court of the United States of America sitting in the Borough of Manhattan in New York City, and appellate courts from any thereof, and (b) consents that any such action or proceeding may be brought in such courts, and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same. Notwithstanding the foregoing consent to jurisdiction, for the duration of the Cases, each of the parties hereto hereby agrees that the United States Bankruptcy Court for the District of Delaware shall have exclusive jurisdiction over all matters arising out of or in connection with this Fee Letter.

THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS FEE LETTER AND FOR ANY COUNTERCLAIM THEREIN.

THIS FEE LETTER AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS FEE LETTER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (EXCEPT TO THE EXTENT NEW YORK LAW IS SUPERSEDED BY THE BANKRUPTCY CODE).

Any provision of this Fee Letter that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Fee Letter may be executed by one or more of the parties to this Fee Letter on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Fee Letter by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart hereof.

[*signatures on following page*]

If the foregoing is in accordance with your understanding, please sign and return to CFS the enclosed copy of this Fee Letter.

Very truly yours,

CANTOR FITZGERALD SECURITIES

By:_____
Name:
Title:

ACCEPTED AND AGREED TO
AS OF JULY _____, 2019 BY:

BLACKHAWK MINING LLC

By:_____
Name:
Title:

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 11
BLACKHAWK MINING LLC, *et al.*,[1]	)	Case No. 19-11595 (LSS)
Debtors.	)	Jointly Administered

FINAL ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES, (V) MODIFYING THE AUTOMATIC STAY, AND (VI) GRANTING RELATED RELIEF

Upon the motion (the "**Motion**")[2] of Blackhawk Mining LLC (the "**Company**"), and its affiliated debtors, each as a debtor and debtor in possession (collectively, the "**Debtors**") in the above-captioned cases (the "**Chapter 11 Cases**") pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 364(e), 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq*. (the "**Bankruptcy Code**"), Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Rule 4001-2 of the

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: Blackhawk Mining LLC (5600); Blackhawk Coal Sales, LLC (9456); Blackhawk Land and Resources, LLC (7839); Blackhawk River Logistics, LLC (3388); Blue Creek Mining, LLC (2427); Blue Diamond Mining, LLC (3488); Eagle Shield, LLC (6721); FCDC Coal, Inc. (6188); Guyandotte Mining, LLC (4882); Hampden Coal, LLC (8241); Kanawha Eagle Mining, LLC (0586); Logan & Kanawha, LLC (3178); Panther Creek Mining, LLC (0627); Pine Branch Land, LLC (9661); Pine Branch Mining, LLC (9681); Pine Branch Resources, LLC (9758); Redhawk Mining, LLC (0852); Rockwell Mining, LLC (3874); Spruce Pine Land Company (2254); Spurlock Mining, LLC (2899); Triad Mining, LLC (7713); and Triad Trucking, LLC (6112). The location of the Debtors' service address in these chapter 11 cases is 3228 Summit Square Place, Suite 180, Lexington, Kentucky 40509.

[2] Capitalized terms used herein and not herein defined have the meaning ascribed to such terms in the Motion.

Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Bankruptcy Rules**") seeking, among other things:

(i) authorization for (x) the Company and certain of its subsidiaries party to the DIP ABL Credit Agreement (as defined below) as borrowers (collectively, the "**DIP ABL Borrowers**") to obtain postpetition financing as set forth in the DIP ABL Financing Documents (as defined below) (the "**DIP ABL Financing**"), and for the DIP ABL Guarantors[3] (together with the DIP ABL Borrowers, the "**DIP ABL Loan Parties**") to guaranty the obligations (the "**DIP ABL Obligations**") of the DIP ABL Borrowers in connection with the DIP ABL Financing; and (y) the Company to obtain postpetition financing as set forth in the Term DIP Documents (as defined below) (the "**Term DIP Financing**" and, together with the DIP ABL Financing, the "**DIP Financing**"), and for the Term DIP Guarantors[4] (together with the Company, the "**Term DIP Loan Parties**"; the Term DIP Loan Parties and the DIP ABL Loan Parties are collectively referred to herein as the "**DIP Loan Parties**") to guaranty the obligations (the "**Term DIP Obligations**" and, together with the DIP ABL Obligations, the "**DIP Obligations**") of the Company in connection with the Term DIP Financing; the DIP Financing consisting of:

(I) a superpriority debtor-in-possession asset-based revolving credit facility made available to the DIP ABL Borrowers in an aggregate principal amount of up to $90,000,000 (the "**DIP ABL Facility**"), pursuant to the terms and conditions of that certain Senior Secured Superpriority Debtor in Possession ABL Credit Agreement (as may be amended, restated, supplemented, waived or otherwise modified from time to time in accordance with the terms hereof and thereof, the "**DIP ABL Credit Agreement**"), among the DIP ABL Borrowers, the DIP ABL Guarantors and MidCap Funding IV Trust, as administrative agent (in such capacity, the "**DIP ABL Agent**"), the lenders party thereto, including their respective successors and assigns (the "**DIP ABL Lenders**" and, together with the DIP ABL Agent, the "**DIP ABL Secured Parties**"), substantially in the form attached to the Motion as **Exhibit B**; and

(II) a superpriority debtor-in-possession term loan credit facility made available to the Company in an aggregate principal amount of up to $150,000,000 (the "**Term DIP Facility**" and, together with the

[3] The "**DIP ABL Guarantors**" shall mean, collectively, the "Guarantors" (as defined in the DIP ABL Credit Agreement).

[4] The "**Term DIP Guarantors**" shall mean, collectively, the "Guarantors" (as defined in the Term DIP Credit Agreement).

DIP ABL Facility, the "**DIP Facilities**") to be provided by certain of the Prepetition First Lien Term Loan Lenders (as defined below) or their designees (in their capacity as lenders under the Term DIP Facility, the "**Term DIP Lenders**") in the form of (X) new money term loans (the "**New Money Term DIP Loans**") in an aggregate principal amount of up to $50 million and (Y) roll-up term loans (the "**Term DIP Roll-Up Loans**" and, together with the New Money Term DIP Loans, the "**Term DIP Loans**"), which shall be secured on a junior basis to the New Money Term DIP Loans, to convert Prepetition First Lien Term Loans (as defined below) held by the Term DIP Lenders in the aggregate principal amount of up to $100 million, in each case pursuant to the terms and conditions of that certain Senior Secured Debtor-in-Possession Term Loan Credit Agreement (as may be amended, restated, supplemented, waived or otherwise modified from time to time in accordance with the terms hereof and thereof, the "**Term DIP Credit Agreement**" and, together with the DIP ABL Credit Agreement, the "**DIP Credit Agreements**"), among the Company, the Term DIP Guarantors, the Term DIP Lenders and Cantor Fitzgerald Securities ("**Cantor**"), as administrative agent and collateral agent (in such capacities, the "**Term DIP Agent**" and, together with the DIP ABL Agent, the "**DIP Agents**"; the Term DIP Lenders together with the Term DIP Agent, the "**Term DIP Secured Parties**"; the Term DIP Secured Parties, together with the DIP ABL Secured Parties are collectively referred to herein as the "**DIP Secured Parties**"), substantially in the form attached to the Motion as **Exhibit C**;

(ii) authorization for:

(I) the DIP ABL Borrowers and the DIP ABL Guarantors to execute and enter into the DIP ABL Credit Agreement, the Security Agreement (as defined in the DIP ABL Credit Agreement) and any other agreements, instruments, pledge agreements, guarantees, security agreements, intellectual property security agreements, control agreements, notes and other DIP ABL Financing Documents (as defined in the DIP ABL Credit Agreement) and documents related thereto, including, without limitation, the "Fee Letter" (as defined in the DIP ABL Credit Agreement), and the DIP ICA (as defined below) (as each of the foregoing may be amended, restated, supplemented, waived, and/or modified from time to time in accordance with the terms hereof and thereof, and collectively with the DIP ABL Credit Agreement, the "**DIP ABL Financing Documents**") and to perform their respective obligations thereunder and all such other and further acts as may be necessary, appropriate, or desirable in connection with the DIP ABL Financing Documents;

(II) the Company and the Term DIP Guarantors to execute and enter into the Term DIP Credit Agreement, Security Agreement (as defined in the Term DIP Credit Agreement) and any other agreements, instruments, pledge agreements, guarantees, security agreements, intellectual property security agreements, control agreements, notes and other Credit Documents (as defined in the Term DIP Credit Agreement) and documents related thereto, including, without limitation, the DIP ICA (as each of the foregoing may be amended, restated, supplemented, waived, and/or modified from time to time in accordance with the terms hereof and thereof, and collectively with the Term DIP Credit Agreement, the "**Term DIP Documents**"; the Term DIP Documents together with the DIP ABL Financing Documents, are collectively referred to herein as the "**DIP Documents**") and to perform their respective obligations thereunder and all such other and further acts as may be necessary, appropriate, or desirable in connection with the Term DIP Documents;

(iii) the DIP Loan Parties to apply the Debtors' prepetition and postpetition accounts receivable to the outstanding principal balance of the Prepetition ABL Debt (as defined below) and use the proceeds of the DIP ABL Financing to refinance the remainder of the Prepetition ABL Debt, including interest and fees through the date of repayment (at the non-default contract rate), which refinancing shall be indefeasible upon the occurrence of the ABL Discharge;[5]

(iv) until the occurrence of the ABL Discharge, the granting of Postpetition liens to the Prepetition ABL Agent (as defined below) and the Prepetition ABL Lenders (as defined below) in connection with the Prepetition ABL Credit Agreement (as defined below);

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[5] "**ABL Discharge**" means the indefeasible payment of the Prepetition ABL Debt (as defined below) in full in cash, including interest and fees through the date of repayment (at the non-default contract rate), which shall be deemed to have occurred if no adversary proceeding or contested matter is timely and properly asserted in accordance with the *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [D.I. 81] (the "**Interim Order**") and this Final Order (the "**Final Order**") with respect to the Prepetition ABL Debt or against any Prepetition ABL Secured Party (as defined below), or if such an adversary proceeding or contested matter is timely and properly asserted in accordance with the Interim Order and this Final Order, upon the final disposition of such adversary proceeding or contested matter in favor of the applicable Prepetition ABL Secured Party or Parties by order of a court of competent jurisdiction; *provided* that, for the avoidance of doubt, interest shall cease to accrue on the Prepetition ABL Debt upon the repayment in full in cash, including interest and fees through the date of repayment, of the Prepetition ABL Debt upon the entry of this Final Order unless the Prepetition ABL Debt is reinstated.

(v) authorization to convert $2.00 of Prepetition First Lien Term Loan Debt (up to an aggregate principal amount of $100 million) held by the Term DIP Lenders into Term DIP Roll-Up Loans for each $1.00 of New Money Term DIP Loans funded by the Term DIP Lenders;

(vi) authorization for the DIP Loan Parties to grant adequate protection to the Prepetition Secured Parties (as defined below) under, or in connection with, or according to the priorities of, the following agreements, as applicable:

(I) that certain Credit Agreement, dated as of September 6, 2017 (as amended, supplemented, restated or otherwise modified prior to the Petition Date (as defined below), the "**Prepetition ABL Credit Agreement**" and, the facility thereunder, the "**Prepetition ABL Credit Facility**"), among the DIP ABL Borrowers, the guarantors party thereto (the "**Prepetition ABL Guarantors**"), MidCap Funding IV Trust, as successor agent (the "**Prepetition ABL Agent**"), the lenders party thereto (the "**Prepetition ABL Lenders**" and, together with the Prepetition ABL Agent and any other "Secured Creditor" as defined in the Prepetition ABL Credit Agreement, the "**Prepetition ABL Secured Parties**"), and those certain Security Documents (as defined in the Prepetition ABL Credit Agreement and, collectively with the Prepetition ABL Credit Agreement, and all other documentation executed in connection therewith, the "**Prepetition ABL Financing Documents**");

(II) First Lien Term Loan Agreement, dated as of February 17, 2017 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the "**Prepetition First Lien Term Loan Credit Agreement**," the facility thereunder, the "**Prepetition First Lien Term Loan Credit Facility**," and the loans extended thereunder, the "**Prepetition First Lien Term Loans**"), among the Company, as borrower, the guarantors party thereto (the "**Prepetition First Lien Term Loan Guarantors**"), Cantor, as successor administrative agent and collateral agent (the "**Prepetition First Lien Term Loan Agent**"), and the lenders party thereto (the "**Prepetition First Lien Term Loan Lenders**" and, together with the Prepetition First Lien Term Agent, the "**Prepetition First Lien Term Loan Secured Parties**"), and those certain Credit Documents (as defined in the Prepetition First Lien Term Loan Credit Agreement and, collectively with the Prepetition First Lien Term Loan Credit Agreement, and all other documentation executed in connection therewith, the "**Prepetition First Lien Term Loan Documents**");

(III) Second Lien Term Loan Agreement, dated as of October 28, 2015 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the "**Prepetition Second Lien Term Loan Credit Agreement**"[6] and, the facility thereunder, the "**Prepetition Second Lien Term Loan Credit Facility**"[7]), among the Company, as borrower, the guarantors party thereto (the "**Prepetition Second Lien Term Loan Guarantors**"), Cortland Capital Market Services, LLC, as administrative agent and collateral agent (the "**Prepetition Second Lien Term Loan Agent**" and together with the Prepetition First Lien Term Loan Agent and Prepetition ABL Agent, the "**Prepetition Agents**"), and the lenders party thereto (the "**Prepetition Second Lien Term Loan Lenders**"[8] and, together with the Prepetition Second Lien Term Loan Agent, the "**Prepetition Second Lien Term Loan Secured Parties**"[9]), and those certain Credit Documents (as defined in the Prepetition Second Lien Credit Agreement and, collectively with the Prepetition Second Lien Credit Agreement, and all other documentation executed in connection therewith, the "**Prepetition Second Lien Term Loan Documents**" and together with the Prepetition First Lien Term Loan Documents and Prepetition ABL Financing Documents, the "**Prepetition Documents**");

(IV) ABL Intercreditor Agreement, dated as of September 6, 2017 (as amended, restated or otherwise modified from time to time, the "**Prepetition ABL Intercreditor Agreement**") entered into between the Prepetition ABL Agent, the Prepetition First Lien Term Loan Agent, and one or more of the Debtors;

(V) Amended and Restated Junior Priority Intercreditor Agreement, dated as of February 17, 2017 (as amended, restated or otherwise modified from time to time, the "**Prepetition Junior Lien**

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[6] The Prepetition ABL Credit Agreement, the Prepetition First Lien Term Loan Credit Agreement and the Prepetition Second Lien Term Loan Credit Agreement are collectively referred to as the "**Prepetition Credit Agreements**."

[7] The Prepetition ABL Credit Facility, the Prepetition First Lien Term Loan Credit Facility and the Prepetition Second Lien Term Loan Credit Facility are collectively referred to as the "**Prepetition Credit Facilities**."

[8] The Prepetition First Lien Term Loan Lenders and the Prepetition Second Lien Term Loan Lenders are collectively referred to as the "**Prepetition Term Loan Lenders**", and, together with the Prepetition ABL Lenders, the "**Prepetition Lenders**."

[9] The Prepetition First Lien Term Loan Secured Parties and the Prepetition Second Lien Term Loan Secured Parties are collectively referred to as the "**Prepetition Term Loan Secured Parties**", and, together with the Prepetition ABL Secured Parties, the "**Prepetition Secured Parties**".

Intercreditor Agreement" and, together with the Prepetition ABL Intercreditor Agreement, the "**Prepetition Intercreditor Agreements**") entered into between the Prepetition ABL Agent, the Prepetition First Lien Term Loan Agent, the Prepetition Second Lien Term Loan Agent and one or more of the Debtors;

(vii) subject to the restrictions set forth in the DIP Documents and this Final Order, authorization for the DIP Loan Parties to continue to use Cash Collateral (as defined below) and all other Prepetition Collateral (as defined below) in which any of the Prepetition Secured Parties has an interest, and to grant adequate protection to the Prepetition Secured Parties with respect to, *inter alia*, such use of Cash Collateral and other Prepetition Collateral;

(viii) authorization for the DIP Loan Parties to pay the principal, interest, fees, expenses and other amounts payable under the DIP Documents as such become earned, due and payable, including, but not limited to, unused line commitment fees, upfront fees, structuring fees, backstop fee, closing fees, exit fees, prepayment fee, audit fees, appraisal fees, valuation fees, administrative agent's fees, the reasonable fees and disbursements of the DIP Agents' and DIP Lenders' attorneys, advisors, accountants, appraisers, bankers, and other consultants, all to the extent provided in, and in accordance with, the DIP Documents;

(ix) approval of certain stipulations by the Debtors with respect to the Prepetition Documents and the liens, claims, and security interests arising therefrom;

(x) the granting to the DIP Secured Parties of allowed superpriority claims, subject to the Carve-Out (as defined below), pursuant to section 364(c)(1) of the Bankruptcy Code payable from and having recourse to all assets of the DIP Loan Parties;

(xi) the granting to the DIP Secured Parties of liens pursuant to section 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code on all prepetition and postpetition property of the DIP Loan Parties' estates and all proceeds thereof, including any Avoidance Proceeds (as defined below), in each case subject to the Carve-Out and with the relative priorities set forth in this Final Order and on **Exhibit A** hereto;

(xii) a waiver of (a) the Debtors' right to surcharge the Prepetition Collateral and the DIP Collateral (as defined below) (together, the "**Collateral**") pursuant to section 506(c) of the Bankruptcy Code, and (b) any right of the Debtors under the "equities of the case" exception under section 552(b) of the Bankruptcy Code; and

(xiii) modification of the automatic stay to the extent set forth herein and in the DIP Documents;

and due and appropriate notice of the Motion and the Final Hearing (as defined below) having been served by the Debtors on the parties identified in the Motion, and it appearing that no other or further notice need be provided; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the Court having reviewed the Motion; and pursuant to Bankruptcy Rule 4001, the interim hearing on the Motion having been held by this Court on July 22, 2019 (the "**Interim Hearing**"); and the Interim Order having been entered by this Court on July 23, 2019; and the final hearing on the Motion having been noticed and held by this Court on August 13, 2019 (the "**Final Hearing**"); and the relief requested in the Motion being in the best interests of the Debtors, their creditors and their estates and all other parties in interest in these Chapter 11 Cases; and the Court having determined that the relief requested in the Motion is necessary to avoid irreparable harm; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon the record made by the Debtors in the Motion, the *Declaration of Marc D. Puntus in Support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* (the "**Puntus Declaration**"), the *Declaration of Jesse M. Parrish, Chief Financial Officer of Blackhawk Mining LLC, in Support of the Chapter 11 Petitions and First Day Motions* (the "**First Day Declaration**"), the DIP Documents, and in the evidence submitted and arguments made by the Debtors at the Interim Hearing and the Final Hearing, and after due deliberation and sufficient cause appearing therefor;

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

1. *Disposition.* The relief requested in the Motion is GRANTED ON A FINAL BASIS in accordance with the terms of this Final Order. Any and all objections to the Motion with respect to the entry of this Final Order that have not been withdrawn, waived, settled, or resolved and all reservations of rights included therein, are hereby denied and overruled on the merits. This Final Order shall become effective immediately upon its entry.

2. *Petition Date*. On July 19, 2019 (the "**Petition Date**"), each Debtor filed a voluntary petition (each, a "**Petition**") under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in any of the Chapter 11 Cases.

3. *Jurisdiction.* This Court has core jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. *Committee Formation*. As of the date hereof, no official committee of unsecured creditors under section 1102 of the Bankruptcy Code (the "**Committee**") or any other statutory committee has been appointed in the Chapter 11 Cases.

5. *Notice*. Appropriate notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules. No other or further notice of this Final Order shall be required. The relief granted herein is necessary to avoid irreparable harm to the Debtors and their estates.

6. *Debtors' Stipulations*. Without prejudice to the rights of any other party in interest, and subject to the limitations thereon contained in paragraphs 26 and 28 below, the Debtors admit, stipulate and agree that:

(a) (i) as of the Petition Date: (A) the DIP ABL Borrowers and the Prepetition ABL Guarantors were justly and lawfully indebted and liable to the Prepetition ABL Secured Parties, without defense, counterclaim, recoupment or offset of any kind, in the aggregate principal amount of not less than $82,000,000 in respect of loans made to the DIP ABL Borrowers, plus accrued and unpaid interest thereon and fees, expenses (including, without limitation, any attorneys', accountants', appraisers' and financial advisors' fees, in each case, that are chargeable or reimbursable under the Prepetition ABL Financing Documents), charges, indemnities and other obligations incurred in connection therewith (whether arising before or after the Petition Date) as provided in the Prepetition ABL Financing Documents (the "**Prepetition ABL Debt**"), which Prepetition ABL Debt has been guaranteed on a joint and several basis by all of the Prepetition ABL Guarantors; (B) the Company and the Prepetition First Lien Term Loan Guarantors were justly and lawfully indebted and liable to the Prepetition First Lien Term Loan Secured Parties without defense, counterclaim or offset of any kind, in the aggregate principal amount of not less than approximately $538,974,437 in respect of loans made by the Prepetition First Lien Term Loan Lenders pursuant to, and in accordance with the terms of, the Prepetition First Lien Term Loan Documents, plus accrued and unpaid interest thereon and fees, expenses (including any attorneys', accountants', appraisers' and financial advisors' fees, in each case, that are chargeable or reimbursable under the Prepetition First Lien Term Loan Documents), charges, indemnities and other obligations incurred in connection therewith (whether arising before or after the Petition Date) as provided in the Prepetition First

Lien Term Loan Documents (collectively, the "**Prepetition First Lien Term Loan Debt**"), which Prepetition First Lien Term Loan Debt has been guaranteed on a joint and several basis by all of the Prepetition First Lien Term Loan Guarantors and (C) the Company and the Prepetition Second Lien Term Loan Guarantors were justly and lawfully indebted and liable to the Prepetition Second Lien Term Loan Secured Parties without defense, counterclaim or offset of any kind, in the aggregate principal amount of not less than approximately $318,307,228 in respect of loans made by the Prepetition Second Lien Term Loan Lenders pursuant to, and in accordance with the terms of, the Prepetition Second Lien Term Loan Documents, plus accrued and unpaid interest thereon and fees, expenses (including any attorneys', accountants', appraisers' and financial advisors' fees, in each case, that are chargeable or reimbursable under the Prepetition Second Lien Term Loan Documents), charges, indemnities and other obligations incurred in connection therewith (whether arising before or after the Petition Date) as provided in the Prepetition Second Lien Term Loan Documents (collectively, the "**Prepetition Second Lien Term Loan Debt**" and, together with the Prepetition ABL Debt and Prepetition First Lien Term Loan Debt, the "**Prepetition Debt**"), which Prepetition Second Lien Term Loan Debt has been guaranteed on a joint and several basis by all of the Prepetition Second Lien Term Loan Guarantors; (ii) the Prepetition Debt constitutes the legal, valid, binding, and non-avoidable obligations of the applicable Prepetition Borrowers[10] and the applicable Prepetition Guarantors,[11] enforceable in accordance with its terms (other than in respect of the stay of enforcement arising

[10] "**Prepetition Borrowers**" shall mean, in the case of the Prepetition First Lien Term Loan Debt and the Prepetition Second Lien Term Loan Debt, the Company and, in the case of the Prepetition ABL Debt, the DIP ABL Borrowers.

[11] "**Prepetition Guarantors**" shall mean, collectively, the Prepetition ABL Guarantors, the Prepetition First Lien Term Loan Guarantors and the Prepetition Second Lien Term Loan Guarantors.

from section 362 of the Bankruptcy Code); and (iii) no portion of the Prepetition Debt or any payment made to the Prepetition Secured Parties or applied to or paid on account of the obligations owing under the Prepetition Documents prior to the Petition Date is subject to any contest, attack, rejection, recovery, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law;

(b) as of the Petition Date, the liens and security interests granted to the Prepetition ABL Secured Parties (the "**Prepetition ABL Liens**") pursuant to and in connection with the Prepetition ABL Financing Documents are: (i) valid, binding, perfected, enforceable, first-priority liens and security interests in the Prepetition ABL Priority Collateral;[12] (ii) valid, binding, perfected, enforceable, second-priority liens and security interests in the Prepetition Term Loan Priority Collateral[13] (together with the Prepetition ABL Priority Collateral, the "**Prepetition Collateral**"); (iii) not subject to avoidance, recharacterization, subordination, recovery, attack, counterclaim, crossclaim, offset, recoupment, defense or claim under the Bankruptcy Code or applicable non-bankruptcy law; and (iv) as of the Petition Date, subject and subordinate only to (A) in the case of the Prepetition Term Loan Priority Collateral, (1) the liens and security interests in favor of the Prepetition First Lien Term Loan Secured Parties and (2) certain other liens permitted by the Prepetition Documents, solely to the extent any such permitted liens were valid, properly perfected, non-avoidable and *pari passu* or senior in priority to Prepetition First Lien Term Liens (as defined below) and (B) in the case of the Prepetition

[12] "**Prepetition ABL Priority Collateral**" means "ABL Priority Collateral" as defined in the Prepetition ABL Intercreditor Agreement (as defined below).

[13] **"Prepetition Term Loan Priority Collateral"** means "Term Loan Priority Collateral" as defined in the Prepetition ABL Intercreditor Agreement.

ABL Priority Collateral, certain other liens permitted by the Prepetition Documents, solely to the extent any such permitted liens were valid, properly perfected, non-avoidable and *pari passu* or senior in priority to the Prepetition ABL Liens;

(c) as of the Petition Date, the liens and security interests granted to the Prepetition First Lien Term Loan Secured Parties (the "**Prepetition First Lien Term Liens**") pursuant to and in connection with the Prepetition First Lien Term Loan Documents are: (i) valid, binding, perfected, enforceable, first-priority liens and security interests in the Prepetition Term Loan Priority Collateral; (ii) valid, binding, perfected, enforceable, second-priority liens and security interests in the Prepetition ABL Priority Collateral; (iii) not subject to avoidance, recharacterization, subordination, recovery, attack, effect, counterclaim, crossclaim, offset, recoupment, defense or claim (as such term is used in the Bankruptcy Code, "**Claim**") under the Bankruptcy Code or applicable non-bankruptcy law; and (iv) as of the Petition Date, subject and subordinate only to (A) in the case of the Prepetition ABL Priority Collateral, (1) the liens and security interests in favor of the Prepetition ABL Secured Parties and (2) certain other liens permitted by the Prepetition Documents, solely to the extent any such permitted liens were valid, properly perfected, non-avoidable and *pari passu* or senior in priority to the Prepetition ABL Liens and (B) in the case of the Prepetition Term Loan Priority Collateral, certain other liens permitted by the Prepetition Documents, solely to the extent any such permitted liens were valid, properly perfected, non-avoidable and *pari passu* or senior in priority to Prepetition First Lien Term Liens;

(d) as of the Petition Date, the liens and security interests granted to the Prepetition Second Lien Term Loan Secured Parties (the "**Prepetition Second Lien Term Liens**" and, together with the Prepetition First Lien Term Liens, the "**Prepetition Term Liens**"

and together with the Prepetition ABL Liens, the "**Prepetition Liens**") pursuant to and in connection with the Prepetition Second Lien Term Loan Agreements are: (i) valid, binding, perfected, enforceable, third-priority liens and security interests in the Prepetition Term Loan Priority Collateral; (ii) valid, binding, perfected, enforceable, third-priority liens and security interests in the Prepetition ABL Priority Collateral; (iii) not subject to avoidance, recharacterization, subordination, recovery, attack, counterclaim, crossclaim, offset, recoupment, defense or claim under the Bankruptcy Code or applicable non-bankruptcy law; and (iv) as of the Petition Date, subject and subordinate only to (A) in the case of the Prepetition ABL Priority Collateral, (1) the liens and security interests in favor of the Prepetition ABL Secured Parties and the Prepetition First Lien Term Loan Secured Parties and (2) certain other liens permitted by the Prepetition Documents, solely to the extent any such permitted liens were valid, properly perfected, non-avoidable and *pari passu* or senior in priority to the Prepetition First Lien Term Liens and (B) in the case of the Prepetition Term Loan Priority Collateral, (1) the Prepetition First Lien Term Liens and Prepetition ABL Liens and (2) certain other liens permitted by the Prepetition Documents, solely to the extent any such permitted liens were valid, properly perfected, non-avoidable and *pari passu* or senior in priority to Prepetition First Lien Term Liens;

(e) the aggregate value of the Prepetition ABL Priority Collateral exceeds the aggregate amount of the Prepetition ABL Debt;

(f) as of the Petition Date, other than as expressly permitted under the Prepetition Documents, there were no liens on or security interests in the Prepetition Collateral other than the Prepetition Liens;

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

(h) no claims, counterclaims, objections, defenses, set-off rights, challenges or causes of action exist against, or with respect to, the Prepetition Secured Parties or any of their respective affiliates, agents, subsidiaries, partners, controlling persons, agents, attorneys, advisors, professionals, officers, directors and employees, whether arising under applicable state or federal law (including, without limitation, any recharacterization, or other equitable relief that might otherwise impair the aforementioned parties or their interest in the Prepetition Collateral, subordination, avoidance or other claims, including any claims or causes of action arising under or pursuant to sections 105, 502(d), 510, 542 through 553(b) or 724(a) of the Bankruptcy Code), in connection with or arising under any Prepetition Documents or the transactions contemplated thereunder or the Prepetition Debt or Prepetition Liens, including without limitation, any right to assert any disgorgement or recovery; and the Debtors and their estates hereby release and discharge any and all such claims, counterclaims, objections, defenses, set-off rights, challenges and causes of actions;

(i) the Debtors hereby absolutely and unconditionally release and forever discharge and acquit the Prepetition Secured Parties and their respective Representatives (as defined below) each solely in their capacity as such (collectively, the "**Released Parties**") from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all claims, counterclaims, demands, debts, accounts, contracts, liabilities, actions and

causes of action arising prior to the Petition Date (collectively, the "**Released Claims**") of any kind, nature or description, whether known or unknown, foreseen or unforeseen or liquidated or unliquidated, arising in law or equity or upon contract or tort or under any state or federal law or otherwise, arising out of or related to (as applicable) the Prepetition Documents, the obligations owing and the financial obligations made thereunder, the negotiation thereof and of the transactions reflected thereby, and the obligations and financial obligations made thereunder, in each case that the Debtors at any time had, now have or may have, or that their successors or assigns hereafter can or may have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of this Final Order, whether such Released Claims are matured, contingent, liquidated, unliquidated, unmatured, known, unknown or otherwise;

(j) that the (A) Prepetition Intercreditor Agreements govern, among other things, the relative priorities of the Prepetition Liens in respect of the applicable Prepetition Collateral, (B) the Prepetition Intercreditor Agreements are binding and enforceable against the Prepetition Borrowers, the Prepetition Guarantors and the Prepetition Secured Parties in accordance with their terms, and (C) the Prepetition Borrowers, the Prepetition Guarantors and the Prepetition Secured Parties are not entitled to take any action that would be contrary to the provisions thereof; and

(k) all cash, securities or other property of the DIP Loan Parties (and the proceeds therefrom), in each case, constituting Prepetition Collateral, as of the Petition Date, including, without limitation, all cash, securities or other property (and the proceeds therefrom) and other amounts on deposit or maintained by the DIP Loan Parties in any account or accounts (collectively, the "**Depository Institutions**"), in each case, constituting Prepetition Collateral

were subject to rights of set-off under the Prepetition Documents and applicable law, for the benefit of the Prepetition Secured Parties, subject to the priorities set forth in the Prepetition Intercreditor Agreements. All proceeds of the Prepetition Collateral (including cash on deposit at the Depository Institutions as of the Petition Date, securities or other property, whether subject to control agreements or otherwise, in each case that constitutes Prepetition Collateral) are "cash collateral" of the Prepetition Secured Parties within the meaning of section 363(a) of the Bankruptcy Code (the "**Cash Collateral**"), subject to the priorities set forth in the Prepetition Intercreditor Agreements.

7. *Findings Regarding the DIP Financing and Use of Cash Collateral.*

(a) Good and sufficient cause has been shown for the entry of this Final Order and authorization for the DIP Loan Parties to obtain financing pursuant to the DIP Facilities.

(b) The DIP Loan Parties need to obtain the DIP Financing and continue to use the Prepetition Collateral (including Cash Collateral) in order to, among other things, (i) permit the orderly continuation of the operation of their businesses, (ii) maintain business relationships with customers, vendors and suppliers, (iii) pay for the necessary services and materials to maintain compliance with permitting and environmental regulatory requirements, (iv) pay for use of the mining equipment leased from third parties, (v) make payroll, (vi) satisfy other working capital and operational needs, (vii) repay a portion of the Prepetition First Lien Term Loan Debt pursuant to the Term Loan Roll-Up (as defined below), (viii) Repay in Full (as defined below) any remaining Prepetition ABL Debt pursuant to the ABL Roll-Up (as defined below). The access by the DIP Loan Parties to sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition Collateral, incurrence of new indebtedness under the DIP Documents and other financial accommodations provided under the DIP Documents are

necessary and vital to the preservation and maintenance of the going concern values of the DIP Loan Parties and to a successful reorganization of the DIP Loan Parties. The terms of the proposed financing are fair and reasonable, reflect the DIP Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration. The adequate protection provided in this Final Order and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code.

(c) The Prepetition ABL Secured Parties would not otherwise consent to the use of their Cash Collateral or the subordination of their liens (to the extent set forth on **Exhibit A** hereto), and the DIP ABL Agent and the DIP ABL Lenders would not be willing to provide the DIP ABL Facility or extend credit to the Debtors thereunder without the inclusion of the ABL Roll-Up. Moreover, the conversion and roll-up of all outstanding Prepetition ABL Obligations into the DIP ABL Obligations will create availability under the DIP ABL Facility.

(d) The Prepetition First Lien Term Loan Secured Parties would not otherwise consent to the use of their Cash Collateral or the subordination of their liens (to the extent set forth on **Exhibit A** hereto), and the Term DIP Lenders would not be willing to provide the Term DIP Facility or extend credit to the Debtors thereunder without the inclusion of the Term Loan Roll-Up.

(e) The DIP Loan Parties are unable to obtain financing on more favorable terms from sources other than the DIP Lenders[14] under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The DIP Loan Parties are also unable to obtain secured credit

[14] **"DIP Lenders"** means, collectively, the DIP ABL Lenders and the Term DIP Lenders.

allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the DIP Loan Parties granting to the DIP Secured Parties, subject to the Carve-Out, the DIP Liens and the DIP Superpriority Claims (as defined below) and, subject to the Carve-Out, incurring the Adequate Protection Obligations (as defined below), in each case, under the terms and conditions set forth in this Final Order and in the DIP Documents.

(f) Based on the Motion, the Puntus Declaration, the First Day Declaration and the record presented to the Court at the Interim Hearing and the Final Hearing, (i) the terms of the DIP Financing, (ii) the terms of the adequate protection granted to the Prepetition Secured Parties as provided in paragraphs 20 and 21 of this Final Order (the "**Adequate Protection**") and (iii) the terms on which the DIP Loan Parties may continue to use the Prepetition Collateral (including Cash Collateral), in each case pursuant to this Final Order and the DIP Documents, are in each case fair and reasonable, reflect the DIP Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties, constitute reasonably equivalent value and fair consideration, and represent the best financing presently available.

(g) To the extent such consent is required, the Prepetition Secured Parties have consented or are deemed under the Prepetition Intercreditor Agreements to have consented to the DIP Loan Parties' use of Cash Collateral and the other Prepetition Collateral, and the DIP Loan Parties' entry into the DIP Documents, in accordance with and subject to the terms and conditions set forth in this Final Order and the DIP Documents.

(h) The DIP Financing, the Adequate Protection and the use of the Prepetition Collateral (including Cash Collateral) have been negotiated in good faith and at arm's length among the DIP Loan Parties, the DIP Agents and the DIP Lenders, and all of the DIP Loan Parties' obligations and indebtedness arising under, in respect of, or in connection with, the DIP

Financing and the DIP Documents, including, without limitation: (i) all loans made to and guarantees issued by the DIP Loan Parties pursuant to the DIP Documents (the "**DIP Loans"**) and any "**Obligations**" and "**DIP ABL Obligations**" (as defined in the DIP Credit Agreements) shall be deemed to have been extended by the DIP Agents and the DIP Lenders and their respective affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Agents and the DIP Lenders (and the successors and assigns thereof) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Final Order or any provision hereof is reversed or modified on appeal. The Prepetition Secured Parties have acted in good faith regarding the DIP Financing and the DIP Loan Parties' continued use of the Prepetition Collateral (including Cash Collateral) to fund the administration of the DIP Loan Parties' estates and continued operation of their businesses (including the incurrence and payment of the Adequate Protection Obligations and the granting of the Adequate Protection Liens (as defined below)), in accordance with the terms hereof, and the Prepetition Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of section 363(m) of the Bankruptcy Code in the event that this Final Order or any provision hereof is reversed or modified on appeal.

(i) The Prepetition Secured Parties are entitled to the Adequate Protection provided in this Final Order as and to the extent set forth herein pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code. Based on the Motion, the Puntus Declaration, the First Day Declaration and the record presented to the Court, the terms of the proposed Adequate Protection arrangements and of the use of the Prepetition Collateral (including Cash Collateral) are fair and reasonable, reflect the DIP Loan Parties' prudent exercise of business judgment

consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration for the use of the Prepetition Collateral (including Cash Collateral); *provided* that nothing in this Final Order or the DIP Documents shall (x) be construed as the affirmative consent by any of the Prepetition Secured Parties for the use of Cash Collateral other than on the terms set forth in this Final Order and in the context of the DIP Financing authorized by this Final Order, (y) be construed as a consent by any party to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior or junior) or (z) prejudice, limit or otherwise impair the rights of any of the Prepetition Secured Parties, subject to any applicable provisions of the Prepetition Intercreditor Agreements, to seek new, different or additional adequate protection or assert the interests of any of the Prepetition Secured Parties.

(j) Payment of the Prepetition ABL Debt and a portion of the Prepetition First Lien Term Loan Debt pursuant to the ABL Roll-Up and Term Loan Roll-Up, respectively, reflect the DIP Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties.

(k) The Debtors have prepared and delivered to DIP Agents and the DIP Lenders an initial budget (the "**Initial Budget**"), a copy of which is attached to the Motion as **Schedule 1** to **Exhibit A**. The Initial Budget reflects the Debtors' anticipated cash receipts and anticipated disbursements for each calendar week during the period from the Petition Date through and including the end of the thirteenth (13th) calendar week following the Petition Date (the Initial Budget and each subsequent budget approved pursuant to the DIP Documents (an "**Approved Budget**")). The Debtors believe that the Initial Budget is reasonable under the facts and circumstances. The DIP Agents and the DIP Lenders are relying, in part, upon the Debtors' covenants in the DIP Credit Agreements with respect to the Approved Budget, the other DIP

Documents and this Final Order in determining to enter into the postpetition financing arrangements provided for in this Final Order.

(l) For the reasons set forth in the Motion, the Puntus Declaration and the First Day Declaration, absent granting the relief set forth in this Final Order, the DIP Loan Parties' estates would face significant business disruption resulting in irreparable harm. Consummation of the DIP Financing and the use of Prepetition Collateral (including Cash Collateral), in accordance with this Final Order and the DIP Documents are therefore in the best interests of the DIP Loan Parties, their estates and their creditors. The terms of this Final Order and the DIP Facilities are fair and reasonable under the circumstances, reflect the DIP Loan Parties' exercise of their prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

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

(a) In addition to the authority granted in the Interim Order, the DIP Loan Parties are authorized to execute, enter into and perform all obligations under the DIP Documents. The DIP ABL Borrowers are authorized to forthwith borrow money pursuant to the DIP ABL Credit Agreement, and the DIP ABL Guarantors are authorized to guaranty DIP ABL Obligations, in each case up to an aggregate principal or face amount equal to $90 million under the DIP ABL Facility, together with applicable interest, protective advances, expenses, fees and other charges payable in connection with the DIP ABL Facility, subject in each case to any limitations on borrowing under the DIP ABL Financing Documents, which shall be used for all purposes permitted under the DIP Documents, including, without limitation, to roll-up and refinance the Prepetition ABL Debt as provided herein, to provide working capital for the DIP Loan Parties and to pay interest, fees and expenses in accordance with this Final Order and the

DIP Documents (including any indemnification obligations). The DIP Loan Parties are authorized to forthwith borrow money pursuant to the Term DIP Credit Agreement, and the Term DIP Guarantors are hereby authorized to guaranty the DIP Loan Parties' Term DIP Obligations with respect to such borrowings, in each case up to an aggregate principal amount equal to $50 million of New Money Term DIP Loans and $100 million of Term DIP Roll-Up Loans, together with applicable interest, protective advances, expenses, fees and other charges payable in connection with the Term DIP Facility, subject to any limitations on borrowing under the Term DIP Documents, which shall be used for purposes permitted under the DIP Documents, including, without limitation, to roll-up and refinance a portion of the Prepetition First Lien Term Loan Debt as provided herein and to pay interest, fees and expenses in accordance with this Final Order and the DIP Documents (including any indemnification obligations).

(b) In furtherance of the foregoing and without further approval of this Court and in addition to the authority granted in the Interim Order, each Debtor is authorized to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages, deeds of trust and financing statements), and to pay all fees that may be reasonably required or necessary for the DIP Loan Parties to implement the terms of, performance of their obligations under or effectuate the purposes of and transactions contemplated by this Final Order or the DIP Financing, including, without limitation:

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

(ii) the execution and delivery of, and performance under, one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each

case, in such form as the DIP Loan Parties, the DIP Agents, the Required DIP ABL Lenders (as defined in the DIP ABL Credit Agreement, the "**Required DIP ABL Lenders**") and the Required Lenders (as defined in the Term DIP Credit Agreement, the "**Required Term DIP Lenders**," and together with the Required DIP ABL Lenders, the "**Required DIP Lenders**"), as applicable, may agree, it being understood that no further approval of the Court shall be required for authorizations, amendments, waivers, consents or other modifications to and under the DIP Documents (and any fees and other expenses (including any attorneys', accountants', appraisers' and financial advisors' fees), amounts, charges, costs, indemnities and other obligations paid in connection therewith) that do not shorten the maturity of the extensions of credit thereunder, increase the aggregate commitments or the rate of interest payable thereunder, or effect any other material amendments;

(iii) the non-refundable payment to the DIP Agents and/or the DIP Lenders, as the case may be, of all fees (which fees, in each case, were, and were deemed to have been approved upon entry of the Interim Order, and which fees shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise) and any amounts due (or that may become due) in respect of the indemnification obligations, in each case referred to in the DIP Credit Agreements (and in any separate letter agreements between any or all DIP Loan Parties, on the one hand, and any of the DIP Agents and/or DIP Lenders, on the other, in connection with the DIP Financing) and the costs and expenses as may be due from time to time, including, without limitation, fees and expenses of the professionals retained by any of the DIP Agents or DIP Lenders, including, without limitation, the reasonable and documented

fees and expenses of (i) Hogan Lovells US LLP as primary counsel to the DIP ABL Agent, Morris, Nichols, Arsht & Tunnell LLP as bankruptcy and Delaware counsel to the DIP ABL Agent, and a single local counsel to the DIP ABL Agent in each other applicable jurisdiction, (ii) Herrick Feinstein LLP as primary counsel to the Term DIP Agent and Prepetition First Lien Term Loan Agent and a single local counsel to the Term DIP Agent and Prepetition First Lien Term Loan Agent in each applicable jurisdiction, (iii) Stroock & Stroock & Lavan LLP as primary counsel to the Prepetition Second Lien Term Loan Agent and a single local counsel to the Prepetition Second Lien Term Loan Agent in each applicable jurisdiction, (iv) Davis Polk & Wardwell LLP as primary counsel to an ad hoc group of Term DIP Lenders, Prepetition First Lien Term Loan Lenders and Prepetition Second Lien Term Loan Lenders (the "**Crossover Group**"), a single local counsel to the Crossover Group in each applicable jurisdiction, and (v) Shearman & Sterling LLP as primary counsel to certain of the Prepetition First Lien Term Loan Lenders (the "**First Lien Group**"), and a single local counsel to the First Lien Group, in each case, as provided for in the DIP Documents, without the need to file retention motions or fee applications or to provide notice to any party, but subject to paragraphs 20(c) and 21(c) of this Final Order; and

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

(c) Upon execution and delivery of the DIP Documents, each of the DIP Documents shall constitute valid, binding and non-avoidable obligations of the DIP Loan Parties, fully enforceable against each DIP Loan Party in accordance with the terms of the DIP Documents and this Final Order. No obligation, payment, transfer or grant of security under the

DIP Documents or this Final Order to the DIP Agents (including their Representatives) and/or the DIP Lenders (including their Representatives) shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, 548 or 549 of the Bankruptcy Code, any applicable Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or other similar state statute or common law), or subject to any defense, reduction, setoff, recoupment, recharacterization, subordination, disallowance, impairment, cross-claim, claim or counterclaim.

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

(e) The Debtors and the financial institutions where the Debtors' Cash Collection Accounts (as defined below) are maintained (including those accounts identified in any Cash Management Order), are authorized and directed to remit, without offset or deduction, funds in such Cash Collection Accounts upon receipt of any direction to that effect from the DIP ABL Agent. For the avoidance of doubt, except to the extent expressly set forth in the DIP ABL Financing Documents, all prepetition practices and procedures for the payment and collection of proceeds of the Prepetition ABL Priority Collateral, the turnover of cash, the delivery of property to the Prepetition ABL Agent and the Prepetition ABL Lenders, including any control agreements and any other similar lockbox or blocked depository bank account arrangements, are hereby approved and shall continue without interruption and shall apply to the DIP ABL Facility. Without limiting the general applicability of the immediately preceding sentence, and

notwithstanding anything contrary in this Final Order, from and after the date of the entry of the Interim Order, all collections and proceeds of any Prepetition ABL Priority Collateral and other DIP ABL Priority Collateral and all Cash Collateral (other than identifiable net proceeds of DIP Term Loan Priority Collateral and except as otherwise set forth in the DIP ABL Credit Agreement) that shall at any time come into the possession, custody, or control of any Debtor, or to which any Debtor is now or shall become entitled at any time, shall be promptly deposited in the same lock-box and/or deposit accounts into which the collections and proceeds of the Prepetition ABL Priority Collateral were deposited under the Prepetition ABL Financing Documents (or in such other accounts as are designated by the DIP ABL Agent from time to time) (collectively, the "**Cash Collection Accounts**") for application in accordance with this Final Order, which accounts (except as otherwise set forth in the DIP ABL Credit Agreement) shall be subject to the sole dominion and control of the DIP ABL Agent until the discharge of the DIP ABL Facility. Unless otherwise agreed to in writing by the DIP ABL Agents and the Prepetition ABL Agents, or otherwise provided for herein, the Debtors shall maintain no accounts except those identified in this Final Order or in any cash management order entered by the Court (a "**Cash Management Order**").

9. *DIP Intercreditor Agreement*. The DIP Loan Parties are hereby authorized and directed to execute, enter into and perform under the intercreditor agreement among the DIP Loan Parties, the DIP ABL Agent and the Term DIP Agent, substantially in the form attached to the DIP Credit Agreements (the "**DIP ICA**"). For the avoidance of doubt the DIP ICA shall be deemed a DIP Document hereunder.

10. *Payment of the Prepetition ABL Debt*. The DIP Loan Parties are hereby authorized to (x) perform the transactions and undertakings contemplated hereby and in the

Interim DIP Order, which are hereby approved in all respects, (y) to use the proceeds of the DIP ABL Financing to roll-up and refinance the remainder of the Prepetition ABL Debt, including interest and fees through the date of repayment (at the non-default contract rate) (the "**Final ABL Roll-Up**," and together with the Interim ABL Roll-Up (as defined in the Interim DIP Order), the "**ABL Roll-Up**"), and the amounts so rolled-up and refinanced, the "**ABL Roll-Up Loans**"), which roll-up and refinancing shall be indefeasible upon the occurrence of the ABL Discharge and shall be entitled to all the priorities, privileges, rights, and other benefits afforded to the other DIP Obligations under this Final Order and the DIP Loan Documents, and (z) use the proceeds of the DIP ABL Financing to pay any fees, charges or expenses incurred by the Prepetition ABL Agent prior to the Petition Date, but which are posted after the payoff of the Prepetition ABL Debt. The foregoing transactions in respect of the Prepetition ABL Debt shall be indefeasible upon the ABL Discharge. Subject to the terms and conditions contained in this Final Order (including, without limitation, the DIP Liens (as defined below) granted hereunder and the Carve-Out (as defined below)), any and all prepetition or postpetition liens and security interests (including, without limitation, any adequate protection replacement liens at any time granted to the Prepetition ABL Secured Parties by this Court) that the Prepetition ABL Secured Parties have or may have in the Collateral shall (a) continue to secure the unpaid portion of any Prepetition ABL Debt (including, without limitation, any Prepetition ABL Debt subsequently reinstated after the repayment thereof) and (b) be junior and subordinate in all respects to the Carve-Out and otherwise have the priorities set forth on **Exhibit A** attached hereto (such liens and security interests of the Prepetition ABL Secured Parties are hereinafter referred to as the "**ABL Indemnification Liens,**" and any such unpaid or reinstated Prepetition ABL Debt described in clause (a) of this sentence is hereinafter referred to as the "**Prepetition ABL**

Indemnification Obligations"). Any surviving obligations as set forth in any DIP Document, Prepetition Documents, any payoff letter related to the Prepetition ABL Debt and/or any documents related to the foregoing, including, without limitation, any indemnification of the Prepetition ABL Secured Parties and the ABL Indemnification Liens, shall continue and survive the ABL Discharge and the other transactions described in this paragraph and shall not be discharged pursuant to a chapter 11 plan or any discharge under section 1141 of the Bankruptcy Code.

11. *Payment of the Prepetition First Lien Term Loan Debt*. On the date of each borrowing of New Money Term DIP Loans under the Term DIP Credit Agreement, the Prepetition First Lien Term Loan Debt held by the Term DIP Lenders (or if a Term DIP Lender is a designee of a Prepetition First Lien Term Loan Lender, the Prepetition First Lien Term Loan Debt held by such designating Prepetition First Lien Term Loan Lender) shall, subject to paragraph 31 hereof, immediately, automatically and irrevocably be deemed to have been converted into Term DIP Roll-Up Loans in an amount equal to $2.00 for each $1.00 of the New Money Term DIP Loans funded on such date (the "**Term Loan Roll-Up**"), which Term DIP Roll-Up Loans shall be entitled to all the priorities, privileges, rights, and other benefits afforded to the other DIP Obligations under this Final Order and the DIP Loan Documents, in each case subject to the terms and conditions set forth in this Final Order, the DIP Documents and the reservation of rights of parties in interest in paragraph 31 below.

12. *Carve-Out*

(a) As used in this Final Order, the "**Carve Out**" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without

regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the "**Allowed Professional Fees**") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "**Debtor Professionals**") and the official committee of unsecured creditors (the "**Creditors' Committee**") (if appointed) pursuant to section 328 or 1103 of the Bankruptcy Code (the "**Committee Professionals**" and, together with the Debtor Professionals, the "**Professional Persons**") at any time before or on the first business day following delivery by the Term DIP Agent or the DIP ABL Agent of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed $2,000,000 incurred after the first business day following delivery by the Term DIP Agent or the DIP ABL Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "**Post-Carve Out Trigger Notice Cap**"). For purposes of the foregoing, "**Carve Out Trigger Notice**" shall mean a written notice delivered by email (or other electronic means) by the Term DIP Agent or the DIP ABL Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Creditors' Committee (if appointed) with a copy to the Prepetition First Lien Term Loan Agent (which shall post the same to the Prepetition First Lien Term Loan Lenders), the Prepetition ABL Agent (which shall post the same to the Prepetition ABL Lenders), and the DIP Agent not delivering such notice, which notice may be delivered following the occurrence and during the continuation of an Event of Default (as defined in this

Final Order) and acceleration of the DIP ABL Obligations or the Term DIP Obligations under the DIP ABL Facility or the Term DIP Facility, as applicable, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) Fee Estimates. Not later than 7:00 p.m. New York time on the third business day of each week starting with the first full calendar week following the Closing Date, each Professional Person shall deliver to the Debtors a statement setting forth a good-faith estimate of the amount of fees and expenses (collectively, "**Estimated Fees and Expenses**") incurred during the preceding week by such Professional Person (through Saturday of such week, the "**Calculation Date**"), along with a good-faith estimate of the cumulative total amount of unreimbursed fees and expenses incurred through the applicable Calculation Date and a statement of the amount of such fees and expenses that have been paid to date by the Debtors (each such statement, a "**Weekly Statement**"); *provided, that* within one business day of the occurrence of the Termination Declaration Date (as defined below), each Professional Person shall deliver one additional statement (the "**Final Statement**") setting forth a good-faith estimate of the amount of fees and expenses incurred during the period commencing on the calendar day after the most recent Calculation Date for which a Weekly Statement has been delivered and concluding on the Termination Declaration Date. If any Professional Person fails to deliver a Weekly Statement within three calendar days after such Weekly Statement is due, such Professional Person's entitlement (if any) to any funds in the Carve Out Reserves (as defined below) with respect to the aggregate unpaid amount of Allowed Professional Fees for the applicable period(s) for which such Professional Person failed to deliver a Weekly Statement covering such period shall be limited to the aggregate unpaid amount of Allowed Professional Fees included in the Approved Budget for such period for such Professional Person; *provided,*

that such Professional Person shall be entitled to be paid any unpaid amount of Allowed Professional Fees in excess of Allowed Professional Fees included in the Approved Budget for such period for such Professional Person from a reserve to be funded by the Debtors from all cash on hand as of such date and any available cash thereafter held by any Debtor pursuant to paragraph 12(c) below. Solely as it relates to the DIP ABL Agent, the Term DIP Agent, the DIP ABL Lenders, the Term DIP Lenders, the Prepetition ABL Agent, and the Prepetition Secured Parties, any deemed draw and borrowing pursuant to paragraph 12(c)(i)(x) for amounts under paragraph 12(a)(iii) above shall be limited to the greater of (x) the sum of (I) the aggregate unpaid amount of Estimated Fees and Expenses included in such Weekly Statements timely received by the Debtors prior to the Termination Declaration Date *plus*, without duplication, (II) the lesser of (1) the aggregate unpaid amount of Estimated Fees and Expenses included in the Final Statements timely received by the Debtors pertaining to the period through and including the Termination Declaration Date and (2) the Budgeted Cushion Amount (as defined below), and (y) the aggregate unpaid amount of Allowed Professional Fees included in the Approved Budget for the period prior to the Termination Declaration Date (such amount, the "**DIP Professional Fee Carve Out Cap**"). For the avoidance of doubt, at all times, the DIP ABL Agent and the Term DIP Agent shall be entitled to maintain reserves (the "**Carve-Out Reserve**"), including, without limitation, a reserve in an amount (the "**Carve-Out Reserve Amount**")[15] equal to the sum of (i) the greater of (x) the aggregate unpaid amount of Estimated Fees and Expenses included in *all* Weekly Statements timely received by the Debtors, and (y) the aggregate amount of Allowed Professional Fees contemplated to be unpaid in the Approved Budget at the

[15] For the avoidance of doubt, the Carve-Out Reserve and the Carve-Out Reserve Amount shall in no way limit the "Reserves" as defined in the DIP ABL Credit Agreement.

applicable time, *plus* (ii) the Post-Carve Out Trigger Notice Cap, *plus* (iii) the amounts contemplated under paragraph 12(a)(i) and 12(a)(ii) above, *plus* (iv) an amount equal to the amount of Allowed Professional Fees set forth in the Approved Budget for the then current week occurring after the most recent Calculation Date and the two weeks succeeding such current week (such amount set forth in (iv), regardless of whether such reserve is maintained, the "**Budgeted Cushion Amount**"). Not later than 7:00 p.m. New York time on the fourth business day of each week starting with the first full calendar week following the Closing Date, the Debtors shall deliver to the DIP ABL Agent and the Term DIP Agent a report setting forth the Carve-Out Reserve Amount as of such time, and, in setting the Carve-Out Reserve, the DIP ABL Agent and the Term DIP Agent shall be entitled to rely upon such reports in accordance with the DIP ABL Credit Agreement and section 8.16 the Term DIP Credit Agreement, respectively. Prior to the delivery of the first report setting forth the Carve-Out Reserve Amount, the DIP ABL Agent and the Term DIP Agent shall calculate the Carve-Out Reserve Amount by reference to the Approved Budget for subsection (i) of the Carve-Out Reserve Amount and for the portion of the Carve-Out Reserve Amount attributable to section 12(a)(i).

(c) Carve Out Reserves

(i) On the day on which a Carve Out Trigger Notice is given by the DIP ABL Agent or the Term DIP Agent to the Debtors with a copy to counsel to the Creditors' Committee (if appointed) (the "**Termination Declaration Date**"), the Carve Out Trigger Notice shall (x) be deemed a draw request and notice of borrowing by the Debtors for DIP Loans under the DIP ABL Credit Agreement or the Term DIP Credit Agreement, as applicable (on a pro rata basis based on the then outstanding DIP Commitments), in an amount equal to the sum of (1) the amounts set forth in paragraphs 12(a)(i) and 12(a)(ii) above, and (2) the lesser of (a) the then

unpaid amounts of the Allowed Professional Fees (b) the DIP Professional Fee Carve Out Cap (any such amounts actually advanced shall constitute DIP ABL Loans or Term DIP Loans, as applicable) and (y) also constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the sum of the amounts set forth in paragraphs 12(a)(i)–(iii) above. The Debtors shall deposit and hold such amounts in trust in a segregated third-party bank account (in respect of amounts funded by the DIP ABL Lenders or from the DIP ABL Priority Collateral) and the Term DIP Agent in trust (in respect of proceeds of the Term Loan Priority Collateral or the proceeds of the Term DIP Loans) exclusively to pay such then unpaid Allowed Professional Fees (the "**Pre-Carve Out Trigger Notice Reserve**") prior to any and all other claims.

(ii) On the Termination Declaration Date, the Carve Out Trigger Notice shall also (x) be deemed a request by the Debtors for DIP ABL Loans under the DIP ABL Credit Agreement or Term DIP Loans under the Term DIP Credit Agreement, as applicable (on a pro rata basis based on the then outstanding DIP Commitments), in an amount equal to the Post-Carve Out Trigger Notice Cap (any such amounts actually advanced shall constitute DIP ABL Loans or Term DIP Loans, as applicable) and (y) constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor, after funding the Pre-Carve Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap. The Debtors shall deposit and hold such amounts in trust in a segregated third-party account with the DIP ABL Agent or the Term DIP Agent (as applicable) to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap (the "**Post-Carve Out Trigger Notice Reserve**" and, together with the Pre-Carve Out Trigger Notice Reserve, the "**Carve Out Reserves**") prior to any and all other claims.

(iii) On the first business day after the Term DIP Agent or the DIP ABL Agent gives such notice to such DIP ABL Lenders (as defined in the DIP ABL Credit Agreement), notwithstanding anything in the DIP ABL Credit Agreement to the contrary, including with respect to the existence of a Default (as defined in the DIP ABL Credit Agreement) or Event of Default, the failure of the Debtors to satisfy any or all of the conditions precedent for DIP ABL Loans under the DIP ABL Facility, any termination of the DIP Commitments following an Event of Default, or the occurrence of the Maturity Date, each DIP ABL Lender with an outstanding DIP Revolving Loan Commitment (on a pro rata basis based on the then outstanding DIP Revolving Loan Commitments) shall make available to the DIP ABL Agent such DIP ABL Lender's pro rata share with respect to such borrowing in accordance with the DIP ABL Facility; *provided* that in no event shall the DIP ABL Agent or the DIP ABL Lenders be required to extend DIP ABL Loans pursuant to a deemed draw and borrowing pursuant to paragraphs 12(c)(i)(x) and 12(c)(ii)(x) in an aggregate amount exceeding the Carve-Out Reserve Amount.

(iv) All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out set forth above (the "**Pre-Carve Out Amounts**"), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full. If the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, subject to clause (vi), below, all remaining funds in (x) the account funded by the DIP ABL Lenders shall be distributed *first* to the DIP ABL Agent on account of the DIP ABL Obligations until indefeasibly Paid in Full, and *thereafter* for application to the Prepetition ABL Obligations in accordance with the Prepetition ABL Credit Agreement and (y) all remaining funds in the account funded by the Term DIP Lenders shall be distributed to the

Term DIP Agent which shall apply such funds to the Term DIP Obligations in accordance with the Term DIP Credit Agreement until indefeasibly Paid in Full.

(v) All funds in the Post-Carve Out Trigger Notice Reserve, to the extent they exceed the DIP Professional Fee Carve Out Cap, shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the "**Post-Carve Out Amounts**"). If, after such application, the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, subject to clause (vi) below, all remaining funds (x) in respect of the account funded by the DIP ABL Lenders, shall be distributed *first* to the DIP ABL Agent on account of the DIP ABL Obligations until indefeasibly Paid in Full, and *thereafter* for application to the Prepetition ABL Obligations in accordance with the Prepetition ABL Credit Agreement and (y) all remaining funds in the account funded by the Term DIP Lenders shall be distributed to the Term DIP Agent, which shall apply such funds to the Term DIP Obligations in accordance with the Term DIP Credit Agreement until indefeasibly Paid in Full.

(vi) Notwithstanding anything to the contrary in the DIP ABL Documents, the Term DIP Documents or this Final Order, (x) if either of the Carve Out Reserves required to be funded by the DIP ABL Lenders is not funded in full in the amounts set forth in this paragraph, then any excess funds in one of the Carve Out Reserves held in any account funded by the DIP ABL Lenders following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts (subject to the limits contained in the DIP Professional Fee Carve Out Cap and the Post-Carve Out Trigger Notice Cap, respectively) shall be used to fund the other Carve Out Reserve to the extent of any shortfall in funding by the DIP ABL Lenders prior to making any payments to the DIP ABL Agent or the Prepetition ABL Secured Parties, as applicable, and (y) if either of the Carve Out Reserves required to be funded with the proceeds of Prepetition

Term Loan Priority Collateral is not funded in full in the amounts set forth in this paragraph, then any excess funds in one of the Carve Out Reserves held in any account funded by such cash on hand following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts (subject to the Post-Carve Out Trigger Notice Cap), respectively, shall be used to fund the other Carve Out Reserve to the extent of any shortfall in funding by the cash on hand prior to making any payments to the Term DIP Agent or the Prepetition Secured Parties, as applicable.

(vii) Notwithstanding anything to the contrary in the DIP ABL Documents, the Term DIP Documents or this Final Order, following delivery of a Carve Out Trigger Notice, the DIP ABL Agent and the Prepetition ABL Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves required to be funded by the DIP ABL Lenders have been fully funded, but the DIP ABL Agent and the Prepetition ABL Agent have a security interest in any residual interest in the Carve Out Reserves held in accounts by the DIP ABL Agent, with any excess paid as provided in paragraphs (iv) and (v) above; and (y) the Term DIP Agent and the Prepetition First Lien Term Loan Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid as provided in paragraphs (iv) and (v) above. The security interests of the DIP ABL Agent and the Term DIP Agent on any residual interest in the Carve Out Reserves shall be shared pro rata based on the amount of funds in the Carve Out Reserves funded by (x) the proceeds of Term DIP Priority Collateral and (y) the DIP ABL Lenders or the DIP ABL Collateral. Further, notwithstanding anything to the contrary in this Final Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not constitute

DIP Loans or increase or reduce the Term DIP Obligations or the DIP ABL Obligations, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the Initial Budget, Approved Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this Final Order, the Term DIP Facility, the DIP ABL Facility, or in any Prepetition Credit Agreement, the Carve Out shall be senior to all liens and claims securing the Term DIP Facility, the DIP ABL Facility, the Adequate Protection Liens, and the 507(b) Claim, and any and all other forms of adequate protection, liens, or claims securing the Term DIP Obligations, the DIP ABL Obligations, or the Prepetition Secured Obligations.

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

(e) No Direct Obligation To Pay Allowed Professional Fees. None of the Term DIP Agent, DIP ABL Agent, DIP ABL Lenders, Term DIP Lenders, or the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Final Order or otherwise shall be construed to obligate the Term DIP Agent, DIP ABL Agent, the Term DIP Lenders, or the Prepetition Secured Parties, in any way, to pay compensation to, or to reimburse

expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(f) Payment of Carve Out On or After the Termination Declaration Date. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis. Any funding of the Carve Out by the Term DIP Lenders shall be added to, and made a part of, the Term DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under this Final Order, the DIP Documents, the Bankruptcy Code, and applicable law. Any funding of the Carve Out by the DIP ABL Lenders shall be added to, and made a part of, the DIP ABL Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under this Final Order, the DIP Documents, the Bankruptcy Code, and applicable law.

13. *DIP Superpriority Claims.* Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against the DIP Loan Parties on a joint and several basis (without the need to file any proof of claim) with priority over any and all claims against the DIP Loan Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 364, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113, 1114 or any other section of the Bankruptcy Code (including the Adequate Protection Obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims (the "**DIP Superpriority Claims**") shall, for purposes of

section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which DIP Superpriority Claims shall be payable from and have recourse to all pre- and postpetition property of the DIP Loan Parties and all proceeds thereof in accordance with the DIP Credit Agreements and this Final Order, subject only to the liens on such property and the Carve-Out. The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Final Order or any provision hereof is reversed or modified on appeal. The DIP Superpriority Claims in respect of the DIP ABL Obligations and the Term DIP Obligations shall, without otherwise impairing the lien priorities as set forth herein, be *pari passu* in right of payment with one another and senior to the Adequate Protection Claims; *provided* that the DIP Superpriority Claims in respect of the Term DIP Roll-Up Loans shall be subject and subordinate to the DIP Superpriority Claims in respect of the New Money Term DIP Loans.

14. *DIP Liens.*

(a) *DIP ABL Liens.* As security for the DIP ABL Obligations, effective and perfected as of the date of the Interim Order and without the necessity of the execution, recordation or filing by the DIP ABL Loan Parties of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, any notation of certificates of title for a titled good or the possession or control by the DIP ABL Agent of, or over, any DIP Collateral (including for the avoidance of doubt any DIP ABL Collateral as defined in the DIP ABL Credit Agreement), the following security interests and liens are hereby granted to the DIP ABL Agent for its own benefit and the benefit of the DIP ABL Secured Parties (all property identified in clauses (i)-(iii) below being collectively referred to as the "**DIP ABL Collateral**"), subject only to the payment of the Carve-Out and in each case in accordance

with the priorities set forth in **Exhibit A** hereto (all such liens and security interests granted to the DIP ABL Agent, for its benefit and for the benefit of the DIP ABL Lenders, pursuant to the Interim Order, this Final Order and the DIP ABL Financing Documents, the "**DIP ABL Liens**"):[16]

(i) Liens on Unencumbered Property. Subject to paragraph 14(a)(iv) and pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected (A) first priority senior security interest in and lien upon all tangible and intangible pre- and postpetition property (including mineral rights) of the DIP ABL Loan Parties, whether existing on the Petition Date or thereafter acquired, of the same nature, scope and type as the Prepetition ABL Priority Collateral and the proceeds, products, rents and profits thereof, which shall include any Avoidance Proceeds related to the forgoing ("**DIP ABL Priority Collateral**," which for the avoidance of doubt shall include Prepetition ABL Priority Collateral), and (B) junior security interest in (to the extent set forth on **Exhibit A** hereto) and lien upon all tangible and intangible pre- and postpetition property of the DIP ABL Loan Parties, whether existing on the Petition Date or thereafter acquired, of the same nature, scope and type as the Prepetition Term Loan Priority Collateral, and the proceeds, products, rents and profits thereof, in each case that, on or as of the Petition Date are not subject to either (x) a valid, perfected and non-avoidable lien, or (y) a valid and non-avoidable lien in existence as of the Petition Date that is perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, and in each case other than the Avoidance Actions[17] (but including Avoidance

[16] For the avoidance of doubt, DIP ABL Liens include the New Money DIP ABL Liens and all security interests and liens in respect of the ABL Roll-Up Loans.

[17] "**Avoidance Actions**" means, collectively, claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code.

Proceeds[18]), but in each case subject to the Carve-Out, provided that, solely with respect to the ABL Roll-Up Loans, the security interests and liens granted pursuant to this clause (i) shall not include liens on any real property lease that, as of the Petition Date, was not subject to a valid and perfected lien securing the Prepetition First Lien Term Loans in accordance with the Prepetition First Lien Term Loan Credit Agreement because the consent of the applicable lessor to the creation of a security interest in favor of the Prepetition First Lien Term Lenders was required pursuant to the terms of the applicable real property lease and such consent was not obtained (the "**Specified Excluded Unencumbered Property**");

(ii) Liens Priming Certain Prepetition Secured Parties' Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code: (A) a valid, binding, continuing, enforceable, fully-perfected first priority priming security interest in and lien upon all pre- and postpetition property (including mineral rights) of the DIP Loan Parties of the same nature, scope and type as the Prepetition ABL Priority Collateral, regardless of where located, that are subject to (1) valid, perfected and non-avoidable liens as of the Petition Date or (2) valid and non-avoidable liens as of the Petition Date and that are perfected after the Petition Date to the extent provided by section 546(b) of the Bankruptcy Code, regardless of whether or not any liens on such assets are voided, avoided, invalidated, lapsed or unperfected, which security interest and lien shall prime the Prepetition ABL Liens and the Prepetition Term Liens (the "**DIP ABL Priority Collateral Priming Liens**"), and (B) a valid, binding, continuing, enforceable, fully-perfected priming security interest in and lien upon (with priority as set forth on **Exhibit A** hereto) all pre- and

[18] "**Avoidance Proceeds**" means any proceeds or property recovered, unencumbered or otherwise, from Avoidance Actions, whether by judgment, settlement or otherwise.

postpetition property of the DIP Loan Parties that are subject to (1) valid, perfected and non-avoidable liens as of the Petition Date or (2) valid and non-avoidable liens as of the Petition Date and that are perfected after the Petition Date to the extent provided by section 546(b) of the Bankruptcy Code, of the same nature, scope and type as the Prepetition Term Loan Priority Collateral (as defined below), regardless of where located, regardless of whether or not any liens on such assets are voided, avoided, invalidated, lapsed or unperfected, which security interest and lien shall prime the Prepetition ABL Liens and Prepetition Second Lien Term Liens (the "**DIP ABL Term Loan Priority Collateral Priming Liens**," and together with the DIP ABL Priority Collateral Priming Liens, the "**DIP ABL Priming Liens**"). Notwithstanding anything herein to the contrary, but subject to the relative priorities set forth in paragraph 14(c) herein, the DIP ABL Priming Liens shall be (A) subject and junior to the Carve-Out in all respects, (B) junior to (1) valid, perfected and non-avoidable liens, if any, to which the Prepetition ABL Liens are subject, and (2) valid and non-avoidable liens to which the Prepetition ABL Liens are subject and that are perfected after the Petition Date to the extent provided by section 546(b) of the Bankruptcy Code, in each case unless such liens are themselves Prepetition ABL Liens, and (C) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code; and

(iii) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, and subject to the Carve-Out, a valid, binding, continuing, enforceable, fully-perfected junior security interest (to the extent set forth on **Exhibit A** hereto) in and lien upon (A) all pre- and postpetition property of the Term DIP Loan Parties of the same nature, scope and type as the Prepetition Term Loan Priority Collateral and (B) all pre- and postpetition property of the ABL DIP Loan Parties of the same nature, scope and type as the Prepetition ABL Priority

Collateral that, on or as of the Petition Date, is subject to valid, perfected and non-avoidable senior liens or valid and non-avoidable senior permitted liens in existence immediately prior to the Petition Date or that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, in each case other than the Prepetition ABL Liens.

(iv) Specified Excluded Unencumbered Property. Notwithstanding anything to the contrary in the Motion, the DIP Documents, the Interim Order or this Final Order, in no event shall the Collateral or DIP Collateral include or the DIP Liens attach to any Specified Excluded Unencumbered Property, or any of such relevant Debtor's rights or interests thereunder, if and for so long as the grant of such security interest would constitute or result in: (a) the abandonment, invalidation, unenforceability, or other impairment of any right, title, or interest of any Debtor therein, or (b) in a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract, agreement, or other property right pursuant to any provision thereof, unless, in the case of each of clauses (a) and (b), the applicable provision is rendered ineffective, unenforceable, and/or invalid by applicable non-bankruptcy law or the Bankruptcy Code; *provided that*, the DIP Secured Parties shall not (i) enforce their rights under the applicable DIP Documents purportedly arising from the DIP Liens attached to a Specified Excluded Unencumbered Property absent a subsequent order by this Court or another court with appropriate jurisdiction, after sufficient notice to the applicable counterparty or counterparties to Specified Excluded Unencumbered Property, finding that with respect to whether applicable non-bankruptcy law or the Bankruptcy Code renders such applicable provision ineffective, unenforceable, and/or invalid, or (ii) absent a subsequent order by this Court or another court with appropriate jurisdiction, after sufficient notice to the applicable counterparty or counterparties to Specified Excluded Unencumbered Property, make any of the filings permitted

under paragraph 24 herein in the event such filings relate solely to the DIP Liens attached to Specified Excluded Unencumbered Property. Notwithstanding the foregoing, the DIP Liens shall in all events attach, effective and perfected as of the date of the Interim Order, to all proceeds, products, offspring, or profits from all sales, transfers, dispositions, or monetization of any and all Specified Excluded Unencumbered Property, which for the avoidance of doubt includes all As-Extracted Collateral (as defined in the Security Agreement) from real property subject to a lease that constitutes Specified Excluded Unencumbered Property.

(v) For the avoidance of doubt, notwithstanding anything to the contrary in the Motion, the DIP Documents, the Interim Order or this Final Order, in no event shall the Collateral or the DIP Collateral include or the DIP Liens or Adequate Protection Liens attach to the applicable Counterparty's (as defined below) underlying interest in (i) real property in respect of which any Debtor has a leasehold interest or (ii) coal/minerals in or under such real property, which in each case shall neither be impaired nor encumbered by the terms of the DIP Financing and Adequate Protection granted under the Interim Order and this Final Order.

(b) *Term DIP Liens.* As security for the Term DIP Obligations, effective and perfected as of the date of the Interim Order and without the necessity of the execution, recordation or filing by the Term DIP Loan Parties of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Term DIP Agent of, or over, any DIP Collateral, the following security interests and liens are hereby granted to the Term DIP Agent for its own benefit and the benefit of the Term DIP Lenders (all property identified in clauses (i)-(iii) below being collectively referred to as the "**Term DIP Collateral**" and, collectively with DIP ABL

Collateral, the "**DIP Collateral**"[19]), subject only to the payment of the Carve-Out and in each case in accordance with the priorities set forth in **Exhibit A** hereto (all such liens and security interests granted to the Term DIP Agent, for its benefit and for the benefit of the Term DIP Lenders, pursuant to the Interim Order, this Final Order and the Term DIP Documents, the "**Term DIP Liens**" and together with the DIP ABL Liens, the "**DIP Liens**"):

(i) Liens on Unencumbered Property. Subject to paragraph 14(b)(iv) and pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected (A) first priority senior security interest in and lien upon all tangible and intangible pre- and postpetition property (including mineral rights) of the Term DIP Loan Parties, whether existing on the Petition Date or thereafter acquired, of the same nature, scope and type as the Prepetition Term Loan Priority Collateral, and the proceeds, products, rents and profits thereof, which shall include any Avoidance Proceeds related to the forgoing ("**DIP Term Loan Priority Collateral**," which for the avoidance of doubt shall include Prepetition Term Loan Priority Collateral) and (B) junior security interest in and lien upon all tangible and intangible pre- and postpetition property of the Term DIP Loan Parties, whether existing on the Petition Date or thereafter acquired, of the same nature, scope and type as the Prepetition ABL Priority Collateral, and the proceeds, products, rents and profits thereof, in each case that, on or

[19] For the avoidance of doubt, DIP Collateral shall not include, and the DIP Liens shall not attach to: (i) funds held for the benefit of Kentucky River Properties LLC and Timberlands, LLC (collectively, "**KRP**") pursuant to the terms of that certain Escrow Agreement dated August 29, 2014, and that certain Account Control Agreement dated August 29, 2014, both between KRP and the Debtors; or (ii) funds held for the benefit of Prichard School, LLC, City National Bank of West Virginia as Successor Trustee under a Trust Agreement dated December 30, 1983 between Kanawha Banking & Trust Company, N.A., Trustee and A.M. Prichard, III, Sarah Ann Prichard and Lewis Prichard and their respective spouses, PRC Holdings, LLC, H.A. Robson, LLC, Ohio River Holdings, LLC, Kanawha Boone Holdings LLC, Robert B. Lafollette Holdings, LLC, Wright Holdings, LLC, James A. Lafollette Holdings, LLC, Riverside Park, Inc., LML Properties, L.L.C. and Broun Properties, L.L.C. (collectively, "**LRPB**") pursuant to the terms of that certain Escrow Agreement dated January 1, 2018 among LRPB, the Debtors and Gaddy Engineering Company.

as of the Petition Date are not subject to either (x) a valid, perfected and non-avoidable lien, or (y) a valid and non-avoidable lien in existence as of the Petition Date that is perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, and in each case, other than the Avoidance Actions (but including Avoidance Proceeds), but in each case subject to the Carve-Out, provided that, with respect to the Term DIP Roll-Up Loans, the security interests and liens granted pursuant to this clause (i) shall not include liens on the Specified Excluded Unencumbered Property;

(ii) Liens Priming Certain Prepetition Secured Parties' Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code: (A) a valid, binding, continuing, enforceable, fully-perfected first priority priming security interest in and lien upon all pre- and postpetition property (including mineral rights) of the DIP Loan Parties that are subject to (1) valid, perfected and nonavoidable liens as of the Petition Date or (2) valid and non-avoidable liens as of the Petition Date and that are perfected after the Petition Date to the extent provided by section 546(b) of the Bankruptcy Code, of the same nature, scope and type as the Prepetition Term Loan Priority Collateral, regardless of where located, regardless of whether or not any liens on such assets are voided, avoided, invalidated, lapsed or unperfected, which security interest and lien shall prime the Prepetition ABL Liens and the Prepetition Term Liens (the "**Term DIP Term Loan Priority Collateral Priming Liens**"), and (B) a valid, binding, continuing, enforceable, fully-perfected priming security interest in and lien upon (with priority as set forth on **Exhibit A** hereto) all pre- and postpetition property of the DIP Loan Parties that are subject to (1) valid, perfected and nonavoidable liens as of the Petition Date or (2) valid and non-avoidable liens as of the Petition Date and that are perfected after the Petition Date to the extent provided by section 546(b) of the Bankruptcy Code, of the same nature, scope and type as the Prepetition ABL Priority Collateral,

regardless of where located, regardless of whether or not any liens on such assets are voided, avoided, invalidated, lapsed or unperfected, which security interest and lien shall prime the Prepetition First Lien Term Liens and Prepetition Second Lien Term Liens (the "**Term DIP ABL Priority Collateral Priming Liens**", and together with the Term DIP Term Loan Priority Collateral Priming Liens, the "**Term DIP Priming Liens**"). Notwithstanding anything herein to the contrary, but subject to the relative priorities set forth in paragraph 14(c) herein, the Term DIP Priming Liens shall be (A) subject and junior to the Carve-Out in all respects, (B) junior to (1) valid, perfected and non-avoidable liens, if any, to which the Prepetition Term Liens are subject and (2) valid and non-avoidable liens to which the Prepetition Term Liens are subject and that are perfected after the Petition Date to the extent provided by section 546(b) of the Bankruptcy Code, in each case unless such liens are themselves Prepetition Term Liens, and (C) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code; and

(iii) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected junior security interest in and lien upon (A) all pre- and postpetition property of the DIP ABL Loan Parties of the same nature, scope and type as the Prepetition ABL Priority Collateral and (B) all pre- and postpetition property of the Term DIP Loan Parties of the same nature, scope and type as the Prepetition Term Loan Priority Collateral that, on or as of the Petition Date, is subject to valid, perfected and non-avoidable senior liens or valid and non-avoidable senior permitted liens in existence immediately prior to the Petition Date or that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, in each case other than the Prepetition Term Liens.

(iv) Specified Excluded Unencumbered Property. Notwithstanding anything to the contrary in the Motion, the DIP Documents, the Interim Order or this Final Order, in no event shall the Collateral or DIP Collateral include or the DIP Liens attach to any Specified Excluded Unencumbered Property, or any of such relevant Debtor's rights or interests thereunder, if and for so long as the grant of such security interest would constitute or result in: (a) the abandonment, invalidation, unenforceability, or other impairment of any right, title, or interest of any Debtor therein, or (b) in a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract, agreement, or other property right pursuant to any provision thereof, unless, in the case of each of clauses (a) and (b), the applicable provision is rendered ineffective, unenforceable, and/or invalid by applicable non-bankruptcy law or the Bankruptcy Code; *provided that*, the DIP Secured Parties shall not (i) enforce their rights under the applicable DIP Documents purportedly arising from the DIP Liens attached to a Specified Excluded Unencumbered Property absent a subsequent order by this Court or another court with appropriate jurisdiction, after sufficient notice to the applicable counterparty or counterparties to Specified Excluded Unencumbered Property, finding that with respect to whether applicable non-bankruptcy law or the Bankruptcy Code renders such applicable provision ineffective, unenforceable, and/or invalid, or (ii) absent a subsequent order by this Court or another court with appropriate jurisdiction, after sufficient notice to the applicable counterparty or counterparties to Specified Excluded Unencumbered Property, make any of the filings permitted under paragraph 24 herein in the event such filings relate solely to the DIP Liens attached to Specified Excluded Unencumbered Property. Notwithstanding the foregoing, the DIP Liens shall in all events attach, effective and perfected as of the date of the Interim Order, to all proceeds, products, offspring, or profits from all sales, transfers, dispositions, or monetization of

any and all Specified Excluded Unencumbered Property, which for the avoidance of doubt includes all As-Extracted Collateral (as defined in the Security Agreement) from real property subject to a lease that constitutes Specified Excluded Unencumbered Property.

(v) For the avoidance of doubt, notwithstanding anything to the contrary in the Motion, the DIP Documents, the Interim Order or this Final Order, in no event shall the Collateral or the DIP Collateral include or the DIP Liens or Adequate Protection Liens attach to the applicable Counterparty's underlying interest in (i) real property in respect of which any Debtor has a leasehold interest or (ii) coal/minerals in or under such real property, which in each case shall neither be impaired nor encumbered by the terms of the DIP Financing and Adequate Protection granted under the Interim Order and this Final Order.

(c) *Relative Priority of Liens*. Notwithstanding anything to the contrary herein, (i) in respect of the Term DIP Collateral, the DIP Liens in respect of the Term DIP Roll-Up Loans (the "**Term DIP Roll-Up Liens**") shall be subject and subordinate to the DIP Liens in respect of the New Money Term DIP Loans (the "**New Money Term DIP Liens**"), and (ii) in respect of the Specified Excluded Unencumbered Property, the DIP Liens in respect of the new money portion of the DIP ABL Facility (the "**New Money DIP ABL Liens**") shall be subject to and subordinate to the New Money Term DIP Liens. Notwithstanding anything to the contrary in the preceding sentence, this Final Order or in the DIP Documents, the relative priority of each DIP Lien granted in this paragraph 14 shall be as set forth in **Exhibit A** attached hereto and the relative priority of the Prepetition ABL Liens, the ABL Indemnification Liens, the Prepetition ABL Adequate Protection Liens, Prepetition Term Liens and the Prepetition Term Loan Adequate Protection Liens shall be as set forth in **Exhibit A** attached hereto; *provided* that, for the avoidance of doubt, each such lien shall be subject and subordinate to the Carve-Out.

(d) *Automatic Effectiveness of Liens.* The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby vacated and modified to permit the DIP Loan Parties to grant the liens and security interests to the DIP Agents, the other DIP Secured Parties and the Prepetition Secured Parties, in any such case, contemplated by this Final Order and the other DIP Documents, and such liens and security interests are hereby automatically granted, attached and perfected.

15. *Protection of DIP Lenders' Rights.*

(a) So long as (1) there are any Term DIP Obligations outstanding or the Term DIP Lenders have any outstanding "Commitments" (as defined, and used, in the Term DIP Credit Agreement) (the "**Term DIP Commitments**") under the Term DIP Credit Agreement, or (2) there is any Prepetition First Lien Term Loan Debt outstanding under the Prepetition First Lien Term Loan Credit Agreement, the Prepetition ABL Secured Parties shall: (i) with respect to the DIP Term Loan Priority Collateral and Prepetition Term Loan Priority Collateral, have no right to and shall take no action to foreclose upon, or recover in connection with, the liens granted pursuant to the Prepetition Documents, the Interim Order or this Final Order, or otherwise seek to exercise or enforce any rights or remedies against such DIP Term Loan Priority Collateral and Prepetition Term Loan Priority Collateral, including in connection with the ABL Indemnification Liens, the Prepetition ABL Liens or the Prepetition ABL Adequate Protection Liens; (ii) be deemed to have consented to any transfer, disposition or sale of, or release of liens on, such DIP Term Loan Priority Collateral and Prepetition Term Loan Priority Collateral (but not any proceeds of such transfer, disposition or sale to the extent remaining after payment in cash in full of the Term DIP Obligations and termination of the Term DIP Commitments and payment in cash in full of the Prepetition First Lien Term Loan Debt), to the

extent such transfer, disposition, sale or release is authorized under the DIP Documents; (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in such DIP Term Loan Priority Collateral and Prepetition Term Loan Priority Collateral unless, solely as to this clause (iii), the DIP Agents or the DIP Lenders file financing statements or other documents to perfect the liens granted pursuant to the Interim Order or this Final Order, or as may be required by applicable state law to continue the perfection of valid and non-avoidable liens or security interests as of the Petition Date and (iv) at the request of the Term DIP Agent, deliver or cause to be delivered, at the Term DIP Loan Parties' cost and expense, any termination statements, releases and/or assignments in favor of the Term DIP Agents or the Term DIP Lenders or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of liens on any portion of such DIP Term Loan Priority Collateral subject to any sale or disposition permitted by the DIP Documents and this Final Order or in connection with the ABL Discharge.

(b) So long as (1) there are any DIP ABL Obligations outstanding or the DIP ABL Lenders have any outstanding "DIP Revolving Loan Commitment" (as defined, and used, in the DIP ABL Credit Agreement) (the "**DIP ABL Commitments**," and together with the Term DIP Commitments, the "**DIP Commitments**") under the DIP ABL Credit Agreement or (2) there is any Prepetition ABL Debt outstanding (including any Prepetition ABL Indemnification Obligations) under the Prepetition ABL Credit Agreement, the Prepetition Term Loan Secured Parties shall: (i) with respect to the Prepetition ABL Priority Collateral and DIP ABL Priority Collateral, have no right to and shall take no action to foreclose upon, or recover in connection with, the liens granted pursuant to the Prepetition Documents, the Interim Order or this Final

Order, or otherwise seek to exercise or enforce any rights or remedies against such Prepetition ABL Priority Collateral and DIP ABL Priority Collateral, including in connection with the Prepetition Term Liens or the Prepetition Term Loan Adequate Protection Liens; (ii) be deemed to have consented to any transfer, disposition or sale of, or release of liens on, such Prepetition ABL Priority Collateral or DIP ABL Priority Collateral (but not any proceeds of such transfer, disposition or sale to the extent remaining after payment in cash in full of the DIP ABL Obligations and Prepetition ABL Debt and termination of the DIP ABL Commitments and "Commitments" as defined under the Prepetition ABL Credit Agreement), to the extent such transfer, disposition, sale or release is authorized under the DIP Documents; (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in such Prepetition ABL Priority Collateral or DIP ABL Priority Collateral unless, solely as to this clause (b), the DIP Agents or the DIP Lenders file financing statements or other documents to perfect the liens granted pursuant to the Interim Order or this Final Order, or as may be required by applicable state law to continue the perfection of valid and non-avoidable liens or security interests as of the Petition Date and (iv) at the request of the DIP ABL Agent or Prepetition ABL Agent, deliver or cause to be delivered, at the DIP ABL Loan Parties' or Prepetition ABL Loan Parties' cost and expense, any termination statements, releases and/or assignments in favor of the DIP ABL Agents or Prepetition ABL Agents or the DIP ABL Lenders or Prepetition ABL Lenders or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of liens on any portion of such Prepetition ABL Priority Collateral or DIP ABL Priority Collateral subject to any sale or disposition permitted by the DIP Documents, the Interim Order and this Final Order or in connection with the ABL Discharge.

(c) To the extent any Prepetition ABL Secured Party has possession of any Prepetition ABL Priority Collateral or DIP ABL Priority Collateral or has control with respect to any Prepetition ABL Priority Collateral or DIP ABL Priority Collateral, or has been noted as a secured party on any certificate of title for a titled good constituting Prepetition ABL Priority Collateral or DIP ABL Priority Collateral, then such Prepetition ABL Secured Party shall be deemed to maintain such possession or notation or exercise such control as a gratuitous bailee and/or gratuitous agent for perfection for the benefit of the DIP Agents and the DIP Lenders (subject to the priorities set forth in **Exhibit A** hereto), and it shall comply with the instructions of the DIP ABL Agent with respect to the exercise of such control.

(d) To the extent any Prepetition Term Loan Secured Party has possession of any Prepetition Term Loan Priority Collateral or DIP Term Loan Priority Collateral or has control with respect to any Prepetition Term Loan Priority Collateral or DIP Term Loan Priority Collateral, or has been noted as a secured party on any certificate of title for a titled good constituting Prepetition Term Loan Priority Collateral or DIP Term Loan Priority Collateral, then such Prepetition Term Loan Secured Party shall be deemed to maintain such possession or notation or exercise such control as a gratuitous bailee and/or gratuitous agent for perfection for the benefit of the DIP Agents and the DIP Lenders (subject to the priorities set forth in **Exhibit A** hereto), and it shall comply with the instructions of the Term DIP Agent with respect to the exercise of such control.

(e) Any proceeds of Prepetition Collateral received by any Prepetition Secured Party in connection with the exercise of any right or remedy (including setoff) relating to the Prepetition Collateral or otherwise received by any Prepetition Secured Party shall be segregated and held in trust for the benefit of and forthwith paid over to the applicable DIP

Agents for the benefit of the applicable DIP Secured Parties (subject to the priorities set forth in **Exhibit A** hereto) in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. The DIP Agents are hereby authorized to make any such endorsements as agent for any such Prepetition Secured Party. This authorization is coupled with an interest and is irrevocable.

(f) The automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent necessary to permit the DIP Secured Parties in respect of any DIP Facility to enforce all of their rights under the applicable DIP Documents and take any or all of the following actions, at the same or different time, in each case without further order or application of the Court: (i) immediately upon the occurrence of an Event of Default, declare (A) the termination, reduction or restriction of any further DIP Commitment to the extent any such DIP Commitment remains, (B) all DIP Obligations to be immediately due, owing and payable, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the DIP Loan Parties; notwithstanding anything herein or in any DIP Document to the contrary, (ii) the termination of the applicable DIP Documents as to any future liability or obligation of the applicable DIP Agent and the applicable DIP Lenders (but, for the avoidance of doubt, without affecting any of the DIP Liens or the DIP Obligations), (iii) subject to the Remedies Notice Period (as defined below), whether or not the maturity of any of the DIP Obligations shall have been accelerated, proceed to protect, enforce and exercise all rights and remedies of the DIP Secured Parties under the DIP Documents for such DIP Facility or applicable law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in any such DIP Document or any instrument pursuant to which such DIP Obligations are evidenced,

and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of any of such DIP Secured Parties, and (iv) unless this Court orders otherwise during the Remedies Notice Period after a hearing, upon the occurrence of an Event of Default and the giving of five business days' prior written notice (which shall run concurrently with any notice required to be provided under the DIP Documents) (the "**Remedies Notice Period**") via email to counsel to the Debtors and the office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**") to (A) withdraw consent to the DIP Loan Parties' continued use of Cash Collateral and (B) exercise all other rights and remedies provided for in the DIP Documents and under applicable law with respect to the DIP Collateral; *provided*, that no such notice shall be required for any exercise of rights or remedies (A) to block or limit withdrawals from any bank accounts that are a part of the Collateral (including, without limitation, by sending any control activation notices to depositary banks pursuant to any control agreement) or (B) in the event of DIP Obligations that have not been Paid in Full (other than contingent indemnification obligations as to which no claim has been asserted) on the applicable termination of the respective DIP Document.

(g) During the Remedies Notice Period, the DIP Loan Parties shall be permitted to use Cash Collateral solely to (A) pay payroll and other critical administrative expenses to keep the business of the DIP Loan Parties operating, strictly in accordance with the Approved Budget and (B) fund the Carve-Out. During the Remedies Notice Period, the Debtors, the Committee (if appointed) and/or any party in interest shall be entitled to seek an emergency hearing with the Court within the Remedies Notice Period. The Debtors have irrevocably waived their right to seek relief under the Bankruptcy Code, including, without limitation, under section 105 of the Bankruptcy Code, to the extent that such relief would in any way impair or

restrict the rights or remedies of the DIP Secured Parties set forth in this Final Order or the DIP Documents.

(h) In no event shall the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral. Further, in no event shall the "equities of the case" exception in section 552(b) of the Bankruptcy Code apply to the secured claims of the Prepetition Secured Parties.

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

(j) Except to the extent the DIP Lenders are required to fund the Carve Out as set forth in this Final Order, the DIP Agents and DIP Lenders shall have no obligation to make any loan or advance under the DIP Documents, unless all of the conditions precedent to the making of such extension of credit under the DIP Documents and this Final Order have been satisfied in full or waived in writing by the applicable DIP Agent and in accordance with the terms of the applicable DIP Documents.

16. *Proceeds of Subsequent Financing*. Without limiting the provisions and protections of Paragraph 14 above, but subject in all respects to the Carve-Out, if at any time prior to the Repayment in Full in accordance with the DIP Documents of all the DIP Obligations

(through and including the effective date of any chapter 11 plan or plans with respect to any of the Debtors), the Debtors' estates, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed shall obtain credit or incur debt pursuant to sections 364(b), 364(c), 364(d), or any other provision of the Bankruptcy Code in violation of this Final Order or the DIP Documents, then all of the cash proceeds derived from such credit or debt and all Cash Collateral shall immediately be turned over to the DIP Agents for application to the DIP Obligations, in accordance with the priorities set forth herein, until such DIP Obligations are Paid in Full.

17. *Limitation on Charging Expenses Against Collateral*. Subject to the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Collateral (including Cash Collateral) pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior express written consent of each of the DIP Agents, the Prepetition Agents (in the case of the Prepetition ABL Agent, prior to the ABL Discharge) and the Prepetition Lenders, as the case may be, that holds a lien on the relevant asset, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agents, the DIP Lenders, the Prepetition Agents or the Prepetition Lenders, and nothing contained in this Final Order shall be deemed to be a consent by the DIP Agents, the DIP Lenders or the Prepetition Secured Parties to any charge, lien, assessment or claim against the Collateral under section 506(c) of the Bankruptcy Code or otherwise.

18. *Payments Free and Clear*. Any and all payments or proceeds remitted to the DIP Agents by, through or on behalf of the DIP Lenders pursuant to the provisions of the Interim

Order, this Final Order, the DIP Documents or any subsequent order of the Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including without limitation, any such claim or charge arising out of or based on, directly or indirectly, sections 506(c) or 552(b) of the Bankruptcy Code, whether asserted or assessed by, through, or on behalf of the Debtors.

19. *Use of Cash Collateral*. The DIP Loan Parties are hereby authorized, subject to the terms and conditions of this Final Order, to use Cash Collateral; *provided* that (a) the Prepetition Secured Parties are granted the Adequate Protection as hereinafter set forth and (b) except on the terms and conditions of this Final Order, the DIP Loan Parties shall be prohibited from at any time using the Cash Collateral absent further order of the Court.

20. *ABL Indemnification Liens and Adequate Protection of Prepetition ABL Secured Parties*. The Prepetition ABL Secured Parties are entitled to (a) the ABL Indemnification Liens and (b) pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, adequate protection of their interests in all Prepetition Collateral, including Cash Collateral, in an amount equal to the aggregate diminution in the value of the Prepetition ABL Secured Parties' interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including, without limitation, any such diminution resulting from the depreciation, sale, lease or use by the DIP Loan Parties (or other decline in value) of the Prepetition Collateral, the priming of the Prepetition ABL Liens by the DIP Liens pursuant to the DIP Documents and this Final Order and/or the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (the "**Prepetition ABL Adequate Protection Claim**"). In consideration of the foregoing, the Prepetition ABL Secured

Parties are hereby granted the following, in each case, subject to the Carve-Out (collectively, the "**Prepetition ABL Secured Parties Adequate Protection Obligations**"):

(a) ABL Indemnification Liens and Prepetition ABL Adequate Protection Liens. The Prepetition ABL Agent (for itself and for the benefit of the Prepetition ABL Lenders) is hereby granted (effective and perfected as of the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), (i) to secure payment of any and all Prepetition ABL Indemnification Claims and the ABL Indemnification Liens and (ii) to secure payment of any and all of the Prepetition ABL Adequate Protection Claims, a valid, perfected replacement security interest in and lien (the "**Prepetition ABL Adequate Protection Liens**") (subject to the limitations set forth above) upon the Collateral, except for the Specified Excluded Unencumbered Property, in accordance with the priorities shown in **Exhibit A** and in each case subject to the Carve-Out.

(b) Prepetition ABL Section 507(b) Claim. The Prepetition ABL Secured Parties are granted against each of the DIP Loan Parties on a joint and several basis an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of the Prepetition ABL Adequate Protection Claim with, except as set forth in this Final Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code (the "**Prepetition ABL 507(b) Claim**"). The Prepetition ABL 507(b) Claim shall be subject and subordinate only to the Carve-Out and the DIP Superpriority Claims granted in respect of the DIP Obligations and shall be *pari passu* with the Prepetition First Lien Term Loan 507(b) Claim (as defined below) and senior in all respects to the Prepetition Second Lien Term Loan 507(b) Claim (as defined below).

Except to the extent expressly set forth in this Final Order or the DIP Credit Agreements, the Prepetition ABL Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Prepetition ABL 507(b) Claim unless and until the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and any claims having a priority superior to or *pari passu* with the DIP Superpriority Claims have indefeasibly been Paid in Full and the DIP Commitments have been terminated. For purposes of this Final Order, the terms "Paid in Full," "Repaid in Full," "Repay in Full," and "Payment in Full" shall mean, with respect to any referenced DIP Obligations and/or Prepetition Debt, (i) the indefeasible payment in full in cash of such obligations, (ii) the termination or cash collateralization, in accordance with the DIP Documents and/or Prepetition Documents, as applicable, of all undrawn letters of credit and Banking Services Obligations outstanding thereunder, and (iii) the termination of all commitments under the DIP Documents and/or the Prepetition Debt Documents, as applicable.

(c) Prepetition ABL Agent Fees and Expenses. The Prepetition ABL Agent shall receive from the DIP Loan Parties, for the benefit of the Prepetition ABL Lenders, current cash payments of the reasonable and documented prepetition and postpetition fees and expenses with respect to Prepetition ABL Debt under the Prepetition ABL Financing Documents, including, but not limited to, the reasonable and documented fees and expenses of counsel for the Prepetition ABL Agent (including Hogan Lovells US LLP as primary counsel to the Prepetition ABL Agent, Morris, Nichols, Arsht & Tunnell LLP as bankruptcy and Delaware counsel to the Prepetition ABL Agent, one local counsel to the Prepetition ABL Agent in each other applicable jurisdiction) promptly upon receipt of invoices therefor. The Prepetition ABL Agent shall provide summary form fee and expense statements (i.e., without any detail) to the DIP Loan

Parties, the U.S. Trustee, and any Committee, which may be redacted for privileged information. If no written objection is received by 12:00 p.m., prevailing Eastern Time, on the date that is ten (10) business days after delivery of such invoice to the Debtors, the U.S. Trustee, and any Committee, the DIP Loan Parties shall promptly pay such invoices. If an objection to a professional's invoice is timely received, the DIP Loan Parties shall promptly pay the undisputed amount of the invoice and this Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. The Prepetition ABL Agent (and each of its professionals) shall not be required to comply with U.S. Trustee fee guidelines or file applications or motions with, or obtain approval of, the Court for the payment of any of their out-of-pocket costs, fees, expenses, disbursements and other charges. Payments of any amounts set forth in this paragraph are not subject to recharacterization, avoidance, subordination or disgorgement.

(d) Prepetition ABL Secured Parties' Cash Payments. Subject to reallocation or recharacterization as payment of principal under sections 506(a) and (b) of the Bankruptcy Code, the Prepetition ABL Secured Parties shall receive current cash payments in the amount of interest on the outstanding principal at the non-default rate under the Prepetition ABL Credit Agreement prior to the ABL Discharge.

(e) Information Rights. Until the occurrence of the ABL Discharge, the Debtors shall promptly provide the Prepetition ABL Agent, on behalf of itself and the Prepetition ABL Lenders, with all required written financial reporting and other periodic reporting that is delivered by any of the DIP Loan Parties under the DIP Documents. In addition, the Debtors shall upon reasonable advance notice, permit the Prepetition ABL Agent, on behalf of itself and the Prepetition ABL Lenders, to conduct field audits, collateral examinations, liquidation

valuations, and inventory appraisals at reasonable times in respect of any or all of the Collateral in accordance with the terms and conditions set forth in the Prepetition ABL Financing Documents.

21. *Adequate Protection of Prepetition Term Loan Secured Parties.* The Prepetition Term Loan Secured Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, to adequate protection of their interests in all Prepetition Collateral, for and equal in amount to the aggregate diminution in the value of the Prepetition Term Loan Secured Parties' interests in the Prepetition Collateral from and after the Petition Date, if any, including, without limitation, any such diminution resulting from the depreciation, sale, lease or use by the DIP Loan Parties (or other decline in value) of the Prepetition Collateral, the priming of the Prepetition Term Liens by the DIP Liens pursuant to the DIP Documents, the Interim Order and this Final Order and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, (the "**Prepetition Term Loan Parties Adequate Protection Claim**" and, together with the Prepetition ABL Adequate Protection Claim, the "**Adequate Protection Claims**"); *provided*, that the avoidance of any Prepetition Term Loan Secured Parties' interests in Prepetition Collateral shall not constitute diminution in the value of such Prepetition Term Loan Secured Party's interests in Prepetition Collateral. As adequate protection of the Prepetition Term Loan Parties Adequate Protection Claim, the Prepetition Term Loan Secured Parties are hereby granted the following, in each case subject to the Carve-Out (collectively, the "**Prepetition Term Loan Adequate Protection Obligations**" and, together with the Prepetition ABL Secured Parties Adequate Protection Obligations, the "**Adequate Protection Obligations**"):

(a) Prepetition Term Loan Adequate Protection Liens. The Prepetition First Lien Term Loan Agent, on behalf of the Prepetition First Lien Term Loan Secured Parties, and the Prepetition Second Lien Term Loan Agent, on behalf of the Prepetition Second Lien Term Loan Secured Parties, are each hereby granted (effective and perfected as of the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of the applicable Prepetition Term Loan Parties Adequate Protection Claim held by such Prepetition Term Loan Secured Parties, a replacement security interest in and lien (the "**Prepetition Term Loan Adequate Protection Liens**" and, together with the Prepetition ABL Adequate Protection Liens, the "**Adequate Protection Liens**") (subject to the limitations set forth above) upon the Collateral, except for the Specified Excluded Unencumbered Property, in accordance with the priorities shown in **Exhibit A** and in each case subject to the Carve-Out.

(b) Prepetition Term Loan Secured Parties Section 507(b) Claim. The Prepetition First Lien Term Loan Secured Parties are granted, subject to the Carve-Out, allowed superpriority claims as provided for in section 507(b) of the Bankruptcy Code, junior to the DIP Superpriority Claims (the "**Prepetition First Lien Term Loan 507(b) Claim**"). The Prepetition Second Lien Term Loan Secured Parties are granted, subject to the Carve-Out, allowed superpriority claims as provided for in section 507(b) of the Bankruptcy Code, junior to the DIP Superpriority Claims, the Prepetition ABL 507(b) Claim and the Prepetition First Lien Term Loan 507(b) Claim (the "**Prepetition Second Lien Term Loan 507(b) Claim**" and, together with the Prepetition First Lien Term Loan 507(b) Claim, the "**Prepetition Term Loan 507(b) Claims**," and the Prepetition Term Loan 507(b) Claims together with the Prepetition ABL 507(b) Claim, the "**507(b) Claims**"). If the Prepetition First Lien Term Loan Secured Parties

holding 66.67% of the Prepetition First Lien Term Loan Debt waive the requirement that their Prepetition Term Loan 507(b) Claims be paid in full in cash, then the Prepetition Second Lien Term Loan Secured Parties will also be deemed to waive such requirement. The Prepetition First Lien Term Loan 507(b) Claim shall be subject and subordinate to only the Carve-Out and the DIP Superpriority Claims granted in respect of the DIP Obligations and shall be *pari passu* with the Prepetition ABL 507(b) Claim. The Prepetition Second Lien Term Loan 507(b) Claim shall be subject and subordinate to only the Carve-Out, the Prepetition First Lien Term Loan 507(b) Claim, the Prepetition ABL 507(b) Claim and the DIP Superpriority Claims granted in respect of the DIP Obligations. Except to the extent expressly set forth in this Final Order or the DIP Credit Agreements, the Prepetition Term Loan Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Prepetition Term Loan 507(b) Claim unless and until the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and any claims having a priority superior to or *pari passu* with the DIP Superpriority Claims have indefeasibly been Paid in Full and the DIP Commitments have been terminated.

(c) Prepetition Term Loan Secured Parties' Fees and Expenses. The Prepetition Term Loan Agents shall receive from the DIP Loan Parties, for the benefit of the Prepetition Term Loan Lenders, current cash payments of the reasonable and documented prepetition and postpetition fees and expenses of the Prepetition Term Loan Agents under the Prepetition Term Loan Documents, including, but not limited to, the reasonable and documented fees and disbursements of one counsel and one local counsel in each applicable jurisdiction for each of the Prepetition Term Loan Agents. The DIP Loan Parties shall also pay all reasonable and documented prepetition and postpetition fees and expenses of: (i) the Crossover Group, to

the extent not already paid, including the reasonable and documented fees and expenses of Davis Polk & Wardwell LLP, as counsel to the Crossover Group, Simpson Thacher & Bartlett LLP, as counsel to Solus Alternative Asset Management LP (a member of the Crossover Group), one local counsel to the Crossover Group in each applicable jurisdiction, if retained; and (ii) the First Lien Group, to the extent not already paid, including the reasonable and documented fees and expenses of Shearman & Sterling LLP, as counsel, one local counsel to the First Lien Group in each applicable jurisdiction, if retained. The Prepetition Term Loan Agents, the Crossover Group, and the First Lien Group shall provide summary form fee and expense statements (i.e., without any detail) to the DIP Loan Parties, the U.S. Trustee, and any Committee, which may be redacted for privileged information. If no written objection is received by 12:00 p.m., prevailing Eastern Time, on the date that is ten (10) business days after delivery of such invoice to the Debtors, the U.S. Trustee, and any Committee, the DIP Loan Parties shall promptly pay such invoices. If an objection to a professional's invoice is timely received, the DIP Loan Parties shall promptly pay the undisputed amount of the invoice and this Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. The Prepetition Term Loan Agents, the Crossover Group, and the First Lien Group (and each of their professionals) shall not be required to comply with U.S. Trustee fee guidelines or file applications or motions with, or obtain approval of, the Court for the payment of any of their out-of-pocket costs, fees, expenses, disbursements and other charges. Payments of any amounts set forth in this paragraph are not subject to recharacterization, avoidance, subordination or disgorgement.

(e) Information Rights. The Debtors shall promptly provide the Prepetition Term Loan Agents, on behalf of itself and the Prepetition Term Loan Lenders, with all required written

financial reporting and other periodic reporting that is delivered by any of the DIP Loan Parties under the DIP Documents, including the Approved Budget and any related variance reporting. In addition, the Debtors shall provide the Prepetition Term Loan Agents, on behalf of itself and the Prepetition Term Loan Lenders, with reasonable access to the Debtors' officers, management, books and records, premises and properties in accordance with the terms and conditions set forth in the Prepetition Term Loan Financing Documents.

22. *Adequate Protection Liens and Prepetition Intercreditor Agreements.* Notwithstanding anything to the contrary herein, the Adequate Protection Liens shall retain the same priority between and among the Prepetition Secured Parties as the liens such parties held prior to the Petition Date pursuant to and as governed by the Prepetition Intercreditor Agreements, and the Prepetition Intercreditor Agreements shall continue in full force and effect and nothing herein shall be construed as modifying, amending, waiving or in any way impacting the effectiveness and enforceability thereof. The Prepetition ABL Lenders and the Prepetition First Lien Term Loan Lenders each consent to the priming of their respective Prepetition Liens by the DIP Liens and the Adequate Protection Liens, and the Prepetition Second Lien Term Loan Lenders are deemed to consent to the priming of their Prepetition Second Lien Term Liens by the DIP Liens and the Adequate Protection Liens pursuant to the terms of the Prepetition Intercreditor Agreements, in each case where and to the extent set forth on **Exhibit A** hereto.

23. *Reservation of Rights of Prepetition Secured Parties*. Subject to the terms of the Prepetition Intercreditor Agreements, all rights of the Prepetition Secured Parties to request further or different adequate protection other than what is provided in this Final Order are fully reserved.

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

(a) In addition to the authority granted in the Interim Order, the DIP Agents, the DIP Lenders and the Prepetition Secured Parties are authorized, but not required, to file or record (and to execute in the name of the DIP Loan Parties, as their true and lawful attorneys, with full power of substitution, to the maximum extent permitted by law) financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over cash or securities or other property, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Agents (on behalf of the DIP Lenders) or the Prepetition Secured Parties shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over any cash or securities or other property, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination (subject to the priorities set forth in this Final Order), at the time and on the date of entry of the Interim Order or thereafter. Upon the request of a DIP Agent, each of the Prepetition Secured Parties and the DIP Loan Parties, without any further consent of any party, is authorized to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the applicable DIP Agent to further validate, perfect, preserve and enforce the DIP Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(b) A certified copy of this Final Order may, in the discretion of the DIP Agents, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are

hereby authorized to accept such certified copy of this Final Order for filing and/or recording, as applicable. The automatic stay of section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit the DIP Agents to take all actions, as applicable, referenced in this subparagraph (b) and the immediately preceding subparagraph (a).

(c) To the extent that any Prepetition Secured Party is the secured party under any account control agreements, real property mortgages or as-extracted collateral filings, listed as loss payee or additional insured under any of the DIP Loan Parties' insurance policies or is the secured party under any other agreement, each of (i) the DIP ABL Agent, on behalf of the DIP ABL Secured Parties, and (ii) the Term DIP Agent, on behalf of the Term DIP Secured Parties, are also deemed to be the secured party under such account control agreements, real property mortgages or as-extracted collateral filings, loss payee or additional insured under the Prepetition Secured Parties' insurance policies and the secured party under each such agreement (in any such case with the same priority of liens and claims thereunder relative to the priority of (x) the Prepetition Liens and Adequate Protection Liens and (y) the DIP Liens, as set forth herein), and shall have all rights and powers in each case attendant to that position (including, without limitation, rights of enforcement, but subject in all respects to the terms of this Final Order), and shall, subject to the terms of this Final Order, act in that capacity and distribute any proceeds recovered or received in respect of any of the foregoing pursuant to the priorities set forth in **Exhibit A** hereto. In accordance with the terms of this Final Order and the other DIP Documents, the Prepetition First Lien Term Loan Agent, the Prepetition Second Lien Term Loan Agent, or the Prepetition ABL Agent, as applicable, shall serve as agent for the applicable DIP Agent for purposes of perfecting such DIP Agent's security interests in and liens on all Collateral

that is of a type such that perfection of a security interest therein may be accomplished only by possession or control by a secured party.

25. *Preservation of Rights Granted Under This Final Order.*

(a) The relative priority of the liens expressly granted by this Final Order shall be as set forth in **Exhibit A**.

(b) Other than the Carve-Out and other claims and liens expressly granted by this Final Order, no claim or lien having a priority superior to or *pari passu* with those granted by this Final Order to the DIP Agents and the DIP Lenders or the Prepetition Secured Parties shall be permitted while any of the DIP Obligations or the Adequate Protection Obligations remain outstanding, and, except as otherwise expressly provided in this Final Order, the DIP Liens and the Adequate Protection Liens shall not be: (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the DIP Loan Parties' estates under section 551 of the Bankruptcy Code; (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise; (iii) subordinated to or made *pari passu* with any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the DIP Loan Parties; or (iv) subject or junior to any intercompany or affiliate liens or security interests of the DIP Loan Parties.

(c) It shall constitute an Event of Default (as defined below) (giving each DIP Agent the right to terminate the DIP Loan Parties' use of Cash Collateral, the right to terminate the applicable DIP Commitments and/or the right to accelerate the applicable DIP Obligations) if any of the DIP Loan Parties, without the prior written consent of the Required DIP Lenders, as

applicable, seeks, proposes or supports (whether by way of motion or other pleadings filed with the Court or any other writing executed by any DIP Loan Party or by oral argument), or if there is entered or confirmed (in each case, as applicable), or if there occurs:

(i) a failure of the Debtors to make any payment under the Interim Order or this Final Order to any of the Prepetition Secured Parties when due;

(ii) a failure of the Debtors to (x) observe or perform any of the material terms or provisions contained in the Interim Order or this Final Order or (y) comply with any covenant or agreement in the Interim Order or this Final Order in any material respect;

(iii) a failure of the Debtors to observe or perform any of the material terms or provisions contained in the RSA (as defined in the Term DIP Credit Agreement), subject to any applicable cure period set forth therein;

(iv) any modifications, amendments, or reversal of the Interim Order or this Final Order, and no such consent shall be implied by any other action, inaction or acquiescence by any party;

or

(v) any "Event of Default" or "DIP Event of Default" as defined in the DIP Credit Agreements.

Except as otherwise provided in this Final Order, any material violation of any of the terms of this Final Order or any occurrence of an "Event of Default" or "DIP Event of Default" under and as defined in the DIP Credit Agreements shall constitute an event of default under this Final Order (each an "**Event of Default**") and upon any such Event of Default, interest, including, where applicable, default interest, shall accrue and be paid as set forth in the DIP Credit Agreements. Notwithstanding any order that may be entered dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered: (A) the DIP Superpriority Claims, the 507(b) Claims, the DIP Liens, and the Adequate Protection Liens, and any claims related to the foregoing, shall continue in full force and effect and shall maintain

their priorities as provided in this Final Order until all DIP Obligations and Adequate Protection Claims shall have been Paid in Full (and that such DIP Superpriority Claims, 507(b) Claims, DIP Liens and Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest); (B) the other rights granted by this Final Order shall not be affected; and (C) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in this paragraph and otherwise in the Interim Order or this Final Order.

(d) This Final Order is entered pursuant to section 364 of the Bankruptcy Code, and Bankruptcy Rules 4001(b) and (c), granting the DIP Secured Parties all protections and benefits afforded by section 364(e) of the Bankruptcy Code.

(e) Except as expressly provided in this Final Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the ABL Indemnification Liens, the Prepetition ABL Indemnification Obligations, the Prepetition Liens, the Prepetition Debt, Adequate Protection Claims and the Adequate Protection and all other rights and remedies of the DIP Agents, the DIP Lenders and the Prepetition Secured Parties granted by the provisions of this Final Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by: (i) the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7, dismissing any of the Chapter 11 Cases, substantively consolidating any of the cases with another case, terminating the joint administration of these Chapter 11 Cases or by any other act or omission; or (ii) the entry of an order confirming a chapter 11 plan in any of the Chapter 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the DIP Loan Parties have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations and with respect to the Prepetition Debt and the

Prepetition ABL Indemnification Obligations (to the extent the ABL Discharge has not occurred). The terms and provisions of this Final Order and the DIP Documents shall continue in these Chapter 11 Cases, in any successor cases if these Chapter 11 Cases cease to be jointly administered and in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Prepetition ABL Indemnification Claims, the ABL Indemnification Liens, the Prepetition Debt, the Prepetition Liens and the Adequate Protection Claims and all other rights and remedies of the DIP Agents, the DIP Lenders and the Prepetition Secured Parties granted by the provisions of this Final Order and the DIP Documents shall continue in full force and effect until the DIP Obligations are Paid in Full, as set forth herein and in the DIP Documents, and the DIP Commitments have been terminated.

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

claims granted to the Prepetition Secured Parties under this Final Order, as applicable, or (b) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset with respect to, the Prepetition Debt, the DIP Obligations and/or the liens, claims, rights, or security interests granted under the Interim Order, this Final Order, the DIP Documents or the Prepetition Credit Agreements including, in each case, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; (ii) except during the Remedies Notice Period, to prevent, hinder, or otherwise delay the Prepetition Secured Parties', the DIP Agent's or the DIP Lenders', as applicable, enforcement or realization on the Prepetition Debt, Prepetition Collateral, DIP Obligations, DIP Collateral, and the liens, claims and rights granted to such parties under this Final Order, each in accordance with the DIP Documents, the Prepetition Credit Agreements or this Final Order; (iii) except during the Remedies Notice Period, to seek to modify any of the rights and remedies granted to the Prepetition Secured Parties, the DIP Agents or the DIP Lenders under this Final Order, the Prepetition Credit Agreements or the DIP Documents, as applicable; (iv) to apply to the Court for authority to approve superpriority claims or grant liens (other than the liens permitted pursuant to the DIP Documents) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Liens, DIP Superpriority Claims, adequate protection liens and superpriority claims and liens granted to the Prepetition Secured Parties, unless all DIP Obligations, Prepetition Debt, adequate protection, and claims granted to the DIP Agents, DIP Lenders or Prepetition Secured Parties under this Final Order, have been refinanced or Paid in Full or otherwise agreed to in writing by the DIP Lenders; or (v) to seek to pay any amount on

account of any claims arising prior to the Petition Date unless such payments are agreed to in writing by the DIP Lenders in or are otherwise included in the "**Approved Budget**".

27. *Real Property Leases*. As a requirement and precondition to the DIP Lenders' willingness to lend and in furtherance of the DIP Superpriority Claims provided for in this Final Order and pursuant to the DIP Documents, which are payable from and have recourse to all of the Debtors' pre- and post-petition property including, among other things, each Mining Lease, Real Property Lease or other Contractual Obligation (each as defined in the DIP Credit Agreements) to which a Debtor is a counterparty (each, a "**Real Property Lease**"), the DIP Lenders shall have the following protections with respect to the Debtors' Real Property Leases, which protections shall be enforced by the DIP Agents or DIP Lenders as authorized, approved, and granted pursuant to the provisions of this Final Order and in accordance with the terms of the DIP Credit Agreements (and after the indefeasible payment in full of the DIP Obligations, solely in the event occurring prior to the effective date of any chapter 11 plan or plans with respect to any of the Debtors, (i) the rights of the DIP Agents and the DIP Lenders shall automatically transfer and be available to the Prepetition Agents and the Prepetition Secured Parties, subject to the terms of the Prepetition Intercreditor Agreements, (ii) defined terms used in this Paragraph 27 relating to the DIP Facilities shall be deemed to be references to corresponding defined terms relating to the Prepetition Credit Facilities, (iii) any notice herein required to be delivered pursuant to this Paragraph 27 to the DIP Agents shall instead be required to be delivered to each of the Prepetition Agents, and (iv) the automatic stay provisions pursuant to section 362 of the Bankruptcy Code are vacated and modified to the extent necessary so as to permit the Prepetition Agents and the Prepetition Secured Parties to exercise any of their rights with respect to Real Property Leases under this Paragraph 27):

(a) Remedies Upon an Event of Default. If an Event of Default shall have occurred and be continuing, the Term DIP Agent for the benefit of the Term DIP Lenders shall, with respect to any Real Property Lease or group of Real Property Leases to which any of the Debtors are party that constitute DIP Term Loan Priority Collateral, and the DIP ABL Agent for the benefit of the DIP ABL Lenders shall, with respect to any Real Property Lease or group of Real Property Leases to which any of the Debtors are party that constitute DIP ABL Priority Collateral, be permitted, and are hereby authorized, approved, and granted the following rights and remedies:

(i) to exercise the Debtors' rights pursuant to section 365(f) of the Bankruptcy Code with respect to any such Real Property Lease(s) and, subject to this Court's approval after notice and hearing, assign any such Real Property Lease(s) in accordance with section 365 of the Bankruptcy Code notwithstanding any language to the contrary in any of the applicable lease documents or executory contracts;

(ii) to require any Debtor to complete promptly, pursuant to section 363 of the Bankruptcy Code, subject to the rights of the applicable DIP Agent, applicable DIP Lenders or applicable Prepetition Secured Parties (if applicable) to credit bid, an Asset Sale[20] of any such Real Property Lease(s) in one or more parcels at public or private sales, at the applicable DIP Agent's offices or elsewhere, for cash, at such time or times and at such price or prices and upon such other terms as the applicable DIP Agent or applicable DIP Lenders may deem commercially reasonable;

(iii) to access the leasehold interests of the Debtors or debtors in possession in any such Real Property Lease(s) for the purpose of (A) marketing such property or properties for sale and (B) removing any Collateral thereon or arranging for the Asset Sale of any such Collateral except to the extent prohibited by the terms of the Real Property Lease (unless the applicable provision is rendered ineffective by applicable non-bankruptcy law or the Bankruptcy Code); *provided* that the foregoing shall not preclude any counterparty to a Real Property Lease (each, a "**Counterparty**") from an

[20] "**Asset Sale"** shall mean (a) the sale, lease, transfer, assignment, conveyance or other disposition (including any sale and lease back transaction) of any assets or rights by the Company or any of its Restricted Subsidiaries (as defined in the DIP Credit Agreements); or (b) the issuance or sale of equity interests by any Restricted Subsidiary or the sale by the Company or any of its Restricted Subsidiaries of equity interests in any Restricted Subsidiary.

opportunity to be heard in this Court on reasonable notice prior to such access; *provided, further,* that, regardless of whether any such Real Property Lease or proceeds thereof constitute DIP ABL Priority Collateral, DIP ABL Agent for the benefit of the DIP ABL Lenders shall be entitled to enter or otherwise access the leasehold interests of the Debtors or debtors in possession in any such Real Property Lease(s), for the purpose of removing any Collateral that constitutes DIP ABL Priority Collateral, or arranging such Collateral for disposition, or to take possession of the Debtors' books and records or obtain access to the Debtors' data processing equipment, computer hardware and software relating to the DIP ABL Priority Collateral; *provided, further,* that nothing in this section 27(a)(iii) shall eliminate or alter any Counterparty's rights under section 365 of the Bankruptcy Code with regards to the foregoing;

(iv) (A) to find an acceptable (in the applicable DIP Agent's or applicable Required DIP Lenders' good faith and reasonable discretion) replacement lessee, which may include the applicable DIP Agent, applicable DIP Lenders or any of their affiliates, to whom such Real Property Lease(s) may be assigned subject to the consent of the applicable Counterparty, or approval of this Court, (B) to hold, and manage all aspects of, an auction or other bidding process to find such acceptable replacement lessee, (C) in connection with any such auction, agree, on behalf of the Debtors, to reimburse reasonable fees and expenses of any stalking horse bidder, if necessary, and/or (D) to notify the Debtors of the selection of any replacement lessee pursuant to this Paragraph 27, upon receipt of which the Debtors shall promptly (1) file a motion seeking, on an expedited basis, approval of the Debtors' assumption and assignment of such Real Property Lease(s) to such proposed assignee, and (2) cure any defaults, if any, that have occurred and are continuing under such Real Property Lease(s) to the extent required by the Court (subject to the applicable DIP Lenders' right to cure defaults as set forth in Paragraph 27(e) of this Final Order); *provided, further,* that nothing in this section 27(a)(iv) shall eliminate or alter any Counterparty's rights under section 365 of the Bankruptcy Code with regards to the foregoing; or

(v) to direct the Debtors to (A) assign any such Real Property Lease(s) to the applicable DIP Agent or applicable DIP Lenders as Collateral securing the applicable DIP Obligations, subject to clause (B), if applicable, (B) seek this Court's approval of the assumption of any such Real Property Lease(s) to the extent that this Court determines pursuant to a final order that an assumption is required in order to assign such lease or leases as Collateral, and (C) promptly cure any default that has occurred and is continuing under such Real Property Lease(s) to the extent required by the Court; *provided* that any assignment of any such Real Property Lease(s) as Collateral securing the applicable DIP Obligations shall not impair the Debtors' ability to subsequently assume (if not already assumed) and assign such Real Property Lease(s) pursuant to section 365 of the

Bankruptcy Code or to enjoy the protections of section 365(f) of the Bankruptcy Code with respect to any such assignment; *provided, further,* that nothing in this section 27(a)(v) shall eliminate or alter any Counterparty's rights under section 365 of the Bankruptcy Code with regards to the foregoing.

(b) Right to Credit Bid. Prior to any assignment of any Real Property Lease or group of Real Property Leases, the Debtors shall first provide at least five (5) business days' prior written notice (the "**Initial Notice Period**") to the Term DIP Agent and Term DIP Lenders, with respect to DIP Term Loan Priority Collateral, and the DIP ABL Agent and DIP ABL Lenders, with respect to DIP ABL Priority Collateral, unless such notice provision is waived by the applicable DIP Agent and applicable Required DIP Lenders, which Initial Notice Period may be extended up to a further twenty-five (25) days by the applicable DIP Agent or applicable Required DIP Lenders in each of their sole discretion by delivering written notice of such extension to the Debtors prior to expiration of the Initial Notice Period, and by any further period as is mutually agreeable between the applicable DIP Agent or applicable Required DIP Lenders and the Company (such notice period being the "**Aggregate Notice Period**"). During such notice period, the applicable DIP Agent shall be permitted to credit bid forgiveness of some or all of the outstanding applicable DIP Obligations (in an amount equal to at least the consideration offered by any other party in respect of such assignment) outstanding under the applicable DIP Facility as consideration in exchange for any such Real Property Lease(s) *provided* that to the extent the Company is entitled to retain a portion of the total consideration paid in respect of such assignment in accordance with the DIP Credit Agreements, the applicable portion of the consideration to be retained by Company shall be paid in cash (provided that such proceeds shall constitute DIP Collateral and Cash Collateral). In addition, in connection with the exercise of any of the applicable DIP Agent's or applicable Required DIP Lenders' rights pursuant to the applicable DIP Credit Agreement or this Final Order to direct or compel a sale or other Asset Sale of any Real Property Lease(s), the

applicable DIP Agent, on behalf of the applicable DIP Lenders, shall be permitted to credit bid forgiveness of some or all of the outstanding applicable DIP Obligations (in an amount equal to at least the consideration offered by any other party in respect of such sale or other Asset Sale) as consideration in exchange for such Real Property Lease(s). Pursuant to section 364(e) of the Bankruptcy Code, absent a stay pending appeal, the applicable DIP Lenders' right to credit bid shall not be affected by the reversal or modification on appeal of the Debtors' authorization pursuant to this Final Order to obtain credit and incur debt as and in accordance with the terms set forth herein. Nothing herein shall affect any requirements to give notice to Counterparties in accordance with the Bankruptcy Code, Bankruptcy Rules and Local Rules.

(c) Right of First Refusal with Respect to Proposed Assignments and Rejections of Real Property Leases. Unless all DIP Obligations shall have indefeasibly been satisfied pursuant to the DIP Credit Agreements, the Debtors shall not seek, and it shall constitute, an Event of Default and terminate the right of the Debtors under the DIP Credit Agreements and this Final Order if any of the Debtors seeks, the sale or other Asset Sale of, or the rejection or other termination of, or if there is entered an order pursuant to section 365 of the Bankruptcy Code assigning or rejecting, any Real Property Lease or group of Real Property Leases, or if any Real Property Lease or group of Real Property Leases is deemed rejected due to the expiration of the assumption period provided for in section 365(d)(4) (the "**Statutory Rejection Date**"), without the Debtors' first providing thirty (30) days' prior written notice to the DIP Agents and DIP Lenders, or if such notice is given more than thirty (30) days in advance of the Statutory Rejection Date, prior written notice at least equal to the Aggregate Notice Period; *provided, however*, that the right of first refusal of the DIP Agents as set forth in this Paragraph 27(c) shall not apply to (x) any assignment or sale of a Real Property Lease or group of Real Property Leases to a winning

bidder at an auction authorized by this Court, and (y) so long as no Event of Default has occurred and is ongoing, or to the extent such action would result in an Event of Default, any assignment or sale of a Real Property Lease or group of Real Property Leases that are not Material Leases generating cash proceeds (net of reasonable costs, expenses, and any applicable taxes) up to $2,500,000 in the aggregate value for all such sales or assignments. During such notice period, the Term DIP Agent, with respect to DIP Term Loan Priority Collateral, and the DIP ABL Agent, with respect to DIP ABL Priority Collateral, shall be permitted to:

(i) (A) notify the Debtors that it elects to take action pursuant to this Paragraph, upon receipt of which the Debtors shall promptly withdraw any previously filed rejection motion, (B) find an acceptable (in the applicable DIP Agents' or applicable Required DIP Lenders' good faith and reasonable discretion) replacement lessee, which may include the applicable DIP Agent, applicable DIP Lenders or any of their affiliates, to whom any such any Real Property Lease or group of Real Property Leases may be assigned (subject to Court approval), (C) hold, and manage all aspects of, an auction or other bidding process to find such acceptable replacement lessee, (D) in connection with any such auction, agree, on behalf of the Debtors (and subject to Court approval) to reimburse the reasonable fees and expenses of any stalking horse bidder, if necessary, and (E) notify the Debtors of the selection of any replacement lessee pursuant to this Paragraph, upon receipt of which the Debtors shall (1) not seek to reject any such Real Property Lease(s), (2) promptly withdraw any pending motion to reject any such Real Property Lease(s), (3) promptly file a motion seeking, on an expedited basis, approval of the Debtors' assumption and assignment of such Real Property Lease(s) to the applicable DIP Agent or applicable Required DIP Lenders' proposed assignee, and (4) promptly cure any defaults that have occurred and are continuing under such Real Property Lease(s) to the extent authorized by the Court; provided all such actions shall be subject to the requirements of section 365 of the Bankruptcy Code; or

(ii) direct the Debtors to (A) assign any Real Property Lease or group of Real Property Leases as Collateral securing the applicable DIP Obligations (subject to Court approval), (B) seek the Court's approval of the assumption of any such Real Property Lease(s) if it is determined pursuant to a final order of this Court that an assumption is required in order to assign such lease(s) as Collateral, and (C) promptly cure any defaults that have occurred and are continuing under such Real Property Lease(s) (subject to the applicable DIP Lenders' right to cure defaults as set forth in Paragraph 27(e) of this Final Order) to the extent authorized by the Court;

provided that any assignment of any Real Property Lease(s) as Collateral securing the applicable DIP Obligations shall not impair the Debtors' ability to subsequently assume (if not already assumed) and assign any such Real Property Lease(s) pursuant to section 365 of the Bankruptcy Code or to enjoy the protections of section 365(f) of the Bankruptcy Code with respect to any such assignment.

(iii) Notwithstanding anything to the contrary herein, the foregoing rights of the DIP Agents set forth in this Paragraph shall not apply to Real Property Leases that are rejected, terminated, sold, or assigned on the effective date of any plan of reorganization in any of the Chapter 11 Cases that, among other things, indefeasibly repays the DIP Obligations in full on the effective date thereof. For the avoidance of doubt, on or prior to the thirtieth (30) day prior to the Statutory Rejection Date (as provided in section 365(d)(4) of the Bankruptcy Code), the Debtors shall have delivered written notice to the DIP Agents of each outstanding Real Property Lease that they intend to reject (including, without limitation, through statutory rejection on the Statutory Rejection Date) from and after the date of such notice (or, if applicable, notice that the Debtors have obtained the applicable landlord's consent to extension of the Statutory Rejection Date); *provided* that if the Debtors fail to deliver any such notice to the DIP Agents prior to such date with respect to any such Real Property Lease(s) (or a notice indicating that no such Real Property Lease(s) shall be rejected), the Debtors shall be deemed, for all purposes hereunder, to have delivered notice to the DIP Agents as of such date that they intend to reject all outstanding Real Property Leases.

(d) Assumption Orders. Any order of this Court approving the assumption of any Real Property Lease shall specifically provide that the applicable Debtor shall be authorized to assign such Real Property Lease pursuant to, and to enjoy the protections of, section 365(f) of the Bankruptcy Code. To the extent that such provision is for any reason not included in any order of the Court approving the assumption of any Real Property Lease, then such Real Property Lease may not be assumed by the applicable Debtor unless the order approving the assumption provides for the assignment of such Real Property Lease, on the date of such order, to an acceptable (in the applicable DIP Agents' or applicable Required DIP Lenders' good faith and reasonable discretion) replacement lessee (which may include the applicable DIP Agents, applicable DIP Lenders, or their respective affiliates) provided the requirements of section 365 are satisfied.

(e) DIP Lenders' Right to Cure Defaults. If any of the Debtors are required to cure any monetary defaults under any Real Property Lease pursuant to any order of this Court or otherwise in connection with any assumption or assumption and assignment of any such Real Property Lease pursuant to section 365(f) of the Bankruptcy Code, and such monetary default is not, within five (5) business days of the receipt by such Debtor of notice from the applicable DIP Agent pursuant to the applicable provision(s) of the applicable DIP Credit Agreement or any other notice from the applicable DIP Agent requesting the cure of such monetary default, cured in accordance with the provisions of such applicable court order as arranged by the applicable DIP Agent, the applicable DIP Agent may cure any such monetary defaults on behalf of the applicable Debtor(s).

(f) Priorities. For the avoidance of doubt, nothing set forth in this Paragraph 27 shall affect the relative priorities of liens and claims set forth herein and on **Exhibit A** hereto. Unless and until Payment in Full of the (A) DIP ABL Obligations and the Prepetition ABL Obligations, nothing set forth in this Paragraph 27 shall permit the Term DIP Agent or the Term DIP Lenders, or any of their designees or agents, to exercise any rights or remedies with respect to DIP ABL Priority Collateral or Prepetition ABL Priority Collateral and (B) DIP Term Loan Obligations and the Prepetition Term Loan Debt, nothing set forth in this Paragraph 27 shall permit the DIP ABL Agent or the DIP ABL Lenders, or any of their designees or agents, to exercise any rights or remedies with respect to DIP Term Loan Priority Collateral or Prepetition Term Loan Priority Collateral.

28. *Insurer Reservation of Rights*. For the avoidance of doubt, nothing in this Final Order, the DIP Credit Agreements or any document related thereto imposes any duty upon any insurer to effectuate endorsements or otherwise expands any obligations or duties of such insurer

under any insurance policies or related agreements issued to or for the benefit of any of the Debtors.

29. *Approved Budget*. The Approved Budget is approved on a final basis. Proceeds of the DIP Facilities and Cash Collateral under this Final Order shall only be used by the Loan Parties in accordance with the DIP Credit Agreements, this Final Order, and the Approved Budget or as otherwise agreed by the DIP Agents. None of the DIP Secured Parties' consent (if any) to, or acknowledgment of, the Approved Budget shall be construed as consent to use of the proceeds of the DIP Facilities or Cash Collateral beyond the respective maturity dates set forth in the DIP Credit Agreements, regardless of whether the aggregate funds shown on the Approved Budget have been expended.

30. *Limits to Lender Liability*. Nothing in this Final Order, the DIP Documents, or any other documents related to these transactions shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agents or any DIP Lender of any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their business, or in connection with their restructuring efforts. The DIP Agents and the DIP Lenders shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person and all risk of loss, damage or destruction of the Collateral shall be borne by the DIP Loan Parties. Provided, however, if, for any reason (*see*, for example, paragraph 33 (b) below), the DIP Agents and/or DIP Lenders operate under the Debtors' Real Property Leases, nothing in this Final Order shall absolve the

DIP Agents and/or DIP Lenders from any responsibility to the Counterparties for any obligations due under the Real Property Leases.

31. *Effect of Stipulations on Third Parties.* The Debtors' stipulations, admissions, agreements and releases contained in this Final Order, including, without limitation, in paragraph 6 of this Final Order, shall be binding upon the Debtors and, subject to the Challenge Period (as defined below), any successor thereto in all circumstances and for all purposes. The Debtors' stipulations, admissions, agreements and releases contained in this Final Order, including, without limitation, in paragraph 6 of this Final Order, shall be binding upon all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, if any (a "**Committee**") and any other person or entity acting or seeking to act on behalf of the Debtors' estates (including, without limitation, any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors) unless: (a) such Committee, or any other party in interest, in each case with requisite standing (subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so), has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, *inter alia*, in this paragraph) by no later than (i) the earlier of (x) the date of entry of an order confirming a chapter 11 plan, (y) October 7, 2019, and (z) 60 calendar days after the appointment of any Committee or (ii) any such later date as has been agreed to, in writing, by the Prepetition Agents (with the consent of the DIP Lenders) as applicable (the time period established by the foregoing clauses (i) and (ii), the "**Challenge Period**"), (A) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Debt or the Prepetition Liens, or (B) otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims or any other

claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "**Challenges**") against the Prepetition Secured Parties or their respective affiliates and each of their respective former, current or future officers, partners, directors, managers, members, principals, employees, agents, related funds, investors, financing sources, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case in their respective capacity as such (each a "**Representative**" and, collectively, the "**Representatives**") in connection with matters related to the Prepetition Credit Agreements, the Prepetition Debt, the Prepetition Liens and the Prepetition Collateral; and (b) there is a final non-appealable order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter; *provided*, *however*, that any pleadings filed in connection with any Challenge shall set forth with specificity the basis for such challenge or claim and any challenges or claims not so specified prior to the expiration of the Challenge Period shall be deemed forever, waived, released and barred. If no such Challenge is timely filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such proceeding then: (a) the Debtors' stipulations, admissions, agreements and releases contained in this Final Order, including, without limitation, those contained in paragraph 6 of this Final Order, shall be binding on all parties in interest; (b) the obligations of the DIP Loan Parties under the Prepetition Credit Agreements, including the Prepetition Debt, shall constitute allowed claims not subject to defense, claim, counterclaim, recharacterization, subordination, offset or avoidance, for all purposes in the Chapter 11 Cases, and any subsequent chapter 7 case(s); (c) the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens, not subject to recharacterization, subordination,

avoidance or other defense; and (d) the Prepetition Debt and the Prepetition Liens on the Prepetition Collateral shall not be subject to any other or further claim or challenge by any Committee, or any other party in interest acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors) and any defenses, claims, causes of action, counterclaims and offsets by any Committee, if any, or any other party acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors), whether arising under the Bankruptcy Code or otherwise, against any of the Prepetition Secured Parties and their Representatives arising out of or relating to any of the Prepetition Credit Agreements shall be deemed forever waived, released and barred. If any such Challenge is timely filed during the Challenge Period, the stipulations, admissions, agreements and releases contained in this Final Order, including, without limitation, those contained in paragraph 6 of this Final Order, shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on any Committee, if any, and on any other person or entity, except to the extent that such stipulations, admissions, agreements and releases were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in this Final Order vests or confers on any Person (as defined in the Bankruptcy Code), including any Committee, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, Challenges with respect to the Prepetition Credit Agreements, the Prepetition Debt or the Prepetition Liens. For the avoidance of doubt, none of the foregoing challenge provisions set forth in this paragraph shall apply to any

DIP Secured Party, in their capacities as such, and in no event shall the DIP Facilities, DIP Obligations or DIP Liens be subject to challenge pursuant to this paragraph on avoidance or any other grounds by any party.

32. *Postpetition Release*. Notwithstanding anything to the contrary set forth herein, upon the repayment of all DIP Obligations (as defined in the DIP Credit Agreements) owed to the DIP Agents and the DIP Lenders by Debtors and termination of the rights and obligations arising under the DIP Documents (which payment and termination shall be on terms and conditions acceptable to DIP Agents), DIP Agents and the DIP Lenders shall be released from any and all obligations, liabilities, actions, duties, responsibilities and causes of action arising or occurring, on or prior to the date of such repayment and termination, in connection with or related to the DIP Documents or this Final Order (including without limitation any obligation or responsibility (whether direct or indirect, absolute or contingent, due or not due, primary or secondary, liquidated or unliquidated) to pay or otherwise fund the Carve-Out on terms and conditions acceptable to the DIP Agents).

33. *Landlord Agreements; Access.*

(a) All collateral access agreements to which the Prepetition ABL Agent or any of the Prepetition Agents is a party shall hereby continue to be deemed to be amended to include the relevant DIP Agent as a beneficiary thereunder, and such agreements shall thereafter be additionally enforceable by the relevant DIP Agent against, and binding upon, each landlord party thereto. Any title, landlord's lien, right of distraint or levy, security interest or other interest that any landlord or mortgagee may have in any DIP Collateral or Prepetition Collateral of the Debtors located on such leased premises, to the extent the same is not avoidable under sections 544, 545,

547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise, is hereby expressly subordinated to the liens of the DIP Lenders and the Prepetition Lenders.

(b) Notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the DIP Agents, for the benefit of the DIP Lenders, contained in this Final Order or the DIP Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Documents, the Interim Order and this Final Order, upon written notice to the landlord of any leased premises that an Event of Default has occurred and is continuing under the DIP Documents, the DIP Agents may, to the extent permitted by (i) existing rights under applicable non-bankruptcy law or an existing agreement with the applicable landlord; (ii) a separate agreement by and between such landlord and the DIP Agents (a "**Separate Agreement**"); or (iii) pursuant to further order of this Court on motion and notice to the landlords appropriate under the circumstances, enter upon any leased premises of the Debtors for the purpose of exercising any remedy with respect to DIP Collateral located thereon and, subject to entering into a Separate Agreement, shall be entitled to all of the Debtors' rights and privileges as lessee under such lease without interference from such landlord; *provided, however, that*, subject to entering into such Separate Agreement, the DIP Agents shall pay all obligations, to the extent required by applicable law, of the Debtors due to the Counterparties under the terms of their respective Real Property Leases, including royalties, rent, and tax obligations as such obligations first accrue after the written notice referenced above and that is payable during the period of such occupancy by the Agent calculated on a per diem basis; *provided further, that* subject to any Separate Agreement, the DIP Agents shall timely perform all of the obligations arising under the leases going forward as required by section 365(d)(3) of the Bankruptcy Code and shall access, use or occupy leased premises only in compliance with any and all applicable federal, state or local

laws, rules, regulations or ordinances. Nothing herein shall require the DIP Agents to assume any lease as a condition to the rights afforded to the DIP Agents in this paragraph.

34. Subject to paragraphs 14(a) and 14(b) herein, but otherwise notwithstanding any provision of this Final Order, the Motion, the Interim Order or the DIP Documents, nothing in this Final Order, the Motion, Interim Order or any DIP Documents shall be deemed or construed to impact, impair, affect, determine, release, waive, modify, limit or expand: (a) the terms and conditions of any Real Property Lease; or (b) any of the claims, rights, remedies, and defenses of any lessors under or in respect of any Real Property Lease and all such claims, rights, remedies and defenses are expressly reserved and preserved.

35. *Final Order Governs*. In the event of any inconsistency between the provisions of this Final Order, the Interim Order, the DIP Documents or any other order entered by this Court, the provisions of this Final Order shall govern. Any payment made pursuant to any other order entered by this Court may be subject to avoidance or disgorgement under section 549 or otherwise of the Bankruptcy Code to the extent such payment is made in violation of this Final Order and the DIP Documents, including the Approved Budget. Except as specifically amended, supplemented or otherwise modified hereby, all of the provisions of the Interim Order shall remain in effect and are hereby ratified by this Final Order.

36. *Binding Effect; Successors and Assigns*. The DIP Documents and the provisions of this Final Order, including all findings herein, shall be binding upon all parties in interest in these Chapter 11 Cases, including, without limitation, the DIP Agents, the DIP Lenders, the Prepetition Secured Parties, any Committee, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy

Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Agents, the DIP Lenders, the Prepetition Secured Parties and the Debtors and their respective successors and assigns; *provided* that the DIP Agents, the DIP Lenders and the Prepetition Secured Parties shall have no obligation to permit the use of the Prepetition Collateral (including Cash Collateral) by, or to extend any financing to, any chapter 7 trustee, chapter 11 trustee or similar responsible person appointed for the estates of the Debtors.

37. *Exculpation*. Nothing in this Final Order, the DIP Documents, the existing agreements or any other documents related to the transactions contemplated hereby shall in any way be construed or interpreted to impose or allow the imposition upon any DIP Secured Party or any Prepetition Secured Party any liability for any claims arising from the prepetition or postpetition activities of the Credit Parties or Loan Parties (as defined in the respective DIP Credit Agreements) in the operation of their businesses, or in connection with their restructuring efforts. In addition, (a) the DIP Secured Parties and the Prepetition Secured Parties shall not, in any way or manner, be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency, or other person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by the DIP Loan Parties.

38. *Limitation of Liability*. In determining to make any loan or other extension of credit under the DIP Credit Agreements, or to permit the use of Cash Collateral, none of the DIP Agents, the DIP Lenders or the Prepetition Secured Parties shall (i) be deemed to be in "control" of the operations or participating in the management of the Debtors; (ii) owe any fiduciary duty

to the Debtors, their respective creditors, shareholders or estates; or (iii) be deemed to be acting as a "Responsible Person" or "Owner" or "Operator" with respect to the operation or management of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq., as amended, or any similar federal or state statute).

39. *Master Proof of Claim.* The Prepetition Agents shall not be required to file proofs of claim in the Chapter 11 Cases or any successor case in order to assert claims on behalf of itself and the Prepetition Secured Parties for payment of the Prepetition Debt arising under the Prepetition Documents, nor shall any other Prepetition Secured Party be required to file any proofs of claim in the Chapter 11 Cases or any successor case in order to assert claims on behalf of itself for payment of the Prepetition Debt arising under the Prepetition Credit Agreements. However, in order to facilitate the processing of claims, to ease the burden upon the Court and to reduce an unnecessary expense to the Debtors' estates, each Prepetition Agent and/or other Prepetition Secured Party is authorized to file in the Debtors' lead chapter 11 case *In re Blackhawk Mining LLC, et. al.*, Case No. 19-11595 (LSS), a single, master proof of claim on behalf of the relevant Prepetition Secured Parties on account of any and all of their respective claims arising under the applicable Prepetition Documents and hereunder (each, a "**Master Proof of Claim**") against each of the Debtors. Upon the filing of a Master Proof of Claim against each of the Debtors, the Prepetition Agents and the Prepetition Secured Parties, and each of their respective successors and assigns, shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against each of the Debtors of any type or nature whatsoever with respect to the applicable Prepetition Credit Agreements, and the claim of each Prepetition Secured Party (and each of its respective successors and assigns),

named in a Master Proof of Claim shall be treated as if such entity had filed a separate proof of claim in each of these Chapter 11 Cases. The Master Proofs of Claim shall not be required to identify whether any Prepetition Secured Party acquired its claim from another party and the identity of any such party or to be amended to reflect a change in the holders of the claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from the transfer of all or any portion of such claims. The provisions of this paragraph 37 and each Master Proof of Claim are intended solely for the purpose of administrative convenience and shall not affect the right of each Prepetition Secured Party (or its successors in interest) to vote separately on any plan proposed in these Chapter 11 Cases. The Master Proofs of Claim shall not be required to attach any instruments, agreements or other documents evidencing the obligations owing by each of the Debtors to the applicable Prepetition Secured Parties, which instruments, agreements or other documents will be provided upon written request to counsel to the applicable Prepetition Agent.

40. *Effectiveness*. This Final Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 7062, or 9014 of the Bankruptcy Rules, or any Local Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry.

41. *Modification of DIP Documents and Approved Budget.* The DIP Loan Parties are hereby authorized, without further order of this Court, to enter into agreements with the DIP Secured Parties providing for any consensual non-material modifications to the Approved Budget or the DIP Documents, or of any other modifications to the DIP Documents necessary to

conform the terms of the DIP Documents to this Final Order, in each case consistent with the amendment provisions of the DIP Document. Notwithstanding the foregoing, updates and supplements to the Approved Budget required to be delivered by the DIP Loan Parties under the DIP Documents shall not be considered material amendments or modifications to the Approved Budget or the DIP Documents.

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

43. *Payments Held in Trust*. Except as expressly permitted in this Final Order or the DIP Documents, in the event that any person or entity (with respect to any person or entity that is not a DIP Secured Party or a party to the RSA, knowingly) receives any payment on account of a security interest in DIP Collateral, receives any DIP Collateral or any proceeds of DIP Collateral or receives any other payment with respect thereto from any other source prior to Payment in Full of all DIP Obligations under the DIP Documents and termination of the Commitments in accordance with the DIP Documents, such person or entity shall be deemed to have received, and shall hold, any such payment or proceeds of Collateral in trust for the benefit of the DIP Agents and the DIP Lenders (as applicable based on the specific asset at issue) and shall immediately turn over such proceeds to the applicable DIP Agent, or as otherwise instructed by this Court, for application in accordance with the DIP Documents and this Final Order. For the avoidance of doubt, once payments that come due in the ordinary course of business and consistent with the DIP Documents (including the Approved Budget), are tendered to lease counterparties, such funds are no longer property of the estate, and, accordingly, the liens described herein shall no longer attach to such assets. Prior to such payments being tendered to the lease counterparties, such amounts are subject to the DIP Liens and Superpriority Claims described herein.

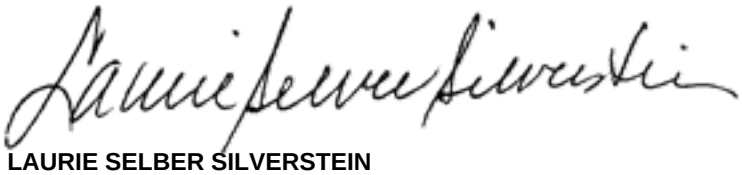
44. *Credit Bidding*. Subject to the rights reserved in paragraph 31, (a) each of the DIP Agents shall have the right to credit bid, in accordance with the DIP Documents, up to the full amount of the applicable DIP Obligations in any sale of the DIP Collateral, subject in all respects to the DIP ICA and the relative lien priorities set forth in **Exhibit A**; and (b) the Prepetition Secured Parties shall have the right to credit bid up to the full amount of their Prepetition Debt in any sale of the Prepetition Collateral, subject in all respects to the Prepetition Intercreditor Agreements, as applicable, and the relative lien priorities set forth in **Exhibit A**, in each case of (a) and (b), as provided for in section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing the same and whether any such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

45. *No Third Party Rights*. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect or incidental beneficiary.

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

47. *Necessary Action*. The Debtors are authorized to take any and all such actions as are necessary or appropriate to implement the terms of this Final Order.

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



Dated: August 13th, 2019
Wilmington, Delaware

LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Lien Priority Schedule

	Prepetition ABL Priority Collateral	**Prepetition Term Loan Priority Collateral**	**Unencumbered Property of the Same Nature, Scope and Type as the Prepetition ABL Priority Collateral**	**Unencumbered Property of the Same Nature, Scope and Type as the Prepetition Term Loan Priority Collateral Other Than The Specified Excluded Unencumbered Property**	**Specified Excluded Unencumbered Property**
1	DIP ABL Liens	New Money Term DIP Liens	DIP ABL Liens	New Money Term DIP Liens	New Money Term DIP Liens
2	Prepetition ABL Adequate Protection Liens and ABL Indemnification Liens	Term DIP Roll-Up Liens	Prepetition ABL Adequate Protection Liens and ABL Indemnification Liens	Term DIP Roll-Up Liens	New Money DIP ABL Liens
3	Prepetition ABL Liens	Prepetition First Lien Term Loan Adequate Protection Liens	New Money Term DIP Liens	Prepetition First Lien Term Loan Adequate Protection Liens	
4	New Money Term DIP Liens	Prepetition First Lien Term Liens	Term DIP Roll-Up Liens	DIP ABL Liens	
5	Term DIP Roll-Up Liens	DIP ABL Liens	Prepetition First Lien Term Loan Adequate Protection Liens	Prepetition ABL Adequate Protection Liens and ABL Indemnification Liens	

6	Prepetition First Lien Term Loan Adequate Protection Liens	Prepetition ABL Adequate Protection Liens and ABL Indemnification Liens	Prepetition Second Lien Term Loan Adequate Protection Liens	Prepetition Second Lien Term Loan Adequate Protection Liens	
7	Prepetition First Lien Term Liens	Prepetition ABL Liens			
8	Prepetition Second Lien Term Loan Adequate Protection Liens	Prepetition Second Lien Term Loan Adequate Protection Liens			
9	Prepetition Second Lien Term Liens	Prepetition Second Lien Term Liens			

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 11
BLACKHAWK MINING LLC, *et al.*,[1]	)	Case No. 19-11595 (LSS)
Debtors.	)	Jointly Administered

INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN ADDITIONAL POSTPETITION FINANCING, (II) INCREASING THE AMOUNT OF INDEBTEDNESS SECURED BY LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (III) AUTHORIZING THE DEBTORS TO AMEND THE TERM DIP CREDIT AGREEMENT, AND (IV) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of Blackhawk Mining LLC (the "Company"), and its affiliated debtors, each as a debtor and debtor in possession (collectively, the "Debtors") in the above-captioned cases (the "Chapter 11 Cases") pursuant to sections 105, 363, 364(c), 364(d) and 364(e) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), Rules 4001(b), (c), and (d), 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Bankruptcy Rules") seeking, among other things, a supplemental order (the "Interim Additional

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: Blackhawk Mining LLC (5600); Blackhawk Coal Sales, LLC (9456); Blackhawk Land and Resources, LLC (7839); Blackhawk River Logistics, LLC (3388); Blue Creek Mining, LLC (2427); Blue Diamond Mining, LLC (3488); Eagle Shield, LLC (6721); FCDC Coal, Inc. (6188); Guyandotte Mining, LLC (4882); Hampden Coal, LLC (8241); Kanawha Eagle Mining, LLC (0586); Logan & Kanawha, LLC (3178); Panther Creek Mining, LLC (0627); Pine Branch Land, LLC (9661); Pine Branch Mining, LLC (9681); Pine Branch Resources, LLC (9758); Redhawk Mining, LLC (0852); Rockwell Mining, LLC (3874); Spruce Pine Land Company (2254); Spurlock Mining, LLC (2899); Triad Mining, LLC (7713); and Triad Trucking, LLC (6112). The location of the Debtors' service address in these chapter 11 cases is 3228 Summit Square Place, Suite 180, Lexington, Kentucky 40509.

[2] Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Final DIP Order (as defined in the Motion) or the Motion, as applicable.

Financing Order"), which shall be granted as an interim order that is subject to a final order (the "Final Additional Financing Order") after a subsequent hearing (the "Final Hearing") on such relief as set forth herein, authorizing the Debtors to:

(i) obtain additional postpetition financing (the "Additional Financing") consisting of a senior secured superpriority debtor-in-possession term loan facility (the "Additional Facility") in an aggregate principal amount of up to $35,000,000 (the loans made thereunder, the "Additional Loans") pursuant to the terms and conditions set forth in the term sheet attached as **Exhibit 1** to **Exhibit A** of the Motion (the "Additional Financing Term Sheet"),[3] including, without limitation, that the Additional Financing shall be on substantially the same terms as, and ranking *pari passu* in right of payment and of security with, the New Money Term DIP Loans, subject to the exceptions set forth in the Additional Financing Term Sheet (the "Additional Financing Modifications");

(ii) execute and enter into the Amendment and to perform their respective obligations thereunder and all such other and further acts as may be necessary, appropriate, or desirable in connection with the Additional Financing Term Sheet and the Additional Financing Documents.

and due and appropriate notice of the Motion and the Interim Hearing (as defined below), under the circumstances, having been served by the Debtors on the parties identified in the Motion, and it appearing that no other or further notice need be provided; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the Court having reviewed the Motion; and the hearing on the Motion having been noticed and held by this Court on October 7, 2019 (the "Interim Hearing"); and the Court having entered the Final DIP Order; and the relief requested in the Motion being in the best interests of the Debtors, their creditors and their estates and all other parties in interest in these Chapter 11 Cases; and the Court having determined that the relief requested in the Motion is necessary to avoid irreparable

[3] The Additional Financing Term Sheet shall be superseded and replaced in all respects by an amendment to the Term DIP Credit Agreement to be executed by the Borrower, the Term DIP Agent and the requisite Term DIP Lenders under the Term DIP Credit Agreement, which shall be in form and substance consistent with the Additional Financing Term Sheet (the "Amendment" and, together with the Additional Financing Term Sheet and the Term DIP Credit Agreement, the "Additional Financing Documents") and this Interim Additional Financing Order.

harm; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon the record made by the Debtors in the Motion, the Nystrom Declaration, the Puntus Declaration, the Additional Financing Documents, and in the evidence submitted and arguments made by the Debtors at the Interim Hearing, and after due deliberation and sufficient cause appearing therefor;

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

1. *Disposition.* The relief requested in the Motion is GRANTED ON AN INTERIM BASIS in accordance with the terms of this Interim Additional Financing Order. The Additional Financing is authorized and approved in an aggregate principal amount of up to $25 million on an interim basis and, subject to entry of the Final Additional Financing Order, $35 million on a final basis, subject to the terms and conditions set forth in the Additional Financing Documents, this Interim Additional Financing Order and the Final DIP Order (as modified by this Interim Additional Financing Order). Any and all objections to the Motion with respect to the entry of this Interim Additional Financing Order that have not been withdrawn, waived, settled, or resolved and all reservations of rights included therein, are hereby denied and overruled on the merits. This Interim Additional Financing Order shall become effective immediately upon its entry.

2. *Jurisdiction and Venue.* This Court has core jurisdiction over the Chapter 11 Cases, the Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012. Venue for the Chapter 11 Cases and proceedings on the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. *Notice.* Appropriate notice of the Motion has, under the circumstances, been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules. No other or further notice of the Motion or the entry of this Interim Additional Financing Order shall be required. The relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

4. *Authorization of the Additional Financing and the Amendment.*

(a) The Company is authorized to borrow money pursuant to the Additional Financing Documents and the Guarantors (as defined in the Term DIP Credit Agreement) are authorized to guaranty the obligations (the "Additional Obligations") of the Company with respect to such borrowings, in each case up to an aggregate principal amount equal to $25,000,000 on an interim basis and, subject to entry of the Final Additional Financing Order, $35,000,000 on a final basis, subject to any limitations on borrowing under the Amendment or the Term DIP Documents, which shall be used for all purposes permitted under the Amendment and the Term DIP Documents, including, without limitation, to pay certain costs, fees and expenses related to the Chapter 11 Cases, to pay the Adequate Protection Obligations, to fund the working capital needs, capital improvements and expenditures of the Debtors and for general corporate purposes during the Chapter 11 Cases, in each case in accordance with this Interim Additional Financing Order, the Final DIP Order (as modified by this Interim Additional Financing Order), the Additional Financing Documents and the Term DIP Documents.

(b) In furtherance of the foregoing and without further approval of this Court, the Company is authorized to enter into the Amendment, and each Debtor is authorized to make, execute and deliver all instruments and documents and to pay all fees in connection with or that may be reasonably required, necessary or desirable for such Debtor's performance of its

obligations under or related to the Additional Financing and the Additional Financing Documents.

5. *Findings Regarding the Additional Financing.*

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

(b) The Term DIP Loan Parties have an immediate need to obtain the Additional Loans in order to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers, customers, and employees, to satisfy other working capital and operational needs, to pay administrative costs, and to bridge to emergence from the Chapter 11 Cases. The access of the Term DIP Loan Parties to sufficient working capital and liquidity through the incurrence of new indebtedness and other financial accommodations is necessary and vital to the preservation and maintenance of the going concern values of the Term DIP Loan Parties and to a successful reorganization of the Term DIP Loan Parties.

(c) The Additional Financing is the best and only available financing option for the Term DIP Loan Parties under the circumstances. The Term DIP Loan Parties are unable to obtain financing on more favorable terms from sources other than the Term DIP Lenders under the Amendment, and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Term DIP Loan Parties are also unable to obtain secured credit on more favorable terms than the Additional Loans through secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the Term DIP Loan Parties granting to the Term DIP Secured Parties, subject to the Carve-Out, the Term DIP Liens and the DIP Superpriority Claims under the terms

and conditions set forth in this Interim Additional Financing Order and in the Additional Financing Documents.

(d) For the avoidance of doubt, the effectiveness of the Amendment and the amendments set forth herein are subject to the consent thereto of the applicable requisite parties under the Term DIP Credit Agreement.

(e) The terms of the Additional Financing are fair and reasonable, reflect the Term DIP Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(f) The terms of the Additional Financing have been negotiated in good faith and at arm's length among the Term DIP Loan Parties and the Term DIP Secured Parties, and all of the Term DIP Loan Parties' obligations and indebtedness arising under, in respect of, or in connection with the Additional Financing Documents, including, without limitation, all Additional Loans made to the Term DIP Loan Parties pursuant to the Additional Financing Documents, shall be deemed to have been extended by the Term DIP Agent and the Term DIP Lenders in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the Term DIP Agent and the Term DIP Lenders (and the successors and assigns thereof, solely in their capacity as such) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Additional Financing Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise.

6. *Privileges and Protections.*

(a) All liens, security interests, priorities and other rights, remedies, benefits, privileges and protections provided to the lenders providing New Money Term DIP Loans and

the Term DIP Agent in the Final DIP Order and the Term DIP Documents with respect to or relating to the Term DIP Financing, as modified by the Additional Financing Modifications, shall apply with equal force and effect with respect to the Additional Financing, the Additional Financing Documents and all obligations in connection therewith or related thereto. The Additional Loans will rank *pari passu* in right of payment and security with the New Money Term DIP Loans, except that (i) the New Money Term DIP Liens shall be subject and subordinate to the liens in respect of the Additional Loans on the Specified Owned Assets and (ii) the Additional Financing Modifications regarding payment priorities between the Additional Loans and the New Money Term DIP Loans shall apply. In furtherance of the foregoing, except as modified by this Interim Additional Financing Order and the Additional Financing Modifications, for all purposes under the Final DIP Order the defined terms (a) "New Money Term DIP Loans" shall include the Additional Loans, (b) "Term DIP Facility" shall include the Additional Facility, (c) "Term DIP Financing" shall include the Additional Financing, (d) "Term DIP Obligations" shall include the Additional Obligations, (e) "Term DIP Documents" shall include the Amendment, and (f) "Term DIP Lenders" shall include each Lender providing an Additional New Money DIP Term Loan Commitment. The Additional Obligations shall constitute DIP Superpriority Claims under the Final DIP Order, subject to the payment priorities set forth in the Additional Financing Modifications.

(b) The Additional Loans made pursuant to the Additional Facility shall be subject to the DIP ICA.

7. *The Final DIP Order.* The terms of the Final DIP Order are incorporated herein and made part of this Interim Additional Financing Order. Except as expressly modified by this Interim Additional Financing Order, the Final DIP Order shall remain unchanged and in full

force and effect. All factual and other findings and conclusions of law contained in the Final DIP Order shall remain fully applicable, including with respect to the Additional Financing, except to the extent specifically modified herein. In the event of any inconsistency among the provisions of this Interim Additional Financing Order, the Final DIP Order and the definitive documents related to the Additional Financing, the provisions of the Final DIP Order shall govern, except as expressly modified by this Interim Additional Financing Order.

Rights of DIP ABL Secured Parties Unaffected. For the avoidance of doubt, nothing in this Interim Additional Financing Order or the Amendment is intended to nor shall alter, impair, or otherwise affect the claims, liens and security interests, or the priority thereof, or the other rights and interests of the DIP ABL Secured Parties under the Final DIP Order, the DIP ICA, and the DIP ABL Financing Documents, or the Prepetition ABL Secured Parties under the Final DIP Order, the Prepetition Intercreditor Agreements, and the Prepetition ABL Financing Documents.

8. *Binding Effect; Successors and Assigns.* The provisions of this Interim Additional Financing Order, including all findings herein, shall be binding upon all parties in interest in the Chapter 11 Cases, including, without limitation, the DIP Agents, the DIP Lenders, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the Term DIP Agent, the Term DIP Lenders and the Debtors and their respective successors and assigns; *provided* that the DIP Agent and the DIP Lenders shall have

no obligation to extend any financing to any chapter 7 trustee, chapter 11 trustee or similar responsible person appointed for the estates of the Debtors.

9. *Liens*. All liens and priority granted to the Term DIP Lenders and the Term DIP Agent pursuant to this Interim Additional Financing Order, including the Additional Financing Liens, shall be deemed effective and perfected upon the date of this Interim Additional Financing Order and without the necessity of the execution, recordation or filing by the Term DIP Loan Parties of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Term DIP Agent of, or over, any Term DIP Collateral.

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

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

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

13. *Final Hearing*. The Final Hearing is scheduled for October 25, 2019 at 2:00pm prevailing Eastern Time before this Court.

14. *Objections*. Any party in interest objecting to the relief sought at the Final Hearing shall file and serve written objections, which objections shall be served upon:

(a) counsel to the Debtors, (i) Kirkland & Ellis LLP, 300 North LaSalle, Chicago, IL 60654 (attn.: Ross M. Kwasteniet, P.C. (rkwasteniet@kirkland.com), Joseph M. Graham (joe.graham@kirkland.com)); 601 Lexington Ave, New York, NY 10022 (attn.: Stephen E. Hessler (stephen.hessler@kirkland)) and (ii) Potter Anderson & Corroon LLP, 1313 N. Market St., 6th Floor, Wilmington, DE 19801 (attn.: L. Katherine Good (kgood@potteranderson.com));

(b) counsel to the DIP ABL Agent, (i) Hogan Lovells US LLP, 390 Madison Avenue, New York, NY 10017 (attn.: Deborah Staudinger (deborah.staudinger@hoganlovells.com), Alex Sher (alex.sher@hoganlovells.com)) and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, P.O. Box 1347, Wilmington, DE 19899-1347 (attn.: Matthew B. Harvey (mharvey@mnat.com), Eric D. Schwartz (eschwartz@mnat.com));

(c) counsel to the Term DIP Agent and Prepetition First Lien Term Loan Agent, Herrick Feinstein LLP, Two Park Ave, New York, NY 10016 (attn.: Eric A. Stabler (EStabler@herrick.com), Steven Smith (ssmith@herrick.com));;

(d) Counsel to the Prepetition Second Lien Term Loan Agent, Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, NY 10038 (attn..: Elizabeth A. Loonam (eloonam@stroock.com), Alex Cota (acota@stroock.com), Gabriel Sasson (gsasson@stroock.com); and

(e) Counsel to the Crossover Group, (i) Davis Polk & Wardwell LLP, 450 Lexington Ave, New York, NY 10017 (attn.: Brian Resnick (brian.resnick@davispolk.com), Dylan Consla (dylan.consla@davispolk.com) and Daniel Meyer (daniel.meyer@davispolk.com)); and (ii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, DE 19801 (attn.: Mark D. Collins (collins@rlf.com) and Paul N. Heath (heath@rlf.com));

(f) Counsel to the First Lien Group, Shearman & Sterling LLP, 599 Lexington Avenue, New York, NY 10022 (attn.: Fredric Sosnick (fsosnick@shearman.com), and Ned S. Schodek (ned.schodek@sheaman.com)) and Ashby & Geddes, P.A., 500 Delaware Avenue, 8th Floor, Wilmington, DE 19899 (attn: Don. A Beskrone (dbeskrone@ashbygeddes.com));

(g) the U.S. Trustee; and

(h) any other party that has filed a request for notices with this Court,

by the foregoing no later than October 18, 2019 at 4:00 p.m. prevailing Eastern Time.

15. The Debtors shall within two (2) business days of its entry serve copies of this Interim Additional Financing Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Interim Hearing, to any party that has filed a request for notices with this Court.

LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

Dated: Oct. 7, 2019
Wilmington, Delaware

#92510462v2

Exhibit 1

BLACKHAWK MINING LLC
ADDITIONAL DIP TERM FACILITY TERM SHEET

This term sheet (the "**Additional DIP Term Facility Term Sheet**") sets forth the principal terms of a new debtor-in-possession facility (the "**Additional DIP Term Facility**") which may be established as a new tranche under the Secured Debtor-In-Possession Credit Agreement among the Borrower, the DIP Term Agent and the other financial institutions party thereto, dated as of July 23, 2019 (as amended, supplemented or otherwise modified from time to time prior to the Additional Facility Closing Date (as defined below), the "**Existing DIP Term Loan Credit Agreement**"; the loans thereunder existing prior to the Additional Facility Closing Date, the "**Existing DIP Term Loans**"; the holders of the Existing DIP Term Loans, the "**Existing DIP Term Lenders**"; and the Existing DIP Term Loans that are New Money Loans, the "**Existing New Money DIP Term Loans**") pursuant to an amendment thereto (the "**DIP Term Amendment**") or, at the election of either Knighthead or the Required Additional DIP Term Lenders, as a separate credit facility[1] (the "**Additional DIP Term Loan Credit Agreement**; the definitive documentation for the Additional DIP Term Facility, whether in the form of the DIP Term Amendment or the Additional DIP Term Loan Credit Agreement, the "**Additional DIP Facility Documentation**"). Capitalized terms used and not otherwise defined herein shall have the meaning assigned to them in the Existing DIP Term Loan Credit Agreement or the Restructuring Support Agreement dated as of July 15, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the "**Restructuring Support Agreement**"), as applicable.

SUMMARY OF PRINCIPAL TERMS	
Borrower	Blackhawk Mining LLC, as a debtor and debtor-in-possession (the "**Borrower**" or the "**Company**").
Guarantors	Same as in the Existing DIP Term Loan Credit Agreement.
DIP Term Agent	Cantor Fitzgerald Securities, as administrative agent and collateral agent (in such capacities, the "**DIP Term Agent**").
Additional DIP Term Lenders	Funds managed or advised by Knighthead Capital Management, LLC (such applicable funds, "**Knighthead**") and the other Existing New Money DIP Term Lenders (as defined below) or their designated affiliates that choose to participate in the Additional DIP Term Facility (collectively, the "**Additional DIP Term Lenders**"). The aggregate amount of the Additional New Money DIP Term Loan Commitments (as defined below) will be offered for participation to each holder of the Existing New Money DIP Term Loans under the Existing DIP Term Loan Credit Agreement (each, an "**Existing New Money DIP Term Lender**"), in each case up to such Existing New Money DIP Term Lender's pro rata share of the Existing New Money DIP Term Loans. Knighthead has agreed to provide the full amount of the Additional New Money DIP Term Loan Commitments. To the extent any other Existing New Money DIP Term Lender (other than Knighthead) desires to provide Additional New Money DIP Term Loan Commitments, such Existing New Money DIP Term Lender may, prior to the entry of the Additional DIP Interim Order (as defined below), elect to provide Additional New Money DIP Term Loan Commitments up to its pro

[1] Upon the exercise of such election, the Company shall support and take all actions commercially reasonably necessary to effectuate such election.

	rata share of the Existing New Money DIP Term Loans by either (i) submitting a signature page to the Fourth Amendment To Restructuring Support Agreement indicating that it agrees to be added to Exhibit C thereto or (ii) entering into a written agreement evidencing its Additional New Money DIP Term Loan Commitment (a "**Participating Existing New Money DIP Term Lender**"), in which case the Additional New Money DIP Term Loan Commitments of Knighthead at the time of such election shall be reduced on a pro rata basis by the aggregate amount of the Additional New Money DIP Term Loan Commitments of such Participating Existing New Money DIP Term Lender.
Amount & Type	A senior secured debtor-in-possession U.S. dollar term loan facility (which may be established as a new tranche under the Existing DIP Term Loan Credit Agreement or as a separate credit facility) in an aggregate principal amount not to exceed $35 million (the commitments under the Additional DIP Term Facility, the "**Additional New Money DIP Term Loan Commitments**"; the loans under the Additional DIP Term Facility, the "**Additional New Money DIP Term Loans**"), subject to the terms and conditions set forth in this Additional DIP Term Facility Term Sheet and as otherwise agreed between the Additional DIP Term Lenders and the Borrower. The borrowing of Additional New Money DIP Term Loans shall permanently decrease the Additional New Money DIP Term Loan Commitments, and any Additional New Money DIP Term Loans repaid may not be reborrowed. For the avoidance of doubt, the Additional New Money DIP Term Loans shall constitute a separate class from the Existing DIP Term Loans. The Additional DIP Term Lenders shall make the Additional New Money DIP Term Loans available to the Borrower in up to two draws in the following manner (in each case upon the satisfaction of the conditions precedent described below), with each such draw to be made no later than November 30, 2019: (a) A first draw of Additional New Money DIP Term Loans in an aggregate principal amount of up to $25 million. (b) A second draw of Additional New Money DIP Term Loans in an aggregate principal amount of up to $10 million.
Termination Date	Same as for Existing DIP Term Loans.
Exit Financing	Upon confirmation of the Acceptable Plan of Reorganization and the Company's emergence from bankruptcy, the Additional New Money DIP Term Loans will be converted into exit term loans in accordance with such Acceptable Plan of Reorganization and the Restructuring Support Agreement.
Interest Rate	LIBOR + 9.50% per annum, with a LIBOR floor of 0.50%.
Default Interest	Same as for the Existing DIP Term Loans.
Amortization	None. Same as for the Existing DIP Term Loans.
Mandatory Prepayments	Same as for the Existing DIP Term Loans, except that with respect to the net proceeds of any sale of assets (including, for the avoidance of doubt, certain of

	the Company's specified, owned coal reserves in northern West Virginia (the "**Specified Owned Assets**")[2]), such proceeds shall be applied, first, to repayment of the Additional New Money DIP Term Loans until repaid in full and second, to repayment of the Existing DIP Term Loans; *provided* that, with respect to the net proceeds of any sale of the Specified Owned Assets (the "**Specified Sale Proceeds**"), the Company shall, subject to a pro forma minimum liquidity test to be agreed that gives effect to the portion of the Specified Sale Proceeds retained by the Company, promptly (and in any event within a time period to be agreed) following receipt thereof, apply the Specified Sale Proceeds to prepay the Additional New Money DIP Term Loans in an amount up to 75% of the aggregate principal amount of the Additional New Money DIP Term Loans (with the balance to be retained by the Company); *provided, further*, that if the sale of the Specified Owned Assets is consummated at a time when there exist any unused Additional New Money DIP Term Loan Commitments, all of the Specified Sale Proceeds shall be deposited into an escrow account on terms reasonably satisfactory to the Required Additional DIP Term Lenders (as defined below) until an agreement in writing is entered into by the Required Additional DIP Term Lenders and the Company as to the application of the Specified Sale Proceeds.
Voluntary Prepayments	Same as for Existing DIP Term Loans, except that any voluntary prepayment shall be applied, first, to repayment of the Additional New Money DIP Term Loans until repaid in full and second, to repayment of the Existing DIP Term Loans.
Additional DIP Interim Order	The order approving the Additional DIP Term Facility, which shall be in form and substance acceptable to the Required Additional DIP Term Lenders and the required lenders under the Existing DIP Term Loan Credit Agreement (the "**Additional DIP Interim Order**") and shall, among other things, authorize and approve (i) the borrowing and making of the Additional New Money DIP Term Loans in an aggregate amount up to $25 million, (ii) the terms and conditions set forth in this Additional DIP Term Facility Term Sheet, (iii) the payment of all reasonable and documented fees and expenses (including the fees and expenses of outside counsel) required to be paid to the DIP Term Agent, the Existing DIP Term Lenders and the Additional DIP Term Lenders as described in Section 11.01(a)(i) of the Existing DIP Term Loan Credit Agreement by the Debtors and (iv) the payment of the fees described under the heading "Fees" below, which payment shall not be subject to reduction, setoff or recoupment.
Additional DIP Final Order	The final order approving the Additional DIP Term Facility, which shall be substantially in the same form as the Additional DIP Interim Order (with such modifications as are necessary to convert the Additional DIP Interim Order into a final order) and in form and substance acceptable to the Required Additional DIP Term Lenders and the required lenders under the Existing DIP Term Loan Credit Agreement (the "**Additional DIP Final Order**" and, together with the Additional DIP Interim Order, the "**Additional DIP Orders**"), shall, among other things, authorize and approve the Borrower to draw the full amount of the Additional New Money DIP Term Loan Commitments.

[2] For the avoidance of doubt, no DIP ABL Priority Collateral (as defined in that certain Debtor-in-Possession ABL Intercreditor Agreement, dated as of July 23, 2019) shall be considered "Specified Owned Assets", including, without limitation, any inventory or as-extracted collateral.

DIP Collateral	Same as for the Existing New Money DIP Term Loans.
Priority Under the DIP Term Facility	Same as for the Existing New Money DIP Term Loans and *pari passu* with the liens securing the Existing New Money DIP Term Loans, except that (i) the liens on the Specified Owned Assets securing the Additional New Money DIP Term Loans shall be senior in priority to the liens thereon securing the Existing DIP Term Loans and (ii) the Additional New Money DIP Term Loans shall be placed ahead of the Existing DIP Term Loans in the default waterfall provisions; *provided* that, in the case of the DIP Term Amendment, clauses (i) and (ii) and, in the case of the Additional DIP Term Loan Credit Agreement, solely clause (i), shall be subject to obtaining the consent of each affected Existing DIP Term Lender. Solely in the case of the DIP Term Amendment, in the event that any affected Existing DIP Term Lender does not consent to the DIP Term Amendment (any such Existing DIP Term Lender, a "**Non-Consenting Existing DIP Term Lender**"; and the consenting Existing DIP Term Lenders, the "**Consenting Existing DIP Term Lenders**"), (i) the liens on the Specified Owned Assets securing the Additional New Money DIP Term Loans will be *pari passu* with the liens thereon securing the Existing New Money DIP Term Loans of the Non-Consenting Existing DIP Term Lenders, but, for the avoidance of doubt, will be senior in priority to the liens thereon securing the Existing New Money DIP Term Loans of the Consenting Existing DIP Term Lenders and (ii) the Additional New Money DIP Term Loans shall be *pari passu* with the Existing New Money DIP Term Loans of the Non-Consenting Existing DIP Term Lenders in the default waterfall provisions, but, for the avoidance of doubt, will be placed head of the Existing New Money DIP Term Loans of the Consenting Existing DIP Term Lenders in the default waterfall provisions. Solely in the case of the Additional DIP Term Loan Credit Agreement, the liens on the Specified Owned Assets securing the Additional New Money DIP Term Loans will be *pari passu* with the liens thereon securing the Existing New Money DIP Term Loans of the Non-Consenting Existing DIP Term Lenders, but, for the avoidance of doubt, will be senior in priority to the liens thereon securing the Existing New Money DIP Term Loans of the Consenting Existing DIP Term Lenders.
Milestones	Same as in the Existing DIP Term Loan Credit Agreement.
Events of Default	Same as in the Existing DIP Term Loan Credit Agreement.
Conditions Precedent to Closing	Usual and customary for financings of this type, including, without limitation: (i) execution and delivery of the Additional DIP Facility Documentation; (ii) entry of the Additional DIP Interim Order; and (iii)(A) if the Additional DIP Term Facility is established as a separate credit facility, (1) the effectiveness of an amendment to the Existing DIP Term Loan Credit Agreement permitting the incurrence of the Additional DIP Term Facility and (2) the entry into an intercreditor agreement governing the relative priority between the Existing DIP Term Loans and the Additional New Money DIP Term Loans and (B) if the Additional DIP Term Facility is established as a new tranche under the Existing DIP Term Loan Credit Agreement, the effectiveness of an amendment to the Existing DIP Term Loan Credit Agreement permitting the incurrence of the Additional DIP Facility on the terms and conditions set forth in this Additional DIP Term Facility Term Sheet (the date on which such conditions are satisfied, the "**Additional Facility**

	Closing Date").
Conditions Precedent to the Funding of each Additional New Money DIP Term Loan	Usual and customary for financings of this type, including, without limitation: (i) no default or event of default; (ii) accuracy of representations and warranties in all material respects; (iii) the Additional DIP Interim Order or the Additional DIP Final Order, as applicable, shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the consent of the Required Additional DIP Term Lenders; (iv) delivery of a customary notice of borrowing and (v) each funding thereunder occurs no later than November 30, 2019.
Covenants	Same as in the Existing DIP Term Loan Credit Agreement.
Financial Covenant	Same as in the Existing DIP Term Loan Credit Agreement.
Representations and Warranties	Same as in the Existing DIP Term Loan Credit Agreement.
Voting	Same as for Existing DIP Term Loans, *provided* that amendments and waivers that affect solely the Additional New Money DIP Term Loans will require the consent of Lenders holding more than 50% of the aggregate Additional New Money DIP Term Loan Commitments and Additional New Money DIP Term Loans and any amendments shall be subject to the terms of the relevant intercreditor agreement (the "**Required Additional DIP Term Lenders**").
Fees and Expenses; Indemnification	Same as in the Existing DIP Term Loan Credit Agreement.
Fees	(a) *Original Issue Discount*: 1.00% of the aggregate principal amount of the Additional New Money DIP Term Loan Commitments, which shall be due and payable on the applicable funding date thereof to the Additional DIP Term Lenders in the form of original issue discount. (b) *Exit Fee*: 2.50% of the aggregate principal amount of the Additional New Money DIP Term Loans, which shall be due and payable in cash on the Termination Date or, in the case of Additional New Money DIP Term Loans prepaid in whole or in part prior to the Termination Date, on the date of such prepayment. (c) *Backstop Fee*: 3.00% of the aggregate equity interests of the reorganized Borrower otherwise allocable in respect of the Roll-Up Loans and the outstanding Pre-Petition First Lien Term Loans held by the Existing New Money DIP Term Lenders who do not elect to participate, or designate an affiliate to participate on their behalf, in the Additional DIP Term Facility (each a "**Non-Participating Lender**") pursuant to the Acceptable Plan of Reorganization, shall be reallocated from each Non-Participating Lender to Knighthead on the effective date of the Acceptable Plan of Reorganization.
Assignments and Participations	Same as in the Existing DIP Term Loan Credit Agreement.
Governing Law	The laws of the State of New York (excluding the laws applicable to conflicts or choice of law), except as governed by the Bankruptcy Code.
Yield Protection	Same as in the Existing DIP Term Loan Credit Agreement.
Counsel to DIP Term Agent	Herrick, Feinstein LLP.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 11
BLACKHAWK MINING LLC, *et al.*,[1]	)	Case No. 19-11595 (LSS)
Debtors.	)	Jointly Administered

FINAL ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN ADDITIONAL POSTPETITION FINANCING, (II) INCREASING THE AMOUNT OF INDEBTEDNESS SECURED BY LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (III) AUTHORIZING THE DEBTORS TO AMEND THE TERM DIP CREDIT AGREEMENT, AND (IV) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of Blackhawk Mining LLC (the "Company"), and its affiliated debtors, each as a debtor and debtor in possession (collectively, the "Debtors") in the above-captioned cases (the "Chapter 11 Cases") pursuant to sections 105, 363, 364(c), 364(d) and 364(e) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq*. (the "Bankruptcy Code"), Rules 4001(b), (c), and (d), 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: Blackhawk Mining LLC (5600); Blackhawk Coal Sales, LLC (9456); Blackhawk Land and Resources, LLC (7839); Blackhawk River Logistics, LLC (3388); Blue Creek Mining, LLC (2427); Blue Diamond Mining, LLC (3488); Eagle Shield, LLC (6721); FCDC Coal, Inc. (6188); Guyandotte Mining, LLC (4882); Hampden Coal, LLC (8241); Kanawha Eagle Mining, LLC (0586); Logan & Kanawha, LLC (3178); Panther Creek Mining, LLC (0627); Pine Branch Land, LLC (9661); Pine Branch Mining, LLC (9681); Pine Branch Resources, LLC (9758); Redhawk Mining, LLC (0852); Rockwell Mining, LLC (3874); Spruce Pine Land Company (2254); Spurlock Mining, LLC (2899); Triad Mining, LLC (7713); and Triad Trucking, LLC (6112). The location of the Debtors' service address in these chapter 11 cases is 3228 Summit Square Place, Suite 180, Lexington, Kentucky 40509.

[2] Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Final DIP Order (as defined in the Motion) or the Motion, as applicable.

Bankruptcy Rules") seeking, among other things, a supplemental final order (the "Final Additional Financing Order") authorizing the Debtors to:

(i) obtain additional postpetition financing (the "Additional Financing") consisting of a senior secured superpriority debtor-in-possession term loan facility (the "Additional Facility") in an aggregate principal amount of up to $35,000,000 (the loans made thereunder, the "Additional Loans") pursuant to the terms and conditions set forth in the term sheet attached as **Exhibit 1** to **Exhibit A** of the Motion (the "Additional Financing Term Sheet"),[3] including, without limitation, that the Additional Financing shall be on substantially the same terms as, and ranking *pari passu* in right of payment and of security with, the New Money Term DIP Loans, subject to the exceptions set forth in the Additional Financing Term Sheet (the "Additional Financing Modifications");

(ii) execute and enter into the Amendment and to perform their respective obligations thereunder and all such other and further acts as may be necessary, appropriate, or desirable in connection with the Additional Financing Term Sheet and the Additional Financing Documents.

and due and appropriate notice of the Motion and the Final Hearing (as defined below) having been served by the Debtors on the parties identified in the Motion, and it appearing that no other or further notice need be provided; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the Court having reviewed the Motion; and pursuant to Bankruptcy Rule 4001, the interim hearing on the Motion having been noticed and held by this Court on October 7, 2019 (the "Interim Hearing"); and the *Interim Order (I) Authorizing the Debtors to Obtain Additional Postpetition Financing, (II) Increasing the Amount of Indebtedness Secured by Liens and Providing Superpriority Administrative Expense Status, (III) Authorizing the Debtors to Amend the Term DIP Credit Agreement, and (IV) Granting Related Relief* [D.I. 294] having been entered by this Court on October 7, 2019;

[3] The Additional Financing Term Sheet shall be superseded and replaced in all respects by an amendment to the Term DIP Credit Agreement to be executed by the Borrower, the Term DIP Agent and the requisite Term DIP Lenders under the Term DIP Credit Agreement, which shall be in form and substance consistent with the Additional Financing Term Sheet (the "Amendment" and, together with the Additional Financing Term Sheet and the Term DIP Credit Agreement, the "Additional Financing Documents") and this Final Additional Financing Order.

and the final hearing on the Motion having been noticed and held by this Court on October 25, 2019 (the "Final Hearing"); and the Court having entered the Final DIP Order; and the relief requested in the Motion being in the best interests of the Debtors, their creditors and their estates and all other parties in interest in these Chapter 11 Cases; and the Court having determined that the relief requested in the Motion is necessary to avoid irreparable harm; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon the record made by the Debtors in the Motion, the Nystrom Declaration, the Puntus Declaration, the Additional Financing Documents, and in the evidence submitted and arguments made by the Debtors at the Interim Hearing and the Final Hearing, and after due deliberation and sufficient cause appearing therefor;

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

1. *Disposition.* The relief requested in the Motion is GRANTED in accordance with the terms of this Final Additional Financing Order. The Additional Financing is authorized and approved, subject to the terms and conditions set forth in the Additional Financing Documents, this Final Additional Financing Order and the Final DIP Order (as modified by this Final Additional Financing Order). Any and all objections to the Motion with respect to the entry of this Final Additional Financing Order that have not been withdrawn, waived, settled, or resolved and all reservations of rights included therein, are hereby denied and overruled on the merits. This Final Additional Financing Order shall become effective immediately upon its entry.

2. *Jurisdiction and Venue.* This Court has core jurisdiction over the Chapter 11 Cases, the Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334 and the Amended Standing Order of Reference from the United States District Court

for the District of Delaware, dated February 29, 2012. Venue for the Chapter 11 Cases and proceedings on the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. *Notice*. Appropriate notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules. No other or further notice of the Motion or the entry of this Final Additional Financing Order shall be required. The relief granted herein is necessary to avoid irreparable harm to the Debtors and their estates.

4. *Authorization of the Additional Financing and the Amendment.*

(a) The Company is authorized to borrow money pursuant to the Additional Financing Documents and the Guarantors (as defined in the Term DIP Credit Agreement) are authorized to guaranty the obligations (the "Additional Obligations") of the Company with respect to such borrowings, in each case up to an aggregate principal amount equal to $35,000,000, subject to any limitations on borrowing under the Amendment or the Term DIP Documents, which shall be used for all purposes permitted under the Amendment and the Term DIP Documents, including, without limitation, to pay certain costs, fees and expenses related to the Chapter 11 Cases, to pay the Adequate Protection Obligations, to fund the working capital needs, capital improvements and expenditures of the Debtors and for general corporate purposes during the Chapter 11 Cases, in each case in accordance with this Final Additional Financing Order, the Final DIP Order (as modified by this Final Additional Financing Order), the Additional Financing Documents and the Term DIP Documents.

(b) In furtherance of the foregoing and without further approval of this Court, the Company is authorized to enter into the Amendment, and each Debtor is authorized to make, execute and deliver all instruments and documents and to pay all fees in connection with or that

may be reasonably required, necessary or desirable for such Debtor's performance of its obligations under or related to the Additional Financing and the Additional Financing Documents.

5. *Findings Regarding the Additional Financing*.

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

(b) The Term DIP Loan Parties need to obtain the Additional Loans in order to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers, customers, and employees, to satisfy other working capital and operational needs, to pay administrative costs, and to bridge to emergence from the Chapter 11 Cases. The access of the Term DIP Loan Parties to sufficient working capital and liquidity through the incurrence of new indebtedness and other financial accommodations is necessary and vital to the preservation and maintenance of the going concern values of the Term DIP Loan Parties and to a successful reorganization of the Term DIP Loan Parties.

(c) The Additional Financing is the best and only available financing option for the Term DIP Loan Parties under the circumstances. The Term DIP Loan Parties are unable to obtain financing on more favorable terms from sources other than the Term DIP Lenders under the Amendment, and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Term DIP Loan Parties are also unable to obtain secured credit on more favorable terms than the Additional Loans through secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the Term DIP Loan Parties granting to the Term DIP Secured Parties,

subject to the Carve-Out, the Term DIP Liens and the DIP Superpriority Claims under the terms and conditions set forth in this Final Additional Financing Order and in the Additional Financing Documents.

(d) For the avoidance of doubt, the effectiveness of the Amendment and the amendments set forth herein are subject to the consent thereto of the applicable requisite parties under the Term DIP Credit Agreement.

(e) The terms of the Additional Financing are fair and reasonable, reflect the Term DIP Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(f) The terms of the Additional Financing have been negotiated in good faith and at arm's length among the Term DIP Loan Parties and the Term DIP Secured Parties, and all of the Term DIP Loan Parties' obligations and indebtedness arising under, in respect of, or in connection with the Additional Financing Documents, including, without limitation, all Additional Loans made to the Term DIP Loan Parties pursuant to the Additional Financing Documents, shall be deemed to have been extended by the Term DIP Agent and the Term DIP Lenders in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the Term DIP Agent and the Term DIP Lenders (and the successors and assigns thereof, solely in their capacity as such) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Final Additional Financing Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise.

6. *Privileges and Protections*.

(a) All liens, security interests, priorities and other rights, remedies, benefits, privileges and protections provided to the lenders providing New Money Term DIP Loans and the Term DIP Agent in the Final DIP Order and the Term DIP Documents with respect to or relating to the Term DIP Financing, as modified by the Additional Financing Modifications, shall apply with equal force and effect with respect to the Additional Financing, the Additional Financing Documents and all obligations in connection therewith or related thereto. The Additional Loans will rank *pari passu* in right of payment and security with the New Money Term DIP Loans, except that (i) the New Money Term DIP Liens shall be subject and subordinate to the liens in respect of the Additional Loans on the Specified Owned Assets and (ii) the Additional Financing Modifications regarding payment priorities between the Additional Loans and the New Money Term DIP Loans shall apply. In furtherance of the foregoing, except as modified by this Final Additional Financing Order and the Additional Financing Modifications, for all purposes under the Final DIP Order the defined terms (a) "New Money Term DIP Loans" shall include the Additional Loans, (b) "Term DIP Facility" shall include the Additional Facility, (c) "Term DIP Financing" shall include the Additional Financing, (d) "Term DIP Obligations" shall include the Additional Obligations, (e) "Term DIP Documents" shall include the Amendment, and (f) "Term DIP Lenders" shall include each Lender providing an Additional New Money DIP Term Loan Commitment. The Additional Obligations shall constitute DIP Superpriority Claims under the Final DIP Order, subject to the payment priorities set forth in the Additional Financing Modifications.

(b) The Additional Loans made pursuant to the Additional Facility shall be subject to the DIP ICA.

7. *The Final DIP Order*. The terms of the Final DIP Order are incorporated herein and made part of this Final Additional Financing Order. Except as expressly modified by this Final Additional Financing Order, the Final DIP Order shall remain unchanged and in full force and effect. All factual and other findings and conclusions of law contained in the Final DIP Order shall remain fully applicable, including with respect to the Additional Financing, except to the extent specifically modified herein. In the event of any inconsistency among the provisions of this Final Additional Financing Order, the Final DIP Order and the definitive documents related to the Additional Financing, the provisions of the Final DIP Order shall govern, except as expressly modified by this Final Additional Financing Order.

Rights of DIP ABL Secured Parties Unaffected. For the avoidance of doubt, nothing in this Final Additional Financing Order or the Amendment is intended to nor shall alter, impair, or otherwise affect the claims, liens and security interests, or the priority thereof, or the other rights and interests of the DIP ABL Secured Parties under the Final DIP Order, the DIP ICA, and the DIP ABL Financing Documents, or the Prepetition ABL Secured Parties under the Final DIP Order, the Prepetition Intercreditor Agreements, and the Prepetition ABL Financing Documents.

8. *Binding Effect; Successors and Assigns*. The provisions of this Final Additional Financing Order, including all findings herein, shall be binding upon all parties in interest in the Chapter 11 Cases, including, without limitation, the DIP Agents, the DIP Lenders, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall

inure to the benefit of the Term DIP Agent, the Term DIP Lenders and the Debtors and their respective successors and assigns; *provided* that the DIP Agent and the DIP Lenders shall have no obligation to extend any financing to any chapter 7 trustee, chapter 11 trustee or similar responsible person appointed for the estates of the Debtors.

9. *Liens*. All liens and priority granted to the Term DIP Lenders and the Term DIP Agent pursuant to this Final Additional Financing Order, including the Additional Financing Liens, shall be deemed effective and perfected upon the date of this Final Additional Financing Order and without the necessity of the execution, recordation or filing by the Term DIP Loan Parties of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Term DIP Agent of, or over, any Term DIP Collateral.

10. *Headings*. Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Final Additional Financing Order.

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

12. *Retention of Jurisdiction*. The Court shall retain jurisdiction to implement, interpret and enforce the provisions of this Final Additional Financing Order, and this retention of jurisdiction shall survive the confirmation and consummation of any chapter 11 plan for any

one or more of the Debtors notwithstanding the terms or provisions of any such chapter 11 plan or any order confirming any such chapter 11 plan.

Dated: October 24th, 2019
Wilmington, Delaware

LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

#92540740v2

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

	:	**Chapter 11**
In re:	:	**Case No. 19-36300 (CGM)**
	:	
BARNEY'S NEW YORK, INC., et al.,	:	**Jointly Administered**
	:	
Debtors.	:	
	:	**Ref. Docket Nos. 49, 127**

FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, AND 507 AND FED. R. BANKR. P. 2002, 4001 AND 9014 (I) AUTHORIZING DEBTORS AND DEBTORS IN POSSESSION TO OBTAIN POST-PETITION FINANCING, (II) GRANTING LIENS AND SUPER-PRIORITY CLAIMS, (III) AUTHORIZING PAYMENT OF PREPETITION SECURED OBLIGATIONS, (IV) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES, (V) MODIFYING THE AUTOMATIC STAY, AND (VI) GRANTING RELATED RELIEF

Upon the DIP Motion[1] and the Amended DIP Motion[2] (collectively, the "***DIP Motions***")[3] of **BARNEY'S, INC.**, on behalf of itself and its affiliated debtors and debtors-in-possession in the above-captioned cases (collectively, the "***Debtors***"), pursuant to sections 105, 361, 362, 363, 364, and 507 of Title 11, United States Code, 11 U.S.C. §§ 101 *et seq*. (the "***Bankruptcy Code***"), and in accordance with Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***"), and Rule 4001-2 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the "***Local Rules***"), filed in the United States Bankruptcy Court for the Southern District of New York (this "***Court***"), in these chapter 11 cases (the "***Chapter 11 Cases***"), for entry of interim and final orders granting the following relief:

(I) DIP Financing

(A) Authorizing the Debtors to obtain up to $217 million in post-petition financing (the

[1] "***DIP Motion***" means the *Debtors' Motion for Entry of Interim and Final Orders (A) Authorizing Debtors and Debtors in Possession to Obtain Junior Lien Postpetition Financing, (B) Authorizing Use of Cash Collateral, (C) Granting Liens and Superpriority Claims, (D) Granting Adequate Protection to Prepetition Secured Parties, (E) Modifying the Automatic Stay, (F) Scheduling a Final Hearing, and (G) Granting Related Relief* [Docket No. 20].

[2] "***Amended DIP Motion***" means the *Debtors' Motion for Entry of an Amended Interim DIP Order on Shortened Notice* [Docket No. 89].

[3] Capitalized terms used but not otherwise defined herein have the meaning given to them in the DIP Credit Agreement (defined below).

"***DIP Facility***") pursuant to (and in accordance with the terms of) that certain *Debtor-In-Possession Secured Term Promissory Note* (as may be amended, modified, or supplemented and in effect from time-to-time, the "***DIP Credit Agreement***"), substantially in the form as filed with the Court, and attached hereto as **Exhibit A**, by and among (x) Barney's Inc., as borrower (the "***Borrower***"), (y) the financial institutions that are or may from time to time become parties thereto (together with their respective successors and assigns, the "***DIP Lenders***"), and (z) GACP Finance Co., LLC, as administrative agent (in such capacity, "***DIP Agent***," and together with the DIP Lenders, the "***DIP Parties***"):

(i) to pay fees, costs, and expenses as provided in the DIP Financing Agreements, including amounts incurred in connection with the preparation, negotiation, execution, and delivery of the DIP Credit Agreement and the other DIP Financing Agreements;

(ii) to repay all of the Prepetition Secured Debt in cash in full, including interest and fees (including any prepayment and/or early termination fees), as set forth in clause (I)(D) below;

(iii) for general operating and working capital purposes, for the payment of transaction expenses, for the payment of fees, expenses, and costs incurred in connection with the Chapter 11 Cases, and other proper corporate purposes of the Debtors not otherwise prohibited by the terms hereof for working capital, and other lawful corporate purposes of the Debtors;

(iv) for making other payments as provided in this Order (this "***Final Order***"); and

(v) to fund the Carve Out (as defined below)

in each case in accordance with the Approved Budget (defined below) and the terms of the Interim Orders (defined below) and this Final Order.

(B) Authorizing the Borrower to enter into the DIP Credit Agreement and for the Borrower and the other Debtors to enter into all other agreements, documents, notes, certificates, and instruments executed and/or delivered with, to, or in favor of the DIP Agent and/or the DIP Lenders, including, without limitation, security agreements, pledge agreements, notes, guaranties, mortgages, and Uniform Commercial Code ("***UCC***") financing statements, and all other related agreements, documents, notes, certificates, and instruments to be executed, delivered, and/or ratified by the Debtors in connection therewith or related thereto (collectively, as may be amended, modified, or supplemented and in effect from time to time, and together with the DIP Credit Agreement, the "***DIP Financing Agreements***");[4]

(C) Authorization of the Debtors to grant security interests, liens, and superpriority claims (including, as applicable, superpriority administrative claims pursuant to section 364(c)(1) of the Bankruptcy Code, and liens pursuant to sections 364(c)(2), 364(c)(3), and 364(d)(1) of the Bankruptcy Code), solely to the extent set forth in

[4] For the avoidance of doubt, "DIP Financing Agreements" shall not include this Final Order or any other postpetition financing or cash collateral order.

the Interim Orders and/or this Final Order, to the DIP Agent, for the benefit of itself and the DIP Lenders, and related protections to secure all obligations of the Debtors under and with respect to the DIP Facility in the order of priority and as provided in the Interim Orders and/or this Final Order;

(D) (x) Authorization for the Debtors to immediately use proceeds of the DIP Facility to, upon entry of the Second Interim Order (defined below) and by no later than 2:00 p.m. (New York time) on August 15, 2019, repay all of the Prepetition Secured Debt (defined below) in cash in full, including interest and fees (including any prepayment and/or early termination fees) through the date of repayment (at the default contract rate) as set forth in that certain Payoff Letter, attached to the Second Interim Order as Exhibit "2", by and between the Debtors and the Prepetition Secured Parties (defined below) (the "***Payoff Letter***"), which repayment shall be indefeasible upon the occurrence of the Indemnity Termination Date[5] and (y) approval of the form and substance of, and authorization for the Debtors to execute and perform under, the Payoff Letter;

(E) (x) Up to and including the Indemnity Termination Date, the granting of adequate protection and Prepetition Indemnity Account Lien (defined below), to the Prepetition Secured Parties under or in connection with the Prepetition Financing Documents, and (y) authorizing the Debtors to fund the Prepetition Indemnity Account (defined below); and

(II) **Modifying the Automatic Stay –** Modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Financing Agreements, the Interim Orders, and this Final Order;

(III) **Waiving Any Applicable Stay –** Waiving any applicable stay (including under Bankruptcy Rule 6004) and provision for immediate effectiveness of this Final Order;

(IV) **Waiving the Provisions of Sections 506(c) and 552(b) of the Bankruptcy Code –** Granting the DIP Parties and the Prepetition Secured Parties, as applicable, a waiver of the "equities of the case" exception under section 552(b) of the Bankruptcy Code and of the provisions of section 506(c) of the Bankruptcy Code;

and upon the *Declaration of Mohsin Y. Meghji, Chief Restructuring Officer of Barneys New York, Inc., in Support of Debtors' Chapter 11 Petitions and First Day Motions (the "**First Day Declaration**")* and the

[5] "***Indemnity Termination Date***" means the date of indefeasible, as provided in Paragraph 20 hereof, payment in full in cash of the Prepetition Secured Debt, including interest and fees (including early termination and/or prepayment fees) through the date of repayment (at the default contract rate), which shall be deemed to have occurred (i) on the Challenge Period Termination Date (defined below), if no Challenge Proceeding has timely and properly been commenced in accordance with Paragraphs 46-52 hereof with respect to the Prepetition Secured Debt or against the Prepetition Secured Parties prior to the Challenge Period Termination Date or (ii) if a Challenge Proceeding is timely and properly commenced in accordance with Paragraphs 46-52 hereof with respect to the Prepetition Secured Debt or against the Prepetition Secured Parties prior to the Challenge Period Termination Date, on the date of any dismissal with prejudice, withdrawal with prejudice, or entry of final judgement or final order in connection with such Challenge Proceeding and (iii) in the case of either (i) or (ii), upon payment in full of any Prepetition Indemnity Obligations then liquidated and due.

*Declaration of Saul Burian in Support of the Debtors' Motion For Entry of Interim and Final Orders (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Liens and Providing Superpriority Administrative Expense Status, (D) Granting Adequate Protection to the Prepetition Lenders, (E) Modifying the Automatic Stay, (F) Scheduling a Final Hearing, and (G) Granting Related Relief (the "**Burian Declaration**")*, each of which was filed contemporaneously with the DIP Motion; and this Court having reviewed the DIP Motion and held a hearing with respect to the DIP Motion on August 6, 2019 (the "***First Interim Hearing***") and another hearing with respect to the Amended DIP Motion on August 14, 2019 (the "***Second Interim Hearing***" and, together with the First Interim Hearing, the "***Interim Hearings***") and held a final hearing with respect to the Amended DIP Motion on September 4, 2019 (the "***Final Hearing***"); and upon the DIP Motions, the First Day Declaration, the Burian Declaration, any other declarations filed in support of the DIP Motions and the record of the Interim Hearings and the Final Hearing; and upon the entry of the *Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507, and Fed. R. Bankr. P. 2002, 4001, and 9014 (I) Authorizing Debtors and Debtors in Possession to Obtain Junior Lien Post-Petition Financing, (II) Authorizing the Use of Cash Collateral, (III) Granting Liens and Super-Priority Claims, (IV) Granting Adequate Protection to Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 49] (the "***First Interim Order***") and the *Second Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507, and Fed. R. Bankr. P. 2002, 4001, and 9014 (I) Authorizing Debtors and Debtors in Possession to Obtain Post-Petition Financing, (II) Granting Liens and Super-Priority Claims, (III) Authorizing Payment of Prepetition Secured Obligations, (IV) Granting Adequate Protection to Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 127] (the "***Second Interim Order***," and, together with the First Interim Order, the "***Interim Orders***") and all objections, if any, to the entry of this Final Order having been withdrawn, resolved, or overruled by this Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

THIS COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

I. Procedural Findings of Fact

1. **Petition Date.** On August 6, 2019 (the "***Petition Date***"), each of the Debtors filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

2. **Jurisdiction and Venue.** This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a "core" proceeding pursuant to 28 U.S.C. § 157(b).

3. **Statutory Predicates**. The statutory bases for the relief sought herein are sections 105, 361, 362, 363, 364, 503, 506, 507 and 552 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, and 9014 and Local Rule 4001-2.

4. **Committee Formation.** On August 15, 2019, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors (the "***Committee***") in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code [Docket No. 131].

5. **Notice.** The Final Hearing is being held pursuant to the authorization of Bankruptcy Rule 2002, 4001(b), (c), and (d) and Rule 9014. Notice of the Final Hearing and the relief requested in the DIP Motions has been provided by the Debtors to certain parties-in-interest, including: (a) the Office of the United States Trustee (the "***U.S. Trustee***"); (b) counsel to the Committee; (c) counsel to the DIP Agent and counsel to the Prepetition Agents (defined below); and (d) all other secured creditors of record, and no other or further notice need be given.

II. Debtors' Acknowledgements and Agreements

6. Subject in all respects to the rights of the Committee and other parties-in-interest (other than the Debtors) and to the extent set forth in Paragraphs 46-52 hereof, effective as of the Petition Date,

each of the Debtors admits, stipulates, acknowledges, and agrees (collectively, Paragraphs II.6(a) through 6(i) hereof shall be referred to herein as the "***Debtors' Stipulations***") that:

(a) Prepetition Financing Documents. Prior to the commencement of the Chapter 11 Cases, the Debtors were parties to (A) that certain Amended and Restated Revolving Credit and Term Loan Facility Agreement, first dated as of June 5, 2012 (as amended, modified, or supplemented and in effect from time-to-time, the "***Prepetition Credit Agreement***"), by and among (1) the Debtors that comprised the "Loan Parties" thereunder, (2) WELLS FARGO BANK, NATIONAL ASSOCIATION, as administrative agent (in such capacity, the "***Prepetition ABL Agent***"), and (3) the other lenders party to the Revolving Facility (as defined in the Prepetition Credit Agreement) from time to time (collectively, the "***Prepetition ABL Lenders***"), and (B) WELLS FARGO BANK, NATIONAL ASSOCIATION, as term loan agent (in such capacity, the "***Prepetition Term Agent***;" and together with the Prepetition ABL Agent, the "***Prepetition Agents***") under the Prepetition Credit Agreement, for itself and on behalf of the term loan lenders who have prepetition Term Loans (collectively, the "***Prepetition Term Lenders***;" and together with the Prepetition ABL Lenders and Prepetition Agents, the "***Prepetition Secured Parties***"); and (C) all other agreements, documents, notes, certificates, and instruments executed and/or delivered with, to, or in favor of Prepetition Secured Parties, including, without limitation, control agreements, mortgages, security agreements, guaranties, UCC financing statements, and all other related agreements, documents, notes, certificates, and instruments executed and/or delivered in connection therewith or related thereto, including, without limitation, that certain WellsOne® Commercial Card Agreement, dated April 10, 2013 (the "***PCard Agreement***") (each as amended, modified or supplemented and in effect, collectively, the "***Prepetition Financing Documents***").

(b) Prepetition Secured Debt Amount.

(i) As of the Petition Date, the Debtors were liable to the Prepetition ABL Agent and Prepetition ABL Lenders under the Prepetition Financing Documents, on account of "Revolving Loans" in the approximate aggregate principal amount of $121,307,911.10, *plus* letters of credit in the approximate stated amount of not less than $20,571,590.02, *plus* interest accrued and accruing at the default rate, costs, expenses, fees (including attorneys' fees and legal expenses), other charges and other obligations, including, without limitation, on account of cash management, credit card, amounts due under the PCard Agreement, depository, leasing, hedging and other banking or financial services secured by the Prepetition Financing Documents (collectively the "***Prepetition ABL Debt***"); and

(ii) As of the Petition Date, the Debtors were liable to the Prepetition Term Agent and Prepetition Term Lenders under the Prepetition Financing Documents, on account of "Term Loans" in the approximate aggregate principal amount of $50,212,500.00, *plus* interest accrued and accruing at the default rate, costs, expenses, fees (including attorneys' fees and legal expenses), other charges and other obligations secured by the Prepetition Financing Documents (collectively the "***Prepetition Term Debt***"; and together with the Prepetition ABL Debt, the "***Prepetition Secured Debt***" and, together with any other obligations arising under, based upon, in connection with or related to the Prepetition Financing Documents, the "***Prepetition Secured Obligations***").

(c) Prepetition Collateral. To secure the Prepetition Secured Debt (including, without limitation, amounts due and owing under the PCard Agreement), each of the Debtors granted continuing security interests and Liens (collectively, the "***Prepetition Liens***") to the Prepetition

ABL Agent, for the benefit of itself and the other Prepetition Secured Parties, upon the "Collateral" (as defined in that certain Amended and Restated Pledge And Security Agreement (ABL) dated as of June 5, 2012 (as amended, modified, or supplemented and in effect from time-to-time, the "***Prepetition Security Agreement***"), comprising substantially all of its/their assets and property (collectively, the "***Prepetition Collateral***"). As of the Petition Date, the value of the Prepetition Collateral exceeded the aggregate amount of Prepetition Secured Debt, and the Prepetition Secured Debt constitutes allowed secured claims pursuant to section 506 of the Bankruptcy Code.

(d) Prepetition Lien Priority. As of the Petition Date, the Prepetition Liens of the Prepetition Secured Parties had and continue to have priority over all other Liens except (x) valid, enforceable, non-avoidable and perfected Liens in existence on the Petition Date that, after giving effect to any intercreditor or subordination agreement (if any), including this Final Order, are senior in priority to the Prepetition Liens, and (y) valid, enforceable and non-avoidable Liens in existence on the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code and after giving effect to any intercreditor or subordination agreement (if any), are senior in priority to the Prepetition Liens (collectively, the "***Permitted Prior Liens***"); provided, however, that any right or alleged right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Permitted Prior Lien and such reclamation right is expressly subject to the Prepetition Liens, the Adequate Protection Liens (defined below) and the DIP Liens (defined below).

(e) As of the Petition Date,

(i) the Prepetition Liens were and continue to be valid, binding, enforceable, and perfected first-priority Liens, subject only to any Permitted Prior Liens, and are not subject to avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law,

(ii) (a) the Prepetition Secured Obligations constitute legal, valid, and binding obligations of the "Loan Parties" thereunder, enforceable in accordance with the terms of the Prepetition Financing Documents (other than in respect of the stay of enforcement arising from Section 362 of the Bankruptcy Code), (b) no offsets, defenses, or counterclaims to any of the Prepetition Secured Debt exists, and (c) no portion of the Prepetition Secured Debt is subject to avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law,

(iii) the Debtors have no valid claims (as such term is defined in section 101(5) of the Bankruptcy Code) or causes of action against the Prepetition Agents or any other Prepetition Secured Party with respect to the Prepetition Financing Documents or otherwise, whether arising at law or at equity, including, without limitation, any recharacterization, subordination, disallowance, avoidance or other claims arising under or pursuant to sections 105, 510, 541 or 542 through 553, inclusive, of the Bankruptcy Code,

(iv) the Prepetition Secured Debt constitutes an allowed secured claim(s);

(v) the Debtors acknowledge and stipulate that they have been and are in default of their obligations under the Prepetition Financing Documents and that,

as of the Petition Date, the Prepetition Secured Debt had been accelerated and was due and payable, and that interest was accruing on the Prepetition Secured Debt at the default rate.

(f) Effective as of the date of the entry of the First Interim Order, each of the Debtors has waived, discharged, and released the Prepetition Agents and each of the other Prepetition Secured Parties, together with their respective successors, assigns, subsidiaries, parents, affiliates, agents, attorneys, officers, directors, and employees (collectively, the "***Released Parties***"), of any right the Debtors may have (i) to challenge or object to any of the Prepetition Secured Debt, (ii) to challenge or object to the Prepetition Liens or any other security for the Prepetition Secured Debt, and (iii) to bring or pursue any and all claims, objections, challenges, causes of action, and/or choses in action arising out of, based upon, or related to the Prepetition Financing Documents, or otherwise. None of the Debtors possesses and none of the Debtors will assert any claim, counterclaim, setoff, or defense of any kind, nature, or description against any of the Released Parties, including anything which would in any way affect the validity, enforceability, priority, and non-avoidability of any of the Prepetition Financing Documents or the Prepetition Liens, or any claim of the Prepetition Agents and/or the Prepetition Secured Parties pursuant to the Prepetition Financing Documents, or otherwise.

(g) Cash Collateral. As of the Petition Date, the Prepetition Secured Parties had and continue to have a continuing security interest in and Lien on all or substantially all of the Debtors' "cash collateral" as defined in section 363(a) of the Bankruptcy Code (the "***Cash Collateral***"), including, without limitation, any and all of the Debtors' cash, including cash and other amounts on deposit or maintained in any account or accounts by the Debtors, any and all cash released as a result of the termination and/or cancellation of any letters of credit issued for the benefit of Debtors that have been or may be cash collateralized prior to or after the Petition Date, any amounts generated by the collection of accounts receivable all amounts located in the Debtors' stores and on deposit in the Debtors' banking, checking, or other deposit accounts and all proceeds of the Prepetition Collateral (but excluding any payroll, withholding tax and other fiduciary accounts and certain accounts with de minimis balances (but solely to the extent provided in the Prepetition Financing Documents), to secure the Prepetition Secured Obligations, and the proceeds and products of each of the foregoing; provided, however, that any Liens, interests, or rights of the Prepetition Secured Parties with respect to Cash Collateral or other property on account of the Consignment Facility (the "***DIP Priority Collateral***") are junior to the Liens, interests, and rights of the DIP Parties.

(h) Adequate Protection. The Prepetition Secured Parties are entitled, pursuant to sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of their respective interests in the Prepetition Collateral, including, without limitation, the Cash Collateral, as set forth in the Interim Orders and this Final Order.

(i) None of the DIP Agent, the DIP Lenders or the Prepetition Secured Parties controls the Debtors or their properties or operations, has authority to determine the manner in which any of the Debtors' operations are managed or conducted, or is a control person or insider of the Debtors or any of their affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from the Interim Orders, this Final Order, the DIP Facility, the DIP Financing Agreements, the Prepetition Secured Obligations and/or the Prepetition Financing Documents.

7. Based upon the record before the Court, including the Interim Orders and this Final Order, the terms of the DIP Facility, the Interim Orders, and this Final Order have been negotiated at arms' length

and in good faith, as that term is used in section 364(e) of the Bankruptcy Code, by each of the Debtors, the DIP Parties, and the Prepetition Secured Parties, are fair and reasonable and within the Debtors' business judgment, and are in the best interests of the Debtors, their estates and creditors and are consistent with the Debtors' fiduciary duties.

8. Pursuant to the terms and conditions of the Interim Orders, the Final Order, and the DIP Financing Agreements, and in accordance with and as may be limited by the Approved Budget (subject to any variances thereto permitted under the terms and conditions of the DIP Financing Agreements, the Interim Orders, and/or this Final Order), the Debtors are authorized to use the advances under the DIP Facility until notice is provided by the DIP Agent that a DIP Event of Default (defined below) and/or the DIP Maturity Date (defined below), as applicable, has occurred; provided, that the Debtors shall not be authorized to use any cash that constitutes DIP Collateral to cash collateralize (a) any prepetition Letter of Credit issued under the Prepetition Credit Agreement or (b) any amounts due or to become due under the PCard Agreement (including, without limitation, any applicable fees and customary charges accrued and accruing thereunder); provided further, that in no event shall the Debtors be authorized to incur obligations under the PCard Agreement (inclusive of applicable fees and customary charges) in an amount greater than $200,000, including any usual and customary fees, costs, and expenses under the PCard Agreement.

9. The DIP Parties and the Debtors have agreed that the budget, the short form of which was filed with the Court on August 15, 2019 [Docket No. 129] (as the same may be modified, supplemented, or updated from time to time in the sole discretion and mutual consent of the Debtors and DIP Agent, the "***Approved Budget***") is adequate considering all the available assets, to pay the administrative expenses as and when such administrative expenses become due. The Approved Budget has been prepared and is predicated on the requirement that the Debtors shall (a) remain "in-formula" and otherwise adhere to the "Borrowing Base" (as defined in the DIP Credit Agreement but calculated as if the Additional Liquidity Amount (as defined in the DIP Credit Agreement) were included therein) formula (including for the avoidance of doubt, the "Term Loan Borrowing Base" and without giving effect to any Reserves (each, as defined in the Prepetition Credit Agreement)) and after giving effect to the Liquidity Credit (as defined in

the DIP Credit Agreement), and (b) at all times during the period covered by the Approved Budget maintain Excess Availability (as defined in the DIP Credit Agreement) of not less than ten percent (10%) of the Borrowing Base (as defined in the DIP Credit Agreement) at such time (the "***Minimum Excess Availability Amount***").

10. All collections of cash shall be deposited by the Debtors with Wells Fargo in accordance with the Debtors' existing consolidated cash management system, the maintenance of which has been approved under separate order of the Court. Upon receipt of cash , such funds shall automatically be swept to the Debtors' operating and disbursement accounts, subject to the terms of this Final Order. In furtherance of the foregoing, not later than noon (prevailing Eastern Time) on Friday of each week, the Debtors shall be required to deliver an updated Borrowing Base Certificate (as defined in the Prepetition Credit Agreement) based on best available estimates to the DIP Parties, which Borrowing Base Certificate shall include a reserve for the amount necessary to fund the Carve-Out Reserve (defined below) (to the extent not funded).

11. Adequate Protection for Prepetition Indemnity Obligations. As adequate protection, up to and including the Indemnity Termination Date, the Prepetition Secured Parties shall continue to receive the following (collectively, "***Adequate Protection***"):

(a) **Adequate Protection Liens**. Pursuant to sections 361 and 363(e) of the Bankruptcy Code, solely to the extent of the Diminution in Value[6] of the interests of the Prepetition Secured Parties in the Prepetition Collateral (including Cash Collateral) and solely to secure the Prepetition Indemnity Obligations (defined below), the Prepetition Secured Parties shall continue to have, subject to the terms and conditions set forth below, valid, perfected, and enforceable additional and replacement security interests and Liens in the DIP Collateral (defined below) (the "***Adequate Protection Liens***") which shall be junior and subordinated in priority only to the Carve Out (defined below), the Permitted Prior Liens, and the DIP Liens.

(b) **Adequate Protection Superpriority Claim**. Solely to the extent of the Diminution in Value of the interests of the Prepetition Secured Parties in the Prepetition Collateral and solely for payment of any Prepetition Indemnity Obligations, each of the Prepetition Secured Parties shall continue to have an allowed superpriority administrative expense claim (each a

[6] "***Diminution in Value***" means any diminution in value of the Prepetition Secured Parties' interest in the Prepetition Collateral as a result of (a) the incurrence of the DIP Obligations, (b) the use of Cash Collateral, (c) the subordination of the Prepetition Secured Debt to the Carve Out and the DIP Liens and DIP Superpriority Claims, (d) any other diminution in value of the Prepetition Collateral (or the proceeds thereof), and (e) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code.

"***Adequate Protection Superpriority Claim***"; and collectively the "***Adequate Protection Superpriority Claims***") which shall continue to have priority in the Chapter 11 Cases under sections 503(b) and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114 of the Bankruptcy Code, and sections 506(c) and 552 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment Lien or other non-consensual Lien, levy, or attachment, but which shall be junior and subordinated in payment right to the Carve Out, the DIP Obligations[7] (including the Enhancement Fee and the Exit Fee) and the DIP Superpriority Claim (defined below), and other than the Carve Out, the DIP Obligations (including the Enhancement Fee and the Exit Fee) and the DIP Superpriority Claim (defined below), no costs or expenses of administration, including, without limitation, professional fees allowed and payable under sections 328, 330 and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in the Chapter 11 Cases, or in any Successor Case, will be senior to, prior to, or on parity with the Adequate Protection Superpriority Claims.

12. Reimbursement on a Current Basis of Fees Until Challenge Period Termination Date. Following the Prepetition Payoff (defined below), and thereafter up to and including the Challenge Period Termination Date, the Prepetition Agents and the other Prepetition Secured Parties shall be reimbursed, on a current basis and pursuant to the provisions of Paragraph 75, for all reasonable and documented out-of-pocket fees, costs, and expenses incurred by (x) the professionals (including attorneys) engaged by such parties solely in connection with any investigation conducted by the Committee pursuant to the Interim Orders and/or this Final Order and (y) the attorneys engaged by such parties solely in connection with such parties' rights under the Interim Orders and/or this Final Order, and/or any cash management order; *provided*, *however*, that any such reimbursement on a current basis pursuant to this Paragraph 12 (a) shall be subject to a cap of $100,000 and to the terms and conditions of the Prepetition Financing Documents, and (b) such cap shall increase by $100,000 for each 30-day period the Court extends the Challenge Period Termination Date beyond September 4, 2019, not to exceed $250,000 in the aggregate (*i.e.*, no more than $350,000 after giving effect to subparts (a) and (b) of this proviso, without regard to the funds held in the Prepetition Indemnity Account).

[7] For purposes of this Final Order, "***DIP Obligations***" shall have the same meaning ascribed to the term "***Obligations***" under the DIP Credit Agreement.

13. Subordination of Claims and Liens of Prepetition Secured Parties to DIP Obligations and DIP Liens. Notwithstanding anything in the Interim Orders or this Final Order to the contrary, upon the Prepetition Payoff, and thereafter, until such time as the DIP Obligations (including the Enhancement Fee and the Exit Fee) are indefeasibly repaid in full, any and all claims of the Prepetition Secured Parties against the Debtors (other than current reimbursement of fees, costs and expenses pursuant to Paragraph 12 and Prepetition Indemnity Obligations to the extent paid from the Prepetition Indemnity Account) shall be subordinated in right of payment to the Carve Out and the DIP Obligations (including the Enhancement Fee and the Exit Fee), and any and all liens of the Prepetition Secured Parties securing Prepetition Secured Obligations (other than the Prepetition Indemnity Account Lien) shall be subordinated to the Carve Out and the DIP Liens. In addition, the Prepetition Secured Parties: (a) shall not be entitled to receive any payment from the Debtors, unless such payment is made from the Prepetition Indemnity Account on account of the Prepetition Indemnity Obligations that are then due and payable or as otherwise expressly authorized in Paragraph 12 hereof; (b) shall hold in trust for the benefit of the DIP Parties, and promptly turnover to the DIP Agent, any payment received on account of their Prepetition Indemnity Obligations that are then due and payable or any Prepetition Secured Obligations, in each case, that is not otherwise authorized under subclause (a); (c) shall be prohibited from exercising any remedies against any DIP Collateral, provided, that for the avoidance of doubt, the Prepetition Secured Parties shall not be precluded from seeking an order from the Court to compel payment by the Debtors of any amounts authorized under Paragraph 12 hereof; (d) shall not object to or otherwise take any action to prevent the Debtors from taking any action or obtaining any relief to which the DIP Parties have consented (including, without limitation, a sale of any property securing all or any part of any DIP Obligations), unless such action or relief would extinguish or materially prejudice the rights granted to the Prepetition Secured Parties under the Interim Orders and/or this Final Order; (e) shall not object to or otherwise take any action to prevent the DIP Parties from taking any action or obtaining any relief sought by the DIP Agent or DIP Lenders (including, without limitation, the enforcement of the DIP Obligations (including the Enhancement Fee and the Exit Fee), the sale of any property securing all or any part of any DIP Obligations, or any request for adequate protection, use of cash

collateral, relief from the automatic stay, or payment of fees and/or expenses), unless such action or relief would extinguish or materially prejudice the rights granted to the Prepetition Secured Parties under the Interim Orders and/or this Final Order; (f) shall not provide or seek to provide financing, either directly or indirectly, to the Debtors in the Chapter 11 Cases without the prior written consent of the DIP Parties; (g) shall not, without the prior written consent of the DIP Parties, propose a plan of reorganization, arrangement or proposal, or file any motion, pleading or material, that would have the effect of impairing or reducing the amount of or the interest rate, fees or other amounts on, or delaying the time of payment of, any DIP Obligations (including the Enhancement Fee and the Exit Fee), or otherwise materially impair the rights of the DIP Agent or any of the DIP Parties, or that would be in conflict with the terms of the Interim Orders or this Final Order; and (h) shall no longer have any consent rights under the Interim Orders, except as otherwise provided in this Final Order.

14. Subrogation. In addition to and not in lieu of any DIP Liens and other rights and protections granted to the DIP Lenders under the DIP Financing Agreements, the Interim Orders, or this Final Order, with respect to any proceeds of the DIP Credit Agreement that any of the DIP Parties has paid or will pay to any of the Prepetition Secured Parties in satisfaction of any Prepetition Secured Obligations, the DIP Secured Parties shall be subrogated to the Prepetition Liens of such Prepetition Secured Parties (which, for purposes of this Paragraph 14, shall survive for the benefit of the DIP Parties) with respect to such satisfied Prepetition Secured Obligations until the payment in full in cash of all DIP Obligations (including the Enhancement Fee and the Exit Fee); provided, however, that notwithstanding anything to the contrary herein, no such subrogation shall either (a) impose, create or otherwise result in any liability or claim against (i) the Debtors in relation to any Prepetition Secured Obligation, or (ii) the DIP Lenders in relation to any Prepetition Secured Obligation that may otherwise exist against the Prepetition Secured Parties prior to the Indemnity Termination Date, or (b) impair the rights granted to the Committee under the Interim Orders or this Final Order to investigate and prosecute claims against the Prepetition Secured Parties and the Prepetition Liens pursuant to Paragraphs 46 to 52 hereof. For the avoidance of doubt, the payoff of the Prepetition Secured Obligations and the related rights of subrogation pursuant to the Interim Orders and

this Final Order shall not reduce any of the DIP Obligations nor impair or prejudice any rights and protections granted to the DIP Parties hereunder.

15. Repayment of Prepetition Secured Obligations (Other Than the Prepetition Indemnity Obligations). On August 15, 2019, the Debtors repaid the amount of the Prepetition Secured Obligations (other than the Prepetition Indemnity Obligations, if any), including interest and fees (including any prepayment and/or early termination fees) through such date of repayment (at the default contract rate) in the amount set forth in the Payoff Letter.

16. Enhancement Fee. The net proceeds ("***Sale Proceeds***") of any disposition of DIP Collateral or sale of the Reorganized Debtors' equity interest (under a chapter 11 plan) (each such disposition, a "***Sale***") (other than with respect to the sale of inventory or other sales in the ordinary course of business (which, for the avoidance of doubt, shall exclude any sale of inventory in accordance with a store closure or other form of liquidation)), after the payment in full of (1) all DIP Obligations (other than the Enhancement Fee), and (2) all other administrative and priority claims (including, for the avoidance of doubt, the Carve Out), shall be promptly paid and shared at closing on such Sale(s) (including if such Sale constitutes a DIP Maturity Event) in the following sequence and percentages: (a) the first $8 million in Sale Proceeds shall be deposited into an escrow account to be used solely for payment of allowed general unsecured claims; and (b) any remaining Sale Proceeds shall be paid, (x) 25% to the Tranche A DIP Lenders and (y) 75% to the Debtors (the amount of such Sale Proceeds payable to the DIP Lenders pursuant to the foregoing, the "***Enhancement Fee***," the payment of which shall constitute a DIP Obligation pursuant to this Final Order), with the Debtors' 75% share subject to the liens and security interests granted in favor of the Prepetition Secured Parties, including the Adequate Protection Liens and the Prepetition Indemnity Account Lien. The Debtors shall keep the DIP Agent and the Committee fully informed of the Debtors' efforts to consummate any Sale(s) and any other sales of equity interests and/or assets of the Debtors after the Petition Date, and without limiting the generality of the foregoing, the Debtors shall: (xx) promptly provide to the DIP Agent and the Committee copies of all offers for the purchase of any asset(s) and/or equity interests of any of the Debtors and copies of all bids from any liquidator(s); (yy) provide, promptly

upon written (including by e-mail) request of the DIP Agent and the Committee, and in any event no less frequently than weekly, status updates on the Debtors' efforts to consummate any Sale(s) and/or any other dispositions or capital/equity raises; and (z) promptly advise the DIP Agent and the Committee of any expressions of interest in any or all of the Debtors' assets and/or equity interests.

17. Credit Bid. In connection with any Sale(s) or other dispositions of any assets of the Debtors (outside of the ordinary course of business), the DIP Agent and DIP Lenders, respectively, may credit bid, in accordance with the DIP Financing Agreements, some or all of the DIP Obligations for the DIP Collateral, (each a "***Credit Bid***"), pursuant to section 363 of the Bankruptcy Code, whether such sale is effectuated through section 363 or 1129 of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise; *provided, however*, that notwithstanding anything to the contrary in the Interim Orders, this Final Order, or any prior order entered by this Court (including that certain *Order (I) Approving the Bidding Procedures, (II) Scheduling the Bid Deadlines and the Auction, (III) Approving the Form and Manner of Notice Thereof, and (IV) Granting Related Relief* [Docket No. 156]), neither the DIP Parties nor any other assignee, transferee, or party in interest shall be entitled to credit bid the Enhancement Fee. In all such instances, each of the DIP Agent and DIP Lenders, respectively, shall be considered a "Qualified Bidder" with respect to its right to acquire all or any of the assets by Credit Bid. For the avoidance of doubt, the DIP Agent and DIP Lenders, in accordance with any order entered by the Court authorizing bidding procedures with respect to a sale of all or substantially all of the Debtors' assets, shall be permitted to combine their respective allocations of the DIP Obligations (excluding any Enhancement Fee) into a single Credit Bid and submit joint Bids as provided therein. The Bidding Procedures shall further provide that: (a) any Bid for Assets that constitute DIP Collateral or Reorganized Debtors' equity interest (under a chapter 11 plan) must (x) provide for indefeasible payment in cash and in full of the DIP Obligations, other than any Enhancement Fee, or (y) have the consent of the DIP Parties; and (b) so long as the DIP Parties submit a Bid that does not exceed the amount of the DIP Obligations (excluding any Enhancement Fee), the DIP Parties shall remain a Consultation Party under the Bidding Procedures.

18. Access to Records; Reporting. In addition to, and without limiting, whatever rights to access the DIP Parties have under the DIP Financing Agreements, as applicable, upon reasonable notice, at reasonable times during normal business hours, the Debtors shall permit representatives, agents, and employees of the DIP Parties and the Committee, respectively: (a) to have access to and inspect the Debtors' properties; (b) to examine the Debtors' books and records; (c) to discuss the Debtors' affairs, finances, and condition with the Debtors' officers and financial advisors; and (d) otherwise to have the full cooperation of the Debtors; provided, however, that the Prepetition Secured Parties and their professionals shall be granted access to information to the extent necessary to respond to a Challenge Proceeding. In connection with the foregoing, during the Chapter 11 Cases, and until such time as the DIP Obligations shall have been paid in full, the Debtors shall cooperate fully with a financial advisor engaged by the DIP Agent and the Committee, respectively. Notwithstanding anything to the contrary herein, none of the Loan Parties will be required to disclose information or provide access to the DIP Agent or the Committee (or any agent or representative thereof) where such disclosure or access is prohibited by applicable law or is subject to attorney-client or similar privilege, constitutes attorney work product, or implicates conflicts matters.

19. Pleadings to Be Filed in the Chapter 11 Cases. Promptly, and at least two (2) calendar days prior to filing, the Debtors shall provide (i) to the DIP Parties copies of all material pleadings (including, without limitation, any proposed orders, motions and applications) and any other pleadings wherein such parties' rights are impacted to be filed or entered in the Chapter 11 Cases and/or in any related proceedings, which pleadings shall be in form and substance reasonably acceptable to the DIP Parties, and (ii) up to and including the Indemnity Termination Date, to the Prepetition Secured Parties copies of all material pleadings (including, without limitation, any proposed orders, motions and applications) wherein such parties' rights and protections granted under the Interim Orders and/or this Final Order may be materially prejudiced to be filed or entered in the Chapter 11 Cases and/or in any related proceedings; provided that any amendments or modifications to this Final Order and the Interim Orders, in each case, shall be, with respect to any rights and protections granted to the Prepetition Secured Parties under the Interim Orders and/or this Final Order, in form and substance acceptable to the Prepetition Secured Parties.

20. Final Satisfaction of Prepetition Secured Obligations. The Debtors, upon entry of the Second Interim Order, were authorized and directed to (x) execute the Payoff Letter and shall continue to perform the transactions and undertakings set forth therein, which are hereby approved in all respects, and, (y) within one business day of the entry of the Second Interim Order and contemporaneous with the second interim funding of the DIP Loans, but in no event later than 2:00 p.m. (New York time) on August 15, 2019, were obligated to irrevocably pay in cash the amount of the Prepetition Secured Obligations (other than the Prepetition Indemnity Obligations, if any), including interest and fees (including any prepayment and/or early termination fees) through the date of repayment (at the default contract rate) in the amount of approximately up to $142 million as set forth in the Payoff Letter (the "**Prepetition Payoff**"), which repayment shall be indefeasible upon the occurrence of the Indemnity Termination Date; provided that the Prepetition Secured Parties' rights to assert the Prepetition Indemnity Obligations, if any, shall continue up to and including the Indemnity Termination Date. Effective immediately upon the Prepetition Payoff:

(a) the Prepetition Financing Documents and any other "Loan Documents" as defined in the Prepetition Credit Agreement, in each case, other than the Prepetition Indemnity Obligations and any other provisions and obligations whose survival is contemplated by the Prepetition Financing Documents or under the Interim Orders or this Final Order (including those that, pursuant to the Interim Orders and this Final Order, survive for the benefit of the DIP Lenders and the prepetition mortgages granted in favor of the Prepetition ABL Agent), were deemed cancelled, terminated, and of no further force and effect (other than the Prepetition Indemnity Obligations, cash management and letter of credit arrangements, and/or any other provisions whose survival is contemplated under the Interim Orders and/or this Final Order), and all rights, and obligations (other than any Prepetition Indemnity Obligations that by their terms survive termination, cash management and letter of credit obligations, and any other provisions and obligations whose survival is contemplated by the Prepetition Financing Documents or under the Interim Orders or this Final Order) under the Prepetition Financing Documents, including the Prepetition Secured Obligations, were released, cancelled, and of no further force or effect; provided, that the Prepetition Liens shall remain in effect solely up to and including the occurrence of the Indemnity Termination Date and solely to secure payment of the Prepetition Indemnity Obligations, other amounts due to the Prepetition Secured Parties pursuant to the Prepetition Financing Documents, the Interim Orders, and/or this Final Order, the cash management and letter of credit arrangements, and any other obligations whose survival is contemplated by the Prepetition Financing Documents or under the Interim Orders or this Final Order. Upon the occurrence of the Indemnity Termination Date, the Prepetition Liens and Prepetition Indemnity Obligations shall be fully and irrevocably deemed released, cancelled, and of no further force or effect, except to the extent they survive under the Interim Orders and this Final Order for the benefit of the DIP Lenders; provided

further that any and all Prepetition Liens that survive until the Indemnity Termination Date shall be subordinate in all respects to the Carve Out, the Permitted Prior Liens, and the DIP Liens, and shall be enforceable only to the extent that any Prepetition Indemnity Obligations and any other obligations whose survival is contemplated by the Prepetition Financing Documents, the Interim Orders, or this Final Order, are not capable of being satisfied from the application of funds on deposit in the Prepetition Indemnity Account; and

(b) the Prepetition Agents will cooperate fully with the DIP Agent to transfer to the DIP Agent any possessory DIP Collateral (other than, for the avoidance of doubt, the Prepetition Indemnity Account (defined below)) that is in the possession of the Prepetition Agents.

21. Prepetition Indemnity Account. Upon entry of the Second Interim Order, the Debtors were authorized and directed to pay or deliver to the Prepetition ABL Agent (for the benefit of the Prepetition Secured Parties) the sum of (x) $500,000 by no later than 2:00 p.m. (New York time) on August 15, 2019 and (y) $250,000 by no later than 2:00 p.m. (New York time) on September 13, 2019, in each case of (x) and (y), to be segregated and held under the control of the Prepetition ABL Agent (for the benefit of the Prepetition Secured Parties) (the "***Prepetition Indemnity Account***") as security for any amounts owing but not paid to the Prepetition Secured Parties and any reimbursement, indemnification, or similar continuing obligations of the Debtors in favor of the Prepetition Agents and the other Prepetition Secured Parties, including, without limitation, in respect of any avoided payments, that expressly by their terms survive termination of the Prepetition Financing Documents, including without limitation, the provisions of Sections 11.3 and 11.4 of the Prepetition Credit Agreement (the "***Prepetition Indemnity Obligations***").

(a) Without limiting the generality of the foregoing, the funds in the Prepetition Indemnity Account shall secure all costs, expenses, and other amounts (including reasonable and documented attorneys' fees) incurred by the Prepetition Agents and the other Prepetition Secured Parties in connection with or responding to (i) formal or informal inquiries and/or discovery requests, any adversary proceeding, cause of action, objection, claim, defense, or other challenge as contemplated in Paragraphs 46-52 hereof, or (ii) any Challenge Proceeding against any one or more of the Prepetition Agent(s) and/or the other Prepetition Secured Parties related to the Prepetition Financing Documents, the Prepetition Liens, or the Prepetition Secured Obligations, whether in the Chapter 11 Cases or independently in another forum, court, or venue; provided, that the relative interests of the Prepetition Agents and other Prepetition Secured Parties in the funds deposited in the Prepetition Indemnity Account on account of any Prepetition Indemnity Obligations shall be subject in all respects to the priority provisions set forth in the Prepetition Financing Documents.

(b) The Prepetition Indemnity Obligations are and shall continue to be secured by a first-priority lien (the "***Prepetition Indemnity Account Lien***") in favor of the Prepetition ABL Agent (on behalf of itself and the other Prepetition Secured Parties) on the Prepetition Indemnity Account and the funds therein and by a Lien in favor of the Prepetition ABL Agent (on behalf of itself and the other Prepetition Secured Parties) on the DIP Collateral (subject and subordinate to the Carve Out, Permitted Prior Liens and the DIP Liens). For the avoidance of doubt, notwithstanding anything to the contrary contained herein, (i) up to and including the Indemnity Termination Date, the Prepetition Indemnity Account and the funds therein shall not constitute DIP Collateral or be subject to the Carve Out, the DIP Liens, the DIP Superpriority Claim or any other Lien or claim granted to any person or entity other than the Prepetition Secured Parties, and (ii) any Prepetition Indemnity Obligations, other than those payable under Paragraph 12 hereof or from the Prepetition Indemnity Account (or any Prepetition Indemnity Account Lien), shall be subject and subordinate to the Carve Out, Permitted Prior Liens, the DIP Obligations, and the DIP Liens.

(c) The Prepetition Agents and other Prepetition Secured Parties may apply amounts in the Prepetition Indemnity Account against the Prepetition Indemnity Obligations as and when they arise, without further consent from the Debtors, the Committee, any other statutory committee, or any other parties in interest and without further order of this Court.

(d) In addition to the establishment and maintenance of the Prepetition Indemnity Account, up to and including the Indemnity Termination Date, the Prepetition Agents (for themselves and on behalf of the other Prepetition Secured Parties), shall retain and maintain the Prepetition Liens (subject and subordinate to the Carve Out, Permitted Prior Liens and the DIP Liens) as security for the amount of any Prepetition Indemnity Obligations not capable of being satisfied from application of the funds on deposit in the Prepetition Indemnity Account; provided, that any such indemnification claim(s) shall (i) be subject to the terms of the Prepetition Financing Documents, (ii) the rights of parties in interest with requisite standing to object to any such indemnification claim(s) are hereby reserved in accordance with Paragraphs 46-52 hereof, and (iii) the Court shall reserve jurisdiction to hear and determine any such disputed indemnification claim(s).

(e) Promptly upon, but in no event later than five Business Days after, the occurrence of the Indemnity Termination Date, the Prepetition ABL Agent shall return to the Debtors the remaining amount, if any, net of any unpaid fees and expenses of the Prepetition Secured Parties and the Prepetition Indemnity Obligations then liquidated and due, in the Prepetition Indemnity Account. Upon such return, such funds shall constitute DIP Collateral.

(f) For the avoidance of doubt, nothing contained in this Paragraph 21 shall relieve the Debtors of their obligation to timely reimburse the fees, costs and expenses of the Prepetition Agents and the other Prepetition Secured Parties pursuant to Paragraph 12 and subject to Paragraph 75 hereof.

22. Treatment of Disgorged Amounts. In the event that the Prepetition Agents or any of the other Prepetition Secured Parties is ordered by this Court to disgorge, refund or in any manner repay to any

of the Debtors or their estates any amounts ("***Disgorged Amounts***"), the Disgorged Amounts, unless otherwise ordered by the Court, shall be placed in a segregated interest bearing account in the control of the Prepetition ABL Agent, pending a further final, non-appealable order of a court of competent jurisdiction (for the avoidance of doubt the Court is a court of competent jurisdiction) regarding the distribution of such Disgorged Amounts (either returning the Disgorged Amounts to the Prepetition Agents and the other Prepetition Secured Parties, distributing such amounts to the Debtors or the DIP Parties, or otherwise).

23. Section 507(b). Nothing herein or the DIP Financing Agreements shall prejudice, limit or otherwise impair or modify the Prepetition Secured Parties' respective rights under section 507(b) of the Bankruptcy Code in the event that the Adequate Protection provided to the Prepetition Secured Parties hereunder is insufficient to compensate for the diminution in value of their interests in the Prepetition Collateral during the Chapter 11 Cases or any Successor Case(s); provided, however, that: (a) nothing herein shall impair the right of the Debtors, the DIP Parties, or any other party in interest to contest any request for additional or different adequate protection; and (b) any section 507(b) claim granted in the Chapter 11 Cases to any Prepetition Secured Party(ies) shall be subject and subordinate to the Carve Out and DIP Obligations.

24. Subject to section 364(e) of the Bankruptcy Code and Paragraph 74 of this Final Order, nothing included herein shall prejudice, impair or otherwise affect Prepetition Secured Parties' rights to seek any other or supplemental relief from the Court in respect of the Debtors.

III. Authorization for the DIP Facility

A. Findings Regarding the DIP Financing.

25. Good Cause. Good cause has been shown for immediate entry of this Final Order.

26. Need for Post-Petition Financing. An immediate need exists for the Debtors to obtain funds from the DIP Facility in order to continue operations and to administer and preserve the value of their estates for the benefit of their various stakeholders. The ability of the Debtors to finance their operations, to preserve and maintain the value of the Debtors' assets, and to maximize a return for all creditors requires

the availability of working capital from the DIP Facility (in each case in the manner and in the amounts provided herein and in the Approved Budget (including any permitted variances), in the DIP Credit Agreement, the Interim Orders, and this Final Order), the absence of which would immediately and irreparably harm the Debtors, their estates and their stakeholders.

27. No Credit Available on More Favorable Terms. As set forth in the DIP Motions, the Debtors have been unable to obtain any of the following:

(a) unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense;

(b) credit for money borrowed with priority over any or all administrative expenses of the kind specified in sections 503(b) or 507(b) of the Bankruptcy Code;

(c) credit for money borrowed secured solely by a Lien on property of the estate that is not otherwise subject to a Lien; or

(d) credit for money borrowed secured by a junior Lien on property of the estate which is subject to a Lien;

in each case, on more favorable terms and conditions than those provided in the DIP Credit Agreement, the Interim Orders, and/or this Final Order. The Debtors are unable to obtain credit from the DIP Lenders without granting to the DIP Agent and the DIP Lenders the DIP Protections (defined below).

28. Business Judgment; Good Faith Pursuant to Section 364(e) of the Bankruptcy Code. The extension of credit under the DIP Facility, the DIP Credit Agreement, and the other DIP Financing Agreements, and the fees paid and to be paid thereunder and the repayment of the Prepetition Secured Debt herein: (a) are fair, reasonable, and the best available under the circumstances; (b) reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties; and (c) are supported by reasonably equivalent value and consideration. The DIP Facility was negotiated in good faith and at arms' length between the Debtors, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties, and the proceeds to be extended under the DIP Facility will be so extended in good faith and used for valid business purposes and uses, as a consequence of which the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties are each entitled to the protections and benefits of sections 363(m) and 364(e) of the Bankruptcy Code.

29. Sections 506(c). As a further condition of the DIP Facility and any obligation of the DIP Lenders to make credit extensions pursuant to the DIP Credit Agreement, the Debtors (and any successors thereto or any representatives thereof, including any trustees appointed in the Chapter 11 Cases or any Successor Case) shall be deemed to have waived any rights or benefits of section 506(c) of the Bankruptcy Code with respect to the DIP Agent, the DIP Lenders, the DIP Collateral, the Prepetition Agents, the Prepetition Secured Parties, and the Prepetition Collateral.

30. Relief Essential; Best Interest. The relief requested in the DIP Motions (and as provided in the Interim Orders and this Final Order) is necessary, essential, and appropriate for the continued operation of the Debtors' business, the management and preservation of the Debtors' assets during the Interim Period, and to avoid immediate and irreparable harm. It is in the best interest of the Debtors' estates that the Debtors be allowed to establish the DIP Facility contemplated by the DIP Credit Agreement and the other DIP Financing Agreements. The Debtors have demonstrated good and sufficient cause for the relief granted herein.

B. Approval of Entry into the DIP Financing Agreements

31. The Debtors are expressly and immediately authorized and empowered to execute and deliver the DIP Financing Agreements (including the Second Amended and Restated Debtor in Possession Secured Term Promissory Note) and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of the Interim Orders, this Final Order, and the DIP Financing Agreements, and to execute and deliver all instruments, certificates, agreements, and documents that may be required or necessary for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens described in and provided for by the Interim Orders, this Final Order, and the DIP Financing Agreements. In furtherance of the foregoing, the Debtors are hereby authorized to do and perform all acts, pay the principal, interest, fees, expenses, and other amounts described in the DIP Credit Agreement and all other DIP Financing Agreements as such become due, including, without limitation, the "Original Exit Fee," the "Additional Facility Fee," and the "Additional Exit Fee" (as defined in the DIP Financing Agreements), and, subject to the provisions of Paragraph 75 hereof, the DIP Agent's and DIP Lenders'

reasonable attorneys', financial advisors', consultants', and accountants' fees and disbursements as provided for in the DIP Credit Agreement, which amounts shall not otherwise be subject to approval of this Court.

32. In order to enable them to continue to operate their businesses, and subject to the terms and conditions of the Interim Orders, this Final Order, the DIP Credit Agreement, the other DIP Financing Agreements, including the Approved Budget (subject to any variances thereto permitted under the terms and conditions of the DIP Financing Agreements, the Interim Orders, and this Final Order), the Debtors are hereby authorized under the DIP Facility to borrow an amount up to $217 million in accordance with the terms and conditions of the DIP Credit Agreement, all of which was advanced pursuant to the Interim Orders.

33. The advances under the DIP Facility shall be used in each case in a manner consistent with the terms and conditions of the DIP Financing Agreements, the Interim Orders, and the Final Order, and in accordance with and as may be limited by the Approved Budget (subject to any variances thereto permitted under the terms and conditions of the DIP Financing Agreements, the Interim Orders, and the Final Order), solely as follows:

(a) to pay fees, costs, and expenses as provided in the DIP Financing Agreements, including amounts incurred in connection with the preparation, negotiation, execution, and delivery of the DIP Credit Agreement and the other DIP Financing Agreements;

(b) for general operating and working capital purposes, for the payment of transaction expenses, for the payment of fees, expenses, and costs incurred in connection with the Chapter 11 Cases, and other proper corporate purposes of the Debtors not otherwise prohibited by the terms hereof for working capital, and other lawful corporate purposes of the Debtors;

(c) for making payments in respect of Adequate Protection and other payments, all subject to and as provided in the Interim Orders and this Final Order;

(d) to repay the Prepetition Secured Obligations as provided in the Interim Orders and/or this Final Order;

(e) to fund the Prepetition Indemnity Account, as provided in the Interim Orders and/or this Final Order; and

(f) to fund the Carve Out.

34. DIP Obligations. The DIP Financing Agreements, the Interim Orders, and this Final Order shall constitute and evidence the validity and binding effect of the Debtors' DIP Obligations, which shall be enforceable against the Debtors, their estates, and any successors thereto, including without limitation, any trustee appointed in these Cases, or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of these Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "***Successor Cases***"). The DIP Obligations include all loans, and any other indebtedness or obligations, contingent or absolute, including, for the avoidance of doubt, the Enhancement Fee, which may now or from time to time be owing by any of the Debtors to the DIP Agent or any of the DIP Lenders, under the DIP Financing Agreements, the Interim Orders, and the Final Order, including, without limitation, all principal, accrued interest, costs, fees, expenses and other amounts owing under the DIP Financing Agreements. The Debtors shall be jointly and severally liable for the DIP Obligations. The DIP Obligations shall be due and payable, without notice or demand except as provided herein. No obligation, payment, transfer, or grant of collateral security hereunder or under the DIP Financing Agreements (including any DIP Obligation or DIP Liens (as defined herein)) shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

35. Pursuant to sections 361, 362, 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code, and subject to the limitations set forth below, effective immediately upon the entry of the Interim Orders as applicable, the DIP Agent was granted the Liens (the "***DIP Liens***") (which DIP Liens are subject and subordinate to the Carve Out) for the ratable benefit of itself and the DIP Lenders, which DIP Liens constituted continuing, valid, binding, enforceable, non-avoidable, and automatically perfected post-

petition security interests and liens, and except as otherwise expressly provided in the Interim Orders and this Final Order, upon and to all of the following (collectively, the "***DIP Collateral***"): Liens with the priorities set forth in 11 U.S.C. § 364(c)(2), (c)(3) , and (d)(1) on all "property of the estate" as defined in section 541 of the Bankruptcy Code (including tangible and intangible assets and equity interests of the Borrowers (and any guarantors), including all assets constituting Prepetition Collateral), subject only to any Permitted Prior Liens and the Carve Out. The DIP Collateral shall exclude (a) leases not subject to a mortgage in favor of the Prepetition ABL Agent as of the Petition Date (the "***Unencumbered Leases***"), but the DIP Collateral shall include any proceeds of Unencumbered Leases, (b) payroll, withholding tax and other fiduciary accounts and all amounts on deposit therein (in each case limited as provided in the Prepetition Financing Documents), (c) claims under chapter 5 of the Bankruptcy Code ("***Avoidance Actions***") or any proceeds of Avoidance Actions, and (d) prior to and including the Indemnity Termination Date, the Prepetition Indemnity Account and any funds therein (including the $750,000, a portion of which was funded pursuant to the Second Interim Order).

36. From and after the Petition Date, the Debtors shall use the proceeds of the extensions of credit under the DIP Facility only for the purposes specifically set forth in the DIP Financing Agreements, the Interim Orders, and/or this Final Order, in compliance with and as limited by the Approved Budget (subject to any variances thereto permitted under the terms and conditions of the DIP Financing Agreements, the Interim Orders, and the Final Order). The Approved Budget, and any modification to, or amendment or update thereof, shall be approved by, and in form and substance satisfactory to, the Debtors and the DIP Agent, each in their sole discretion. The Approved Budget shall be updated, modified, or supplemented by the Debtors from time to time in accordance with the DIP Credit Agreement (provided that any update, modification or supplement shall be approved in writing by, and shall be in form and substance satisfactory to the DIP Agent in its sole discretion), and no such updated, modified or supplemented budget shall be effective until so approved and once approved shall be deemed the "Approved Budget." Each budget delivered to the DIP Agent shall be accompanied by such supporting documentation as reasonably requested by the DIP Agent and shall be prepared in good faith based upon assumptions the

Debtors believe to be reasonable. A copy of any Approved Budget shall be delivered to counsel for the Committee and the U.S. Trustee after (or if) it has been approved by the DIP Agent.

37. Subject and subordinate to the Carve Out, all DIP Obligations shall be an allowed superpriority administrative expense claim (the "***DIP Superpriority Claim***" and, together with the DIP Liens, collectively, the "***DIP Protections***") with priority in the Chapter 11 Cases and any Successor Case(s) under sections 364(c)(1), 503(b), and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in, arising, or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114 of the Bankruptcy Code, and, sections 506(c) and 552(b) of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment Lien or other non-consensual Lien, levy, or attachment. Notwithstanding anything to the contrary herein, the DIP Superpriority Claim shall not be payable from Avoidance Actions brought under 11 U.S.C. Sections 547 or 548 or the proceeds thereof as to any of the Debtors' landlords, vendors (whether supplier of goods or services), or employees (in each case, who are non-insiders of the Debtors), provided, however, the DIP Superpriority Claim may be paid on account of any Avoidance Action arising out of 11 U.S.C. Section 548, if such payment or transfer was not on account of (i) the supply of goods or services, (ii) amounts relating to rent or other amounts due under a lease or contract related to such lease, or (iii) amounts paid for wages, salaries, benefits, contributions required under a collective bargaining agreement, reimbursement of expenses or other amounts related to any of the Debtors' union or non-insider employee's employment or other agreement, plan or requirement that is required to be paid under the Debtors' employment policies, collective bargaining agreements, or otherwise required to be paid under law to or on behalf of any such non-insider employees or union organization.

38. Other than the Carve Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under sections 328, 330, and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in the Chapter 11 Cases, or in any Successor Case, and no priority claims are, or will be, senior to, prior to, or on a parity with the DIP Protections or the DIP Obligations or with any other claims of the DIP Agent and/or DIP Lenders arising hereunder.

39. The Interim Orders and this Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens, Adequate Protection Liens, and Prepetition Indemnity Account Lien without the necessity of filing or recording any financing statement, deed of trust, mortgage, security agreement, notice of Lien or other instrument or document that may otherwise be required under the law of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement or securities account control agreement) to validate or perfect such DIP Liens, Adequate Protection Liens, or Prepetition Indemnity Account Lien, or to entitle the DIP Liens, Adequate Protection Liens, or Prepetition Indemnity Account Lien to the priorities granted herein.

40. Notwithstanding the foregoing, the DIP Parties and/or the Prepetition Secured Parties, as applicable, may, in their respective discretion, file such financing statements, deeds of trust, mortgages, security agreements, notices of Liens, and other similar instruments and documents to evidence, confirm, validate, or perfect, or to ensure the contemplated priority of, the DIP Liens, the Adequate Protection Liens and/or the Prepetition Indemnity Account Lien, and are hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, deeds of trust, mortgages, security agreements, notices of Liens, and other similar instruments and documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of the Chapter 11 Cases.

41. The Debtors shall execute and deliver to the DIP Agent and each Prepetition Secured Party, as applicable, all such financing statements, deeds of trust, mortgages, security agreements, notices of Liens, and other similar instruments and documents as the DIP Agent and/or the applicable Prepetition Secured Party may reasonably request to evidence, confirm, validate, or perfect, or to ensure the

contemplated priority of, the DIP Liens, the Adequate Protection Liens and/or the Prepetition Indemnity Account Lien.

42. The DIP Parties and the Prepetition Secured Parties, in their respective discretion, may file a photocopy of the entered, docketed version of the Interim Orders and this Final Order as a financing statement with any recording office designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which any of the Debtors has real or personal property, and in such event, the subject filing or recording office shall be authorized to file or record such copy of the Interim Orders and this Final Order. Subject to the priorities set forth in the Interim Orders and this Final Order, the prepetition mortgages granted in favor of the Prepetition ABL Agent shall remain in full force and effect in accordance with its/their terms as if the same were executed and delivered under the Interim Orders and the Final Order and thereafter recorded with any registry of deeds or similar office in any jurisdiction in which any of the Debtors has real or personal property, and each such mortgage (or any mortgage granted to the DIP Agent in respect of the DIP Facility, regardless of whether the same is recorded with any applicable registry of deeds or similar office in any jurisdiction in which any of the Debtors has real or personal property) shall serve as evidence of validity, perfection and contemplated priority of the DIP Liens, the Adequate Protection Liens and/or the Prepetition Indemnity Account Lien.

43. Subject to the terms of the Interim Orders and this Final Order (including the subordination provisions therein and hereof), the DIP Agent shall, in addition to the rights granted to it under the DIP Financing Agreements, succeed to the rights of the Prepetition Agents with respect to all third-party notifications in connection with the Prepetition Financing Documents, all prepetition collateral access agreements, and all other agreements with third parties (including any agreement with a customs broker, freight forwarder, or credit card processor) relating to, or waiving claims against, any Prepetition Collateral, including, without limitation, each collateral access agreement duly executed and delivered by any landlord of any Debtor and including, for the avoidance of doubt, all deposit account control agreements, securities account control agreements, and credit card agreements, provided, that nothing herein shall impair any such rights of the Prepetition Agents that may continue to exist, subject to Paragraph 14 of this Final Order.

44. The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified as necessary to:

(a) permit the Debtors to grant the DIP Liens, the Adequate Protection Liens, and Prepetition Indemnity Account Lien, and to incur all liabilities and obligations to the DIP Agent and DIP Lenders under the DIP Financing Agreements, the DIP Facility, the Interim Orders, and this Final Order; and

(b) authorize the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties to retain and apply payments hereunder as provided by the DIP Financing Agreements, the Interim Orders, and this Final Order.

45. The DIP Lenders are authorized to provide the Consignment Facility to the Debtors pursuant to the terms contained in the DIP Financing Agreements.

C. Reservation of Certain Third-Party Rights and Bar of Challenges and Claims

46. Nothing in the Interim Orders, this Final Order, the Prepetition Financing Documents, the DIP Credit Agreement, or the other DIP Financing Agreements shall prejudice whatever rights the Committee or any other party-in-interest (other than the Debtors) with requisite standing that has been sought and granted by this Court, as applicable, may have to bring an adversary proceeding, cause of action, objection, claim, defense, or other challenge against any one or more of the Prepetition Secured Parties, the Prepetition Secured Debt and/or the Prepetition Liens (collectively, a "***Challenge Proceeding"***), including, but not limited to, any of the following:

(a) in the case of the Prepetition Secured Parties, an objection to or challenge of the Debtors' Stipulations set forth in Paragraphs II.6(a) through II.6(i), including (i) the validity, extent, perfection, or priority of the security interests and Prepetition Liens of the Prepetition Agents in and to the Prepetition Collateral, or (ii) the validity, allowability, priority, status, or amount of the Prepetition Secured Debt; or

(b) a suit against any one or more of the Prepetition Secured Parties in connection with or related to the Prepetition Secured Debt and/or the Prepetition Liens, or the actions or inactions of the such Prepetition Secured Party(ies) arising out of or related to such Prepetition Secured Debt and/or Prepetition Liens;

provided, however, that the Committee or any other party-in-interest with requisite standing that has been sought and granted by this Court, as applicable, must commence a Challenge Proceeding asserting such objection or challenge, including, without limitation, any claim against any one or more of the Prepetition Agents and/or other Prepetition Secured Parties, as applicable, in the nature of a claim, cause of action,

setoff, counterclaim, or defense in respect of the Prepetition Secured Debt and/or the Prepetition Liens (including, but not limited to, those under sections 506, 544, 547, 548, 549, 550, and/or 552 of the Bankruptcy Code), by 5:00 p.m. (prevailing Eastern Time) on September 4, 2019 (the "***Challenge Period Termination Date***"). The failure of the Committee or other third party who desires to investigate either (i) the validity, extent, perfection, or priority of the security interests and Prepetition Liens in and to the Prepetition Collateral, or (ii) the validity, allowability, priority, status, or amount of the Prepetition Secured Debt, to make a formal written request to the affected Prepetition Secured Parties for information validating such Prepetition Secured Debt and/or Prepetition Liens on or before the date that is ten (10) calendar days prior to the Challenge Period Termination Date shall operate as a bar to any motion, application or other request by such party(ies) for an extension of the Challenge Period Termination Date.

47. Not less than five (5) business days prior to filing a motion seeking standing (a "***Challenge Standing Motion***") to commence a Challenge Proceeding, the Committee or other third party, as the context makes applicable, shall inform the affected Prepetition Agent(s) and/or other Prepetition Secured Party(ies), in writing, of its intent to file such standing motion (such writing shall contain a reasonably detailed statement of the claims proposed to be asserted in such Challenge Proceeding and the legal/other bases supporting such claim(s) in the event standing were to be granted by the Court ("***Challenge Statement***")). The parties shall thereafter meet and confer for purposes of attempting to resolve any issues/claims asserted in the Challenge Statement. In the event the Committee or other third party thereafter files a Challenge Standing Motion seeking standing to commence a Challenge Proceeding in accordance with the terms of this Final Order, any such Challenge Standing Motion shall, at a minimum, include a copy of any proposed objection or adversary complaint containing a detailed description of the claims and causes of action such party proposes to pursue. The Challenge Period Termination Date shall be tolled for a period not to exceed thirty (30) days upon the filing of a Challenge Standing Motion (the "***Tolling Period***") by an interested party (other than the Committee) seeking standing to commence a Challenge Proceeding in accordance with the terms of this Final Order); provided, that any such tolling shall be applicable solely to the party that files the subject Challenge Standing Motion and solely as to the Challenge Proceedings for which

standing is sought (as set forth in such Challenge Standing Motion); and provided, further, that, unless otherwise ordered by the Court, the granting of any Challenge Standing Motion shall not extend the Challenge Period Termination Date beyond expiration of the Tolling Period. The Challenge Period Termination Date may occur as to some, but not all, of the Prepetition Agents and/or other Prepetition Secured Parties if a Challenge Proceeding is brought against one or more but not all of the Prepetition Agents and/or other Prepetition Secured Parties.

48. For the avoidance of doubt, in the event any one or more of the Chapter 11 Cases is converted to a case under Chapter 7, or if a Chapter 11 trustee is appointed prior to the Challenge Period Termination Date, then in either such event and solely as applies to any such trustee, the Challenge Period Termination Date shall be sixty (60) days after such trustee's appointment. In the event that the Committee or any other party in interest with requisite standing, as applicable, has commenced a Challenge Proceeding prior to the conversion to Chapter 7 or appointment of a Chapter 11 trustee, the trustee shall be entitled to assume the prosecution of any pending Challenge Proceeding. In the event that the Committee or any other party in interest with requisite standing, as applicable, has commenced a Challenge Proceeding prior to the conversion to Chapter 7 or appointment of a Chapter 11 trustee, the trustee shall be entitled to assume the prosecution of any pending Challenge Proceeding. Until the later of the Challenge Period Termination Date without commencement of a Challenge Proceeding or the entry of a final, non-appealable order or judgment on account of any Challenge Proceeding properly commenced before the Challenge Period Termination Date, such trustee shall not be bound by the Debtors' Stipulations in the Interim Orders and this Final Order.

49. Upon the Challenge Period Termination Date with respect to one or more or all of the Prepetition Secured Parties, any and all such challenges, claims, and/or objections by any party (including, without limitation, the Committee, any chapter 11 or chapter 7 trustee appointed herein or in any Successor Case, and any other party-in-interest) ***shall be deemed to be forever waived and barred*** with respect to the Prepetition Agents and other Prepetition Secured Parties, as applicable, and the Prepetition Secured Obligations and Prepetition Liens as to one or more or all of the Prepetition Agents and/or other Prepetition

Secured Parties, as the case may be, as of the Petition Date, shall be deemed to be an allowed fully secured claim within the meaning of section 506 of the Bankruptcy Code for all purposes in connection with the Chapter 11 Cases and the Debtors' Stipulations as to one or more or all of the Prepetition Agents and/or other Prepetition Secured Parties, as the case may be, shall be binding on all creditors, interest holders, and parties-in-interest, including the Committee.

50. To the extent any such Challenge Proceeding is commenced, or any claim is asserted against any one or more of the Prepetition Agents and/or other Prepetition Secured Parties, the affected Prepetition Secured Parties, or any of them, as the case may be, shall be entitled to include the costs and expenses, including, but not limited to, reasonable and documented attorneys' fees and disbursements, incurred in responding to any inquiry, producing documents, and/or witnesses in response to formal or informal discovery requests, or otherwise defending the objection or complaint, as part of the prepetition claims and Liens of such Prepetition Secured Party(ies) to the extent permitted pursuant to the applicable Prepetition Financing Documents, and subject to the provisions herein, including with respect to the priority of such claims and Liens. To the extent any such inquiry or discovery is undertaken or any such objection or complaint is filed (or as part of any agreed upon resolution thereof), the affected Prepetition Secured Party(ies), or any of them, as the case may be, shall be entitled to include such costs and expenses, including, but not limited to, reasonable and documented attorneys' fees incurred in responding to the inquiry or discovery or in defending the objection or complaint, as part of such party's prepetition claim which shall be reimbursed by the Debtors, (x) subject, and subordinate as provided herein, to the Carve Out and the indefeasible payment in full in cash of the DIP Obligations, or (y) where applicable, out of the Prepetition Indemnity Account or as provided under Paragraph 12 hereof for fees and expenses incurred prior to the Challenge Period Termination Date, and as part of the Adequate Protection Superpriority Claims. In addition to any other provisions in this Final Order, the Prepetition Indemnity Account shall be maintained until the final resolution of all such objections or claims that would, if successful, be payable as Prepetition Indemnity Obligations, against the affected Prepetition Secured Party(ies). Subject in all respects to the Carve Out and prior payment in full in cash of the DIP Obligations, the Debtors shall remain liable to the

Prepetition Secured Parties, or any of them, as the case may be, for all unpaid Prepetition Indemnity Obligations to the extent that the funds in the Prepetition Indemnity Account are insufficient to satisfy the Prepetition Indemnity Obligations in full.

51. Notwithstanding anything to the contrary contained in the Interim Orders and/or this Final Order, (a) the Committee has completed its investigation and, based upon that investigation as well as the terms and conditions of this Final Order, the Committee has determined and agreed that it will not commence a Challenge Proceeding or file a Challenge Standing Motion, and (b) the Challenge Period Termination Date is deemed to have occurred as to the Committee.

52. Notwithstanding anything contained in the Interim Orders, this Final Order, or any of the DIP Financing Agreements, the Challenge Period Termination Date shall not be modified, amended or extended without the prior written consent of the Prepetition Secured Parties, in their sole discretion, and the DIP Parties, with such consent of the DIP Parties not to be unreasonably withheld or delayed.

D. Carve Out and Payment of Professionals

53. Carve Out. As used in this Final Order, the "Carve Out" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (exclusive of any fee which becomes due and payable upon consummation of a transaction) (the "Allowed Professional Fees")[8] incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals") at any time before or on the first business day following delivery by the DIP Agent of a Carve Out Trigger Notice (defined below), whether

[8] Any fee that is or will become due and payable upon the consummation of a transaction shall be payable solely from the proceeds received by the Debtors resulting from such transaction, free and clear of the liens of the DIP Agent and the DIP Lenders.

allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; (iv) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all Allowed Professional Fees incurred by persons or firms retained by the Committee (the "Committee Professionals" and, together with the Debtor Professionals, the "Professional Persons") and all allowed expenses, pursuant to section 503(b)(3)(F) of the Bankruptcy Code, of the members of the Committee at any time before or on the first business day following delivery by the DIP Agent of a Carve Out Trigger Notice (defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice, and (v) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed $500,000 incurred after the first business day following delivery by the DIP Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (v) being the "Post-Carve Out Trigger Notice Cap"). For purposes of the foregoing, "Carve Out Trigger Notice" shall mean a written notice delivered by email (or other electronic means) to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Committee by the DIP Agent, which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

54. Fee Estimates. Not later than 7:00 p.m. New York time on the third business day of each week starting with the first full calendar week following the entry of the First Interim Order, each Professional Person shall deliver to the Debtors a statement setting forth a good-faith estimate of the amount of fees and expenses (collectively, "Estimated Fees and Expenses") incurred during the preceding week by such Professional Person (through Saturday of such week, the "Calculation Date"), along with a good-faith estimate of the cumulative total amount of unreimbursed fees and expenses incurred through the applicable Calculation Date and a statement of the amount of such fees and expenses that have been paid to date by the Debtors (each such statement, a "Weekly Statement"); provided, that within one business day of the occurrence of the Termination Declaration Date (defined below), each Professional Person shall deliver one additional statement (the "Final Statement") setting forth a good-faith estimate of the amount of fees and expenses incurred during the period commencing on the calendar day after the most recent Calculation

Date for which a Weekly Statement has been delivered and concluding on the Termination Declaration Date. If any Professional Person fails to deliver a Weekly Statement within three calendar days after such Weekly Statement is due, such Professional Person's entitlement (if any) to any funds in the Carve Out Reserves (defined below) with respect to the aggregate unpaid amount of Allowed Professional Fees for the applicable period(s) for which such Professional Person failed to deliver a Weekly Statement covering such period shall be limited to the aggregate unpaid amount of Allowed Professional Fees included in the Approved Budget for such period for such Professional Person; provided, that such Professional Person shall be entitled to be paid any unpaid amount of Allowed Professional Fees in excess of Allowed Professional Fees included in the Approved Budget for such period for such Professional Person from a reserve to be funded by the Debtors from all cash on hand as of such date and any available cash thereafter held by any Debtor. The Debtors shall fund and maintain in a segregated account (the "Funded Reserve Account") (a) at all times, in trust for the benefit of Professional Persons in an amount (the "Funded Reserve Amount") equal to the sum of (i) the greater of (x) the aggregate unpaid amount of Estimated Fees and Expenses included in all Weekly Statements timely received by the Debtors, and (y) the aggregate amount of Allowed Professional Fees contemplated to be unpaid in the Approved Budget at the applicable time, *plus* (ii) the Post-Carve Out Trigger Notice Cap, *plus* (iii) the amounts contemplated under paragraph 53(i) and (ii) above, and (b) subject to available liquidity (iv) an amount equal to the amount of Allowed Professional Fees set forth in the Approved Budget for the then current week occurring after the most recent Calculation Date and the two weeks succeeding such current week. Any and all amounts in the Funded Reserve Account shall not be subject to any cash sweep and/or foreclosure provisions in the DIP Financing Agreements and the DIP Lenders shall not be entitled to sweep or foreclose on such amounts notwithstanding any provision to the contrary in the DIP Financing Agreements. Not later than 7:00 p.m. New York time on the fourth business day of each week starting with the first full calendar week following the entry of the First Interim Order, the Debtors shall deliver to the DIP Parties and the Committee a report setting forth the Funded Reserve Amount as of such time. Prior to the delivery of the first report setting forth the Carve-Out Reserve Amount, the Debtors shall calculate the Funded Reserve Amount by reference

to the Approved Budget for subsection (i) of the Funded Reserve Amount. The information supplied by Professional Persons pursuant to this paragraph shall be used to determine whether there is compliance with Section 16(T) of the DIP Credit Agreement. Once the Funded Reserve Amount is funded into the Funded Reserve Account, the DIP Lenders shall not have any further obligations with respect to the payments to Professional Persons relating to such amounts, and Professional Persons may only be paid from the Funded Reserve Account. For the avoidance of doubt, the Prepetition Secured Parties shall have no obligations with respect to any payments to Professional Persons, or to fund the Funded Reserve Amount or any other amounts related to the Carve Out.

55. Carve Out Reserves. On the day on which a Carve Out Trigger Notice is given by the DIP Agent to the Debtors with a copy to counsel to the Committee (the "Termination Declaration Date"), the Carve Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand (including any amounts held in the Funded Reserve Account) as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees. The Debtors shall deposit and hold such amounts in a segregated account with the DIP Agent in trust to pay such then unpaid Allowed Professional Fees (the "Pre-Carve Out Trigger Notice Reserve") prior to any and all other claims. On the Termination Declaration Date, after funding the Pre-Carve Out Trigger Notice Reserve, the Debtors shall utilize all remaining cash on hand (including any amounts held in the Funded Reserve Account) as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap (the "Post-Carve Out Trigger Notice Reserve" and, together with the Pre-Carve Out Trigger Notice Reserve, the "Carve Out Reserves") prior to any and all other claims. All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out set forth above (the "Pre-Carve Out Amounts"), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the Prepetition Secured Parties in accordance with their rights and priorities as of the Petition Date until such obligations have been indefeasibly paid in full, in cash, in which case any such excess shall be

paid to the DIP Agent for the benefit of the DIP Lenders. All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (v) of the definition of Carve Out set forth above (the "Post-Carve Out Amounts"), and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay to the DIP Agent for the benefit of the DIP Lenders in accordance with their rights and priorities set forth in this Final Order, until the DIP Obligations have been indefeasibly paid in full, in cash, and all Commitments have been terminated, in which case any such excess shall be paid to the Prepetition Secured Parties in accordance with their rights and priorities as of the Petition Date, until the Prepetition Secured Obligations, if any, have been indefeasibly paid in full in cash. Notwithstanding anything to the contrary in this Final Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in this Paragraph 55, then, any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively, shall be used to fund the other Carve Out Reserve, up to the applicable amount set forth in this Paragraph 55, prior to making any payments to the DIP Agent or the Prepetition Secured Parties, as applicable. Notwithstanding anything to the contrary in this Final Order, following delivery of a Carve Out Trigger Notice, the DIP Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the DIP Agent for application in accordance with the DIP Financing Agreements until the DIP Obligations have been indefeasibly paid in full, in cash, and all DIP Commitments have been terminated, and thereafter to the Prepetition Secured Parties until the Prepetition Secured Obligations, if any, have been indefeasibly paid in full. Further, notwithstanding anything to the contrary in this Final Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not constitute Term Loans (as defined in the DIP Credit Agreement) or increase or reduce the DIP Obligations, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees of the Debtor Professionals shall not affect the priority of the Carve Out with respect to the Debtor Professionals, and (iii) in no way shall the Approved Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be

construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in the Interim Orders, this Final Order, the DIP Financing Agreements, or in any Prepetition Financing Agreement(s), the Carve Out with respect to the Debtor Professionals shall be senior to all liens and claims securing the DIP Facility, the Adequate Protection Liens, the Prepetition Indemnity Obligations (other than the Prepetition Indemnity Account Lien and/or any claims of Prepetition Secured Parties to the Prepetition Indemnity Account and/or funds therein), and the Prepetition Secured Parties' and DIP Lenders' respective superpriority claims, and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations and/or Prepetition Secured Obligations (other than the Prepetition Indemnity Account Lien and/or any claims of Prepetition Secured Parties to the Prepetition Indemnity Account and/or funds therein). The Carve Out with respect to all other Professional Persons, other than Debtor Professionals, shall be limited to the Carve Out Reserve.

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

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

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

Collateral and shall be otherwise entitled to the protections granted under the Interim Orders, this Final Order, the DIP Financing Agreements, the Bankruptcy Code, and applicable law.

59. Restriction on Use of Funds. Notwithstanding anything herein to the contrary, no proceeds of the DIP Facility, DIP Collateral or the Prepetition Indemnity Account (including funds therein) may be used by the Debtors, the Committee, or any other person or entity without the consent of the DIP Agent and/or the Prepetition Secured Parties in connection with any of the following: (a) the investigation (including by way of examinations or discovery proceedings), initiation, assertion, joining, commencement, support or prosecution of any claims, causes of action, adversary proceedings, or other litigation against any of the DIP Agent, the DIP Lenders, or Prepetition Secured Parties, or any of their respective officers, directors, employees, agents, attorneys, consultants, financial advisors, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, action or other matter in any way related to the DIP Financing Agreements or the Prepetition Loan Documents (including formal discovery proceedings in anticipation thereof), including, without limitation, (i) investigating or challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the DIP Obligations, DIP Superpriority Claims or the DIP Liens; (ii) investigating or challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the Prepetition Secured Obligations, the Prepetition Indemnity Obligations, Prepetition Liens, Adequate Protection Superpriority Claims, Adequate Protection Liens, or the Prepetition Indemnity Account Lien; (iii) investigating or asserting any claims or causes of action arising under chapter 5 of the Bankruptcy Code or under similar laws of any jurisdiction against any of the Prepetition Secured Parties or the DIP Parties; (iv) investigating or asserting any so-called "lender liability" claims and causes of action against any of the Prepetition Secured Parties or the DIP Parties; and (v) any action seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the Prepetition Secured Obligations, the Prepetition Indemnity Obligations, the Prepetition Liens, the Adequate Protection Superpriority Claim, the Adequate Protection Liens, the Prepetition Indemnity Account Lien, the DIP Obligations, the DIP Superpriority Claim, and the DIP Liens; (b) asserting any claims or causes of action against the DIP Parties or the Prepetition Secured Parties in

such capacity, including, without limitation, claims or actions to object to or contest in any manner the DIP Parties' or the Prepetition Secured Parties' assertion or enforcement of any lien, claim, right or security interest or realization upon any DIP Collateral or the Prepetition Indemnity Account (including any funds therein) in accordance with the terms and conditions of the DIP Financing Agreements, the Prepetition Loan Documents, the Interim Orders, or this Final Order; (c) seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to the DIP Parties or the Prepetition Secured Parties hereunder or under the DIP Financing Agreements or Prepetition Loan Documents (as applicable), in each of the foregoing cases without such applicable parties' prior written consent; provided, however, that the proceeds of the DIP Facility and DIP Collateral shall be available for payment of any fees or expenses incurred by the Committee to investigate, but not prosecute, any of the foregoing in an amount not to exceed $50,000.

E. Maturity; DIP Order Events of Default; Remedies

60. The DIP Facility shall mature (the "***DIP Maturity Date***"), and the Debtors' ability to utilize cash shall terminate, upon the expiration of five (5) business days' prior written notice (a "***DIP Remedies Notice***" and the "***DIP Remedies Notice Period***") to each of (a) the Debtors, (b) lead restructuring counsel to the Debtors, (c) counsel to the Prepetition Agents, (d) counsel for the Committee, (e) counsel to the DIP Agent, and (f) the U.S. Trustee, after the occurrence and continuation of any of the following events (each, a "***DIP Maturity Event***"), unless waived by the DIP Agent or cured by the Debtors during the DIP Remedies Notice Period:

(a) March 31, 2020;

(b) the date which is 30 days following the date of entry of the Interim Order if this Final Order has not been entered by the Court on or prior to such date;

(c) the failure of the Debtors to adhere to the Approved Budget, including any failure to maintain Excess Availability at the levels required hereunder;

(d) the date on which the DIP Agent accelerates the DIP Obligations outstanding under the terms of the DIP Facility after the occurrence of an Event of Default (as defined in the DIP Credit Agreement and the passage of any applicable cure period) in accordance with the terms of the DIP Credit Agreement;

(e) the occurrence of DIP Order Event of Default (defined below);

(f) the consummation of a sale of all or substantially all of the Debtors' assets;

(g) any stay, reversal, vacatur, rescission or other modification of the terms of this Final Order is not consented to by the DIP Parties;

(h) the failure of the Debtors to provide all financial reports as well as any budget variance report required under the DIP Financing Agreements;

(i) the dismissal of any of the Chapter 11 Cases, the conversion of any Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, or the appointment of a chapter 11 trustee with expanded powers in any of the Chapter 11 Cases;

(j) the failure of the Debtors to comply with any of the budget covenants or Milestones as set forth in the DIP Financing Agreements; or

(k) the substantial consummation of a plan of reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order of the Court.

61. Immediately upon the occurrence of the DIP Maturity Date, notwithstanding any automatic stay otherwise applicable to the DIP Parties pursuant to section 362 of the Bankruptcy Code, and without any application, motion, or notice to, hearing before, or order from the Court, but subject to the terms of the Interim Orders and this Final Order, the DIP Parties may exercise their rights and remedies in accordance with the Interim Orders and this Final Order upon the expiration of the DIP Remedies Notice Period following delivery of a DIP Remedies Notice, in each case such DIP Remedies Notice being given to each of (i) the Debtors, (ii) counsel to the Debtors, (iii) counsel for the Committee, (iv) counsel to the DIP Agent, and (vi) the U.S. Trustee.

62. Following the giving of a DIP Remedies Notice, the Debtors and the Committee shall be entitled to an emergency hearing before this Court, with any such hearing to be held on not less than two (2) business days' notice to the Committee and the DIP Agent; provided, that if a hearing to consider any relief in connection with the delivery of a DIP Remedies Notice or continued use of cash is requested to be heard within such DIP Remedies Notice Period but is scheduled for a later date by the Court, the DIP Remedies Notice Period shall be automatically extended to the date of such hearing. If (x) the Debtors or the Committee do not contest the occurrence of a DIP Maturity Event and/or the right of the DIP Parties to exercise their remedies, or (y) the Debtors or the Committee do timely contest the occurrence of a DIP

Maturity. Event and/or the right of the DIP Parties to exercise their remedies, and unless this Court, after notice and hearing prior to the expiry of the DIP Remedies Notice Period stays the enforcement thereof, the automatic stay, solely as to the DIP Parties, shall automatically terminate at the end of the DIP Remedies Notice Period.

63. Subject to the provisions of Paragraphs 61-62 hereof, upon the expiration of the DIP Remedies Notice Period, the DIP Parties are authorized to exercise their remedies and proceed under or pursuant to the DIP Financing Agreements; except that with respect to any of the Debtors' leasehold locations, the DIP Parties can only enter upon a leased premises following the DIP Maturity Date in accordance with (i) a separate written agreement by and between the DIP Agent and any applicable landlord, (ii) pre-existing rights of the DIP Parties and any applicable landlord under applicable non-bankruptcy law, (iii) consent of the applicable landlord, or (iv) entry of an order of this Court obtained by motion of the DIP Parties on such notice to the landlord, the Debtors, the Committee, and the U.S. Trustee as shall be required by this Court.

64. Unless and until the DIP Obligations have been irrevocably repaid in full in cash (or other arrangements for payment of the DIP Obligations satisfactory to the DIP Agent, in its sole and exclusive discretion have been made), and all DIP Commitments have been irrevocably terminated, the protections afforded to the DIP Agent and the DIP Lenders pursuant to the Interim Orders, this Final Order, and under the DIP Financing Agreements, and any actions taken pursuant thereto, shall survive the entry of any order confirming any plan of reorganization or liquidation (a "***Plan***") or converting the Chapter 11 Cases into a Successor Case, and the DIP Liens and the DIP Superpriority Claim shall continue in the Chapter 11 Cases and in any Successor Case, and such DIP Liens and DIP Superpriority Claim shall maintain their respective priorities as provided by the Interim Orders and this Final Order. Unless and until the Indemnity Termination Date has occurred, the protections afforded to the Prepetition Secured Parties pursuant to the Interim Orders, this Final Order and under the Prepetition Financing Agreements, and any actions taken pursuant thereto, shall survive the entry of any order confirming any plan of reorganization or liquidation (a "***Plan***") or converting the Chapter 11 Cases into a Successor Case, and the Prepetition Indemnity

Obligations, the Prepetition Liens, the Adequate Protection Liens, the Adequate Protection Superpriority Claims and the Prepetition Indemnity Account Lien shall continue in these Chapter 11 Cases and in any Successor Case, and such Prepetition Indemnity Obligations, Prepetition Liens, Adequate Protection Liens, Adequate Protection Superpriority Claims and Prepetition Indemnity Account Lien shall maintain their respective priorities as provided by the Interim Orders and this Final Order.

65. Each of the following, unless waived by the DIP Agent or cured by the Debtors, shall constitute a "***DIP Order Event of Default***":

(a) the occurrence of an Event of Default (as defined in the DIP Credit Agreement) in accordance with the DIP Credit Agreement;

(b) the failure of the Debtors to obtain entry of the Final Order on or before the date that is thirty (30) days after the Petition Date, unless such date has been extended by consent of the DIP Agent, in its sole and absolute discretion;

(c) the failure of the Debtors to perform, in any respect, any of the terms, provisions, conditions, covenants, or obligations under the DIP Credit Agreement (including, without limitation, the Milestones (as defined therein), and after giving effect to any notice or cure periods provided therein) or this Final Order;

(d) the filing of a motion by the Debtors seeking dismissal of any of the Chapter 11 Cases, the dismissal of any of the Chapter 11 Cases, the filing of a motion by the Debtors seeking to convert any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, or the conversion of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, or the appointment of a trustee or examiner with expanded powers in any of the Chapter 11 Cases;

(e) termination of the exclusivity period for the Debtors to file a chapter 11 plan in the Chapter 11 Cases;

(f) other than as contemplated by the Interim Orders and this Final Order, entry of an order granting any lien or claim which is senior to or *pari passu* with the DIP Agent's lien and claims under the DIP Facility without the prior written consent of the DIP Agent (or the filing of any motion by the Debtors seeking such relief), unless the obligations owing to the DIP Agent and DIP Lenders are indefeasibly paid in full in cash and the DIP Lenders' commitment to make loans is terminated;

(g) entry of an order confirming (or the filing of any motion or pleading requesting confirmation of) a plan of reorganization or liquidation that does not require indefeasible repayment in full in cash of the DIP Facility as of the effective date of the plan;

(h) payment of or granting adequate protection with respect to prepetition debt (other than as set forth in the Interim Orders or this Final Order, or as may be agreed by the DIP Agent);

(i) the failure of liens or superpriority claims granted with respect to the DIP Facility to be valid, perfected and enforceable with the priority described herein;

(j) the entry of one or more orders of the Court lifting the automatic stay under section 362 of the Bankruptcy Code with respect to assets of the Debtors having a value in excess of $500,000 in the aggregate; or

(k) the Interim Orders or this Final Order, as applicable, shall be amended, modified, stayed or vacated without the written consent of the DIP Agent.

66. Upon the service of a DIP Remedies Notice, to the extent the DIP Agent, as and to the extent provided for by the DIP Credit Agreement, determines in its sole and absolute discretion to exercise its rights and remedies in accordance with the Interim Orders and this Final Order:

(a) any obligation otherwise imposed on the DIP Lenders to provide any loan or advance to the Debtors pursuant to the DIP Facility shall be suspended, and any loan or advance made thereafter shall be made by the DIP Lenders in their sole and exclusive discretion;

(b) the Debtors shall continue to deliver and cause the delivery of the proceeds of the DIP Collateral to the DIP Agent, as provided in the Interim Orders, this Final Order, and in the DIP Financing Agreements;

(c) the DIP Agent shall continue to apply such proceeds in accordance with the provisions of the Interim Orders, this Final Order, and the DIP Financing Agreements, as applicable;

(d) the Debtors shall have no right to use any of such proceeds, nor any cash that constitutes DIP Collateral, other than towards the satisfaction of the DIP Obligations and the Carve Out, as provided in the DIP Financing Agreements, the Interim Orders, and this Final Order; provided, however, that during the DIP Remedies Notice Period the Debtors may use cash (excluding any amounts in the Prepetition Indemnity Account) solely to meet accrued but unpaid payroll obligations (other than severance) and trust fund obligations strictly in accordance with the Approved Budget; and

(e) upon the occurrence of either (a) an Event of Default and, subject to the DIP Remedies Notice Period and other terms of the Interim Orders and this Final Order, the exercise by the Agent or the DIP Lenders of their rights and remedies under the Interim Orders, this Final Order, or the other DIP Documents, or (b) the failure of any Loan Party to comply with the October 24, 2019 Milestone under Section 14(h)(6), each Loan Party shall assist the Agent in effecting a sale or other disposition of the Collateral upon such terms as are designed to maximize the proceeds obtainable from such sale or other disposition, and the Loan Parties shall immediately commence all liquidation processes in the manner contemplated by the Store Closure Motion.

67. Upon expiration of the DIP Remedies Notice Period, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties (subject to the subordination agreement and other limitations contained herein) are authorized to exercise their remedies and proceed under or pursuant to the DIP Credit Agreement or the Prepetition Financing Documents, as applicable; except that, with respect to any of the Debtors' leasehold locations, the DIP Agent and/or DIP Lenders can only enter upon a leased premises after expiration of the DIP Remedies Notice Period in accordance with (i) the rights of the Prepetition Agents where the DIP Agent succeeds to such rights under this Final Order, or (ii) entry of an order of this Court obtained by motion of the applicable DIP Agent or DIP Lender on such notice to the landlord as shall be required by this Court.

68. Nothing included herein shall prejudice, impair or otherwise affect either the DIP Agent's rights to seek any other or supplemental relief from the Court in respect of the Debtors, nor the DIP Lenders' rights, as provided herein and in the DIP Financing Agreements, to suspend or terminate the making of loans and granting financial accommodations under the DIP Credit Agreement.

69. The delay in or the failure of the DIP Agent and/or the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies shall not constitute a waiver of any of the DIP Agent's, DIP Lenders' and/or Prepetition Secured Parties' rights and remedies. Notwithstanding anything herein, the entry of the Interim Orders or this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly or otherwise impair the rights and remedies of the DIP Agent, DIP Lenders, or the Prepetition Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the rights of the DIP Agent, DIP Lenders, Prepetition Agents, and/or the Prepetition Secured Parties to: (i) request conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, dismissal of the Chapter 11 Cases, or the appointment of a trustee in the Chapter 11 Cases; (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a Plan; or (iii) subject to section 362 of the Bankruptcy Code exercise any of the rights, claims, or privileges (whether legal, equitable, or otherwise) the DIP Agent, DIP Lenders, and/or Prepetition Secured Parties may have.

IV. Certain Limiting Provisions

A. Section 506(c) Claims and Waiver

70. Nothing contained in the Interim Orders and/or this Final Order shall be deemed a consent by the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties to any charge, Lien, assessment, or claim against the DIP Collateral, the DIP Liens, the Prepetition Collateral, the Adequate Protection Liens, Prepetition Indemnity Account (and the funds therein), or the Prepetition Indemnity Account Lien under section 506(c) of the Bankruptcy Code or otherwise, including for any amounts set forth in the Approved Budget.

71. As a further condition of the DIP Facility and any obligation of the DIP Lenders to make credit extensions pursuant to the DIP Credit Agreement, the Debtors (and any successors thereto or any representatives thereof, including any trustees appointed in the Chapter 11 Cases or any Successor Case) shall be deemed to have waived any rights or benefits of section 506(c) of the Bankruptcy Code with respect to the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, the DIP Collateral, the Prepetition Collateral, and the Prepetition Indemnity Account (and the funds therein).

B. Proceeds of Subsequent Financing

72. If at any time prior to the irrevocable repayment in full in cash of all DIP Obligations and the Prepetition Secured Obligations, and the termination of the DIP Lenders' obligations to make loans and advances under the DIP Facility, the Debtors, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed, shall obtain credit or incur debt pursuant to sections 364(c)(1) or 364(d) of the Bankruptcy Code in violation of the DIP Credit Agreement, then all of the cash proceeds derived from such credit or debt shall immediately be turned over first, to the DIP Agent to be applied in reduction of the DIP Obligations, and after payment in full of the DIP Obligations, second, to the Prepetition Secured Parties to be applied in reduction of the remaining Prepetition Secured Obligations (including any accrued Adequate Protection), if any, and third, solely to the extent that the DIP Obligations and the Prepetition Secured Obligations (including any accrued Adequate Protection) have been irrevocably paid in full, to the Debtors.

C. No Priming of DIP Facility

73. In entering into the DIP Financing Agreements, each of the Debtors hereby agrees that until such time as all DIP Obligations and all Prepetition Secured Obligations have been irrevocably paid in full in cash (or other arrangements for payment of thereof satisfactory to the DIP Lenders and Prepetition Secured Parties, as applicable, in their sole and exclusive discretion, have been made) and the DIP Credit Agreement has been terminated in accordance with the terms thereof, the Debtors shall not (unless otherwise agreed to in writing by the DIP Agent and the DIP Lenders, each in their sole respective discretion) in any way prime or seek to prime the security interests and DIP Liens provided to the DIP Agent by offering a subsequent lender or a party-in-interest a superior or *pari passu* Lien or claim pursuant to section 364(d) of the Bankruptcy Code or otherwise. For the avoidance of doubt, nothing contained herein shall prejudice the rights of any of the Prepetition Secured Parties to contest the adequacy of any adequate protection offered, or to seek any other form of adequate protection, in connection with any such priming postpetition financing.

V. Other Rights and Obligations

A. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Final Order

74. Notwithstanding any modification, amendment, or vacation of any or all of the provisions of this Final Order, any claim or protection granted to the DIP Agent, DIP Lenders and/or the Prepetition Secured Parties hereunder arising prior to the effective date of such modification, amendment, or vacation of any such claim or protection granted to the DIP Agent, the DIP Lenders, or Prepetition Secured Parties shall be governed in all respects by the original provisions of the Interim Orders and this Final Order, and the DIP Agent, the DIP Lenders, and Prepetition Secured Parties shall be entitled to all of the rights, remedies, privileges, and benefits, including the DIP Protections and Adequate Protection granted herein, with respect to any such claim, including those found under section 364(e) of the Bankruptcy Code.

B. Prepetition Secured Parties', DIP Agent's, and DIP Lenders' Expenses

75. All reasonable out-of-pocket costs and expenses of the Prepetition Secured Parties, the DIP Agent, and the DIP Lenders, including, without limitation, reasonable legal, accounting, collateral examination, monitoring and appraisal fees and disbursements, financial advisory fees, fees and expenses of other consultants, indemnification and reimbursement obligations with respect to fees and expenses, and other out of pocket expenses (whether incurred prior to, on or after the Petition Date), whether or not contained in the Approved Budget and without limitation with respect to the dollar estimates contained in the Approved Budget (provided, however, that such overages shall not weigh against the Debtors in any testing related to compliance with the Approved Budget), shall promptly be paid by the Debtors. Payment of such fees shall not be subject to allowance by this Court; provided, however, the Debtors, the U.S. Trustee, or counsel for the Committee may seek a determination by this Court whether such fees and expenses are reasonable in the manner set forth below. Under no circumstances shall professionals for the DIP Agent, the DIP Lenders, and/or the other Prepetition Secured Parties be required to comply with the Court's and/or U.S. Trustee's fee guidelines or file applications or motions with, or obtain approval of, the Court for the payment of any of their out-of-pocket costs, fees, expenses, disbursements and other charges; provided, however, the DIP Agent, the DIP Lenders, and/or the Prepetition Secured Parties shall provide the Debtors, the U.S. Trustee, and the Committee with a copy of the invoice summary, for professional fees and expenses incurred during the pendency of the Chapter 11 Cases. Each such invoice summary shall not be required to contain time entries, but shall include a general, brief description of the nature of the matters for which services were performed, and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney client privilege or of any benefits of the attorney work product doctrine. If the Debtors, U.S. Trustee or the Committee object to the reasonableness of the invoice summary submitted by the DIP Agent, the DIP Lenders, and/or the Prepetition Secured Parties, and the parties cannot resolve such objection within ten (10) days of receipt of such invoice summary, the Debtors, U.S. Trustee or the Committee, as the case

may be, shall file with the Court and serve on the applicable DIP Agent, DIP Lender, or Prepetition Secured Party an objection (a "***Fee Objection***") limited to the issue of reasonableness of such fees and expenses. The Debtors shall promptly pay the amounts set forth in any submitted invoice summary after the expiration of the ten (10) day notice period if no Fee Objection is received in such ten (10) day period. If a Fee Objection is timely received, the Debtors shall promptly pay the undisputed amount only of any invoice summary that is the subject of such Fee Objection, and the Court shall have jurisdiction to determine the disputed portion of such invoice summary if the parties are unable to resolve the Fee Objection. Payments of any amounts set forth in this paragraph are not subject to recharacterization, avoidance, subordination or disgorgement. Notwithstanding anything to the contrary contained herein, the aggregate amount of reasonable and documented fees and expenses paid to or for the benefit of the Prepetition Secured Parties pursuant to Paragraphs 12 and 21 hereof shall not exceed $1.1 million (inclusive of the amounts held in the Prepetition Indemnity Account), irrespective of whether there is a Challenge Proceeding.

C. Binding Effect

76. The provisions of the Interim Orders and this Final Order shall be binding upon and inure to the benefit of the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, the Debtors, and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors), the Committee, and any other statutory committee (subject to the provisions of Paragraphs 46-52 hereof), whether in the Chapter 11 Cases, in any Successor Case, or upon dismissal of any such chapter 11 or chapter 7 case.

D. No Third Party Rights

77. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect or incidental beneficiary, other than the Debtors, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties.

E. No Marshaling

78. The DIP Agent, the DIP Lenders, and the Prepetition Secured Parties shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP

Collateral or Prepetition Collateral, as applicable; provided, that the Prepetition Secured Parties hereby waive any such "marshaling" or rights under any other similar doctrine with respect to any of the DIP Collateral unless and until the DIP Obligations are indefeasibly paid in full.

F. Section 552(b) of the Bankruptcy Code

79. The Prepetition Secured Parties (and, to the extent applicable, the DIP Parties) shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the Debtors and/or any successors thereto shall not assert that the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall apply to the Prepetition Secured Parties (and, to the extent applicable, the DIP Parties) with respect to proceeds, product, offspring, or profits of any of the Prepetition Collateral or the DIP Collateral.

G. Amendments

80. The Debtors and the DIP Agent may amend, modify, supplement, or waive any provision of the DIP Financing Agreements without further approval of this Court; provided, however, that notice of any "material" amendment, modification, supplement, or waiver shall be filed with this Court, and the Committee, the Prepetition Secured Parties, and the U.S. Trustee, each shall have five (5) business days from the date of such filing within which to object in writing to such proposed amendment, modification, supplement, or waiver; provided, further, that if the Committee, the U.S. Trustee, or any Prepetition Secured Party timely objects to any material amendment, modification, supplement, or waiver, then such amendment, modification, supplement, or waiver shall only be permitted pursuant to an order of this Court after notice and a hearing. For purposes of this Paragraph 80, a "material" amendment means: any amendment, modification, supplement, or waiver that (i) increases the interest rate (other than as a result of the imposition of the Default Rate), (ii) increases the committed amounts under the DIP Credit Agreement, (iii) changes the maturity date of the DIP Facility to a date sooner than that which is provided under the DIP Credit Agreement and this Final Order as of the date hereof, (iv) amends any Event of Default under the DIP Credit Agreement to make same more restrictive than exists as of the date hereof, (v) revises any Milestone set forth in the DIP Credit Agreement in a manner that reduces or shortens the time periods

provided for in the DIP Credit Agreement, or (vi) otherwise modifies any of the DIP Financing Agreements in a manner adverse and/or less favorable to the Debtors. All amendments, modifications, supplements, or waivers of any of the provisions hereof shall not be effective unless set forth in writing, signed by on behalf of the Debtors, the DIP Agent and, if required, approved by this Court. Notwithstanding anything in this Paragraph 80 to the contrary, the Debtors and the DIP Agent shall not amend, modify, supplement, or waive any provision of the DIP Financing Agreements that provides for repayment in full of the Prepetition Secured Debt on or before August 15, 2019 at 2:00 pm (New York time).

H. Limits on Lender Liability

81. Nothing in the Interim Orders, this Final Order, any of the DIP Financing Agreements, or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties of any liability for any claims arising from any activities by the Debtors in the operation of their businesses, whether before or after the Petition Date, or in connection with the administration of these Chapter 11 Cases. The DIP Agent, the DIP Lenders, and the Prepetition Secured Parties shall not, solely by reason of having made, or consented to the making of, loans under the DIP Facility, be deemed in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended, or any similar federal or state statute). Nothing in the Interim Orders, this Final Order, and/or the DIP Financing Agreements, shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or any of the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of the Debtors.

I. Survival of Interim Order

82. The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered:

(a) confirming any Plan in the Chapter 11 Cases,

(b) converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code,

(c) dismissing the Chapter 11 Cases,

(d) withdrawing of the reference of the Chapter 11 Cases from this Court, or

(e) providing for abstention from handling or retaining of jurisdiction of the Chapter 11 Cases in this Court.

83. The terms and provisions of this Final Order, including any protections granted the DIP Parties and the Prepetition Secured Parties and the DIP Protections granted pursuant to this Final Order, shall continue in full force and effect notwithstanding the entry of any order described in Paragraph 82 hereof, and such DIP Protections and protections for the DIP Parties and the Prepetition Secured Parties shall maintain their priority as provided by the Interim Orders and this Final Order until all of the DIP Obligations of the Debtors to the DIP Lenders pursuant to the DIP Credit Agreement have indefeasibly been paid in full in cash and discharged (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms) and, with respect to any protections granted to the Prepetition Secured Parties herein, until the Indemnity Termination Date has occurred.

J. Inconsistency

84. Up to the entry of this Final Order, in the event of any inconsistency between the Interim Orders (as applicable), on the one hand, and the terms and conditions of the DIP Credit Agreement, the DIP Financing Agreements, or the other DIP Financing Agreements, on the other hand, the provisions of the Interim Orders (as applicable) shall govern and control. Upon the entry of this Final Order, in the event of any inconsistency between this Final Order, on the one hand, and the terms and conditions of the DIP Credit Agreement, the DIP Financing Agreements, or the other DIP Financing Agreements, on the other hand, the provisions of this Final Order shall govern and control.

K. Enforceability

85. This Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable immediately upon entry by the Court

of this Final Order. To the extent that any finding of fact shall be determined to be a conclusion of law, it shall be so deemed and vice versa.

L. Objections Overruled

86. All objections to the DIP Motions to the extent not withdrawn or resolved, are hereby overruled.

M. Waiver of Any Applicable Stay

87. Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Final Order.

N. Proofs of Claim

88. The Prepetition Secured Parties and the DIP Parties will not be required to file proofs of claim or any request for payment of an administrative expense in the Chapter 11 Cases or in any Successor Case in order to maintain their respective claims for payment of the Prepetition Secured Obligations under the Prepetition Financing Documents, for payment and performance of the Adequate Protection, for payment of any claim granted in the Interim Orders and/or this Final Order, and/or for payment of the DIP Obligations under the DIP Financing Agreements. The statements of claim in respect of the Prepetition Secured Obligations, Adequate Protection, and DIP Obligations set forth in the Interim Orders and this Final Order, together with the evidence accompanying the DIP Motions and presented at the Interim Hearings and/or Final Hearing are deemed sufficient to and do constitute proofs of claim (and requests for payment of an administrative expense) in respect of such obligations and such secured status. Notwithstanding any order entered by this Court in relation to the establishment of a bar date for filing a claim (including without limitation, administrative claims) in any of the Chapter 11 Cases or in any Successor Case to the contrary, the Prepetition ABL Agent, on behalf and for the benefit of the Prepetition Secured Parties, (i) is hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a single, master consolidated proof of claim in respect of the Prepetition Secured Obligations (including, without limitation, in respect of all guarantees by any of the Debtors of such Prepetition Secured Obligations), the Adequate Protection, and any claim granted in the

Interim Orders and/or this Final Order, in the Debtors' lead Chapter 11 Case, *In re Barneys New York, Inc., et al*. (Case No. 19- 36300 (CGM)), which master proof of claim shall be deemed a valid, timely and properly filed proof of claim against each applicable Debtor in the Chapter 11 Cases and/or in any Successor Case and (ii) shall not be required to file any agreements, documents, or other instruments evidencing such Prepetition Secured Debt, Adequate Protection and/or any claim granted in the Interim Orders and/or this Final Order with such master proof of claim. Any master proof of claim filed by the Prepetition ABL Agent shall be deemed to be in addition to, and not in lieu of, any other proof of claim that may be filed by any of the other Prepetition Secured Parties at such party's election; provided that no such Prepetition Secured Party is required to file any such proof of claim. Notwithstanding anything to the contrary herein, the Debtors reserve the right to estimate or object to the quantum of any contingent, unliquidated Prepetition Secured Obligation, including the Prepetition Indemnity Obligations (if any), or Adequate Protection.

O. Provisions Regarding Certain Leases

89. With respect to those certain real property leases related to the Madison Avenue and Beverly Hills store locations, the Debtors shall either (x) assume both of the leases or (y) reject both of the leases contemporaneously, as the case may be.

P. Headings

90. The headings in this Final Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this Final Order.

Q. Retention of Jurisdiction

91. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

R. Comenity

92. Comenity Capital Bank's ("Comenity") rights of setoff, and/or recoupment with respect to the Credit Card Program Agreement between Comenity Capital Bank and Barney's, Inc. dated as of March 8, 2013, as amended from time to time (the "Program Agreement"): (i) shall not be affected, modified, waived, primed, subordinated, or impaired in any way by this Final Order, (ii) shall not be made subject to,

subordinated by, or pari passu with any (x) secured financing, security interests, or liens and/or (y) super priority, administrative, or adequate protection claims. Notwithstanding anything contained in this subsection to the contrary, nothing herein is intended to expand the rights or privileges set out by the Credit Card Program Agreement or applicable law, or to otherwise alter or affect the relative rights and priorities of the Prepetition Secured Parties and Comenity that existed on the Petition Date

93. Comenity's right to use the Debtors' trademarks, service marks, and/or other rights pertaining to the Debtors' names as set forth in the Program Agreement: (i) shall not be affected, modified, waived, primed, subordinated, or impaired in any way by this Final Order, (ii) shall not be made subject to, subordinated by, or pari passu with any (x) secured financing, security interests, or liens, and/or (y) super priority, administrative, or adequate protection claims. Notwithstanding anything contained in this subsection to the contrary, nothing herein is intended to expand the rights or privileges set out by the Credit Card Program Agreement or applicable law, or to otherwise alter or affect the relative rights and priorities of the Prepetition Secured Parties and Comenity that existed on the Petition Date.

94. All of Comenity's rights, remedies, claims, defenses, and other relief arising from or related to the Program Agreement (including, but not limited to, those set forth in paragraphs 92 and 93 of this Final Order are expressly preserved and reserved.

S. LVMH

95. The Debtors and the DIP Parties have reviewed and intend to execute that certain Master Sales Agreement with certain subsidiaries of LVMH Moët Hennessy - Louis Vuitton SE.

Dated: September 5, 2019
Poughkeepsie, New York

/s/ Cecelia G. Morris

Hon. Cecelia G. Morris
Chief U.S. Bankruptcy Judge

Exhibit A

DIP Credit Agreement

EXECUTION VERSION

SECOND AMENDED AND RESTATED DEBTOR IN POSSESSION SECURED TERM PROMISSORY NOTE

$217,000,000 New York, New York
September 4, 2019

On August 6, 2019 (the "Petition Date"), BARNEY'S INC., (the "Borrower") and certain of its affiliates commenced Chapter 11 Case Nos. 19-36299, 19-36300, 19-36301, 19-36302 and 19-36303 respectively, which cases are being jointly administered under Chapter 11 Case No. 19-36300 (CGM) (each a "Chapter 11 Case" and collectively, the "Chapter 11 Cases") by filing separate voluntary petitions for reorganization relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). The Loan Parties (as defined herein) continue to operate their respective businesses and manage their respective properties as debtors and debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. The Borrower has requested that GACP Finance Co., LLC, as agent (in such capacity, the "Agent") for the lenders (the "DIP Lenders") from time to time party to this Second Amended and Restated Debtor in Possession Secured Term Promissory Note (as amended, modified, or supplemented from time to time, this "Note"), make term loans evidenced by this Note. Certain subsidiaries of the Borrower who comprise the other debtors in the Chapter 11 Cases wish to guaranty the Borrower's Obligations under this Note (collectively, the "Guarantors"), and are simultaneously executing Guarantees in favor of the Agent. The Borrower intends to utilize such Term Loans to (i) repay the Prepetition Secured Debt in full and in cash (other than any Obligations (as defined therein) relating to letters of credit issued under the Prepetition ABL Facility (the "LCs") and Prepetition Secured Contingent Indemnity Claims) and to cash collateralize the LCs (ii) fund general corporate needs, including without limitation working capital and other needs, and (iii) pay administrative expenses of the Chapter 11 Cases, including fees and expenses of professionals, in each case in accordance with the Budget, this Note, the Bankruptcy Code, and the Financing Orders. Capitalized terms used herein and not otherwise defined herein shall have the meanings provided in Section 18 of this Note. This Note is being executed and delivered as an amendment to and a full restatement of the Debtor in Possession Secured Multi-Draw Term Promissory Note dated as of August 6, 2019, among the parties hereto (the "Original Note"), as amended and restated as of August 15, 2019 (the "Restated Note"), and as so, the Restated Note is amended and restated, replaced and superseded by the terms, conditions, agreements, covenants, representations and warranties set forth in this Note without the need for any further actions or notices.

1. Term Loans.

(a) (i) On the Closing Date, the DIP Lenders party to the Original Note provided the Borrower with super-priority secured debtor-in-possession "Tranche A" loans under Section 364(c)(2) and (c)(3) of the Bankruptcy Code, which were made available to the Borrower on August 7, 2019, on the entry of the Interim Order, in the principal amount of $75,000,000 (the "Tranche A Term Loans"), (ii) on the Effective Date, certain DIP Lenders party to the Restated Note provided the Borrower with super-priority secured debtor-in-possession "Tranche B" loans under Section 364(c) and (d) of the Bankruptcy Code (collectively, the "Tranche B Term Loans"),

each of which were made available to the Borrower on August 15, 2019, on the entry of the Second Interim Order, and which were comprised of (A) "Tranche B-1" loans in the principal amount of $71,000,000 (the "Tranche B-1 Term Loans") and (B) "Tranche B-2" loans in the principal amount of $50,000,000 Term Loans, and (iii) on the Effective Date, certain DIP Lenders provided the Borrower with super-priority secured debtor-in-possession "Tranche C" loans under Section 364(c) and (d) of the Bankruptcy Code, all of which were made available to the Borrower on August 15, 2019, on the entry of the Second Interim Order, in the principal amount of $21,000,000 (the "Tranche C Term Loans" and, together with the Tranche A Term Loans and the Tranche B Term Loans, the "Term Loans"). The parties hereto agree that upon the effectiveness of this Note, all term loans under the Restated Note shall be reevidenced as Term Loans of the applicable tranche made by the DIP Lenders hereunder, ratably based on the respective amounts advanced thereunder by each such DIP Lender and the parties agree that the aggregate outstanding principal amount of each tranche of Term Loans on the Second Effective Date is as set forth on Schedule 1(a) hereto. The Term Loans shall be subject to the priority set forth in the applicable Financing Order. The respective Commitments of each DIP Lender were permanently reduced upon the making of each tranche of Term Loan in an amount equal to such tranche of Term Loan. Additionally, at the Borrower's request, certain DIP Lenders and/or at their election, certain of their respective affiliates (collectively in such capacity, the "Consignor") have provided the Loan Parties with a consignment facility to support post-petition inventory purchases, subject to the terms and conditions set forth on Exhibit B attached hereto (the "Consignment Facility"). The Borrower and the Consignor may mutually agree upon new inventory purchases (collectively, the "Consigned Inventory") pursuant to which the Consignor will purchase new inventory from the applicable vendor at prices negotiated between the Loan Parties and such vendor. For the avoidance of doubt, (i) the Consigned Inventory are not assets of the Loan Parties and shall not constitute "Collateral" nor be subject to the liens of the Agent or DIP Lenders hereunder; (ii) upon the sale of any Consigned Inventory, the Loan Parties' share of the proceeds on the Consigned Inventory (less the amounts payable to the Consignor in Section 7(b)(1)) shall constitute "Collateral" hereunder and the other DIP Documents, and (iii) any fees paid to the Loan Parties described on Exhibit B shall constitute "Collateral" hereunder and under the other DIP Documents.

(b) The aggregate principal amount of Terms Loans outstanding shall not exceed $217,000,000, subject to any limitation of credit extensions under this Note and the Financing Orders (the "Maximum Amount").

(c) The Agent shall be entitled to rely upon, and shall be fully protected in relying upon, any borrowing request or similar notice believed by the Agent to be genuine. The Agent may assume that each Person executing and delivering any such notice was duly authorized, unless the responsible individual acting thereon for the Agent has actual knowledge to the contrary.

(d) The Borrower shall utilize the proceeds of Term Loans to (i) repay the Prepetition Secured Debt in full and in cash (other than any Obligations (as defined therein) relating to the LCs and Prepetition Secured Contingent Indemnity Claims) and to cash collateralize the LCs, (ii) fund general corporate needs, including without limitation working capital and other needs, and (iii) pay administrative expenses of the Chapter 11 Cases, including fees and expenses of professionals, in each case in accordance with the Budget, this Note, the Bankruptcy Code, and the Financing Orders); provided, that (a) the Tranche A Term Loans were used on the Closing Date to repay a portion of the Prepetition Secured Debt under the Prepetition ABL Facility, (b)

the Tranche B Term Loans were used to repay in full all remaining outstanding loans and other obligations (other than in respect of the LCs and other than Prepetition Secured Contingent Indemnity Claims) under the Prepetition Credit Agreement, (c) the Tranche C Term Loans shall be used solely to cash collateralize the LCs in accordance with the terms thereof (and to pay reimbursement or other obligations in respect thereof under the Prepetition Credit Agreement, (d) the Term Loans may be used to pay interest, fees, and expenses that constitute DIP Obligations and (e) no portion of any Term Loan shall be used, directly or indirectly, to finance or make any Restricted Payment (except as described in clause (a) of this proviso), or to make any distribution under a plan of reorganization in the Chapter 11 Cases or any similar proceeding of any of the Subsidiaries or affiliates of any of the Loan Parties.

(e) Except to the extent expressly provided otherwise in the Financing Orders, the Obligations shall be deemed to (i) constitute a DIP Superpriority Claim and (ii) be secured pursuant to sections 364(c) and (d) of the Bankruptcy Code.

2. Certain Conditions to Second Effective Date. The Restated Note shall not be amended and restated hereby on the Second Effective Date, if, as of the date thereof:

(a) (i) the Bankruptcy Court shall not have entered the Final Order; or (ii) the Interim Order, the Second Interim Order or the Final Order shall have been stayed, vacated, reversed, modified or amended, in each case, without Agent's consent;

(b) except as occasioned by the commencement of the Chapter 11 Cases and the actions, proceedings, investigations and other matters related thereto or arising therefrom (including any actions taken in accordance with the Budget, the Store Closure Motion, the Sale Motion, this Note or the Financing Orders), any event or circumstance having a Material Adverse Effect shall have occurred since the date hereof;

(c) any Default or Event of Default shall have occurred and be continuing hereunder or under the Restated Note or would result after giving effect to any Term Loan;

(d) Mo Meghji shall no longer be retained as Chief Restructuring Officer of the Loan Parties on terms and conditions (including scope of authority) reasonably acceptable to the Agent;

(e) the Loan Parties shall have filed pleadings with the Bankruptcy Court, which pleadings could affect the rights or remedies of the Agent and the DIP Lenders under this Note and the Financing Orders in a manner that is adverse to the Agent and the DIP Lenders in any material respect, and such pleadings shall not be in form and substance reasonably acceptable to the Agent; or

(f) the Bankruptcy Court shall have entered orders, which orders could affect the rights or remedies of the Agent and the DIP Lenders under this Note and the Financing Orders in a manner adverse to the Agent and the DIP Lenders in any material respect, and such orders shall not be in form and substance reasonably acceptable to the Agent.

This second amendment and restatement of this Note shall be deemed to constitute, as of the Second Effective Date, a reaffirmation by the Borrower of the granting and continuance

of the Liens and guaranties granted in favor of the Agent on behalf of the DIP Lenders, pursuant to the Financing Orders.

3. Payment of Principal. FOR VALUE RECEIVED, the Borrower promises to pay to the Agent, the unpaid principal amount of all Term Loans made by the Agent on behalf of the DIP Lenders to the Borrower, on the Maturity Date, together with all accrued and unpaid interest, fees and expenses to the extent provided in this Note.

4. Payment of Interest.

(a) Tranche A Term Loans.

(1) Subject to the terms of this Note, the Tranche A Term Loans or any portion thereof shall be a LIBOR Rate Loan and shall bear interest on the principal amount thereof from time to time outstanding, from the Closing Date until repaid, at a rate per annum equal to the LIBOR Rate for the Interest Period in effect for the Tranche A Term Loans (or such portion thereof) plus 12.00%.

(b) Tranche B-1 Term Loans.

(1) Subject to the terms of this Note, the Tranche B-1 Term Loans or any portion thereof shall be a LIBOR Rate Loan and shall bear interest on the principal amount thereof from time to time outstanding, from the date of the Tranche B Term Loans until repaid, at a rate per annum equal to the LIBOR Rate for the Interest Period in effect for the Tranche B-1 Term Loans (or such portion thereof) plus 2.25%.

(c) Tranche B-2 Term Loans

(1) Subject to the terms of this Note, the Tranche B-2 Term Loans or any portion thereof shall be a LIBOR Rate Loan and shall bear interest on the principal amount thereof from time to time outstanding, from the date of the Tranche B Term Loans until repaid, at a rate per annum equal to the one-month LIBOR Rate for the Interest Period in effect for the Tranche B-2 Term Loans (or such portion thereof) plus 7.00%.

(d) Tranche C Term Loans

(1) Subject to the terms of this Note, the Tranche C Term Loans or any portion thereof shall bear interest at the per annum rates equal to (x) until any LCs that are cash collateralized with the proceeds of the Tranche C Term Loans are drawn at any time after the Petition Date (and while the proceeds of such Tranche C Term Loans is being held as cash collateral therefor), an amount equal to the sum (if positive) of (i) the aggregate rates at which such undrawn LCs would have accrued fees under the Prepetition Credit Agreement (both to the issuing bank and the participating banks), absent cash collateralization, *minus* (ii) the rate at which such undrawn LCs would accrue fees while fully cash collateralized, and (y) from and after the drawing on any such LC from and after the Petition Date and solely with respect to any drawn amount under such LC, at the rate *per annum* otherwise applicable to the Tranche B-1 Loans.

(e) Interest on the Term Loans shall be payable monthly, in arrears, on the first day of each month, commencing on the first day of the month following the month in which the applicable Term Loan is made. If any payment of any of the Obligations becomes due and payable on a day other than a Business Day, the maturity thereof will be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension.

(f) All computations of fees and interest shall be made by the Agent on the basis of a 360-day year, in each case for the actual number of days occurring in the period for which such fees or interest are payable. Each determination by the Agent of an interest rate hereunder shall be final, binding and conclusive on the Borrower (absent manifest error).

(g) So long as an Event of Default shall have occurred and be continuing, and at the election of the Agent or the Required Lenders, the interest rate applicable to the Obligations shall be increased by two percentage points (2.00%) per annum above the rate of interest otherwise applicable hereunder (the "Default Rate"), and all outstanding Obligations shall bear interest at the Default Rate applicable to such Obligations. Interest at the Default Rate shall accrue from the date of such Event of Default until such Event of Default is cured or waived and shall be payable upon demand.

(h) It is the intention of the parties hereto that the Agent and each DIP Lender shall conform strictly to usury laws applicable to it. Accordingly, if the transactions contemplated hereby or by any other DIP Document would be usurious as to the Agent or any DIP Lender under laws applicable to it (including the laws of the United States of America and the State of New York or any other jurisdiction whose laws may be mandatorily applicable to the Agent or such DIP Lender notwithstanding the other provisions of this Note), then, in that event, notwithstanding anything to the contrary in this Note or any other DIP Document or any agreement entered into in connection with or as security for the Obligations, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under law applicable to the Agent or any DIP Lender that is contracted for, taken, reserved, charged or received by the Agent or such DIP Lender under this Note or any other DIP Document or agreements or otherwise in connection with the Obligations shall under no circumstances exceed the maximum amount allowed by such applicable law, any excess shall be canceled automatically and if theretofore paid shall be credited by the Agent or such DIP Lender on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by the Agent or such DIP Lender, as applicable, to the Borrower). If at any time and from time to time (x) the amount of interest payable to the Agent or any DIP Lender on any date shall be computed at the highest lawful rate applicable to the Agent or such DIP Lender pursuant to this Section 4(h) and (y) in respect of any subsequent interest computation period the amount of interest otherwise payable to the Agent or such DIP Lender would be less than the amount of interest payable to the Agent or such DIP Lender computed at the highest lawful rate applicable to the Agent or such DIP Lender, then the amount of interest payable to the Agent or such DIP Lender in respect of such subsequent interest computation period shall continue to be computed at the highest lawful rate applicable to the Agent or such DIP Lender until the total amount of interest payable to the Agent or such DIP Lender shall equal the total amount of interest which would have been payable to the Agent or such DIP Lender if the total amount of interest had been computed without giving effect to this Section4(h).

(i) The LIBOR Rate may be adjusted by the DIP Lenders on a prospective basis to take into account any additional or increased costs to the DIP Lenders of maintaining or obtaining any eurodollar deposits or increased costs, in each case, due to changes in applicable law (other than change with respect to tax law, which are addressed in Section 10 hereof) occurring subsequent to the commencement of the then applicable Interest Period, including changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), which additional or increased costs would increase the cost of funding loans bearing interest at the LIBOR Rate. In any such event, the DIP Lenders shall give the Borrower notice of such a determination and adjustment and, upon its receipt of the notice from such DIP Lender, the Borrower may, by notice to such DIP Lender (1) request the DIP Lender to furnish to the Borrower a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment or (2) repay the LIBOR Rate Loans with respect to which such adjustment is made.

(j) Anything to the contrary contained herein notwithstanding, the DIP Lenders are not required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues at the LIBOR Rate. The provisions of Sections 4(i) through (k) shall apply as if the DIP Lenders had match funded any Obligation as to which interest is accruing at the LIBOR Rate by acquiring eurodollar deposits for each Interest Period in the amount of the LIBOR Rate Loans.

(k) If, after the date hereof, the DIP Lenders determine that (1) the adoption of or change in any law, rule, regulation or guideline regarding capital requirements for banks or bank holding companies, or any change in the interpretation or application thereof by any governmental authority charged with the administration thereof, or (2) compliance by any of the DIP Lenders or its parent bank holding company with any guideline, request, or directive of any such entity regarding capital adequacy (whether or not having the force of law), has the effect of reducing the return on the DIP Lender's or such holding company's capital as a consequence of the DIP Lender's Term Loans hereunder to a level below that which the DIP Lender or such holding company could have achieved but for such adoption, change, or compliance (taking into consideration the DIP Lender's or such holding company's then existing policies with respect to capital adequacy and assuming the full utilization of such entity's capital) by any amount reasonably deemed by the DIP Lender to be material, then the DIP Lender may notify the Borrower thereof. Following receipt of such notice, the Borrower agrees to pay the DIP Lender on demand the amount of such reduction of return of capital as and when such reduction is determined, payable promptly after presentation by the DIP Lender to the Borrower of a statement in the amount and setting forth in reasonable detail the DIP Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent manifest error). In determining such amount, the DIP Lender may use any reasonable averaging and attribution methods.

(l) The Borrower may elect the Interest Period in effect for the Term Loans (or any portion thereof); provided, that (1) In no event will the Borrower have more than 6 Interest Periods outstanding at any time and (2) if the Agent reasonably determines that the LIBOR Rate is unavailable, then the Term Loans that would otherwise bear interest at the LIBOR rate shall bear interest, at a rate per annum equal to the Base Rate plus, (x) in the case of the Tranche A Term Loans, 11.00%, (y) in the case of the Tranche B-1 Term Loans (and, to the extent

applicable, Tranche C Term Loans), 1.25%, and (z) in the case of the Tranche B-2 Term Loans, 6.00%, in each case on the principal amount thereof from the date that the LIBOR Rate became unavailable until such time the Agent or such DIP Lender determines that the LIBOR Rate is available.

5. Payments. All payments of principal and interest in respect of this Note shall be made in lawful money of the United States of America in same day funds to the Agent at the following account:

Bank:	City National Bank 555 South Flower Street Los Angeles, CA 90071
ABA/Routing:	122016066
Swift Number:	CINAUS6L (International Wires Only)
Account Name:	GACP II, LP
Account Number:	210427139
Reference:	Barney's

or to such other account as shall be designated in a written notice delivered by the Agent to the Borrower. Any payments of Term Loans shall be applied as follows: first, to the payment of all fees (excluding the Exit Fee, the Additional Facility Fee and the Enhancement Fee), and all expenses, to the full extent thereof; second, to the payment of any accrued interest at the Default Rate, if any; third, to the payment of any accrued interest (other than Default Rate interest); fourth, to repay (x) to the extent such proceeds constitute amounts released from being held as cash collateral with the proceeds of Tranche C Term Loans with respect to LCs (other than to repay such reimbursement obligations), the Tranche C Term Loans, and (y) otherwise, pro rata to the Tranche B-1 Term Loans and Tranche C Term Loans (except to the extent that LCs that were cash collateralized by such Tranche C Term Loans remain outstanding and undrawn) to the full extent thereof; fifth, to repay the Tranche B-2 Term Loans to the full extent thereof; sixth, to repay the Tranche A Term Loans and the Original Exit Fee; seventh, to pay, pro rata, all other Obligations in full (excluding the Additional Facility Fee, the Additional Exit Fee and the Enhancement Fee); eighth, to pay, pro rata, the Additional Facility Fee and/or the Additional Exit Fee (to the extent the Additional Facility Fee and/or Additional Exit Fee are then due and payable); ninth, to pay the Enhancement Fee (to the extent any Enhancement Fee is then due and payable); and tenth, upon satisfaction in full of all Obligations, to the Borrower or as otherwise required by law. During the continuance of an Event of Default, the Agent shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Obligations (but without changing the priority as among the holders of the Term Loans of each tranche).

6. Optional Prepayments. Subject to the terms and conditions of the Financing Orders and the application of payments in Section 5 hereof, the Borrower shall have the right at any time and from time to time to prepay any Term Loans under this Note in whole or in part (without premium or penalty) upon two (2) Business Days' notice to the Agent; provided that each such prepayment shall be in a minimum amount of $100,000. Notice of prepayment having been

given as aforesaid, the principal amount specified in such notice shall become due and payable on the prepayment date specified therein in the aggregate principal amount specified therein unless such repayment is conditioned on the receipt of any third party funds which are not received. Any prepayment or repayment hereunder shall be accompanied by interest on the principal amount of the Note being prepaid or repaid to the date of prepayment or repayment.

7. Mandatory Prepayments. In each case, subject to the terms and conditions of the Financing Orders and the application of payments in Section 5 hereof and reduced (with respect to clauses (b), (c), (d) and (e) of this paragraph 7), on a dollar for dollar basis, for any Exit Fee payable in connection with such repayment:

(a) If at any time the aggregate outstanding principal amount of the Term Loans exceed the Maximum Amount, the Borrower shall immediately repay the aggregate outstanding Term Loans to the extent required to eliminate such excess.

(b) Immediately upon receipt by any Loan Party of cash proceeds of any asset disposition, unless the Agent agrees otherwise, such Loan Party shall contribute such proceeds to the Borrower and the Borrower shall prepay the Term Loans in an amount equal to all such proceeds, net of (1) commissions and other reasonable and customary transaction costs, fees and expenses properly attributable to such transaction and payable by the Borrower or any Loan Party in connection therewith (in each case, paid to non-affiliates), (2) transfer, sales, or similar taxes actually paid or payable by a Loan Party in connection with such disposition, and (3) amounts required to be applied to the repayment of debt secured by such assets sold and secured by a Lien that is senior to the Liens securing the Obligations under this Note. Notwithstanding anything in this Note to the contrary, (i) the following shall not be subject to mandatory prepayment under this clause (b): proceeds of sales of Inventory or other sales in the ordinary course of business or in accordance with the Budget, the Store Closure Motion, or the Financing Orders, and (ii) if the Borrower or any Loan Party and the Consignor enter into a Consignment Facility, the proceeds of sales of Consigned Inventory shall be paid to Consignor as follows:

(1) Upon the sale of an item of Consigned Inventory by or on behalf of the Borrower or any Loan Party, the Borrower or such Loan Party shall pay the Consignor the applicable invoice price plus the applicable Consignment Fee.

(c) If any Loan Party issues any debt securities not permitted under this Note, no later than the Business Day following the date of receipt of the cash proceeds thereof, the Borrower shall prepay the Term Loans in an amount equal to all such proceeds, net of underwriting discounts and commissions and other reasonable costs or fees paid to non-affiliates in connection therewith.

(d) Upon the receipt by any Loan Party or any of their Subsidiaries of any Extraordinary Receipts, the Borrower shall prepay the outstanding principal of the Term Loans in an amount equal to all such Extraordinary Receipts, net of any expenses incurred in collecting such Extraordinary Receipts.

(e) Upon release of any amounts being held as cash collateral with respect to LCs (other than to repay reimbursement and other obligations with respect to such LCs under the

Prepetition Credit Agreement), the Borrower shall immediately prepay the outstanding principal amount of the Tranche C Term Loans in an amount equal to such released amounts.

(f) No Implied Consent. Nothing in this Section 7 shall be construed to constitute the Agent's or any DIP Lender's consent to any transaction that is not permitted by other provisions of this Note or the other DIP Documents.

8. Fees. Borrower shall pay to the Agent for the account of the DIP Lenders the following fees:

(a) Facility Fee. On the Closing Date, the Borrower paid in cash to the Agent (under the Original Note) the Facility Fee (as defined in the Original Note) equal to 5% of the principal amount of the Tranche A Term Loans (the "Original Facility Fee"), which was fully earned upon the entry of the Interim Order and non-refundable when paid; it being acknowledged and agreed that the Facility Fee (as defined in the Original Note) has been paid. In addition, the Borrower shall pay to the Agent in cash, for the benefit of the Lenders holding Tranche A Term Loans, an additional facility fee (the "Additional Facility Fee" and, together with the Original Facility Fee, the "Facility Fee") equal to 3% of the principal amount of the Tranche A Term Loans funded on the Closing Date, which Additional Facility Fee shall be fully earned upon the entry of the Final Order and non-refundable when paid and shall be due and payable on the Maturity Date; *provided* that the Additional Facility Fee shall not be payable prior to October 24, 2019 and shall be payable from the net sale or liquidation proceeds of the Collateral (other than with respect to the sale of inventory or other sales in the ordinary course of business (which, for the avoidance of doubt, shall exclude any sale of inventory in accordance with a store closure or other form of liquidation)) or the sale of the reorganized Debtors' equity interests (under a chapter 11 plan) remaining after repayment of all Obligations (including the Original Exit Fee, but excluding the Enhancement Fee and the Additional Exit Fee), but prior to the payment of administrative expenses and priority claims as more particularly described in the Financing Orders and in the manner set forth in the Financing Orders.

(b) Weekly Fee. On the Effective Date and on each weekly anniversary of the Effective Date thereafter on which any Tranche B Term Loans or Tranche C Term Loans shall remain outstanding, the Borrower shall pay to the Agent for the benefit of the Lenders holding Tranche B Term Loans and Tranche C Loans, a non-refundable fee of $100,000 (to be shared ratably among such Lenders based on the aggregate outstanding amount of Tranche B Term Loans and Tranche C Term Loans) to be paid in cash, which fee shall be fully earned on the Effective Date and on each weekly anniversary thereafter.

(c) Exit Fee. The Borrower shall pay to the Agent, for the benefit of the Lenders holding Tranche A Term Loans, a non-refundable exit fee (the "Original Exit Fee") equal to 5% of the amount of Tranche A Term Loans on the Closing Date, which was fully earned on the Closing Date, and when paid, shall be paid in cash on the earlier of (a) the Maturity Date and (b) the date of any repayment, satisfaction, distribution, reduction or other discharge of any such Tranche A Term Loans (in each case, based on the aggregate amount of the affected Tranche A Term Loans). In addition, the Borrower shall pay to the Agent in cash, for the benefit of the Lenders holding Tranche A Term Loans, a non-refundable additional exit fee (the "Additional Exit Fee" and, together with the Original Exit Fee, the "Exit Fee") equal to 3% of the amount of Tranche

A Term Loans funded on the Closing Date, which Additional Exit Fee shall be fully earned on the Second Effective Date, and shall be due and payable on the earlier of (i) the Maturity Date and (ii) the date of any repayment, satisfaction, distribution, reduction or other discharge of any such Tranche A Term Loans (in each case, based on the aggregate amount of the affected Tranche A Term Loans); *provided* that the Additional Exit Fee shall not be payable prior to October 24, 2019 and shall be payable from the net sale or liquidation proceeds of the Collateral (other than with respect to the sale of inventory or other sales in the ordinary course of business (which, for the avoidance of doubt, shall exclude any sale of inventory in accordance with a store closure or other form of liquidation)) or the sale of the reorganized Debtors' equity interests (under a chapter 11 plan) remaining after repayment of all Obligations (including the Original Exit Fee, but excluding the Enhancement Fee and the Additional Facility Fee), but prior to the payment of administrative expenses and priority claims as more particularly described in the Financing Orders and in the manner set forth in the Financing Orders.

(d) Enhancement Fee. The Borrower shall pay to the Agent, for the benefit of the Lenders holding Tranche A Term Loans, upon the disposition of the Collateral (other than with respect to the sale of inventory or other sales in the ordinary course of business (which, for the avoidance of doubt, shall exclude any sale of inventory in accordance with a store closure or other form of liquidation)) or the sale of the reorganized Debtors' equity interests (under a chapter 11 plan), 25.0% (the "Enhancement Fee") of any proceeds remaining after (i) repayment of all Obligations (including the Exit Fee and the Additional Facility Fee), (ii) payment of administrative expenses and priority claims and (iii) payment or set aside (including, if applicable, escrow) of $8 million for the benefit of general unsecured creditors, all as more particularly described in the Financing Orders and in the manner set forth in the Financing Orders.

9. Indemnity.

(a) The Borrower shall indemnify and hold harmless the Agent and each DIP Lender and each of their respective affiliates, and each such Person's respective officers, directors, employees, attorneys, agents and representatives (each, an "Indemnified Person"), from and against any and all suits, actions, proceedings, claims, damages, losses, liabilities and expenses (including reasonable attorneys' fees and disbursements and other costs of investigation or defense, including those incurred upon any appeal but limited in each case to one firm of outside counsel for all similarly situated Indemnified Parties) that may be instituted or asserted against or incurred by any such Indemnified Person as the result of credit having been extended, suspended or terminated under this Note and the other DIP Documents and the administration of such credit, and in connection with or arising out of the transactions contemplated hereunder and thereunder and any actions or failures to act in connection therewith, and legal costs and expenses arising out of or incurred in connection with disputes between the parties to any of the DIP Documents on the one hand and any Loan Party on the other hand; provided, that (i) the Borrower shall not be liable for any indemnification to an Indemnified Person to the extent that any such suit, action, proceeding, claim, damage, loss, liability or expense results solely from that Indemnified Person's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction and (ii) this Section 9 shall not apply with respect to taxes other than any taxes that represent losses, claims, damages, etc. arising from any non-tax claim. **NO INDEMNIFIED PERSON SHALL BE RESPONSIBLE OR LIABLE TO ANY OTHER PARTY TO ANY DIP DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OF**

SUCH PERSON OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES THAT MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER ANY DIP DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

10. Adjustments for Withholding, Capital Adequacy Etc. All payments to the Agent by any Loan Party under this Note shall be made free and clear of and without deduction or withholding for any and all taxes, duties, levies, imposts, deductions, charges or withholdings and all related liabilities, including any interest, additions to tax or penalties applicable thereto (all such taxes, duties, levies, imposts, deductions, charges, withholdings and liabilities being referred to as "Taxes") imposed by the United States of America or any other nation or jurisdiction (or any political subdivision or taxing authority of either thereof), unless such Taxes are required by applicable law to be deducted or withheld. If any applicable withholding agent shall be required by applicable law to deduct or withhold any such Taxes from or in respect of any amount payable under this Note other than taxes imposed on the Agent or any DIP Lender's overall net income, then (A) if such Tax is an Indemnified Tax, the amount payable by the applicable Loan Party shall be increased as may be necessary so that after making all required deductions or withholdings, (including deductions or withholdings applicable to any additional amounts paid under this Note) the Agent receives an amount equal to the amount it would have received if no such deduction or withholding had been made, (B) the applicable withholding agent shall be entitled to make such deductions or withholdings, and (C) the applicable withholding agent shall timely pay the full amount deducted or withheld to the relevant governmental entity in accordance with applicable law.

If the effect of the adoption, effectiveness, phase-in or applicability after the date hereof of any law, rule or regulation (including without limitation any tax, duty, charge or withholding on or from payments due from any Loan Party (but excluding Indemnified Taxes, Excluded Taxes, and taxation on the overall net income of the DIP Lenders)), or any change therein or in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, is to reduce the rate of return on the capital of the Agent with respect to this Note or to increase the cost to the Agent of making or maintaining amounts available under this Note, the Borrower (on behalf of itself and the other Loan Parties) agrees to pay to the Agent such additional amount or amounts as will compensate the Agent on an after-tax basis for such reduction or increase.

The Borrower (on behalf of itself and the other Loan Parties) agrees to timely pay any present or future stamp or documentary taxes or any other excise or property taxes, charges, financial institutions duties, debits taxes or similar levies (all such taxes, charges, duties and levies being referred to as "Other Taxes") which arise from any payment made by any Loan Party under this Note or from the execution, delivery or registration of, or otherwise with respect to, this Note.

The Loan Parties shall indemnify the Agent and each of the DIP Lenders, within 10 days after demand therefor, for the full amount of Indemnified Taxes (including, without limitation, any Indemnified Taxes imposed by any jurisdiction on amounts payable by the Borrower hereunder) paid or payable by the Agent or any DIP Lender and any liability (including

penalties, interest and expenses) arising from or with respect to such Indemnified Taxes, whether or not they were correctly or legally asserted, excluding taxes imposed on the Agent or any DIP Lender's overall net income. Payment under this indemnification shall be made upon demand. A certificate as to the amount of such Indemnified Taxes submitted to the Borrower by the Agent shall be conclusive evidence, absent manifest error, of the amount due from the Loan Parties to the DIP Lenders.

The Borrower shall furnish to the DIP Lenders the original or a certified copy of a receipt evidencing any payment of Taxes made by a Loan Party pursuant to this Section 10 within thirty (30) days after the date of any such payment. If any Recipient becomes aware (in its sole discretion exercised in good faith) that it has received a refund of any Taxes with respect to which any Loan Party has paid any amount pursuant to this Section 10, such Recipient shall pay the amount of such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such Recipient and without interest (other than any interest received from the relevant governmental authority with respect thereto), to the Borrower promptly after receipt thereof. This paragraph shall not be construed to require any Recipient to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to Borrower or any other Person.

Any Recipient of a payment hereunder shall, to the extent it is legally entitled to do so, deliver to the Borrower on or prior to the date hereof (and from time to time thereafter upon the reasonable request of the Borrower), two properly completed and executed copies of IRS Form W-9 and properly completed and executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction (if any) required to be made. In addition, any such Recipient, if reasonably requested by the Borrower, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower as will enable the Borrower to determine whether or not such Recipient is subject to backup withholding or information reporting requirements. Each Recipient agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall timely update such form or certification or promptly notify the Borrower in writing of its legal inability to do so.

11. Priority of Obligations and DIP Lenders' Liens.

(a) To secure all of the Borrower's Obligations now existing or hereafter arising, the Agent is granted (i) a super-priority administrative claim against each of the Borrower and Guarantors pursuant to Section 364(c)(1) of the Bankruptcy Code, and except as set forth in the Financing Orders, having a priority over all other costs and expenses of administration of any kind, including those specified in, or ordered pursuant to, Sections 105, 326, 328, 330, 331, 363, 364, 365, 503, 506, 507, 546, 726, 1113 or 1114 of the Bankruptcy Code or any other provision of the Bankruptcy Code or otherwise (whether incurred in these Chapter 11 Cases and any Successor Case), and shall at all times be senior to the rights of the Borrower or any domestic or foreign Subsidiary of the Borrower, any Loan Party, any successor trustee or estate representative, or any other creditor or party in interest in the Chapter 11 Cases or any Successor Case (a "DIP Superpriority Claim"), (ii) with respect to the Tranche A Term Loans, pursuant to Sections 364(c) and (d) of the Bankruptcy Code, Liens on, and security interests in, the Collateral, subject only to

the Carve Out, Permitted Prior Liens, Liens in favor of the Tranche B Term Loans and Tranche C Term Loans (in each case, including adequate protections liens), junior Liens in favor of the Prepetition Secured Parties, the Prepetition Indemnity Account Lien and any other Liens as set forth in the Financing Orders, and (iii) with respect to the Tranche B Term Loans and Tranche C Term Loans, pursuant to Sections 364(c) and (d) of the Bankruptcy Code, Liens on, and security interests in, the Collateral, subject only to the Carve Out, Permitted Prior Liens, junior Liens in favor of the Prepetition Secured Parties, the Prepetition Indemnity Account Lien and any other Liens as set forth in the Financing Orders. The security interests and Liens granted to the Agent hereunder shall not be (i) subject to any Lien or security interest which is avoided and preserved for the benefit of the Loan Parties' estates under Section 551 of the Bankruptcy Code, or (ii) except as set forth herein or in the Financing Orders, subordinated to or made pari passu with any other Lien or security interest under Section 364(d) of the Bankruptcy Code or otherwise.

(b) The priority of the Agent's Liens on the Collateral (including without limitation with respect to the Prepetition Indemnity Account) shall be as set forth in the Financing Orders.

(c) Notwithstanding anything herein to the contrary, (i) all proceeds received by the Agent and the DIP Lenders from the Collateral subject to the Liens granted in this Section 11 and in each other DIP Document and by the Financing Orders shall be subject to the prior payment of the Carve Out, and as otherwise set forth in the Financing Orders and (ii) no Person entitled to the Carve Out shall be entitled to sell or otherwise dispose, or seek or object to the sale or other disposition, of any Collateral.

(d) The Borrower (on behalf of itself and the other Loan Parties) agrees that the Obligations of such Person shall constitute allowed administrative expenses in the Chapter 11 Cases, having priority over all administrative expenses of and unsecured claims against such Person now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expenses of the kind specified in, or arising or ordered under, Sections 105, 326, 328, 503(b), 506(c), 507(a), 507(b), 546(c), and 1114 of the Bankruptcy Code, except as set forth in the Financing Orders.

(e) The Agent's Liens on the Collateral and the super-priority administrative claim under Section 364(c) of the Bankruptcy Code afforded the Obligations and the Guaranteed Obligations shall, following the occurrence and during the continuation of an Event of Default, be subject to the Carve Out, in accordance with the Financing Orders.

12. Further Assurances. The Borrower agrees that it shall, at the Borrower's reasonable expense and upon the reasonable request of the Agent, duly execute and deliver or cause to be duty executed and delivered, to the Agent or such DIP Lender, as the Agent shall direct such Borrower such further instruments and do and cause to be done such further acts as may be necessary or proper in the reasonable opinion of the Agent to carry out more effectively the provisions and purposes of this Note or any other DIP Document, including, upon the written request of the Agent and in form and substance reasonably satisfactory to the Agent, security agreements, UCC-l financing statements and other Collateral Documents granting to the Agent, on behalf of the DIP Lenders, Liens (subject in all respect to the Financing Orders and the priorities set forth in Section 11 hereof) in the Collateral to secure the Obligations; provided that the

"Collateral" shall not include (such assets "Excluded Assets") (a) leases not subject to a mortgage in favor of the Prepetition Agent as of the Petition Date (the "Unencumbered Leases"), provided that the Collateral shall include proceeds of the Unencumbered Leases. (b) payroll, withholding tax and other fiduciary accounts and all amounts on deposit therein (in each case limited as would have been provided in the Prepetition Financing Documents if such facility had remained in effect), (c) Prepetition Indemnity Account (until such time as is provided in the Financing Orders) and (d) claims under chapter 5 of the Bankruptcy Code ("Avoidance Actions").

13. Reports and Notices. The Borrower agrees that it shall deliver (which delivery may be made by electronic communication (including email)) to the Agent each of the reports and other items set forth on Schedule 13 no later than the times specified therein. The Borrower agrees that no Subsidiary of the Borrower will change its fiscal year in a manner that would have been prohibited by the Prepetition Credit Agreement if such facility had remained in effect. In addition, the Borrower agrees to, and to cause each of its Subsidiaries to, maintain a system of accounting that enables the Borrower and such Subsidiaries to produce financial statements in accordance with GAAP in all material respects.

14. Affirmative Covenants.

The Borrower agrees that:

(a) Upon the reasonable request of the Agent, the Loan Parties will permit any officer, employee, attorney or accountant or agent of the Agent to audit, review, make extracts from or copy, at the Borrower's expense, any and all corporate and financial and other books and records of the Loan Parties at all times during ordinary business hours and upon reasonable advance notice and to discuss the Loan Parties' affairs with any of their directors, officers, employees, attorneys, or accountants. The Borrower will permit the Agent, or any of its officers, employees, accountants, attorneys or agent, to examine and inspect any Collateral or any other property of the Loan Parties at any time during ordinary business hours and upon reasonable prior notice. Notwithstanding the foregoing, none of the Loan Parties will be required to disclose information to the Agent (or any agent or representative thereof) that is prohibited by applicable law or is subject to attorney-client or similar privilege or constitutes attorney work product.

(b) (A) Except as otherwise excused by the Bankruptcy Code, the Borrower and its Subsidiaries will comply with all requirements of applicable law, the non-compliance with which could reasonably be expected to have a Material Adverse Effect and (B) the Borrower and its Subsidiaries will obtain, maintain in effect and comply with all permits, licenses and similar approvals necessary for the operation of its business as now or hereafter conducted other than to the extent contemplated by the Budget, the Store Closure Motion, the Sale Motion or the Financing Orders or to the extent such failure could not reasonably be expected to have a Material Adverse Effect.

(c) In the case of any Debtor, in accordance with the Bankruptcy Code and subject to any required approval by the Bankruptcy Court, pay and discharge promptly when due (x) the Borrower and its Subsidiaries will pay or discharge, when due, (i) all taxes, assessments and governmental charges levied or imposed upon it or upon its income or profits, upon any properties of the Borrower and its Subsidiaries (including, without limitation, the Collateral) or

upon or against the creation, perfection or continuance of the security interest, prior to the date on which penalties attach thereto, except in each case (1) where the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary, (2) to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect, and (3) taxes the nonpayment of which is permitted or required by the Bankruptcy Code, (ii) all federal, state and local taxes required to be withheld by it, and (iii) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien or charge upon any properties of Borrower and its Subsidiaries.

(d) (i) The Borrower and each of its Subsidiaries will keep and maintain the Collateral and all of its other properties necessary or useful in its business in good condition, repair and working order (normal wear and tear excepted) other than to the extent contemplated by the Budget, the Store Closure Motion, the Sale Motion or the Financing Orders, (ii) the Borrower and each of its Subsidiaries will defend the Collateral against all claims or demands of all Persons (other than Permitted Encumbrances) claiming the Collateral or any interest therein, (iii) the Borrower and each of its Subsidiaries will keep all Collateral free and clear of all security interests, liens and encumbrances, except Permitted Encumbrances, and (iv) the Borrower and each of its Subsidiaries will ensure that the mix of Inventory not sold pursuant to the Store Closure Motion (together if applicable, with any Consigned Inventory), as to type, category, style, brand and description, shall be in all material respects, subject to ordinary course of business changes and adjustments, consistent with the level and mix on the Petition Date.

(e) The Borrower and its Subsidiaries will obtain and at all times maintain insurance with responsible and reputable insurers, in such amounts and against such risks as would have been required by the Prepetition ABL Facility had such facility remained in effect. Without limiting the generality of the foregoing, the Borrower and its Subsidiaries will at all times keep all tangible Collateral insured against such risks as would have been required by the Prepetition ABL Facility had such facility remained in effect, with any loss payable to the Agent to the extent of its interest and subject to the Financing Orders, and shall use commercially reasonable efforts to provide within 30 days of the Closing Date that all policies of such insurance shall contain a loss payable endorsement in favor of the Agent and subject to the Financing Orders, in form and substance acceptable to the Agent. The Loan Parties shall use commercially reasonable efforts to provide within 30 days of the Closing Date that all policies of liability insurance required hereunder shall name the Agent as an additional insured.

(f) The Borrower and its Subsidiaries will preserve and maintain their existence and all of their rights, privileges and franchises necessary or desirable in the normal conduct of its business, except to the extent contemplated by the Budget, the Store Closure Motion, the Sale Motion or the Financing Orders.

(g) The Borrower and its Subsidiaries shall, from and after September 4, 2019, at all times operate their business in a manner consistent with the Budget except to the extent of any Permitted Variance.

(h) The Borrower and its Subsidiaries each agree that they shall take all actions necessary to cause each of the following to occur (each a "Milestone" and collectively, the

"Milestones"):

(1) no later than 2 days after the Petition Date, the Interim Order approving the Note shall be entered by the Bankruptcy Court (which Milestone the parties hereto agree has occurred);

(2) no later than August 9, 2019, the Loan Parties shall have filed one or more motions seeking entry of orders authorizing and approving (x) store closure and inventory transfer procedures for certain of the Loan Parties' store locations with such store closings to be conducted by affiliates of the Agent and/or the DIP Lenders who shall have been hired by the Loan Parties pursuant to Section 363 of the Bankruptcy Code to perform such services on a "fee-for-service" basis (the "Store Closure Motion"), and (y) bid and sale procedures for all or substantially all of the Loan Parties' assets (the "Sale Motion"), in each case in form and substance reasonably acceptable to the Agent (which Milestone the parties hereto hereby agree has occurred);

(3) as soon as reasonably practicable but in no event later than August 16, 2019, the Bankruptcy Court shall have entered one or more orders, in form and substance reasonably acceptable to the Agent, granting the relief requested in the Store Closure Motion, which order shall provide, among other things, that the Borrower may designate, or the DIP Lenders may elect in the event the Milestones in subsections (6), (7), or (8) below are not achieved, additional store locations to be closed pursuant thereto on the same terms and conditions set forth therein and that any store closings conducted thereby shall be binding on any chapter 7 or 11 trustee (which Milestone the parties hereto hereby agree has occurred);

(4) no later than 21 days after the Petition Date, the Bankruptcy Court shall have entered an order, in form and substance reasonably acceptable to Agent, establishing bidding procedures in connection with the Sale Motion, which order, shall provide, among other things, that bids for any, or all, of the Loan Parties' assets shall be considered in connection therewith (such order, the "Bid Procedures Order") (which Milestone the parties hereto hereby agree has occurred);

(5) no later than 30 days after the Petition Date, the Final Order approving this Note shall be entered by the Bankruptcy Court;

(6) by October 24, 2019, the Loan Parties shall receive a binding Qualified Bid (as defined by the Bid Procedures Order) that provides sufficient cash consideration to indefeasibly pay in full all of the Obligations under this Note (such bid, the "Acceptable Bid");

(7) no later than October 30, 2019, the Bankruptcy Court shall have entered one or more orders, in form and substance reasonably acceptable to the Agent, (i) granting the relief requested in the Sale Motion and (ii) approving the binding Acceptable Bid; and

(8) no later than by November 2, 2019, a closing of the Acceptable Bid shall have occurred.

(i) [Reserved].

(j) The gross margin earned on the sale of Inventory shall not be more than 2% less than the gross margin forecasted in the file named "190804 - BNY DIP Budget (Hilco Pivot at 60 Days ~$2mm Merch per Week).xlsm" on the "Direct Cash Flow Tab" in row "198" (other than in connection with store closure sales and consignments) tested weekly and calculated in accordance with the Loan Parties' inventory ledgers, in the aggregate, for sales occurring in the Cumulative Three-Week Period prior to such test.

15. Negative Covenants.

The Borrower and its Subsidiaries each agree that, without the prior written consent of the Agent and other than in accordance with the Budget, the Store Closure Motion, the Sale Motion or the Financing Orders or as would have been permitted by the Prepetition ABL Facility had such facility remained in effect (assuming that all dollar baskets were $0 and that any conditions relating to availability, liquidity or Payment Conditions (as defined therein) were not satisfied):

(a) Neither the Borrower nor any of its Subsidiaries shall directly or indirectly, by operation of law or otherwise, (i) form or acquire any Subsidiary, or (ii) merge with, consolidate with, acquire all or substantially all of the assets or capital Stock of, or otherwise combine with or acquire, any Person, except in the case of this clause (ii), with respect to existing Subsidiaries to the extent consented to by the Agent (which consent shall not be unreasonably withheld).

(b) Neither the Borrower nor any of its Subsidiaries shall create, incur, assume or permit to exist any Indebtedness for borrowed money in an amount in excess of $500,000 in the aggregate, except (without duplication), to the extent not prohibited by the Financing Orders, Permitted Indebtedness.

(c) [Reserved].

(d) Neither the Borrower nor any of its Subsidiaries shall create, incur, assume or permit to exist any Lien securing obligations in an amount in excess of $500,000 in the aggregate on or with respect to any of its properties or assets (whether now owned or hereafter acquired) except for Permitted Encumbrances.

(e) Neither the Borrower nor any of its Subsidiaries shall (a) make any Restricted Payment, except dividends and distributions by Subsidiaries of the Borrower paid to the Borrower or other wholly-owned Subsidiaries of the Borrower and (b) make any payment in respect of, or repurchase, redeem, retire or defease any, prepetition Indebtedness, except pursuant to the terms of the Financing Orders.

(f) Neither the Borrower nor any of its Subsidiaries will assume, guarantee, endorse or otherwise become directly or contingently liable in connection with any obligations of any other Person (other than the Borrower or any of its Subsidiaries), except the endorsement of negotiable instruments by Borrower and its Subsidiaries for the deposit or collection or similar

transactions in the ordinary course of business.

(g) Neither the Borrower nor any of its Subsidiaries will convey, sell, lease, assign, transfer or otherwise dispose of any of its property, business or assets, whether now owned or hereinafter acquired, or engage any third party provider to assist in disposition of the foregoing, whether pursuant to Sections 327, 328, or 363 of the Bankruptcy Code, other than (a) the sale of Inventory (or in the event applicable, Consigned Inventory) in the ordinary course of business and or in accordance with the Budget, the Store Closure Motion, the Sale Motion or the Financing Orders, (b) the sale or disposition of obsolete equipment and (c) the sale of other property on terms acceptable to the Agent.

(h) Neither the Borrower nor any of its Subsidiaries shall consent to any amendment, supplement or other modification of any of the terms or provisions contained in, or applicable to (a) the Financing Orders or (b) the Prepetition Secured Debt, except as otherwise provided in the Financing Orders. Except for (i) claims of employees for unpaid wages, bonuses, accrued vacation and sick leave time, business expenses and contributions to employee benefit plans for the period immediately preceding the Petition Date and prepetition severance obligations, in each case to the extent permitted to be paid by order of the Bankruptcy Court, (ii) cure payments made in accordance with Section 365(b)(l)(A) of the Bankruptcy Code, (iii) utility deposits made in accordance with Section 366 of the Bankruptcy Code, (iv) payments permitted by the Financing Orders and the Budget and (v) payments permitted under Section 15(e), neither the Borrower nor any of its Subsidiaries shall make any payment in respect of, or repurchase, redeem, retire or defease any, prepetition Indebtedness, except for other payments consented to by the Agent in writing.

(i) Neither the Borrowers nor any of its Subsidiaries shall make any investment in, or make loans or advances of money to, any Person, through the direct or indirect lending of money, holding of securities or otherwise.

(j) The Borrower shall maintain Excess Availability at all times at least equal to 10% of the Borrowing Base, as further provided in the Financing Orders.

(k) Neither the Loan Parties nor any of their Subsidiaries shall permit any unspent amounts on Inventory line items in the Budget to instead be spent on any non-inventory line item in the Budget.

16. Events of Default; Rights and Remedies. Notwithstanding the provisions of Section 362 of the Bankruptcy Code and without application or motion to the Bankruptcy Court, the occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an "Event of Default" hereunder:

A. The Borrower (i) shall fail to make any payment of principal of, or interest on, or fees owing in respect of, the Term Loans or any of the other Obligations when due and payable, or (ii) shall fail to pay or reimburse the Agent on behalf of the DIP Lenders for any expense reimbursable hereunder or under any other DIP Document within three (3) Business Days following the Agent's demands for such reimbursement or payment.

B. Any Loan Party shall fail to comply with any of the provisions of (i)

Sections 13, 14(b), 14(d), 14(e), 14(f), of this Note and such failure shall remain uncured for a period of one (1) Business Day after notice from the Agent, or (ii) Section 14(a) of this Note and such failure shall remain uncured for a period of three (3) Business Days after notice from the Agent, or (iii) Sections 14(g), 14(h), 14(j), or 15 of this Note or any material provision of the Guaranty.

C. Any Loan Party shall fail to comply with any of other provision of this Note or any of the other DIP Documents (other than any provision embodied in or covered by any other clause of this Section 16) and the same, if capable of being remedied, shall remain unremedied for ten (10) days after the earlier of the date a senior officer or any Loan Party becomes aware of such failure and the date written notice of such default shall have been given by the Agent to such Loan Party.

D. Except for defaults occasioned by the filing of the Chapter 11 Cases and defaults resulting from obligations with respect to which the Bankruptcy Code prohibits any Loan Party from complying or permits any Loan Party not to comply, a default or breach shall occur under any other agreement, document or instrument to which any Loan Party is a party that is not cured within any applicable grace period therefor, and such default or breach (i) involves the failure to make any payment when due in respect of any Indebtedness (other than the Obligations) of any Loan Party in excess of $500,000 in the aggregate, or (ii) causes, or permits any holder of such Indebtedness or a trustee to cause, Indebtedness or a portion thereof in excess of $500,000 in the aggregate to become due prior to its stated maturity or prior to its regularly scheduled dates of payment, regardless of whether such default is waived, or such right is exercised, by such holder or trustee.

E. Any representation or warranty herein or in any other DIP Document or in any written statement, report, financial statement or certificate made or delivered to DIP Lenders by any Loan Party is untrue or incorrect in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date when made or deemed made.

F. Any Loan Party shall bring a motion in any Chapter 11 Case: (i) to obtain financing from any Person other than DIP Lenders under Section 364(c) or 364(d) of the Bankruptcy Code, except to the extent the proceeds of such financing would be used to repay in full in cash all of the Obligations under this Note, including without limitation the Exit Fee, the Additional Facility Fee and the Enhancement Fee (if any); (ii) to grant any Lien other than Permitted Encumbrances upon or affecting any Collateral, except to the extent the proceeds of any such financing would be used to repay in full all of the Obligations under this Note; (iii) to recover from any portion of the Collateral any costs or expenses of preserving or disposing of such Collateral under Section 506(c) of the Bankruptcy Code; or (iv) to authorize any other action or actions materially adverse to the Agent or the DIP Lenders, or the Agent's rights and remedies hereunder or their interests in the Collateral.

G. Any Loan Party permits a plan or plans of reorganization to be filed, or permits the entry of an order in any of the Chapter 11 Cases confirming a plan or plans of reorganization, that does not contain a provision for the repayment in full in cash of all the Obligations under this Note on or before the effective date of such plan or plans.

H. The filing of any motion by the Borrower or any Loan Party seeking, or the entry of any order in the Chapter 11 Cases in respect of, any claim or claims under Section 506(c) of the Bankruptcy Code against or with respect to any Collateral.

I. The sale without the Agent's consent, of all or substantially all of Borrower's assets either through a sale under Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Chapter 11 Cases, or otherwise, that does not provide for payment in full in cash of the Obligations, including without limitation the Exit Fee, the Additional Facility Fee and the Enhancement Fee (if any).

J. [Reserved].

K. The entry by the Bankruptcy Court of an order authorizing the appointment of an interim or permanent trustee in the Chapter 11 Cases or the appointment of an examiner in the Chapter 11 Cases with expanded powers to operate or manage the financial affairs, business, or reorganization of any Loan Party.

L. The Chapter 11 Cases, or any of them, shall be dismissed or converted from cases under Chapter 11 to cases under Chapter 7 of the Bankruptcy Code.

M. The entry of an order in any Chapter 11 Case avoiding or requiring repayment of any portion of the payments made on account of the Obligations owing under this Note or the other DIP Documents.

N. The entry of an order in any Chapter 11 Case granting any other super-priority administrative claim or Lien equal to or superior to that granted to the Agent (other than any such claims or Liens permitted by Section 11 hereof and the Financing Orders), unless (i) consented to by the Agent or (ii) the Obligations (including the Exit Fee, the Additional Facility Fee and the Enhancement Fee (if any)) are paid in full in cash.

O. The entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code to allow any creditor (other than the Agent) to execute upon or enforce a Lien on any Collateral except with respect to Permitted Encumbrances arising prior to the Petition Date in an aggregate amount not to exceed $500,000.

P. The Financing Orders (or either of them) shall be stayed, amended, modified, reversed or revoked in any respect without the Agent's prior written consent.

Q. There shall commence any suit or action against the Agent or any DIP Lender or any lenders or agents under the Prepetition ABL Facility by or on behalf of (i) any Loan Party or (ii) any official committee in the Chapter 11 Cases, in each case, that asserts a claim or seeks a legal or equitable remedy that would have the effect of subordinating the claim or Lien of DIP Lenders and, if such suit or action is commenced by any Person other than Borrower or any Subsidiary, officer, or employee of Borrower, such suit or action shall not have been dismissed or stayed within 10 days after service thereof on the Agent or any DIP Lender, as applicable, and, if stayed, such stay shall have been lifted.

R. [Reserved]

S. Any material provision of any material DIP Document shall for any reason cease to be valid, binding and enforceable in accordance with its terms (or any Loan Party shall challenge the enforceability of any DIP Document or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of any DIP Document has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms), or any material Lien created under any DIP Document shall cease to be a valid and perfected Lien (except as otherwise permitted herein or in the Financing Orders) in any of the Collateral purported to be covered thereby.

T. In the event the accrued amount of professional fees for case professionals for the applicable Cumulative Three-Week Period exceed by greater than 10.0% the "Total Professional Fee Disbursements" line item as set forth in the Budget for the applicable Cumulative Three-Week Period.

U. Assets of any Loan Party with a fair market value of $500,000 or more are attached, seized, levied upon or subjected to a writ or distress warrant, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors of any Loan Party and such condition continues for ten (10) days or more.

V. A breach by any Loan Party of the terms of any of the Financing Order.

W. A Material Adverse Deviation shall have occurred.

X. Entry of an order authorizing and/or directing the return of goods pursuant to section 546(h) of the Bankruptcy Code (or other return of goods on account of any prepetition indebtedness) to any creditor of any Loan Party.

If any Event of Default shall have occurred and be continuing, then the Agent may, upon written notice to the Borrower and subject to the terms of the Financing Orders: (i) declare all or any portion of the Obligations, including all or any portion of any Term Loan, to be forthwith due and payable; (ii) revoke the Borrower's rights to use Cash Collateral in which the Agent and the DIP Lenders have an interest; and (iii) exercise any rights and remedies under the DIP Documents or at law or in equity, all in accordance with the Financing Orders. Upon the occurrence of (a) an Event of Default and the exercise by the Agent or the DIP Lenders of their rights and remedies under this Note and the other DIP Documents pursuant to clause (iii) above and subject to the Financing Orders or (b) the failure of any Loan Party to comply with the October 24, 2019 Milestone under Section 14(h)(6), each Loan Party shall assist the Agent in effecting a sale or other disposition of the Collateral upon such terms as are designed to maximize the proceeds obtainable from such sale or other disposition, and the Loan Parties shall immediately commence all liquidation processes in the manner contemplated by the Store Closure Motion.

Except as otherwise provided for in this Note or by applicable law, the Borrower waives: (a) presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights,

documents, instruments, chattel paper and guaranties at any time held by the Agent on which the Borrower may in any way be liable, and hereby ratifies and confirms whatever the Agent may do in this regard; (b) all rights to notice and a hearing prior to the Agent taking possession or control of, or Agent's replevy, attachment or levy upon, the Collateral or any bond or security that might be required by any court prior to allowing Agent to exercise any of its remedies; and (c) the benefit of all valuation, appraisal, marshaling and exemption laws.

To the extent permitted by law and subject in all respects to the terms of the Financing Orders, the Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under section 9-207 of the Uniform Commercial Code or otherwise, shall be to deal with it in the same manner as Agent deals with similar securities and property for its own account, the Agent's duty of care with respect to Collateral in the custody or possession of a bailee or other third person shall be deemed fulfilled if the Agent exercises reasonable care in the selection of the bailee or other third person, and the Agent need not otherwise preserve, protect, insure or care for any Collateral, and the Agent shall not be obligated to preserve any rights any Loan Party may have against prior parties.

For the avoidance of doubt, the Agent or any DIP Lender may be a qualified bidder and the purchaser of any or all of such Collateral at any such sale and the Agent, as agent for and representative of DIP Lenders (or any DIP Lender or the DIP Lenders in its or their respective individual capacities unless the DIP Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such private or public sale (other than any sale in the ordinary course of business), to use and apply any of the Obligations (other than any Obligations in respect of the Enhancement Fee) as a credit on account of the purchase price for any Collateral payable by the Agent (or any DIP Lenders) at such sale.

17. Reference Agreements. This Note evidences the Term Loans that may be made to Borrower from time to time in the aggregate principal amount outstanding of up to $217,000,000 and is issued pursuant to and entitled to the benefits of the Financing Orders, to which reference is hereby made for a more complete statement of the terms and conditions under which the Term Loans evidenced by this Note are made and are to be repaid.

18. Definitions. The following terms used in this Note shall have the following meanings (and any of such terms may, unless the context otherwise requires, be used in the singular or the plural depending on the reference):

"Additional Exit Fee" shall have the meaning given such term in Section 8 of this Note.

"Additional Facility Fee" shall have the meaning given such term in Section 8 of this Note.

"Additional Liquidity Amount" shall mean as of Friday of each week, for the week containing the day that is (a) the Effective Date, $500,000, (b) one week after the Effective Date, $1,000,000, (c) two weeks after the Effective Date, $1,500,000, (d) three weeks after the Effective Date, $2,000,000, (e) four weeks after the Effective Date, $2,750,000, (f) five weeks after the

Effective Date, $3,000,000, (g) six weeks after the Effective Date, $3,500,000, (h) seven weeks after the Effective Date, $4,000,000, (i) eight weeks after the Effective Date, $4,500,000 and (j) nine weeks after the Effective Date and thereafter, $5,000,000.

"Agent Fee Letter" shall have the meaning given to such term in the Restated Note.

"Bankruptcy Code" shall have the meaning given such term in the recital to this Note.

"Bankruptcy Court" shall have the meaning given such term in the recital to this Note.

"Base Rate" shall have the meaning given such term in the Prepetition Credit Agreement whether or not such agreement remains in effect; provided, that, notwithstanding the foregoing, the "Base Rate" hereunder shall be no less than zero percent (0.00%) per annum.

"Borrower" shall have the meaning given such term in the recital to this Note.

"Borrowing Base" means (a) the Borrowing Base (as defined in the Prepetition Credit Agreement as if it was in effect), including, for the avoidance of doubt, the Term Loan Borrowing Base (as defined in the Prepetition Credit Agreement as if it was in effect) and without giving effect to any Reserves (as defined in the Prepetition Credit Agreement as if it was in effect), *plus* (b) the then-applicable Additional Liquidity Amount, calculated in a manner consistent with the Budget.

"Budget" means a 13-week forecast of projected receipts, disbursements, net cash flow, liquidity, loans and availability for the immediately following consecutive 13 weeks after the Petition Date, which shall be in substantially the form as the Initial Budget or otherwise in form and substance acceptable to the Agent and shall be approved by the Agent, in its sole discretion. The initial Budget (the "Initial Budget") shall be the "Approved Budget" (as defined in Section 9 of Second Interim Order).

"Business Day" means any day other than a Saturday, Sunday or legal holiday under the laws of the State of New York or any other day on which banking institutions located in the State of New York are authorized or required by law or other governmental action to close.

"Carve Out" shall have the meaning given such term in the Financing Orders.

"Cash Collateral" shall mean "cash collateral" as that phrase is defined in Section 363(a) of the Bankruptcy Code.

"Chapter 11 Case" and "Chapter 11 Cases" shall have the respective meanings given such terms in the recital to this Note.

"Closing Date" means August 7, 2019.

"Collateral" shall mean the assets and property covered by the Financing Orders and the other Collateral Documents and any other assets and property, real or personal, tangible or

intangible, now existing or hereafter acquired, that may at any time be or become subject to a security interest or Lien in favor of the Agent on behalf of the DIP Lenders, to secure the Obligations and the Guaranteed Obligations; provided that Excluded Assets shall in no event constitute "Collateral." Without limiting the foregoing, the Collateral shall include all present and future property of each Loan Party under Section 541(a) of the Bankruptcy Code and all proceeds thereof, in each case, other than the Excluded Assets.

"Collateral Documents" shall mean any agreement entered into pursuant to Section 12 hereof and all similar agreements entered into guaranteeing payment of, or granting a Lien upon property as security for payment of, the Obligations and the Guaranteed Obligations, including the Financing Orders and the Guaranty.

"Commitment" has the meaning set forth in the Restated Note.

"Commitment Letter" means the Commitment Letter relating to this Note and the Term Loans hereunder, among the parties thereto, dated as of August 9. 2019.

"Consigned Inventory Proceeds" means gross proceeds from the sale of Consigned Inventory, less applicable sales taxes.

"Consignment Facility" shall have the meaning given to such term in Section 1(a) of this Note.

"Consignment Fee" means the fees payable to the Consignor in exchange for providing the Consignment Facility calculated at a rate of 7% per annum of outstanding amounts under the Consignment Facility, payable only with Consigned Inventory Proceeds.

"Consignor" shall have the meaning given to such term in Section 1(a) of this Note.

"Cumulative Three-Week Period" means the three-week period up to and through the Saturday of the most recent week then ended, or if a three-week period has not then elapsed from the Petition Date, such shorter period since the Petition Date through the Saturday of the most recent week then ended.

"Debtors" shall have the meaning given to such term in the Financing Orders.

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

"Default Rate" shall have the meaning given such term in Section 4(g) of this Note.

"DIP Documents" shall mean the Note, the Collateral Documents, the Guaranty, the Agent Fee Letter, the Financing Orders and all other agreements, instruments, documents and certificates executed and delivered to, or in favor of the Agent and including all other pledges, powers of attorney, consents, assignments, contracts, notices, and all other written matter whether heretofore, now or hereafter executed by or on behalf of any Loan Party, or any employee of any Loan Party, and delivered to the Agent in connection with the Note or the transactions contemplated thereby. Any reference in this Note or any other DIP Document to a DIP Document

shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to such DIP Document as the same may be in effect at any and all times such reference becomes operative.

"DIP Lenders" shall have the meaning given such term in the recital to this Note.

"Dollars" or "$" shall mean lawful currency of the United States of America.

"Effective Date" means August 15, 2019.

"Enhancement Fee" shall have the meaning given such term in Section 8 of this Note.

"Event of Default" shall have the meaning given such term in Section 16 of this Note.

"Excess Availability" means, at any time, (a) the Borrowing Base *minus* (b) the principal amount of all Term Loans outstanding at such time reduced on a dollar for dollar basis by the Liquidity Credit.

"Excluded Assets" shall have the meaning given such term in Section 12 of this Note.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any DIP Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof), (b) in the case of a DIP Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such DIP Lender with respect to an applicable interest in a Term Loan or Commitment pursuant to a law in effect on the date on which (i) such DIP Lender acquires such interest in the Term Loans or Commitment or (ii) such DIP Lender changes its lending office, except in each case to the extent that, pursuant to Section 10, amounts with respect to such Taxes were payable either to such DIP Lender's assignor immediately before such DIP Lender became a party hereto or to such DIP Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to provide the Borrower with the tax documentation described in Section 10 hereof and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Exit Fee" shall have the meaning given such term in Section 8 of this Note.

"Extraordinary Receipts" means any cash received by Borrower or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds described Sections 7(b) and (c) hereof or of any cash proceeds provided for in the Budget), including, without limitation, (i) foreign, United States, state or local tax refunds, (ii) pension plan reversions, (iii) proceeds of insurance, (iv) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (v) condemnation awards (and payments in lieu thereof), (vi) indemnity payments and (vii) any purchase price adjustment received in connection with any

purchase agreement.

"Facility Fee" shall have the meaning given such term in Section 8 of this Note.

"FATCA" means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among governmental authorities and implementing such Sections of the Internal Revenue Code.

"Final Order" shall mean the order of the Bankruptcy Court entered in the Chapter 11 Cases after a final hearing pursuant to Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001, satisfactory in form and substance to the Agent in its sole discretion, together with all extensions, modifications and amendments thereto, authorizing Borrower to obtain credit, incur Indebtedness, and grant Liens under this Note, as amended and restated hereby, and/or certain financing documentation, all as set forth in such order.

"Financing Orders" shall mean, collectively, the Interim Order, the Second Interim Order and the Final Order.

"GAAP" shall mean generally accepted accounting principles in the United States of America.

"Guaranteed Obligations" shall mean the obligations to be guaranteed by each Guarantor pursuant to the terms of the Guaranty.

"Guarantor" shall have the meaning given such term in the recital to this Note.

"Guaranty" shall mean a guaranty of the Guarantors, in form and substance satisfactory to the Agent, with respect to the Obligations.

"Indebtedness" shall have the meaning given such term in the Prepetition Credit Agreement whether or not such agreement remains in effect.

"Indemnified Person" shall have the meaning given such term in Section 9 of this Note.

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

"Initial DIP Lenders" means GACP Finance Co., LLC, BRF Finance Co., LLC, and Brigade Capital Management, LP, on behalf of its managed funds and accounts.

"Interest Payment Date" shall mean the first Business Day of each month to occur while such Term Loan is outstanding; provided that, in addition to the foregoing, each of (x) the

date upon which all of the Term Loans have been paid in full and (y) the Maturity Date shall be deemed to be an "Interest Payment Date" with respect to any interest that has then accrued hereunder.

"Interest Period" means, with respect to each LIBOR Rate Loan, a period commencing on the date of the making of such LIBOR Rate Loan and ending 1 month thereafter; provided, however, that (a) interest shall accrue at the applicable rate based upon the LIBOR Rate from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (b) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (c) with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is 1 month after the date on which the Interest Period began, as applicable, and (d) Borrower may not elect an Interest Period which will end after the Maturity Date.

"Interim Order" means that certain Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507 and Fed. R. Bankr. P. 2002, 4001 and 9014 (I) Authorizing Debtors and Debtors in Possession to Obtain Junior Lien Post-Petition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Superpriority Claims, (IV) Granting Adequate Protection to Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief entered by the Bankruptcy Court on August 7, 2019 (ECF No. 49).

"Inventory" shall have the meaning given such term in the Prepetition Credit Agreement whether or not such agreement remains in effect.

"LIBOR Rate" means "LIBO Rate" as such term is defined in the Prepetition Credit Agreement whether or not such agreement remains in effect; provided, that, notwithstanding the foregoing, the “LIBOR Rate” hereunder shall not be less than zero percent (0.00%) per annum.

"LIBOR Rate Loan" means each portion of a Term Loan that bears interest at a rate determined by reference to the LIBOR Rate.

"Lien" shall mean any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, lien, charge, claim, security interest, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any lease or any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement perfecting a security interest under the Uniform Commercial Code or comparable law of any jurisdiction).

"Liquidity Credit" means $25,000,000.

"Liquidity Forecast" means a rolling 13-week forecast of projected liquidity for the consecutive 13-week period immediately following the date of delivery of such forecast as certified in a certificate delivered by the Borrower.

"Loan Party" means Borrower and any Guarantor.

"Material Adverse Deviation" means, from and after September 4, 2019, as of any date of determination, an adverse deviation of more than the Permitted Variance from the aggregate amount set forth in the following line items of the Budget: "Operating Disbursements" and "Net Cash Flow", in each case, for such Cumulative Three-Week Period.

"Material Adverse Effect" means a material adverse effect on (i) the operations, business, assets, properties or condition (financial or otherwise) of the Loan Parties taken as a whole, (ii) the ability of the Borrower or the Loan Parties as a whole to perform any of their material obligations under any material DIP Document to which it is a party, (iii) the legality, validity or enforceability of this Note or any other material DIP Document, (iv) the rights and remedies of the Agent and DIP Lenders taken as a whole under the DIP Documents, or (v) the validity, perfection or priority of a Lien in favor of DIP Lenders on any material portion of the Collateral.

"Maturity Date" means the earliest to occur of (i) March 31, 2020, (ii) the date that is 30 days following the date of entry of the Interim Order if the Final Order has not been entered by the Bankruptcy Court on or prior to such date, (iii) the consummation of a sale of all or substantially all of the Loan Parties' assets; (iv) the substantial consummation of a plan of reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order of the Bankruptcy Court, or (v) the date on which the Term Loans are accelerated pursuant to Section 16.

"Maximum Amount" shall have the meaning given such term in Section 1 of this Note.

"Milestones" shall have the meaning given such term in Section 14 of this Note.

"Note" shall have the meaning given such term in the recital to this Note.

"Obligations" shall mean all loans, advances, debts, liabilities and obligations for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or determinable) owing by Borrower to DIP Lenders, and all covenants and duties regarding such amounts, of any kind or nature, present or future, whether or not evidenced by any note, agreement or other instrument, arising under the Note or any of the other DIP Documents. This term includes all principal, interest, fees, charges, expenses, attorneys' fees and any other sum chargeable to Borrower under the Note or any of the other DIP Documents, including the Exit Fee, the Additional Facility Fee and the Enhancement Fee.

"Original Exit Fee" shall have the meaning given such term in Section 8 of this Note.

"Original Facility Fee" shall have the meaning given such term in Section 8 of this Note.

"Other Taxes" shall have the meaning given such term in Section 10 of this Note.

"Participant Register" shall have the meaning given such term in Section 20 of this Note.

"Payment Office" means such office or offices of the Agent as may be designated in writing from time to time by the Agent to Borrower.

"Permitted Encumbrances" shall mean the following encumbrances: (a) Liens for taxes or assessments or other governmental charges (i) not yet due and payable, (ii) that are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP, or (iii) the nonpayment of which is permitted or required by the Bankruptcy Code; (b) pledges or deposits of money securing statutory obligations under workmen's compensation, unemployment insurance, social security or public liability laws or similar legislation (excluding Liens under ERISA); (c) pledges or deposits of money securing bids, tenders, contracts (other than contracts for the payment of money) or leases to which any Loan Party is a party as lessee made in the ordinary course of business; (d) carriers', warehousemen's, suppliers' or other similar possessory liens arising in the ordinary course of business; (e) deposits securing, or in lieu of, surety, appeal or customs bonds in proceedings to which any Loan Party is a party; (f) zoning restrictions, easements, licenses, or other restrictions on the use of any real estate or other minor irregularities in title (including leasehold title) thereto so long as the same do not materially impair the use, value, or marketability of such real estate; (g) the Agent's and DIP Lenders' Liens; (h) Liens existing on the Petition Date, to the extent valid, enforceable, perfected and not subject to avoidance as of the Petition Date or perfected after the Petition Date pursuant to section 546(b) of the Bankruptcy Code; (i) other Liens granted pursuant to the Financing Order (including the Carve-Out, junior liens securing the Prepetition Secured Contingent Indemnity Claims and the Prepetition Indemnity Account Lien) and (j) Liens on goods delivered to any Loan Party after the Petition Date under any consignment or similar title retention agreements.

"Permitted Indebtedness" shall mean: (a) current Indebtedness incurred in the ordinary course of business for supplies, equipment, services, taxes or labor; (b) Indebtedness arising under this Note and the other DIP Documents; (c) deferred taxes and other expenses incurred in the ordinary course of business; (d) any Indebtedness existing on the Petition Date; and (e) administrative expenses of Borrower for which the Bankruptcy Court has not directed payment.

"Permitted Prior Liens" shall have the meaning given such term in the Financing Orders.

"Permitted Variance" means (a) a variance of up to (x) 25% for the first Cumulative Three-Week Periods after the Petition Date and (y) 12.5% thereafter, in each case, between the actual disbursements for the applicable Cumulative Three-Week Period and the "Operating Disbursements" line item as set forth in the Budget for the applicable Cumulative Three-Week Period (other than professional fees and disbursements in connection with store closure sales and consignments), (b) a negative variance of up to (x) 25% for the first Cumulative Three-Week Periods after the Petition Date and (y) 12.5% thereafter, in each case, between the actual net cash flow for the applicable Cumulative Three-Week Period and the "Net Cash Flow" line item as set forth in the Budget for the applicable Cumulative Three-Week Period (other than receipts in connection with store closure sales and consignments), and (c) a negative variance of up to (x)

25% for the first Cumulative Three-Week Periods after the Petition Date and (y) 12.5% thereafter, in each case, between the actual receipts for the applicable Cumulative Three-Week Period and the "Total Cash Receipts" line item as set forth in the Budget for the applicable Cumulative Three-Week Period (other than disbursements in connection with store closure sales and consignments).

"Person" shall mean any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, other entity or government (whether federal, state, county, city, municipal, local, foreign, or otherwise, including any instrumentality, division, agency, body or department thereof).

"Prepetition ABL Agent" shall have the meaning given such term in the Financing Orders.

"Prepetition ABL Facility" means that certain senior secured asset based revolving credit facility and term loan facility pursuant to the Prepetition Financing Documents.

"Prepetition Credit Agreement" shall have the meaning given such term in the Financing Orders.

"Prepetition Financing Documents" shall have the meaning given such term in the Financing Orders.

"Prepetition Indemnity Account" shall have the meaning given such term in the Financing Orders.

"Prepetition Indemnity Account Lien" shall have the meaning given such term in the Financing Orders.

"Prepetition Secured Contingent Indemnity Claims" means the contingent indemnity obligations due or that may become due to the Prepetition Secured Parties under the Prepetition Financing Documents subject to and in accordance with, the Financing Orders.

"Prepetition Secured Debt" shall have the meaning given such term in the Financing Orders.

"Prepetition Secured Parties" shall have the meaning given such term in the Financing Orders.

"Prepetition Term Loan Parties" shall have the meaning given such term in the Financing Orders.

"Pro Rata Share" means the percentage obtained by dividing (i) the aggregate outstanding principal amount of such DIP Lender's Term Loans by (ii) the aggregate outstanding principal amount of Term Loans of all DIP Lenders.

"Recipient" means the Agent or any DIP Lender, as applicable.

"Register" shall have the meaning given such term in Section 20 of this Note.

"Related Fund" shall mean, with respect to any Person, an affiliate of such Person, or a fund or account managed by such Person or an affiliate of such Person.

"Required Lenders" shall mean, collectively, 100% of the DIP Lenders who are the Initial DIP Lenders or any of their affiliates that become DIP Lenders.

"Restricted Payment" shall mean, with respect to any Person: (a) the declaration or payment of any dividend or the incurrence of any liability to make any other payment or distribution of cash or other property or assets in respect of such Person's Stock; (b) any payment on account of the purchase, redemption, defeasance, sinking fund or other retirement of such Person's Stock or any other payment or distribution made in respect thereof, either directly or indirectly; (c) any payment or prepayment of principal of, premium, if any, or interest, fees or other charges on or with respect to, and any redemption, purchase, retirement, defeasance, sinking fund or similar payment and any claim for rescission with respect to, any subordinated debt of such Person; (d) any payment made to redeem, purchase, repurchase or retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire Stock of such Person now or hereafter outstanding; (e) any payment of a claim for the rescission of the purchase or sale of, or for material damages arising from the purchase or sale of, any shares of such Person's Stock or of a claim for reimbursement, indemnification or contribution arising out of or related to any such claim for damages or rescission; (f) any payment, loan, contribution, or other transfer of funds or other property to any Stockholder of such Person other than payment of compensation in the ordinary course to Stockholders who are employees of such Person; and (g) any payment of management fees (or other fees of a similar nature) by such Person to any Stockholder of such Person or its affiliates.

"Second Effective Date" shall mean the Business Day when each of the conditions applicable to the effectiveness of the second amendment and restatement hereof and listed in Section 2 of this Note shall have been satisfied or waived in a manner reasonably satisfactory to the Agent.

"Second Interim Order" shall mean that certain Second Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507 and Fed. R. Bankr. P. 2002, 4001 and 9014 (I) Authorizing Debtors and Debtors in Possession to Obtain Post-Petition Financing, (II) Granting Liens and Super-Priority Claims, (III) Authorizing Payment of Prepetition Secured Obligations, (IV) Granting Adequate Protection to Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief entered by the Bankruptcy Court on August 15, 2019 (ECF No. 49).

"Stock" shall have the meaning given such term in the Prepetition Credit Agreement whether or not such agreement remains in effect.

"Stockholder" shall mean with respect to any Person, each holder of Stock of such Person.

"Subsidiary" shall have the meaning given such term in the Prepetition Credit Agreement whether or not such agreement remains in effect.

"Successor Case" shall have the meaning given such term in the Financing Orders.

"Taxes" shall have the meaning given such term in Section 10 of this Note.

"Term Loans" shall have the meaning given such term in Section 1 of this Note.

"Tranche A Term Loans" shall have the meaning given to such term in Section 1 of this Note and refers to the $75,000,000 of the Term Loans that were advanced on the Closing Date, which are and shall be secured by, among other things, Liens, and constitute a DIP Superpriority Claim, all to be set forth more fully in the Financing Orders.

"Tranche B Term Loans" shall mean the Tranche B-1 Term Loans and the Tranche B-2 Term Loans.

"Tranche B-1 Term Loans" shall have the meaning given to such term in Section 1 of this Note and refers to the $71,000,000 of the Term Loans that were advanced on the Effective Date, which are and shall be secured by, among other things, Liens, and constitute a DIP Superpriority Claim, all to be set forth more fully in the Financing Orders.

"Tranche B-2 Term Loans" shall have the meaning given to such term in Section 1 of this Note and refers to the $50,000,000 of the Term Loans that were advanced on the Effective Date, which are and shall be secured by, among other things, Liens, and constitute a DIP Superpriority Claim, all to be set forth more fully in the Financing Orders.

"Tranche C Term Loans" shall have the meaning given to such term in Section 1 of this Note and refers to the $21,000,000 of the Term Loans that were advanced on the Effective Date, which are and shall be secured by, among other things, Liens, and constitute a DIP Superpriority Claim, all to be set forth more fully in the Financing Orders.

19. Representations and Warranties. The Borrower and each of its Subsidiaries represent as follows:

(a) the Borrower and each of its Subsidiaries are duly formed and/or organized, validly existing and in good standing under the laws of their jurisdictions of incorporation or formation;

(b) upon entry of the Financing Orders and subject to the terms thereof, the execution and delivery of this Note and the other DIP Documents and the performance by the Borrower of the Borrower's obligations hereunder and under the other DIP Documents are within its corporate powers, have been duly authorized by all necessary corporate action of the Borrower, have received all necessary bankruptcy, insolvency or governmental approvals, and do not and will not contravene or conflict with any provisions of applicable law or of the Borrower's corporate charter or by-laws or of any agreements binding upon or applicable to the Borrower or any of its Subsidiaries or any of their properties;

(c) the Chapter 11 Cases have been duly authorized by all necessary legal and corporate action by or on behalf of each Loan Party and have been duly and properly commenced;

(d) upon entry of the Financing Orders and subject to the terms thereof, this Note and each other DIP Document is the legal, valid and binding obligation, enforceable against the Borrower in accordance with its terms except as limited by equitable principles relating to enforceability.

(e) the Borrower and its Subsidiaries have good and marketable title to, or valid leasehold interests in, all of its property and assets; none of the properties and assets of the Borrower and its Subsidiaries are subject to any Liens other than Permitted Encumbrances;

(f) no information contained in this Note, any of the other DIP Document, any projections, financial statements or collateral reports or other reports from time to time delivered hereunder or any written statement furnished by or on behalf of the Borrower and its Subsidiaries to the DIP Lenders pursuant to the terms of this Note or otherwise contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of all of the circumstances under which they were made;

(g) the Liens granted to the DIP Lenders pursuant to the Collateral Documents and the Financing Orders will at all times be fully perfected Liens in and to the Collateral described therein, subject, as to priority, only to the Permitted Prior Liens, the Prepetition Indemnity Account Lien or other Liens permitted to have such priority under Section 11 of this Note and the Financing Orders;

(h) except for proceedings in the Chapter 11 Cases in connection with the entry of the Financing Orders, no action, claim, lawsuit, demand, investigation or proceeding is now pending or, to the knowledge of the Borrower, threatened against the Borrower of its Subsidiaries before any governmental authority or before any arbitrator or panel of arbitrators that challenges the rights or powers of the Borrower or its Subsidiaries to enter into or perform any of its obligations under the DIP Documents to which it is a party, or the validity or enforceability of any DIP Document or any action taken thereunder;

(i) the Borrower and its Subsidiaries are and will be at all times the owners of the Collateral free and clear of any lien, security interest or other charge or encumbrance except for the security interest created by this Note or any other DIP Documents and the other Permitted Encumbrances;

(j) [reserved]; and

(k) except for the Chapter 11 Cases, there is no order, notice, claim, litigation, proceeding or investigation pending or, to the knowledge of the Borrower, threatened against or in any way affecting (i) any Loan Party, whether or not covered by insurance, that would reasonably be expected to have a Material Adverse Effect or (ii) this Note or any other DIP Document.

20. Agent.

(a) Appointment. Each DIP Lender hereby irrevocably appoints and authorizes the Agent to perform the duties of the Agent as set forth in this Note including: (i) to receive on behalf of each DIP Lender any payment of principal of or interest on any tranche of Term Loans

outstanding hereunder and all other amounts accrued hereunder for the account of the DIP Lenders holding such tranche of Term Loans and paid to the Agent, and to distribute promptly to each DIP Lender its ratable share of all payments so received with respect to such tranche of Term Loans; (ii) to distribute to each DIP Lender copies of all material notices and agreements received by the Agent; (iii) to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Term Loans, and related matters and to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Collateral and related matters; (iv) to execute or file any and all notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to this Note or any other DIP Document; (v) to perform, exercise, and enforce any and all other rights and remedies of the DIP Lenders with respect to the Borrower, the Obligations, or otherwise related to any of same to the extent reasonably incidental to the exercise by the Agent of the rights and remedies specifically authorized to be exercised by the Agent by the terms of this Note or any other DIP Document; (vi) to incur and pay such fees necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to this Note or any other DIP Document; and (vii) to take such action as the Agent deems appropriate on its behalf to administer the Term Loans and the DIP Documents and to exercise such other powers delegated to the Agent by the terms hereof or the other DIP Documents together with such powers as are reasonably incidental thereto to carry out the purposes hereof and thereof.

(b) Nature of Duties. The Agent shall have no duties or responsibilities except those expressly set forth in this Note or in the other DIP Documents. The Agent shall not exercise any discretion, make any determination, grant any consent or approval or take any action (including, without limitation, the exercise of any right or remedy) under any DIP Document, or in connection with the Chapter 11 Cases, except upon the instructions of the Required Lenders (or such greater proportion of the DIP Lenders required hereby or by the Bankruptcy Code, as applicable).

(c) Rights, Exculpation, Etc. The Agent and its directors, officers, agents or employees shall not be liable for any action taken or omitted to be taken by them under or in connection with this Note or the other DIP Documents, except for their own gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction.

(d) Reliance. The Agent shall be entitled to rely upon any written notices, statements, certificates, orders or other documents or any telephone message believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person, and with respect to all matters pertaining to this Note or any of the other DIP Documents and its duties hereunder or thereunder, upon advice of counsel selected by it.

(e) Indemnification. To the extent that the Agent is not reimbursed and indemnified by the Borrower, the DIP Lenders will reimburse and indemnify the Agent from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Agent in any way relating to or arising out of this Note or any of the other DIP Documents or any action taken or omitted by the Agent under this Note or any of the other DIP Documents, in proportion to each DIP Lender's Pro Rata Share.

(f) Collateral Matters.

(1) The DIP Lenders hereby irrevocably authorize the Agent, at its option and in its discretion, to release any Lien granted to or held by the Agent upon any Collateral upon cancellation of the Note and payment and satisfaction of the Term Loans and all other Obligations which have matured and which the Agent has been notified in writing are then due and payable; or constituting property being sold or disposed of in the ordinary course of the Borrower's business or otherwise in compliance with the terms of this Note and the other DIP Documents; or if approved, authorized or ratified in writing by the DIP Lenders.

(2) Without in any manner limiting the Agent's authority to act without any specific or further authorization or consent by the DIP Lenders, each DIP Lender agrees to confirm in writing, upon request by the Agent, the authority to release Collateral conferred upon the Agent under paragraph (f)(1) above.

The Agent shall have no obligation whatsoever to any DIP Lender to assure that the Collateral exists or is owned by the Loan Parties, or is cared for, protected or insured or has been encumbered or that the Lien granted to the Agent pursuant to this Note or any other DIP Document has been properly or sufficiently or lawfully created, perfected, protected or enforced or is entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Agent in this section or in any other DIP Document, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Agent may act in any manner it may deem appropriate, in its sole discretion, given the Agent's own interest in the Collateral as one of the DIP Lenders and that the Agent shall have no duty or liability whatsoever to any other DIP Lender, except as otherwise provided herein.

21. Miscellaneous.

(a) All notices, demands, requests or other communications provided for hereunder shall be in writing (including facsimile communication) and mailed, emailed or delivered as follows:

If to Borrower: BARNEY'S INC.
C/O Barney's New York, Inc.
575 Fifth Avenue
New York NY 10017
Attn: Chief Executive Officer and Chief Financial Officer
Email: gfu@barneys.com
sfisi@barrneys.com

with copies to: KIRKLAND & ELLIS
601 Lexington Avenue
New York, New York 10022
Attn: Josh Sussberg; and Chad Husnick

Email: jsussberg@kirkland.com
chusnick@kirkland.com

If to Agent or any Lender:

GACP FINANCE CO., LLC
21255 Burbank Blvd, Suite 400
Woodland Hills, California 91367
Attn: John Ahn, Robert Louzan and Alex Zuckerman
Email: jahn@gacapitalpartners.com
rlouzan@gacapitalpartners.com
azuckerman@gacapitalpartners.com

with copies to:

JONES DAY
250 Vesey Street
New York, New York 10281
Attn: Sidney P. Levinson, Michael Schneidereit and Jeremy Evans

Email: slevinson@jonesday.com
mschneidereit@jonesday.com
jevans@jonesday.com

All such notices, demands, requests or other communications shall, when mailed or sent by overnight courier, be effective two Business Days after being deposited in the mails, with adequate postage prepaid, and sent by registered or certified mail with return receipt requested by such sending party, or the next Business Day after being sent by an overnight courier to a party at its address set forth above, as the case may be, or when sent by email be effective the day when sent.

(b) The Borrower shall reimburse the Agent and DIP Lenders for all reasonable out-of-pocket expenses incurred in connection with the negotiation and preparation of the DIP Documents and the obtaining of approval of the DIP Documents by the Bankruptcy Court (including the reasonable fees and expenses of one firm of outside counsel for Agent and DIP Lenders, taken as a whole, all of their respective special local counsel limited to one firm in any material jurisdiction to the extent necessary to obtain the Liens contemplated by the DIP Documents, reasonable financial advisory fees for one financial advisor for the Agent hereunder and the DIP Lenders, and auditors retained in connection with the DIP Documents and advice in connection therewith). The Borrower shall reimburse the Agent and DIP Lenders for all reasonable fees, costs and expenses, including the reasonable fees, costs and expenses of one firm of outside counsel for advice, assistance, or other representation, including, in connection with:

(1) any amendment, modification or waiver of, consent with respect to, or termination or enforcement of, any of the DIP Documents or advice in connection with the administration of the Term Loans made pursuant hereto or its rights hereunder or thereunder;

(2) the review of pleadings and documents related to the

Chapter 11 Cases and any subsequent Chapter 7 case, attendance at meetings related to the Chapter 11 Cases and any subsequent Chapter 7 case, and general monitoring of the Chapter 11 Cases and any subsequent Chapter 7 case;

(3) any litigation, contest, dispute, suit, proceeding or action (whether instituted by the Agent, the DIP Lenders, the Borrower or any other Person, and whether as a party, witness or otherwise) in any way relating to the Collateral, any of the DIP Documents or any other agreement to be executed or delivered in connection herewith or therewith, including any litigation, contest, dispute, suit, case, proceeding or action, and any appeal or review thereof, in connection with a case commenced by or against Borrower or any other Person that may be obligated to the Agent by virtue of the DIP Documents, including any such litigation, contest, dispute, suit, proceeding or action arising in connection with any work-out or restructuring of the Term Loans during the pendency of one or more Events of Default;

(4) any attempt to enforce any remedies of the Agent against any or all of the Borrower or any other Person that may be obligated to the Agent by virtue of any of the DIP Documents, including any such attempt to enforce any such remedies in the course of any work-out or restructuring of the Term Loans during the pendency of one or more Events of Default;

(5) any work-out or restructuring of the Term Loans during the pendency of one or more Events of Default; and

(6) any efforts to (A) monitor the Term Loans or any of the other Obligations, (B) evaluate, observe or assess any of the Borrower or their respective affairs, (C) verify, protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise dispose of any of the Collateral and (D) monitor any sales in connection with store closures or other sales;

including, as to each of clauses (1) through (6) above, all attorneys' and other professional and service providers' fees arising from such services, including those in connection with any appellate proceedings, and all expenses, costs, charges and other fees incurred by such counsel and others in connection with or relating to any of the events or actions described in this Section 20(b), all of which shall be payable, on demand, by the Borrower to the Agent on behalf of the DIP Lenders. Without limiting the generality of the foregoing, such expenses, costs, charges and fees may include: fees, costs and expenses of accountants, appraisers, investment bankers, management and other consultants and paralegals; court costs and expenses; photocopying and duplication expenses; court reporter fees, costs and expenses; long distance telephone charges; air express charges;; and expenses for travel, lodging and food paid or incurred in connection with the performance of such legal or other advisory services. All expenses incurred by the Agent shall receive super-priority administrative expense status per Section 364 of the Bankruptcy Code (subject to Section 11 hereof and the Financing Orders).

(c) No failure or delay on the part of the Agent or any other holder of this Note to exercise any right, power or privilege under this Note and no course of dealing between Borrower and the Agent shall impair such right, power or privilege or operate as a waiver of any

default or an acquiescence therein, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies expressly provided in this Note are cumulative to, and not exclusive of, any rights or remedies that the Agent would otherwise have. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the Agent to any other or further action in any circumstances without notice or demand.

(d) Borrower and any endorser of this Note hereby consent to renewals and extensions of time at or after the maturity hereof without notice, and hereby waive diligence, presentment, protest, demand and notice of every kind and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand hereunder.

(e) If any provision in or obligation under this Note shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(f) **THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE BORROWER AND THE AGENT HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK INCLUDING WITHOUT LIMITATION SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.**

(g) Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Bankruptcy Court and, if the Bankruptcy Court does not have (or abstains from) jurisdiction, the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Note or any DIP Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(h) **THE BORROWER AND, BY THEIR ACCEPTANCE OF THIS NOTE, THE AGENT, ANY DIP LENDER AND ANY SUBSEQUENT HOLDER OF THIS NOTE, HEREBY IRREVOCABLY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS NOTE OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS NOTE AND THE AGENT'S/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED**. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including without limitation contract claims, tort claims, breach

of duty claims and all other common law and statutory claims. The Borrower and, by their acceptance of this Note, the Agent, any DIP Lender and any subsequent holder of this Note, each (i) acknowledges that this waiver is a material inducement to enter into a business relationship, that each has already relied on this waiver in entering into this relationship, and that each will continue to rely on this waiver in their related future dealings and (ii) further warrants and represents that each has reviewed this waiver with its legal counsel and that each knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. **THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING) THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS OF THIS NOTE**. In the event of litigation, this provision may be filed as a written consent a trial by the court.

(i) The Borrower hereby waives the benefit of any statute or rule of law or judicial decision which would otherwise require that the provisions of this Note be construed or interpreted most strongly against the party responsible for the drafting thereof.

(j) The Borrower shall not have the right to assign their obligations or liabilities under this Note without the prior written consent of the Agent. The DIP Lenders may assign to one or more entities all or any part of, or may grant participation's to one or more entities in or to all or any part of, the amounts outstanding hereunder, and to the extent of any such assignment or participation (unless otherwise stated therein) the assignee or participant shall have the same rights and benefits hereunder as it would have if it were a DIP Lender hereunder. An assigning DIP Lender shall notify the Borrower of any such assignment (other than an assignment to an affiliate of such DIP Lender or a Related Fund) which notice shall include a description of the assignment and include customary instructions from the DIP Lender and such assignee with respect to the making of payments and other communications with the DIP Lender and such assignee.

(k) The Agent shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain, or cause to be maintained at the Payment Office, a copy of each assignment notice delivered to and accepted by it and a register (the "Register") for the recordation of the names and addresses of the Persons, if any, that take an assignment from it and the principal amount of the Term Loans and stated interest thereon owing to each DIP Lender from time to time. The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower and the Agent may treat each Person whose name is recorded in the Register as a DIP Lender hereunder for all purposes of this Note. The Register shall be available for inspection by Borrower and the DIP Lenders at any reasonable time and from time to time upon reasonable prior notice.

(l) Upon receipt by the Agent of an assignment notice, the Agent shall accept such assignment and record the information contained therein in the Register.

(m) A Term Loan may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register. Any assignment or sale of all or part of such Term Loan may be effected only by registration of such assignment or sale on the Register. Prior to the registration of assignment or sale of any Term Loan, the Agent shall treat the Person in whose name such Term Loan is registered as the owner thereof for the purpose of receiving all

payments thereon and for all other purposes, notwithstanding notice to the contrary.

(n) In the event that a DIP Lender sells participations in a Term Loan, such DIP Lender shall maintain a register for this purpose as a non-fiduciary agent of Borrower on which it enters the name of all participants in the Term Loans held by it and the principal amount (and stated interest thereon) of the portion of the Term Loan that is the subject of the participation (the "Participant Register"). A Term Loan may be participated in whole or in part only by registration of such participation on the Participant Register. Any participation of such Term Loan may be effected only by the registration of such participation on the Participant Register. The Participant Register shall be available for inspection by the Borrower and the DIP Lenders at any reasonable time and from time to time upon reasonable prior notice.

(o) No provision of this Note may be amended or waived unless such amendment or waiver is in writing and is signed by the Borrower and the Agent (acting on the instructions of the Required Lenders).

(p) Any provision of this Note which is prohibited or unenforceable shall be ineffective to the extent such prohibition or unenforceability without invalidating the remaining provisions hereof.

(q) This Note, the other DIP Documents, and all Liens created hereby or pursuant to the Collateral Documents or any other DIP Document shall be binding upon the Borrower and each other Loan Party, the estates of the Borrower, and any trustee or successor in interest of the Borrower and each other Loan Party in the Chapter 11 Case or any subsequent case commenced under Chapter 7 of the Bankruptcy Code, and shall not be subject to Section 365 of the Bankruptcy Code. This Note and the other DIP Documents and the Financing Orders shall be binding upon, and inure to the benefit of, the successors of the Agent and the DIP Lenders and each of their respective assigns, transferees and endorsees. The Liens created by this Note, and the other DIP Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of the Chapter 11 Case or any other bankruptcy case of any Loan Party to a case under chapter 7 of the Bankruptcy Code or in the event of dismissal of the Chapter 11 Case or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the Agent file financing statements or otherwise perfect its security interests or Liens under applicable law.

(r) THIS WRITTEN PROMISSORY NOTE REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES, AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

(s) This Note may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto. Delivery of an executed counterpart to this Note by facsimile transmission or electric transmission in “pdf” or other imaging format shall be as effective as delivery of a manually signed original.

(t) In the event of any inconsistency between the terms and conditions of this Note and the Financing Orders, the provisions of the Financing Orders shall govern and control.

(u) This Note constitutes an amendment and restatement of the Restated Note effective from and after the date hereof. The execution and delivery of this Note are not intended by the parties to be, and shall not constitute, a novation or an accord and satisfaction of the obligations under the Restated Note, all of which remain outstanding and shall be continuing obligations hereunder.

* * * * *

IN WITNESS WHEREOF, the Borrower have caused this Note to be executed and delivered by its duly authorized officer as of the day and year and at the place first above written.

BARNEY'S, INC., as Debtor and Debtor in Possession

By: _____
Name:
Title

Acknowledged and Agreed

GACP FINANCE CO., LLC, as Agent

By: _____
Name:
Title:

GACP II, L.P., as a DIP Lender

By: GREAT AMERICAN CAPITAL PARTNERS, LLC
Its: General Partner

By:_____
Its: Authorized Signatory

BRF FINANCE CO., LLC, as a DIP Lender

By: _____
Name:
Title:

BRIGADE CAPITAL MANAGEMENT, LP, on behalf of its managed funds and accounts, as a DIP Lender

By: _____
Name:
Title:

EXHIBIT B

(AMENDED) EXHIBIT B TO DIP TERM NOTE
CONSIGNMENT FACILITY TERMS

Effective as of August 9, 2019, the following terms and conditions shall govern the Consignment Facility, as defined in the *Second Amended and Restated Debtor in Possession Secured Term Promissory Note* to which this Exhibit B is annexed (the "Note") and shall supersede in all respects the terms and conditions set forth in Exhibit B to all prior instances of the Note. Capitalized terms used but not defined herein have the meanings given thereto in the Note.

1. Consignor shall be B. Riley Financial, Inc. ("BR") and/or an affiliate thereof, as BR may designate in its sole discretion.

2. Consignor shall have a first-priority senior Lien pursuant to 11 U.S.C. § 364(d) (with respect to the DIP Lenders and Prepetition Secured Parties upon entry of the Second Interim Order, and with respect to all parties asserting Liens against the Consigned Inventory Proceeds upon entry of the Final Order) on all Consigned Inventory Proceeds and other amounts, in each case, due to Consignor in connection with the Consigned Inventory (including but not limited to the Work Fee (defined below) and the Consignment Fee defined in Section 18 of the Note), which amounts shall remain subject to the Lien of Consignor until indefeasibly paid to Consignor pursuant to paragraph 7(b)(ii) of the Note.

3. Borrower has opened, or shall promptly open, a new, segregated bank account (the "Consignment Facility Account") for the exclusive purposes of (a) receiving funds in trust from Consignor pursuant to the Consignment Facility and (b) using such funds to pay vendors' invoices for Consigned Inventory. Borrower shall not use the Consignment Facility Account or any funds therein for any other purpose, and shall have no interest in any funds on deposit in the Consignment Facility Account at any time, which funds shall be held in trust at all times for the payment of vendors' approved invoices for Consigned Inventory pursuant to the terms of the Consignment Facility. To the extent all or any portion of the funds on deposit in the Consignment Facility Account at any time are ever deemed property of Borrower's bankruptcy estate, Consignor shall have a first-priority senior Lien on such funds, and such funds shall be DIP Priority Collateral of Consignor. At Consignor's request, Borrower shall take all steps reasonably necessary to obtain a deposit account control agreement providing Consignor control over the Consignment Facility Account.

4. Items of Consigned Inventory identified by the same SKUs ("Consigned Overlap Inventory") as similar goods in Borrower's existing inventory ("Existing Overlap Inventory") shall be accounted for on a "last-in-first-out" basis, whereby all Consigned Overlap Inventory identified by a particular SKU is treated as sold before the

corresponding Existing Overlap Inventory, with all proceeds of Consigned Overlap Inventory constituting Consigned Inventory Proceeds.

5. The Consignment Facility is not a revolving credit line. Amounts advanced under the Consignment Facility to purchase Consigned Inventory may not be re-advanced once repaid unless approved in advance in writing by Consignor in its sole discretion. Borrower shall hold the Consigned Inventory in trust for the benefit of Consignor and shall insure the Consigned Inventory against loss. To the extent all or any portion of the Consigned Inventory is ever deemed property of Borrower's bankruptcy estate, such Consigned Inventory shall be DIP Priority Collateral of Consignor.

6. The maximum aggregate landed cost of all Consigned Inventory that may be purchased under the Consignment Facility is $40,000,000 (the "Consigned Inventory Cap"). Borrower may request funds from Consignor under the Consignment Facility to pay invoices for Consigned Inventory once per Business Day (each such request, a "Consignment Funding Request"). In connection with each Consignment Funding Request, Borrower shall provide Consignor with (a) a list of all purchase orders (which purchase orders shall be approved by at least one of Borrower's Chief Executive Officer, Chief Financial Officer, or Chief Merchant) for Consigned Inventory comprising such Consignment Funding Request and (b) copies of all invoices for such Consigned Inventory. Subject to the Consigned Inventory Cap, Consignor will fund the aggregate landed cost of all approved invoices and/or purchase orders for Consigned Inventory in a given Consignment Funding Request via a single wire transfer into the Consignment Facility Account. Immediately upon receipt of such wire transfer, Borrower, in consultation with Consignor's on-site personnel, shall initiate wire or ACH transfers, as applicable, to each vendor for the approved invoices and/or purchase orders and provide Consignor with wire or ACH transfer confirmations (including Fed Reference Numbers for wire transfers) for each such payment.

7. In connection with any sale or liquidation of all or substantially all of Borrower's assets and subject to Section 12(ii) below, Consignor may, upon written notice to Borrower (e-mail being acceptable), elect to take title to, or designate another entity to take title to, all or any portion of the Consigned Inventory, provided that Borrower shall not be required to make the payment contemplated by section 7(b)(1) of the Note for any Consigned Inventory to which Consignor elects to take title or designate another entity to take title pursuant to this paragraph.

8. Consignor shall have access to information and reporting with respect to the Consigned Inventory and the purchases and sales thereof, the Consignment Facility, the Consignment Facility Account, and the Consigned Inventory Proceeds.

9. Consignor may have on-site representatives at Borrower to assist Borrower and the Loan Parties with the Consignment Facility and the procurement and sale of Consigned Inventory.

10. Consignor shall be entitled to a work fee in the amount of $100,000 per month or part thereof that any amounts are outstanding under the Consignment Facility (the "Work Fee"). Consignor shall pay the Consignment Fee defined in Section 18 of the Note (7% per annum of the average amount outstanding under the Consignment Facility during the preceding month) from Consigned Inventory Proceeds, along with the Work Fee, to Consignor via wire transfer within five days after the end of each month.

11. Borrower shall maintain insurance against loss of (whether by theft, fire, flood, natural disaster, or otherwise) and damage to Consigned Inventory consistent with Borrower's insurance for its own inventory. In the event of any insured loss of or damage to Consigned Inventory in Borrower's possession and/or control, the insurance proceeds related thereto shall constitute Consigned Inventory Proceeds. Borrower shall be responsible for any uninsured loss of or damage to any Consigned Inventory in Borrower's possession and/or control.

12. If Borrower's going concern sale process is successful, (i) Consignor shall have the right, in its sole discretion, to require the purchaser to purchase all or a portion of the Consigned Inventory remaining at the closing of the going concern sale, as reflected on Borrower's books and records, at 105% of landed cost, with payment due at the closing of the going concern sale, and (ii) a going concern purchaser shall have the right, in its sole discretion, to purchase any Consigned Inventory remaining at the closing of the going concern sale, as reflected on Borrower's books and records, at 105% of landed cost, with payment due at the closing of the going concern sale.

ACKNOWLEDGED AND AGREED TO:

BARNEY'S, INC., Debtor in Possession

By: _____
Name: Sandro Risi
Title: Executive Vice President and Treasurer

B. RILEY FINANCIAL, INC.
as Consignor

By: _____
Name:
Title:

Schedule 1(a)

Outstanding Term Loans of each Tranche as of the Second Effective Date

(attached)

Schedule 13

Deliver (which delivery may be made by electronic communication (including email)) to the Agent, the Monthly Reports, Annual Reports and Compliance Certificates required by Sections 6.1(a) (c) and (d) of the Prepetition Credit Agreement (determined as if such agreement had remained in effect) and each of the financial statements, reports, or other items set forth below at the following times in form satisfactory to the Agent:

on Wednesday of each week beginning with the third full calendar week after the Petition Date	(a) a weekly DIP variance report/reconciliation for the prior Cumulative Three-Week Period and for the period from the commencement of the Initial Budget to the end of the prior week in each case (i) showing actual results for the following items: (A) receipts, (B) disbursements, (C) net operating cash flow, (D) liquidity and Excess Availability, (E) Term Loan balances and (F) professional fees and expenses, noting therein variances from values set forth for such periods in both the Initial Budget and the most recent Budget and (ii) an explanation for all material variances, certified by the chief financial officer of Barney's, (b) to the extent received by a Loan Party, a weekly report of sales in connection with store closures results (including detail on gross recoveries and expenses) from the affiliates of the Agent and/or DIP Lenders retained by the Loan Parties,
on the date that is four full weeks after the Petition Date and every second week thereafter	(c) a revised proposed budget (it being understood that upon written approval of such proposed budget by the Agent, in its reasonable discretion, such proposed budget shall become the "Budget") and timing changes with respect to any periods that were included in a previously delivered Liquidity Forecast and which shall be in form and substance acceptable to the Agent and DIP Lenders,
promptly, to the extent reasonably feasible,	(d) copies of all material pleadings, motions, applications or financial information filed by any Loan Party with the Bankruptcy Court; provided that any such documents that are publicly available shall be deemed to have been delivered,
promptly,	(e) copies of all "Borrowing Base Certificates" (as such term is defined in the Prepetition Credit Agreement as if such agreement had remained in effect) that would have been delivered pursuant to the Prepetition ABL Facility had such agreement remained in effect,

promptly, but in any event within 5 Business Days after Borrower has knowledge of any event or condition that constitutes a Default (provided that the delivery of a notice of any such event of default at any time will cure any Event of Default arising from the failure to timely deliver such notice of such event of default),	(f) notice of such event or condition and a statement of the curative action that Borrower proposes to take with respect thereto,
upon the reasonable request of Agent,	(g) any other information reasonably requested relating to the financial condition of Borrower or its Subsidiaries, and
upon notice of Agent,	(h) access to the advisors to the Loan Parties at all times during the Chapter 11 Cases.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	:	Chapter 11
GCX Limited, et al.,[1]	:	Case No. 19-12031 (CSS)
Debtors.	:	(Jointly Administered)

INTERIM ORDER PURSUANT TO SECTIONS 105, 361, 362, 363, AND 364 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002, 4001, 6004, AND 9014 (A) AUTHORIZING THE DEBTORS TO (I) USE CASH COLLATERAL, (II) OBTAIN SECURED SUPERPRIORITY POSTPETITION FINANCING AND GRANT LIENS AND SUPERPRIORITY ADMINISTRATIVE CLAIMS, AND (III) PROVIDE ADEQUATE PROTECTION, (B) SCHEDULING A FINAL HEARING, AND (C) GRANTING RELATED RELIEF

Upon the motion, dated September 15, 2019 (the "Motion"), of the debtors and debtors-in-possession (the "Debtors") in the above-captioned chapter 11 cases (the "Cases"), for the entry of an order pursuant to Sections 105, 361, 362, 363, and 364 of title 11 of the United States Code (as amended, the "Bankruptcy Code") and Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules") and Rules 2002-1, 4001-2, 9006-1, and 9013-1 of the Local Rules of Bankruptcy Practice and Procedure for the District of Delaware (the "Local Rules") (A) authorizing the Debtors to (I) use cash collateral of the Prepetition Secured Parties (defined below), (II) obtain secured superpriority postpetition

[1] The debtors in these chapter 11 cases, along with the last four digits of each debtor's tax identification number, as applicable, are GCX Limited (n/a); FLAG Telecom Development Limited (n/a); FLAG Telecom Group Services Limited (n/a); FLAG Telecom Ireland Network DAC (n/a); FLAG Telecom Network Services DAC (n/a); FLAG Telecom Network USA Limited (2662); Reliance FLAG Atlantic France SAS (n/a); Reliance FLAG Telecom Ireland DAC (n/a); Reliance Globalcom Limited (n/a); Reliance Vanco Group Limited (n/a); Vanco Australasia Pty Limited (n/a); Vanco GmbH (n/a); Vanco SAS (n/a); Vanco UK Limited (n/a); Vanco US, LLC (0221); and VNO Direct Limited (n/a). The location of Debtor FLAG Telecom Network USA Limited's principal place of business and the Debtors' service address in these chapter 11 cases is 3190 S Vaughn Way, # 550, Aurora, CO 80014.

financing and granting liens and superpriority administrative expense claims and (III) provide adequate protection to the Prepetition Secured Parties of the Bankruptcy Code, and (B) scheduling interim and final hearings, the Debtors sought, among other things, the following relief:

(i) the Court's authorization, pursuant to Sections 363 and 364(c)(1), (2), (3) and (d)(1) of the Bankruptcy Code, for GCX Limited (the "DIP Borrower"), to (A) enter into a senior secured superpriority debtor-in-possession credit facility (the "DIP Facility"), pursuant to the Senior Secured Superpriority Debtor-in-Possession Credit Agreement attached hereto as Exhibit 1 (the "DIP Credit Agreement"[2] and, together with this order (the "Interim Order"), the Final Order (defined below), and all other agreements, documents and instruments delivered or executed in connection therewith, as hereafter amended, restated, supplemented or otherwise modified from time to time, including the DIP Budget (defined below), collectively, the "DIP Documents") by and among the DIP Borrower, the Debtors other than the DIP Borrower, as guarantors (collectively, the "DIP Guarantors") Wilmington Trust, National Association, as administrative agent (in such capacity, the "DIP Agent"), and the financial institutions party thereto from time to time as lenders (the "DIP Lenders" and, together with the DIP Agent, the "DIP Secured Parties"), and (B) obtain extensions of credit thereunder on a senior secured and superpriority basis in an aggregate principal amount not to exceed $54,500,000 which consists of, (1) during the period (the "Interim Period") from the date hereof through and including the earlier to occur of (x) the date of entry of the Final Order by this Court and (y) the Termination Date (defined below), in a single draw in an aggregate principal amount not to exceed $23,100,000 (the "Initial DIP Term Loan"), and (2) upon entry of the Final Order and thereafter until the Termination Date, in multiple draws as set forth in the DIP Credit Agreement, in an aggregate principal amount not to exceed $31,400,000 (together with the Initial DIP Term Loan, all other financial accommodations and extensions of credit under the DIP Credit Agreement and the DIP Facility, the "DIP Extensions of Credit");

(ii) the Court's authorization for each Debtor to execute the DIP Credit Agreement and the other DIP Documents to which it is a party and to perform such other and further acts as may be necessary or appropriate in connection therewith;

(iii) the Court's authorization for the Debtors to use DIP Extensions of Credit in accordance with the proposed budget prepared by the Debtors and annexed hereto as Exhibit 2 (as updated from time to time pursuant to, and in accordance with, the terms of the DIP Documents and, subject to the prior approval of the DIP Agent, the "DIP Budget"), including any variances permitted under the DIP Credit Agreement, and as otherwise provided herein and in the other DIP Documents;

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2 Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the DIP Credit Agreement.

(iv) the Court's authorization to grant to the DIP Agent, for the benefit of the DIP Lenders, in respect of the DIP Obligations (defined below), a superpriority administrative claim pursuant to Section 364(c)(1) of the Bankruptcy Code and first priority priming liens on and security interests in all assets and property of the Debtors (now owned or hereafter acquired), including the equity interests of the DIP Borrower and of each other Debtor held by any other Debtor, pursuant to Sections 364(c)(2), (c)(3) and (d)(1) of the Bankruptcy Code, in each case as and to the extent set forth more fully below;

(v) the Court's authorization for the Debtors to use "cash collateral" as such term is defined in Section 363 of the Bankruptcy Code (the "Cash Collateral") in which the Prepetition Secured Parties (defined below) have an interest;

(vi) the Court's authorization to grant, as of the Petition Date (defined below), adequate protection for the benefit of the Prepetition Secured Parties, as set forth, including, the Adequate Protection Superpriority Claim (defined below) and Adequate Protection Liens (defined below), in each case to the extent of and as compensation for any Diminution in Value (defined below), and the payment of fees and expenses to the Prepetition Notes Trustee (defined below) for the benefit of the Prepetition Secured Parties, in each case as set forth more fully below, and the Debtors' satisfaction of the Milestones in respect of an Acceptable Sale Process in accordance with the DIP Credit Agreement through the implementation of the Bidding Procedures in respect of a sale of all or substantially all of the Debtors' assets or the equity interests in the DIP Borrower through a public auction or private sale process whereby the Prepetition Notes Trustee and the DIP Agent shall have the right to credit bid (independently or together) up to the full amount of the Prepetition Secured Obligations and the DIP Obligations;

(vii) the modification or waiver by the Court of the automatic stay imposed by Section 362 of the Bankruptcy Code and any other applicable stay (including Bankruptcy Rule 6004) to the extent necessary to implement and effectuate the terms and provisions of the DIP Facility, this Interim Order and the other DIP Documents and to provide for the immediate effectiveness of this Interim Order;

(viii) the scheduling by the Court of an interim hearing (the "Interim Hearing") to consider entry of this Interim Order;

(ix) the scheduling by the Court of a final hearing (the "Final Hearing") to consider entry of an order (the "Final Order") granting the relief requested in the Motion on a final basis and approving the form of notice with respect to the Final Hearing and the transactions contemplated by the Motion; and

(x) approval of the Final Order.

The Court having considered the Motion, the terms of the DIP Facility and the DIP Documents, the Declaration of Michael Katzenstein, Chief Restructuring Officer of GCX Limited in Support of Debtors' Chapter 11 Petitions and First Day Motions, the Declaration of

Kenneth S. Ziman in Support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Secured Financing Pursuant to Section 364 of the Bankruptcy Code and (B) Utilize Cash Collateral; (II) Granting Liens and Superpriority Administrative Expense Claims; (III) Granting Adequate Protection; (IV) Modifying the Automatic Stay; (V) Scheduling a Final Hearing; and (VI) Granting Related Relief, the Declaration of Donald Harer in Support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Secured Financing Pursuant to Section 364 of the Bankruptcy Code and (B) Utilize Cash Collateral; (II) Granting Liens and Superpriority Administrative Expense Claims; (III) Granting Adequate Protection; (IV) Modifying the Automatic Stay; (V) Scheduling a Final Hearing; and (VI) Granting Related Relief, and the evidence submitted at the Interim Hearing held before the Court on September 16, 2019, to consider entry of this Interim Order; and in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and 9014 and 2002-1, 4001-2, 9006-1, and 9013-1 of the Local Rules, appropriate notice of the Motion and the Interim Hearing having been given under the circumstances; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors pending the Final Hearing and is otherwise fair and reasonable and in the best interests of the Debtors, their creditors and their estates, and essential for the continued operation of the Debtors' businesses; and all objections, if any, to the entry of this Interim Order having been withdrawn, resolved or overruled by the Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. **Petition Date.** On September 15, 2019 (the "Petition Date"), the Debtors filed voluntary petitions under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "Court"). The Debtors have continued in the management and operation of their businesses and properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases.

B. **Jurisdiction and Venue.** The Court has jurisdiction over these proceedings, pursuant to 28 U.S.C. § 1334. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases and the proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Committee Formation.** As of the date hereof, no official committee of unsecured creditors has been appointed in the Cases (any such committee, the "Creditors' Committee" and, together with any other statutory committee appointed in the Cases pursuant to Sections 328 or 1103 of the Bankruptcy Code, a "Committee").

D. **Notice.** The Debtors have represented that notice of the Interim Hearing and the relief requested in the Motion has been provided by the Debtors, by telecopy, email, overnight courier and/or hand delivery, to (a) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), (b) counsel to the Ad Hoc Group of Prepetition Secured Noteholders; (c) all other parties asserting a lien on or a security interest in the assets of the Debtors to the extent reasonably known to the Debtors; (d) the Office of the United States Attorney General for the District of Delaware; (e) the Internal Revenue Service, and (f) those creditors holding the 30 largest unsecured claims against the Debtors' estates (the "Notice

Parties"). Under the circumstances, such notice of the Interim Hearing and the relief requested in the Motion is appropriate notice and complies with Section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001(b) and (c) and 2002-1 and 4001-2 of the Local Rules.

E. **Prepetition Indebtedness.** After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties-in-interest as set forth in paragraph 8 herein, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree as follows:

(i) Pursuant to that certain Indenture, dated August 1, 2014 (as amended, restated, supplemented or otherwise modified through the Petition Date, the "Prepetition Indenture" and collectively with and all other agreements, documents and instruments delivered or executed in connection therewith, each as may have been amended, restated, supplemented or otherwise modified from time to time through the Petition Date, the "Prepetition Debt Documents") among the DIP Borrower, as issuer, Bank of New York Mellon, as trustee and collateral agent (in such capacity, the "Prepetition Notes Trustee"), and the Subsidiary Guarantors (as defined in the Prepetition Indenture) party thereto, the DIP Borrower issued 7.00% Senior Secured Notes due August 1, 2019 (the "Prepetition Secured Notes" and the holders thereof, the "Prepetition Secured Noteholders" and, together with the Prepetition Notes Trustee, the "Prepetition Secured Parties") in the aggregate principal amount of $350,000,000.

(ii) Pursuant to the Prepetition Debt Documents, the Prepetition Secured Parties were granted first priority liens (the "Prepetition Liens") on, and security interests in, the Collateral (as defined in the Prepetition Indenture) (the "Prepetition Collateral"), subject to certain Permitted Liens (as defined in the Prepetition Indenture) and such Liens (as defined in the Prepetition Indenture).

(iii) Pursuant to the Prepetition Debt Documents, each of the Subsidiary Guarantors (as defined in the Prepetition Indenture) has provided to the Prepetition Notes Trustee an unconditional joint and several guaranty in accordance with Article 11 of the Prepetition Indenture, which guaranty is secured by the Prepetition Collateral.

F. **Stipulations as to Prepetition Secured Obligations.** After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties-in-interest as set forth in paragraph 8 herein, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree as follows:

(i) **Prepetition Secured Obligations**. As of the Petition Date, the DIP Borrower and the Subsidiary Guarantors (as defined in the Prepetition Indenture) were indebted and liable to the Prepetition Notes Trustee and the Prepetition Secured Noteholders under the Prepetition Debt Documents, without objection, defense, counterclaim or offset of any kind, in the aggregate principal amount of not less than $350,000,000 with respect to the Prepetition Secured Notes plus accrued (both before and after the Petition Date) and unpaid interest thereon, and fees, expenses, prepayment premiums, and all other obligations under the Prepetition Debt Documents, including any attorneys', accountants', consultants', appraisers' and financial and other advisors' fees that are chargeable or reimbursable under the Prepetition Debt Documents (collectively, the "Prepetition Secured Obligations").

(ii) **Enforceability, etc. of the Prepetition Secured Obligations**. The Prepetition Debt Documents and the Prepetition Secured Obligations are (a) legal, valid, binding, and enforceable against the DIP Borrower and each other Debtor that is a party to the Prepetition Debt Documents, and (b) not subject to any contest, attack, objection, recoupment, defense, counterclaim, offset, subordination, re-characterization, avoidance or other claim, cause of action

or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise.

(iii) **Enforceability, etc. of Prepetition Liens**. The Prepetition Liens granted by the Debtors party to, and under, the Prepetition Debt Documents to or for the benefit of the Prepetition Notes Trustee and the Prepetition Secured Noteholders as security for the Prepetition Secured Obligations encumber the Prepetition Collateral, as the same existed on or at any time prior to the Petition Date. The Prepetition Liens have been properly recorded and perfected under applicable non-bankruptcy law, and are legal, valid, enforceable, non-avoidable, and not subject to contest, avoidance, attack, offset, re-characterization, subordination or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise. As of the Petition Date, and without giving effect to this Interim Order, the Debtors are not aware, after making due inquiry, of any liens or security interests having priority over the Prepetition Liens, except the Senior Third Party Liens (defined below). The Prepetition Liens were granted to or for the benefit of the Prepetition Notes Trustee and the Prepetition Secured Noteholders for fair consideration and reasonably equivalent value, and were granted contemporaneously with the making of the loans and/or commitments and other financial accommodations secured thereby.

(iv) **Indemnity**. The DIP Secured Parties shall be and hereby are indemnified and held harmless by the Debtors, jointly and severally, in respect of any claim or liability incurred with respect to the DIP Facility and the use of Cash Collateral or in any way related thereto except for claims relating to gross negligence and willful misconduct. No exception or defense in contract, law or equity exists as to any obligation set forth, as the case may be, in this

paragraph F(iv), in the DIP Documents, to indemnify and/or hold harmless the DIP Agent or any other DIP Secured Party, as the case may be, and any such defenses are hereby waived.

(v) **No Control**. None of the DIP Secured Parties or the Prepetition Secured Parties are control persons or insiders of the Debtors or any of their affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from the DIP Facility, the DIP Documents and/or the Prepetition Debt Documents.

(vi) **No Claims, Causes of Action**. As of the date hereof, there exist no claims or causes of action against any of the Prepetition Notes Trustee, any other Prepetition Secured Party, or any DIP Secured Party with respect to, in connection with, related to, or arising from the Prepetition Debt Documents and/or the DIP Documents that may be asserted by the Debtors or any other person or entity.

(vii) **Release**. Subject to the entry of a Final Order, the Debtors forever and irrevocably release, discharge, and acquit all former, current and future (a) DIP Secured Parties, (b) Prepetition Secured Parties, (c) Affiliates of the DIP Secured Parties and Prepetition Secured Parties, and (d) officers, employees, directors, agents, representatives, owners, members, partners, financial and other advisors and consultants, legal advisors, shareholders, managers, consultants, accountants, attorneys, and predecessors and successors in interest of each of the DIP Secured Parties, the Prepetition Secured Parties and each of their respective Affiliates, in each case acting in such capacity (collectively, the "Releasees") of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent,

pending or threatened including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description, arising out of, in connection with, or relating to the DIP Facility, the DIP Documents, the Prepetition Debt Documents and/or the transactions contemplated hereunder or thereunder including, without limitation, (x) any so-called "lender liability" or equitable subordination claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with respect to the validity, priority, perfection or avoidability of the liens or claims of the Prepetition Notes Trustee, the Prepetition Secured Parties and/or the DIP Secured Parties. The Debtors further waive and release any defense, right of counterclaim, right of setoff or deduction to the payment of the Prepetition Secured Obligations and the DIP Obligations which the Debtors now have or may claim to have against the Releasees arising out of, connected with, or relating to any and all acts, omissions or events occurring prior to the entry of this Interim Order by the Court.

G. **Immediate Need for Postpetition Financing and Use of Cash Collateral.** The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). Good cause has been shown for entry of this Interim Order. An immediate need exists for the Debtors to obtain funds and liquidity in order to continue operations, to satisfy in full the costs and expenses of administering the Cases, to preserve the value of their estates to consummate the transactions contemplated by the Restructuring Support Agreement and pending a potential sale of all or substantially all of the Debtors' assets and property pursuant to the Acceptable Sale Process that will maximize recoveries to all stakeholders. The ability of the Debtors to finance their operations, to preserve and maintain the value of the Debtors' assets and to maximize the return for all creditors requires the immediate

availability of the DIP Facility and the use of Cash Collateral. In the absence of the immediate availability of such funds and liquidity in accordance with the terms hereof, the continued operation of the Debtors' businesses may not be possible, and serious and irreparable harm to the Debtors and their estates and creditors could occur. Thus, the ability of the Debtors to preserve and maintain the value of their assets and maximize the return for creditors requires the availability of working capital from the DIP Facility and the use of Cash Collateral. Accordingly, sufficient cause exists for the entry of this Interim Order.

H. **No Credit Available on More Favorable Terms.** The Debtors have been unable to obtain on more favorable terms and conditions than those provided in this Interim Order (a) adequate unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense, (b) credit for money borrowed with priority over any or all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code, (c) credit for money borrowed secured by a lien on property of the estate that is not otherwise subject to a lien, or (d) credit for money borrowed secured by a junior lien on property of the estate which is subject to a lien. The Debtors are unable to obtain credit for borrowed money without granting the DIP Liens and the DIP Superpriority Claim (defined below) to (or for the benefit of) the DIP Secured Parties.

I. **Use of Cash Collateral and Proceeds of the DIP Facility, DIP Collateral and Prepetition Collateral.** The Debtors represent and stipulate that all of the Debtors' cash, cash equivalents, negotiable instruments, investment property, and securities constitute Cash Collateral of the Prepetition Notes Trustee on behalf of the Prepetition Secured Parties. All Cash Collateral, all proceeds of the Prepetition Collateral and the DIP Collateral (defined below), including proceeds realized from a sale or disposition thereof, or from payment thereon, and all

proceeds of the DIP Facility (net of any amounts used to pay fees, costs and expenses payable under this Interim Order or the Final Order) shall be used and/or applied in accordance with the terms and conditions of this Interim Order, the DIP Budget (subject to variances permitted under the DIP Credit Agreement) and the other DIP Documents, for the types of expenditures in the DIP Budget and for no other purpose.

J. **Adequate Protection for the Prepetition Secured Parties.** The Prepetition Notes Trustee and the Prepetition Secured Noteholders have negotiated in good faith regarding the Debtors' use of the Prepetition Collateral (including the Cash Collateral) to fund the administration of the Debtors' estates and continued operation of their businesses, in accordance with the terms hereof. The Prepetition Notes Trustee and the Prepetition Secured Noteholders have agreed to permit the Debtors to use the Prepetition Collateral, including the Cash Collateral, in accordance with the terms hereof and the DIP Budget (subject to variances permitted under the DIP Credit Agreement) during the Interim Period subject to the terms and conditions set forth herein, including the protections afforded parties acting in "good faith" under Section 363(m) of the Bankruptcy Code. The Prepetition Notes Trustee and the Prepetition Secured Noteholders are entitled to the adequate protection as and to the extent set forth herein pursuant to Sections 361, 362 and 363 of the Bankruptcy Code. Based on the Motion and on the record presented to the Court at the Interim Hearing, the terms of the proposed adequate protection arrangements and of the use of the Prepetition Collateral (including the Cash Collateral) are fair and reasonable, reflect the Debtors' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the Prepetition Notes Trustee's consent thereto; provided that nothing in this Interim Order or the other DIP Documents shall (x) be construed as a consent by any Prepetition Secured Party that it would be adequately protected in the event debtor-in-

possession financing is provided by a third party (i.e., other than the DIP Lenders) or a consent to the terms of any other such financing, including the consent to any lien encumbering the Prepetition Collateral (whether senior or junior) or to the use of Cash Collateral (except under the terms hereof), or (y) prejudice, limit or otherwise impair the rights of the Prepetition Notes Trustee (for the benefit of the Prepetition Secured Parties) to seek new, different or additional adequate protection under any circumstances.

K. **Section 552.** Subject to the entry of a Final Order, in light of, as applicable, the subordination of the Prepetition Liens and the Adequate Protection Liens of the Prepetition Secured Parties to the DIP Liens and the Carve-Out, and the granting of the DIP Liens on the Prepetition Collateral, the Prepetition Notes Trustee and the Prepetition Secured Noteholders are each entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code, and the "equities of the case" exception shall not apply.

L. **Extension of Financing.** The DIP Secured Parties have indicated a willingness to provide financing to the Debtors in accordance with the DIP Credit Agreement and the other DIP Documents (including the DIP Budget) and subject to (i) the entry of this Interim Order and the Final Order, (ii) the Milestones, including without limitation, procedures relating to the Acceptable Sale Process, and (iii) findings by this Court that such financing is essential to the Debtors' estates, that the DIP Secured Parties are good faith financiers, and that the reversal or modification on appeal of the authorization hereunder for the Debtors to incur the debt under the DIP Facility, or the grant hereunder of the priority of the DIP Liens and the Adequate Protection Liens, does not affect the validity of such debt, or any priority of any such lien so granted, as provided in Section 364(e) of the Bankruptcy Code.

M. **Business Judgment and Good Faith Pursuant to Section 364(e).**

(i) The extension of credit under the DIP Facility, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available under the circumstances, reflect the Debtors' exercise of prudent business judgment, and are supported by reasonably equivalent value and consideration;

(ii) the DIP Facility was negotiated in good faith and at arm's length among the Debtors, the DIP Agent and the other DIP Secured Parties; and

(iii) the use of the proceeds to be extended under the DIP Facility will be so extended in good faith and for valid business purposes and uses, as a consequence of which the DIP Secured Parties are entitled to the protection and benefits of Section 364(e) of the Bankruptcy Code.

N. **Relief Essential; Best Interest.** The relief requested in the Motion (and provided in this Interim Order) is necessary, essential and appropriate for the continued operation of the Debtors' businesses and the management and preservation of the Debtors' assets and property. It is in the best interest of the Debtors' estates that the Debtors be allowed to enter into the DIP Facility, incur the DIP Obligations and use the Cash Collateral as contemplated herein.

NOW, THEREFORE, on the Motion of the Debtors and the record before this Court with respect to the Motion, including the record made during the Interim Hearing, and with the consent of the Debtors, the Prepetition Secured Parties and the DIP Secured Parties, and good and sufficient cause appearing therefor,

IT IS ORDERED that:

1. **Motion Granted**. The Motion is granted on an interim basis in accordance with the terms and conditions set forth in this Interim Order. Any objections to the Motion with

respect to entry of this Interim Order, to the extent not withdrawn, waived or otherwise resolved are hereby denied and overruled.

2. **DIP Facility**.

(a) **DIP Obligations, etc**. The Debtors are expressly and immediately authorized and empowered to enter into the DIP Facility and to incur and to perform the DIP Obligations in accordance with and subject to this Interim Order (and, upon its entry, a Final Order) and the other DIP Documents, to execute and/or deliver all DIP Documents and all other related instruments, certificates, agreements and documents, and to take all actions which may be reasonably required or otherwise necessary for the performance by the Debtors under the DIP Facility, including the creation and perfection of the DIP Liens described and provided for herein. Subject to the terms of this Interim Order, the Debtors are hereby authorized and directed to pay all principal, interest, fees and expenses, indemnities and other amounts described herein and in the other DIP Documents as such shall accrue and become due hereunder or thereunder, including, without limitation, the reasonable fees and expenses of the attorneys and financial and other advisors and consultants of the DIP Agent and the DIP Lenders as, and to the extent, provided for herein and in the other DIP Documents (collectively, all loans, advances, extensions of credit, financial accommodations, fees, expenses and other liabilities and obligations (including indemnities and similar obligations) in respect of DIP Extensions of Credit, the DIP Facility and the DIP Documents, the "DIP Obligations"); provided that payment of any invoices of the DIP Agent's and the DIP Lenders' professionals for fees and expenses incurred after entry of this Interim Order shall be subject to the notice and objection provisions of paragraph 20(b) of this Interim Order. The DIP Documents and all DIP Obligations shall represent, constitute and evidence, as the case may be, valid and binding obligations of the Debtors, enforceable against

the Debtors, their estates and any successors thereto in accordance with their terms. No obligation, payment, transfer or grant of security under the DIP Documents as approved under this Interim Order shall be stayed, restrained, voided, voidable or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim. The term of the DIP Facility shall commence on the date of entry of this Interim Order and end on the Termination Date, subject to the terms and conditions set forth herein and in the other DIP Documents.

(b) **Authorization to Borrow, etc**. In order to continue to operate its business, subject to the terms and conditions of this Interim Order and the other DIP Documents (including the DIP Budget), the DIP Borrower is hereby authorized to borrow under (and the DIP Guarantors are authorized to guarantee) the Initial DIP Term Loan during the Interim Period.

(c) **Conditions Precedent**. The DIP Lenders shall have no obligation to make any DIP Extension of Credit or any other financial accommodation hereunder or under the other DIP Documents (and the Debtors shall not make any request therefor) unless all conditions precedent to making DIP Extensions of Credit under the DIP Documents have been satisfied or waived in accordance with the terms of the DIP Documents.

(d) **DIP Collateral**. As used herein, "DIP Collateral" shall mean all now owned or hereafter acquired assets and property in which the Debtors and their estates have an interest, whether real or personal, tangible or intangible, or otherwise, whenever acquired, including, without limitation, all Prepetition Collateral, all assets and property pledged under the DIP Documents, including the equity interests of the DIP Borrower and of each other Debtor held by any other Debtor, all cash, any investment of such cash, inventory, accounts receivable, including intercompany accounts receivable (and all rights associated therewith), other rights to

payment whether arising before or after the Petition Date, contracts, contract rights, chattel paper, goods, investment property, inventory, deposit accounts (including the cash collection, "lockbox" and "concentration" accounts described in the DIP Documents), "core concentration accounts," "cash collateral accounts", and in each case all amounts on deposit therein from time to time, equity interests, securities accounts, securities entitlements, securities, commercial tort claims, books, records, plants, equipment, general intangibles, documents, instruments, interests in leases and leaseholds, interests in real property, fixtures, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, letter of credit rights, supporting obligations, machinery and equipment, patents, copyrights, trademarks, tradenames, other intellectual property, all licenses therefor, and all proceeds, rents, profits, products and substitutions, if any, of any of the foregoing. The DIP Collateral shall not include causes of action for preferences, fraudulent conveyances, and other avoidance power claims under Sections 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code (the "Avoidance Actions"), but shall, upon entry of a Final Order, include the proceeds of Avoidance Actions.

(e) **DIP Liens**. Effective immediately upon the entry of this Interim Order, and subject and subordinate to the Carve-Out, as set forth more fully in this Interim Order, the DIP Agent for the ratable benefit of the DIP Secured Parties is hereby granted the following security interests and liens, which shall immediately be valid, binding, perfected, continuing, enforceable and non-avoidable (all liens and security interests granted to the DIP Agent for the benefit of the DIP Secured Parties pursuant to this Interim Order, any Final Order and the other DIP Documents, the "DIP Liens"):

(I) pursuant to Section 364(c)(2) of the Bankruptcy Code, valid, enforceable, perfected and non-avoidable first priority liens on and security

interests in all DIP Collateral that was not encumbered by valid, enforceable, perfected and non-avoidable liens as of the Petition Date;

(II) pursuant to Section 364(c)(3) of the Bankruptcy Code, valid, enforceable, perfected and non-avoidable liens on and security interests in (x) all DIP Collateral which is unencumbered by the Prepetition Liens but on which a third party, i.e., not the Prepetition Secured Parties (a "Third Party Lienholder"), had a pre-existing lien on the Petition Date and (y) all DIP Collateral encumbered by the Prepetition Liens on which a Third Party Lienholder had a pre-existing lien on the Petition Date that was senior to or *pari passu* to the Prepetition Liens, in each case immediately junior only to any such liens and security interests of Third Party Lienholders, but solely to the extent that such liens and security interests of Third Party Lienholders were in each case valid, enforceable, perfected and non-avoidable as of the Petition Date (or were perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code) and were Permitted Liens (the "Senior Third Party Liens"); and

(III) pursuant to Section 364(d) of the Bankruptcy Code, valid, enforceable, perfected and non-avoidable liens on and security interests in all Prepetition Collateral, which liens and security interests shall be senior to and prime the Prepetition Liens and the liens of all Third Party Lienholders which are junior and subject to the Prepetition Liens.

(f) **Other Provisions Relating to the DIP Liens**. The DIP Liens shall secure all of the DIP Obligations. The DIP Liens shall not, without the consent of the DIP Agent, be made subject to, subordinate to, or *pari passu* with, any other lien or security interest, other than

to the extent expressly provided herein and to the Carve-Out, by any Court order heretofore or hereafter entered in the Cases. The DIP Liens shall be valid and enforceable against any trustee appointed in the Cases, upon the conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (such cases or proceedings, "Successor Cases"), and/or upon the dismissal of any of the Cases. The DIP Liens and the Adequate Protection Liens shall not be subject to Sections 510, 549, 550 or 551 of the Bankruptcy Code or, upon entry of the Final Order, the "equities of the case" exception of Section 552 of the Bankruptcy Code or Section 506(c) of the Bankruptcy Code. If the granting of the DIP Liens against any of the DIP Collateral are in any way prohibited or restricted under any of the Debtors' organizational documents, such organizational documents are hereby modified solely to permit the granting of the DIP Liens.

(g) **Superpriority Administrative Claim Status**. The DIP Obligations shall, pursuant to Section 364(c)(1) of the Bankruptcy Code, at all times constitute an allowed superpriority claim (the "DIP Superpriority Claim") of the DIP Agent for the benefit of the DIP Secured Parties, and be payable from and have recourse to all DIP Collateral. The DIP Superpriority Claim shall be subject and subordinate only to the Carve-Out. Other than as expressly provided herein, including in paragraph 9 hereof with respect to the Carve-Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under Sections 328, 330 and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these proceedings or in any Successor Cases, and no priority claims are, or will be, senior to, prior to or *pari passu* with the DIP Liens, the DIP Superpriority Claim or any of the DIP Obligations, or with any other claims of the DIP Secured Parties arising hereunder or under the other DIP Documents, or otherwise in connection with the DIP Facility.

3. **Authorization and Approval to Use Cash Collateral and Proceeds of DIP Facility**. Subject to the terms and conditions of this Interim Order and the other DIP Documents, and to the adequate protection granted to or for the benefit of the Prepetition Secured Parties as hereinafter set forth, the Debtors are authorized during the Interim Period (and not beyond) to (a) use the Cash Collateral and (b) request and use proceeds of the DIP Extensions of Credit, in each case in the amounts and for the line item expenditures set forth in the DIP Budget (subject to variances permitted under the DIP Credit Agreement). The DIP Budget may only be amended, restated, supplemented, modified, replaced, or extended in accordance with the DIP Documents and the prior written consent of the DIP Agent without further order of the Court; provided that any such amended, restated, supplemented, modified, replaced, or extended DIP Budget shall, within three (3) business days, be filed with the Court and served on the office of the U.S. Trustee and any Committee. Any expenditures other than transfers of cash made by the Debtors on or after the Petition Date shall be deemed to have been made first from Cash Collateral and any of the Debtors' other cash on hand and, after such Cash Collateral and other cash on hand (if any) has been fully depleted, then from proceeds of the DIP Facility, in each case, regardless of the actual source of any such expenditures or other transfers. Notwithstanding anything herein to the contrary, subject only to the Debtors' rights under paragraph 17(b) hereof and the Carve-Out, the Debtors' right to request or use proceeds of DIP Extensions of Credit or to use Cash Collateral shall terminate on the Termination Date. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or their estates or proceeds resulting therefrom outside the ordinary course of business, except as permitted herein (subject to any required Court approval).

4. **Adequate Protection for Prepetition Secured Parties**. As adequate protection for the interests of the Prepetition Notes Trustee and the Prepetition Secured Noteholders in the Prepetition Collateral (including Cash Collateral), the Prepetition Notes Trustee, for the benefit of the other Prepetition Secured Parties, shall, subject to any timely and successful Challenge (as defined below) that results in the avoidance of the Prepetition Liens pursuant to an order of the Court that is final and not subject to further appeal, from and after the Petition Date, receive adequate protection as follows:

(a) **Adequate Protection Liens**. To the extent of, and in an aggregate amount equal to, the diminution in value (if any) of the interests of the Prepetition Secured Parties in the Prepetition Collateral (including the Cash Collateral), from and after the Petition Date, calculated in accordance with Section 506(a) of the Bankruptcy Code, resulting from the use, sale or lease by the Debtors of the Prepetition Collateral (including the use of Cash Collateral), the granting of the DIP Liens, the subordination of the Prepetition Liens thereto and to the Carve-Out, and the imposition or enforcement of the automatic stay of Section 362(a) (collectively, "Diminution in Value"), the Prepetition Secured Parties shall have, pursuant to Sections 361, 363(e) and 364(d) of the Bankruptcy Code, replacement security interests in and liens upon (the "Adequate Protection Liens") all of the DIP Collateral. The Adequate Protection Liens of the Prepetition Secured Parties shall be junior and subject to the DIP Liens, any Senior Third Party Liens, and the Carve-Out.

(b) **Adequate Protection Superpriority Claims**. To the extent of the aggregate Diminution in Value, the Prepetition Secured Parties shall have an allowed superpriority administrative expense claim (the "Adequate Protection Superpriority Claim") as provided for in Section 507(b) of the Bankruptcy Code, immediately junior and subject to the

DIP Superpriority Claim and the Carve-Out, and payable from and having recourse to all DIP Collateral; provided that the Prepetition Secured Parties shall not receive or retain any payments, property, distribution or other amounts in respect of the Adequate Protection Superpriority Claim unless and until the DIP Obligations and (without duplication) the DIP Superpriority Claim have indefeasibly been paid in full in cash.

(c) **Adequate Protection Payments**. The Debtors shall pay all reasonable professional and advisory fees, costs and expenses of the Prepetition Notes Trustee and the Prepetition Secured Noteholders incurred in connection with the negotiation, documentation, administration and monitoring of the Prepetition Debt Documents and/or the DIP Facility and in connection with the Cases, including the reasonable documented postpetition fees and expenses of legal, financial and other advisory, tax, investment banking and other professionals (including, without limitation, White & Case LLP and Farnan LLP) as well as fees and expenses owed to any professional under the Forbearance Agreement; provided that payment of any fees and expenses of the Prepetition Notes Trustee's or Prepetition Secured Noteholders' professionals incurred after entry of this Interim Order, shall be subject to the notice and objection provisions of paragraph 20(b) of this Interim Order.

(d) **Milestones and Credit Bid Protection**. The Prepetition Secured Parties have represented that the Debtors' compliance with the Milestones are an essential element of the adequate protection of the Prepetition Secured Parties. Subject to the Final Order, the DIP Agent and the Prepetition Notes Trustee (together or independently) shall each have, subject to Section 363(k) of the Bankruptcy Code, the unqualified right to credit bid (x) up to the full amount of the DIP Obligations and the Prepetition Secured Obligations, respectively, and (y) the DIP Superpriority Claim and both the Adequate Protection Superpriority Claim, respectively,

without the need for further Court order authorizing the same, in connection with any sale of any of the DIP Collateral or Prepetition Collateral, whether such sale is effectuated through Section 363 or Section 1129 of the Bankruptcy Code, by a chapter 7 trustee under Section 725 of the Bankruptcy Code, or otherwise.

5. **Monitoring of Collateral**. The Prepetition Notes Trustee and the DIP Agent, and their respective consultants and advisors, shall be given reasonable access to the Debtors' books, records, assets and properties for purposes of monitoring the Debtors' businesses and the value of the DIP Collateral, and shall be permitted to conduct, at their discretion and at the Debtors' cost and expense, field audits, collateral examinations and inventory appraisals in respect of the DIP Collateral.

6. **Financial Reporting, etc**. The Debtors shall provide the DIP Agent and the Prepetition Notes Trustee with the monthly financial reporting given to the U.S. Trustee and all of the financial reporting as required under and in all instances consistent with the DIP Documents.

7. **DIP Lien and Adequate Protection Replacement Lien Perfection**. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection and priority of the DIP Liens and the Adequate Protection Liens without the necessity of filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any other action to validate or perfect the DIP Liens and the Adequate Protection Liens or to entitle the DIP Liens and the Adequate Protection Liens to the priorities granted herein. Notwithstanding the foregoing, the DIP Agent may, in its sole discretion, file such financing statements, deeds of trust, mortgages, security agreements, notices of liens and other similar documents, and is hereby

granted relief from the automatic stay of Section 362 of the Bankruptcy Code in order to do so, and all such financing statements, deeds of trust, mortgages, security agreements, notices and other agreements or documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of the Cases. The Debtors shall take any action requested by the DIP Agent, including executing and delivering to the DIP Agent all such financing statements, mortgages, security agreements, notices and other documents as the DIP Agent may request, to evidence, confirm, validate or perfect, or to insure the contemplated priority of the DIP Liens and the Adequate Protection Liens. The DIP Agent, in its sole discretion, may file a photocopy of this Interim Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which the Debtors have real or personal property. To the extent that the Prepetition Notes Trustee is the secured party under any account control agreements, listed as loss payee under any of the Debtors' insurance policies or is the secured party under any Prepetition Debt Document, the DIP Agent is also hereby deemed to be the secured party under such account control agreements, loss payee under the Debtors' insurance policies and the secured party under each such Prepetition Debt Document, and shall have all rights and powers attendant to that position (including, without limitation, rights of enforcement) and shall act in that capacity and distribute any proceeds recovered or received in accordance with the terms of this Interim Order and/or the Final Order, as applicable, and the other DIP Documents. The Prepetition Notes Trustee shall serve as agent for the DIP Agent for purposes of perfecting the DIP Agent's security interests and liens on all DIP Collateral that is of a type such that perfection of a security interest therein may be accomplished only by possession or control by a secured party.

8. **Reservation of Certain Third Party Rights and Bar of Challenges and Claims**.

(a) All of the findings in paragraph E hereof and all agreements, terms, provisions and stipulations set forth in paragraph F hereof (the "Claims Stipulations") shall be irrevocably binding on all persons and entities upon the Challenge Period Termination Date (defined below). Nothing in this Interim Order shall prejudice any rights any party in interest may have (a) to object to or challenge any of the Claims Stipulations, including in relation to (i) the validity, extent, perfection or priority of the Prepetition Liens on the Prepetition Collateral, or (ii) the validity, allowability, priority, status or amount of the Prepetition Secured Obligations, or (b) to bring suit against any of the Prepetition Secured Parties in connection with or related to the matters covered by the Claims Stipulations; provided that, unless any party with standing to do so commences an adversary proceeding or contested matter (as applicable) raising such objection or challenge, including without limitation any claim against the Prepetition Secured Parties in the nature of a setoff, counterclaim or defense to the Prepetition Secured Obligations (including but not limited to, those under Sections 544, 547, 548, 549, 550 and/or 552 of the Bankruptcy Code or by way of suit against any of the Prepetition Secured Parties) (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "Challenge"), by the date that is (x) with respect to any Creditors' Committee, sixty (60) calendar days following the formation of such Creditors' Committee and (y) with respect to any other party with standing, seventy-five (75) calendar days following entry of this Interim Order (the period described in the immediately preceding clause shall be referred to as the "Challenge Period" and the date that is the next calendar day after the termination of the Challenge Period shall be referred to as the "Challenge Period Termination Date"), upon the Challenge Period Termination Date, any and all

such challenges and objections by any Committee, any Chapter 11 or Chapter 7 trustee appointed herein or in any Successor Case, and any other party in interest shall be deemed to be forever waived and barred, and the Prepetition Secured Obligations shall be deemed to be allowed secured claims within the meaning of Sections 502 and 506 of the Bankruptcy Code for all purposes in connection with the Cases, and the Claims Stipulations shall be binding on all creditors, interest holders and parties in interest. Notwithstanding the foregoing, if a chapter 11 trustee is appointed in the Cases or if one or more of the Cases are converted to chapter 7 prior to the expiration of the Challenge Period, the chapter 11 or chapter 7 trustee, as applicable, shall have until the later of (i) the expiry of the Challenge Period, (ii) thirty (30) days following the appointment of the chapter 11 trustee or the conversion of such Chapter 11 Cases, as applicable, and (iii) such date as otherwise ordered by the Court, to commence a Challenge. To the extent any such objection or complaint is filed prior to the Challenge Period Termination Date, the Claims Stipulations shall nonetheless remain binding and preclusive except to the extent expressly challenged in such objection or complaint. Upon a successful Challenge as against any party, the Court may fashion an appropriate remedy. All remedies or defenses of any party with respect to any Challenge are hereby preserved.

(b) No portion of the Carve-Out, no proceeds of the DIP Facility, the DIP Collateral or DIP Extensions of Credit, and no proceeds of the Prepetition Collateral (including Cash Collateral), may be used for the payment of the fees and expenses of any person incurred (i) in investigating, challenging, or in relation to the challenge of, any of the Prepetition Liens, Prepetition Secured Obligations, DIP Liens, or DIP Obligations (or the value of the Prepetition Collateral or the DIP Collateral), or the initiation or prosecution of any claim or action against any of the Prepetition Secured Parties or DIP Secured Parties, including, without limitation, any

claim under Chapter 5 of the Bankruptcy Code, or any state, local or foreign law, in respect of the Prepetition Secured Obligations or the DIP Obligations, or in preventing, hindering or delaying the realization by the Prepetition Secured Parties or the DIP Secured Parties upon any Prepetition Collateral or DIP Collateral, respectively, or the enforcement of their respective rights under this Interim Order, the Final Order, any other DIP Loan Document or any Prepetition Debt Document, (ii) in requesting authorization, or supporting any request for authorization, to obtain postpetition financing (whether equity or debt) or other financial accommodations pursuant to Section 364(c) or (d) of the Bankruptcy Code, or otherwise, other than (x) from the DIP Lenders or (y) if such financing is sufficient to indefeasibly pay and satisfy all Prepetition Secured Obligations and DIP Obligations in full in cash and such financing is immediately so used or (iii) in connection with any claims or causes of actions against the Releasees, including formal or informal discovery proceedings in anticipation thereof, and/or in challenging any Prepetition Secured Obligations, DIP Obligations, Prepetition Liens, Adequate Protection Liens or DIP Liens; provided that, if a Creditors' Committee is appointed, the Creditors' Committee may investigate any potential challenges with respect to the Prepetition Secured Obligations, Prepetition Debt Documents, and Prepetition Liens during the Challenge Period at an aggregate expense for such investigation (but not litigation, prosecution, objection, or challenge thereto) not to exceed, in the aggregate, an amount to be agreed by the Creditors' Committee, the Debtors, and the DIP Agent and, if no such agreement is reached, all rights for further relief with respect to such investigation budget are reserved.

9. **Carve-Out**.

(a) As used in this Interim Order, the "Carve-Out" means the sum of: (i) all fees required to be paid to the Clerk of the Court and all statutory fees payable to the U.S.

Trustee under Section 1930(a) of title 28 of the United States Code, together with the statutory rate of interest (without regard to the Post-Carve-Out Trigger Notice Cap (defined below)); (ii) all reasonable fees and expenses up to $25,000 incurred by a trustee under Section 726(b) of the Bankruptcy Code; (iii) to the extent allowed by the Court at any time, pursuant to a fee application on notice, or other procedure permitted by any Court order allowing interim compensation or the payment of fees of ordinary course professionals, whether by interim order, final order, procedural order or otherwise, all reasonable and documented unpaid fees and expenses (the "Allowed Professional Fees") incurred by estate professionals retained by the Debtors pursuant to Section 327, 328, or 363 of the Bankruptcy Code (collectively, the "Debtor Professionals") and any Committee (together with the Debtor Professionals, the "Professionals"), and, with respect to any Committee, as limited by the DIP Budget, at any time before the Carve-Out Trigger Date (defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice (provided that nothing herein shall be construed to impair the ability of any party to object to the professional fees, reimbursement or compensation referred to in this clause (iii)); and (iv) the Allowed Professional Fees of the Professionals incurred on and after the first business day following the Carve-Out Trigger Date in an aggregate amount not to exceed $1,000,000 (the amounts set forth in this clause (iv) being the "Post-Carve-Out Trigger Notice Cap"); provided that the Post-Carve-Out Trigger Notice Cap shall be reduced, dollar-for-dollar, by the amount of any fees and expenses incurred and accruing by the Debtors and paid to the applicable Professionals following delivery of the Carve-Out Trigger Notice; provided further that the Post-Carve-Out Trigger Notice Cap shall be reduced, dollar for dollar, by the amount of any prepetition retainers received by any Professional and not previously applied to fees and expenses of such Professional. For the avoidance of doubt and notwithstanding anything to the

contrary contained in this Interim Order or the Prepetition Debt Documents, the Carve-Out shall be senior to the DIP Liens, the DIP Superpriority Claim, the Adequate Protection Liens, and the Adequate Protection Superpriority Claim.

(b) For purposes of the foregoing, "Carve-Out Trigger Notice" shall mean a written notice delivered by electronic mail (or other electronic means) by the DIP Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee and lead counsel to the Committee, if any, of the occurrence and continuation of an Event of Default or the termination of funding under the DIP Facility, stating that the Post-Carve-Out Trigger Notice Cap has been invoked. "Carve-Out Trigger Date" shall mean the date on which the DIP Agent provides the Carve-Out Trigger Notice.

(c) After the Carve-Out Trigger Date, the DIP Lenders shall permit usage of the DIP Facility to fund the full amount of the Carve-Out, including the Post-Carve-Out Trigger Notice Cap, into a segregated account (the "Carve-Out Reserve Account") held by the Debtors, to be applied to the Allowed Professional Fees and the fees of the U.S. Trustee and Clerk of the Court when due and payable (the "Carve-Out Segregated Funds"). Without in any way limiting the Debtors' ability to use the Carve-Out Segregated Funds in the Carve-Out Reserve Account to pay the Allowed Professional Fees and the fees of the U.S. Trustee and Clerk of the Court, the Carve-Out Segregated Funds shall remain encumbered by and subject to the DIP Liens. To the extent the Carve-Out Segregated Funds in the Carve-Out Reserve Account exceed the Allowed Professional Fees and the fees of the U.S. Trustee and Clerk of the Court, any such remaining amounts shall be promptly returned to the DIP Agent for the benefit of the DIP Lenders.

10. **Payment of Compensation**. Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses of any of the Debtors or any Committee or

shall limit or otherwise affect the right of the DIP Secured Parties and/or the Prepetition Secured Parties or any other party in interest to object to the allowance and payment of any such fees and expenses. No professional fees shall be paid absent a Court order allowing such payment, pursuant to a fee application on notice, or other procedure permitted by any Court order allowing interim compensation or the payment of fees of ordinary course professionals. So long as no Event of Default exists that has not been waived in writing, the Debtors shall be permitted to pay compensation and reimbursement of expenses allowed by the Court and payable under Sections 330 and 331 of the Bankruptcy Code or compensation procedures approved by the Court and in form and substance reasonably acceptable to the Debtors and the DIP Secured Parties, as the same may be due and payable, and the same shall not reduce the Post-Carve-Out Trigger Notice Cap.

11. **Section 506(c) Claims**. Subject to the entry of the Final Order, as a further condition of the DIP Facility, any obligation of the DIP Secured Parties to make DIP Extensions of Credit, and the Debtors' authorization to use the Cash Collateral, the Debtors (and any successors thereto or any representatives thereof, including any trustees appointed in the Cases or any Successor Case) shall be deemed to have waived any rights, benefits or causes of action under Section 506(c) of the Bankruptcy Code as they may relate to or be asserted against the DIP Secured Parties, the DIP Liens, the DIP Collateral, the Prepetition Secured Parties, the Adequate Protection Liens, the Prepetition Liens or the Prepetition Collateral. Save and except for the Carve-Out, nothing contained in this Interim Order, in the Final Order or in the other DIP Documents shall be deemed a consent by the Prepetition Secured Parties or the DIP Secured Parties to any charge, lien, assessment or claim against, or in respect of, the DIP Collateral or the Prepetition Collateral under Section 506(c) of the Bankruptcy Code or otherwise.

12. **Collateral Rights; Limitations in Respect of Subsequent Court Orders**. Without limiting any other provisions of this Interim Order, unless the DIP Agent and the Prepetition Notes Trustee have provided their prior written consent, it shall be an Event of Default under the DIP Facility for there to be entered in these Cases, or in any Successor Case, any order which authorizes (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral and/or entitled to priority administrative status which is superior to or *pari passu* with those granted pursuant to this Interim Order to or for the benefit of the DIP Secured Parties or the Prepetition Secured Parties, or (ii) the use of Cash Collateral for any purpose other than as set forth in this Interim Order or in the DIP Budget.

13. **Proceeds of Subsequent Financing**. Without limiting the provisions and protections of paragraph 12 hereof, if at any time prior to the indefeasible repayment and satisfaction in full in cash of all DIP Obligations and the termination of the DIP Secured Parties' obligations to make DIP Extensions of Credit, including subsequent to the confirmation of any Chapter 11 plan (the "Plan") with respect to the Debtors, the Debtors' estates, any trustee, any examiner with enlarged powers or any responsible officer subsequently appointed, shall obtain credit or incur debt in violation of this Interim Order or the other DIP Documents, then the first cash proceeds derived from such credit or debt and all Cash Collateral in the amount necessary to satisfy all DIP Obligations then outstanding shall immediately be turned over to the DIP Agent for the indefeasible repayment and satisfaction in full in cash of all DIP Obligations then outstanding.

14. **Cash Management**. Any DIP Extensions of Credit or other proceeds of the DIP Facility may only be held in deposit accounts that are deposit accounts over which the DIP Agent

is deemed to have "control" or deposit accounts subject to a control agreement with the Prepetition Notes Trustee and/or the DIP Agent (unless otherwise expressly authorized under the DIP Credit Agreement), each in accordance with the DIP Credit Agreement, and shall be disbursed in accordance with the terms and conditions set forth in the DIP Credit Agreement. The Debtors' cash management system shall at all times be maintained (i) in accordance with the terms of the DIP Documents and any order of this Court approving the maintenance of the Debtors' cash management system (the "Cash Management Order"), and (ii) in a manner which in any event shall be reasonably satisfactory to the DIP Agent as in the Cash Management Order, the Debtors shall not transfer any funds (including, without limitation, any proceeds of DIP Collateral or any Cash Collateral) to any of the Debtors' non-Debtor affiliates, during the Cases except in accordance with the DIP Budget and the terms and conditions of the Cash Management Order. The DIP Agent shall be deemed to have "control" over all cash management accounts for all purposes of perfection under the Uniform Commercial Code. Absent the occurrence of an Event of Default, all amounts collected in the cash collection accounts may be used in accordance with this Interim Order, the DIP Budget and the other DIP Documents; after the occurrence and during the continuance of an Event of Default, subject only to the funding of the Carve-Out and the Debtors' rights under paragraph 17(b) hereof, all such amounts shall be applied in accordance with paragraph 18(b) hereof.

15. **Disposition of DIP Collateral**. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral, except as permitted by the DIP Documents or as approved by the Court.

16. **Survival of Certain Provisions**. In the event of the entry of any order converting any of these Cases into a Successor Case, the DIP Liens, the DIP Superpriority Claim, the

Adequate Protection Liens, the Adequate Protection Superpriority Claim and the Carve-Out shall continue in these proceedings and in any Successor Case, and such DIP Liens, DIP Superpriority Claim, Adequate Protection Liens, Adequate Protection Superpriority Claim and Carve-Out shall maintain their respective priorities as provided by this Interim Order.

17. **Events of Default; Rights and Remedies Upon Event of Default**.

(a) Any automatic stay otherwise applicable to the DIP Secured Parties and the Prepetition Notes Trustee is hereby modified so that, upon and after the occurrence of the Termination Date, the DIP Agent and the Prepetition Notes Trustee shall, subject to subparagraph (b) of this paragraph 17, be immediately entitled to exercise all of their rights and remedies in respect of the DIP Collateral and the Prepetition Collateral, in accordance with this Interim Order, the other DIP Documents and/or the Prepetition Debt Documents, as applicable. The term "Termination Date" shall mean: the earliest to occur of: (i) the Maturity Date, (ii) the date that is thirty-five (35) calendar days after the Petition Date, if the Court has not entered the Final Order, (iii) the date on which the Court denies approval of, or indicates that it will not approve, the Final Order, (iv) the consummation of a sale of all or substantially all of the assets of the Debtors pursuant to Section 363 of the Bankruptcy Code, (v) substantial consummation (as defined in section 1101 of the Bankruptcy Code and which for purposes hereof shall be no later than the "effective date" thereof) of a plan of reorganization or liquidation filed in the Cases that is confirmed pursuant to an order entered by the Court, and (vi) the acceleration of the loans and the termination of all Commitments in accordance with the terms of the DIP Documents.

(b) Notwithstanding the foregoing subparagraph (a) of this paragraph 17, immediately following the giving of notice by the DIP Agent (or, if the DIP Obligations have been indefeasibly paid in full, the Prepetition Notes Trustee) to the Debtors, counsel to the

Debtors, counsel for any Committee and the U.S. Trustee of the occurrence of an Event of Default: (i) all Commitments of the DIP Lenders to provide any DIP Extensions of Credit shall immediately be suspended; (ii) the Debtors shall have no right to request or use any proceeds of any DIP Extensions of Credit or DIP Collateral, or to use Cash Collateral, provided that, during the Default Notice Period (defined below), the Debtors shall be permitted to continue to use Cash Collateral and the proceeds of the DIP Facility solely in the ordinary course of business in accordance with the DIP Budget and towards the satisfaction of the DIP Obligations and the Carve-Out, as provided in the applicable DIP Documents and this Interim Order, and to take the actions set forth in the following clause (v); (iii) on or after five (5) business days following delivery of such notice (such 5-business day period, the "Default Notice Period"), unless such Event of Default is cured within such time, the DIP Lenders shall have relief from the automatic stay to exercise remedies under the DIP Documents; (iv) the Debtors shall deliver and cause the delivery of the proceeds of the DIP Extensions of Credits and the DIP Collateral to the DIP Agent as provided herein and in the DIP Documents subject to the funding of the Carve-Out; and (v) the Debtors and any Committee shall be entitled to an emergency hearing before this Court during the Default Notice Period to challenge the lifting of the automatic stay ~~solely on the basis that no Event of Default has occurred~~. If the Debtors or any Committee or any other party in interest, does not contest the occurrence of the Event of Default within the Default Notice Period, or if there is a timely contest of the occurrence of an Event of Default and the Court after notice and a hearing declines to stay the enforcement thereof, the Termination Date shall be deemed to have occurred for all purposes and the automatic stay, as to the DIP Agent and the Prepetition Notes Trustee, shall automatically terminate in all respects.

(c) Upon the occurrence of the Termination Date (but subject, only in the case of the occurrence of the Termination Date resulting from an Event of Default, to the provisions of paragraph 17(b) hereof), the DIP Agent and the Prepetition Notes Trustee are authorized to exercise all remedies and proceed under or pursuant to the applicable DIP Documents and the Prepetition Debt Documents. All proceeds realized in connection with the exercise of the rights and remedies of the applicable DIP Secured Parties and Prepetition Secured Parties shall be turned over and applied in accordance with paragraph 18(b) hereof.

(d) The automatic stay imposed under Section 362(a) of the Bankruptcy Code is hereby modified pursuant to the terms of the DIP Documents as necessary to (i) permit the Debtors to grant the Adequate Protection Liens and the DIP Liens and to incur all DIP Obligations and all liabilities and obligations to the Prepetition Secured Parties hereunder and under the other DIP Documents, as the case may be, and (ii) authorize the DIP Agent and Prepetition Notes Trustee to retain and apply payments, and otherwise enforce their respective rights and remedies hereunder subject to the provisions of paragraph 17(b) hereof.

(e) Nothing included herein shall prejudice, impair or otherwise affect the Prepetition Notes Trustee's or the DIP Agent's rights to seek (on behalf of the Prepetition Secured Parties and the DIP Secured Parties, respectively) any other or supplemental relief in respect of the Debtors (including, as the case may be, other or additional adequate protection).

(f) Notwithstanding anything in this Interim Order to the contrary, the Prepetition Notes Trustee shall not be permitted to exercise any rights or remedies for itself or the Prepetition Secured Parties unless and until the DIP Obligations are indefeasibly paid and satisfied in full in cash.

18. **Applications of Proceeds of Collateral, Payments and Collections**.

(a) As a condition to the DIP Extensions of Credit and the authorization to use Cash Collateral, each Debtor has agreed that proceeds of any DIP Collateral and Prepetition Collateral, any amounts held on account of the DIP Collateral or Prepetition Collateral, and all payments and collections received by the Debtors with respect to all proceeds of DIP Collateral and Prepetition Collateral, shall be used and applied in accordance with the DIP Documents (including repayment and reduction of the DIP Obligations), the DIP Budget (subject to variances permitted under the DIP Credit Agreement) and this Interim Order.

(b) Subject to the Debtors' rights under paragraph 17(b) hereof and the funding of the Carve-Out, if applicable, upon and after the occurrence of the Termination Date, all proceeds of DIP Collateral and Prepetition Collateral, whenever received, shall be paid and applied as follows: (i) *first*, to permanently and indefeasibly repay and reduce the DIP Obligations then due and owing in accordance with the DIP Documents, until paid and satisfied in full in cash; (ii) *second*, to permanently and indefeasibly repay and reduce the Prepetition Secured Obligations then due and owing in accordance with the Prepetition Debt Documents, until paid and satisfied in full in cash; and (iii) *third*, to the Debtors' estates. For avoidance of doubt, nothing in this Interim Order shall be construed to limit the voluntary and mandatory repayment provisions set forth in the DIP Documents.

19. **Proofs of Claim, etc**. None of the Prepetition Secured Parties or the DIP Secured Parties shall be required to file proofs of claim in any of the Cases or any Successor Case for any claim described herein. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Cases or any Successor Case to the contrary, the Prepetition Notes Trustee, on behalf of itself and the other Prepetition Secured Parties and the

DIP Agent, on behalf of itself and the other DIP Secured Parties, respectively, are hereby authorized and entitled, in each of their sole and absolute discretion, but not required, to file (and amend and/or supplement, as each sees fit) a proof of claim and/or aggregate proofs of claim in any of the Cases or any Successor Case for any claim described herein; for avoidance of doubt, any such proof of claim may (but is not required to be) filed as one consolidated proof of claim against all of the Debtors, rather than as separate proofs of claim against each Debtor. Any proof of claim filed by the Prepetition Notes Trustee or the DIP Agent shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the respective Prepetition Secured Parties or DIP Secured Parties. Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation administrative claims) in any of the Cases or any Successor Case shall not apply to the Prepetition Notes Trustee, the other Prepetition Secured Parties, the DIP Agent, or the other DIP Secured Parties; provided that, upon the conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code, the filing of such proofs of claim may be required.

20. **Other Rights and Obligations**.

(a) **Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order**. Based on the findings set forth in this Interim Order and in accordance with Section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility as approved by this Interim Order, the reversal or modification on appeal of the authorization hereunder for the Debtors to obtain the DIP Facility, or the grant hereunder of the DIP Liens and the Adequate Protection Liens, shall not affect the validity of such debt or the priority of such liens.

(b) **Expenses**. To the fullest extent provided in the DIP Documents, the Prepetition Debt Documents and this Interim Order, the Debtors will pay all expenses incurred by the DIP Secured Parties, the Prepetition Notes Trustee and the Prepetition Secured Noteholders (including, without limitation, the reasonable fees and disbursements of their counsel, any other local counsel that they shall retain and any internal or third-party appraisers, consultants, financial, restructuring or other advisors and auditors advising any such counsel) in connection with (i) the preparation, execution, delivery, funding and administration of the DIP Documents, including, without limitation, all due diligence fees and expenses incurred or sustained in connection with the DIP Documents, (ii) the administration of the Prepetition Debt Documents, (iii) the Cases or any Successor Case, or (iv) enforcement of any rights or remedies under the DIP Documents or the Prepetition Debt Documents, in each case whether or not the transactions contemplated hereby are fully consummated. Notwithstanding any other provisions of this Interim Order, the Prepetition Notes Trustee, the Prepetition Secured Noteholders and the DIP Secured Parties, and their advisors and professionals, shall not be required to comply with the U.S. Trustee fee guidelines, but shall provide reasonably detailed statements (redacted if necessary for privileged, confidential or otherwise sensitive information, as to those statements provided to any party other than the U.S. Trustee) for fees and expenses incurred after entry of this Interim Order to the Office of the U.S. Trustee and counsel for any Committee and the Debtors. Thereafter, within ten (10) calendar days of presentment of such statements, if no written objections to the reasonableness of the fees and expenses charged in any such invoice (or portion thereof) is made, the Debtors shall pay in cash all such fees and expenses of the Prepetition Notes Trustee, the Prepetition Secured Noteholders, the DIP Agent and the DIP Secured Parties, and their advisors and professionals. Any objection to the payment of such fees

or expenses shall be made only on the basis of "reasonableness," and shall specify in writing the amount of the contested fees and expenses and the detailed basis for such objection. To the extent an objection only contests a portion of an invoice, the undisputed portion thereof shall be promptly paid. If any such objection to payment of an invoice (or any portion thereof) is not otherwise resolved between objecting party and the issuer of the invoice, either party may submit such dispute to the Court for a determination as to the reasonableness of the relevant disputed fees and expenses set forth in the invoice. This Court shall resolve any dispute as to the reasonableness of any fees and expenses. For the avoidance of doubt, and without limiting any of the forgoing or any other provision of this Interim Order, the fees specified in Section 2(e)(iii) of the DIP Credit Agreement are, upon entry of this Interim Order and irrespective of any subsequent order approving or denying the DIP Facility or any other financing pursuant to Section 364 of the Bankruptcy Code, fully entitled to all of the protections of Section 364(e) of the Bankruptcy Code and are deemed fully earned, indefeasibly paid, non-refundable, irrevocable and non-avoidable as of the date of this Interim Order.

(c) **Binding Effect**. The provisions of this Interim Order shall be binding upon and inure to the benefit of the DIP Secured Parties and the Prepetition Secured Parties, the Debtors, and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors) whether in the Cases, in any Successor Case, or upon dismissal of any such Chapter 11 or Chapter 7 case.

(d) **No Waiver**. The failure of the DIP Secured Parties or the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order, the other DIP Documents or the Prepetition Debt Documents or otherwise, as applicable,

shall not constitute a waiver of any of the DIP Secured Parties' or Prepetition Secured Parties' rights hereunder, thereunder or otherwise. Notwithstanding anything herein, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair any of the rights, claims, privileges, objections, defenses or remedies of the DIP Secured Parties or the Prepetition Secured Parties under the Bankruptcy Code or under non-bankruptcy law against any other person or entity in any court, including without limitation, the rights of the DIP Agent and the Prepetition Notes Trustee (i) to request conversion of any of the Cases to cases under Chapter 7, dismissal of any of the Cases, or the appointment of a trustee in any of the Cases, or (ii) to propose, subject to the provisions of Section 1121 of the Bankruptcy Code, a Plan, or (iii) to exercise any of the rights, claims or privileges (whether legal, equitable or otherwise) on behalf of the DIP Secured Parties or the Prepetition Secured Parties.

(e) **No Third Party Rights**. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, third party or incidental beneficiary.

(f) **Intercreditor Matters**. Nothing in this Interim Order shall be construed to convey on any individual DIP Secured Party or Prepetition Secured Party any consent, voting or other rights beyond those (if any) set forth in the DIP Documents and Prepetition Debt Documents, as applicable. Nothing in this Interim Order shall be construed to impair or otherwise affect any intercreditor, subordination or similar agreement or arrangement in respect of the Prepetition Secured Obligations, which are enforceable to the fullest extent provided by Section 510(a) of the Bankruptcy Code and applicable law.

(g) **No Marshaling**. Subject to the entry of the Final Order, neither the DIP Secured Parties nor the Prepetition Secured Parties shall be subject to the equitable doctrine of

"marshaling" or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as applicable.

(h) **Section 552(b)**. Subject to the entry of the Final Order, the DIP Secured Parties and the Prepetition Secured Parties shall each be entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under Section 552(b) of the Bankruptcy Code shall not apply to the DIP Secured Parties or the Prepetition Secured Parties with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral or the DIP Collateral.

(i) **Amendment**. The Debtors and the DIP Agent (with the consent of the requisite DIP Secured Parties as provided in and consistent with their respective rights under the DIP Documents) may amend, modify, supplement or waive any provision of the DIP Documents without further approval of the Court, unless such amendment, modification, supplement or waiver (w) increases the interest rate (other than as a result of the imposition of the default rate) or fees charged in connection with the DIP Facility, (x) increases the commitments of the DIP Lenders to make DIP Extensions of Credit under the DIP Documents, (y) changes the Termination Date or (z) otherwise is materially adverse to the interests of the Debtors or their estates; provided that any amendment, modification, or supplement of the DIP Documents that does not require Court approval shall, within three (3) business days, be filed with the Court and served on the office of the U.S. Trustee and any Committee. No waiver, modification or amendment of any of the provisions hereof shall be effective unless set forth in writing, signed by, or on behalf of, the Debtors and the DIP Agent (after having obtained the approval of the requisite DIP Secured Parties as provided in the DIP Documents) and approved by the Court after notice to parties in interest.

(j) **Priority of Terms**. To the extent of any conflict between or among (a) the express terms or provisions of any of the DIP Documents, the Motion, any other order of this Court, or any other agreements, on the one hand, and (b) the terms and provisions of this Interim Order, on the other hand, unless such term or provision herein is phrased in terms of "defined in" or "as set forth in" the DIP Credit Agreement, the terms and provisions of this Interim Order shall govern.

(k) **Survival of Interim Order**. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (i) confirming any Plan in any of the Cases, (ii) converting any of the Cases to a case under Chapter 7 of the Bankruptcy Code, (iii) to the extent authorized by applicable law, dismissing any of the Cases, (iv) withdrawing of the reference of any of the Cases from this Court or (v) providing for abstention from handling or retaining of jurisdiction of any of the Cases in this Court. The terms and provisions of this Interim Order, the DIP Documents and the Prepetition Debt Documents, including the DIP Liens and DIP Superpriority Claim granted pursuant to this Interim Order, the DIP Documents and the Prepetition Debt Documents and any priorities and protections granted to or for the benefit of the DIP Secured Parties and Prepetition Secured Parties (including the Adequate Protection Liens and the Adequate Protection Superpriority Claim) hereunder and thereunder, shall continue in full force and effect to the fullest extent provided by Section 364(e) of the Bankruptcy Code.

(l) **Enforceability**. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.

(m) **No Waivers or Modification of Interim Order**. The Debtors irrevocably waive any right to seek any modification or extension of this Interim Order without the prior written consent of the DIP Agent and the Prepetition Notes Trustee, and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Agent or the Prepetition Notes Trustee. The Debtors may not seek to modify or to alter relative lien priority of the DIP Liens, the Prepetition Liens and the Adequate Protection Liens set forth in this Interim Order.

(n) **Waiver of any Applicable Stay**. Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Interim Order.

21. **Final Hearing**.

(a) The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility is scheduled for October 16, 2019, at 12 noon. (EST) at the United States Bankruptcy Court for the District of Delaware.

(b) On or before two business days after entry of this Interim Order, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice"), together with copies of this Interim Order and the Motion[, on the Notice Parties and to any other party that has filed a request for notices with this Court prior thereto and to any Committee after the same has been appointed, or Committee counsel, if the same shall have been appointed; the Internal Revenue Service, the state taxing authorities in any state in which the Debtors do business, any federal or state regulatory authorities governing the Debtors' industry, the U.S. Attorney's Office, the Delaware Attorney General, and the U.S. Trustee]. The Final Hearing Notice shall state that any

party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of the Court no later than [●] at [●]:[●] [a./p.]m. (EST), which objections shall be served so that the same are received on or before such date by: (a) proposed counsel for the Debtors, Paul Hastings LLP, Attn: Chris L. Dickerson, Brendan M. Gage, Robert A. Dixon Jr., 71 South Wacker Drive, Suite 4500, Chicago, Illinois 60606, Attn: Todd M. Schwartz, 1117 S. California Avenue Palo Alto, California 94304; (b) proposed co-counsel for the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: M. Blake Cleary and Jaime Luton Chapman; (c) counsel for the [Ad Hoc Group of Prepetition Secured Noteholders], White & Case LLP, Attn: William A. Guerrieri, 111 South Wacker Drive, Suite 5100, Chicago, IL 60606, Attn: Andrew T. Zatz, 1221 Avenue of the Americas, New York, New York 10020; (d) co-counsel for the [Ad Hoc Group of Prepetition Secured Noteholders], Fox Rothschild LLP, 919 N. Market St., Wilmington, Delaware 19801, Attn: Jeffrey M. Schlerf; and (e) the U.S. Trustee, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: [●].

(c) **Retention of Jurisdiction**. The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

Sept. 16, 2019

HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

DIP CREDIT AGREEMENT

Execution Version

DEBTOR-IN-POSSESSION CREDIT AGREEMENT

dated as of September [●], 2019

among

GCX LIMITED, as Borrower,

THE GUARANTORS FROM TIME TO TIME PARTY HERETO, as Guarantors,

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

and

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Administrative Agent

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DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This DEBTOR-IN-POSSESSION CREDIT AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, this "Agreement"), dated as of September [●], 2019, among GCX LIMITED, an exempted company with limited liability formed under the laws of Bermuda (the "Borrower"), the Guarantors from time to time party hereto (collectively, the "Guarantors" and, individually, each a "Guarantor"), the lenders from time to time party hereto (in such capacity, together with their respective successors and assigns permitted hereunder, the "Lenders"), and WILMINGTON TRUST, NATIONAL ASSOCIATION, a national banking association, as agent (in such capacity, together with its successors and assigns permitted hereunder, the "Administrative Agent").

RECITALS

WHEREAS, prior to the Petition Date (as defined below), the Borrower issued the 7.000% Senior Secured Notes due 2019 ("Prepetition Secured Notes" and the holders of such Prepetition Secured Notes, the "Prepetition Secured Noteholders") pursuant to that certain Indenture, dated August 1, 2014 (as amended, amended and restated, supplemented, or otherwise modified from time to time, the "Indenture" and collectively with and all other agreements, documents and instruments delivered or executed in connection therewith, each as may have been amended, amended and restated, supplemented or otherwise modified from time to time, the "Prepetition Debt Documents"), among the Borrower, as Issuer, FLAG Telecom Development Limited, FLAG Telecom Group Services Limited, FLAG Telecom Ireland Network DAC, FLAG Telecom Network Services DAC, FLAG Telecom Network USA Limited, Reliance FLAG Atlantic France SAS, Reliance FLAG Telecom Ireland DAC, Reliance Globalcom Limited, Reliance Vanco Group Limited, Vanco Australasia Pty Limited, Vanco GmbH, Vanco SAS, Vanco UK Limited, Vanco US, LLC, and VNO Direct Limited, as Subsidiary Guarantors (collectively with the Borrower, the "Debtors"), and the Bank of New York Mellon, as Trustee and Collateral Agent (the "Prepetition Notes Trustee");

WHEREAS, to secure the Borrower's obligations under the Prepetition Secured Notes, the Debtors granted to the Prepetition Notes Trustee a lien and security interest in substantially all of the Debtors' assets, including the equity interests in the Debtors (together with all other collateral pledged under the Indenture and the Prepetition Secured Notes and the other Prepetition Debt Documents, collectively, the "Prepetition Collateral");

WHEREAS, on September [●], 2019 (the "Petition Date"), the Debtors filed voluntary proceedings (the "Chapter 11 Cases") under chapter 11 of title 11 of the United States Code (as amended, the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), and such Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, the Borrower has requested that the Lenders provide a multiple draw senior secured superpriority debtor-in-possession term loan facility in an aggregate principal amount of up to $54,500,000 to the Borrower (the "DIP Facility"), consisting of initial term loans

to be funded in cash on or after the Closing Date but prior to the entry of the Final DIP Order in an aggregate principal amount not exceeding $23,100,000, and delayed draw term loans to be funded in cash in multiple draws occurring after the entry of the Final DIP Order;

WHEREAS, the Lenders have agreed to provide the DIP Facility on the terms and subject to the conditions set forth herein and in the DIP Orders; and

WHEREAS, the Borrower and each Guarantor acknowledge that they each will receive substantial direct and indirect benefits by reason of the making of loans and other financial accommodations to the Borrower as provided in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and the conditions set forth below, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. **Definitions**. As used in this Agreement, the following terms shall have the meanings set forth below:

"Acceptable Plan" means a plan of reorganization for the Debtors on the terms set forth in the Restructuring Support Agreement and otherwise in form and substance reasonably acceptable to the Required Lenders.

"Acceptable Sale Process" means a sale and marketing process in respect of a potential Sale Transaction on the terms set forth in the Restructuring Support Agreement and otherwise in form and substance reasonably acceptable to the Required Lenders.

"Administrative Agent" has the meaning as provided in the first paragraph of this Agreement.

"Affiliate" of a Person has the meaning set forth in Section 101(2) of the Bankruptcy Code and also includes any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

"Agreement" has the meaning as provided in the first paragraph of this Agreement.

"Applicable Rate" means 8.50% per annum.

"Auction" means an auction in accordance with an Acceptable Sale Process.

"Avoidance Actions" mean claims and causes of action under Chapter 5 of the Bankruptcy Code and other similar laws for preferences, fraudulent conveyances, and other avoidance power claims.

"Bankruptcy Code" has the meaning as provided in the recitals to this Agreement.

"Bankruptcy Court" has the meaning as provided in the recitals to this Agreement.

"Bidding Procedures" means bidding procedures in accordance with an Acceptable Sale Process in form and substance acceptable to the Required Lenders in their reasonable discretion.

"Bidding Procedures Order" means a Final Order of the Bankruptcy Court in the Chapter 11 Cases, in form and substance reasonably acceptable to the Required Lenders, approving the Bidding Procedures, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time with the express consent of the Required Lenders (such consent not to be unreasonably withheld, conditioned or delayed).

"Borrower" has the meaning as provided in the first paragraph of this Agreement.

"Business Day" means any day except Saturday, Sunday, any day that is a legal holiday in New York, New York, or a day on which banking institutions are authorized or required by law or other government action to close.

"Capital Lease" means, with respect to any Person, any lease of any property (whether real, personal or mixed) by that person as lessee that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of that Person.

"Carve-Out" has the meaning as provided in the DIP Orders.

"Cash Collateral" has the meaning set forth in Section 363(a) of the Bankruptcy Code and includes the proceeds of Loans.

"Change in Control" has the meaning assigned to that term in the Indenture.

"Chapter 11 Cases" has the meaning as provided in the recitals to this Agreement.

"Closing Date" means the first date on which (x) the Administrative Agent shall have received a counterpart of this Agreement executed by each of the Loan Parties and the Lenders and (y) the Bankruptcy Court shall have entered the Interim DIP Order.

"Collateral" means all assets and property of each Loan Party, now owned or hereafter acquired, which is subject to the Liens granted by such Loan Party (or intended to be subject to Liens granted by such Loan Party) that secures the Obligations pursuant to the DIP Order, and shall include all "DIP Collateral" as such term is defined in the DIP Order. Collateral shall not include any Avoidance Actions and, until the entry of the Final DIP Order, the proceeds of any Avoidance Action.

"Commitment" means $54,500,000, as the same may be reduced from time to time or terminated pursuant to Section 2(f), 2(g) or 2(h).

"Commitment Period" means the period commencing on the Closing Date and ending on the Commitment Termination Date.

"Commitment Termination Date" means the earliest to occur of (i) the date on which the

Commitment is permanently reduced to zero in accordance with Section 2(g), (ii) the date on which the Borrower voluntarily terminates in full the Commitment pursuant to Section 2(f), (iii) the date on which the Commitment is terminated pursuant to Section 6, (iv) the Maturity Date and (v) the effective date of an Acceptable Plan.

"Confirmation Order" means a Final Order of the Bankruptcy Court confirming an Acceptable Plan.

"Default" shall mean any event, act or condition described in Section 6 which with notice or lapse of time, or both, would constitute an Event of Default.

"Default Notice Period" has the meaning as provided in the DIP Orders.

"Default Rate" means, with respect to overdue principal on outstanding Loans, the applicable interest rate plus 2.00% per annum, and with respect to any other overdue amount (including overdue interest), the interest rate applicable to the Loans plus 2.00% per annum, which, in each case, shall be payable on demand.

"DIP Budget" has the meaning as provided in Section 5(a).

"DIP Facility" has the meaning as provided in the recitals to this Agreement.

"DIP Lien" has the meaning as provided in the DIP Orders.

"DIP Obligations" has the meaning as provided in the DIP Orders.

"DIP Order" means the Interim DIP Order or the Final DIP Order, as applicable.

"Disclosure Statement" means a disclosure statement for an Acceptable Plan in form and substance reasonably satisfactory to the Required Lenders (as amended, amended and restated, supplemented or otherwise modified from time to time).

"Disclosure Statement Order" means an order of the Bankruptcy Court in form and substance reasonably satisfactory to the Required Lenders approving the Disclosure Statement.

"Disposition" means (a) the sale, conveyance, transfer, license, lease or other disposition, whether in a single transaction or a series of related transactions, of property or assets (including by way of a sale and leaseback transaction) of the Loan Parties (in each case, other than qualified capital stock of the Borrower) or (b) the issuance or sale of capital stock of any Loan Party, whether in a single transaction or a series of related transactions.

"Dollars" or "U.S. Dollars" and the sign "$" mean the lawful currency of the United States of America.

"Effect of Bankruptcy" means, with respect to any contractual obligation, contract or agreement to which a Loan Party or a Subsidiary thereof is a party, any default or other legal consequences arising on account of the commencement or the filing of the Chapter 11 Cases

(including the implementation of any stay), or the rejection of any such contractual obligation, contract or agreement with the approval of the Bankruptcy Court if required under applicable law.

"Event of Default" has the meaning provided in Section 6.

"Existing Liabilities" means the "Obligations" as defined in the Indenture.

"Fee Letter" means the letter agreement, dated on or about the date hereof, between the Borrower and the Administrative Agent.

"Final DIP Order" means a Final Order of the Bankruptcy Court entered in the Chapter 11 Cases after a final hearing under Rule 4001(c)(2) of the Federal Rules of Bankruptcy Procedure, authorizing and approving the DIP Facility and the terms of this Agreement and the other Loan Documents, in form and substance reasonably acceptable to the Required Lenders, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time with the express consent of the Required Lenders (such consent not to be unreasonably withheld, conditioned or delayed).

"Final Order" means an order signed by the Bankruptcy Court as to which no stay has been entered and which has not been reversed, vacated or overturned, and for which no appeal or motion to reconsider has been timely filed or, if timely filed, such appeal or motion to reconsider has been dismissed or denied unless the Required Lenders waive such requirement in writing.

"Forbearance Agreement" means that certain Forbearance Agreement, dated as of July 31, 2019, by and among the Debtors, the Prepetition Secured Noteholders party thereto and the other persons party thereto (as amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof).

"GAAP" means International Financial Reporting Standards as in effect from time to time.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state, regional, county, municipal or local, and any agency, authority, instrumentality, regulatory body, ministry, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Guaranteed Obligations" has the meaning as provided in Section 9(a).

"Guarantors" has the meaning as provided in the first paragraph of this Agreement.

"Incremental Commitment Date" means the first date on which (a) the Confirmation Order has been entered by the Bankruptcy Court, (b) the Debtors have determined to implement the Restructuring Transaction (as defined in the Restructuring Support Agreement) pursuant to the plan confirmed by the Confirmation Order rather than the Sale Transaction and (c) all conditions to the effective date of an Acceptable Plan have been satisfied (or waived in the sole discretion of the Required Lenders) in accordance with the terms thereof other than any such condition that the Debtors shall have obtained all approvals required by a Governmental Authority.

"Indebtedness" means, with respect to any Person, without duplication, (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property payment for which is deferred 6 months or more, but excluding obligations to trade creditors incurred in the ordinary course of business that are unsecured and not overdue by more than 6 months unless being contested in good faith, (b) all reimbursement and other obligations with respect to letters of credit, bankers' acceptances and surety bonds, whether or not matured, (c) all obligations evidenced by notes, bonds, debentures or similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) that portion of obligations with respect to Capital Leases which is properly classified as a liability on a balance sheet in conformity with GAAP, (f) all obligations of such Person under commodity purchase or option agreements or other commodity price hedging arrangements, in each case whether contingent or matured, (g) all obligations of such Person under any foreign exchange contract, currency swap agreement, interest rate swap, cap or collar agreement or other similar agreement or arrangement designed to alter the risks of that Person arising from fluctuations in currency values or interest rates, in each case whether contingent or matured and (h) all indebtedness referred to above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property or other assets (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such indebtedness.

"Indenture" has the meaning as provided in the recitals to this Agreement.

"Initial Commitment Period" means the period commencing on the date of entry of the Interim DIP Order and ending on the date of entry of the Final DIP Order.

"Interim DIP Order" means an order of the Bankruptcy Court entered in the Chapter 11 Cases after an interim hearing under Rule 4001(c)(2) of the Federal Rules of Bankruptcy Procedure in form and substance reasonably acceptable to the Required Lenders and the Agent authorizing and approving, among other things, the DIP Facility on an interim basis, the terms of this Agreement and the other Loan Documents on an interim basis, and the granting of the Liens on the Collateral with the priority contemplated in this Agreement, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time with the express consent of the Required Lenders (such consent not to be unreasonably withheld, conditioned or delayed).

"Investment" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of any direct or indirect (a) advance, loan, time deposit or other extensions of credit (other than advances or extensions of credit to customers, suppliers, directors, officers or employees of any Person in the ordinary course of business, and excluding any debt or extension of credit represented by a bank deposit other than a time deposit), (b) capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), (c) incurrence of a guarantee of any obligation of, or (d) any purchase or acquisition of shares, other equity interests, indebtedness or other similar instruments issued by, in each case, such other Persons and all other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP, as applicable;

provided, however, that endorsements of negotiable instruments and documents in the ordinary course of business will not be deemed to be an Investment.

"Investment Related Property" means any and all investment property (as that term is defined in the UCC).

"Lenders" has the meaning as provided in the first paragraph of this Agreement.

"Loan Documents" means this Agreement and each other document delivered to the Administrative Agent and the Lenders in connection with this Agreement and/or the credit extended hereunder, including without limitation the Fee Letter, in each case, as amended, amended and restated, supplemented or otherwise modified from time to time.

"Lien" means, with respect to any assets or property, (a) any mortgage, deed of trust, trust, deemed trust (statutory or otherwise), lien (statutory or otherwise), pledge, encumbrance, claim, charge, assignment, hypothecation, security interest or encumbrance of any kind or any filing of any financing statement under the UCC or any other similar notice of Lien under any similar notice or recording statute of any Governmental Authority, including any easement, right-of-way or other encumbrance on title to real property, in each of the foregoing cases whether voluntary or imposed by law, and any agreement to give any of the foregoing, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such Property and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Loan Party" or "Loan Parties" shall mean the Borrower and each Guarantor.

"Margin Stock" shall have the meaning provided in Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"Material Adverse Effect" means: (a) a material adverse change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent), or financial condition of any of the Loan Parties, taken as a whole (other than as customarily occurs as a result of events leading up to and following the commencement of a proceeding under Chapter 11 of the Bankruptcy Code and the commencement of the Chapter 11 Cases); (b) a material impairment of the rights and remedies of the Lenders under any Loan Document, or of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which any of them is a party, other than in accordance with its terms. A "Material Adverse Effect" shall not be deemed to exist as a result of the Effect of Bankruptcy or the events leading up to and resulting therefrom.

"Maturity Date" means earliest to occur of: (a) 5:00 p.m. (prevailing New York time) on December 31, 2019, (b) the date of the closing of a Sale Transaction, (c) the effective date of an Acceptable Plan, and (d) the date of acceleration of the Loans or termination of the Commitment by the Required Lenders or the Administrative Agent (at the direction of the Required Lenders) following an Event of Default; provided that clause (a) of the definition of Maturity Date shall be

automatically extended to 5:00 p.m. (prevailing New York time) on February 28, 2020 if all conditions to the effective date of an Acceptable Plan have been satisfied (or waived in the sole discretion of the Required Lenders) in accordance with the terms thereof other than any such condition that the Debtors shall have obtained all approvals required by any Governmental Authority.

"Milestones" has the meaning provided in Section 5(c).

"Notice of Borrowing" has the meaning provided in Section 2(b).

"Obligations" means all obligations of every nature of the Borrower and each other Loan Party under the Loan Documents, including, without limitation, any liability of such Loan Party on any claim, whether or not the right to payment in respect of such claim is reduced to judgment, liquidated, unliquidated, fixed or contingent, matured, disputed, undisputed, legal, equitable, secured or unsecured, and whether or not such claim is discharged, stayed or otherwise affected by any bankruptcy, insolvency, reorganization or other similar proceeding. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under this Agreement include (a) the obligation to pay principal, interest, charges, expenses, fees, attorneys' fees and disbursements, indemnities and other amounts payable by the Borrower under any Loan Document and (b) the obligation to reimburse any amount in respect of any of the foregoing that the Lenders, in their sole discretion, may elect to pay or advance on behalf of any Loan Party.

"Outside Plan Confirmation Date" means the seventy-fifth (75th) day following the Petition Date (or such later date as agreed to by the Required Lenders in their sole discretion).

"Outside Plan Effective Date" means December 31, 2019 (or such later date as agreed to in writing by the Required Lenders in their sole discretion); provided that, if all conditions to the effective date of an Acceptable Plan have been satisfied (or waived in the sole discretion of the Required Lenders) in accordance with the terms thereof other than any such condition that the Debtors shall have obtained all approvals required by a Governmental Authority, the "Outside Plan Effective Date" shall be automatically extended to February 28, 2020.

"PATRIOT Act" has the meaning provided in Section 8(l).

"Permitted Affiliate Transactions" means: (a) so long as it has been approved by a Debtor's or its applicable Subsidiary's board of directors (or comparable governing body) in accordance with applicable law, any indemnity, compensation or other similar benefit provided for the benefit of directors (or comparable managers) of such Debtor or its applicable Subsidiary, (b) so long as it has been approved by a Debtor's or its applicable Subsidiary's board of directors (or comparable governing body) in accordance with applicable law, the payment of reasonable compensation, severance, or employee benefit arrangements to employees, officers, and outside directors of a Debtor and its Subsidiaries in the ordinary course of business and consistent with industry practice, (c) any Permitted Intercompany Advance and (d) transactions between or among (1) the Loan Parties, (2) the Subsidiaries that are not Loan Parties, or (3) one or more of the Loan Parties, on one hand, and any Affiliate of the Loan Parties, on the other hand, so long as, in the case of this clause (3), such transactions are in the ordinary course of business and consistent with past practices.

"Permitted Dispositions" means: (a) the sale of any furniture, fixture, equipment or inventory that is no longer used or useful in the business of the Loan Parties or their Subsidiaries, (b) sales of inventory or scrap in the ordinary course of business, including, without limitation, intercompany sales of inventory in the ordinary course of business consistent with past practices, (c) the granting of Permitted Liens, (d) the leasing or subleasing of assets of any Loan Party or its Subsidiaries in the ordinary course of business, (e) the making of Permitted Investments, (f) dispositions in the ordinary course of business of cash or cash equivalents, (g) dispositions pursuant to casualty events, (h) the unwinding of any hedging instruments, and (i) sale or other disposition of assets (other than transfer or sales of its own capital stock) by (1) any Loan Party to any other Loan Party, (2) any Loan Party to any other Subsidiary that is not a Loan Party in the ordinary course consistent with past practice for a valid business purposes and (3) by any Subsidiary of a Loan Party that is not a Loan Party to a Loan Party.

"Permitted Indebtedness" means: (a) Indebtedness under this Agreement; (b) the Existing Liabilities; (c) other Indebtedness outstanding on the date hereof; (d) Refinancing Indebtedness secured by purchase money security interests or Capital Leases existing as of the date hereof, (e) intercompany Indebtedness resulting from one or more Permitted Intercompany Advances, (f) endorsement of instruments or other payment items for deposit, (g) Indebtedness incurred in respect of bank products (other than pursuant to hedge agreements) in the ordinary course of business, including netting services, automatic clearinghouse arrangements, overdraft protections and other cash management arrangements, (h) Indebtedness assumed in connection with a Permitted Investments, (i) Indebtedness consisting of (x) unsecured guarantees incurred in the ordinary course of business with respect to surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guarantee and similar obligations; (y) unsecured guarantees arising with respect to customary indemnification obligations to purchasers in connection with Permitted Dispositions; and (z) unsecured guarantees with respect to Indebtedness of any Loan Party or one of its Subsidiaries, to the extent that the Person that is obligated under such guaranty could have incurred such underlying Indebtedness, (j) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to any Loan Party or any of its Subsidiaries, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such year, and (k) indebtedness in respect of hedging instruments designed to hedge against interest rates, foreign exchange rates or commodities pricing risks incurred not for speculative purposes.

"Permitted Investments" means (a) any Investment existing on the date hereof and other Investments permitted by the "first day" orders, (b) Investments by any Loan Party in another Loan Party, (c) Investments in cash and cash equivalents, (d) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business, (e) advances made in connection with purchases of Goods or services in the ordinary course of business, (f) Permitted Intercompany Advances, (g) Investments resulting from entering into (x) bank product agreements, or (y) agreements relative to Indebtedness that is permitted under clause (i) of the definition of Permitted Indebtedness, (h) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the ordinary course of business or owing to any Loan Party or any of its Subsidiaries as a result of insolvency proceedings involving an account

debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries, (i) investments in respect of hedging instruments designed to hedge against interest rates, foreign exchange rates or commodities pricing risks incurred not for speculative purposes, (j) deposits of cash made in the ordinary course of business to secure performance of operating leases, and (k) Investments in the form of capital contributions and the acquisition of capital stock made by any Loan Party in any other Loan Party.

"Permitted Intercompany Advances" means loans made by (a) a Debtor to another Debtor, (b) a Subsidiary of a Debtor which is not a Debtor to another Subsidiary of a Debtor which is not a Debtor, (c) a Debtor to any Subsidiary of a Debtor which is not a Debtor so long as any such loans are made in the ordinary course of business consistent with past practices for a valid business purpose and (d) a Subsidiary of a Debtor which is not a Debtor to a Debtor; provided that, at the request of the Required Lenders, such loans made pursuant to clause (d) may be subject to a customary intercompany subordination agreement.

"Permitted Lien" means (a) Liens created under the Loan Documents or the DIP Orders (including Liens on Cash Collateral), (b) Liens securing the Existing Liabilities, (c) adequate protection liens granted to the Prepetition Secured Parties pursuant to the DIP Order, (d) Liens in respect of Permitted Indebtedness, (e) Liens for unpaid taxes, assessments, or other governmental charges or levies that either (i) are not yet overdue for more than 60 days or which constitute prepetition claims in the Bankruptcy Cases, or (ii) are the subject of Permitted Protests, (f) Liens securing judgments for the payment of money not constituting an Event of Default hereunder, (g) the interests of lessors under operating leases and non-exclusive licensors under license agreements, (h) Liens that are replacements of Permitted Liens to the extent that the original Indebtedness is the subject of permitted Refinancing Indebtedness and so long as the replacement Liens only encumber those assets that secured the original Indebtedness, (i) Liens in favor of warehousemen, landlords, carriers, mechanics, materialmen, laborers, or suppliers, incurred in the ordinary course of business and not in connection with the borrowing of money, and which Liens either (x) are for sums not yet overdue for more than 60 days or which constitute prepetition claims in the Bankruptcy Cases, or (y) are the subject of Permitted Protests, (j) Liens on amounts deposited to secure Loan Parties' and their Subsidiaries' obligations in connection with worker's compensation or other unemployment insurance, (k) Liens on amounts deposited to secure Loan Parties' and their Subsidiaries' obligations in connection with the making or entering into of bids, tenders, or leases in the ordinary course of business and not in connection with the borrowing of money, (l) Liens on amounts deposited to secure Loan Parties' and their Subsidiaries' reimbursement obligations with respect to surety or appeal bonds obtained in the ordinary course of business, (m) with respect to any real property, easements, rights of way, and zoning restrictions that do not materially interfere with or impair the use or operation thereof, (n) non-exclusive licenses of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business, (o) rights of setoff or bankers' liens upon deposits of cash in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of such deposit accounts in the ordinary course of business, (p) Liens on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness, (q) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods, (r) with respect to any non-U.S. Loan Party or Subsidiary, other Liens and privileges arising mandatorily by law, and (s) other valid, perfected, enforceable and

non-avoidable Liens not otherwise described in this definition and outstanding on the date hereof; provided that, in the case of clauses (d), (e), (f), (g), (i), (j), (k), (l), (o), (p), and (q), any such Liens granted by any Debtor are (A) secured on a junior basis to the Obligations and (B) permitted by the Bankruptcy Code and, as may be required by the Bankruptcy Code, authorized by the Bankruptcy Court.

"Permitted Protest" means the right of any Loan Party or any of its Subsidiaries to protest any Lien (other than any Lien that secures the Obligations), taxes (other than payroll taxes or taxes that are the subject of a United States federal tax lien), or rental payment; provided, that, (a) a reserve with respect to such obligation is established on such Debtor's or its Subsidiaries' books and records in such amount as is required under GAAP, (b) any such protest is instituted in good faith, and (c) while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of the Administrative Agent's Liens.

"Permitted Variances" means actual amounts of (i) intercompany transfers made by the Debtors that vary from the applicable DIP Budget by less than 20% for the line item for "InterCo Activity" (as set forth in the applicable DIP Budget) and (ii) expenditures made by the Debtors that vary from the applicable DIP Budget by less than 20% for the sum of the line item for "Total Cash Disbursements" (as set forth in the applicable DIP Budget) in the aggregate (without taking into account the professional fees of the Debtors), in each case of clauses (i) and (ii), on a trailing four-week basis.

"Person" means (i) any person, individual, corporation, company, partnership, joint venture, firm, limited liability company, joint stock company, estate, business trust, unincorporated organization, trust or association, (ii) the U.S. Trustee, (iii) any Governmental Authority or any political subdivision thereof, or (iv) any other entity.

"Petition Date" has the meaning as provided in the recitals to this Agreement.

"Prepetition Collateral" has the meaning as provided in the recitals to this Agreement.

"Prepetition Notes Trustee" has the meaning as provided in the recitals to this Agreement.

"Prepetition Secured Noteholders" has the meaning as provided in the recitals to this Agreement.

"Prepetition Secured Notes" has the meaning as provided in the recitals to this Agreement.

"Prepetition Secured Parties" means the Prepetition Notes Trustee and the Prepetition Secured Noteholders.

"Refinancing Indebtedness" means refinancings, renewals, or extensions of Indebtedness so long as:

(a) such refinancings, renewals, or extensions do not result in an increase in the principal amount of the Indebtedness so refinanced, renewed, or extended, other than by the amount of premiums paid thereon and the accrued interest, fees and expenses incurred in connection therewith and by the amount of unfunded commitments with respect thereto,

(b) such refinancings, renewals, or extensions do not result in a shortening of the average weighted maturity (measured as of the refinancing, renewal, or extension) of the Indebtedness so refinanced, renewed, or extended, nor are they on terms or conditions that, taken as a whole, are or could reasonably be expected to be materially adverse to the interests of the Lenders,

(c) if the Indebtedness that is refinanced, renewed, or extended was contractually subordinated in right of payment to the Obligations, then the terms and conditions of the refinancing, renewal, or extension must include contractual subordination terms and conditions that are at least as favorable to the Lenders as those that were applicable to the refinanced, renewed, or extended Indebtedness,

(d) if the Indebtedness that is refinanced, renewed, or extended was unsecured, then the refinancing, renewal, or extension of such Indebtedness must be unsecured, and

(e) the Indebtedness that is refinanced, renewed, or extended is not recourse to any Person that is liable on account of the Obligations other than those Persons which were obligated with respect to the Indebtedness that was refinanced, renewed, or extended.

"Register" has the meaning provided in Section 8(d).

"Required Lenders" means, as of any date of determination, Lenders representing more than 50% of the sum of the (a) aggregate unused Commitment and (b) principal outstanding Obligations hereunder.

"Requirements of Law" means, with respect to any Person, any and all requirements of any Governmental Authority applicable to such Person having the force of law, including any and all laws, judgments, orders, decrees, ordinances, rules, regulations, statutes or case law.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any equity interest of any Loan Party or any Subsidiary thereof, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such equity interest, or on account of any return of capital to any Loan Party's or any respective Subsidiary's stockholders, partners or members (or the equivalent Persons thereof).

"Restructuring Support Agreement" means the Restructuring Support Agreement, dated as of September 15, 2019 by and among the Borrower, the other Loan Parties, and certain of the Prepetition Secured Noteholders, and attached hereto as Exhibit A (as amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof).

"Sale Order" means a Final Order, in form and substance reasonably acceptable to the Required Lenders, authorizing a sale of all or substantially all of the Debtors' assets in accordance with the Bidding Procedures and the Bidding Procedures Order.

"Sale Transaction" means a sale of all or substantially all of the Collateral pursuant to

Section 363 of the Bankruptcy Code.

"Subsidiary" of a Person means a corporation, partnership, limited liability company, or other entity in which that Person directly or indirectly owns or controls the shares of capital stock having ordinary voting power to elect a majority of the board of directors (or appoint other comparable managers) of such corporation, partnership, limited liability company, or other entity.

"Taxes" has the meaning provided in Section 8(c).

"UCC" means the New York Uniform Commercial Code, as in effect from time to time; provided, however, that, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, priority, or remedies with respect to the Administrative Agent's Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies. To the extent that defined terms set forth herein shall have different meanings under different Articles under the Uniform Commercial Code, the meaning assigned to such defined term under Article 9 of the Uniform Commercial Code shall control.

"U.S. Trustee" means the Office of the United States trustee.

"Withholding Taxes" has the meaning provided in Section 8(c).

Section 2. **The Commitment and Credit Extension**.

(a) Commitment and Borrowing. Subject to the terms and conditions set forth herein and in the DIP Order, each Lender severally agrees to make during the Commitment Period a term loan or term loans (each a "Loan" and, collectively, the "Loans") to the Borrower in an aggregate principal amount not to exceed its pro rata share of the Commitment on the applicable date of Borrowing; provided that, notwithstanding anything to the contrary herein, (x) during the Initial Commitment Period, only one Borrowing of Loans shall be available to the Borrower, and the amount of such Borrowing shall not exceed $23,100,000, (y) upon and after the entry of the Final DIP Order, three additional Borrowings of Loans shall be available to the Borrower not to exceed, in the aggregate, $23,100,000 and (z) upon and after the Incremental Commitment Date, one additional Borrowing of Loans shall be available to the Borrower not to exceed $8,300,000. The Loans shall be incurred pursuant to one or more borrowings (each a "Borrowing," and, collectively, the "Borrowings"); provided that, each such Borrowing (x) shall be denominated in U.S. Dollars and (y) shall be in an aggregate principal amount that is not less than $7,500,000 or if less, equal to the remaining available balance of the Commitment at such time. Amounts repaid under the DIP Facility may not be reborrowed.

(b) Notice of Borrowing. Whenever the Borrower desires to incur Loans hereunder, the Borrower shall give the Administrative Agent written notice of such Borrowing of Loans, not later than 12:00 p.m., New York City time (or such later time as may be required by the Administrative Agent or acceptable to the Required Lenders), three (3) Business Days (or such shorter period as agreed by the Administrative Agent in its sole discretion) before the date of the proposed Borrowing. Each such notice (each, a "Notice of Borrowing") shall specify the following

information: (i) the date of such Borrowing, which shall be a Business Day, (ii) the aggregate principal amount of such Borrowing and (iii) a statement certified by an authorized officer of the Borrower that the conditions set forth in Section 4(a) or (b), as applicable, will be satisfied or waived as of the date the requested Borrowing is made. Any Notice of Borrowing may be conditioned on the entry of a Final Order specified in such Notice of Borrowing, and may be revoked or postponed if such Final Order fails to be entered. Promptly upon receipt by the Administrative Agent of such Notice of Borrowing, the Administrative Agent shall notify each Lender of the proposed Borrowing and its pro rata share of the aggregate amount of Loans requested pursuant to such Notice of Borrowing.

(c) Disbursement of Funds. No later than 4:00 p.m., New York City time on the date specified in each Notice of Borrowing, each Lender shall credit the account of the Borrower as directed by the Borrower prior to such time with its pro rata share of the aggregate amount of Loans requested pursuant to the applicable Notice of Borrowing to be made on such date. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitment of the Lenders is several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(d) Maturity Date. The aggregate principal amount of the Loans outstanding on the Maturity Date, together with all accrued and unpaid interest thereon, shall become due and payable in full on the Maturity Date.

(e) Interest and Fees.

(i) Interest Rate. The Loans shall bear interest on the outstanding principal amount thereof from the applicable date of Borrowing at a rate per annum equal to the Applicable Rate. Interest accruing on each Loan shall be due and payable in cash in arrears on the last Business Day of each calendar month after the Closing Date and on the Maturity Date and the Borrower shall pay such amounts in cash to the Administrative Agent on such dates to such account as may be specified by the Administrative Agent. The Administrative Agent shall distribute any such amounts received by it for the account of the Lenders promptly following receipt thereof. Interest on the Loans shall also be payable as otherwise set forth in Section 2(f) below.

(ii) Default Rate. Notwithstanding the foregoing clause (i), if an Event of Default has occurred and is continuing, then interest shall accrue on the aggregate outstanding principal amount of all Loans, after as well as before judgment, at a rate per annum equal to the Default Rate to the fullest extent permitted by law, from the date of such Event of Default until, in each case, such Event of Default has been remedied to the satisfaction of the Required Lenders or such Event of Default has been waived by the Required Lenders. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable on demand.

(iii) Fees.

(A) The Borrower shall pay a commitment fee equal to 3.25% of the aggregate amount of the Commitment of each Lender provided on the Closing Date, which shall be earned and paid in-kind on the Closing Date to the Administrative Agent for the account of each Lender (based on each Lender's pro rata share of the Commitment). Amounts paid in-kind pursuant to this Section 2(e)(iii)(A) shall be added to the outstanding principal amount of all Loans and shall accrue interest in accordance with Sections 2(e)(i) and 2(e)(ii).

(B) The Borrower shall pay an exit fee equal to 3.00% of the aggregate outstanding Loans repaid as of the effective date of an Acceptable Plan or the consummation date of the Sale Transaction, which shall be earned and paid in-kind on the date of entry of the Confirmation Order or the Sale Order, as applicable, to the Administrative Agent for the account of each Lender (based on each Lender's pro rata share of the Commitment). Amounts paid in-kind pursuant to this Section 2(e)(iii)(B) shall be added to the outstanding principal amount of all Loans and shall accrue interest in accordance with Sections 2(e)(i) and 2(e)(ii).

(C) Other Fees. The Borrower shall pay to the Administrative Agent for its own account fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(iv) All interest and (if applicable) all fees hereunder shall be computed on the basis of a year of 360 days, and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(f) Optional Prepayments and Commitment Reductions. The Borrower may voluntarily reduce the unutilized portion of the Commitment and/or repay the Loans at any time without premium or penalty upon at least three (3) Business Days' prior written notice (or such shorter period as agreed by the Required Lenders in their sole discretion), which notice shall specify the amount of such prepayment; provided that each such reduction or prepayment shall be in an aggregate principal amount of at least $100,000 (or such lesser amount as agreed to by the Required Lenders in their sole discretion). Any prepayment of Loans shall be accompanied by all accrued interest on the amount of such repaid Loans.

(g) Mandatory Reduction of Commitments. The Commitment shall automatically be permanently reduced on each date of Borrowing of Loans (after giving effect to the Loans incurred on such date) by an amount equal to the aggregate principal amount of the Loans incurred on such Borrowing date.

(h) Termination of Commitment. The Commitment shall terminate in its entirety on the Maturity Date.

(i) Mandatory Prepayments. Anything contained in this Agreement to the contrary notwithstanding, (i) in no event shall the aggregate principal amount of the Loans at any time outstanding exceed the amount permitted to be outstanding hereunder pursuant to the DIP Order, in each case as the foregoing limits may be in effect from time to time and (ii) the Borrower

agrees to immediately prepay the Loans in the amounts and at the times as may be necessary to comply with the foregoing clause (i).

(j) Security. Subject in each case to the entry and the terms of the DIP Order and the terms of the Loan Documents, the DIP Facility and the Obligations shall be entitled to superpriority administrative claim status pursuant to Section 364(c)(1) of the Bankruptcy Code in respect of each of the Loan Parties, and the Obligations shall be and hereby are secured by valid, enforceable and non-avoidable first priority priming Liens, subject and subordinate to the Carve-Out, in and to the Collateral. Such Liens shall be granted pursuant to Sections 364(c)(2), (c)(3) and (d)(1) of the Bankruptcy Code (subject to any Permitted Liens) and the DIP Order shall provide that such Liens shall be automatically perfected upon the entry of the Interim DIP Order without the need for any further action by the Administrative Agent, the Lenders or the Borrower (subject, however, to Section 5(d)(xii)), including the filing of any financing statements or the recording of any mortgages.

Section 3. **Representations and Warranties.** Each Loan Party represents and warrants that:

(a) Each Loan Party and each of its subsidiaries is duly organized and validly existing and in good standing (to the extent such concept is applicable in the relevant jurisdiction) under the laws of the jurisdiction of its organization.

(b) Subject to the granting of the Interim DIP Order or Final DIP Order, as applicable, the transactions contemplated by this Agreement and the other Loan Documents (i) are within the power of the Borrower and the other Loan Parties, (ii) have been duly authorized by all necessary corporate and, if required, other organizational approval by the Borrower and each Loan Party, (iii) constitute legal, valid and binding obligations of the Borrower and each other Loan Party, and (iv) do not require the consent or approval of, or any other action by, any Governmental Authority, except for (a) any necessary local filings or recordings as may be required in connection with perfecting liens in Collateral owned by any Loan Party not organized in the United States, (b) those filings as may be required, in connection with the disposition of any pledged Collateral, by laws generally affecting the offering and sale of securities, or (c) approvals, consents, or other actions which have been duly obtained, taken, given or made and are in full force and effect.

(c) This Agreement and the other Loan Documents have been duly executed and delivered by or on behalf of the Borrower and the other Loan Parties.

(d) The business operations of the Borrower and the other Loan Parties have been and will continue to be conducted in compliance with all laws of each jurisdiction in which business has been or is being carried on, except where the failure to do so would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(e) The Borrower and the other Loan Parties have obtained all licenses and permits required for the operation of their respective businesses, which licenses and permits remain in full force and effect except where the failure to do so would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. To the knowledge of the

Borrower, no proceedings have been commenced or threatened to revoke or amend any of such licenses or permits which would reasonably be expected to have a Material Adverse Effect.

(f) Since the Petition Date, no event or change has occurred that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect.

(g) All written factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about each Loan Party's industry) provided by or on behalf of the Borrower and the other Loan Parties to the Administrative Agent or any of the Lenders for the purposes of or in connection with this Agreement or any transaction contemplated herein is true and accurate in all material respects on the date as of which such information (other than forward-looking information and projections and information of a general economic nature and general information about each Loan Party's industry) is dated or certified and not incomplete by omitting to state any fact necessary to make such information taken as a whole not misleading in any material respect at such time in light of the circumstances under which such information was provided.

(h) The Loan Parties have disclosed to the Lenders all material assumptions with respect to the DIP Budget.

(i) All proceeds of the Loans shall be used only for bankruptcy-related fees, costs, and expenses (including any fees, costs, and expenses related to the DIP Facility) and working capital and other general corporate purposes of the Loan Parties, in each case in accordance with, and subject to the limitations set forth in, the DIP Budget, this Agreement, and the DIP Order.

(j) No part of any Loan or the proceeds thereof will be used to purchase or carry any Margin Stock or to extend credit for the purpose of purchasing or carrying any Margin Stock. Neither the making of any Loan nor the use of the proceeds thereof will violate or be inconsistent with the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

(k) Neither the execution, delivery or performance by any Loan Party of this Agreement or any other Loan Document, nor compliance by it with the terms and provisions hereof or thereof, (i) will contravene any provision of any Requirement of Law or any order, writ, injunction or decree of any court or Governmental Authority, subject to entry of the DIP Order, or (ii) will violate any provision of the certificate or articles of incorporation, certificate of formation, limited liability company agreement or by-laws (or equivalent organizational documents), as applicable, of any Loan Party or any of its Subsidiaries.

(l) No Loan Party is, or is required to be registered as, an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

Section 4. **Conditions Precedent**:

(a) Conditions Precedent to Initial Borrowing. The funding of the initial Loans on or after the Closing Date during the Initial Commitment Period shall be subject to the satisfaction of the following conditions precedent except as otherwise agreed between the

Borrower and the Required Lenders or the Administrative Agent (acting at the direction of the Required Lenders):

(i) The Chapter 11 Cases shall have been filed in the Bankruptcy Court.

(ii) The Interim DIP Order shall be in full force and effect, shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Required Lenders.

(iii) The Required Lenders and the Administrative Agent shall have received an initial DIP Budget, in form and substance reasonably satisfactory to the Required Lenders, including as to all assumptions.

(iv) No Default or Event of Default shall exist at the time of, or immediately after giving effect to, the making of the Loans.

(v) The representations and warranties of the Borrower and each other Loan Party set forth in each Loan Document shall be true and correct in all material respects (or, to the extent qualified by materiality, in all respects) immediately prior to, and after giving effect to, the making of any Loans, except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representations and warranties were true and correct in all material respects (or, to the extent qualified by materiality, in all respects) as of such earlier date.

(vi) The Administrative Agent and the Lenders shall have received all such agreements, instruments, approvals, and other documents, each reasonably satisfactory to the Lenders in form and substance, as the Lenders may reasonably request.

(vii) The Borrower shall have delivered a duly completed and irrevocable Notice of Borrowing pursuant to Section 2(b).

(viii) An order setting an expedited schedule for confirmation of an Acceptable Plan by the Outside Plan Confirmation Date shall have been entered by the Bankruptcy Court.

(ix) The Loan Parties shall be in compliance with the terms of the Interim DIP Order.

(x) The Debtors shall have filed (i) an Acceptable Plan, (ii) the Disclosure Statement and (iii) a motion, in form and substance reasonably acceptable to the Lenders, seeking approval of the solicitation materials in respect of an Acceptable Plan in form and substance reasonably acceptable to the Lenders.

(xi) The Loan Parties shall have commenced solicitation of an Acceptable Plan.

(xii) The Administrative Agent and the Lenders shall have received (or each shall have agreed to arrangements for the) payment of all fees, costs and expenses then due and owing to the Administrative Agent and the Lenders, in each case, to the extent invoiced at least two (2) Business Days prior to the Closing Date.

(b) Conditions Precedent to Each Borrowing After the Closing Date. The funding of Loans on each date of Borrowing after the Initial Commitment Period shall be subject to the satisfaction of the following conditions precedent except as otherwise agreed between the Borrower and the Required Lenders or the Administrative Agent (acting at the direction of the Required Lenders):

(i) The representations and warranties of the Borrower and each other Loan Party set forth in the Loan Documents shall be true and correct in all material respects (or, to the extent qualified by materiality, in all respects) immediately prior to, and after giving effect to, the making of such Loans, except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representations and warranties were true and correct in all material respects (or, to the extent qualified by materiality, in all respects) as of such earlier date.

(ii) On and after its entry by the Bankruptcy Court, the Confirmation Order shall be in full force and effect, shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified in each case without the prior written consent of the Required Lenders.

(iii) No Default or Event of Default shall exist at the time of, or immediately after giving effect to, the making of such Loans.

(iv) The Borrower shall have delivered a duly completed and irrevocable Notice of Borrowing pursuant to Section 2(b).

(v) The Final DIP Order, the Disclosure Statement Order and the Bidding Procedures Order shall each be in full force and effect, shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Required Lenders.

(vi) The Loan Parties shall be in compliance with the terms of the Final DIP Order, the Disclosure Statement Order, the Bidding Procedures Order, the Confirmation Order, and the Sale Order, in each case to the extent such order has been entered by the Bankruptcy Court.

(vii) Any Acceptable Plan shall not have been withdrawn and no other action shall have been taken by any Loan Party or any of its Affiliates in the Chapter 11 Cases that would reasonably be expected to frustrate (A) the effectiveness of such Acceptable Plan by the Outside Plan Effective Date and/or (B) the confirmation of such Acceptable Plan by the Outside Plan Confirmation Date.

(viii) The Administrative Agent and the Lenders shall have received (or shall have received arrangements for the) payment of all fees, costs and expenses then due and owing to the Administrative Agent and the Lenders, in each case, to the extent invoiced at least two (2) Business Days prior to the Closing Date.

Section 5. **Affirmative Covenants**. On and after the effective date of this Agreement and until the date that the Commitment hereunder has terminated and the principal of, and interest on, each Loans and all fees, expenses and other amounts payable under any Loan Document (other than contingent indemnification obligations for which no claim or demand has been made) have been paid in full in cash:

(a) Financial Reporting Requirements. The Borrower shall provide to the Administrative Agent (i) a rolling 13-week cash flow forecast, in form and substance acceptable to the Required Lenders (as amended, extended, varied, supplemented, or otherwise modified from time to time, the "DIP Budget") that shall set forth in reasonable detail all receipts and disbursements of the Borrower on a weekly basis for the 13-week period following the Petition Date, and rolling thereafter; provided that the Borrower may, at its discretion, provide to the Administrative Agent for approval by the Required Lenders, no earlier than thirty (30) days after the effectiveness of the current DIP Budget (or such earlier date as agreed by the Required Lenders), an updated DIP Budget for a 13-week period prior to the expiration of the period of the current DIP Budget; provided, further, that, upon the receipt by the Borrower of written acceptance by the Administrative Agent (acting at the direction of the Required Lenders) or the Required Lenders of any DIP Budget (such acceptance to be deemed provided if the Administrative Agent (acting at the direction of the Required Lenders) or the Required Lenders do not object to the DIP Budget within three (3) Business Days of receipt), such DIP Budget shall replace the prior DIP Budget for all purposes hereunder and in the other Loan Documents but, in the event that any proposed budget is not approved by the Administrative Agent (acting at the direction of the Required Lenders) or the Required Lenders, the preceding approved DIP Budget will remain the DIP Budget, (ii) by 12:00 noon (New York time) on the seventh (7th) Business Day following the end of each calendar week, a reconciliation of actual receipts and disbursements, cash balance and loan balance on a line-item basis against such figures set forth in the DIP Budget for (A) such week and (B) the four-week period which ended with such week, in each case, with written explanations of any line-item that varies by more than 10% for such line-item or $200,000, in each case, for such week; provided that the first such reconciliation shall not be required to be delivered until the Wednesday of the third full week following the Petition Date, and (iii) such other information or documents (financial or otherwise) with respect to the Loan Parties and their Subsidiaries as the Lenders (through the Administrative Agent) may reasonably request.

(b) DIP Variances. Subject to the Permitted Variances and the terms of the DIP Order, the expenditures authorized in the DIP Budget shall be adhered to on a 4-week basis and on a cumulative basis as described below; provided, however, that unused expenditures shall carry forward to successive 4-week DIP Budget periods on a cumulative basis. The DIP Budget shall be tested on a cumulative basis for a 4-week period then ended, it being understood and agreed that actual amounts of each of the Debtors' and non-Debtor Affiliates' expenditures in the aggregate may not vary from the applicable DIP Budget period by more than the Permitted Variances; provided that any use by the Loan Parties of Cash Collateral or the cash proceeds of Prepetition Collateral shall be taken account in connection with measuring compliance with the DIP Budget (including the Permitted Variances). Cash Collateral, whether the proceeds of Loans or otherwise, shall only be used for purposes set forth in the DIP Budget (regardless of whether such uses are permitted under this Agreement or otherwise).

(c) Milestones. Each Loan Party hereby covenants and agrees to comply with the following milestones (the "Milestones"), unless otherwise agreed to in writing by the Required Lenders:

(i) within two (2) days of the Petition Date, the Borrower shall file with the Bankruptcy Court a motion seeking to approve the Bidding Procedures in the Chapter 11 Cases, in form and substance reasonably satisfactory to the Required Lenders;

(ii) on or before the twenty-fifth (25th) day after the Petition Date, subject to the Bankruptcy Court's availability, the Bidding Procedures Order shall have been entered, and such order shall not have been reversed, modified, amended, stayed or vacated;

(iii) on or before the thirty-fifth (35th) day after the entry of the Interim DIP Order, the Final DIP Order shall have been entered, and such order shall not have been reversed, modified, amended, stayed or vacated;

(iv) on or before the forty-second (42nd) day after the Petition Date, Borrower shall commence and complete the Auction, if any, subject to the supervision of the Bankruptcy Court and in accordance with the Milestones; and

(v) on or before the Outside Plan Confirmation Date, Borrower shall obtain an order of the Bankruptcy Court, in form and substance reasonably satisfactory to the Required Lenders, confirming an Acceptable Plan.

(vi) on or before the Outside Plan Effective Date, an Acceptable Plan shall have been substantially consummated (as such term is used in section 1101 of the Bankruptcy Code).

(d) Other Affirmative Covenants. Each Loan Party hereby covenants and agrees:

(i) to permit the Lenders or the Administrative Agent (at the direction of the Required Lenders) or their respective agents and advisors on reasonable notice during regular business hours to enter and inspect each of the Loan Party's assets and properties, and provide the Lenders or the Administrative Agent, as the case may be, and their respective agents or advisors on reasonable notice and during normal business hours full access to the books and records of the Loan Parties and use commercially reasonable efforts to cause management thereof to fully cooperate with the Lenders or the Administrative Agent, as the case may be, and their respective agents and advisors accordingly;

(ii) to keep the Lenders and the Administrative Agent apprised on a timely basis of all material developments with respect to the business and affairs of the Loan Parties and their respective Subsidiaries;

(iii) to provide the Lenders and the Administrative Agent with notice of motions, applications or other filings to be brought or made in the Chapter 11 Cases in accordance with the Restructuring Support Agreement including to (1) use best efforts to give no less than two (2) Business Days' notice of any material motion, application or other filing to be brought or made by the Borrower or any other Loan Party in the Chapter 11 Cases or, where it is not practicable to do so, as much notice as is reasonably possible prior to any such filing; and (2) use best efforts to provide drafts of any material materials (including draft material orders) to be served by the Borrower or any other Loan Party at least two (2) Business Days prior to any such service to give the Lenders and the Administrative Agent a reasonable opportunity to review and comment on such draft material materials before service of such materials or, where it is not practicable to do so, as much opportunity in the circumstances as is reasonably practicable to do;

(iv) to seek the Required Lenders' prior approval of any material order in the Chapter 11 Cases that affects this Agreement, the DIP Facility, any other related Loan Documents or an Acceptable Plan and only to seek to obtain such orders as are in form and substance reasonably satisfactory to the Required Lenders;

(v) to comply with all Bankruptcy Court orders and use all the proceeds of the DIP Facility in a manner consistent with the restrictions set forth in this Agreement and the DIP Order;

(vi) to promptly notify the Administrative Agent of (and, in any event, no later than 2 Business Days after) the occurrence of any Default or Event of Default;

(vii) subject to entry of an order by the Bankruptcy Court, to maintain the insurance in existence on the date hereof, with respect to the Collateral, except such non-compliances as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(viii) to comply in all respects with all applicable laws, rules and regulations applicable to their businesses, including, without limitation, environmental laws, except such non-compliances as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(ix) to, and cause each of their respective Subsidiaries to, comply with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities in respect of the conduct of its business and the ownership of its property (including applicable statutes, regulations, orders and restrictions relating to environmental standards and controls), except such non-compliances as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(x) to, and cause each of their respective Subsidiaries to, do or cause to be done, all things necessary to preserve and keep in full force and effect its existence and its rights, franchises, licenses, permits, copyrights, trademarks and patents, except such non-compliances as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(xi) to use the proceeds of the Loans only as provided in Section 3(i);

(xii) to promptly execute and deliver all further instruments and documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) and take all further action that the Required Lenders or the Administrative Agent may require, to give effect to this Agreement, perfect and protect any DIP Lien or to enable the Administrative Agent and the Lenders to exercise and enforce their rights and remedies with respect to the Collateral, subject to the terms and conditions set forth in the DIP Order;

(xiii) to maintain detailed and accurate accounting and records of proceeds of the Loans; and

(xiv) to continue to operate its businesses in the ordinary course (subject to the terms of this Agreement and any limitations imposed as a result of operation as debtors-in-possession under the Bankruptcy Code) including (A) subject to entry of the cash management order, maintaining its existing bank accounts and not closing any bank

accounts or creating any new bank accounts without the consent of the Lenders, acting reasonably, (B) subject to entry of the cash management order, maintaining its existing cash management system, (C) maintaining its registered office in the jurisdiction indicated in the notice provisions of the Loan Documents to which it is party and not changing its name, the name under or by which it conducts its business, its organizational identification number, its jurisdiction of formation or organization, its type of organization or other legal structure or its chief executive office, and not permitting the documents and books in its possession or under its control evidencing the Collateral to be moved, (D) not changing its accounting practices, policies, or treatment except to the extent required by applicable law, changes in GAAP or requirements of its independent accounts, (E) not becoming an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended, by virtue of an exemption other than pursuant to Section 3(c)(l) or Section 3(c)(7) thereof, and (F) not becoming a "covered fund" under Section 13 of the Bank Holding Company Act of 1956, as amended.

(e) Negative Covenants. Each Loan Party hereby covenants and agrees, on and after the effective date of this Agreement and until the date that the Commitment hereunder has terminated and the principal of and interest on each Loans and all fees, expenses and other amounts payable under any Loan Document (other than contingent indemnification obligations for which no claim or demand has been made) have been paid in full in cash, each Loan Party will not, and will not permit any of its Subsidiaries to:

(i) make any Disposition other than Permitted Dispositions without the prior written consent of the Required Lenders and, as may be required by the Bankruptcy Code, an order of the Bankruptcy Court;

(ii) repudiate, terminate or disclaim any contract which reasonably could be expected to result in a Material Adverse Effect without the prior written consent of the Required Lenders;

(iii) make any payment, prepayment, purchase or defeasance (i) in respect of existing (i.e., prior to the Petition Date) any Indebtedness of any Loan Party, other than (A) the Existing Liabilities under the Indenture (including as contemplated herein); (B) the Obligations in accordance with this Agreement, and (C) Permitted Intercompany Advances, in each case other than as set forth in the DIP Budget, or (ii) otherwise prohibited by the DIP Order or any other Loan Document (otherwise be consented to in advance in writing by the Required Lenders);

(iv) create, assume, incur or suffer to exist any Indebtedness other than Permitted Indebtedness without the prior written consent of the Required Lenders and, as may be required by the Bankruptcy Code, an order of the Bankruptcy Court;

(v) create, incur, assume or suffer to exist any Liens on any of its properties or assets other than Permitted Liens without the prior written consent of the Required Lenders and, as may be required by the Bankruptcy Code, an order of the Bankruptcy Court;

(vi) increase any termination or severance entitlement whatsoever or pay any termination or severance pay to executives of any Loan Party or Subsidiary, each without the prior written consent of the Required Lenders and, as may be required by the Bankruptcy Code, an order of the Bankruptcy Court;

(vii) change its name, its fiscal year, amalgamate, consolidate with or merge into, dispose of all or substantially all of its assets, or enter into any similar transaction with any other entity without the prior written consent of the Required Lenders;

(viii) take any action that would reasonably be expected to frustrate in any material respect (A) the confirmation of an Acceptable Plan by the Outside Plan Confirmation Date and/or (B) the effectiveness of an Acceptable Plan by the Outside Plan Effective Date including, without limitation, withdrawing an Acceptable Plan or filing any other plan in the Chapter 11 Cases without the prior written consent of the Required Lenders;

(ix) make a public announcement in respect of, enter into any agreement or letter of intent with respect to, attempt to consummate or support any third party's attempt to consummate any transaction or agreement that would materially adversely impact the DIP Facility or consummation of an Acceptable Plan;

(x) make or hold any Investment other than Permitted Investments without the prior written consent of the Required Lenders and, as may be required by the Bankruptcy Code, an order of the Bankruptcy Court;

(xi) declare or make, directly or indirectly, any Restricted Payment, except as set forth in the DIP Budget, without the prior written consent of the Required Lenders; provided that non-Debtor Loan Parties may make Restricted Payments not specified in the DIP Budget that qualify as Permitted Affiliate Transactions;

(xii) engage in any business other than the businesses engaged in by the Borrower and the Loan Parties on the date hereof without the written consent of the Required Lenders;

(xiii) enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate on terms that are less favorable to such Loan Party or Subsidiary, as the case may be, other than Permitted Affiliate Transactions without the prior written consent of the Required Lenders;

(xiv) enter into after the date hereof or allow to exist any contractual obligations (other than this Agreement) that limit the ability of any Loan Party to create, incur, answer or suffer to exist Liens on property or assets of such Person in favor of the Administrative Agent for the benefit of the Lenders with respect to the DIP Facility and the obligations hereunder;

(xv) at any time, seek or consent to any reversal, modification, amendments, stay or vacation of (i) any "First Day Order", (ii) the Disclosure Statement Order, (iii) the Interim DIP Order, (iv) the Final DIP Order, or (v) the Confirmation Order, in each case, without the prior written consent of the Required Lenders (such consent not to be unreasonably withheld or delayed);

(xvi) at any time, seek or consent to a priority for any administrative expense against the Debtors (now existing or hereafter arising) of any kind or nature whatsoever (including, without limitation, any administrative expenses of the kind specified in, or ordered under, Sections 105(a), 326, 328, 330, 331, 503(b), 506(c), 507, 546(c), 726, 1113 and 1114 of the Bankruptcy Code) equal to or superior to the priority of the Administrative Agent and the Lenders in respect of the DIP Obligations except as expressly permitted in the DIP Order;

(xvii) seek or consent to a sale of any of the Collateral other than Permitted Dispositions without the prior written consent of the Required Lenders and, as may be required by the Bankruptcy Code, an order of the Bankruptcy Court;

(xviii) to (A) divide into two or more Persons pursuant to a "plan of division" or similar method, or (B) create, or reorganize into, one or more Persons, in each case, as contemplated under the laws of any jurisdiction; or

(xix) use Cash Collateral, whether the proceeds of Loans or otherwise, other than for purposes set forth in the DIP Budget (regardless of

whether such uses are permitted under this Agreement or otherwise) or in amounts that exceed the Permitted Variances without the prior written consent of the Administrative Agent (acting at the direction of the Required Lenders) or the Required Lenders.

Section 6. **Events of Default**. Notwithstanding the provisions of Section 362 of the Bankruptcy Code and without application or motion to, or order from, the Bankruptcy Court, the occurrence of any one or more of the following events, regardless of the reason therefore, shall constitute an "Event of Default" hereunder:

(a) the failure of the Borrower to pay any principal when due, whether at stated maturity, by acceleration, by required prepayment or otherwise, or shall fail to pay any installment of interest or other amount payable hereunder within three (3) Business Days of the date when due;

(b) any representation, warranty or statement made or deemed made by any Loan Party herein or in any other Loan Document or other document related hereto or thereto or in any certificate delivered to the Administrative Agent or the Lenders pursuant hereto or thereto shall prove to be untrue in any material respect (or, in the case of any representation, warranty or statement qualified by materiality, in any respect) on the date as of which made or deemed made;

(c) the Loan Parties or any of their respective Subsidiaries fail to perform or observe any term, covenant or agreement contained in any of Section 5(a), 5(b), 5(c), 5(d)(v), 5(d)(viii), 5(d)(xi) or 5(e);

(d) the Loan Parties or any of their respective Subsidiaries fail to perform or observe any other provision of this Agreement or any other Loan Document (other than those set forth in clauses (a), (b) or (c) above) and such default shall continue unremedied for a period of fifteen (15) days after the earlier of (i) the date on which such default shall first become known to any officer of the Borrower or any other Loan Party and (ii) the date on which written notice thereof is given to the defaulting party by the Lenders or the Administrative Agent;

(e) the Bankruptcy Court shall have entered an order (i) directing the appointment of an examiner with expanded powers, (ii) converting any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code, or (iii) dismissing any of the Chapter 11 Cases;

(f) termination by the Bankruptcy Court of, or the expiration of, the exclusive period for the Debtors to file a plan of reorganization in the Chapter 11 Cases as set forth in section 1121 of the Bankruptcy Code;

(g) any Loan Party or any of their Subsidiaries taking any action that would reasonably be expected to frustrate in any material respect either or both (A) the effectiveness of an Acceptable Plan by the Outside Plan Effective Date and (B) the confirmation of an Acceptable Plan by the Outside Plan Confirmation Date, in each case, including, without limitation, withdrawing such Acceptable Plan or filing any other plan in the Chapter 11 Cases without the prior written consent of the Required Lenders;

(h) any debtor-in-possession financing is entered into by any Debtor other than the DIP Facility or any Debtor seeks authorization from the Bankruptcy Court to enter into such facility without the prior written consent of the Required Lenders that, in each instance, does not provide for indefeasible payment in full of all Obligations under this Agreement;

(i) entry of any order by the Bankruptcy Court reversing, amending, supplementing, staying for a period of ten (10) days or more, vacating or otherwise amending, supplementing or modifying the DIP Order, the Disclosure Statement Order or the Confirmation Order without the prior written consent of the Required Lenders;

(j) payment by any Loan Party of prepetition debt (other than as approved by the Bankruptcy Court and as otherwise contemplated by the DIP Budget, this Agreement, the DIP Order, or with the prior written consent of the Required Lenders);

(k) the Interim DIP Order or the Final DIP Order, as applicable, shall cease to purport to create valid, enforceable, and perfected Liens on the Collateral with the priority set forth therein or otherwise cease to be valid and binding and in full force and effect;

(l) the appointment by the Bankruptcy Court of a receiver and manager, receiver, interim receiver, trustee in bankruptcy or similar official in respect of any of the Loan Parties;

(m) the Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code pertaining to the Collateral to the holder or holders of any security interest to (i) permit foreclosure (or the granting of a deed or lieu of foreclosing or the like) on any assets of the Loan Parties which would frustrate the consummation of an Acceptable Plan or (ii) permit other actions that would have a Material Adverse Effect;

(n) the filing of any motion by any Loan Party or any of their Subsidiaries seeking relief from the automatic stay which could reasonably be expected to result in a material impairment of the rights or interests of the Administrative Agent or the Lenders without the prior written consent of the Required Lenders (such consent not to be unreasonably withheld);

(o) one or more judgments, orders or decrees for the payment of money required to be satisfied as an administrative expense claim in the Chapter 11 Cases shall be allowed by the Bankruptcy Court in an aggregate amount (to the extent not paid or covered by insurance) that is reasonably expected to have a Material Adverse Effect;

(p) actual or asserted (by any Loan Party or any Affiliate thereof) invalidity or impairment of this Agreement or any related Loan Document (including the failure of any Lien to remain perfected);

(q) non-compliance by any Loan Party in any material respect with the terms of the DIP Order, the Disclosure Statement Order, the Bidding Procedures Order, the Confirmation Order, the Sale Order, or any other order entered in the Chapter 11 Cases;

(r) any Debtor files, amends or modifies, or files a pleading seeking approval of, any order or document approved in the Chapter 11 Cases in a manner that is inconsistent with the Required Lenders' consent and approval rights under this Agreement and the other Loan Documents;

(s) the Borrower or any of the other Loan Parties ceases or threatens to cease to carry on business in the ordinary course as it is carried on as of the date hereof, except where such cessation is consented to in writing by the Required Lenders;

(t) revocation or cancellation (except upon the expiration of the term thereof) by the counterparty of any contract to which the Borrower or any of the Loan Parties is a party which has or would reasonably be expected to have a Material Adverse Effect;

(u) the Bankruptcy Court enters an order or orders (i) to sell, transfer, lease, exchange, alienate or otherwise dispose of any of the Collateral pursuant to Section 363 of the Bankruptcy Code other than in accordance with an Acceptable Sale Process, (ii) avoiding or requiring disgorgement by the Administrative Agent or the Lenders of any amounts received in respect of the DIP Obligations or (iii) permitting the grant of a Lien on the Collateral other than the Permitted Liens;

(v) any of the Loan Parties shall take any action in support of any matter set forth in Sections 6(e), (f), (i), (l), (o) or (u) or any other Person shall do so and such application is not contested in good faith by the Loan Parties;

(w) any Loan Party shall file a motion, pleading or proceeding which could reasonably be expected to result in a material impairment of the rights or interests of the Administrative Agent or the Lenders or a determination by a court with respect to a motion, pleading or proceeding brought by another party which results in such a material impairment;

(x) the failure of any Milestone to be timely satisfied;

(y) the Borrower changes the membership or composition of its board of directors or the current Chief Restructuring Officer of the Loan Parties ceases to be the Chief Restructuring Officer of the Loan Parties and is not replaced by a Chief Restructuring Officer reasonably acceptable to the Required Lenders within five (5) Business Days; or

(z) a Change in Control with respect to any of the Loan Parties.

Upon the occurrence and continuance of any Event of Default, the Administrative Agent (acting on the instructions of the Required Lenders) or the Required Lenders may (notwithstanding the provisions of Section 362 of the Bankruptcy Code and without application or motion to, or order from, the Bankruptcy Court), subject to the terms, conditions and provisions of the DIP Order, by written notice to the Borrower, the Prepetition Notes Trustee, the Prepetition Secured Noteholders and the U.S. Trustee, declare the Commitment to be terminated forthwith, whereupon the Commitment shall immediately terminate, and/or, by notice to the Borrower, declare its Loans hereunder, with accrued interest thereon, and all other Obligations owed to it under this Agreement and the other Loan Documents to be due and payable forthwith, whereupon the same shall

immediately become due and payable. Except as expressly provided above in this Section 6, presentment, demand, protest and all other notices of any kind are hereby expressly waived.

Upon the occurrence and during the continuance of any Event of Default and subject to the terms of the DIP Order, the Administrative Agent and each of the Lenders may (i) exercise all of its rights and remedies set forth in any of the Loan Documents and the DIP Order, in addition to all rights and remedies allowed under any applicable law, including the UCC, and (ii) revoke the rights of the Borrower and the other Loan Parties to use Cash Collateral in which the Administrative Agent and the Lenders have an interest. None of the Administrative Agent or the Lenders shall have any obligation of any kind to make a motion or application to the Bankruptcy Court to exercise their rights and remedies set forth or referred to in this Agreement or in the other Loan Documents. The enumeration of the foregoing rights and remedies is not intended to be exhaustive and the exercise of any right or remedy shall not preclude the exercise of any other rights or remedies, all of which shall be cumulative and not alternative.

The Loan Parties waive (i) presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties or other property at any time held by the Administrative Agent or the Lenders on which the Loan Parties may in any way be liable and hereby ratify and confirm whatever the Lenders may lawfully do in this regard, (ii) subject to the terms of the DIP Order, all rights to notice and hearing prior to the Administrative Agent or the Lenders taking possession or control of the Collateral, or any bond or security which might be required by any court prior to allowing the Administrative Agent or the Lenders to exercise any of their remedies subject to the terms of the DIP Order, and (iii) the benefit of all valuation, appraisal and exemption laws. The Loan Parties acknowledge that they have been advised by counsel of their choice with respect to the effect of the foregoing waivers and this Agreement, the other Loan Documents and the transactions evidenced by this Agreement and the other Loan Documents.

For the avoidance of doubt, notwithstanding any other provision of any Loan Document to the contrary, during the Default Notice Period, (i) the Debtors shall be permitted to continue to use Cash Collateral and proceeds of the Loans solely in the ordinary course of business in accordance with the DIP Budget and to satisfy the Carve-Out, and (ii) the Debtors may seek emergency relief from the Bankruptcy Court during the Default Notice Period solely to seek a finding that no Event of Default has occurred.

Section 7. **Application of Proceeds**. Subject to the DIP Order, all or any part of proceeds constituting Collateral in payment of the Obligations shall be applied in the following order:

First, to pay the incurred and unpaid fees, costs and expenses of the Lenders and the Administrative Agent required to be reimbursed under the Loan Documents;

Second, to the Lenders to pay accrued and unpaid interest on the Loans;

Third, to the Lenders to pay all outstanding principal amounts in respect of the Loans;

Fourth, to the Administrative Agent or the Lenders in payment of any remaining Obligations;

Fifth, any balance remaining after the Obligations shall have been paid in full, in payment to the Prepetition Notes Trustee for distribution to the Prepetition Secured Noteholders pursuant to the Indenture, or to whomever may be lawfully entitled; and

Sixth, in payment to the Borrower.

Section 8. **Miscellaneous**.

(a) Costs and Expenses. Whether or not the transactions contemplated hereby shall be consummated, but subject to entry of the Interim DIP Order, the Borrower shall reimburse the Lenders and Administrative Agent for (i) all reasonable and documented out-of-pocket costs and expenses in connection with the preparation of the Loan Documents, the Interim DIP Order, the Final DIP Order and any consents, amendments, waivers or other modifications thereto and in connection with the consummation and administration of the transactions contemplated hereby and thereby and in connection with the Chapter 11 Cases; (ii) all reasonable and documented out-of-pocket fees, expenses and disbursements of counsel to any or all Lenders, a single financial advisor to all Lenders, a single firm of counsel to the Administrative Agent, and, if necessary, for each of the Lenders and the Administrative Agent, one firm of counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) in connection with the negotiation, preparation, execution and administration of the Loan Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Borrower and in connection with the consummation and administration of the transactions contemplated hereby and thereby and in connection with the Chapter 11 Cases; (iii) all reasonable and documented out-of-pocket costs and expenses in connection with the custody or preservation of any of the Collateral; and (iv) all reasonable and documented out-of-pocket costs and expenses, including attorneys' fees and costs of settlement, incurred by the Administrative Agent and the Lenders in enforcing any Obligations of or in collecting any payments due from the Borrower or the other Loan Parties hereunder or under the other Loan Documents (including in connection with the sale of, collection from, or other realization upon any of the Collateral) or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or pursuant to the Chapter 11 Cases, or any other insolvency proceedings or any attempt to enforce any rights or remedies of the Lenders or the Administrative Agent against the Borrower or any other Person that may be obligated thereto by virtue of being a party to any of the Loan Documents, in each case, without the need to file any applications with the Bankruptcy Court and subject to the limitations set forth in the DIP Order.

(b) Indemnity. Whether or not the transactions contemplated hereby shall be consummated, but subject to entry of the Interim DIP Order, the Borrower agrees, jointly and severally with the other Loan Parties, to indemnify, pay and hold the Lenders, the Administrative Agent, and the shareholders, officers, directors, employees and agents thereof (each, an "Indemnified Party"), harmless from and against any and all claims, liabilities, losses, damages, costs and expenses (whether or not any of the foregoing Persons is a party to any litigation), including, without limitation, attorneys' and financial advisors' fees and costs (limited in the case

of legal fees and expenses to reasonable and documented legal fees of counsel for any or all Indemnified Parties and a single financial advisor for all Indemnified Parties, taken as a whole, and, if necessary, one firm of counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for all Indemnified Parties taken as a whole (and, in the case of an actual or perceived conflict of interest, where the Indemnified Parties affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of an additional counsel for each group of affected Indemnified Parties similarly situated, taken as a whole)) and costs of investigation, document production, attendance at a deposition, or other discovery, with respect to or arising out of this Agreement or the other Loan Documents or any use of proceeds hereunder or the Chapter 11 Cases or any transactions contemplated hereby or thereby, or any claim, demand, action or cause of action being asserted against the Borrower or any other Loan Party (collectively, the "Indemnified Liabilities"); provided that the Borrower shall have no obligation hereunder with respect to Indemnified Liabilities with respect to a particular Indemnified Party to the extent arising from the gross negligence or willful misconduct of any such Indemnified Party. This covenant shall survive termination of this Agreement and payment of the outstanding Loans.

(c) Yield Protection, Taxes and Other Deductions. Payments by the Borrower or any other Loan Party hereunder or under any other related Loan Documents shall be made free and clear of and without reduction for or on account of any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any country or political subdivision of a country (collectively, "Taxes"); provided, however, that if any Taxes are required by applicable law to be withheld ("Withholding Taxes") from any amount payable to the Lenders or the Administrative Agent, the amounts so payable to the Lenders or the Administrative Agent shall be increased to the extent necessary to yield to the Lenders or the Administrative Agent, as the case may be, on a net basis after the payment of all Withholding Taxes the amount payable under this Agreement or any other related Loan Documents at the rate provided herein or therein and if requested by the Administrative Agent or any Lender, the Borrower and the other Loan Parties shall provide evidence reasonably satisfactory to the Lenders or the Administrative Agent, as the case may be, that the applicable Taxes have been withheld and remitted.

(d) Assignments and Participations. Neither the Borrower nor any Guarantor may assign or transfer any of its rights, obligations or interest hereunder without the prior written consent of the Lenders (and any attempted assignment or transfer without such consent shall be null and void). The Lenders may sell, assign, transfer, negotiate or grant participations to other financial institutions in all or part of the obligations of the Borrower outstanding under the Loan Documents, with the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed) (provided that (i) no such consent shall be required (A) if an Event of Default has occurred and is continuing, (B) in connection with an assignment to a Lender or an Affiliate of a Lender and (C) in connection with a participation and (ii) such consent shall be deemed to have been given if the Borrower has not responded within ten Business Days after delivery of a written request therefor by the Administrative Agent); provided that any such sale, assignment, transfer, negotiation or participation shall be in compliance with the applicable federal and state securities laws; provided, further, that any assignee or transferee agrees to be bound by the terms and conditions of this Agreement. The Lenders may, in connection with any actual or

proposed assignment or participation, disclose to the actual or proposed assignee or participant, any information relating to the Loan Parties or any of their respective subsidiaries. The parties hereto agree that the Administrative Agent and the Lenders shall be permitted to make technical fixes to this Agreement to accommodate any such assignment or transfer. Any assignment of an interest in the Commitments or the Loans must be approved by the Administrative Agent, unless the Person that is the proposed assignee is itself a Lender and the parties to any such assignment shall execute and deliver to the Administrative Agent an executed assignment and assumption agreement, together with an administrative processing fee in the amount of $3,500; provided, however, that the Administrative Agent may in its sole discretion, elect to waive such fee in the case of any assignment. An assignee, if it shall not be a Lender, shall be required to deliver to the Administrative Agent an administrative questionnaire in a form supplied by the Administrative Agent. The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, each Lender's pro rata share of the Commitment, and the principal amount (and stated interest with respect thereto) of the Loans pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent, and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender (solely with respect to such Lender's Loans) at any reasonable time and from time to time upon reasonable prior written notice.

(e) Amendments. Neither this Agreement nor any terms hereof may be changed, waived, discharged or terminated unless such change, waiver, discharge or termination is in writing signed by the respective Loan Parties party hereto, the Administrative Agent and the Required Lenders (other than in the case of clauses (i) – (vi) below which shall only require the consent of the Lenders expressly set forth therein); provided that, except as expressly provided herein, no such agreement shall

(i) decrease, forgive, waive or excuse the principal amount of, or any interest on, or extend the final maturity of, or decrease the rate of interest on, any Loan beyond the applicable Maturity Date, without the prior written consent of each Lender directly and adversely affected thereby (it being agreed that waiver of the Default Rate shall require the consent of Required Lenders only);

(ii) increase or extend the Commitment of any Lender or decrease, forgive, waive or excuse the fees of any Lender or the Administrative Agent without the prior written consent of such Lender or the Administrative Agent, as applicable (it being understood that waivers or modifications of conditions precedent, covenants, Events of Default or of a mandatory reduction in the Commitments shall not constitute an increase of the Commitments of any Lender);

(iii) extend any date on which payment of principal or interest on any Loan or any fee is due, without the prior written consent of each

Lender directly and adversely affected thereby (for the avoidance of doubt, Default Rate may be postponed, delayed, reduced, waived or modified with the consent of Required Lenders);

(iv) amend the provisions of Section 7, or any analogous provision of any other Loan Document, in a manner that would by its terms alter the *pro rata* sharing of payments required thereby or the waterfall provision, without the prior written consent of each Lender directly and adversely affected thereby;

(v) amend or modify the provisions of this Section 8(e) or the definition of the term "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the prior written consent of each Lender; or

(vi) unless pursuant to a transaction permitted by this Agreement (including Section 5(e)(i)), release any of the Collateral or release any of the value of the Guarantees provided by the Loan Parties hereunder, in each case, without the prior written consent of each Lender;

provided, further, that no such change, waiver, discharge or termination shall amend, modify or otherwise affect the rights, obligations or duties of the Administrative Agent hereunder or under any other Loan Document, unless approved in writing by the Administrative Agent.

(f) Entire Agreement; Conflict. This Agreement currently constitutes the entire agreement between the parties relating to the subject matter hereof and is binding on the parties in accordance with its terms. To the extent that there is any inconsistency between this Agreement and any of the other related Loan Documents once executed, this Agreement shall govern unless such other document specifically states otherwise; provided that, for the avoidance of doubt, to the extent that there is any inconsistency between this Agreement and the DIP Order, the DIP Order shall govern.

(g) Effectiveness; Binding Effect; Governing Law. This Agreement shall become effective when it shall have been executed by the Borrower, the other Loan Parties, the Administrative Agent, and the Lenders and thereafter shall be binding upon and inure to the benefit of the Borrower, the other Loan Parties, the Administrative Agent, the Lenders and their respective permitted successors and assigns. THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(h) Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, EACH OF THE PARTIES TO THIS AGREEMENT HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF

ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED.

(i) Consent to Jurisdiction; Venue. All judicial proceedings brought against any party hereto with respect to this Agreement and the Loan Documents shall be brought in the Bankruptcy Court or, upon the dismissal or other resolution of the Chapter 11 Cases, in any state or federal court of competent jurisdiction in the State of New York, and by execution and delivery of this Agreement, each Loan Party accepts for itself and in connection with its properties, generally and unconditionally, the exclusive jurisdiction of the Bankruptcy Court, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement. Each Loan Party irrevocably waives any right it may have to assert the doctrine of forum non conveniens or to object to venue to the extent any proceeding is brought in accordance with this clause (i).

(j) Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile or other electronic transmission shall be as effective as delivery of an original counterpart of this Agreement.

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

(l) PATRIOT Act. Each Lender and Administrative Agent are subject to the USA PATRIOT Act (Title III of Pub. Law 107-56 (signed into law October 26, 2001)) (as amended from time to time, the "PATRIOT Act") and hereby notifies the Borrower and the other Loan Parties that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrower and the other Loan Parties and other information that will allow the Lenders and the Administrative Agent to identify the Borrower and the other Loan Parties in accordance with the PATRIOT Act. This notice is given in accordance with the requirements of the PATRIOT Act and is effective as to the Lenders and the Administrative Agent.

(m) Interpretive Provisions. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section, subsection, schedule and exhibit references are sections, subsections, schedules and exhibits to this Agreement unless otherwise specified.

(n) Limitation on Liability. TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS: (I) NONE OF THE ADMINISTRATIVE AGENT, THE LENDERS OR ANY INDEMNIFIED PARTY SHALL BE LIABLE TO ANY PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE OR

CONSEQUENTIAL DAMAGES IN CONNECTION WITH THEIR RESPECTIVE ACTIVITIES RELATED TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, THE TRANSACTIONS CONTEMPLATED THEREBY, THE LOANS, OR OTHERWISE IN CONNECTION WITH THE FOREGOING; (II) WITHOUT LIMITING THE FOREGOING, NONE OF THE ADMINISTRATIVE AGENT, THE LENDERS OR ANY INDEMNIFIED PARTY SHALL BE SUBJECT TO ANY EQUITABLE REMEDY OR RELIEF, INCLUDING SPECIFIC PERFORMANCE OR INJUNCTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED THEREBY; AND (III) NONE OF THE ADMINISTRATIVE AGENT, THE LENDERS OR ANY INDEMNIFIED PARTY SHALL HAVE ANY LIABILITY TO THE LOAN PARTIES, FOR DAMAGES OR OTHERWISE, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED THEREBY FOR ANY ACT OR OMISSION PRIOR TO THE CLOSING DATE.

(o) Notice. All notices, demands, and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (a) when personally delivered, (b) when transmitted via electronic mail to the e-mail address set out below if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), (c) the day following the day (except if not a Business Day then the next Business Day) on which the same has been delivered prepaid to a reputable national overnight courier service, or (d) the third (3rd) Business Day following the day on which the same is sent by certified or registered mail, postage prepaid. Notices, demands, and communications, in each case to the respective parties, shall be sent to the applicable address set forth below, unless another address has been previously specified in writing:

(i) If to the Administrative Agent, to:

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402
Attention: Jeffery Rose, Vice President
Email: jrose@wilmingtontrust.com

with a copy (that will not constitute notice) to:

Duane Morris LLP
222 Delaware Avenue, Suite 1600
Wilmington, DE 19801
Attention: Christopher M. Winter, Esq.
cmwinter@duanemorris.com

(ii) If to any Lender, to:

White & Case LLP
200 S. Biscayne Blvd. Suite 4900
Miami, Florida 33131

Attention: Brian Pfeiffer
Email: brian.pfeiffer@whitecase.com

with a copy (that will not constitute notice) to:

Brian Pfeiffer, Esq.
Andrew T. Zatz, Esq.
White & Case LLP
1221 Avenue of the Americas
New York, NY 10020-1095
brian.pfeiffer@whitecase.com
azatz@whitecase.com

-and-

William A. Guerrieri, Esq.
White & Case LLP
111 South Wacker Drive, Suite 5100
Chicago, IL 60606
william.guerrieri@whitecase.com

(iii) If to the Loan Parties, to:

GCX Limited
3190 S Vaughn Way, # 550
Aurora, CO 80014
Attn: Michael Katzenstein, Chief Restructuring Officer
Email: Mike.Katzenstein@fticonsulting.com

with a copy to (which shall not constitute notice):

Paul Hastings LLP
71 S. Wacker Dr.
Chicago, IL 60606
Attn: Chris L. Dickerson, Esq.; Todd M. Schwartz, Esq.; Brendan M. Gage, Esq.
Email: chrisdickerson@paulhastings.com; toddschwartz@paulhastings.com; brendangage@paulhastings.com

(p) Confidentiality. The Administrative Agent and each Lender agrees that material, non-public information regarding the Debtors and their Subsidiaries, their operations, assets, and existing and contemplated business plans conspicuously designated as material, non-public information ("Confidential Information") shall be treated by the Administrative Agent and each Lender in a confidential manner, and shall not be disclosed by the Administrative Agent or any Lender to Persons who are not parties to this Agreement, except: (i) to attorneys, other advisors, accountants, auditors, and consultants to any Lender or the Administrative Agent and to employees, directors and officers of any Lender or the Administrative Agent (the Persons in this

clause (i), "Representatives") on a "need to know" basis in connection with this Agreement and the transactions contemplated hereby and on a confidential basis, (ii) to Subsidiaries and Affiliates of any Lender or the Administrative Agent; provided that, any such Subsidiary or Affiliate shall have agreed to receive such information hereunder subject to the terms of this Section 8(p), (iii) as may be required by regulatory authorities, (iv) as may be required by statute, decision, or judicial or administrative order, rule, or regulation; provided that (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide the Borrower with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to the Borrower pursuant to the terms of the applicable statute, decision, or judicial or administrative order, rule, or regulation and (y) any disclosure under this clause (iv) shall be limited to the portion of the Confidential Information as may be required by such statute, decision, or judicial or administrative order, rule, or regulation, (v) as may be agreed to in advance in writing by the Borrower, (vi) as requested or required by any Governmental Authority pursuant to any subpoena or other legal process; provided that, (x) prior to any disclosure under this clause (vi) the disclosing party agrees to provide the Borrower with prior written notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior written notice to the Borrower pursuant to the terms of the subpoena or other legal process and (y) any disclosure under this clause (vi) shall be limited to the portion of the Confidential Information as may be required by such Governmental Authority pursuant to such subpoena or other legal process, (vii) as to any such information that is or becomes generally available to the public (other than as a result of prohibited disclosure by any Lender, the Administrative Agent or its respective Representatives), (viii) in connection with any assignment, participation or pledge of any Lender's or the Administrative Agent's interest under this Agreement; provided that, prior to receipt of Confidential Information any such assignee, participant, or pledgee shall have agreed in writing to receive such Confidential Information hereunder subject to the terms of this Section, (ix) in connection with any litigation or other adversary proceeding involving parties hereto which such litigation or adversary proceeding involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents, (x) to equity owners of each Loan Party and (xi) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any other Loan Document.

Section 9. **Guarantee**.

(a) The Guarantee. Each of the Guarantors hereby jointly and severally guarantee, as a primary obligor and not as a surety to the Lenders and the Administrative Agent and each of their respective successors and assigns, the prompt payment in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the principal of and interest (including any interest, fees, costs or charges that would accrue but for the provisions of the Bankruptcy Code after the Petition Date) on the Loans made by the Lenders to the Borrower, and all other Obligations and/or liabilities from time to time owing to the Lenders and the Administrative Agent by any Loan Party hereunder or under any other related Loan Documents (such obligations being herein collectively called the "Guaranteed Obligations"). The Guarantors hereby jointly and severally agree that if the Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any

of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

(b) Obligations Unconditional. The obligations of the Guarantors under Section 9(a) shall constitute a guaranty of payment and to the fullest extent permitted by applicable Requirements of Law (subject to the entry of the DIP Order by the Bankruptcy Court), are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations of the Borrower under this Agreement or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment in full). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

(i) at any time or from time to time, without notice to the Guarantors, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of this Agreement or any other agreement or instrument referred to herein or therein shall be done or omitted;

(iii) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect (included any increase or decrease in the principal amount thereof or the rate of interest or fees thereon), or any right under this Agreement or any other agreement or instruments related hereto or referred to herein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;

(iv) any Lien or security interest granted to, or in favor of, the Administrative Agent and the Lenders as security for any of the Guaranteed Obligations shall fail to be perfected;

(v) the release of any other Guarantor; or

(vi) taking of any other action which would, under otherwise applicable principles of common law, give rise to a legal or equitable discharge of any Guarantor from its liabilities under this Guarantee.

Except as cannot be waived under applicable law, the Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any

requirement that the Lenders or the Administrative Agent exhaust any right, power or remedy or proceed against the Borrower under this Agreement or any other agreement or instrument referred to herein or therein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Guarantors waive any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by the Lenders or the Administrative Agent upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between the Borrower and the Lenders or the Administrative Agent shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by Lenders or the Administrative Agent, and the obligations and liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Lenders, the Administrative Agent or any other Person at any time of any right or remedy against the Borrower or against any other Person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. Until the payment and satisfaction in full in cash of all Guaranteed Obligations and the expiration and termination of the Commitments of the Lenders under this Agreement, this Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and the successors and assigns thereof, and shall inure to the benefit of the Lenders and the Administrative Agent, and its successors and assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding.

(c) Reinstatement. The obligations of the Guarantors under this Section 9 shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or another Loan Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise. The Guarantors jointly and severally agree that they will indemnify the Lenders and the Administrative Agent on demand for all costs and expenses (including fees of counsel) incurred by the Lenders or the Administrative Agent in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law, other than any costs or expenses resulting from the bad faith or willful misconduct of the Lenders or the Administrative Agent, as the case may be.

(d) Subrogation; Subordination. Each Guarantor hereby agrees that until the payment and satisfaction in full in cash of all Guaranteed Obligations (other than contingent indemnification obligations for which no claim or demand has been made) and the expiration and termination of the Commitments of the Lenders under this Agreement it shall waive any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in Section 9(a), whether by subrogation or otherwise, against the Borrower or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. Any indebtedness of any Loan Party permitted pursuant to Section 5(e)(iv) shall be

subordinated to such Loan Party's Guaranteed Obligations in form and substance reasonably satisfactory to the Lenders.

(e) Remedies. The Guarantors jointly and severally agree that, as among the Guarantors, the Administrative Agent and the Lenders, the Obligations of the Borrower under this Agreement may be declared to be forthwith due and payable as provided in Section 6 for purposes of Section 9(a), notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 9(a).

(f) Instrument for the Payment of Money. Each Guarantor hereby acknowledges that the guarantee in this Section 9 constitutes an instrument for the payment of money, and consents and agrees that the Lenders and the Administrative Agent, at their sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

(g) Continuing Guarantee. Until the payment and satisfaction in full in cash of all Guaranteed Obligations (other than contingent indemnification obligations for which no claim or demand has been made) and the expiration and termination of the Commitments of the Lenders under this Agreement, the guarantee in this Section 9 is a continuing guarantee of payment, and shall apply to all Guaranteed Obligations whenever arising.

(h) General Limitation on Guarantee Obligations. In any action or proceeding involving any state corporate, limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Guarantor under Section 9(a) would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 9(a), then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Guarantor, any Loan Party or any other Persons, be automatically limited and reduced to the highest amount after giving effect to the rights of contribution established in Section 9(i).

(i) Right of Contribution. Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 9(d). The provisions of this Section 9(i) shall in no respect limit the obligations and liabilities of any Guarantor to the Administrative Agent and the Lenders, and each Guarantor shall remain liable to the Lenders and the Administrative Agent for the full amount guaranteed by such Guarantor hereunder.

(j) Payments. All payments made by the Guarantors pursuant to this Section 9 shall be made in U.S. Dollars and will be made without setoff, counterclaim or other defense and shall be subject to the provisions of Section 8(c).

Section 10. **The Administrative Agent**.

(a) Authorization and Action.

(i) Each Lender hereby designates and appoints Wilmington Trust, National Association, as Administrative Agent under this Agreement and the other Loan Documents and authorizes Wilmington Trust, National Association, in the capacity of Administrative Agent, to (i) execute, deliver and perform the obligations, if any, of the Lenders, as applicable under this Agreement and each other Loan Document and (ii) take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. The provisions of this Section 10 are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor any other Loan Party shall have rights as a third-party beneficiary of any such provisions. As to any matters not expressly provided for by the Loan Documents (including, without limitation, enforcement of the Obligations or collection of the Obligations owing under the Loan Documents), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders (or, if appropriate, all Lenders), and such instructions shall be binding upon the Lenders; provided, however, that the Administrative Agent shall not be required to take any action that exposes the Administrative Agent to personal liability or that is contrary to this Agreement or applicable law.

(ii) The Administrative Agent may execute any of its duties under this Agreement or any other Loan Document (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof)) by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent, employee or attorney-in-fact that it selects in accordance with the foregoing provisions of this Section 10(a)(ii) in the absence of the Administrative Agent's gross negligence or willful misconduct.

(b) Administrative Agent's Reliance, Etc. Neither the Administrative Agent nor any of its directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it or them under or in connection with the Loan Documents (i) with the consent of or at the request of the Required Lenders or (ii) in the absence of its or their own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. Without limitation of the generality of the foregoing, the Administrative Agent: (i) may consult with legal counsel (including counsel for any Loan Party), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts; (ii) makes no warranty or representation to the Lenders and shall not be responsible to any Lender for any statements, warranties or representations (whether written or oral) made in or in connection with the Loan Documents, nor shall it have any duty to ascertain or inquire into such statements, warranties or representations; (iii) shall not have any duty to ascertain or inquire into the contents of any certificate, report or other document delivered under any of the Loan Documents; (iv) shall not have any duty to ascertain or to inquire as to the performance, observance or satisfaction of any of the terms, covenants or conditions of any Loan Document on the part of any Loan Party or the existence at any time of any Default under the Loan Documents or to inspect the property (including the books and records) of any Loan Party, and shall be deemed not to have knowledge of any Default under the Loan Documents unless and until notice describing such Default is given to the Administrative Agent in writing by the Borrower or a Lender; (v) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any Lien or security interest created or purported to be created under or in connection with, any Loan Document or any other instrument or document furnished pursuant thereto; and (vi) shall incur no liability under or in respect of any Loan Document by acting upon any notice, consent, certificate or other instrument or writing (which may be by telegram, telecopy or electronic communication) believed by it to be genuine and signed or sent by the proper party or parties.

(c) No Fiduciary Duty. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent (i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing; (ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and (iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(d) Agents and Affiliates. The Administrative Agent and its Affiliates may accept deposits from, lend money to, act as trustee under indentures of, accept investment banking

engagements from and generally engage in any kind of business with, any Loan Party, any of its Subsidiaries and any Person that may do business with or own securities of any Loan Party or any such Subsidiary, all as if the Administrative Agent was not an agent and without any duty to account therefor to the Lenders (or any other Person). The Administrative Agent shall not have any duty to disclose any information obtained or received by it or any of its Affiliates relating to any Loan Party or any of its Subsidiaries to the extent such information was obtained or received in any capacity other than as Administrative Agent.

(e) Lender Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent and based on documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement.

(f) Indemnification.

(i) Each Lender agrees to indemnify the Administrative Agent (to the extent not promptly reimbursed by the Loan Parties and without limiting its obligation to do so) from and against its pro rata share of any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Administrative Agent in any way relating to or arising out of the Loan Documents or any action taken or omitted by the Administrative Agent under the Loan Documents (collectively, the "Indemnified Costs"); provided, however, that the Lenders shall not be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's gross negligence or willful misconduct as found in a final, non-appealable judgment by a court of competent jurisdiction. Without limitation of the foregoing, each Lender agrees to reimburse the Administrative Agent promptly upon demand for its pro rata share of any costs and expenses (including, without limitation, fees and expenses of counsel) payable by the Loan Parties under Section 8(a), to the extent that the Administrative Agent is not promptly reimbursed for such costs and expenses by the Loan Parties. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Costs, this Section 10(f) applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. The Administrative Agent is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and otherwise apply any and all amounts it receives pursuant to the Loan Documents to or for the credit or the account of the Lenders against any and all obligations of the Lenders to the

Administrative Agent now or hereafter existing under this Section 10(f); provided that the foregoing sentence shall only apply if any such Lender fails to promptly pay such obligation following the Administrative Agent's written request for payment; provided, further, that any obligation a Lender fails to promptly pay following the Administrative Agent's written request for payment shall, upon the election of the Required Lenders, bear interest at the same rate as Default Rate and the Administrative Agent is authorized to set off against any such accrued interest in the manner described above.

(ii) Without prejudice to the survival of any other agreement of the Lenders hereunder, the agreement and obligations of the Lenders contained in this Section 10(f) shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the other Loan Documents.

(g) Successor Administrative Agent. The Administrative Agent may resign at any time by giving 15 days' written notice thereof to the Lenders and the Borrower and may be removed at any time with or without cause by the Lenders. Upon any such resignation or removal, the Required Lenders shall have the right, with (so long as no Event of Default has occurred and is continuing) the consent of the Borrower (not to be unreasonably withheld or delayed), to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within 30 days after the retiring Administrative Agent's giving of notice of resignation or the Required Lenders' removal of the retiring Administrative Agent, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, which shall be a commercial bank organized under the laws of the United States or of any State thereof and having a combined capital and surplus of at least $500,000,000. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall succeed to and become vested with all the rights, powers, discretion, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents. If within 45 days after written notice is given of the retiring Administrative Agent's resignation or removal under this Section 10(g) no successor Administrative Agent shall have been appointed and shall have accepted such appointment, then on such 45th day (i) the retiring Administrative Agent's resignation or removal shall become effective, (ii) the retiring Administrative Agent shall thereupon be discharged from its duties and obligations under the Loan Documents and (iii) the Required Lenders shall thereafter perform all duties of the retiring Administrative Agent under the Loan Documents until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided above. After any retiring Administrative Agent's resignation or removal hereunder as Administrative Agent shall have become effective, the provisions of this Section 10 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent.

(h) Each Loan Party hereby agrees to maintain the confidentiality of the Fee Letter, including, without limitation, the contents thereof in communications with third parties and

otherwise and to take all reasonable actions to prevent the unauthorized use or disclosure of and to protect the confidentiality of such confidential information; provided that the Loan Parties may disclose the contents of the Fee Letter (a) to their Affiliates, their respective partners, shareholders, members, directors, officers, employees, attorneys, accountants or advisors (collectively, the "Recipients") on a confidential and need-to-know basis, (b) as required by applicable law or regulations or by any subpoena or similar legal process (in which case, to the extent practicable and permitted by law, each Loan Party agrees to inform the Administrative Agent promptly thereafter), (c) in connection with the exercise of any remedies hereunder or any action or proceeding relating hereto or the enforcement of rights hereunder, or (d) the fees generally in a funds flow or other like closing statement.

[*Intentionally left blank*]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered as of the date and year first written above.

GCX Limited, as the Borrower

By: _____
Name:
Title:

FLAG Telecom Development Limited, as a Guarantor

By: _____
Name:
Title:

FLAG Telecom Group Services Limited, as a Guarantor

By: _____
Name:
Title:

FLAG Telecom Ireland Network DAC, as a Guarantor

By: _____
Name:
Title:

FLAG Telecom Network Services DAC, as a Guarantor

By: _____
Name:
Title:

FLAG Telecom Network USA Limited, as a Guarantor

By: _____
Name:
Title:

Vanco Australasia Pty Limited, as a Guarantor

By: _____
Name:
Title:

Reliance FLAG Atlantic France SAS, as a Guarantor

By: _____
Name:
Title:

Reliance FLAG Telecom Ireland DAC, as a Guarantor

By: _____
Name:
Title:

Reliance Globalcom Limited, as a Guarantor

By: _____
Name:
Title:

Reliance Vanco Group Limited, as a Guarantor

By: _____
Name:
Title:

Vanco GmbH, as a Guarantor

By: _____
Name:
Title:

Vanco SAS, as a Guarantor

By: _____
Name:
Title:

Vanco UK Limited, as a Guarantor

By: _____
Name:
Title:

Vanco US, LLC, as a Guarantor

By: _____
Name:
Title:

VNO Direct Limited, as a Guarantor

By: _____
Name:
Title:

[●], as a Lender

By:_____
Name:
Title:

Wilmington Trust, National Association, as the Administrative Agent

By:_____
Name:
Title:

EXHIBIT 2

DIP BUDGET

GCX - Debtor Entities
Cash Forecast Summary

($ in 000s) Week ending:	Week 0 Actual/Frcst 9/13	Ch 11. Week 1 Frcst 9/20	Week 2 Frcst 9/27	Week 3 Frcst 10/4	Week 4 Frcst 10/11	Week 5 Frcst 10/18	Week 6 Frcst 10/25	Week 7 Frcst 11/1	Week 8 Frcst 11/8	Week 9 Frcst 11/15	Week 10 Frcst 11/22	Week 11 Frcst 11/29	Week 12 Frcst 12/6	Week 13 Frcst 12/13	Total 13 Weeks
Cash Receipts															
Customer	$3,960	$3,528	$8,341	$3,133	$2,471	$2,253	$7,545	$2,013	$2,539	$2,215	$3,274	$5,145	$2,168	$2,606	$47,231
Other Receipts	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Cash Receipts	3,960	3,528	8,341	3,133	2,471	2,253	7,545	2,013	2,539	2,215	3,274	5,145	2,168	2,606	47,231
Cash Disbursements															
Capital spending	$700	$1,211	$65	$837	$43	$522	$396	$500	-	$500	-	$1,000	$500	$600	$6,173
Network Costs	3,513	1,993	3,267	4,094	5,358	2,166	2,401	3,055	4,112	2,820	2,228	3,055	5,112	2,820	42,480
Employee Costs	2,083	166	1,220	175	-	404	1,047	320	104	461	186	2,069	132	324	6,608
Selling & General Admin Costs	2,476	126	550	85	164	119	199	-	127	180	74	151	56	149	1,981
VAT & CIT	144	242	10	-	53	29	10	-	-	26	235	10	88	145	847
Other	875	75	75	75	75	75	75	75	75	75	75	75	75	75	975
Total Cash Disbursements	9,791	3,814	5,187	5,266	5,693	3,315	4,127	3,950	4,418	4,062	2,798	6,360	5,962	4,113	59,064
Net Operating Cash flows	(5,831)	(286)	3,155	(2,134)	(3,222)	(1,062)	3,418	(1,937)	(1,879)	(1,847)	476	(1,215)	(3,794)	(1,507)	(11,833)
Professional Fees & Expenses	3,857	-	203	192	183	2,099	153	153	1,258	580	2,712	143	85	110	7,872
DIP Financing Costs (fee & interest)	-	1,771	-	57	-	-	-	172	-	-	-	-	304	-	2,305
Forbearance Fee	6,195	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Restucturing & Financing Costs	10,053	1,771	203	250	183	2,099	153	325	1,258	580	2,712	143	389	110	20,533
Net Cash Flow	**($15,884)**	**($2,057)**	**$2,951**	**($2,383)**	**($3,405)**	**($3,162)**	**$3,265**	**($2,261)**	**($3,137)**	**($2,427)**	**($2,236)**	**($1,358)**	**($4,183)**	**($1,617)**	**($32,366)**
Beginning cash	20,593	4,855	25,898	28,849	26,466	22,061	26,599	28,864	24,603	27,966	24,539	21,303	24,845	19,662	4,855
Net Increase (Decrease) in Cash	(15,884)	(2,057)	2,951	(2,383)	(3,405)	(3,162)	3,265	(2,261)	(3,137)	(2,427)	(2,236)	(1,358)	(4,183)	(1,617)	(22,010)
InterCo Activity	(4,000)	-	-	-	(1,000)	-	(1,000)	(2,000)	(1,000)	(1,000)	(1,000)	(3,000)	(1,000)	(1,000)	(12,000)
DIP Advances	-	23,100	-	-	-	7,700	-	-	7,500	-	-	7,900	-	-	46,200
Adj. Ending Cash to Actual	4,145	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending Cash	**$4,855**	**$25,898**	**$28,849**	**$26,466**	**$22,061**	**$26,599**	**$28,864**	**$24,603**	**$27,966**	**$24,539**	**$21,303**	**$24,845**	**$19,662**	**$17,045**	**$17,045**
Restricted Cash Balances															
Bank Guarantees	1,794	1,794	1,794	1,794	1,794	1,794	1,794	1,794	1,794	1,794	1,794	1,794	1,794	1,794	1,794
Subtotal	1,794	1,794	1,794	1,794	1,794	1,794	1,794	1,794	1,794	1,794	1,794	1,794	1,794	1,794	1,794
Available Ending Cash	**$3,060**	**$24,103**	**$27,055**	**$24,671**	**$20,266**	**$24,805**	**$27,070**	**$22,808**	**$26,172**	**$22,744**	**$19,509**	**$23,051**	**$17,868**	**$15,250**	**$15,250**
DIP Financing:															
Beginning Balance	-	-	$23,100	$23,100	$23,100	$23,100	$30,800	$30,800	$30,800	$38,300	$38,300	$38,300	$46,200	$46,200	-
Borrowings	-	23,100	-	-	-	7,700	-	-	7,500	-	-	7,900	-	-	46,200
Cash Adjustments, Misc.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending Balance	-	$23,100	$23,100	$23,100	$23,100	$30,800	$30,800	$30,800	$38,300	$38,300	$38,300	$46,200	$46,200	$46,200	$46,200
Commitment	-	*$46,200*	*$46,200*	*$46,200*	*$46,200*	*$46,200*	*$46,200*	*$46,200*	*$46,200*	*$46,200*	*$46,200*	*$46,200*	*$46,200*	*$46,200*	*$46,200*
Headroom	-	*$23,100*	*$23,100*	*$23,100*	*$23,100*	*$15,400*	*$15,400*	*$15,400*	*$7,900*	*$7,900*	*$7,900*	-	-	-	-

CONFIDENTIAL DRAFT
Subject to Change
9/16/2019

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	:	Chapter 11
GCX Limited, et al.,[1]	:	Case No. 19-12031 (CSS)
Debtors.	:	(Jointly Administered) Re: Docket Nos. 17 and 49

FINAL ORDER PURSUANT TO SECTIONS 105, 361, 362, 363, AND 364 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002, 4001, 6004, AND 9014 (A) AUTHORIZING THE DEBTORS TO (I) USE CASH COLLATERAL, (II) OBTAIN SECURED SUPERPRIORITY POSTPETITION FINANCING AND GRANT LIENS AND SUPERPRIORITY ADMINISTRATIVE CLAIMS, AND (III) PROVIDE ADEQUATE PROTECTION, AND (B) GRANTING RELATED RELIEF

Upon the motion, dated September 15, 2019 (the "Motion"), of the debtors and debtors-in-possession (the "Debtors") in the above-captioned chapter 11 cases (the "Cases"), for the entry of an order pursuant to Sections 105, 361, 362, 363, and 364 of title 11 of the United States Code (as amended, the "Bankruptcy Code") and Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules") and Rules 2002-1, 4001-2, 9006-1, and 9013-1 of the Local Rules of Bankruptcy Practice and Procedure for the District of Delaware (the "Local Rules") (A) authorizing the Debtors to (I) use cash collateral of the Prepetition Secured Parties (defined below), (II) obtain secured superpriority

[1] The debtors in these chapter 11 cases, along with the last four digits of each debtor's tax identification number, as applicable, are GCX Limited (n/a); FLAG Telecom Development Limited (n/a); FLAG Telecom Group Services Limited (n/a); FLAG Telecom Ireland Network DAC (n/a); FLAG Telecom Network Services DAC (n/a); FLAG Telecom Network USA Limited (2662); Reliance FLAG Atlantic France SAS (n/a); Reliance FLAG Telecom Ireland DAC (n/a); Reliance Globalcom Limited (n/a); Reliance Vanco Group Limited (n/a); Vanco Australasia Pty Limited (n/a); Vanco GmbH (n/a); Vanco SAS (n/a); Vanco UK Limited (n/a); Vanco US, LLC (0221); and VNO Direct Limited (n/a). The location of Debtor FLAG Telecom Network USA Limited's principal place of business and the Debtors' service address in these chapter 11 cases is 3190 S Vaughn Way, # 550, Aurora, CO 80014.

postpetition financing and grant liens and superpriority administrative expense claims and (III) provide adequate protection to the Prepetition Secured Parties of the Bankruptcy Code, and (B) scheduling interim and final hearings, the Debtors sought, among other things, the following relief:

(i) the Court's authorization, pursuant to Sections 363 and 364(c)(1), (2), (3) and (d)(1) of the Bankruptcy Code, for GCX Limited (the "DIP Borrower") to (A) enter into a senior secured superpriority debtor-in-possession credit facility (the "DIP Facility"), pursuant to the Senior Secured Superpriority Debtor-in-Possession Credit Agreement attached as Exhibit 1 to the Interim Order (defined below) (the "DIP Credit Agreement"[2] and, together with the Interim Order, this order (the "Final Order"), and all other agreements, documents and instruments delivered or executed in connection therewith, as hereafter amended, restated, supplemented or otherwise modified from time to time, including the DIP Budget (defined below), collectively, the "DIP Documents") by and among the DIP Borrower, the Debtors other than the DIP Borrower, as guarantors (collectively, the "DIP Guarantors"), Wilmington Trust, National Association, as administrative agent (in such capacity, the "DIP Agent"), and the financial institutions party thereto from time to time as lenders (the "DIP Lenders" and, together with the DIP Agent, the "DIP Secured Parties"), and (B) obtain extensions of credit thereunder on a senior secured and superpriority basis in an aggregate principal amount not to exceed $54,500,000, which consists of (1) during the period from the date of entry of the Interim Order through and including the date hereof, in an aggregate principal amount not to exceed $23,100,000 (the "Initial DIP Term Loan"), and (2) upon entry of this Final Order and thereafter until the Termination Date, in multiple draws as set forth in the DIP Credit Agreement, in an aggregate principal amount not to exceed $31,400,000 (together with the Initial DIP Term Loan, all other financial accommodations and extensions of credit under the DIP Credit Agreement and the DIP Facility, the "DIP Extensions of Credit");

(ii) the Court's authorization for each Debtor to execute the DIP Credit Agreement and the other DIP Documents to which it is a party and to perform such other and further acts as may be necessary or appropriate in connection therewith;

(iii) the Court's authorization for the Debtors to use DIP Extensions of Credit in accordance with the proposed budget prepared by the Debtors and annexed as Exhibit 2 to the Interim Order (as updated from time to time pursuant to, and in accordance with, the terms of the DIP Documents and subject to the prior approval of the DIP Agent, the "DIP Budget"), including any variances permitted under the DIP Credit Agreement, and as otherwise provided herein and in the other DIP Documents;

2 Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the DIP Credit Agreement.

(iv) the Court's authorization to grant to the DIP Agent, for the benefit of the DIP Lenders, in respect of the DIP Obligations (defined below), a superpriority administrative claim pursuant to Section 364(c)(1) of the Bankruptcy Code and first priority priming liens on and security interests in all assets and property of the Debtors (now owned or hereafter acquired), including the equity interests of the DIP Borrower and of each other Debtor held by any other Debtor, pursuant to Sections 364(c)(2), (c)(3) and (d)(1) of the Bankruptcy Code, in each case as and to the extent set forth more fully below;

(v) the Court's authorization for the Debtors to use "cash collateral" as such term is defined in Section 363 of the Bankruptcy Code (the "Cash Collateral") in which the Prepetition Secured Parties (defined below) have an interest;

(vi) the Court's authorization to grant, as of the Petition Date (defined below), adequate protection for the benefit of the Prepetition Secured Parties, as set forth more fully below, including, the Adequate Protection Superpriority Claim (defined below) and Adequate Protection Liens (defined below), in each case to the extent of and as compensation for any Diminution in Value (defined below), and the payment of fees and expenses to the Prepetition Notes Trustee (defined below) for the benefit of the Prepetition Secured Parties, in each case as set forth more fully below, and the Debtors' satisfaction of the Milestones in respect of an Acceptable Sale Process in accordance with the DIP Credit Agreement through the implementation of the Bidding Procedures in respect of a sale of all or substantially all of the Debtors' assets or the equity interests in the DIP Borrower through a public sale process whereby the Prepetition Notes Trustee and the DIP Agent shall have the right to credit bid (independently or together) up to the full amount of the Prepetition Secured Obligations and the DIP Obligations;

(vii) the modification or waiver by the Court of the automatic stay imposed by Section 362 of the Bankruptcy Code and any other applicable stay (including Bankruptcy Rule 6004) to the extent necessary to implement and effectuate the terms and provisions of the DIP Facility, this Final Order and the other DIP Documents and to provide for the immediate effectiveness of this Final Order;

(viii) the scheduling by the Court of the Interim Hearing (defined below) to consider entry of the Interim Order;

(ix) the scheduling by the Court of the Final Hearing (defined below) to consider entry of this Final Order granting the relief requested in the Motion on a final basis and approving the form of notice with respect to the Final Hearing and the transactions contemplated by the Motion; and

(x) approval of this Final Order.

The Court having considered the Motion, the terms of the DIP Facility and the DIP Documents, the *Declaration of Michael Katzenstein, Chief Restructuring Officer of GCX*

Limited in Support of Debtors' Chapter 11 Petitions and First Day Motions [Docket No. 18], the *Declaration of Kenneth S. Ziman in Support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Secured Financing Pursuant to Section 364 of the Bankruptcy Code and (B) Utilize Cash Collateral; (II) Granting Liens and Superpriority Administrative Expense Claims; (III) Granting Adequate Protection; (IV) Modifying the Automatic Stay; (V) Scheduling a Final Hearing; and (VI) Granting Related Relief* [Docket No. 17, Ex. B], the *Declaration of Donald Harer in Support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Secured Financing Pursuant to Section 364 of the Bankruptcy Code and (B) Utilize Cash Collateral; (II) Granting Liens and Superpriority Administrative Expense Claims; (III) Granting Adequate Protection; (IV) Modifying the Automatic Stay; (V) Scheduling a Final Hearing; and (VI) Granting Related Relief* [Docket No. 17, Ex. C], the evidence submitted at the hearing held before the Court on September 16, 2019 to consider entry of the Interim Order (the "Interim Hearing"), and the evidence submitted at the hearing held before the Court on October 16, 2019 to consider entry of this Final Order (the "Final Hearing"); and the Court having entered, after the Interim Hearing, that certain *Interim Order Pursuant to Sections 105, 361, 362, 363, and 364 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 6004, and 9014 (A) Authorizing the Debtors to (I) Use Cash Collateral, (II) Obtain Secured Superpriority Postpetition Financing and Grant Liens and Superpriority Administrative Claims, and (III) Provide Adequate Protection, (B) Scheduling a Final Hearing, and (C) Granting Related Relief* [Docket No. 49] (the "Interim Order"); and in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and 9014 and 2002-1, 4001-2, 9006-1, and 9013-1 of the Local Rules, appropriate

notice of the Motion, the Interim Hearing and the Final Hearing having been given under the circumstances; and it appearing that approval of the relief requested in the Motion is fair and reasonable and in the best interests of the Debtors, their creditors and their estates, and essential for the continued operation of the Debtors' businesses; and all objections, if any, to the entry of this Final Order having been withdrawn, resolved or overruled by the Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. **Petition Date.** On September 15, 2019 (the "Petition Date"), the Debtors filed voluntary petitions under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "Court"). The Debtors have continued in the management and operation of their businesses and properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases.

B. **Jurisdiction and Venue.** The Court has jurisdiction over these proceedings, pursuant to 28 U.S.C. § 1334. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases and the proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Committee Formation.** As of the date hereof, no official committee of unsecured creditors has been appointed in the Cases (any such committee, the "Creditors' Committee" and, together with any other statutory committee appointed in the Cases pursuant to Sections 328 or 1103 of the Bankruptcy Code, a "Committee").

D. **Interim Order.** At the Interim Hearing, the Court approved the Motion on an interim basis pursuant to the Interim Order.

E. **Notice.** The Debtors have represented that notice of the Final Hearing and the relief requested in the Motion has been provided by the Debtors, by telecopy, email, overnight courier and/or hand delivery, to (a) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), (b) counsel to the Ad Hoc Group of Prepetition Secured Noteholders; (c) all other parties asserting a lien on or a security interest in the assets of the Debtors to the extent reasonably known to the Debtors; (d) the Office of the United States Attorney General for the District of Delaware; (e) the Internal Revenue Service, and (f) those creditors holding the 30 largest unsecured claims against the Debtors' estates (the "Notice Parties"). Under the circumstances, such notice of the Final Hearing and the relief requested in the Motion is appropriate notice and complies with Section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001(b) and (c) and Local Rules 2002-1 and 4001-2.

F. **Prepetition Indebtedness.** After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties-in-interest as set forth in paragraph 8 herein, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree as follows:

(i) Pursuant to that certain Indenture, dated August 1, 2014 (as amended, restated, supplemented or otherwise modified through the Petition Date, the "Prepetition Indenture" and collectively with all other agreements, documents and instruments delivered or executed in connection therewith, each as may have been amended, restated, supplemented or otherwise modified from time to time through the Petition Date, the "Prepetition Debt

Documents") among the DIP Borrower, as issuer, Bank of New York Mellon, as trustee and collateral agent (in such capacity, the "Prepetition Notes Trustee"), and the Subsidiary Guarantors (as defined in the Prepetition Indenture) party thereto, the DIP Borrower issued 7.00% Senior Secured Notes due August 1, 2019 (the "Prepetition Secured Notes" and the holders thereof, the "Prepetition Secured Noteholders" and, together with the Prepetition Notes Trustee, the "Prepetition Secured Parties") in the aggregate principal amount of $350,000,000.

(ii) Pursuant to the Prepetition Debt Documents, the Prepetition Secured Parties were granted first priority liens (the "Prepetition Liens") on, and security interests in, the Collateral (as defined in the Prepetition Indenture) (the "Prepetition Collateral"), subject to certain Permitted Liens (as defined in the Prepetition Indenture).

(iii) Pursuant to the Prepetition Debt Documents, each of the Subsidiary Guarantors (as defined in the Prepetition Indenture) has provided to the Prepetition Notes Trustee an unconditional joint and several guaranty in accordance with Article 11 of the Prepetition Indenture, which guaranty is secured by the Prepetition Collateral.

G. **Stipulations as to Prepetition Secured Obligations.** After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties-in-interest as set forth in paragraph 8 herein, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree as follows:

(i) **Prepetition Secured Obligations**. As of the Petition Date, the DIP Borrower and the Subsidiary Guarantors (as defined in the Prepetition Indenture) were indebted and liable to the Prepetition Notes Trustee and the Prepetition Secured Noteholders under the Prepetition Debt Documents, without objection, defense, counterclaim or offset of any kind, in

the aggregate principal amount of not less than $350,000,000 with respect to the Prepetition Secured Notes plus accrued (both before and after the Petition Date) and unpaid interest thereon, and fees, expenses, prepayment premiums, and all other obligations under the Prepetition Debt Documents, including any attorneys', accountants', consultants', appraisers' and financial and other advisors' fees that are chargeable or reimbursable under the Prepetition Debt Documents (collectively, the "Prepetition Secured Obligations").

(ii) **Enforceability, etc. of the Prepetition Secured Obligations**. The Prepetition Debt Documents and the Prepetition Secured Obligations are (a) legal, valid, binding, and enforceable against the DIP Borrower and each other Debtor that is a party to the Prepetition Debt Documents, and (b) not subject to any contest, attack, objection, recoupment, defense, counterclaim, offset, subordination, re-characterization, avoidance or other claim, cause of action or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise.

(iii) **Enforceability, etc. of Prepetition Liens**. The Prepetition Liens granted by the Debtors party to, and under, the Prepetition Debt Documents to or for the benefit of the Prepetition Notes Trustee and the Prepetition Secured Noteholders as security for the Prepetition Secured Obligations encumber the Prepetition Collateral, as the same existed on or at any time prior to the Petition Date. The Prepetition Liens have been properly recorded and perfected under applicable non-bankruptcy law, and are legal, valid, enforceable, non-avoidable, and not subject to contest, avoidance, attack, offset, re-characterization, subordination or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise. As of the Petition Date, the Debtors are not aware, after making due inquiry, of any

liens or security interests having priority over the Prepetition Liens, except the Senior Third Party Liens (defined below). The Prepetition Liens were granted to or for the benefit of the Prepetition Notes Trustee and the Prepetition Secured Noteholders for fair consideration and reasonably equivalent value, and were granted contemporaneously with the making of the loans and/or commitments and other financial accommodations secured thereby.

(iv) **Indemnity**. The DIP Secured Parties shall be and hereby are indemnified and held harmless by the Debtors, jointly and severally, in respect of any claim or liability incurred with respect to the DIP Facility and the use of Cash Collateral or in any way related thereto except for claims relating to gross negligence and willful misconduct. No exception or defense in contract, law or equity exists as to any obligation set forth, as the case may be, in this paragraph G(iv) or in the DIP Documents, to indemnify and/or hold harmless the DIP Agent or any other DIP Secured Party, as the case may be, and any such defenses are hereby waived.

(v) **No Control**. None of the DIP Secured Parties or the Prepetition Secured Parties are control persons or insiders of the Debtors or any of their affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from the DIP Facility, the DIP Documents and/or the Prepetition Debt Documents.

(vi) **No Claims, Causes of Action**. As of the date hereof, there exist no claims or causes of action against any of the Prepetition Notes Trustee, any other Prepetition Secured Party, or any DIP Secured Party with respect to, in connection with, related to, or arising from the Prepetition Debt Documents and/or the DIP Documents that may be asserted by the Debtors or any other person or entity.

(vii) **Release**. The Debtors forever and irrevocably release, discharge, and acquit all former, current and future (a) DIP Secured Parties, (b) Prepetition Secured Parties, (c) Affiliates of the DIP Secured Parties and Prepetition Secured Parties, and (d) officers, employees, directors, agents, representatives, owners, members, partners, financial and other advisors and consultants, legal advisors, shareholders, managers, consultants, accountants, attorneys, and predecessors and successors in interest of each of the DIP Secured Parties, the Prepetition Secured Parties and each of their respective Affiliates, in each case acting in such capacity (collectively, the "Releasees") of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending or threatened including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description, arising out of, in connection with, or relating to the DIP Facility, the DIP Documents, the Prepetition Debt Documents and/or the transactions contemplated hereunder or thereunder including, without limitation, (x) any so-called "lender liability" or equitable subordination claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with respect to the validity, priority, perfection or avoidability of the liens or claims of the Prepetition Notes Trustee, the Prepetition Secured Parties and/or the DIP Secured Parties. The Debtors further waive and release any defense, right of counterclaim, right of setoff or deduction to the payment of the Prepetition Secured Obligations and the DIP

Obligations which the Debtors now have or may claim to have against the Releasees arising out of, connected with, or relating to any and all acts, omissions or events occurring prior to the entry of this Final Order.

H. **Need for Postpetition Financing and Use of Cash Collateral.** A need exists for the Debtors to obtain funds and liquidity in order to continue operations, to satisfy in full the costs and expenses of administering the Cases, to preserve the value of their estates to consummate the transactions contemplated by the Restructuring Support Agreement and pending a potential sale of all or substantially all of the Debtors' assets and property pursuant to the Acceptable Sale Process that will maximize recoveries to all stakeholders. The ability of the Debtors to finance their operations, to preserve and maintain the value of the Debtors' assets and to maximize the return for all creditors requires the availability of the DIP Facility and the use of Cash Collateral. In the absence of the availability of such funds and liquidity in accordance with the terms hereof, the continued operation of the Debtors' businesses may not be possible, and serious and irreparable harm to the Debtors and their estates and creditors could occur. Thus, the ability of the Debtors to preserve and maintain the value of their assets and maximize the return for creditors requires the availability of working capital from the DIP Facility and the use of Cash Collateral. Accordingly, sufficient cause exists for the entry of this Final Order.

I. **No Credit Available on More Favorable Terms.** The Debtors have been unable to obtain on more favorable terms and conditions than those provided in this Final Order and in the other DIP Documents (a) adequate unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense, (b) credit for money borrowed with priority over any or all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the

Bankruptcy Code, (c) credit for money borrowed secured by a lien on property of the estate that is not otherwise subject to a lien, or (d) credit for money borrowed secured by a junior lien on property of the estate which is subject to a lien. The Debtors are unable to obtain credit for borrowed money without granting the DIP Liens and the DIP Superpriority Claim (defined below) to (or for the benefit of) the DIP Secured Parties.

J. **Use of Cash Collateral and Proceeds of the DIP Facility, DIP Collateral and Prepetition Collateral.** The Debtors represent and stipulate that all of the Debtors' cash, cash equivalents, negotiable instruments, investment property, and securities constitute Cash Collateral of the Prepetition Notes Trustee on behalf of the Prepetition Secured Parties. All Cash Collateral, all proceeds of the Prepetition Collateral and the DIP Collateral (defined below), including proceeds realized from a sale or disposition thereof, or from payment thereon, and all proceeds of the DIP Facility (net of any amounts used to pay fees, costs and expenses payable under the Interim Order or this Final Order) shall be used and/or applied in accordance with the terms and conditions of this Final Order, the DIP Budget (subject to variances permitted under the DIP Credit Agreement) and the other DIP Documents, for the types of expenditures in the DIP Budget and for no other purpose.

K. **Adequate Protection for the Prepetition Secured Parties.** The Prepetition Notes Trustee and the Prepetition Secured Noteholders have negotiated and acted in good faith regarding the Debtors' use of the Prepetition Collateral (including the Cash Collateral) to fund the administration of the Debtors' estates and continued operation of their businesses, in accordance with the terms hereof. The Prepetition Notes Trustee and the Prepetition Secured Noteholders have agreed to permit the Debtors to use the Prepetition Collateral, including the

Cash Collateral, in accordance with the terms hereof and the DIP Budget (subject to variances permitted under the DIP Credit Agreement) subject to the terms and conditions set forth herein, including the protections afforded parties acting in "good faith" under Section 363(m) of the Bankruptcy Code. The Prepetition Notes Trustee and the Prepetition Secured Noteholders are entitled to the adequate protection as and to the extent set forth herein pursuant to Sections 361, 362 and 363 of the Bankruptcy Code. Based on the Motion and on the record presented to the Court at the Interim Hearing and the Final Hearing, the terms of the proposed adequate protection arrangements and of the use of the Prepetition Collateral (including the Cash Collateral) are fair and reasonable, reflect the Debtors' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the Prepetition Notes Trustee's consent thereto; provided that nothing in this Final Order or the other DIP Documents shall (x) be construed as a consent by any Prepetition Secured Party that it would be adequately protected in the event debtor-in-possession financing is provided by a third party (i.e., other than the DIP Lenders) or a consent to the terms of any other such financing, including the consent to any lien encumbering the Prepetition Collateral (whether senior or junior) or to the use of Cash Collateral (except under the terms hereof), or (y) prejudice, limit or otherwise impair the rights of the Prepetition Notes Trustee (for the benefit of the Prepetition Secured Parties) to seek new, different or additional adequate protection under any circumstances.

L. **Section 552.** In light of the subordination of the Prepetition Liens and the Adequate Protection Liens of the Prepetition Secured Parties to the DIP Liens and the Carve-Out, and the granting of the DIP Liens on the Prepetition Collateral, the Prepetition Notes Trustee and the Prepetition Secured Noteholders are each entitled to all of the rights and benefits

of Section 552(b) of the Bankruptcy Code, and the "equities of the case" exception shall not apply.

M. **Extension of Financing.** The DIP Secured Parties have indicated a willingness to provide financing to the Debtors in accordance with the DIP Credit Agreement and the other DIP Documents (including the DIP Budget) and subject to (i) entry of this Final Order, (ii) the Milestones, including without limitation, procedures relating to the Acceptable Sale Process, and (iii) findings by this Court that such financing is essential to the Debtors' estates, that the DIP Secured Parties are good faith financiers, and that the reversal or modification on appeal of the authorization hereunder for the Debtors to incur the debt under the DIP Facility, or the grant hereunder of the priority of the DIP Liens and the Adequate Protection Liens, does not affect the validity of such debt, or any priority of any such lien so granted, as provided in Section 364(e) of the Bankruptcy Code.

N. **Business Judgment and Good Faith Pursuant to Section 364(e).**

(i) The extension of credit under the DIP Facility, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available under the circumstances, reflect the Debtors' exercise of prudent business judgment, and are supported by reasonably equivalent value and consideration;

(ii) the DIP Facility was negotiated in good faith and at arm's length among the Debtors, the DIP Agent and the other DIP Secured Parties; and

(iii) the use of the proceeds to be extended under the DIP Facility will be so extended in good faith and for valid business purposes and uses, as a consequence of which the

DIP Secured Parties are entitled to the protection and benefits of Section 364(e) of the Bankruptcy Code.

O. **Relief Essential; Best Interest.** The relief requested in the Motion (and provided in the Interim Order and this Final Order) is necessary, essential and appropriate for the continued operation of the Debtors' businesses and the management and preservation of the Debtors' assets and property. It is in the best interest of the Debtors' estates that the Debtors be allowed to enter into the DIP Facility, incur the DIP Obligations and use the Cash Collateral as contemplated herein.

NOW, THEREFORE, on the Motion of the Debtors and the record before this Court with respect to the Motion, including the record made during the Interim Hearing and the Final Hearing, and with the consent of the Debtors, the Prepetition Secured Parties and the DIP Secured Parties, and good and sufficient cause appearing therefor,

IT IS ORDERED that:

1. **Motion Granted**. The Motion is granted on a final basis in accordance with the terms and conditions set forth in this Final Order. Any objections to the Motion with respect to entry of this Final Order, to the extent not withdrawn, waived or otherwise resolved are hereby denied and overruled.

2. **DIP Facility**.

(a) **DIP Obligations, etc**. The Debtors are expressly and immediately authorized and empowered to enter into the DIP Facility and to incur and to perform the DIP Obligations in accordance with and subject to this Final Order and the other DIP Documents, to execute and/or deliver (to the extent not previously executed or delivered) all DIP Documents

and all other related instruments, certificates, agreements and documents, and to take all actions which may be reasonably required or otherwise necessary for the performance by the Debtors under the DIP Facility, including the creation and perfection of the DIP Liens described and provided for herein. Subject to the terms of this Final Order, the Debtors are hereby authorized and directed to pay all principal, interest, fees and expenses, indemnities and other amounts described herein and in the other DIP Documents as such shall accrue and become due hereunder or thereunder, including, without limitation, the reasonable fees and expenses of the attorneys and financial and other advisors and consultants of the DIP Agent and the DIP Lenders as, and to the extent, provided for herein and in the other DIP Documents (collectively, all loans, advances, extensions of credit, financial accommodations, fees, expenses and other liabilities and obligations (including indemnities and similar obligations) in respect of DIP Extensions of Credit, the DIP Facility and the DIP Documents, the "DIP Obligations"); provided that payment of any invoices of the DIP Agent's and the DIP Lenders' professionals for fees and expenses incurred after entry of the Interim Order shall be subject to the notice and objection provisions of paragraph 20(b) of this Final Order. The DIP Documents and all DIP Obligations shall represent, constitute and evidence, as the case may be, valid and binding obligations of the Debtors, enforceable against the Debtors, their estates and any successors thereto in accordance with their terms. No obligation, payment, transfer or grant of security under the DIP Documents as approved under the Interim Order and this Final Order shall be stayed, restrained, voided, voidable or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim. The term of the DIP

Facility commenced on the date of entry of the Interim Order and shall end on the Termination Date, subject to the terms and conditions set forth herein and in the other DIP Documents.

(b) **Authorization to Borrow, etc**. In order to continue to operate its business, subject to the terms and conditions of this Final Order and the other DIP Documents (including the DIP Budget), the DIP Borrower is hereby authorized to borrow under (and the DIP Guarantors are authorized to guarantee) the DIP Facility in accordance with the DIP Credit Agreement up to an aggregate principal amount of $54,500,000.

(c) **Conditions Precedent**. The DIP Lenders shall have no obligation to make any DIP Extension of Credit or any other financial accommodation hereunder or under the other DIP Documents (and the Debtors shall not make any request therefor) unless all conditions precedent to making DIP Extensions of Credit under the DIP Documents have been satisfied or waived in accordance with the terms of the DIP Documents.

(d) **DIP Collateral**. As used herein, "DIP Collateral" shall mean all now owned or hereafter acquired assets and property in which the Debtors and their estates have an interest, whether real or personal, tangible or intangible, or otherwise, whenever acquired, including, without limitation, all Prepetition Collateral, all assets and property pledged under the DIP Documents, including the equity interests of the DIP Borrower and of each other Debtor held by any other Debtor, all cash, any investment of such cash, inventory, accounts receivable, including intercompany accounts receivable (and all rights associated therewith), other rights to payment whether arising before or after the Petition Date, contracts, contract rights, chattel paper, goods, investment property, inventory, deposit accounts (including the cash collection, "lockbox" and "concentration" accounts described in the DIP Documents), "core concentration

accounts," "cash collateral accounts," and in each case all amounts on deposit therein from time to time, equity interests, securities accounts, securities entitlements, securities, commercial tort claims, books, records, plants, equipment, general intangibles, documents, instruments, interests in leases and leaseholds, interests in real property, fixtures, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, letter of credit rights, supporting obligations, machinery and equipment, patents, copyrights, trademarks, tradenames, other intellectual property, all licenses therefor, and all proceeds, rents, profits, products and substitutions, if any, of any of the foregoing. The DIP Collateral shall not include causes of action for preferences, fraudulent conveyances, and other avoidance power claims under Sections 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code (the "Avoidance Actions"), but shall include the proceeds of Avoidance Actions.

(e) **DIP Liens**. Subject and subordinate to the Carve-Out, as set forth more fully in this Final Order and the other DIP Documents, the DIP Agent for the ratable benefit of the DIP Secured Parties, effective immediately upon entry of the Interim Order, was granted and, upon entry of this Final Order, is granted on a final basis the following security interests and liens, which shall immediately be valid, binding, perfected, continuing, enforceable and non-avoidable (all liens and security interests granted to the DIP Agent for the benefit of the DIP Secured Parties pursuant to the Interim Order, this Final Order and the other DIP Documents, the "DIP Liens"):

(I) pursuant to Section 364(c)(2) of the Bankruptcy Code, valid, enforceable, perfected and non-avoidable first priority liens on and security

interests in all DIP Collateral that was not encumbered by valid, enforceable, perfected and non-avoidable liens as of the Petition Date;

(II) pursuant to Section 364(c)(3) of the Bankruptcy Code, valid, enforceable, perfected and non-avoidable liens on and security interests in (x) all DIP Collateral which is unencumbered by the Prepetition Liens but on which a third party, i.e., not the Prepetition Secured Parties (a "Third Party Lienholder"), had a pre-existing lien on the Petition Date and (y) all DIP Collateral encumbered by the Prepetition Liens on which a Third Party Lienholder had a pre-existing lien on the Petition Date that was senior to or *pari passu* to the Prepetition Liens (including, without limitation, any valid, enforceable, perfected and non-avoidable liens held by any Texas *ad valorem* tax authority for prepetition *ad valorem* taxes arising, and deemed to be senior to or *pari passu* to the Prepetition Liens, under state law on any DIP Collateral), in each case immediately junior only to any such liens and security interests of Third Party Lienholders, but solely to the extent that such liens and security interests of Third Party Lienholders were in each case valid, enforceable, perfected and non-avoidable as of the Petition Date (or were perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code) (the "Senior Third Party Liens") and were Permitted Liens; and

(III) pursuant to Section 364(d) of the Bankruptcy Code, valid, enforceable, perfected and non-avoidable liens on and security interests in all Prepetition Collateral, which liens and security interests shall be senior to and

prime the Prepetition Liens and the liens of all Third Party Lienholders which are junior and subject to the Prepetition Liens.

(f) **Other Provisions Relating to the DIP Liens**. The DIP Liens shall secure all of the DIP Obligations. The DIP Liens shall not, without the consent of the DIP Agent, be made subject to, subordinate to, or *pari passu* with, any other lien or security interest, other than to the extent expressly provided herein and to the Carve-Out, by any Court order heretofore or hereafter entered in the Cases. The DIP Liens shall be valid and enforceable against any trustee appointed in the Cases, upon the conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (such cases or proceedings, "Successor Cases"), and/or upon the dismissal of any of the Cases. The DIP Liens and the Adequate Protection Liens shall not be subject to Sections 510, 549, 550 or 551 of the Bankruptcy Code or the "equities of the case" exception of Section 552 of the Bankruptcy Code or Section 506(c) of the Bankruptcy Code. If the granting of the DIP Liens against any of the DIP Collateral are in any way prohibited or restricted under any of the Debtors' organizational documents, such organizational documents are hereby modified solely to permit the granting of the DIP Liens.

(g) **Superpriority Administrative Claim Status**. The DIP Obligations shall, pursuant to Section 364(c)(1) of the Bankruptcy Code, at all times constitute an allowed superpriority claim (the "DIP Superpriority Claim") of the DIP Agent for the benefit of the DIP Secured Parties, and be payable from and have recourse to all DIP Collateral. The DIP Superpriority Claim shall be subject and subordinate only to the Carve-Out. Other than as expressly provided herein, including in paragraph 9 hereof with respect to the Carve-Out, no

costs or expenses of administration, including, without limitation, professional fees allowed and payable under Sections 328, 330 and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these proceedings or in any Successor Cases, and no priority claims are, or will be, senior to, prior to or *pari passu* with the DIP Liens, the DIP Superpriority Claim or any of the DIP Obligations, or with any other claims of the DIP Secured Parties arising hereunder or under the other DIP Documents, or otherwise in connection with the DIP Facility.

3. **Authorization and Approval to Use Cash Collateral and Proceeds of DIP Facility**. Subject to the terms and conditions of this Final Order and the other DIP Documents, and to the adequate protection granted to or for the benefit of the Prepetition Secured Parties as hereinafter set forth, the Debtors are authorized to (a) use the Cash Collateral and (b) request and use proceeds of the DIP Extensions of Credit, in each case in the amounts and for the line item expenditures set forth in the DIP Budget (subject to variances permitted under the DIP Credit Agreement). The DIP Budget may only be amended, restated, supplemented, modified, replaced, or extended in accordance with the DIP Documents and the prior written consent of the DIP Agent without further order of the Court; provided that any such amended, restated, supplemented, modified, replaced, or extended DIP Budget shall, within three (3) business days, be filed with the Court and served on the office of the U.S. Trustee and any Committee. Any expenditures or other transfers of cash made by the Debtors on or after the Petition Date shall be deemed to have been made first from Cash Collateral and any of the Debtors' other cash on hand and, after such Cash Collateral and other cash on hand (if any) has been fully depleted, then from proceeds of the DIP Facility, in each case, regardless of the actual source of any such expenditures or other transfers. Notwithstanding anything herein to the contrary, subject only to

the Debtors' rights under paragraph 17(b) hereof and the Carve-Out, the Debtors' right to request or use proceeds of DIP Extensions of Credit or to use Cash Collateral shall terminate on the Termination Date. Nothing in this Final Order shall authorize the disposition of any assets of the Debtors or their estates or proceeds resulting therefrom outside the ordinary course of business, except as permitted herein (subject to any required Court approval).

4. **Adequate Protection for Prepetition Secured Parties**. As adequate protection for the interests of the Prepetition Notes Trustee and the Prepetition Secured Noteholders in the Prepetition Collateral (including Cash Collateral), the Prepetition Notes Trustee, for the benefit of the Prepetition Secured Parties, shall, subject to any timely and successful Challenge (as defined below) that results in the avoidance of the Prepetition Liens pursuant to an order of the Court that is final and not subject to further appeal, from and after the Petition Date, receive adequate protection as follows:

(a) **Adequate Protection Liens**. To the extent of, and in an aggregate amount equal to, the diminution in value (if any) of the interests of the Prepetition Secured Parties in the Prepetition Collateral (including the Cash Collateral), from and after the Petition Date, calculated in accordance with Section 506(a) of the Bankruptcy Code, resulting from the use, sale or lease by the Debtors of the Prepetition Collateral (including the use of Cash Collateral), the granting of the DIP Liens, the subordination of the Prepetition Liens thereto and to the Carve-Out, and/or the imposition or enforcement of the automatic stay of Section 362(a) (collectively, "Diminution in Value"), the Prepetition Secured Parties shall have, pursuant to Sections 361, 363(e) and 364(d) of the Bankruptcy Code, replacement security interests in and liens upon (the "Adequate Protection Liens") all of the DIP Collateral. The Adequate Protection

Liens of the Prepetition Secured Parties shall be junior and subject to the DIP Liens, any Senior Third Party Liens, and the Carve-Out.

(b) **Adequate Protection Superpriority Claims**. To the extent of the aggregate Diminution in Value, the Prepetition Secured Parties shall have an allowed superpriority administrative expense claim (the "Adequate Protection Superpriority Claim") as provided for in Section 507(b) of the Bankruptcy Code, immediately junior and subject to the DIP Superpriority Claim and the Carve-Out, and payable from and having recourse to all DIP Collateral; provided that the Prepetition Secured Parties shall not receive or retain any payments, property, distribution or other amounts in respect of the Adequate Protection Superpriority Claim unless and until the DIP Obligations and (without duplication) the DIP Superpriority Claim have indefeasibly been paid in full in cash.

(c) **Adequate Protection Payments**. The Debtors shall pay all reasonable professional and advisory fees, costs and expenses of the Prepetition Notes Trustee and the Prepetition Secured Noteholders incurred in connection with the negotiation, documentation, administration and monitoring of the Prepetition Debt Documents and/or the DIP Facility and in connection with the Cases, including the reasonable documented postpetition fees and expenses of legal, financial and other advisory, tax, investment banking and other professionals (including, without limitation, White & Case LLP and Farnan LLP) as well as fees and expenses owed to any professional under the Forbearance Agreement; provided that payment of any fees and expenses of the Prepetition Notes Trustee's or Prepetition Secured Noteholders' professionals incurred after entry of the Interim Order, shall be subject to the notice and objection provisions of paragraph 20(b) of this Final Order.

(d) **Milestones and Credit Bid Protection**. The Prepetition Secured Parties have represented that the Debtors' compliance with the Milestones are an essential element of the adequate protection of the Prepetition Secured Parties. The DIP Agent and the Prepetition Notes Trustee (together or independently) shall each have, subject to Section 363(k) of the Bankruptcy Code, the unqualified right to credit bid (x) up to the full amount of the DIP Obligations and the Prepetition Secured Obligations, respectively, and (y) the DIP Superpriority Claim and both the Adequate Protection Superpriority Claim, respectively, without the need for further Court order authorizing the same, in connection with any sale of any of the DIP Collateral or Prepetition Collateral, whether such sale is effectuated through Section 363 or Section 1129 of the Bankruptcy Code, by a chapter 7 trustee under Section 725 of the Bankruptcy Code, or otherwise.

5. **Monitoring of Collateral**. The Prepetition Notes Trustee and the DIP Agent, and their respective consultants and advisors, shall be given reasonable access to the Debtors' books, records, assets and properties for purposes of monitoring the Debtors' businesses and the value of the DIP Collateral, and shall be permitted to conduct, at their discretion and at the Debtors' cost and expense, field audits, collateral examinations and inventory appraisals in respect of the DIP Collateral.

6. **Financial Reporting, etc**. The Debtors shall provide the DIP Agent and the Prepetition Notes Trustee with the monthly financial reporting given to the U.S. Trustee and all of the financial reporting as required under and in all instances consistent with the DIP Documents.

7. **DIP Lien and Adequate Protection Replacement Lien Perfection**. The Interim Order and/or this Final Order shall be sufficient and conclusive evidence of the validity, perfection and priority of the DIP Liens and the Adequate Protection Liens without the necessity of filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any other action to validate or perfect the DIP Liens and the Adequate Protection Liens or to entitle the DIP Liens and the Adequate Protection Liens to the priorities granted herein. Notwithstanding the foregoing, the DIP Agent may, in its sole discretion, file such financing statements, deeds of trust, mortgages, security agreements, notices of liens and other similar documents, and is hereby granted relief from the automatic stay of Section 362 of the Bankruptcy Code in order to do so, and all such financing statements, deeds of trust, mortgages, security agreements, notices and other agreements or documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of the Cases. The Debtors shall take any action requested by the DIP Agent, including executing and delivering to the DIP Agent all such financing statements, mortgages, security agreements, notices and other documents as the DIP Agent may request, to evidence, confirm, validate or perfect, or to insure the contemplated priority of the DIP Liens and the Adequate Protection Liens. The DIP Agent, in its sole discretion, may file a photocopy of the Interim Order and/or this Final Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which the Debtors have real or personal property. To the extent that the Prepetition Notes Trustee is the secured party under any account control agreements, listed as loss payee under any of the Debtors' insurance policies or

is the secured party under any Prepetition Debt Document, the DIP Agent is also hereby deemed to be the secured party under such account control agreements, loss payee under the Debtors' insurance policies and the secured party under each such Prepetition Debt Document, and shall have all rights and powers attendant to that position (including, without limitation, rights of enforcement) and shall act in that capacity and distribute any proceeds recovered or received in accordance with the terms of this Final Order and the other DIP Documents. The Prepetition Notes Trustee shall serve as agent for the DIP Agent for purposes of perfecting the DIP Agent's security interests and liens on all DIP Collateral that is of a type such that perfection of a security interest therein may be accomplished only by possession or control by a secured party.

8. **Reservation of Certain Third Party Rights and Bar of Challenges and Claims**.

(a) All of the findings in paragraph F hereof and all agreements, terms, provisions and stipulations set forth in paragraph G hereof (the "Claims Stipulations") shall be irrevocably binding on all persons and entities upon the Challenge Period Termination Date (defined below). Nothing in this Final Order shall prejudice any rights any party in interest may have (a) to object to or challenge any of the Claims Stipulations, including in relation to (i) the validity, extent, perfection or priority of the Prepetition Liens on the Prepetition Collateral, or (ii) the validity, allowability, priority, status or amount of the Prepetition Secured Obligations, or (b) to bring suit against any of the Prepetition Secured Parties in connection with or related to the matters covered by the Claims Stipulations; provided that, unless any party with standing to do so commences an adversary proceeding or contested matter (as applicable) raising such objection or challenge, including without limitation any claim against the Prepetition Secured Parties in the

nature of a setoff, counterclaim or defense to the Prepetition Secured Obligations (including but not limited to, those under Sections 544, 547, 548, 549, 550 and/or 552 of the Bankruptcy Code or by way of suit against any of the Prepetition Secured Parties) (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "Challenge"), by the date that is (x) with respect to any Creditors' Committee, the earlier of (i) sixty (60) calendar days following the formation of such Creditors' Committee and (ii) the confirmation of a plan of reorganization in these Cases, and (y) with respect to any other party with standing, seventy-five (75) calendar days following entry of the Interim Order (the period described in the immediately preceding clause shall be referred to as the "Challenge Period" and the date that is the next calendar day after the termination of the Challenge Period shall be referred to as the "Challenge Period Termination Date"), upon the Challenge Period Termination Date, any and all such challenges and objections by any Committee, any Chapter 11 or Chapter 7 trustee appointed herein or in any Successor Case, and any other party in interest shall be deemed to be forever waived and barred, and the Prepetition Secured Obligations shall be deemed to be allowed secured claims within the meaning of Sections 502 and 506 of the Bankruptcy Code for all purposes in connection with the Cases, and the Claims Stipulations shall be binding on all creditors, interest holders and parties in interest. Notwithstanding the foregoing, if a chapter 11 trustee is appointed in the Cases or if one or more of the Cases are converted to chapter 7 prior to the expiration of the Challenge Period, the chapter 11 or chapter 7 trustee, as applicable, shall have until the later of (i) the expiry of the Challenge Period, (ii) thirty (30) days following the appointment of the chapter 11 trustee or the conversion of such Chapter 11 Cases, as applicable, and (iii) such date as otherwise ordered by the Court, to commence a Challenge. To the extent

any objection or complaint is filed prior to the Challenge Period Termination Date, the Claims Stipulations shall nonetheless remain binding and preclusive except to the extent expressly challenged in such objection or complaint. Upon a successful Challenge as against any party, the Court may fashion an appropriate remedy. All remedies or defenses of any party with respect to any Challenge are hereby preserved.

(b) No portion of the Carve-Out, no proceeds of the DIP Facility, the DIP Collateral or DIP Extensions of Credit, and no proceeds of the Prepetition Collateral (including Cash Collateral), may be used for the payment of the fees and expenses of any person incurred (i) in investigating, challenging, or in relation to the challenge of, any of the Prepetition Liens, Prepetition Secured Obligations, DIP Liens, or DIP Obligations (or the value of the Prepetition Collateral or the DIP Collateral), or the initiation or prosecution of any claim or action against any of the Prepetition Secured Parties or DIP Secured Parties, including, without limitation, any claim under Chapter 5 of the Bankruptcy Code, or any state, local or foreign law, in respect of the Prepetition Secured Obligations or the DIP Obligations, or in preventing, hindering or delaying the realization by the Prepetition Secured Parties or the DIP Secured Parties upon any Prepetition Collateral or DIP Collateral, respectively, or the enforcement of their respective rights under the Interim Order, this Final Order, any other DIP Loan Document or any Prepetition Debt Document, (ii) in requesting authorization, or supporting any request for authorization, to obtain non-consensual use of cash collateral or any postpetition financing (whether equity or debt) or other financial accommodations pursuant to Section 364(c) or (d) of the Bankruptcy Code, or otherwise, other than (x) from the DIP Lenders or (y) if such financing is sufficient to indefeasibly pay and satisfy all Prepetition Secured Obligations and DIP

Obligations in full in cash and such financing is immediately so used or (iii) in connection with any claims or causes of actions against the Releasees, including formal or informal discovery proceedings in anticipation thereof, and/or in challenging any Prepetition Secured Obligations, DIP Obligations, Prepetition Liens, Adequate Protection Liens or DIP Liens; provided that, if a Creditors' Committee is appointed, the Creditors' Committee may investigate any potential challenges with respect to the Prepetition Secured Obligations, Prepetition Debt Documents, and Prepetition Liens during the Challenge Period at an aggregate expense for such investigation (but not litigation, prosecution, objection, or challenge thereto) not to exceed, in the aggregate, an amount to be agreed by the Creditors' Committee, the Debtors, and the DIP Agent and, if no such agreement is reached, all rights for further relief with respect to such investigation budget are reserved.

9. **Carve-Out**.

(a) As used in this Final Order, the "Carve-Out" means the sum of: (i) all fees required to be paid to the Clerk of the Court and all statutory fees payable to the U.S. Trustee under Section 1930(a) of title 28 of the United States Code, together with the statutory rate of interest (without regard to the Post-Carve-Out Trigger Notice Cap (defined below)); (ii) all reasonable fees and expenses up to $25,000 incurred by a trustee under Section 726(b) of the Bankruptcy Code; (iii) to the extent allowed by the Court at any time, pursuant to a fee application on notice, or other procedure permitted by any Court order allowing interim compensation or the payment of fees of ordinary course professionals, whether by interim order, final order, procedural order or otherwise, all reasonable and documented unpaid fees and expenses (the "Allowed Professional Fees") incurred by estate professionals retained by the

Debtors pursuant to Section 327, 328, or 363 of the Bankruptcy Code (collectively, the "Debtor Professionals") and any Committee (together with the Debtor Professionals, the "Professionals"), and, with respect to any Committee, as limited by the DIP Budget, at any time before the Carve-Out Trigger Date (defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice (provided that nothing herein shall be construed to impair the ability of any party to object to the professional fees, reimbursement or compensation referred to in this clause (iii)); and (iv) the Allowed Professional Fees of the Professionals incurred on and after the first business day following the Carve-Out Trigger Date in an aggregate amount not to exceed $1,000,000 (the amounts set forth in this clause (iv) being the "Post-Carve-Out Trigger Notice Cap"); provided that the Post-Carve-Out Trigger Notice Cap shall be reduced, dollar-for-dollar, by the amount of any fees and expenses incurred and accruing by the Debtors and paid to the applicable Professionals following delivery of the Carve-Out Trigger Notice; provided further that the Post-Carve-Out Trigger Notice Cap shall be reduced, dollar for dollar, by the amount of any prepetition retainers received by any Professional and not previously applied to fees and expenses of such Professional. For the avoidance of doubt and notwithstanding anything to the contrary contained in this Final Order or the Prepetition Debt Documents, the Carve-Out shall be senior to the DIP Liens, the DIP Superpriority Claim, the Adequate Protection Liens, and the Adequate Protection Superpriority Claim.

(b) For purposes of the foregoing, "Carve-Out Trigger Notice" shall mean a written notice delivered by electronic mail (or other electronic means) by the DIP Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee and lead counsel to any Committee, if any, of the occurrence and continuation of an Event of Default or the termination of funding

under the DIP Facility, stating that the Post-Carve-Out Trigger Notice Cap has been invoked. "Carve-Out Trigger Date" shall mean the date on which the DIP Agent provides the Carve-Out Trigger Notice.

(c) After the Carve-Out Trigger Date, the DIP Lenders shall permit usage of the DIP Facility to fund no greater than the full amount of the Carve-Out, including the Post-Carve-Out Trigger Notice Cap, into a segregated account (the "Carve-Out Reserve Account") held by the Debtors, to be applied to the Allowed Professional Fees and the fees of the U.S. Trustee and Clerk of the Court when due and payable (the "Carve-Out Segregated Funds"). Without in any way limiting the Debtors' ability to use the Carve-Out Segregated Funds in the Carve-Out Reserve Account to pay the Allowed Professional Fees and the fees of the U.S. Trustee and Clerk of the Court, the Carve-Out Segregated Funds shall remain encumbered by and subject to the DIP Liens. To the extent the Carve-Out Segregated Funds in the Carve-Out Reserve Account exceed the Allowed Professional Fees and the fees of the U.S. Trustee and Clerk of the Court, any such remaining amounts shall be promptly returned to the DIP Agent for the benefit of the DIP Lenders.

10. **Payment of Compensation**. Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses of any of the Debtors or any Committee or shall limit or otherwise affect the right of the DIP Secured Parties and/or the Prepetition Secured Parties or any other party in interest to object to the allowance and payment of any such fees and expenses. No professional fees shall be paid absent a Court order allowing such payment, pursuant to a fee application on notice, or other procedure permitted by any Court order allowing interim compensation or the payment of fees of ordinary course professionals. So long as no

Event of Default exists that has not been waived in writing, the Debtors shall be permitted to pay compensation and reimbursement of expenses allowed by the Court and payable under Sections 330 and 331 of the Bankruptcy Code or compensation procedures approved by the Court and in form and substance reasonably acceptable to the Debtors and the DIP Secured Parties, as the same may be due and payable, and the same shall not reduce the Post-Carve-Out Trigger Notice Cap.

11. **Section 506(c) Claims**. As a further condition of the DIP Facility, any obligation of the DIP Secured Parties to make DIP Extensions of Credit, and the Debtors' authorization to use the Cash Collateral, the Debtors (and any successors thereto or any representatives thereof, including any trustees appointed in the Cases or any Successor Case) shall be deemed to have waived any rights, benefits or causes of action under Section 506(c) of the Bankruptcy Code as they may relate to or be asserted against the DIP Secured Parties, the DIP Liens, the DIP Collateral, the Prepetition Secured Parties, the Adequate Protection Liens, the Prepetition Liens or the Prepetition Collateral. Save and except for the Carve-Out, nothing contained in the Interim Order, in this Final Order or in the other DIP Documents shall be deemed a consent by the Prepetition Secured Parties or the DIP Secured Parties to any charge, lien, assessment or claim against, or in respect of, the DIP Collateral or the Prepetition Collateral under Section 506(c) of the Bankruptcy Code or otherwise.

12. **Collateral Rights; Limitations in Respect of Subsequent Court Orders**. Without limiting any other provisions of this Final Order, unless the DIP Agent and the Prepetition Notes Trustee have provided their prior written consent, it shall be an Event of Default under the DIP Facility for there to be entered in these Cases, or in any Successor Case,

any order which authorizes (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral and/or entitled to priority administrative status which is superior to or *pari passu* with those granted pursuant to the Interim Order and/or this Final Order to or for the benefit of the DIP Secured Parties or the Prepetition Secured Parties, or (ii) the use of Cash Collateral for any purpose other than as set forth in this Final Order or in the DIP Budget.

13. **Proceeds of Subsequent Financing**. Without limiting the provisions and protections of paragraph 12 hereof, if at any time prior to the indefeasible repayment and satisfaction in full in cash of all DIP Obligations and the termination of the DIP Secured Parties' obligations to make DIP Extensions of Credit, including subsequent to the confirmation of any Chapter 11 plan (the "Plan") with respect to the Debtors, the Debtors' estates, any trustee, any examiner with enlarged powers or any responsible officer subsequently appointed, shall obtain credit or incur debt in violation of this Final Order or the other DIP Documents, then the first cash proceeds derived from such credit or debt and all Cash Collateral in the amount necessary to satisfy all DIP Obligations then outstanding shall immediately be turned over to the DIP Agent for the indefeasible repayment and satisfaction in full in cash of all DIP Obligations then outstanding.

14. **Cash Management**. Any DIP Extensions of Credit or other proceeds of the DIP Facility may only be held in deposit accounts that are deposit accounts over which the DIP Agent is deemed to have "control" or deposit accounts subject to a control agreement with the Prepetition Notes Trustee and/or the DIP Agent (unless otherwise expressly authorized under the DIP Credit Agreement), each in accordance with the DIP Credit Agreement, and shall be

disbursed in accordance with the terms and conditions set forth in the DIP Credit Agreement. The Debtors' cash management system shall at all times be maintained (i) in accordance with the terms of the DIP Documents and any order of this Court approving the maintenance of the Debtors' cash management system (the "Cash Management Order"), and (ii) in a manner which in any event shall be reasonably satisfactory to the DIP Agent. The Debtors shall not transfer any funds (including, without limitation, any proceeds of DIP Collateral or any Cash Collateral) to any of the Debtors' non-Debtor affiliates, during the Cases except in accordance with the DIP Budget and the terms and conditions of the Cash Management Order. The DIP Agent shall be deemed to have "control" over all cash management accounts for all purposes of perfection under the Uniform Commercial Code. Absent the occurrence of an Event of Default, all amounts collected in the cash collection accounts may be used in accordance with this Final Order, the DIP Budget and the other DIP Documents; after the occurrence and during the continuance of an Event of Default, subject only to the funding of the Carve-Out and the Debtors' rights under paragraph 17(b) hereof, all such amounts shall be applied in accordance with paragraph 18(b) hereof.

15. **Disposition of DIP Collateral**. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral, except as permitted by the DIP Documents or as approved by the Court.

16. **Survival of Certain Provisions**. In the event of the entry of any order converting any of these Cases into a Successor Case, the DIP Liens, the DIP Superpriority Claim, the Adequate Protection Liens, the Adequate Protection Superpriority Claim and the Carve-Out shall continue in these proceedings and in any Successor Case, and such DIP Liens, DIP Superpriority

Claim, Adequate Protection Liens, Adequate Protection Superpriority Claim and Carve-Out shall remain enforceable and, as applicable, maintain their respective priorities as provided by this Final Order.

17. **Events of Default; Rights and Remedies Upon Event of Default**.

(a) Any automatic stay otherwise applicable to the DIP Secured Parties and the Prepetition Notes Trustee is hereby modified so that, upon and after the occurrence of the Termination Date, the DIP Agent and the Prepetition Notes Trustee shall, subject to subparagraph (b) of this paragraph 17, be immediately entitled to exercise all of their rights and remedies in respect of the DIP Collateral and the Prepetition Collateral, in accordance with this Final Order, the other DIP Documents and/or the Prepetition Debt Documents, as applicable. The term "Termination Date" shall mean: the earliest to occur of: (i) the Maturity Date, (ii) the consummation of a sale of all or substantially all of the assets of the Debtors pursuant to Section 363 of the Bankruptcy Code, (iii) substantial consummation (as defined in section 1101 of the Bankruptcy Code and which for purposes hereof shall be no later than the "effective date" thereof) of a plan of reorganization or liquidation filed in the Cases that is confirmed pursuant to an order entered by the Court, (iv) the acceleration of the loans and the termination of all Commitments in accordance with the terms of the DIP Documents, and (v) this Final Order ceasing to be in full force and effect for any reason.

(b) Notwithstanding the foregoing subparagraph (a) of this paragraph 17, immediately following the giving of notice by the DIP Agent (or, if the DIP Obligations have been indefeasibly paid in full, the Prepetition Notes Trustee) to the Debtors, counsel to the Debtors, counsel for any Committee and the U.S. Trustee of the occurrence of an Event of

Default: (i) all Commitments of the DIP Lenders to provide any DIP Extensions of Credit shall immediately be suspended; (ii) the Debtors shall have no right to request or use any proceeds of any DIP Extensions of Credit or DIP Collateral, or to use Cash Collateral; provided that, during the Default Notice Period (defined below), the Debtors shall be permitted to continue to use Cash Collateral and the proceeds of the DIP Facility solely in the ordinary course of business in accordance with the DIP Budget and towards the satisfaction of the DIP Obligations and the Carve-Out, as provided in the applicable DIP Documents and this Final Order, and to take the actions set forth in the following clause (v); (iii) on or after five (5) business days following delivery of such notice (such 5-business day period, the "Default Notice Period"), unless such Event of Default is cured within such time, the DIP Lenders shall have relief from the automatic stay to exercise remedies under the DIP Documents; (iv) the Debtors shall deliver and cause the delivery of the proceeds of the DIP Extensions of Credits and the DIP Collateral to the DIP Agent as provided herein and in the DIP Documents subject to the funding of the Carve-Out; and (v) the Debtors and any Committee shall be entitled to an emergency hearing before this Court during the Default Notice Period to challenge the lifting of the automatic stay. If the Debtors or any Committee or any other party in interest does not contest the occurrence of the Event of Default within the Default Notice Period, or if there is a timely contest of the occurrence of an Event of Default and the Court after notice and a hearing declines to stay the enforcement thereof, the Termination Date shall be deemed to have occurred for all purposes and the automatic stay, as to the DIP Agent and the Prepetition Notes Trustee, shall automatically terminate in all respects.

(c) Upon the occurrence of the Termination Date (but subject, only in the case of the occurrence of the Termination Date resulting from an Event of Default, to the provisions of paragraph 17(b) hereof), the DIP Agent and the Prepetition Notes Trustee are authorized to exercise all remedies and proceed under or pursuant to the applicable DIP Documents and the Prepetition Debt Documents. All proceeds realized in connection with the exercise of the rights and remedies of the applicable DIP Secured Parties and Prepetition Secured Parties shall be turned over and applied in accordance with paragraph 18(b) hereof.

(d) The automatic stay imposed under Section 362(a) of the Bankruptcy Code is hereby modified pursuant to the terms of the DIP Documents as necessary to (i) permit the Debtors to grant the Adequate Protection Liens and the DIP Liens and to incur all DIP Obligations and all liabilities and obligations to the Prepetition Secured Parties hereunder and under the other DIP Documents, as the case may be, and (ii) authorize the DIP Agent and Prepetition Notes Trustee to retain and apply payments, and otherwise enforce their respective rights and remedies hereunder subject to the provisions of paragraph 17(b) hereof.

(e) Nothing included herein shall prejudice, impair or otherwise affect the Prepetition Notes Trustee's or the DIP Agent's rights to seek (on behalf of the Prepetition Secured Parties and the DIP Secured Parties, respectively) any other or supplemental relief in respect of the Debtors (including, as the case may be, other or additional adequate protection).

(f) Notwithstanding anything in the Interim Order or this Final Order to the contrary, the Prepetition Notes Trustee shall not be permitted to exercise any rights or remedies for itself or the Prepetition Secured Parties unless and until the DIP Obligations are indefeasibly paid and satisfied in full in cash.

18. **Applications of Proceeds of Collateral, Payments and Collections**.

(a) As a condition to the DIP Extensions of Credit and the authorization to use Cash Collateral, each Debtor has agreed that proceeds of any DIP Collateral and Prepetition Collateral, any amounts held on account of the DIP Collateral or Prepetition Collateral, and all payments and collections received by the Debtors with respect to all proceeds of DIP Collateral and Prepetition Collateral, shall be used and applied in accordance with the DIP Documents (including repayment and reduction of the DIP Obligations), the DIP Budget (subject to variances permitted under the DIP Credit Agreement) and this Final Order.

(b) Subject to the Debtors' rights under paragraph 17(b) hereof and the funding of the Carve-Out, if applicable, upon and after the occurrence of the Termination Date, all proceeds of DIP Collateral and Prepetition Collateral, whenever received, shall be paid and applied as follows: (i) *first*, to permanently and indefeasibly repay and reduce the DIP Obligations then due and owing in accordance with the DIP Documents, until paid and satisfied in full in cash; (ii) *second*, to permanently and indefeasibly repay and reduce the Prepetition Secured Obligations then due and owing in accordance with the Prepetition Debt Documents, until paid and satisfied in full in cash; and (iii) *third*, to the Debtors' estates. For avoidance of doubt, nothing in this Final Order shall be construed to limit the voluntary and mandatory repayment provisions set forth in the DIP Documents.

19. **Proofs of Claim, etc**. None of the Prepetition Secured Parties or the DIP Secured Parties shall be required to file proofs of claim in any of the Cases or any Successor Case for any claim described herein. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Cases or any Successor Case to the contrary, the

Prepetition Notes Trustee, on behalf of itself and the other Prepetition Secured Parties and the DIP Agent, on behalf of itself and the other DIP Secured Parties, respectively, are hereby authorized and entitled, in each of their sole and absolute discretion, but not required, to file (and amend and/or supplement, as each sees fit) a proof of claim and/or aggregate proofs of claim in any of the Cases or any Successor Case for any claim described herein; for avoidance of doubt, any such proof of claim may (but is not required to be) filed as one consolidated proof of claim against all of the Debtors, rather than as separate proofs of claim against each Debtor. Any proof of claim filed by the Prepetition Notes Trustee or the DIP Agent shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the respective Prepetition Secured Parties or DIP Secured Parties. Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation administrative claims) in any of the Cases or any Successor Case shall not apply to the Prepetition Notes Trustee, the other Prepetition Secured Parties, the DIP Agent, or the other DIP Secured Parties; provided that, upon the conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code, the filing of such proofs of claim may be required.

20. **Other Rights and Obligations**.

(a) **Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Final Order**. Based on the findings set forth in this Final Order and in accordance with Section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility as approved by the Interim Order and this Final Order, the reversal or modification on appeal of the authorization hereunder for the Debtors to obtain the DIP Facility, or the grant

hereunder of the DIP Liens and the Adequate Protection Liens, shall not affect the validity of such debt or the priority of such liens.

(b) **Expenses**. To the fullest extent provided in the DIP Documents, the Prepetition Debt Documents and this Final Order, the Debtors will pay all expenses incurred by the DIP Secured Parties, the Prepetition Notes Trustee and the Prepetition Secured Noteholders (including, without limitation, the reasonable fees and disbursements of their counsel, any other local counsel that they shall retain and any internal or third-party appraisers, consultants, financial, restructuring or other advisors and auditors advising any such counsel) in connection with (i) the preparation, execution, delivery, funding and administration of the DIP Documents, including, without limitation, all due diligence fees and expenses incurred or sustained in connection with the DIP Documents, (ii) the administration of the Prepetition Debt Documents, (iii) the Cases or any Successor Case, or (iv) enforcement of any rights or remedies under the DIP Documents or the Prepetition Debt Documents, in each case whether or not the transactions contemplated hereby are fully consummated. Notwithstanding any other provisions of the Interim Order and/or this Final Order, the Prepetition Notes Trustee, the Prepetition Secured Noteholders and the DIP Secured Parties, and their advisors and professionals, shall not be required to comply with the U.S. Trustee fee guidelines, but shall provide reasonably detailed statements (redacted if necessary for privileged, confidential or otherwise sensitive information, as to those statements provided to any party other than the U.S. Trustee) for fees and expenses incurred after entry of the Interim Order to the Office of the U.S. Trustee and counsel for any Committee and the Debtors. Thereafter, within ten (10) calendar days of presentment of such statements, if no written objections to the reasonableness of the fees and expenses charged in any

such invoice (or portion thereof) is made, the Debtors shall pay in cash all such fees and expenses of the Prepetition Notes Trustee, the Prepetition Secured Noteholders, the DIP Agent and the DIP Secured Parties, and their advisors and professionals. Any objection to the payment of such fees or expenses shall be made only on the basis of "reasonableness," and shall specify in writing the amount of the contested fees and expenses and the detailed basis for such objection. To the extent an objection only contests a portion of an invoice, the undisputed portion thereof shall be promptly paid. If any such objection to payment of an invoice (or any portion thereof) is not otherwise resolved between the objecting party and the issuer of the invoice, either party may submit such dispute to the Court for a determination as to the reasonableness of the relevant disputed fees and expenses set forth in the invoice. This Court shall resolve any dispute as to the reasonableness of any fees and expenses. For the avoidance of doubt, and without limiting any of the forgoing or any other provision of the Interim Order and/or this Final Order, the fees specified in Section 2(e)(iii) of the DIP Credit Agreement were, upon entry of the Interim Order, and continue to be, upon entry of this Final Order, and irrespective of any subsequent order approving or denying the DIP Facility or any other financing pursuant to Section 364 of the Bankruptcy Code, fully entitled to all of the protections of Section 364(e) of the Bankruptcy Code and were deemed fully earned, indefeasibly paid, non-refundable, irrevocable and non-avoidable as of the date of entry of the Interim Order.

(c) **Binding Effect**. The provisions of this Final Order shall be binding upon and inure to the benefit of the DIP Secured Parties and the Prepetition Secured Parties, the Debtors, and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of

the estates of the Debtors) whether in the Cases, in any Successor Case, or upon dismissal of any such Chapter 11 or Chapter 7 case.

(d) **No Waiver**. The failure of the DIP Secured Parties or the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Final Order, the other DIP Documents or the Prepetition Debt Documents or otherwise, as applicable, shall not constitute a waiver of any of the DIP Secured Parties' or Prepetition Secured Parties' rights hereunder, thereunder or otherwise. Notwithstanding anything herein, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair any of the rights, claims, privileges, objections, defenses or remedies of the DIP Secured Parties or the Prepetition Secured Parties under the Bankruptcy Code or under non-bankruptcy law against any other person or entity in any court, including without limitation, the rights of the DIP Agent and the Prepetition Notes Trustee (i) to request conversion of any of the Cases to cases under Chapter 7, dismissal of any of the Cases, or the appointment of a trustee in any of the Cases, or (ii) to propose, subject to the provisions of Section 1121 of the Bankruptcy Code, a Plan, or (iii) to exercise any of the rights, claims or privileges (whether legal, equitable or otherwise) on behalf of the DIP Secured Parties or the Prepetition Secured Parties.

(e) **No Third Party Rights**. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, third party or incidental beneficiary.

(f) **Intercreditor Matters**. Nothing in this Final Order shall be construed to convey on any individual DIP Secured Party or Prepetition Secured Party any consent, voting or other rights beyond those (if any) set forth in the DIP Documents and Prepetition Debt

Documents, as applicable. Nothing in this Final Order shall be construed to impair or otherwise affect any intercreditor, subordination or similar agreement or arrangement in respect of the Prepetition Secured Obligations, which are enforceable to the fullest extent provided by Section 510(a) of the Bankruptcy Code and applicable law.

(g) **No Marshaling**. Neither the DIP Secured Parties nor the Prepetition Secured Parties shall be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as applicable.

(h) **Section 552(b)**. The DIP Secured Parties and the Prepetition Secured Parties shall each be entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under Section 552(b) of the Bankruptcy Code shall not apply to the DIP Secured Parties or the Prepetition Secured Parties with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral or the DIP Collateral.

(i) **Amendment**. The Debtors and the DIP Agent (with the consent of the requisite DIP Secured Parties as provided in and consistent with their respective rights under the DIP Documents) may amend, modify, supplement or waive any provision of the DIP Documents without further approval of the Court, unless such amendment, modification, supplement or waiver (w) increases the interest rate (other than as a result of the imposition of the default rate) or fees charged in connection with the DIP Facility, (x) increases the commitments of the DIP Lenders to make DIP Extensions of Credit under the DIP Documents, (y) changes the Termination Date or (z) otherwise is materially adverse to the interests of the Debtors or their estates; provided that any amendment, modification, or supplement of the DIP Documents that does not require Court approval shall, within three (3) business days, be filed with the Court and

served on the office of the U.S. Trustee and any Committee. No waiver, modification or amendment of any of the provisions hereof shall be effective unless set forth in writing, signed by, or on behalf of, the Debtors and the DIP Agent (after having obtained the approval of the requisite DIP Secured Parties as provided in the DIP Documents) and approved by the Court after notice to parties in interest.

(j) **Priority of Terms**. To the extent of any conflict between or among (a) the express terms or provisions of any of the DIP Documents, the Motion, any other order of this Court, or any other agreements, on the one hand, and (b) the terms and provisions of this Final Order, on the other hand, unless such term or provision herein is phrased in terms of "defined in" or "as set forth in" the DIP Credit Agreement, the terms and provisions of this Final Order shall govern.

(k) **Survival of Final Order**. The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (i) confirming any Plan in any of the Cases, (ii) converting any of the Cases to a case under Chapter 7 of the Bankruptcy Code, (iii) to the extent authorized by applicable law, dismissing any of the Cases, (iv) withdrawing of the reference of any of the Cases from this Court or (v) providing for abstention from handling or retaining of jurisdiction of any of the Cases in this Court. The terms and provisions of the Interim Order, this Final Order, the DIP Documents and the Prepetition Debt Documents, including the DIP Liens and DIP Superpriority Claim granted pursuant to this Final Order, the DIP Documents and the Prepetition Debt Documents and any priorities and protections granted to or for the benefit of the DIP Secured Parties and Prepetition Secured Parties (including the Adequate Protection Liens and the Adequate Protection Superpriority

Claim) hereunder and thereunder, shall continue in full force and effect to the fullest extent provided by Section 364(e) of the Bankruptcy Code.

(l) **Enforceability**. This Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.

(m) **No Waivers or Modification of Interim Order**. The Debtors irrevocably waive any right to seek any modification or extension of this Final Order without the prior written consent of the DIP Agent and the Prepetition Notes Trustee, and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Agent or the Prepetition Notes Trustee. The Debtors may not seek to modify or to alter relative lien priority of the DIP Liens, the Prepetition Liens and the Adequate Protection Liens set forth in this Final Order.

(n) **Waiver of any Applicable Stay**. Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Final Order.

(o) **Retention of Jurisdiction**. The Court has and will retain jurisdiction to enforce this Final Order according to its terms.

Dated: October 15th, 2019
Wilmington, Delaware

CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

DIP Credit Agreement

SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AND GUARANTY AGREEMENT

dated as of October [31], 2019

among

MURRAY ENERGY CORPORATION,
as a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code,

MURRAY ENERGY HOLDINGS CO.,
as a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code,

CERTAIN SUBSIDIARIES OF MURRAY ENERGY CORPORATION,
each as a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code,
as Guarantors,

VARIOUS LENDERS,

GLAS USA LLC,
as Administrative Agent

and

GLAS AMERICAS LLC,
as Collateral Agent

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[1] To be updated.

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[22] NTD: to include Mission Holdco entities, and Murray South America guarantors.

SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AND GUARANTY AGREEMENT

This **SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AND GUARANTY AGREEMENT**, dated as of October 31, 2019, is entered into by and among **MURRAY ENERGY CORPORATION**, an Ohio corporation, as debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code ("**Borrower**"), **MURRAY ENERGY HOLDINGS CO.**, a Delaware corporation, as debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code ("**Holdings**"), **CERTAIN SUBSIDIARIES OF BORROWER**, each as a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code, as Guarantors, the Lenders party hereto from time to time, and **GLAS USA LLC,** a limited liability company organized and existing under the laws of the State of New Jersey ("**GLAS USA**"), as Administrative Agent (together with its permitted successors in such capacity, **"Administrative Agent"**) and GLAS AMERICAS LLC, a limited liability company organized and existing under the laws of the State of New York ("GLAS Americas"), as Collateral Agent (together with its permitted successors in such capacity, **"Collateral Agent"**).

RECITALS:

WHEREAS, capitalized terms used in these Recitals shall have the respective meanings set forth for such terms in Section 1.1 hereof;

WHEREAS, on October [28], 2019, (the "**Petition Date**"), Holdings, Borrower, and certain Subsidiaries of Borrower (collectively, and together with any other Subsidiaries that become debtors-in-possession in the Cases, the "**Debtors**" and each, a "**Debtor**") filed voluntary petitions with the Bankruptcy Court initiating their respective cases that are pending under Chapter 11 of the Bankruptcy Code (each case of Holdings, Borrower and such Subsidiaries, a "**Case**" and collectively, the "**Cases**") and have continued in the possession of their assets and in the management of their businesses pursuant to Section 1107 and 1108 of the Bankruptcy Code;

WHEREAS, Borrower has requested the Lenders to extend credit in the form of (i) a delayed-draw term loan facility in an aggregate principal amount of $[350,000,000] (the "**Term Loan Facility**") and (ii) a roll-up term loan facility in an aggregate principal amount of $90,000,000 (the "**Roll-Up Facility**"), with all of the obligations with respect to the foregoing to be guaranteed by each Guarantor;

WHEREAS, Borrower has entered into that certain Amended and Restated Revolving Credit Agreement dated as of June 29, 2018 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the "**Prepetition Revolving Credit Agreement**") with the financial institutions from time to time party thereto as revolving lenders (together with their successors and assigns, collectively, the "**Prepetition Revolving Lenders**") and GACP Finance Co., LLC as last-out lender (the "**Prepetition Last-Out Lender**" and, together with the Prepetition Revolving Lenders, the "**Prepetition ABL Lenders**") and Goldman Sachs Bank USA, as administrative agent for the Prepetition Revolving Lenders (together with its successors in such capacity, the "**Prepetition Revolving Agent**"), pursuant to which the Prepetition Revolving Lenders, among other things, extended revolving loans to Borrower (the "**Prepetition Revolving Loans**") and the Prepetition Last-Out Lender extended last-out loans to

Borrower (the "**Prepetition Last-Out Loans**");

WHEREAS, the Lenders are willing to extend such credit to Borrower on the terms and subject to the conditions set forth herein;

WHEREAS, the priority of liens with respect to the Collateral granted to secure the Term Loan Facility and the Roll-Up Facility shall be as set forth in the Interim Order and the Final Order, in each case upon entry thereof by the Bankruptcy Court, and in the Collateral Documents; and

WHEREAS, all of the claims and the Liens granted under the Orders and the Credit Documents to the Administrative Agent, the Collateral Agent and the Lenders in respect of the Term Loan Facility and the Roll-Up Facility shall be subject to the Carve Out;

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

SECTION 1. DEFINITIONS AND INTERPRETATION

1.1. Definitions. The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

"1113/1114 Motion" as defined in Section 5.18(f).

"**ABL Collateral**" means all right, title and interest of any Grantor that is a Roll-Up Guarantor in and to the following types of property, whether now-owned or hereafter created, acquired or arising and wherever located:

(i) Accounts (but excluding any Accounts which constitute identifiable Proceeds of Fixed Asset Collateral);

(ii) any Collection Account and any other Deposit Accounts and Securities Accounts (including all cash, cash equivalents, Money, checks, Instruments, funds, ACH transfers, wired funds and other funds and property, in each case, to the extent held in or on deposit in any of the foregoing, but excluding (v) Term Loan Proceeds, (w) the Segregated Account, (x) other Investment Related Property, (y) any cash, cash equivalents, Money, checks, Instruments, funds, ACH transfers, wired funds and other funds and property, in each case held in or on deposit in the Fixed Asset Collateral Proceeds Account and (z) any identifiable Proceeds of Fixed Asset Collateral held in the Collection Account or any other Deposit Accounts or Securities Accounts);

(iii) Inventory;

(iv) Letter of Credit Rights arising out of, or related to, or derivative of any of the property or interests in property described in subsections (i), (ii) and (iii) of the definition of "ABL Collateral";

(v) letters of credit transferred to any Prepetition ABL Lender, or with respect to which the Proceeds thereof have been assigned to any Prepetition ABL Lender, or on which any Prepetition ABL Lender is named as beneficiary, in each case arising out of, related to, or derivative of the property or interests described in subsections (i), (ii) and (iii) of the definition of "ABL Collateral";

(vi) Supporting Obligations and Commercial Tort Claims, in each case, solely to the extent arising out of, or related to, or derivative of the property or interests in property described in subsections (i), (ii) and (iii) of the definition of "ABL Collateral";

(vii) contracts, contract rights and other General Intangibles (including, without limitation, Supporting IP but excluding Intellectual Property constituting Fixed Asset Collateral or identifiable Proceeds of Fixed Asset Collateral), all Documents, Chattel Paper, and Instruments (including promissory notes), in each case, to the extent arising out of, or related to, or derivative of the property or interests in property described in subsections (i), (ii) and (iii) of the definition of "ABL Collateral";

(viii) books and Records relating to the items referred to in the preceding clauses (i) through (vii) (including all books, databases, data processing software, customer lists, and Records, whether tangible or electronic, to the extent containing any information relating to any of the items referred to in the preceding clauses (i) through (vii)); and

(ix) collateral security and guarantees with respect to any of the foregoing and all Proceeds, products, substitutions, replacements, accessions, cash, Money, insurance proceeds, Instruments, Securities, Security Entitlements, Financial Assets, Deposit Accounts and Securities Accounts, in each case, received as Proceeds of any of the foregoing, but excluding (x) any cash, cash equivalents, Money, checks, Instruments, funds, ACH transfers, wired funds, Investment Related Property, and other funds and property, in each case held in or on deposit in the Fixed Asset Collateral Proceeds Account or the Segregated Account, (y) any identifiable Proceeds of Fixed Asset Collateral and (z) Term Loan Proceeds.

Notwithstanding anything to the contrary herein, the term "ABL Collateral" shall exclude "Excluded Assets". All capitalized terms used in this definition and not defined elsewhere in this Agreement have the meanings assigned to them in the UCC.

"**Acceptable Confirmation Order**" means an order of the Bankruptcy Court confirming an Acceptable Plan that is, unless otherwise agreed by the Requisite Roll-Up Lenders, an Acceptable Roll-Up Plan, in form and substance satisfactory to the Requisite Term Lenders in their reasonable discretion (as the same may be amended, supplemented, or modified from time to time after entry thereof with the consent of the Requisite Term Lenders in their reasonable discretion).

"**Acceptable Disclosure Statement**" means the disclosure statement relating to the Acceptable Plan in form and substance satisfactory to the Requisite Term Lenders in their reasonable discretion (as the same may be amended, supplemented, or modified from time to time after the initial filing thereof with the consent of the Requisite Term Lenders in their reasonable discretion).

"**Acceptable Disclosure Statement Order**" means an order of the Bankruptcy Court approving the Acceptable Disclosure Statement, in form and substance reasonably satisfactory to the Requisite Term Lenders (as the same may be amended, supplemented, or modified from time to time after entry thereof so long as such amendment, supplement, or modification is reasonably satisfactory to the Requisite Term Lenders).

"**Acceptable Plan**" means a Reorganization Plan that is satisfactory to the Requisite Term Lenders in their reasonable discretion and is, unless otherwise agreed by the Requisite Roll-Up Lenders, an Acceptable Roll-Up Plan (as the same may be amended, supplemented, or modified from time to time after entry thereof with the consent of the Requisite Term Lenders in their reasonable discretion).

"**Acceptable Roll-Up Plan**" means a Reorganization Plan that indefeasibly satisfies all claims of the Roll-Up Lenders on account of the Roll-Up Loans in full in cash or such other consideration acceptable to the Requisite Roll-Up Lenders (as the same may be amended, supplemented, or modified from time to time after entry thereof with the consent of the Requisite Lenders in their reasonable discretion).

"Accounting Change" as defined in Section 1.2**.**

"Adjusted Eurodollar Rate" means, for any Interest Rate Determination Date with respect to an Interest Period for a Eurodollar Rate Loan, the rate *per annum* obtained by dividing (i) (a) the rate *per annum* equal to the rate determined by Administrative Agent to be the offered rate which appears on the Thomson Reuters Screen which displays the average ICE Benchmark Administration Limited interest settlement rate, or in each case the successor thereto (such page currently being LIBOR01 page) for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (b) in the event the rate referenced in the preceding clause (a) does not appear on such page or service or if such page or service shall cease to be available, the rate *per annum* equal to the rate determined by Administrative Agent to be the offered rate on such other commercially available page or other service which displays an average ICE Benchmark Administration Limited interest settlement rate for deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (c) in the event the rates referenced in the preceding clauses (a) and (b) are not available, the rate *per annum* equal to the offered quotation rate to first class banks in the London interbank market by Citibank, N.A. for deposits (for delivery on the first day of the relevant period) in Dollars for which the Adjusted Eurodollar Rate is then being determined with maturities comparable to such period as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, by (ii) an amount equal to (a) one minus (b) the Applicable Reserve Requirement; provided, however, that notwithstanding the foregoing, (x) the Adjusted Eurodollar Rate with respect to any Loan shall at no time be less than 2.00% *per annum* and (y) in the event that any reference rate referred to in clause (i) is less than 0%, such reference rate shall be deemed to be 0%.

"Administrative Agent" as defined in the preamble hereto.

"Adverse Proceeding" means any action, suit, proceeding, hearing (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of Holdings or any of its Restricted Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign, whether pending or, to the actual knowledge of Holdings or Borrower, threatened in writing against or directly affecting Holdings or any of its Restricted Subsidiaries or any property of Holdings or any of its Restricted Subsidiaries.

"Affected Lender" as defined in Section 2.18(b).

"Affected Loans" as defined in Section 2.18(b).

"Affiliate" means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power (i) to vote 10% or more of the Securities having ordinary voting power for the election of directors of such Person or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

"Affiliate Transaction" as defined in Section 6.11.

"Agent" means each of (i) Administrative Agent, (ii) Collateral Agent, (iii) the Escrow Agent and (iv) any other Person appointed under the Credit Documents to serve in an agent or similar capacity.

"Agent Affiliates" as defined in Section 10.1(b)(iii).

"Agent Fee Letter" means the Indicative Fee Proposal for Agency Services, dated as of October 25, 2019, by and among GLAS USA, GLAS Americas and the Borrower.

"Aggregate Amounts Due" as defined in Section 2.17.

"Aggregate Payments" as defined in Section 7.2.

"Agreement" means this Superpriority Debtor-In-Possession Credit and Guaranty Agreement, dated as of October 31, 2019, as it may be amended, restated, supplemented or otherwise modified from time to time.

"American Coal" means The American Coal Company, a Delaware corporation.

"Applicable Guaranteed Obligations" means (i) with respect to the Roll-Up Guarantors, the Guaranteed Roll-Up Obligations and (ii) with respect to the Term Guarantors, the Guaranteed Term Obligations.

"Applicable Margin" means (i) with respect to any Term Loan that is a Base Rate Loan, a rate equal to 10.00% *per annum*, (ii) with respect to any Term Loan that is a

Eurodollar Rate Loan, a rate equal to 11.00% *per annum,* or (iii) with respect to any Roll-Up Loans, (x) if the principal amount of Roll-Up Loans is less than the full Roll-Up Amount on the Closing Date, a rate equal to 9.75% *per annum* or (y) if the principal amount of Roll-Up Loans equal to the full Roll-Up Amount, a rate equal to 9.50% *per annum*.

"Applicable Reserve Requirement" means, at any time, for any Eurodollar Rate Loan, the maximum rate, expressed as a decimal, at which reserves (including any basic marginal, special, supplemental, emergency or other reserves) are required to be maintained with respect thereto against "Eurocurrency liabilities" (as such term is defined in Regulation D) under regulations issued from time to time by the Board of Governors or other applicable banking regulator. Without limiting the effect of the foregoing, the Applicable Reserve Requirement shall reflect any other reserves required to be maintained by such member banks with respect to (i) any category of liabilities which includes deposits by reference to which the applicable Adjusted Eurodollar Rate or any other interest rate of a Loan is to be determined, or (ii) any category of extensions of credit or other assets which include Eurodollar Rate Loans. A Eurodollar Rate Loan shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefits of credit for proration, exceptions or offsets that may be available from time to time to the applicable Lender. The rate of interest on Eurodollar Rate Loans shall be adjusted automatically on and as of the effective date of any change in the Applicable Reserve Requirement.

"Applicant Violator System" means the nationwide database maintained by OSMRE of mine applicants, permittees, operators, application and permit records, as well as unabated or uncorrected environmental violations pursuant to the Surface Mining Control and Reclamation Act of 1977, as amended, 30 U.S.C. §§ 1201, et seq., its state analogues and other applicable mining and environmental related statutes and regulations.

"Approved Cash Flow Forecast" as defined in Section 5.1(p).

"Approved Electronic Communications" means any notice, demand, communication, information, document or other material that any Credit Party provides to Administrative Agent pursuant to any Credit Document or the transactions contemplated therein which is distributed to Agents or Lenders by means of electronic communications pursuant to Section 10.1(b).

"Asset Sale" means (a) the sale, lease, conveyance or other disposition of any assets by Borrower or any of Borrower's Restricted Subsidiaries and (b) the issuance of Equity Interests by any of Borrower's Restricted Subsidiaries or the sale by Borrower or any of Borrower's Restricted Subsidiaries of Equity Interests in any of Borrower's Subsidiaries. Notwithstanding the preceding, none of the following items will be deemed to be an "Asset Sale":

(i) [reserved];

(ii) the sale, lease, conveyance or other disposition of assets (A) between or among Borrower and Non-Specified Guarantor; *provided*, that the Western Kentucky Guarantors shall be capped at $7,5000,000 (together with Investments under Section 6.6(c)), (B) from

Borrower or any Non-Specified Guarantor to a Specified Guarantor (other than a Murray South America, Inc. and its Subsidiaries) in an aggregate Fair Market Value not to exceed, in the case of the Mission Guarantors, $10,000,000 subject to the consent of the Requisite Backstop Lenders and less the aggregate amount of Investments made in accordance with Section 6.6(d)(A), in the ordinary course of business consistent with past practice, (C) from Specified Guarantors or any Restricted Subsidiaries that are not Credit Parties to Borrower or any Non-Specified Guarantor or (D) from Specified Guarantors to Subsidaries of the Borrower with assets received pursuant to clause (B);

(iii) an issuance of Equity Interests by a Restricted Subsidiary of Borrower to Borrower or a Restricted Subsidiary of Borrower; provided that any such issuance by a Credit Party shall only be made to another Credit Party;

(iv) the sale, lease or other transfer of inventory, products, services or accounts receivable in the ordinary course of business and any sale or other disposition of damaged, worn-out or obsolete assets in the ordinary course of business (including the abandonment or other disposition of Intellectual Property that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful in the conduct of the business of the Restricted Group taken as whole);

(v) non-exclusive licenses and sublicenses by Borrower or any of Borrower's Restricted Subsidiaries of software or Intellectual Property in the ordinary course of business;

(vi) any surrender or waiver of contract rights or settlement, release, recovery on or surrender of contract, tort or other claims in the ordinary course of business or consistent with past practices;

(vii) the granting of Liens not prohibited by Section 6.2, including any leases or licenses of property in the ordinary course of business or that do not materially adversely affect the value of said property;

(viii) the sale or other disposition of cash or Cash Equivalents in the ordinary course of business; and

(x) dispositions of assets resulting from condemnation or casualty events.

"Assignment Agreement" means, an Assignment and Assumption Agreement substantially in the form of Exhibit D, with such amendments or modifications as may be approved by Administrative Agent and Borrower .

"Assignment Effective Date" as defined in Section 10.6(b).

"Authorized Officer" means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, chief operating officer, president or one of its vice presidents (or the equivalent thereof), and such Person's chief financial officer or treasurer (or other officer that is reasonably acceptable to Administrative Agent).

"**Automatic Rejection Date**" means with respect to any particular lease, the last day of the assumption period for the Credit Parties in the Cases provided for in Section 365(d)(4) of the Bankruptcy Code, to the extent applicable (including as may have been extended in accordance with Section 365(d)(4) of the Bankruptcy Code).

"Automatic Stay" has the meaning provided for such term under Section 362 of the Bankruptcy Code.

"Avoidance Actions" as defined in Section 4.27(c).

"Backstop Lender Commitment" means, with respect to any Backstop Lender, the commitment to provide loans in an amount set forth opposite its name on Schedule 2.

"Backstop Lenders" means the Lenders listed on Schedule 2.

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

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

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor thereto.

"Bankruptcy Court" means the United States Bankruptcy Court for the Southern District of Ohio, Western Division, or any other court having jurisdiction over the Cases from time to time.

"Bankruptcy Law" means each of (i) Title 11 of the United States Code, as now or hereafter in effect, or any successor thereto, (ii) any domestic or foreign law relating to liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, debt adjustment, receivership or similar debtor relief from time to time in effect and affecting the rights of creditors generally (including without limitation any plan of arrangement provisions of applicable corporation statutes), and (iii) any order made by a court of competent jurisdiction in respect of any of the foregoing.

"**Bankruptcy Rules**" means the Federal Rules of Bankruptcy Procedure, as the same may from time to time be in effect and applicable to the Cases.

"Base Rate" means, for any day, a rate *per annum* equal to the greatest of (i) the Prime Rate in effect on such day, (ii) the Federal Funds Effective Rate in effect on such day plus ½ of 1% and (iii) the sum of (a) the Adjusted Eurodollar Rate (after giving effect to any Adjusted Eurodollar Rate "floor") that would be payable on such day for a Eurodollar Rate Loan with a one-month Interest Period plus (b) 1.00%. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective on the effective day of such

change in the Prime Rate or the Federal Funds Effective Rate, respectively.

"Base Rate Loan" means a Loan bearing interest at a rate determined by reference to the Base Rate.

"Beneficial Owner" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" will be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only after the passage of time.

"**Beneficial Ownership Certificate**" means a certification regarding beneficial ownership as required by 31 C.F.R. § 1010.230.

"**Beneficiary**" means each Agent, Lender, Commodities Hedge Provider, Lender Counterparty and Designated Coal Contract Counterparty.

"**Benefit Plan**" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan."

"Bidding Procedures Motion" as defined in Section 5.18(a).

"Bidding Procedures Order" as defined in Section 5.18(a).

"Black Lung Act" means the Black Lung Benefits Act of 1972, 30 U.S.C. §§ 901, et seq., the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801, et seq., the Black Lung Benefits Revenue Act of 1977, Pub. L. No. 95-227, 92 Stat. 11 (1978), the Black Lung Benefits Reform Act of 1977, Pub. L. No. 95-239, 92 Stat. 95 (1978), and the Black Lung Benefits Revenue Act of 1981 and the Black Lung Benefits Amendments of 1981, Pub. L. No. 97-119, 95 Stat. 1643 (1981) in each case as amended, if applicable.

"Board of Governors" means the Board of Governors of the United States Federal Reserve System, or any successor thereto.

"Borrower" as defined in the preamble hereto.

"Budget Variance Report" shall mean a weekly variance report, commencing with a variance report for the one week period following the Closing Date, the two week period following the Closing Date, the three week period following the Closing Date and the four week period following the Closing Date, and each subsequent four week period ending each week thereafter, with the report for each such subsequent four week period including a cumulative report of such four week period and an individual report of the last week of such four week period (each such one week, two week, three week and four week period, a "**Reporting Period**"), in each case, setting forth for the one-week, two-week, three week or four-week period, as

applicable, ended on the immediately preceding Friday prior to the delivery thereof (1) the negative variance (as compared to the Operative Approved Cash Flow Forecast) of the aggregate operating cash receipts of the Debtors in the aggregate for the applicable Reporting Period and for the last week of the applicable Reporting Period, (2) the positive variance (as compared to the Operative Approved Cash Flow Forecast) of the aggregate operating disbursements (excluding professional fees) made by the Debtors in the aggregate for the applicable Reporting Period and for the last week of the applicable Reporting Period and (3) an explanation, in reasonable detail, for any material negative variance (in the case of receipts) or material positive variance (in the case of disbursements), certified by an Authorized Officer of Borrower

"Business Day" means (i) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other Governmental Acts to close and (ii) with respect to all notices, determinations, fundings and payments in connection with the Adjusted Eurodollar Rate or any Eurodollar Rate Loans, the term **"Business Day"** means any day which is a Business Day described in clause (i) and which is also a day for trading by and between banks in Dollar deposits in the London interbank market.

"Capital Lease" means, subject to Section 1.2, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is required to be accounted for as a capital lease on the balance sheet of that Person.

"Capital Lease Obligation" means, at the time any determination is to be made, the amount of the liability in respect of a Capital Lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with GAAP; *provided* that all obligations of the Borrower and its Restricted Subsidiaries that are or would be characterized as an operating lease as determined in accordance with GAAP as in effect on December 15, 2018 (whether or not such operating lease was in effect on such date) shall continue to be accounted for as an operating lease (and not as a Capital Lease Obligation) for purposes of this Agreement regardless of any change in GAAP following December 15, 2018 that would otherwise require such obligation to be recharacterized as a Capital Lease Obligation.

"Capital Stock" means (i) in the case of a corporation, corporate stock; (ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock; (iii) in the case of a partnership or limited liability company, partnership interests (whether general or limited or whether common or subordinated), including any units in Foresight GP or Foresight LP, or membership interests; and (iv) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

"Carve Out" as defined in the Interim Order or the Final Order, as applicable.

"Case" as defined in the recitals hereto.

"Cash" means money, currency or a credit balance in any demand account.

"**Cash Collateral**" has the meaning set forth in the Interim Order or the Final Order, as applicable.

"Cash Equivalents" means: (i) (a) Dollars, euro, or any national currency of any member state of the European Union; or (b) any other foreign currency held by Borrower or its Restricted Subsidiaries in the ordinary course of business; (ii) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (provided that the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than six months from the date of acquisition; (iii) certificates of deposit and eurodollar time deposits with maturities of six months or less from the date of acquisition, bankers' acceptances with maturities not exceeding six months and overnight bank deposits, in each case, with any domestic commercial bank having capital and surplus in excess of $500.0 million and a Thomson Bank Watch Rating of "B" or better; (iv) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (ii) and (iii) above entered into with any financial institution meeting the qualifications specified in clause (iii) above; or (v) commercial paper having one of the two highest ratings obtainable from Moody's or S&P and, in each case, maturing within six months after the date of acquisition; and money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (i) through (v) of this definition.

"Cash Flow Forecast" means a projected statement of sources and uses of cash for the Credit Parties, prepared in accordance with Section 5.1(p), for the current and following 12 calendar weeks (but not any preceding weeks), including the anticipated uses of the Draw proceeds for each week during such period and to include (i) a separate line item for any uses of cash (including the purchase, sale, lease or exchange of any property or the rendering of any service) from a Credit Party or any of their Restricted Subsidiaries to any Unrestricted Subsidiary and (ii) a separate line item for any uses of cash (including the purchase, sale, lease or exchange of any property or the rendering of any service) from a Credit Party that is not a Specified Guarantor to a Specified Guarantor. As used herein, "Cash Flow Forecast" shall initially refer to the 13-week cash flow forecast most recently delivered on or prior to the Petition Date and, thereafter, the most recent Cash Flow Forecast delivered by the Borrower in accordance with Section 5.1(p).

"Cash Management Obligations" means obligations in respect of cash management services (including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements), including obligations for the payment of fees, interest, charges, expenses and disbursements in connection therewith to the extent provided for in the documents evidencing such cash management services.

"Certificate re Non-Bank Status" means a certificate substantially in the form of Exhibit E.

"Change of Control" means, (i) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a

series of related transactions, of all or substantially all of the properties or assets of Borrower and its Subsidiaries taken as a whole to any Person (including any "person" (as that term is used in Section 13(d)(3) of the Exchange Act)); (ii) the adoption of a plan relating to the liquidation or dissolution of Borrower; (iii) the consummation of any transaction (including, without limitation, any merger or consolidation), the result of which is that any Person (including any "person" (as defined above)), other than the Principals and their Related Parties, becomes the Beneficial Owner, directly or indirectly, of more than 50% of the Voting Stock in Borrower, measured by voting power rather than number of shares; or (iv) the first day on which 100% of the outstanding Capital Stock of Borrower ceases to be owned directly or indirectly by Holdings.

"Closing Date" as defined in Section 3.1.

"Closing Date Certificate" means a Closing Date Certificate substantially in the form of Exhibit F.

"Coal" means all of the coal owned by any Credit Party or their Subsidiaries located on, under, within, in-transit to, or produced or severed from any Facility of any Credit Party or their Subsidiaries but only to the extent such Coal has been, extracted, excavated, produced or severed from the applicable mine.

"Coal Act" as defined in Section 4.20(b).

"Coal Contract" means any agreement pursuant to which Borrower or any Guarantor Subsidiary agrees to sell and deliver a shipment of coal.

"Collateral" means, collectively, (i) all of the real, personal and mixed property (including Equity Interests) in which Liens are purported to be granted pursuant to the Orders or Collateral Documents as security for all or any part of the Obligations under the Credit Documents (subject to exceptions contained in the Collateral Documents), and, in each case excluding any Excluded Assets and (ii) "DIP Collateral" or words of similar intent, as defined in any Order.

"Collateral Agent" as defined in the recitals hereto.

"Collateral Documents" means the Pledge and Security Agreement, the Specified Pledge Agreement, the Mortgages (if any), the Escrow Agreement, the Intellectual Property Security Agreements and all other instruments, documents and agreements delivered by or on behalf of any Credit Party pursuant to this Agreement or any of the other Credit Documents or the Orders in order to grant to, or perfect in favor of, Collateral Agent, for the benefit of Secured Parties, a Lien on any real, personal or mixed property of that Credit Party as security for all or any part of the Obligations (subject to exceptions contained in the Collateral Documents).

"Collateral Questionnaire" means a certificate in form reasonably satisfactory to Administrative Agent that provides information with respect to the personal or mixed property of each Credit Party.

"Commitment" means any Initial Commitment and/or Delayed Draw

Commitment, as the case may be.

"Commodities Agreement" means any commodity price hedging agreement or other similar agreement or arrangement, which is for the purpose of hedging commodity price exposure associated with Borrower's and its Subsidiaries' operations and not for speculative purposes.

"Commodities Hedge Provider" means any Person that is a Lender, Agent or an Affiliate of a Lender or Agent at the time it entered into a Secured Commodities Agreement.

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

"Compliance Certificate" means a Compliance Certificate substantially in the form of Exhibit L.

"Consolidated Adjusted EBITDA" means, for any period, an amount determined for Financial Report Entities on a consolidated basis equal to Consolidated Net Income for such period, plus, without duplication:

(i) an amount equal to any extraordinary loss plus any net non-cash loss realized by any Financial Report Entities in connection with an Asset Sale, to the extent such losses were deducted in computing such Consolidated Net Income; plus

(ii) provision for taxes based on income or profits of the Financial Report Entities for such period, to the extent that such provision for taxes was deducted in computing such Consolidated Net Income; plus

(iii) the Fixed Charges of Financial Report Entities for such period, to the extent that such Fixed Charges were deducted in computing such Consolidated Net Income; plus

(iv) [reserved]; plus

(v) depreciation, amortization (including amortization of intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) and other non-cash charges and expenses (excluding any such non-cash charge or expense to the extent that it represents an accrual of or reserve for cash charges or expenses in any future period or amortization of a prepaid cash charge or expense that was paid in a prior period) of Financial Report Entities for such period to the extent that such depreciation, amortization and other non-cash charges or expenses were deducted in computing such Consolidated Net Income; plus

(vi) [reserved]; plus

(vii) to the extent deducted in computing such Consolidated Net Income, the amortization of debt discount for such period; plus

(viii) any expenses or charges (other than depreciation or amortization expense) related to (x) any amendment or waiver of Indebtedness evidenced by this Agreement or

otherwise permitted to be incurred or remain outstanding under this Agreement (including a refinancing thereof), (y) the Cases (including the preparation for and ongoing administration thereof, including any professional fees paid by or on behalf of the Debtors) and (z) the transactions contemplated hereby (including, without limitation, the Roll-Up of Prepetition Last-Out Loans, the Term Loan Facility, entry into the RSA, the establishment and maintenance of the Outstanding LCs and the ABL Refinancing); plus

(ix) [reserved]; plus

(x) [reserved]; plus

(xi) [reserved]; plus

(xii) [reserved]; minus

(xiii) non-cash items and any non-cash gains increasing such Consolidated Net Income for such period, other than the accrual of revenue in the ordinary course of business; minus

(xiv) any net non-cash gains realized by any Financial Report Entities in connection with an Asset Sale, to the extent such gains were included in computing such Consolidated Net Income, in each case, on a consolidated basis and determined in accordance with GAAP.

"Consolidated Net Income" means, for any period, the aggregate of the net income (loss) of the Financial Report Entities for such period, on a consolidated basis (for the avoidance of doubt, excluding the net income (loss) of any Unrestricted Subsidiary of such Person) determined in accordance with GAAP and for the avoidance of doubt including any variable interest entity with financial results that are required by GAAP to be consolidated with Borrower's financial results, and without any reduction in respect of preferred stock dividends; provided that:

(i) all extraordinary gains or losses and all gains (but not losses) realized in connection with any Asset Sale or the disposition of securities or the early extinguishment of Indebtedness, together with any related provision for taxes on any such gain, will be excluded;

(ii) (a) the net income (and loss) of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting will not be included and (b) Consolidated Net Income for such period shall be increased by the amount of any dividend or distribution in respect of Capital Stock paid in cash by any such Person described in clause (a) to any Financial Report Entities;

(iii) the net income (but not loss) of any Restricted Subsidiary will be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that net income is not at the date of determination permitted without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule, or governmental regulation applicable to that Restricted Subsidiary or its stockholders; and

(iv) (x) non-cash items in respect of reclamation liabilities, pension, OPEB and workers' compensation and other employee insurance related liabilities (excluding any active employee medical, dental or related expenses), including any withdrawal liabilities, will be excluded and (y) cash payments (excluding the posting of letters of credit and cash collateral) in respect of reclamation liabilities, pension, OPEB and workers' compensation and other employee insurance related liabilities (excluding any active employee medical, dental or related expenses), including any withdrawal liabilities, will be deducted from Consolidated Net Income (but only to the extent not already reducing Consolidated Net Income in accordance with GAAP).

"Contractual Obligation" means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"Contributing Guarantors" as defined in Section 7.2.

"Conversion/Continuation Date" means the effective date of a continuation or conversion, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

"Conversion/Continuation Notice" means a Conversion/Continuation Notice substantially in the form of Exhibit A-2.

"Cost" means, with respect to any Coal, the lesser of (a) the market value of such Coal and (b) the extraction cost of such Coal plus the cost of processing raw Coal into clean Coal, in each case under this clause (b) based upon the Borrower's accounting practices as in effect on the Closing Date.

"Counterpart Agreement" means a Counterpart Agreement substantially in the form of Exhibit G delivered by a Credit Party pursuant to Section 5.10(a).

"Credit Date" means the date of a Credit Extension.

"Credit Document" means any of this Agreement, the Notes, if any, the Collateral Documents, any fee letter or other document relating to the fees referred to in Section 2.11, and all other documents, certificates, instruments or agreements executed and delivered by a Credit Party for the benefit of any Agent or any Lender in connection herewith (other than Hedge Agreements, Commodities Agreements, Coal Contracts (including any Designated Coal Contracts)).

"Credit Extension" means the making of a Loan.

"Credit Facilities" means, one or more debt facilities, commercial paper facilities, or indentures, in each case, with banks, other institutional lenders, or other investors providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against such receivables) or letters of credit, in each case, as amended, restated, modified, renewed, refunded, replaced in any manner (whether upon or after termination or otherwise) or refinanced (including by means of sales of debt securities) in whole or in part from time to time.

"Credit Party" means Borrower and each Guarantor from time to time party to a Credit Document.

"Critical Vendor Report" means a report, in a form reasonably acceptable to the Financial Advisor (it being agreed that the form previously provided to the Financial Advisor prior to the Closing Date is acceptable), describing in reasonable detail the matter set forth in Exhibit I.

"**Current Assets**" means, collectively, Gross Receivables and Gross Inventory.

"Debtor Relief Laws" means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

"Debtors" as defined in the recitals hereto.

"Default" means a condition or event that constitutes an Event of Default, or after notice or expiration of any grace period set forth in Section 8 or both, would constitute an Event of Default.

"Defaulting Lender" means subject to Section 2.22, any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies Administrative Agent and Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (which conditions precedent, together with the applicable default, if any, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified Borrower or Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lenders' obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with the applicable default, if any, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by Administrative Agent or Borrower, to confirm in writing to Administrative Agent and Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by Administrative Agent and Borrower), or (d) Administrative Agent has received notification that such Lender is, or has a direct or indirect parent company that is (i) insolvent, or is generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors or (ii) the subject of a bankruptcy, insolvency, reorganization, liquidation or similar proceeding or otherwise subject to any proceeding under Debtor Relief Laws, or a receiver, trustee, conservator, intervenor or sequestrator or the like has been appointed for such Lender or its direct or indirect parent company, or such Lender or its direct or indirect parent company has taken any action in furtherance of or indicating its consent

to or acquiescence in any such proceeding or appointment or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or otherwise or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

"Delayed Draw Commitment" means the commitment of a Term Lender to make or otherwise fund a Full Availability Term Loan and "**Delayed Draw Commitments**" means such commitments of all Term Lenders in the aggregate, each of which commitments to make or fund an Interim Term Loan shall be satisfied on the Closing Date, as further contemplated by Section 2.1(a)(ii). The amount of each Term Lender's Delayed Draw Commitment, if any, is set forth on Appendix A-2 or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Delayed Draw Commitments as of the Closing Date is $[150,000,000].

"Designated Coal Contract" means (i) each Existing Designated Coal Contract and (ii) any other Coal Contract entered into from time to time by Borrower or any of its Guarantor Subsidiaries with a Designated Coal Contract Counterparty that has been designated by Borrower and such Designated Coal Contract Counterparty as a "Designated Coal Contract" by notice to Administrative Agent delivered on or prior to the tenth Business Day following the later of (a) the Closing Date, (b) the date that such Coal Contract is entered into, or (c) the date that the Person that is a party to such Coal Contract becomes a Lender or Agent (or an Affiliate of a Lender or Agent).

"Designated Coal Contract Counterparty" means (i) each Existing Designated Coal Contract Counterparty and (ii) any other Person that is a Lender or an Agent or an Affiliate of a Lender or an Agent at the time it entered into a Designated Coal Contract.

"DIP Budget" as defined in Section 3.1(q).

"DIP Collateral" means the "DIP Collateral" as defined in the Orders.

"**DIP Proceeds Withdrawal Request**" means a certificate of a Financial Officer of the Borrower substantially in the form of Exhibit J to this Agreement.

"Disqualified Equity Interests" means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (i) matures or is mandatorily redeemable (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), in whole or in part, (iii) provides for the scheduled payments or dividends in cash, or (iv) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case of the foregoing clauses

(i) - (iv), prior to the date that is 91 days after the Maturity Date at the time of issuance thereof, except, in the case of clauses (i) and (ii), if as a result of a change of control, initial public offering or asset sale, so long as any rights of the holders thereof upon the occurrence of such a change of control or asset sale event are subject to compliance with Section 6.4 or the prior Payment in Full of all Obligations under this Agreement.

"Dollars" and the sign **"$"** mean the lawful money of the United States.

"Domestic Subsidiary" means any Subsidiary organized under the laws of the United States, any State thereof or the District of Columbia.

"Draw" as defined in Section 2.2.

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

"**EEA Member Country**" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Assignee" means (i) any Lender, any Affiliate of any Lender and any Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof) and (ii) any commercial bank, insurance company, investment or mutual fund or other fund or entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and which extends credit, buys or invests in loans, securities or other financial assets in the ordinary course of business; provided, no natural person, Defaulting Lender, Credit Party or Affiliate of a Credit Party shall be an Eligible Assignee.

"Employee Benefit Plan" means any "employee benefit plan" as defined in Section 3(3) of ERISA, other than a Multiemployer Plan, which is sponsored, maintained or contributed to by, or required to be contributed by a Credit Party or, with respect to employee benefit plans for which a Credit Party could reasonably be expected to have any actual or potential liability, any of their respective ERISA Affiliates.

"Environmental and Mining Laws" means any and all applicable federal, state and local laws, ordinances, regulations and common law, or any enforceable administrative or judicial order, consent, decree or judgment, relating to pollution or the protection of the environment, including, without limitation, those relating to, regulating, or imposing liability or standards of conduct concerning (i) the emission, discharge, release, generation, processing, use, treatment, storage, disposal, transport or handling of, or exposure to, Hazardous Materials, (ii) the investigation, remediation or cleanup of any Hazardous Materials, (iii) surface or

underground coal mining, including any related reclamation, or (iv) coal workers' pneumoconiosis disease (black lung).

"Environmental Claim" means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive, by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law or any Governmental Authorization issued thereto; (ii) in connection with any Release or threatened Release of any Hazardous Material or any actual or alleged Hazardous Materials Activity; (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment that could give rise to any liability or obligation under applicable Environmental Law or (iv) in connection with any contractual agreement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Environmental Laws" means, any and all applicable federal, state and local laws, ordinances, regulations, and common law, or any enforceable administrative or judicial order, consent, decree or judgment or Governmental Authorizations relating to (i) pollution or the preservation and protection of the environment, including laws relating to the Release of any Hazardous Materials; (ii) the generation, use, storage, transportation or disposal of, or exposure to, Hazardous Materials; or (iii) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health or welfare (with respect to Hazardous Materials), in any manner applicable to Borrower or any of its Restricted Subsidiaries or any Facility.

"Equity Interests" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

"ERISA Affiliate" means, as applied to any Person: (i) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (ii) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (iii) solely for purposes of Section 412 and 430 of the Internal Revenue Code, any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person is a member. Any former ERISA Affiliate of any Credit Party shall continue to be considered an ERISA Affiliate of such Credit Party within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of such Credit Party solely with respect to liabilities arising after such period for which such Credit Party could reasonably be expected to be liable under the Internal Revenue Code or ERISA.

"ERISA Event" means: (i) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for 30-day notice to the PBGC has been waived by regulation); (ii) the failure of any Pension Plan to meet the minimum funding standard of

Section 412 or Section 430 of the Internal Revenue Code (or Section 302 or 303 of ERISA, in each case whether or not waived) or the failure by a Credit Party or any of its ERISA Affiliates to make by its due date a required installment under Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure of any of Credit Parties or any of their respective ERISA Affiliates to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by any Credit Party or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to a Credit Party or any of its ERISA Affiliates pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which would reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (vi) the imposition of liability on any of the Credit Parties or any of their respective ERISA Affiliates pursuant to Section 4062 or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of any of the Credit Parties or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by any of the Credit Parties or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the occurrence of an act or omission which could reasonably be expected to give rise to the imposition on a Credit Party or any of its ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Section 406, Section 409, Sections 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Employee Benefit Plan; (ix) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan or the assets thereof, or against any of the Credit Parties or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (x) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; (xi) the imposition of a Lien on the assets of any of the Credit Parties or any of their respective ERISA Affiliates pursuant to Section 430(k) of the Internal Revenue Code or pursuant to Section 303(k) of ERISA with respect to any Pension Plan; (xii) a determination that the aggregate benefit liabilities under any Pension Plan exceed the aggregate current value of the assets of such Pension Plan, as of the end of any plan year, on the basis of the actuarial assumptions specified for funding purposes in the most recent actuarial valuation for such Pension Plan at the time of such determination; (xiii) a determination that any Multiemployer Plan is, or is expected to be, in "critical" or "endangered" status under Section 432 of the Internal Revenue Code or Section 305 of ERISA, to the extent such Multiemployer Plan is not in such status as of the date hereof; or (xiv) failure of a Credit Party or any of its ERISA Affiliates to comply with the requirements of Section 515 of ERISA with respect to a Multiemployer Plan.

"Escrow Agent" means GLAS Americas in its capacity as escrow agent under the Escrow Agreement.

"Escrow Agreement" means an escrow agreement, dated as of the Closing Date, substantially in the form of Exhibit M, as it may be amended, restated, supplemented or otherwise modified from time to time.

"**EU Bail-In Legislation Schedule**" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Eurodollar Rate Loan" means a Loan bearing interest at a rate determined by reference to the Adjusted Eurodollar Rate.

"Event of Default" means each of the conditions or events set forth in Section 8.1.

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

"Excluded Assets" means each of the following:

(a) [reserved];

(b) [reserved];

(c) pledges and security interests prohibited or restricted by applicable law (including the requirement to obtain the consent of any Governmental Authority to the extent not obtained);

(d) Margin Stock and interests in any Person other than wholly-owned subsidiaries to the extent not permitted by the terms of such Person's organizational or joint venture documents or could not be pledged without the consent of third parties (provided that any Equity Interests in Foresight GP and Foresight LP owned by a Grantor shall not be excluded);

(e) any assets to the extent a security interest in such assets could reasonably be expected to result in material adverse tax consequences or material adverse regulatory consequences, in each case, as reasonably determined by the Borrower in consultation with the Administrative Agent;

(f) any intent-to-use United States Trademark applications for which an amendment to allege use or statement of use has not been filed under federal law or, if filed, has not been deemed in conformance with federal law;

(g) any lease, license, permit or other agreement, or any property subject to a purchase money security interest, capital lease obligation or similar arrangement to the extent that a grant of a security interest therein would require consent thereunder, or would violate or invalidate such lease, license, permit, or agreement, purchase money arrangement, capital lease or similar arrangement or create a right of termination in favor of any other party thereto (other than a Credit Party), after giving effect to the applicable anti-assignment provisions of the UCC,

the Orders or other applicable law; *provided*, however, that the Collateral shall include and such security interest shall attach at such time as the contractual or legal prohibition shall no longer be applicable and to the extent severable, shall attach immediately to any portion of such lease, license, permit or agreement not subject to the prohibitions specified in this clause (g); *provided*, *further*, unless such term has been rendered ineffective pursuant to the applicable Order, upon the request of the Collateral Agent (acting at the direction of the Requisite Term Lenders) (i) the Credit Parties are using or have used commercially reasonable efforts (in each case, for a period of up to sixty (60) days from the Closing Date) to obtain such consent or waiver as may be necessary to grant such a Lien except in the case of any lease, license, contract, property right or agreement which, when considered in the aggregate with all such other items requiring such consent or waiver, would not be material (*provided* that the obligation of the Borrower and other Credit Parties to use commercially reasonable efforts shall not require the Borrower or any other Credit Party to request any consent or waiver with respect to a restriction on assignment in any agreement which is imposed by any legal requirement or which the Borrower or such other Credit Party reasonably determines would have a material adverse effect on such agreement or on the Borrower's or other Credit Party's relationship with the other party or parties to such agreement; *provided*, *further*, that the use of commercially reasonable efforts shall (x) not require any payment or other consideration (other than reimbursements of costs incurred to review such requests for consent) from the Borrower or other Credit Parties and/or (y) not require the Borrower or other Credit Parties to seek any change to any terms of any lease, license, contract property right or agreement other than the specific consent or waiver and (ii) such lease, license, contract, property right or agreement will cease to be an Excluded Asset and will become subject to the Lien granted under the Collateral Documents, immediately and automatically, at such time as such consent or waiver is obtained or such consequences will no longer result..

(h) any governmental license or state or local franchises, charters and authorizations to the extent a security interest therein is prohibited or restricted by applicable law;

(i) any cash or Cash Equivalents segregated as cash collateral for the Outstanding LCs (the "**Outstanding LC Cash Collateral**") and cash segregated to fund the Carve-Out;

(j) any Equity Interests in Excluded Subsidiaries (except for the Equity Interests in Foresight GP and Foresight LP owned by a Grantor and 100 % of the Equity Interests in any first-tier Foreign Subsidiaries);

(k) any assets where the cost of obtaining a security interest therein exceeds the practical benefit to the Secured Parties afforded thereby as agreed by the Borrower and the Administrative Agent;

(l) [reserved];

(m) (x) cash posted as margin by the Existing Designated Coal Contract Counterparty pursuant to the Existing Designated Coal Contract and (y) cash, cash equivalents and investments deposited in Excluded Accounts (as defined in the applicable Pledge and Security Agreement);

(n) any "building" or "mobile home" (each as defined in Regulation H as promulgated by the Board of Governors under the Flood Program) presently or hereafter located on any land comprising part of any Real Estate Assets located in the United States until the Administrative Agent has requested and received a Flood Certificate in form and substance reasonably satisfactory to the Administrative Agent; and

(o) any assets that require action under the law of any foreign jurisdiction to create or perfect a security interest in such assets under such foreign jurisdiction (other than as set forth in the Specified Pledge Agreement);

provided that the exclusions referred to in clauses (a) through (o) above shall not include any Proceeds of any such assets unless such Proceeds would otherwise be excluded by virtue of being the type of asset described in such clauses (a) through (o). For the avoidance of doubt, Specified Excluded Unencumbered Property (as defined in the Orders) shall constitute "Excluded Assets" only to the extent that clause (g) of the foregoing is applicable to such Specified Excluded Unencumbered Property.

Nothing herein shall be deemed or construed to affect the right of the Existing Designated Coal Contract Counterparty, following a default under the Designated Coal Contract, to offset the obligations owing by a Credit Party to the Existing Designated Coal Contract Counterparty against the receivables arising from the sale of coal owing by the Existing Designated Coal Contract Counterparty to a Credit Party under the Designated Coal Contract, and any amounts so offset shall not be subject to claims by any Secured Party. Notwithstanding anything in this Agreement to the contrary, following the allocation of the voting units of Foresight GP (the "**Foresight GP Voting Units**") owned by a Grantor to Foresight Reserves, LP pursuant to and in accordance with Section 10.4(e)(ii) of that certain Fourth Amended and Restated Limited Liability Company Agreement of Foresight GP LLC (as amended, amended and restated, supplemented or modified from time to time, the "**Foresight LLC Agreement**") (including pursuant to a change of control (deemed or otherwise) pursuant to Section 10.4(c) of the Foresight LLC Agreement or a foreclosure to which the Original Member (as defined in the Foresight LLC Agreement) has not consented under Section 10.4(d) of the Foresight LLC Agreement), the liens on such Foresight GP Voting Units granted pursuant to this Agreement shall be immediately and automatically released without any further action on the part of the parties hereto to the extent set forth in the Foresight LLC Agreement; provided, the Borrower shall promptly notify the Collateral Agent thereof in writing of such transfer and the release of such liens.

"Excluded Damages" as defined in Section 10.3.

"Excluded Hedge Obligation" means, with respect to any Guarantor, any guarantee of any Swap Obligations under a Secured Hedge Agreement if, and only to the extent that and for so long as, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation under a Secured Hedge Agreement (or any guarantee thereof) or under Designated Coal Contract (or any guarantee thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an

"eligible contract participant" as defined in the Commodity Exchange Act at the time the guarantee of such Guarantor or the grant of such security interest would otherwise have become effective with respect to such Swap Obligation under a Secured Hedge Agreement or a Designated Coal Contract but for such Guarantor's failure to constitute an "eligible contract participant". If a Swap Obligation under a Secured Hedge Agreement or a Designated Coal Contract arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation under a Secured Hedge Agreement or a Designated Coal Contract that is attributable to swaps for which such guarantee or security interest is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Future Trading Commission (or the application or official interpretation of any thereof).

"Excluded Subsidiary" means (i) a Foreign Subsidiary, (ii) any direct or indirect Domestic Subsidiary of a Foreign Subsidiary and (iii) Unrestricted Subsidiaries, in each case, other than any Subsidiary of Holdings that is a Debtor.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (i) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (a) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (b) that are Other Connection Taxes, (ii) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (a) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.23) or (b) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.20, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (iii) Taxes attributable to such Recipient's failure to comply with Section 2.20(d) and (iv) any U.S. federal withholding Taxes imposed under FATCA.

"Existing Designated Coal Contract" means, each of (a) General Terms & Conditions for DES Sales and Purchase of Coal, dated May 24, 2013, including the Margin Annex thereto and all confirmations thereunder, between American Coal and the Existing Designated Coal Contract Counterparty, as amended by the Letter of Amendment, dated December 5, 2013 and as the same may be further amended, restated, supplemented, replaced or otherwise modified from time to time and (b) Master Coal Purchase and Sale Agreement, dated as of June 13, 2015 ("Original MEC PSA"), by and among Javelin Global Commodities (UK) LTD, The American Coal Sales Company ("ACSC") and Murray Energy Corporation ("MEC"), as modified by the Assignment and Assumption Agreement, dated as of September 15, 2015, by and between ACSC and Murray Global Commodities, Inc. ("MGC"), pursuant to which ACSC assigned to MGC all of ACSC's rights, title and interest in and to the Original MEC PSA and delegated to MGC all of its obligations thereunder, as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time.

"**Existing Designated Coal Contract Counterparty**" means, each of (a) J. Aron & Company and its successors, (b) Javelin Global Commodities Holdings LLP and its wholly-owned subsidiaries (including, without limitation, Javelin Global Commodities (UK) Ltd.) and their successors and (c) Uniper Global Commodities UK Limited and its wholly-owned subsidiaries and their successors.

"Exposure" means, with respect to any Lender, as of any date of determination, the sum of (a) the Term Loan Exposure of such Lender and (b) the Roll-Up Loan Exposure of such Lender.

"Facility" means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by Borrower or any of its Restricted Subsidiaries.

"Fair Market Value" means the value (which, for the avoidance of doubt, will take into account any liabilities associated with related assets) that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by Borrower. Any determination of Fair Market Value in respect of a transaction or series of related transactions involving aggregate consideration in excess of $35.0 million shall be evidenced by a resolution of the Board of Directors of Borrower and shall be approved by a majority of the disinterested members of the Board of Directors of Borrower. Any determination of Fair Market Value in respect of a transaction or series of related transactions involving aggregate consideration in excess of $100.0 million shall also be accompanied by an opinion supporting such valuation from a financial point of view issued by an accounting, appraisal or investment banking firm of regional standing.

"Fair Share" as defined in Section 7.2.

"Fair Share Contribution Amount" as defined in Section 7.2.

"FATCA" means Sections 1471 through 1474 of the Internal Revenue Code as of the date of this Agreement (or any successor or future version thereof that is substantially comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

"Federal Funds Effective Rate" means for any day, the rate *per annum* (expressed as a decimal, rounded upwards, if necessary, to the next higher 1/100 of 1%) calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided, (i) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate charged to Administrative Agent, in its capacity as a Lender, on such day on such transactions as reasonably determined by Administrative Agent. If the Federal Funds Effective

Rate is ever less than 0%, then for purposes of this Agreement the Federal Funds Effective Rate shall be deemed to be 0%.

"Final Order" means, collectively, the order of the Bankruptcy Court entered in the Cases after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court, which order shall be in the form of the Interim Order (with only such modifications thereto as are necessary to convert the Interim Order to a final order and such other modifications as are satisfactory to the Requisite Term Lenders and Requisite Roll-Up Lenders), and from which no appeal or motion to reconsider has been timely filed, or if timely filed, such appeal or motion to reconsider has been dismissed or denied with no further appeal and the time for filing such appeal has passed (unless the Requisite Term Lenders and Requisite Roll-Up Lenders waive such requirement), together with all extensions, modifications, and amendments thereto, in form and substance satisfactory to the Requisite Term Lenders and Requisite Roll-Up Lenders.

"Final Order Entry Date" means the date on which the Final Order is entered by the Bankruptcy Court.

"Financial Advisor" means Houlihan Lokey, Inc., in its capacity as financial advisor to the Backstop Lenders.

"Financial Officer" means the chief financial officer, senior vice president of finance or treasurer of Holdings or Borrower (or officer with similar responsibilities).

"Financial Officer Certification" means, with respect to the financial statements for which such certification is required, the certification of a Financial Officer that such financial statements fairly present, in all material respects, the financial condition of Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated.

"Financial Report Entities" means the Borrower and its Restricted Subsidiaries (other than (a) Murray Metallurgical Coal Properties, LLC, (b) Murray Metallurgical Coal Properties II, LLC and (c) Murray South America, Inc. and its Subsidiaries).

"First Priority" means, with respect to any Lien purported to be created in any Collateral pursuant to the Orders or any Collateral Document, that such Lien has the priority and ranking as set forth in the Orders.

"Fiscal Month" means a fiscal month of any Fiscal Year.

"Fiscal Quarter" means a fiscal quarter of any Fiscal Year.

"Fiscal Year" means the fiscal year of Borrower and its Subsidiaries ending on December 31 of each calendar year.

"**Fixed Asset Collateral**" means all right, title and interest of any Grantor in and to the Collateral and any property whether now owned or hereafter created, acquired or arising and wherever located, other than the ABL Collateral. The term "Fixed Asset Collateral" shall

include the following types of property:

(i) Real Estate and fixtures;

(ii) Equipment;

(iii) Term Debt Pledged Collateral;

(iv) Intellectual Property;

(v) Term Loan Proceeds and the Segregated Account (including all cash, cash equivalents, Money, checks, Instruments, funds, ACH transfers, wired funds and other funds and property, in each case, to the extent held in or on deposit therein;

(vi) Letter of Credit Rights arising out of, or related to, or derivative of any of the property or interests in property described in subsections (i), (ii), (iii) and (iv) of the definition of "Fixed Asset Collateral";

(vii) letters of credit transferred to any Term Debt Claimholders, or with respect to which the Proceeds thereof have been assigned to any Term Debt Claimholder, or on which any Term Debt Claimholder is named as beneficiary, in each case arising out of, related to, or derivative of the property or interests in property described in subsections (i), (ii), (iii) and (iv) of the definition of "Fixed Asset Collateral";

(viii) Supporting Obligations and Commercial Tort Claims, in each case, to the extent arising out of, or related to, or derivative of, the property or interests described in subsections (i), (ii), (iii) and (iv) of the definition of "Fixed Asset Collateral";

(ix) contracts, contract rights and other General Intangibles, Documents, Chattel Paper, and Instruments (including promissory notes), in each case, to the extent arising out of, or related to, or derivative of the property or interests in property described in subsections (i), (ii), (iii) and (iv) of the definition of "Fixed Asset Collateral";

(x) books and Records relating to the items referred to in the preceding clauses (i) through (viii) (including all books, databases, data processing software, customer lists, engineer drawings, and Records, whether tangible or electronic, to the extent containing any information relating to any of the items referred to in the preceding clauses (i) through (viii));

(xi) all collateral security and guarantees with respect to any of the foregoing and all Proceeds, products, substitutions, replacements, accessions, cash, Money, insurance proceeds, Instruments, Securities, Security Entitlements and Financial Assets received as Proceeds of any of the foregoing, but excluding identifiable Proceeds of ABL Collateral; and

(xii) property of the type set forth in the definition of "ABL Collateral" of a Grantor that is not a Roll-Up Guarantor.

Notwithstanding anything to the contrary herein, the term "Fixed Asset Collateral" shall exclude "Excluded Assets". All capitalized terms used in this definition and not defined elsewhere in this

Agreement have the meanings assigned to them in the UCC.

"**Fixed Asset Collateral Proceeds Account**" means the account specified by the Borrower to the Administrative Agent at Huntington National Bank, with the last four digits of 8945.

"**Fixed Charges**" means, with respect to Borrower or any of its Restricted Subsidiaries for any period, the sum, without duplication, of:

(i) the consolidated interest expense of Borrower and its Restricted Subsidiaries for such period, whether paid or accrued, including, without limitation, amortization of debt issuance costs and original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers' acceptance financings, and net of the effect of all payments made or received pursuant to Interest Rate Agreements; plus

(ii) the consolidated interest expense of Borrower and its Restricted Subsidiaries that was capitalized during such period.

"Flood Certificate" means a "Standard Flood Hazard Determination Form" of the Federal Emergency Management Agency and any successor Governmental Authority performing a similar function.

"Flood Hazard Property" means any Real Estate Asset that constitutes Collateral in favor of Collateral Agent, for the benefit of Secured Parties, with buildings or mobile homes located in a Flood Zone.

"Flood Program" means the National Flood Insurance Program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994 and the Flood Insurance Reform Act of 2004, in each case as amended from time to time, and any successor statutes.

"Flood Zone" means areas having special flood hazards as described in the National Flood Insurance Act of 1968, as amended from time to time, and any successor statute.

"Foreign Subsidiary" means (i) any Subsidiary that is not a Domestic Subsidiary and (ii) any direct or indirect Domestic Subsidiary substantially all the assets of which are Equity Interests in Foreign Subsidiaries and, if applicable, Indebtedness of such Foreign Subsidiaries.

"Foresight GP" means Foresight Energy GP LLC, a Delaware limited liability company.

"Foresight LP" means Foresight Energy LP, a Delaware limited partnership.

"Four-Week Test Period" means, at any time, the four-week period ended on the immediately preceding Friday; provided that only periods ending on the fourth Friday

following the Closing Date and each fourth Friday thereafter shall constitute Four-Week Test Periods.

"**Full Availability Date**" means the first Credit Date (as set forth in a Funding Notice for Full Availability Term Loans) on which the conditions precedent set forth in Sections 3.2 and 3.3 have been satisfied or waived, which such Credit Date shall in no event be later than one Business Day after the Final Order Entry Date.

"**Full Availability Term Loans**" means a Loan made pursuant to Section 2.1(a)(ii).

"Funding Guarantors" as defined in Section 7.2.

"Funding Notice" means a notice substantially in the form of Exhibit A-1.

"GAAP" means, subject to the limitations on the application thereof set forth in Section 1.2, United States generally accepted accounting principles in effect as of the date of determination thereof.

"GLAS Americas" as defined in the recitals hereto.

"GLAS USA" as defined in the recitals hereto.

"Governmental Acts" means any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority.

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

"Governmental Authorization" means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

"**Grantor**" has the meaning ascribed to such term in the applicable Pledge and Security Agreement.

"**Gross Inventory**" means, as of any date of determination, the Cost of the Inventory of the Credit Parties at such time.

"**Gross Receivables**" means, as of any date of determination, the then-unpaid amount of the true and correct Receivables of the Credit Parties at such time.

"Guaranteed Obligations" as defined in Section 7.1(b).

"Guaranteed Roll-Up Obligations" as defined in Section 7.1(a).

"Guaranteed Term Obligations" as defined in Section 7.1(b).

"Guarantor" means (a) with respect to the Guaranteed Roll-Up Obligations, the Roll-Up Guarantors and (b) with respect to the Guaranteed Term Obligations, the Term Guarantors.

"Guarantor Subsidiary" means each Guarantor other than Holdings.

"Guaranty" means the guaranty of each Guarantor set forth in Section 7.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic materials, substances or wastes or other contaminants or pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, and all other materials, substances or wastes of any nature prohibited, limited or regulated by any Governmental Authority or under any Environmental Law or any Environmental and Mining Laws due to its toxic or deleterious properties or characteristics (including, without limitation, any chemical, material or substance exposure to which is prohibited, limited or regulated by Environmental and Mining Laws).

"Hazardous Materials Activity" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

"Hedge Agreement" means an Interest Rate Agreement entered into with a Lender Counterparty that has been designated by Borrower and such Lender Counterparty as a "Hedge Agreement" by notice to Administrative Agent delivered on or prior to the tenth Business Day following the later of (a) the Closing Date, (b) the date that such Hedge Agreement is entered into, or (c) the date that the Person party to such Hedge Agreement becomes a Lender Counterparty.

"Hedging Obligations" means, with respect to any specified Person, the obligations of such Person under: (i) interest rate swap agreements (whether from fixed to floating or from floating to fixed), interest rate cap agreements, and interest rate collar agreements; (ii) other agreements or arrangements designed to manage interest rates or interest rate risk; and (3) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange rates or commodity prices. For the avoidance of doubt, Hedging Obligations do not include obligations under coal sales contracts requiring the delivery of coal that is priced pursuant to an established index created for the purposes of establishing a market price for the underlying commodity.

"Highest Lawful Rate" means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws now allow.

"Historical Financial Statements" means as of the Closing Date, (i) the audited financial statements of Borrower and its Subsidiaries, for the immediately preceding three Fiscal Years, consisting of balance sheets and the related consolidated statements of income, stockholders' equity and cash flows for such Fiscal Years, (ii) the unaudited financial statements of Borrower and its Subsidiaries for each of the first three Fiscal Quarters ended after the date of the most recent audited financial statements and at least 45 days prior to the Closing Date, consisting of a balance sheet and the related consolidated statements of income, stockholders' equity and cash flows for the three-, six- or nine-month period, as applicable, ending on such date, in each case, delivered under the Prepetition Superpriority Credit Agreement.

"Holdings" as defined in the preamble hereto.

"Increased Amount" as defined in Section 6.2

"Increased-Cost Lender" as defined in Section 2.23.

"Indebtedness" means, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables), whether or not contingent:

(i) in respect of borrowed money;

(ii) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof);

(iii) in respect of banker's acceptances;

(iv) representing Capital Lease Obligations;

(v) representing the balance deferred and unpaid of the purchase price of any property or services due more than twelve months after such property is acquired or such services are completed, other than trade payables incurred in the ordinary course of business; or

(vi) representing any Hedging Obligations.

If and to the extent any of the preceding items (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet of the specified Person prepared in accordance with GAAP. In addition, the term "Indebtedness" includes all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) (provided that the amount of any such Indebtedness shall not exceed the lesser of the amount of such Indebtedness and fair market value of the assets subject to such Lien) and, to the extent not otherwise included, the guarantee by the specified Person of any Indebtedness of any other Person. Indebtedness shall be calculated without giving effect to the effects of Statement of Financial Accounting Standards No. 133 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under the indenture as a result of accounting for any embedded derivatives created by the terms of such Indebtedness. In no event shall obligations under any Designated Coal Contract or any other Coal Contract be deemed "Indebtedness" or, except for the purposes of the definition of "Excluded Hedge Obligation", a Hedging Obligation for any

purpose under this Agreement.

"Indemnified Liabilities" means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims (including Environmental Claims), actions, judgments, suits, costs (including the reasonable and documented costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Hazardous Materials Activity), expenses and disbursements of any kind or nature whatsoever (including the reasonable and documented out-of-pocket fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding or hearing commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any reasonable and documented out of pocket fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect, special or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (i) this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby (including the Lenders' agreement to make Credit Extensions, the syndication of the credit facilities provided for herein or the use or intended use of the proceeds thereof, any amendments, waivers or consents with respect to any provision of this Agreement or any of the other Credit Documents, or any enforcement of any of the Credit Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty)); (ii) [reserved]; or (iii) any Environmental Claim or any Hazardous Materials Activity relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, or practice of Holdings or any of its Restricted Subsidiaries; provided that "Indemnified Liabilities" shall not include any Taxes, which are the subject of Section 2.20.

"Indemnitee" as defined in Section 10.3(a).

"Initial Commitment" means the commitment of a Term Lender to make or otherwise fund an Interim Term Loan and "**Initial Commitments**" means such commitments of all Term Lenders in the aggregate, each of which commitments to make or fund an Interim Term Loan shall be satisfied on the Closing Date, as further contemplated by Section 2.1(a)(i). The amount of each Term Lender's Initial Commitment, if any, is set forth on Appendix A-1 or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Initial Commitments as of the Closing Date is $[200,000,000].

"Initial Roll-Up Lender" means GACP Finance Co., LLC.

"Insider Designated Coal Contract Counterparty" as defined in Section 2.16(h).

"Intellectual Property" as defined in the applicable Pledge and Security Agreement.

"Intellectual Property Security Agreements" has the meaning assigned to that term in the applicable Pledge and Security Agreement.

"Interest Payment Date" means with respect to (i) any Loan that is a Base Rate Loan, the last Business Day of each Fiscal Month, commencing on the first such date to occur after the Closing Date and the final maturity date of such Loan; and (ii) any Loan that is a Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan.

"Interest Period" means, in connection with a Eurodollar Rate Loan, an interest period of one month (i) initially, commencing on the Credit Date or Conversion/Continuation Date thereof, as the case may be; and (ii) thereafter, commencing on the day on which the immediately preceding Interest Period expires; provided, (a) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately preceding Business Day; (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (c) of this definition, end on the last Business Day of a calendar month; (c) no Interest Period shall extend beyond the Maturity Date.

"Interest Rate Agreement" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is for the purpose of hedging the interest rate exposure associated with Borrower's and its Subsidiaries' operations and not for speculative purposes.

"Interest Rate Determination Date" means, with respect to any Interest Period, the date that is two Business Days prior to the first day of such Interest Period.

"Interim Order" means the order of the Bankruptcy Court entered in the Cases after an interim hearing (assuming satisfaction of the standard prescribed in Bankruptcy Rule 4001 and other applicable law) substantially in the form of Exhibit C hereto or otherwise in form and substance satisfactory to the Requisite Term Lenders and Requisite Roll-Up Lenders, which, among other matters but not by way of limitation, authorizes, on an interim basis, the Borrower and Guarantors to execute and perform under the terms of this Agreement and the other Credit Documents.

"Interim Order Entry Date" means the date on which the Interim Order is entered by the Bankruptcy Court and the Administrative Agent shall have received a certified copy thereof.

"Interim Term Availability Amount" means $[200,000,000].

"Interim Term Loans" means a Loan made pursuant to Section 2.1(a)(i).

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended to the date hereof and from time to time hereafter, and any successor statute (in each case, unless otherwise indicated).

"Inventory" means all extracted Coal owned by any Credit Party.

"**Inventory Appraisal**" shall mean an Inventory appraisal conducted by an independent appraisal firm reasonably satisfactory to the Roll-Up Lenders and delivered pursuant to Section 5.24 hereof (it being understood and agreed that Hilco and other nationally recognized appraisal firms are reasonably satisfactory to the Roll-Up Lenders).

"Inventory Appraisal Trigger Event" shall mean the earliest to occur of (i) an Event of Default pursuant to 8.1(a) (with respect to the Roll-Up Loans) and 8.1(c) (respect to Section 6.7(d)), (ii) the date that is six (6) months following the Closing Date or (iii) the filing with the Bankruptcy Court of a Reorganization Plan that is not an Acceptable Roll-Up Plan.

"Investment" means (i) any direct or indirect purchase or other acquisition by Borrower or any of its Restricted Subsidiaries of, or of a beneficial interest in, any of the Equity Interests or Securities of any other Person; (ii) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contributions by Holdings or any of its Restricted Subsidiaries to any other Person and (iii) any purchase or other acquisition (other than purchases or other acquisitions of inventory, materials and equipment in the ordinary course of business and capital expenditures), of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. The amount of any Investment of the type described in clauses (i), (ii) and (iii) shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment. Except as otherwise provided in the Agreement, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value and net of any dividends, distributions, repayments or redemptions received in respect of such Investment.

"Joint Venture" means a joint venture, partnership or other similar arrangement with a third party non-Affiliate, whether in corporate, partnership or other legal form.

"Leasehold Property" means any interest of any Credit Party as lessee or licensee in, to and under leases or licenses of land, improvements and/or fixtures, other than any such leasehold interest designated from time to time by Administrative Agent or Collateral Agent (in each case acting on the instructions of Requisite Lenders (or such other Lenders as may be required to give instructions to the Administrative Agent under Section 10.5)) as not being required to be included in the Collateral.

"Lender" each Term Lender or Roll-Up Lender.

"Lender Counterparty" means each Lender, each Agent and each of their respective Affiliates counterparty to a Hedge Agreement (including any Person who is an Agent or a Lender (and any Affiliate thereof) as of the Closing Date but subsequently, whether before or after entering into a Hedge Agreement, ceases to be an Agent or a Lender, as the case may be); provided, at the time of entering into a Hedge Agreement, no Lender Counterparty shall be a Defaulting Lender.

"Lien" means any lien, mortgage, pledge, collateral assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease or license in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing.

"**Liquidity**" means, the aggregate amount of cash and Cash Equivalents held in accounts on the consolidated balance sheet of Borrower and its Restricted Subsidiaries that is "unrestricted" in accordance with GAAP (including, for the avoidance of doubt, any cash or Cash Equivalents held in the Segregated Account).

"LLC Division" means the statutory division of any limited liability company into two or more limited liability companies pursuant to Section 18.217 of the Delaware Limited Liability Company Act or a comparable provision of a different jurisdiction's laws, as applicable.

"**Loan**" or "**Loans**" means, individually or collectively as the context requires, a Term Loan and the Roll-Up Loans.

"Margin Stock" as defined in Regulation U.

"Material Adverse Effect" means a material adverse effect on (i) the business, operations, properties, assets or financial condition of the Restricted Group taken as a whole (other than by virtue of the commencement of the Cases, any matter disclosed in Schedule 4.11 and in each case, the events and circumstances giving rise thereto (including any payment defaults prior to the Petition Date relating to Indebtedness or other obligations)); (ii) the ability of the Credit Parties, taken as a whole, to fully and timely perform their Obligations (other than by virtue of the commencement of the Cases, any matter disclosed in Schedule 4.11 and in each case, the events and circumstances giving rise thereto (including any payment defaults prior to the Petition Date relating to Indebtedness or other obligations)); (iii) the legality, validity, binding effect or enforceability against a Credit Party of a Credit Document to which it is a party; or (iv) the rights, remedies and benefits available to, or conferred upon, any Agent and any Lender or any Secured Party under any Credit Document.

"**Material Lease**" means any lease or license demising to any Credit Party any Material Real Estate Asset that constitutes a Leasehold Property.

"**Material Real Estate Asset**" means (a) any Real Estate Asset with a Fair Market Value in excess of $1,000,000, which determination shall include the Fair Market Value of any improvements located on such owned or leased Real Estate Asset; (b) all of the owned or leased Real Estate Assets identified on Schedule 3; and (c) in the case of any Real Estate Asset with coal reserves, any owned or leased Real Estate Asset which (i) contains more than 7,500,000 recoverable tons of coal, and (ii) is within Borrower's five-year mine plan.

"Maturity Date" means the first to occur of: (a) the date that is nine (9) months following the Petition Date (the "**Stated Maturity Date**"), (b) the Plan Effective Date, (c) the consummation of a sale or other disposition of all or substantially all assets of the Debtors under section 363 of the Bankruptcy Code and (d) the date on which Obligations hereunder shall be

accelerated in accordance with the provisions of this Agreement.

"Mining Financial Assurances" means performance bonds for reclamation or otherwise, surety bonds or escrow agreements and any payment or prepayment made with respect to, or certificates of deposit or other sums or assets required to be posted by Borrower under Mining Laws for reclamation or otherwise.

"Mining Laws" means any and all current or future foreign or domestic, federal, state or local statutes, ordinances, orders, rules, regulations, judgments, Governmental Authorizations, or any other requirements of Governmental Authorities relating to surface or subsurface mining operations and activities, including, but not limited to, the Federal Coal Leasing Amendments Act; the Surface Mining Control and Reclamation Act; all other applicable land reclamation and use statutes and regulations; the Federal Mine Safety Act of 1977; the Black Lung Act; and the Coal Act; each as amended, and any comparable state and local laws or regulations.

"Mission Guarantors" means each of Murray Metallurgical Coal Properties, LLC and Murray Metallurgical Coal Properties II, LLC.

"Monthly Mine-Level Financial Reports" means financial reports with respect to Borrower and its Subsidiaries, substantially in the form that has been previously provided to the Financial Advisor or in the form of Exhibit K-1 (and, for the avoidance of doubt, to include information with respect to the Mission Guarantors and their Subsidiaries) for any Fiscal Month, that set forth mine-level operational financial information and operating statistics, delivered in accordance with Section 5.1(a)(y).

"Monthly Consolidated Financial Reports" means financial reports with respect to Borrower and its Subsidiaries, substantially in the form of Exhibit K-2 hereto (and, for the avoidance of doubt, to include information with respect to the Mission Guarantors and their Subsidiaries) for any Fiscal Month, that set forth consolidated information and operating statistics, delivered in accordance with Section 5.1(a)(x).

"Moody's" means Moody's Investors Service, Inc.

"**Mortgage**" means a mortgage, deed to secure debt, deed of trust or similar instrument in form and substance reasonably satisfactory to Borrower and Collateral Agent.

"Multiemployer Plan" means any "multiemployer plan" as defined in Section 4001(a)(3) of ERISA to which a Credit Party or any of its ERISA Affiliates contributes or is required to contribute or could reasonably be expected to have any actual or potential liability.

"Narrative Report" means, with respect to the financial statements for which such narrative report is required, a management's summary describing the operations of Borrower and its Restricted Subsidiaries for the applicable Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such period to which such financial statements relate.

"Net Asset Sale Proceeds" means, with respect to any Asset Sale, an amount equal to: (i) Cash payments (including any Cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) received by Holdings or any of its Restricted Subsidiaries from such Asset Sale, minus (ii) any direct costs, fees and expenses relating to such Asset Sale, including (a) Taxes paid or payable by the seller as a result of any gain recognized in connection with such Asset Sale, (b) all reasonable fees, legal fees, brokerage fees, commissions, costs, relocation expenses and other expenses in connection with such Asset Sale, (c) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than Prepetition Debt) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale and (d) cash held in escrow from the sale price and any reasonable reserve taken in connection with such Asset Sale, including for any purchase price adjustments, or any indemnification payments (fixed or contingent) attributable to seller's indemnities and representations and warranties to purchaser in respect of such Asset Sale undertaken by Holdings or any of its Restricted Subsidiaries in connection with such Asset Sale; provided that upon release of any such reserve, the amount released shall be considered Net Asset Sale Proceeds.

"Net Insurance/Condemnation Proceeds" means an amount equal to: (i) any Cash payments or proceeds received by Holdings or any of its Restricted Subsidiaries (a) under any property or casualty insurance policy in respect of a covered loss thereunder or (b) as a result of the taking of any assets of Holdings or any of its Restricted Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (ii) (a) any actual and reasonable costs incurred by Holdings or any of its Restricted Subsidiaries in connection with the adjustment or settlement of any claims of Holdings or such Restricted Subsidiary in respect thereof, (b) any bona fide direct costs, fees and expenses incurred in connection with any sale of such assets as referred to in clause (i)(b) of this definition, including Taxes payable as a result of any gain recognized or otherwise in connection therewith and (c) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than Prepetition Debt) that is secured by a Lien on the assets subject to the relevant event described in clause (i)(a) or (b) above that is required that to be repaid as a result of such event.

"Net Mark-to-Market Exposure" means, in respect of any one or more Hedge Agreements, Commodities Agreements or other Hedging Obligations, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements, Commodities Agreements or other Hedging Obligations, (a) for any date on or after the date such Hedge Agreements, Commodities Agreements or other Hedging Obligations have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark to market value(s) for such Hedge Agreements, Commodities Agreements or other Hedging Obligations, as determined in accordance with the terms thereof and in accordance with customary methods for calculating mark-to-market values under similar arrangements by the Lender Counterparty or Commodities Hedge Provider (or the Borrower, if no Lender Counterparty or Commodities Hedge Provider is party to such Hedge Agreements, Commodities Agreements or other Hedging Obligations).

"Non-Public Information" means material non-public information (within the meaning of United States federal, state or other applicable securities laws) with respect to Borrower or its Subsidiaries or their respective Securities.

"Non-Specified Guarantor" means any Subsidiary Guarantor hereunder that is not a Specified Guarantor.

"Note" means a Term Loan Note and/or a Roll-Up Loan Note, as the context may require.

"Notice" means a Funding Notice or a Conversion/Continuation Notice.

"Obligations" means (i) all obligations of every nature of each Credit Party, including obligations from time to time owed to any Agent (including any former Agent), Lenders or any of them and Lender Counterparties, under any Credit Document (including Schedule 5.16) or Hedge Agreement, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such Credit Party, would have accrued on any Obligation, whether or not a claim is allowed against such Credit Party for such interest in the related bankruptcy proceeding), payments for early termination of Hedge Agreements, fees, expenses, indemnification or otherwise, (ii) all Secured Commodities Hedge Obligations and (iii) all Secured Designated Coal Contract Obligations; provided that Obligations shall not include any obligations with respect to any Commodities Agreement or Interest Rate Agreement that constitute secured obligations under the Prepetition Revolving Credit Agreement; provided, further, that Obligations of any Guarantor shall not include any Excluded Hedge Obligations of such Guarantor.

"Obligee Guarantor" as defined in Section 7.7.

"OPEB" means post-employment benefits other than pension benefits, including, as applicable, medical, dental, vision, life and accidental death and dismemberment.

"Operative Approved Cash Flow Forecast" means, with respect to any Reporting Period, Two-Week Test Period or Four Week Test Period, the Approved Cash Flow Forecast most recently delivered that contains projections for each week included in such Reporting Period, Two-Week Test Period or Four Week Test Period.

"Orders" shall mean, collectively, the Interim Order and the Final Order.

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

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

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Credit Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.23).

"Outstanding LC Cash Collateral" has the meaning assigned to such term in "Excluded Assets."

"Outstanding LCs" has the meaning assigned to such term in the Orders.

"Participant Register" as defined in Section 10.6(g)(i).

"PATRIOT Act" as defined in Section 3.1(p).

"**Payment in Full**" or "**Paid in Full**" means, with respect to the Obligations, (i) termination of the Commitments of all of the Lenders and (ii) payment in full in cash of all Obligations under the Credit Documents (other than contingent indemnification obligations and other obligations not then payable which expressly survive termination and as to which no claim has been asserted) or (iii) in the case of any Designated Coal Contract, satisfaction of the Obligations thereunder in a manner acceptable to the applicable Secured Party.

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

"Pension Plan" means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA and which a Credit Party or any of its ERISA Affiliates sponsors, maintains or is required to contribute to or could reasonably be expected to have any actual or potential liability to.

"Permitted Business" means any business that is the same as, or reasonably related, ancillary or complementary to, any of the businesses in which Borrower and its Restricted Subsidiaries are engaged on the Closing Date.

"Permitted Liens" means each of the Liens permitted pursuant to Section 6.2.

"Permitted Payments to Holdings" means, without duplication as to amounts:

(i) payments to Holdings to permit payment of reasonable accounting, legal and administrative expenses of Holdings when due, in an aggregate amount not to exceed

$100,000 in any Fiscal Year and in accordance with the Operative Approved Cash Flow Forecast (subject to Permitted Variances); less the amount of Investments made in any such Fiscal Year pursuant to Section 6.6(d) in reliance on this clause (i);

(ii) for so long as Borrower is a member of a group filing a consolidated or combined tax return with Holdings, payments to Holdings in respect of an allocable portion of the tax liabilities of such group that is attributable to Borrower and its Subsidiaries ("**Tax Payments**"). The Tax Payments shall not exceed the lesser of (i) the amount of the relevant tax (including any penalties and interest) that Borrower would owe if Borrower were filing a separate tax return (or a separate consolidated or combined return with its Subsidiaries that are members of the consolidated or combined group), taking into account any carryovers and carrybacks of tax attributes (such as net operating losses) of Borrower and such Subsidiaries from other taxable years and (ii) the net amount of the relevant tax that Holdings actually owes to the appropriate taxing authority; provided that any Tax Payments received from Borrower shall be paid over to the appropriate taxing authority within 30 days of Holdings' receipt of such Tax Payments or refunded to Borrower;

(iii) customary indemnification obligations of Holdings, directors' fees and expense reimbursements, in each case, owing to directors, officers, employees or other Persons under its charter or by-laws in effect prior to the Petition Date or pursuant to written agreements entered into prior to the Closing Date with any such Person to the extent relating to Borrower and its Subsidiaries; and

(iv) obligations of Holdings in respect of director and officer insurance (including premiums therefor) to the extent relating to Borrower and its Subsidiaries.

"**Permitted Refinancing Indebtedness**" means any Indebtedness of Borrower or any of Borrower's Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge other Indebtedness of Borrower or any of Borrower's Restricted Subsidiaries (other than intercompany Indebtedness); provided that:

(i) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness renewed, refunded, refinanced, replaced, defeased or discharged (plus all accrued interest on the Indebtedness and the amount of all fees and expenses, including penalties or premiums, incurred in connection therewith);

(ii) such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and has a weighted average life to maturity that is (a) equal to or greater than the remaining weighted average life to maturity of, the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged or (b) more than 90 days after the Maturity Date;

(iii) if the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is subordinated in right of payment to the Obligations, such Permitted Refinancing Indebtedness is subordinated in right of payment to the Obligations on terms at least as favorable

to the Lenders as those contained in the documentation governing the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged;

(iv) such Permitted Refinancing Indebtedness is incurred either by Borrower or by the Restricted Subsidiary of Borrower that was the obligor on the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged and is guaranteed only by Persons who were obligors on the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged;

(v) [reserved]; and

(vi) if the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is secured by a Lien on the Collateral such Permitted Refinancing Indebtedness may be unsecured or secured by a Lien on the same collateral as such Indebtedness (pursuant to substantially similar collateral documentation), (a) in the case of any such Indebtedness being so refinanced that is secured by a Lien on the Collateral that ranks pari passu with the Lien securing the Obligations, that is pari passu with or junior to the Lien securing the Obligations and (b) in the case of any such Indebtedness being so refinanced that is secured by a Lien ranking junior to the lien securing the Collateral, that is junior to the Lien securing the Obligations.

"Person" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

"Petition Date" as defined in the recitals hereto.

"**Plan Effective Date**" means the date of the substantial consummation (as defined in section 1101(2) of the Bankruptcy Code, which for purposes hereof shall be no later than the effective date) of one or more plans of reorganization confirmed pursuant to a final order entered by the Bankruptcy Court.

"Platform" as defined in Section 5.1(o).

"Pledge and Security Agreement" means the Pledge and Security Agreement executed by Borrower, each Guarantor and the Collateral Agent, dated as of the Closing Date, substantially in the form of Exhibit H-1 as it may be amended, restated, supplemented or otherwise modified from time to time.

"Prepetition" means the time period immediately prior to the filing of the applicable Case.

"Prepetition ABL Lenders" as defined in the recitals hereto.

"Prepetition Collateral Trust Agreements" means (i) the Second Amended and Restated Collateral Trust Agreement dated as of June 29, 2018 by and among Borrower, the guarantors party thereto, the Prepetition Collateral Trustee, and the additional parties thereto

from time to time and (ii) the Specified Collateral Trust Agreement dated as of June 29, 2018 by and among Borrower, the guarantors party thereto, the Prepetition Collateral Trustee, and the additional parties thereto from time to time, in each case, as the same may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Prepetition Collateral Trustee" means U.S. Bank National Association in its capacity as collateral trustee and its successors and assigns pursuant to the Prepetition Collateral Trust Agreements.

"Prepetition Debt" means, collectively, the Indebtedness of each Debtor outstanding and unpaid on the date on which such Person becomes a Debtor (for the avoidance of doubt, including Existing Designated Coal Contracts).

"Prepetition Last-Out Lenders" as defined in the recitals hereto.

"Prepetition Last-Out Loans" as defined in the recitals hereto.

"Prepetition Lenders" means "Lenders" as defined in the Prepetition Superpriority Credit Agreement.

"Prepetition Revolving Agent" as defined in the recitals hereto.

"Prepetition Revolving Credit Agreement" as defined in the recitals hereto.

"Prepetition Revolving Lenders" as defined in the recitals hereto.

"Prepetition Revolving Loans" as defined in the recitals hereto.

"Prepetition Superpriority Credit Agreement" means that certain Superpriority Credit and Guaranty Agreement dated as of June 29, 2018 by and among the Borrower, the lenders party thereto, GLAS Trust Company LLC, as Administrative Agent, and the other agents party thereto (as amended, supplemented or otherwise modified from time to time prior to the Petition Date).

"Prime Rate" means the rate of interest quoted in the print edition of *The Wall Street Journal*, Money Rates Section as the Prime Rate (currently defined as the base rate on corporate loans posted by at least 75% of the nation's thirty (30) largest banks), as in effect from time to time. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Administrative Agent or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate. If the Prime Rate is ever less than 0%, then for purposes of this Agreement the Prime Rate shall be deemed to be 0%.

"Principal Office" means, for Administrative Agent, such Person's "Principal Office" as set forth on Appendix B, or such other office or office of a third party or sub-agent, as appropriate, as such Person may from time to time designate in writing to Borrower, Administrative Agent and each Lender.

"Principals" means Robert E. Murray, Brenda L. Murray, Robert Edward Murray (son), Jonathan Robert Murray, Ryan Michael Murray (or any of their estates, or heirs or beneficiaries by will) and the Murray 2003 Trust or any trustee thereof.

"Pro Rata Share" means with respect to (a) all payments, computations and other matters relating to the Commitments or the Term Loan of any Term Lender, the percentage obtained by dividing (i) the Term Loan Exposure of that Lender by (ii) the aggregate Term Loan Exposure of all Lenders or (b) all payments, computations and other matters relating to the Roll-Up Loan of any Roll-Up Lender, the percentage obtained by dividing (i) the Roll-Up Loan Exposure of that Roll-Up Lender by (ii) the aggregate Roll-Up Loan Exposure of all Roll-Up Lenders.

"proceeds" has the meaning assigned to such term in the UCC

"PTE" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"Public Lenders" means Lenders that do not wish to receive Non-Public Information with respect to Holdings, its Subsidiaries or their Securities.

"**Qualified ECP Guarantor"** means, in respect of any Swap Obligation under a Secured Hedge Agreement, each Credit Party that has total assets exceeding $10,000,000 at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation under a Secured Hedge Agreement or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Ratable Portion" means with respect to all payments, computations and other matters relating to the Commitments or the Loan of any Lender, the percentage obtained by dividing (i) the Exposure of that Lender by (ii) the aggregate Exposure of all Lenders.

"Real Estate Asset" means, at any time of determination, any interest (fee, leasehold or otherwise) then owned by any Credit Party in any real property.

"**Receivables**" means all rights to the payment of a monetary obligation now or hereafter owing to any Credit Party, evidenced by Accounts, Instruments, Chattel Paper or General Intangibles (as such terms are defined in Article 9 of the UCC), calculated on a gross basis.

"Recipient" means the Administrative Agent, the Collateral Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Credit Party hereunder.

"Register" as defined in Section 2.7(b).

"Regulation D" means Regulation D of the Board of Governors, as in effect from

time to time and all official rulings and interpretations thereunder or thereof.

"Regulation FD" means Regulation FD as promulgated by the U.S. Securities and Exchange Commission under the Securities Act and Exchange Act as in effect from time to time.

"Regulation H" means Regulation H of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation T" means Regulation T of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation U" means Regulation U of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation X" means Regulation X of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Related Fund" means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"Related Party" means (i) any controlling stockholder, majority owned subsidiary, or immediate family member (in the case of an individual) of any Principal; or (ii) any trust, corporation, partnership, limited liability company or other entity, the beneficiaries, stockholders, partners, members, owners or Persons beneficially holding a majority (and controlling) interest of which consist of any one or more Principals and/or such other Persons referred to in the immediately preceding clause (i).

"Release" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the migration of any Hazardous Material through the air, soil, surface water or groundwater.

"Released DIP Parties" as defined in Section 2.26.

"Releasing Parties" as defined in Section 2.26.

"Reorganization Plan" means a plan of reorganization in any or all of the Cases of the Debtors.

"Replacement Lender" as defined in Section 2.23.

"Reporting Period" as defined in the definition of "Budget Variance Report".

"Requisite Backstop Lenders" means one or more Backstop Lenders having or

holding Term Loan Exposure and representing more than 50% of the aggregate Term Loan Exposure of all Backstop Lenders; *provided* that amount of Term Loan Exposure shall be determined with respect to any Defaulting Lender by disregarding the Term Loan Exposure of such Defaulting Lender *provided further* that, to the extent no Backstop Lender is a Lender hereunder, the "Requisite Backstop Lenders" shall mean the Requisite Lenders.

"Requisite Lenders" means one or more Lenders having or holding Exposure and representing more than 50% of the aggregate Exposure of all Lenders; provided that amount of Exposure shall be determined with respect to any Defaulting Lender by disregarding the Exposure of such Defaulting Lender.

"Requisite Roll-Up Lenders" means one or more Roll-Up Lenders having or holding Roll-Up Loan Exposure and representing more than 50% of the aggregate Roll-Up Loan Exposure of all Roll-Up Lenders; *provided* that amount of Roll-Up Loan Exposure shall be determined with respect to any Defaulting Lender by disregarding the Roll-Up Exposure of such Defaulting Lender *provided further* that, to the extent no Roll-Up Lender is a Lender hereunder, the "Requisite Roll-Up Lenders" shall mean the Requisite Lenders.

"Requisite Term Lenders" means one or more Term Lenders having or holding Term Loan Exposure and representing more than 50% of the aggregate Term Loan Exposure of all Term Lenders; *provided* that amount of Term Loan Exposure shall be determined with respect to any Defaulting Lender by disregarding the Term Loan Exposure of such Defaulting Lender *provided further* that, to the extent no Term Lender is a Lender hereunder, the "Requisite Term Lenders" shall mean the Requisite Lenders.

"Restricted Group" means Holdings, Borrower and its Restricted Subsidiaries**.**

"Restricted Junior Payment" means (i) any dividend or other distribution on account of any shares of any class of stock of Holdings or Borrower now or hereafter outstanding, except a dividend payable solely in common Equity Interests of Holdings or any parent thereof of such class of stock; (ii) any payment on account of redemption, retirement, purchase or other acquisition for value, including any sinking fund or similar payment, of any shares of any class of Equity Interests of Holdings or Borrower now or hereafter outstanding; (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Equity Interests of Holdings or Borrower now or hereafter outstanding and (iv) any payment (whether in cash, securities or other property) on account of the prepayment, redemption, purchase, retirement or defeasance (including covenant or legal defeasance). Solely for purposes of clause (ii) of the definition of the term "Permitted Payments to Holdings" relating to Restricted Junior Payments, in the event that any Credit Party or Restricted Subsidiary makes a cash distribution, such distribution shall not be a "Restricted Junior Payment" to the extent that such distribution (x) discharges the federal, state, local and/or foreign tax liabilities of an Unrestricted Subsidiary and (y) was funded in cash by an Unrestricted Subsidiary.

"Restricted Subsidiary" means any subsidiary other than an Unrestricted Subsidiary.

"**Roll-Up**" as defined in Section 2.1(b)(i).

"**Roll-Up Amount**" means $90,000,000.

"**Roll-Up Cap**" means, at any time, (a) the Roll-Up Amount, *plus* (b) accrued and unpaid interest, at such time with respect to the Roll-Up Loans pursuant to the terms of the Credit Documents, whether or not the same are added to the principal amount of the Roll-Up Loans, *minus* (c) the aggregate amounts paid to Roll-Up Lenders prior to such time under this Agreement, including pursuant to Section 8.2, 8.3(b), 2.13, 2.14 or otherwise. Notwithstanding anything to the contrary herein, once decreased such amount shall not thereafter be increased and such amount shall not be less than zero.

"Roll-Up Facility" as defined in the recitals hereto.

"Roll-Up Financial Advisor" means Province, Inc., in its capacity as financial advisor to the Roll-Up Lenders.

"Roll-Up Financial Covenant Event of Default" as defined in Section 8.1(c).

"Roll-Up Guarantors" means the Guarantors (as defined in the Prepetition Revolving Agreement) party to the Prepetition Revolving Agreement as of the Petition Date.

"**Roll-Up Lenders**" means the Initial Roll-Up Lender and any other Person that becomes a party hereto and received Roll-Up Loans pursuant to an Assignment Agreement.

"**Roll-Up Loan Exposure"** means, with respect to any Roll-Up Lender, as of any date of determination, the outstanding principal amount of the Roll-Up Loans of such Roll-Up Lender.

"Roll-Up Loan Note" means a promissory note in the form of Exhibit B-2, as it may be amended, restated, supplemented or otherwise modified from time to time.

"**Roll-Up Loans**" as defined in Section 2.1(b)(i).

"Roll-Up Obligations" means all obligations of every nature of the Borrower and the Roll-Up Guarantors with respect to the Roll-Up Loans, including obligations from time to time owed to any Agent (including any former Agent), Roll-Up Lenders or any of them and Lender Counterparties, under any Credit Document (including Schedule 5.16).

"RSA" means that certain Restructuring Support Agreement dated as of October [28], 2019, executed and delivered by the Credit Parties and the other parties thereto, as such agreement may be amended, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"S&P" means Standard & Poor's, a Division of The McGraw-Hill Companies, Inc.

"Sale Order" as defined in Section 5.18(j).

"Secured Commodities Agreement" means any Commodities Agreement entered into from time to time by Borrower or any of its Guarantor Subsidiaries with a Commodities Hedge Provider that has been designated by Borrower and such Commodities Hedge Provider as a "Secured Commodities Agreement" by notice to Administrative Agent delivered on or prior to the tenth Business Day following the later of (a) the Closing Date, (b) the date that such Commodities Agreement is entered into, or (c) the date that the Person providing such Commodities Agreement becomes a Lender or Administrative Agent (or an Affiliate of a Lender or Administrative Agent).

"Secured Commodities Hedge Obligations" means obligations owed by Borrower or any of its Guarantor Subsidiaries to any Commodities Hedge Provider pursuant to or evidenced by any Secured Commodities Agreement.

"Secured Designated Coal Contract Obligations" means obligations owed by Borrower or any of its Guarantor Subsidiaries to any Designated Coal Contract Counterparty pursuant to or evidenced by any Designated Coal Contract and arising from the sale of coal from mines located in the United States not to exceed 10,000,000 tons in any 12-month period.

"Secured Hedge Agreement" means any Hedge Agreement and any Secured Commodities Agreement.

"Secured Parties" has the meaning assigned to that term in the applicable Pledge and Security Agreement.

"Securities" means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

"Securities Act" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"**Segregated Account**" shall mean an account of the Escrow Agent with the account number of 392177371, maintained at the Segregated Account Depository, which shall at all times be subject to the Escrow Agreement.

"Segregated Account Depository" shall mean [JPMorgan Chase Bank, N.A.].

"Shared Collateral" means the Collateral granted by Persons that are both Roll-Up Guarantors and Term Guarantors.

"Specified Guarantor" means the Subsidiary Guarantors set forth on Schedule 1.1-A hereto.

"Specified Pledge Agreement" means the Superpriority Lien Debt Security

Assignment and Charge of Rights and Interests Relating to a Limited Liability Partnership Deed executed by Murray Global Commodities, Inc. and the Collateral Agent, dated as of the Closing Date, substantially in the form of Exhibit H-2 as it may be amended, restated, supplemented or otherwise modified from time to time.

"Stated Maturity Date" as defined in clause (a) of the definition of "Maturity Date" hereunder.

"subsidiary" means, with respect to any Person, (1) any corporation, association or other business entity (other than a partnership) of which more than 50% of the total voting power of shares of Capital Stock entitled to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other subsidiaries of that Person (or a combination thereof), or (2) any partnership of which such Person or any subsidiary of such Person is a controlling general partner or otherwise controls such entity.

"**Subsidiary**" means, unless the context otherwise requires, a subsidiary of Borrower.

"Subsidiary Guarantors" means Guarantors that are Subsidiaries.

"Supermajority Backstop Lenders" means one or more Backstop Lenders having or holding Term Loan Exposure and representing more than 67% of the aggregate Term Loan Exposure of all Backstop Lenders; *provided* that amount of Term Loan Exposure shall be determined with respect to any Defaulting Lender by disregarding the Term Loan Exposure of such Defaulting Lender *provided further* that, to the extent no Backstop Lender is a Lender hereunder, the "Supermajority Backstop Lenders" shall mean the Requisite Lenders.

"Superpriority Claims" means the "DIP Superpriority Claims" (as defined in the Orders).

"Swap Obligation" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

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

"Term Financial Covenant Event of Default" as defined in Section 8.1(c).

"Term Guarantors" each of Holdings and each wholly-owned Restricted Subsidiary of Holdings (other than Borrower and any Excluded Subsidiaries).

"Term Lender" means each financial institution listed on the signature pages hereto as a Lender (for the avoidance of doubt, other than the Initial Roll-Up Lender) and any other Person that becomes a party hereto and received any Term Loan Exposure pursuant to an Assignment Agreement.

"Term Loan" means the Interim Term Loans and/or the Full Availability Term Loans, as the context may require.

"Term Loan ABL Collateral Cap" means at any time, (a) $65,000,000 *minus* (b) the aggregate amounts paid to the Term Lenders with proceeds of ABL Collateral prior to such time under this Agreement, including pursuant to Sections 2.13, 2.14 and 8.3(b) or otherwise *minus* [__][3]. Notwithstanding anything to the contrary herein, once decreased such amount shall not thereafter be increased and such amount shall not be less than zero.

"Term Loan Exposure" means, with respect to any Term Lender, as of any date of determination, the sum of (x) the outstanding principal amount of the Term Loans of such Term Lender and (b) the unused Commitment of such Term Lender (or as the context requires in the calculation of Pro Rata Share, one or both of the two clauses).

"Term Loan Facility" as defined in the preamble hereto.

"Term Loan Note" means a promissory note in the form of Exhibit B-1, as it may be amended, restated, supplemented or otherwise modified from time to time.

"Term Loan Only Collateral" means the Collateral granted by Persons that are Term Guarantors but not Roll-Up Guarantors.

"Term Loan Only Guaranties" means the Guaranties provided by Persons that are Term Guarantors but not Roll-Up Guarantors.

"Term Loan Proceeds" as defined in Section 2.1(c)(ii).

"Terminated Lender" as defined in Section 2.23.

"Termination Amount" has the meaning assigned to such term (or such similar or parallel term) in the applicable Designated Coal Contract or any other similar amount to be received or paid as a result of a termination, breach or default of a Designated Coal Contract.

"Transactions" means the transactions contemplated herein to occur on the Closing Date, including the Roll-Up, the funding of the Term Loan Facility the refinancing of the Prepetition Revolving Loans and the commencement of the Cases.

"Two-Week Test Period" means, at any time, the two-week period ended on the immediately preceding Friday; provided that only periods ending on the second Friday following the Closing Date and each fourth Friday thereafter shall constitute Two-Week Test Periods.

"Type of Loan" means a Base Rate Loan or a Eurodollar Rate Loan.

"UCC" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect from time to time in the State of New York; provided, however, that in

[3] Sidley and restructuring teams to provide per Carve-Out discussion.

the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

"Unrestricted Subsidiary" means (a) Foresight GP, Foresight LP and their subsidiaries and (b) the subsidiaries of Murray Metallurgical Coal Properties, LLC, and Murray Metallurgical Coal Properties II, LLC (including, in either case, for the avoidance of doubt Murray Metallurgical Coal Holdings, LLC and its Subsidiaries), in each case of the foregoing, to the extent any such entity is a Subsidiary of Borrower, until any such entity is designated as a Restricted Subsidiary pursuant to Section 5.15.

"U.S. Trustee" as defined in Section 5.19(a).

"Voting Stock" of any specified Person as of any date means the Equity Interest of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"Waivable Mandatory Prepayment" as defined in Section 2.15(a).

"Western Kentucky Guarantors" means Murray Kentucky Energy, Inc. and each Subsidiary Guarantor that is a direct or indirect subsidiary of Murray Kentucky Energy, Inc.

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

1.2. Accounting Terms. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Borrower to Lenders pursuant to Sections 5.1(b) and 5.1(c) shall be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in Section 5.1(e), if applicable). In the event that any Accounting Change (as defined below) results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then Borrower and Administrative Agent agree to enter into good faith negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Change with the desired result that the criteria for evaluating Borrower's financial condition shall be the same after such Accounting Change as if such Accounting Change had not been made. Until such time as such an amendment shall have been executed and delivered by Borrower and the Requisite Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Change had not occurred. "**Accounting Change**" refers to any change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of certified Public Accountants or, if applicable, the U.S. Securities and Exchange Commission and/or the Public Company

Accounting Oversight Board (or successors thereto or agencies with similar functions). Anything in this Agreement to the contrary notwithstanding, any obligation of a Person under a lease (whether existing now or entered into in the future) that is not (or would not be) required to be classified and accounted for as a capital lease on the balance sheet of such Person under GAAP as in effect on December 15, 2018 shall not be treated as a capital lease solely as a result of (a) the adoption of any changes in, or (b) changes in the application of, GAAP after the Closing Date.

1.3. Interpretation, Etc. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The terms "lease" and "license" shall include sub-lease and sub-license, as applicable. References to any "Agent," the "Collateral Agent," any "Credit Party," any "Lender," any "obligor," any "party" or any other persons shall be construed so as to include successors in title, permitted assigns and permitted transferees. References to "assets" include present and future properties, revenues and rights of every description. Unless otherwise specifically indicated, the term "consolidated" with respect to any Person refers to such Person consolidated with its Restricted Subsidiaries, and excludes from such consolidation any Unrestricted Subsidiary as if such Unrestricted Subsidiary were not an Affiliate of such Person. References to a "Credit Document" or any other agreement or instrument is a reference to that Credit Document or other agreement or instrument as amended, novated, supplemented, extended or restated, strictly in accordance with the terms thereof. References to any "Guarantor," the "Guaranteed Obligations," or any "Subsidiary Guarantor," shall be construed so as give effect to (i) the obligation to the Payment in Full of the Guaranteed Roll-Up Obligations by the Roll-Up Guarantors and (ii) the obligation to the Payment in Full of the Guaranteed Term Obligations by the Term Guarantors and, in each case, as set forth in Section 7.1(a).

1.4. [Reserved].

1.5. LLC Division. For all purposes under the Credit Documents, in connection with any division or plan of division under Delaware law (including any LLC Division, or any comparable event under a different jurisdiction's laws, as applicable): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

1.6. Unrestricted Subsidiaries. For the avoidance of doubt, the Indebtedness and preferred stock of any Unrestricted Subsidiary shall not be treated as Indebtedness or preferred

stock of Borrower and its Restricted Subsidiaries, and Investments of, or dividends or distributions by, an Unrestricted Subsidiary shall not be treated as Investments of, or dividends or distributions by, Borrower and its Restricted Subsidiaries.

SECTION 2. LOANS

2.1. Loans.

(a) Loan Commitments. Subject to the terms and conditions hereof,

(i) each Term Lender agrees severally and not jointly, to make a Term Loan to the Borrower on the Closing Date in an amount equal to its Initial Commitment (the "**Interim Term Loan**"); *provided*, that, for the avoidance of doubt, prior to the Full Availability Date, after giving effect to the making of any Interim Term Loans, the aggregate principal amount of the Term Loans outstanding of all Lenders shall not exceed Interim Term Availability Amount; and

(ii) each Term Lender agrees severally and not jointly, to make a Term Loan to the Borrower on the Full Availability Date in an amount equal to its Delayed Draw Commitment (the "**Full Availability Term Loan**").

Borrower may make only one borrowing under the Commitments on the Closing Date, and Borrower may make only one borrowing under Commitments on the Full Availability Date. Any amount borrowed under this Section 2.1(a) and subsequently repaid or prepaid may not be reborrowed. Subject to Section 2.13(a) and 2.14, all amounts owed hereunder with respect to the Term Loans shall be Paid in Full no later than the Maturity Date. Each Term Lender's Initial Commitment or Delayed Draw Commitment shall terminate immediately and without further action on the Closing Date or the Full Availability Date, as applicable, after giving effect to the funding of such Term Lender's Commitment on such date. [Notwithstanding anything to the contrary, unless the Administrative Agent and the Borrower shall otherwise agree, the initial Interest Period of any Full Availability Term Loans that are Eurodollar Rate Loans shall commence on the date of funding and shall end on the last day of the then-current Interest Period for all Eurodollar Rate Loans that are Interim Term Loans then outstanding.]

(b) **Roll-Up Loans.**

(i) Subject to the terms and conditions hereof and the Orders, on the Closing Date, the Prepetition Last-Out Loans held by the Prepetition Last-Out Lender, which is also a Lender or Affiliates of a Lender hereunder, shall be automatically substituted and exchanged for (and prepaid by) loans hereunder (the "**Roll-Up Loans**") held by the Initial Roll-Up Lender in a principal amount equal to the Prepetition Last-Out Loans of such Lender or such Affiliate of such Lender on the Closing Date which, for the avoidance of doubt, shall be in a principal amount equal to the Roll-Up Amount (and such Roll-Up Loans shall be deemed funded on the Closing Date and shall constitute and shall be deemed to be Loans hereunder) (the foregoing substitution and exchange of Prepetition Last-Out Loans into Roll-Up Loans shall be defined herein, generally, as the

"**Roll-Up**").

(ii) The parties hereto hereby agree that the Administrative Agent and the Prepetition Revolving Agent may each conclusively rely on this Section 2.1(b) in adjusting the Register and the Register (as defined in the Prepetition Revolving Credit Agreement) to reflect the cancellation of Prepetition Last-Out Loans and the Roll-Up Loans to be received by the Initial Roll-Up Lender on the Closing Date as a result of the Roll-Up).

(iii) For the avoidance of doubt, solely with respect to the applicable calculations in determining the Lenders constituting "Requisite Lenders" hereunder, the Interim Term Loans, Full Availability Term Loans, and Roll-Up Loans shall constitute a single class of Loans.

(c) Borrowing Mechanics for Loans.

(i) Borrower shall deliver to Administrative Agent a fully executed Funding Notice no later than (x) three Business Days prior to the Closing Date or the Full Availability Date, as applicable, with respect to Base Rate Loans and (y) three Business Days prior to the Closing Date or the Full Availability Date, as applicable, with respect to Eurodollar Rate Loans (or such shorter period as may be acceptable to Administrative Agent); it being agreed that the Borrower has delivered a Funding Notice as of the date hereof in the form previously provided to counsel to the Term Lenders. Promptly upon receipt by Administrative Agent of such Funding Notice, Administrative Agent shall notify each Term Lender of the proposed borrowing. [The Roll-Up Loans shall be deemed Loans entirely made of Eurodollar Rate Loans with an interest period of one month].

(ii) Each Term Lender shall make its Term Loan available to Administrative Agent not later than 12:00 p.m. (New York City time) on the Closing Date or the Full Availability Date, as applicable, by wire transfer of same day funds in Dollars, at the Principal Office designated by Administrative Agent. Upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of the Term Loans (the "**Term Loan Proceeds**") available to Borrower on the Closing Date or the Full Availability Date, as applicable, by causing an amount of same day funds in Dollars equal to the proceeds of all such Term Loans received by Administrative Agent from Term Lenders to be credited to (i) with respect to the funding on the Closing Date in an amount equal to $[115,000,000][4] (the "**Initial Funding Amount**"), to the account of Borrower designated in writing to the Administrative Agent in the applicable Funding Notice (such amounts to be segregated in a Fixed Asset Collateral Proceeds Account prior to utilization) and (ii) with respect to all other Term Loan Proceeds, to the Segregated Account.

2.2. Draws from the Segregated Account. The Borrower may draw from the Segregated Account (each, a "**Draw**"), by delivering a DIP Proceeds Withdrawal Request to the

[4] NTD: to confirm.

Administrative Agent, subject to compliance with Sections 5.23 and 6.18, and use the proceeds of such draws solely in accordance with Sections 2.6 and 5.12. The Administrative Agent shall make any DIP Proceeds Withdrawal Request received by it available to the Lenders promptly upon receipt thereof from the Borrower and it shall immediately sign and acknowledge such DIP Proceeds Withdrawal Request unless a Default or an Event of Default shall have occurred and be continuing, and the Requisite Term Lenders shall have instructed the Administrative Agent not to countersign and deliver such DIP Proceeds Withdrawal Request to the Escrow Agent pursuant to the Escrow Agreement.

2.3. [Reserved].

2.4. [Reserved].

2.5. Pro Rata Shares; Availability of Funds.

(a) Pro Rata Shares. All Loans shall be made by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Loan requested hereunder nor shall any Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder.

(b) Availability of Funds. Unless Administrative Agent shall have been notified by any Lender prior to the applicable Credit Date that such Lender does not intend to make available to Administrative Agent the amount of such Lender's Loan requested on such Credit Date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such Credit Date and Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to Borrower a corresponding amount on such Credit Date. If such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the customary rate set by Administrative Agent for the correction of errors among banks for three Business Days and thereafter at the Base Rate. In the event that (i) a Lender fails to fund to Administrative Agent all or any portion of the Loans required to be funded by such Lender hereunder prior to the time specified in this Agreement and (ii) such Lender's failure results in Administrative Agent failing to make a corresponding amount available to Borrower on the Credit Date, at Administrative Agent's option, such Lender shall not receive interest hereunder with respect to the requested amount of such Lender's Loans for the period commencing with the time specified in this Agreement for receipt of payment by Borrower through and including the time of Borrower's receipt of the requested amount. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefor, Administrative Agent shall promptly notify Borrower and Borrower shall promptly pay such corresponding amount to Administrative Agent together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the rate payable hereunder

for Base Rate Loans. Nothing in this Section 2.5(b) shall be deemed to relieve any Lender from its obligation to fulfill its Commitments hereunder or to prejudice any rights that Borrower may have against any Lender as a result of any default by such Lender hereunder.

2.6. Use of Proceeds. The proceeds of the Loans shall be applied by Borrower (i) to pay the fees, costs and expenses required to be paid in connection with the transactions contemplated hereby and the Cases, (ii) to finance the working capital and other needs/general corporate purposes of the Borrower following the commencement of the Cases and including the Roll-Up of Prepetition Last-Out Loans and the establishment and maintenance of the Outstanding LCs and funding of the Outstanding LC Cash Collateral not to exceed 3.00% of the stated amount of such Outstanding LCs and (iii) to refinance and repay all of the Prepetition Revolving Loans as set forth in the Interim Order (the "**ABL Refinancing**"), in each case, solely in accordance with the Operative Approved Cash Flow Forecast (subject to Permitted Variances) delivered from time to time pursuant to this Agreement and not in contravention of any applicable law and not in violation of this Agreement, the other Credit Documents or the Orders.

2.7. Evidence of Debt; Register; Lenders' Books and Records; Notes.

(a) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of Borrower to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on Borrower, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect Borrower's Obligations in respect of any applicable Loans; and provided further, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(b) Register. Administrative Agent (or its agent or sub-agent appointed by it), acting for this purpose as agent of Borrower shall maintain at its Principal Office a register for the recordation of the names and addresses of Lenders and Loans (and any interest thereon) of each Lender from time to time (the **"Register"**). The Register shall be available for inspection at Administrative Agent's Principal Office (or via delivery by Administrative Agent) by (1) any Lender (with respect to (i) any entry relating to such Lender's Loans and (ii) the identity of the other Lenders (but not any information with respect to such other Lenders' Loans)) and (2) by Borrower, in each case at any reasonable time and from time to time upon reasonable prior notice. Administrative Agent shall record, or shall cause to be recorded, in the Register the Loans and any interest outstanding in accordance with the provisions of Section 10.6, and each repayment or prepayment in respect of the principal amount of the Loans and any interest outstanding, and any such recordation shall be conclusive and binding on Borrower and each Lender, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not affect Borrower's Obligations in respect of any Loan. Borrower hereby designates Administrative Agent to serve as Borrower's agent solely for purposes of maintaining the Register as provided in this Section 2.7, an2.7d Borrower hereby agrees that, to the extent Administrative Agent serves in such capacity, Administrative Agent and its Affiliates and its and its Affiliates'

officers, partners, members, directors, trustees, advisors, employees, attorneys, agents, sub-agents and controlling parties shall constitute "Indemnitees."

(c) Notes. If so requested by any Lender by written notice to Borrower (with a copy to Administrative Agent) at least two Business Days prior to the Closing Date, or at any time thereafter, Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6) on the Closing Date (or, if such notice is delivered after the Closing Date, promptly after Borrower's receipt of such notice) a Note or Notes to evidence such Lender's Loan.

2.8. Interest on Loans.

(a) Except as otherwise set forth herein, each Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

(i) if a Base Rate Loan, at the Base Rate plus the Applicable Margin; or

(ii) if a Eurodollar Rate Loan, at the Adjusted Eurodollar Rate plus the Applicable Margin;

(b) The basis for determining the rate of interest with respect to any Loan and the Interest Period with respect to any Eurodollar Rate Loan shall be selected by Borrower and notified to Administrative Agent pursuant to the applicable Funding Notice or Conversion/Continuation Notice, as the case may be;

(c) In connection with Eurodollar Rate Loans there shall be no more than seven (7) Interest Periods outstanding at any time. In the event Borrower fails to specify between a Base Rate Loan or a Eurodollar Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, such Loan (if outstanding as a Eurodollar Rate Loan) will be automatically converted into a Base Rate Loan on the last day of the then-current Interest Period for such Loan (or if outstanding as a Base Rate Loan will remain as, or (if not then outstanding) will be made as, a Base Rate Loan). In the event Borrower fails to specify an Interest Period for any Eurodollar Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, Borrower shall be deemed to have selected an Interest Period of one month. As soon as practicable after 10:00 a.m. (New York City time) on each Interest Rate Determination Date, Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the Eurodollar Rate Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to Borrower and each Lender.

(d) Interest payable pursuant to Section 2.8(a) shall be computed (i) in the case of Base Rate Loans on the basis of a 365-day or 366-day year, as the case may be, and (ii) in the case of Eurodollar Rate Loans, on the basis of a 360-day year, in each

case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the last Interest Payment Date with respect to such Loan or, with respect to a Base Rate Loan being converted from a Eurodollar Rate Loan, the date of conversion of such Eurodollar Rate Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a Eurodollar Rate Loan, the date of conversion of such Base Rate Loan to such Eurodollar Rate Loan, as the case may be, shall be excluded; provided, if a Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Loan.

(e) Except as otherwise set forth herein, interest on each Loan (i) shall accrue on a daily basis and shall be payable in arrears on each Interest Payment Date with respect to interest accrued on and to each such Interest Payment Date; (ii) shall accrue on a daily basis and shall be payable in arrears upon any prepayment of that Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) shall accrue on a daily basis and shall be payable in arrears at maturity of the Loans, including final maturity of the Loans; provided, however, with respect to any voluntary prepayment of a Base Rate Loan, accrued interest shall instead be payable on the applicable Interest Payment Date.

2.9. Conversion/Continuation.

(a) Subject to Section 2.18, Borrower shall have the option:

(i) to convert at any time all or any part of any Loan equal to $1,000,000 and integral multiples of $500,000 in excess of that amount from one Type of Loan to another Type of Loan; provided, a Eurodollar Rate Loan may only be converted on the expiration of the Interest Period applicable to such Eurodollar Rate Loan unless Borrower shall pay all amounts due under Section 2.18 in connection with any such conversion; or

(ii) upon the expiration of any Interest Period applicable to any Eurodollar Rate Loan, to continue all or any portion of such Loan equal to $1,000,000 and integral multiples of $500,000 in excess of that amount as a Eurodollar Rate Loan.

If an Event of Default has occurred and is continuing and the Requisite Lenders have determined, in their sole discretion, not to permit such conversion or continuation and have notified Borrower of such determination, then no conversion of any such Loan to, or continuation of such Loan as, a Eurodollar Rate Loan shall be permitted and, upon the expiration of any Interest Period applicable to any Eurodollar Rate Loan, such Loan shall be converted to a Base Rate Loan.

(b) Borrower shall deliver a Conversion/Continuation Notice to Administrative Agent no later than 10:00 a.m. (New York City time) at least one Business Day in advance of the proposed conversion date (in the case of a conversion to a Base Rate Loan) and at least three Business Days in advance of the proposed conversion/continuation date (in the case of a conversion to, or a continuation of, a

Eurodollar Rate Loan (or telephonic notice in lieu thereof)). Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any Eurodollar Rate Loans shall be irrevocable on and after the related Interest Rate Determination Date, and Borrower shall be bound to effect a conversion or continuation in accordance therewith. If on any day a Loan is outstanding with respect to which a Funding Notice or Conversion/Continuation Notice has not been delivered to Administrative Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then for that day such Loan shall be a Base Rate Loan.

(c) Any Notice shall be executed by an Authorized Officer in a writing delivered to Administrative Agent. In lieu of delivering a Notice, Borrower may give Administrative Agent telephonic notice by the required time of any proposed borrowing or conversion/continuation, as the case may be; provided each such telephonic notice shall be promptly confirmed in writing by delivery of the applicable Notice to Administrative Agent on or before the applicable date of borrowing or continuation/conversion. In the event of a discrepancy between the telephonic notice and the written Notice, the written Notice shall govern. In the case of any Notice that is irrevocable once given, if Borrower provides telephonic notice in lieu thereof, such telephonic notice shall also be irrevocable once given. Neither Administrative Agent nor any Lender shall incur any liability to Borrower in acting upon any telephonic notice referred to above that Administrative Agent believes in good faith to have been given by an Authorized Officer or other person authorized on behalf of Borrower or for otherwise acting in good faith.

2.10. Default Interest.

(a) Upon the occurrence and during the continuance of an Event of Default, any overdue amounts in respect of the Term Loans and, to the extent permitted by applicable law, any overdue interest payments on the Term Loans or any overdue fees or other amounts owed hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under Debtor Relief Laws) payable on demand at a rate that is 3.00% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is 3.00% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans); provided, in the case of Eurodollar Rate Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective such Eurodollar Rate Loans shall upon the request of the Requisite Term Lenders become Base Rate Loans and shall thereafter bear interest payable upon demand at a rate which is 3.00% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans.

(b) Upon the occurrence and during the continuance of an Event of Default, any overdue amounts in respect of the Roll-Up Loans and, to the extent permitted by applicable law, any overdue interest payments on the Roll-Up Loans or any overdue fees or other amounts owed hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under Debtor Relief Laws) payable on demand at

a rate that is 3.00% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is 3.00% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans); provided, in the case of Eurodollar Rate Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective such Eurodollar Rate Loans shall upon the request of the Requisite Roll-Up Lenders become Base Rate Loans and shall thereafter bear interest payable upon demand at a rate which is 3.00% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans.

(c) Payment or acceptance of the increased rates of interest provided for in this Section 2.10 is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent or any Lender.

2.11. Fees. Borrower agrees to pay to Agents and Lenders the following fees:

(a) The Borrower agrees to pay to the Administrative Agent for the account of each Term Lender, an upfront fee in an amount equal to 3.00% of the principal amount of each such Term Lender's aggregate Commitment (for the avoidance of doubt, the Initial Commitment and Delayed Draw Commitment) on the Closing Date, payable on the Closing Date upon the funding of the Interim Term Loans, which may be netted from such funding on the Closing Date;

(b) The Borrower agrees to pay to the Administrative Agent for the account of each Backstop Lender, a put premium in an amount equal to 5.00% of the principal amount of each such Backstop Lender's Backstop Lender Commitment on the Closing Date, payable on the Closing Date upon the funding of the Interim Term Loans, which may be netted from such funding on the Closing Date;

(c) The Borrower agrees to pay to the Term Lenders an exit fee in an aggregate amount equal to 1.00% of the aggregate principal amount of the Loans made by each such Lender under this Agreement, which shall be due and payable in cash on the Maturity Date or, in the case of Term Loans prepaid in whole or in part prior to the Maturity Date pursuant to Sections 2.13 or 2.14, if any, shall be due and payable in cash on the date of such prepayment; and

(d) The Borrower shall pay to the Agents such other fees as shall have been separately agreed upon in writing for its own account fees in the amounts and at the times so specified, including the fees specified in the Agent Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the Administrative Agent).

2.12. Repayment of Loans. The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of such Lender's Loans, together with all other amounts owed hereunder with respect thereto, including all applicable fees in accordance with Section 2.11, on the Maturity Date.

2.13. Voluntary Prepayments.

(a) Voluntary Prepayments.

(i) Subject to Section 2.11(c), any time and from time to time:

(x) with respect to Base Rate Loans, Borrower may prepay any such Loans on any Business Day in whole or in part, in an aggregate minimum amount of $1,000,000 and integral multiples of $500,000 in excess of that amount (unless a lesser amount is required to repay such Loan in full); and

(y) with respect to Eurodollar Rate Loans, Borrower may prepay any such Loans on any Business Day in whole or in part in an aggregate minimum amount of $1,000,000 and integral multiples of $500,000 in excess of that amount (unless a lesser amount is required to repay such Loan in full).

(ii) All such prepayments shall be made:

(x) upon not less than one Business Day's prior written or telephonic notice in the case of Base Rate Loans; and

(y) upon not less than three Business Days' prior written or telephonic notice in the case of Eurodollar Rate Loans;

in each case given to Administrative Agent, as the case may be, by 1:00 p.m. (New York City time) on the date required and, if given by telephone, promptly confirmed in writing to Administrative Agent (and Administrative Agent will promptly transmit such telephonic or written notice by telefacsimile or telephone to each Lender). Upon the giving of any such notice, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in Section **Error! Reference source not found.**.

2.14. Mandatory Prepayments.

(a) Asset Sales. Subject to Section 2.11(b), no later than five Business Days following the date of receipt by Borrower or any of its Restricted Subsidiaries of any Net Asset Sale Proceeds, without duplication, (i) in an aggregate amount in excess of $500,000 for all aggregate Asset Sales following the Closing Date and (ii) in an aggregate amount in excess of $250,000 for any individual Asset Sale, Borrower shall prepay the Loans as set forth in Section **Error! Reference source not found.** in an aggregate amount equal to such excess Net Asset Sale Proceeds.

(b) Insurance/Condemnation Proceeds. Subject to Section 2.11(b), no later than five Business Days following the date of receipt by Borrower or any of its Restricted Subsidiaries, or Administrative Agent as loss payee, of any Net Insurance/Condemnation Proceeds, without duplication, (i) in an aggregate amount in excess of $500,000 for all such Net Insurance/Condemnation Proceeds received following the Closing Date and (ii) in an aggregate amount in excess of $250,000 in connection with Net Insurance/Condemnation Proceeds in connection with any event, Borrower shall prepay the Loans as set forth in Section **Error! Reference source not found.** in an aggregate amount equal to such excess Net Insurance/Condemnation Proceeds; *provided* that, so long as no Event of Default shall have occurred and be continuing on the date of receipt of such proceeds, Borrower shall have the option, directly or through one or more of its Restricted Subsidiaries to reinvest such Net Insurance/Condemnation Proceeds, only to the extent such Proceeds do not constitute ABL Collateral, within one-hundred eighty (180) days of receipt thereof in the repair, restoration or replacement of the applicable assets thereof.

(c) Issuance of Debt. Subject to Section 2.11(c), within five Business Days of the receipt by Holdings or any of its Restricted Subsidiaries of any net cash proceeds from the incurrence of any Indebtedness of Holdings or any of its Restricted Subsidiaries (other than with respect to any Indebtedness permitted to be incurred pursuant to Section 6.1), Borrower shall prepay the Loans as set forth in Section **Error! Reference source not found.** in an aggregate amount equal to 100% of such proceeds, net of underwriting discounts, debt issuance and commitment fees and commissions and other reasonable costs and expenses associated therewith, including reasonable legal fees and expenses.

(d) [Reserved].

(e) Prepayment Certificate. Concurrently with any prepayment of the Loans pursuant to Sections 2.14(a) through 2.14(c), Borrower shall deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the calculation of the amount of the applicable net proceeds. In the event that Borrower shall subsequently determine that the actual amount received exceeded the amount set forth in such certificate, Borrower shall promptly make an additional prepayment of the Loans in an amount equal to such excess to the extent not otherwise permitted to be reinvested in the case of Net Insurance/Condemnation Proceeds, and Borrower shall concurrently therewith deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the derivation of such excess.

2.15. Application of Prepayments.

(a) Prepayments Waterfall. All Prepayments pursuant to Section 2.13 and 2.14 shall be accompanied by accrued interest to the extent required by Section 2.8 and 2.10. Subject to the Carve Out, each prepayment of Loans pursuant to Section 2.13 and 2.14 shall be applied by Borrower, in accordance with the Orders, and to the extent not in contravention with the Orders, to be remitted by Borrower to Administrative Agent and applied by Administrative Agent (w) in the case of prepayments pursuant to Section

2.13 and Section 2.14(c), ratably to repay the Loans then outstanding, (x) in the case of a prepayment pursuant to Sections 2.14(a) and 2.14(b) with the proceeds of ABL Collateral, ratably to repay the Loans then outstanding in accordance with Section 8.3(b), (y) in the case of a prepayment pursuant to Section 2.14(a) and 2.14(b) with the proceeds of Fixed Assets Collateral, ratably to repay the Loans then outstanding in accordance with Section 8.3(a) and (z) in the case of a prepayment pursuant to Section 2.14(a) and 2.14(b) with the proceeds of Term Loan Only Collateral, ratably to repay the Loans then outstanding in accordance with Section 8.4; *provided*, prior to any prepayments pursuant to Section 2.13 and 2.14, the Borrower shall have delivered to the Administrative Agent (to be forwarded to the Lenders) a notice of such prepayment identifying the Loans to be prepaid and the source of the proceeds of such prepayment and designating such proceeds as ABL Collateral, Fixed Asset Collateral, Term Loan Only Collateral or not Collateral. The designation of such proceeds shall be reasonably acceptable to the Requisite Term Lenders and the Requisite Roll-Up Lenders and, until so approved, no such prepayment shall be made until so approved; *provided* that the Requisite Term Lenders and the Requisite Roll-Up Lenders shall be deemed to have approved a prepayment notice delivered pursuant to this Section 2.15(a) unless Lenders constituting the Requisite Term Lenders or the Requisite Roll-Up Lenders shall have objected to such prepayment notice within 5 Business Days. If not so approved, the parties agree to negotiate in good faith to reach a resolution as to such allocation.

(b) Waivable Mandatory Prepayment. Anything contained herein to the contrary notwithstanding, so long as any Loans are outstanding, in the event Borrower is required to make any mandatory prepayment pursuant to Section 2.14(a) or (b) (a **"Waivable Mandatory Prepayment"**) of the Loans, not less than five Business Days prior to the date (the **"Required Prepayment Date"**) on which Borrower is required to make such Waivable Mandatory Prepayment, Borrower shall notify Administrative Agent of the amount of such prepayment, and Administrative Agent will promptly thereafter notify each Lender holding an outstanding Loan of the amount of such Lender's Pro Rata Share of such Waivable Mandatory Prepayment and such Lender's option to refuse such amount. Each such Lender may exercise such option by giving written notice to Borrower and Administrative Agent of its election to do so on or before the Business Day prior to the Required Prepayment Date (it being understood that any Lender which does not notify Borrower and Administrative Agent of its election to exercise such option on or before the Business Day prior to the Required Prepayment Date shall be deemed to have elected, as of such date, not to exercise such option). On the Required Prepayment Date, Borrower shall pay to Administrative Agent the amount of the Waivable Mandatory Prepayment, which amount shall be applied in an amount equal to that portion of the Waivable Mandatory Prepayment payable to those Lenders that have not elected to exercise such option to decline, to prepay the Loans of such Lenders, on a pro rata basis.

(c) Application of Prepayments of Loans to Base Rate Loans and Eurodollar Rate Loans. Any prepayment of Loans shall be applied first to Base Rate Loans to the full extent thereof before application to Eurodollar Rate Loans, in each case in a manner which minimizes the amount of any payments required to be made by Borrower pursuant to Section 2.18(c).

2.16. General Provisions Regarding Payments.

(a) All payments by Borrower of principal, interest, fees and other Obligations shall be made in Dollars in same day funds, without defense, recoupment, setoff or counterclaim, free of any restriction or condition, and delivered to Administrative Agent not later than 2:00 p.m. (New York City time) on the date due at the Principal Office of Administrative Agent for the account of Lenders; for purposes of computing interest and fees, funds received by Administrative Agent after that time on such due date shall be deemed to have been paid by Borrower on the next succeeding Business Day.

(b) All payments in respect of the principal amount of any Loan shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid, and all such payments (and, in any event, any payments in respect of any Loan on a date when interest is due and payable with respect to such Loan) shall be applied to the payment of interest then due and payable before application to principal.

(c) Administrative Agent (or its agent or sub-agent appointed by it) shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender's applicable Pro Rata Share of all payments and prepayments of principal and interest due hereunder, together with all other amounts due thereto, including all fees payable with respect thereto, to the extent received by Administrative Agent.

(d) Notwithstanding the foregoing provisions hereof, if any Conversion/ Continuation Notice is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its Pro Rata Share of any Eurodollar Rate Loans, Administrative Agent shall give effect thereto in apportioning payments received thereafter.

(e) Whenever any payment to be made hereunder with respect to any Loan shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day; provided, that if such extension would cause such payment to be made in the next succeeding Fiscal Quarter, such payment shall be made on the immediately preceding Business Day instead.

(f) Administrative Agent shall deem any payment by or on behalf of Borrower hereunder that is not made in same day funds prior to 3:00 p.m. (New York City time) to be a non-conforming payment. Any such payment shall not be deemed to have been received by Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Administrative Agent shall give prompt telephonic notice to Borrower and each applicable Lender (confirmed in writing) if any payment is non-conforming. To the extent not made in same day funds no later than 6:00 p.m. (New York City time), any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 8.1(a). Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no

event less than the period from the date of such payment to the next succeeding applicable Business Day) at the rate determined pursuant to Section 2.10 from the date such amount was due and payable until the date such amount is Paid in Full.

(g) If an Event of Default shall have occurred and not otherwise been waived, and the maturity of the Obligations shall have been accelerated pursuant to Section 8.1 or pursuant to any sale of, any collection from, or other realization upon all or any part of the Collateral as a result thereof, all payments or proceeds received by Agents hereunder in respect of any of the Obligations shall be applied in accordance with Section 8.2.

(h) Notwithstanding anything to the contrary herein, any Designated Coal Contract Counterparty that is an "insider" under, and as defined in, the Bankruptcy Code (an "**Insider Designated Coal Contract Counterparty**") shall solely bear the risk that any Obligations owing to it or any Lien to the extent securing any such Obligations is set aside or avoided as a preference, fraudulent conveyance or otherwise and the application of voluntary payments, mandatory payments, prepayments or any other payments or distributions of Collateral proceeds to the other Secured Parties under this Agreement or any other Credit Documents shall not be modified or otherwise adversely affected as a result of any such avoidance with respect to an Insider Designated Coal Contract Counterparty. In the event that any Lien, to the extent securing the Obligations owing to an Insider Designated Coal Contract Counterparty, is set aside or avoided as a preference, fraudulent conveyance or otherwise, then such Insider Designated Coal Contract Counterparty shall be deemed ab initio to have never been a Secured Party under this Agreement or any other Credit Documents and hence shall not be entitled, directly or indirectly, to the benefit of such Lien.

2.17. Ratable Sharing. Lenders hereby agree among themselves that if any of them shall, whether by voluntary payment, through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Credit Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code or any other applicable legislation, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Lender hereunder or under the other Credit Documents (collectively, the **"Aggregate Amounts Due"** to such Lender) resulting in such Lender receiving payment of a greater proportion of the Aggregate Amounts Due to such Lender than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (a) notify Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders ratably in accordance with the Aggregate Amounts Due to them; provided, (i) if all or part of such proportionally greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of Borrower or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the

extent of such recovery, but without interest and (ii) such participations shall be allocated by the Administrative Agent in accordance with the priority scheme set forth in Section 8.2, 8.3 or 8.4, as the context may require based on the type of proceeds received by such purchasing Lender. Borrower expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, set-off or counterclaim with respect to any and all monies owing by Borrower to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder. The provisions of this Section 2.17 shall not be construed to apply to (a) any payment made by Borrower pursuant to and in accordance with the express terms of this Agreement (for the avoidance of doubt, as in effect from time to time) (including the application of funds arising from the existence of a Defaulting Lender) or (b) any payment obtained by any Lender as consideration for the assignment or sale of a participation in any of its Loans or other Obligations owed to it.

2.18. Making or Maintaining Eurodollar Rate Loans.

(a) Inability to Determine Applicable Interest Rate. In the event that Administrative Agent shall have determined (which determination shall be final and conclusive and binding upon all parties hereto but shall be made only after consultation with Borrower), on any Interest Rate Determination Date with respect to any Eurodollar Rate Loans, that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such Loans on the basis provided for in the definition of "Adjusted Eurodollar Rate", Administrative Agent shall on such date give notice (by telefacsimile or by telephone confirmed in writing) to Borrower and each Lender of such determination, whereupon (i) no Loans may be made as, or converted to, Eurodollar Rate Loans until such time as Administrative Agent notifies Borrower and Lenders that the circumstances giving rise to such notice no longer exist, and (ii) any Funding Notice or Conversion/Continuation Notice given by Borrower with respect to the Loans in respect of which such determination was made shall be deemed to be rescinded by Borrower.

(b) Illegality or Impracticability of Eurodollar Rate Loans. In the event that on any date (i) any Lender shall have determined (which determination shall be final and conclusive and binding upon all parties hereto but shall be made only after consultation with Borrower and Administrative Agent) that the making, maintaining, converting to or continuation of its Eurodollar Rate Loans has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) Administrative Agent is advised by the Requisite Lenders (which determination shall be final and conclusive and binding upon all parties hereto) that the making, maintaining, converting to or continuation of its Eurodollar Rate Loans has become impracticable, as a result of contingencies occurring after the date hereof which materially and adversely affect the London interbank market or the position of the Lenders in that market, then, and in any such event, such Lenders (or in the case of the preceding clause (b), such Lender) shall be an **"Affected Lender"** and such Affected Lender shall on that day give notice (in writing by telefacsimile or by

telephone confirmed in writing) to Borrower and Administrative Agent of such determination (which notice Administrative Agent shall promptly transmit to each Lender). If Administrative Agent receives a notice from (x) any Lender pursuant to clause (b) of the preceding sentence or (y) Lenders constituting Requisite Lenders pursuant to clause (b) of the preceding sentence, then (1) the obligation of the Lenders (or, in the case of any notice pursuant to clause (b) of the preceding sentence, such Lender) to make Loans as, or to convert Loans to, Eurodollar Rate Loans shall be suspended until such notice shall be withdrawn by each Affected Lender, (2) to the extent such determination by the Affected Lender relates to a Eurodollar Rate Loan then being requested by Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, the Lenders (or in the case of any notice pursuant to clause (b) of the preceding sentence, such Lender) shall make such Loan as (or continue such Loan as or convert such Loan to, as the case may be) a Base Rate Loan, (3) the Lenders' (or in the case of any notice pursuant to clause (b) of the preceding sentence, such Lender's) obligations to maintain their respective outstanding Eurodollar Rate Loans (the **"Affected Loans"**) shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (4) the Affected Loans shall automatically convert into Base Rate Loans on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a Eurodollar Rate Loan then being requested by Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, Borrower shall have the option, subject to the provisions of Section 2.18(c), to rescind such Funding Notice or Conversion/Continuation Notice as to all Lenders by promptly giving notice (in writing by telefacsimile or by telephone confirmed in writing) to Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission Administrative Agent shall promptly transmit to each Lender). Except as provided in the immediately preceding sentence, nothing in this Section 2.18(b) shall affect the obligation of any Lender other than an Affected Lender to make or maintain Loans as, or to convert Loans to, Eurodollar Rate Loans in accordance with the terms hereof.

(c) Compensation for Breakage or Non-Commencement of Interest Periods. Borrower shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable, actual out-of-pocket losses, expenses and liabilities (including any interest paid by such Lender to Lenders of funds borrowed by it to make or carry its Eurodollar Rate Loans and any actual out-of-pocket loss, expense or liability sustained by such Lender in connection with the liquidation or re-employment of such funds but excluding loss of anticipated profits and excluding any interest rate floor in such determination) which such Lender sustains: (i) if for any reason (other than a default by such Lender) a borrowing of any Eurodollar Rate Loan does not occur on a date specified therefor in a Funding Notice or a telephonic request for borrowing, or a conversion to or continuation of any Eurodollar Rate Loan does not occur on a date specified therefor in a Conversion/Continuation Notice or a telephonic request for conversion or continuation; (ii) if any prepayment or other principal payment of, or any conversion of, any of its Eurodollar Rate Loans occurs on a date prior to the last day of an Interest Period applicable to that Loan; or (iii) if any prepayment of any of its Eurodollar Rate Loans is

not made on any date specified in a notice of prepayment given by Borrower.

(d) Booking of Eurodollar Rate Loans. Subject to Sections 2.20 and 2.21, any Lender may make, carry or transfer Eurodollar Rate Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender.

(e) Assumptions Concerning Funding of Eurodollar Rate Loans. Calculation of all amounts payable to a Lender under this Section 2.18 and under Section 2.19 shall be made as though such Lender had actually funded each of its relevant Eurodollar Rate Loans through the purchase of a eurodollar deposit bearing interest at the rate obtained pursuant to clause (i) of the definition of "Adjusted Eurodollar Rate" in an amount equal to the amount of such Eurodollar Rate Loan and having a maturity comparable to the relevant Interest Period and through the transfer of such eurodollar deposit from an offshore office of such Lender to a domestic office of such Lender in the United States; provided, however, each Lender may fund each of its Eurodollar Rate Loans in any manner it sees fit and the foregoing assumptions shall be utilized only for the purposes of calculating amounts payable under this Section 2.18 and under Section 2.19.

2.19. Increased Costs; Capital Adequacy.

(a) Compensation For Increased Costs and Taxes. In the event that any Lender shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that (A) any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (regardless of whether the underlying law, treaty or governmental rule, regulation or order was issued or enacted prior to the date hereof), including the introduction of any new law, treaty or governmental rule, regulation or order but excluding solely proposals thereof, or any determination of a court or Governmental Authority, in each case that becomes effective after the date hereof (provided that the introduction of any new law, treaty or governmental rule, regulation or order, or any determination of a court or Governmental Authority with respect to the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, in each case that becomes effective after the Closing Date shall be considered a change in law whether promulgated before or after the Closing Date), or (B) any guideline, request or directive by any central bank or other governmental or quasi-governmental authority (whether or not having the force of law) or any implementation rules or interpretations of previously issued guidelines, requests or directives, in each case that is issued or made after the date hereof: (i) subjects such Lender (or its applicable lending office) to any additional Tax (other than any Tax described in clauses (ii) through (iv) of the definition of Excluded Taxes, Other Connection Taxes or any tax in respect of which such Lender is indemnified or receives additional amounts pursuant to Section 2.20) with respect to this Agreement or any of the other Credit Documents or any of its obligations hereunder or thereunder or

any payments to such Lender (or its applicable lending office) of principal, interest, fees or any other amount payable hereunder or thereunder or on such Lender's loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto); (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, liquidity, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender (other than any such reserve or other requirements with respect to Eurodollar Rate Loans that are reflected in the definition of "Adjusted Eurodollar Rate") or any company controlling such Lender; or (iii) imposes any other condition (other than with respect to Taxes) on or affecting such Lender (or its applicable lending office) or any company controlling such Lender or such Lender's obligations hereunder or the London interbank market; and the result of any of the foregoing is to increase the cost to such Lender of agreeing to make, making or maintaining Eurodollar Rate Loans hereunder or to reduce any amount received or receivable by such Lender (or its applicable lending office) with respect thereto; then, in any such case, Borrower shall promptly pay to such Lender, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or in a lump sum or otherwise as such Lender in its sole discretion shall determine) as may be necessary to compensate such Lender for any such increased cost or reduction in amounts received or receivable hereunder. Such Lender shall deliver to Borrower (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Lender under this Section 2.19(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error; provided, that, with respect to a Lender other than a Lender listed on the signature pages hereof on the Closing Date, no such additional amount shall be required to be paid unless such law, treaty, governmental rule, regulation, order, change therein, interpretation, administration or application thereof, or determination becomes effective, or such guideline, request or directive is issued or made, after the effective date of the Assignment Agreement pursuant to which such Lender became a Lender.

(b) Capital Adequacy Adjustment. In the event that any Lender shall have determined (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that (A) the adoption, effectiveness, phase-in or applicability after the Closing Date of any law, rule or regulation (or any provision thereof) regarding capital adequacy, but including the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith (whether or not promulgated before or after the Closing Date) and all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III (whether or not promulgated before or after the Closing Date), or any change therein or in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or (B) compliance by any Lender (or its applicable lending office)

or any company controlling such Lender with any guideline, request or directive regarding capital adequacy or liquidity (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, in each case after the date hereof, has or would have the effect of reducing the rate of return on the capital of such Lender or any company controlling such Lender as a consequence of, or with reference to, such Lender's Loans or other obligations hereunder with respect to the Loans to a level below that which such Lender or such controlling company could have achieved but for such adoption, effectiveness, phase-in, applicability, change or compliance (taking into consideration the policies of such Lender or such controlling company with regard to capital adequacy), then from time to time, within five Business Days after receipt by Borrower from such Lender of the statement referred to in the next sentence, Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling company on an after-tax basis for such reduction. Such Lender shall deliver to Borrower (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.19(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

2.20. Taxes; Withholding, Etc.

(a) Payments to Be Free and Clear. Subject to Section 2.20(b), all sums payable by any Credit Party hereunder and under the other Credit Documents shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding on account of, any Tax imposed, levied, collected, withheld or assessed by any Governmental Authority or any political subdivision or taxing authority thereof or therein.

(b) Withholding of Taxes. If any Credit Party or the Administrative Agent is required by law to make any deduction or withholding on account of any Tax from any sum paid or payable by or on behalf of any Credit Party to Administrative Agent or any Lender under any of the Credit Documents: (i) Borrower shall notify Administrative Agent or Administrative Agent shall notify Borrower, as applicable, of any such requirement or any change in any such requirement as soon as reasonably possible after Borrower or Administrative Agent becomes aware of it; (ii) Borrower or Administrative Agent (or other relevant Credit Party) shall pay any such Tax to the relevant Governmental Authority before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Credit Party) for its own account or (if that liability is imposed on Administrative Agent or such Lender, as the case may be) on behalf of and in the name of Administrative Agent or such Lender; (iii) the sum payable by such Credit Party in respect of which the relevant deduction or withholding is required shall be increased to the extent necessary to ensure that, after the making of that deduction or withholding (including such deductions and withholdings applicable to additional sums payable under this Section), Administrative Agent or such Lender, as the case may be, receives on the relevant due date a net sum equal to what it would have received had no such deduction or withholding been required or made; and (iv) within thirty days after paying any sum from which any deduction or withholding has been made, Borrower shall deliver to Administrative Agent evidence reasonably

satisfactory to Administrative Agent of such deduction or withholding and of the remittance thereof to the relevant tax or other authority; provided, no such additional amount shall be required to be paid under clause (iii) above with respect to any Excluded Taxes.

(c) Payment of Other Taxes. In addition, Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, and shall indemnify and timely reimburse the Administrative Agent for the payment of, any Other Taxes.

(d) Evidence of Exemption From U.S. Withholding Tax. Each Lender that is not a United States person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. federal income tax purposes shall deliver to Administrative Agent and Borrower, on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of Borrower or Administrative Agent (each in the reasonable exercise of its discretion), (i) two copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (claiming the benefits of any applicable income tax treaty), W-8EXP, W-8ECI and/or W-8IMY (or any successor forms), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code or reasonably requested by Borrower or Administrative Agent to establish that such Lender is not subject to (or is subject to a reduced rate of) deduction or withholding of United States federal income tax with respect to any payments to such Lender of principal, interest, fees or other amounts payable under any of the Credit Documents, or (ii) if such Lender is not a "bank" or other Person described in Section 881(c)(3) of the Internal Revenue Code and is relying on the so-called "portfolio interest exemption," a Certificate re Non-Bank Status together with two copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable and/or W-8IMY (or any successor form), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code or reasonably requested by Borrower or Administrative Agent to establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to any payments to such Lender of interest payable under any of the Credit Documents. If any Lender provides an Internal Revenue Service Form W-8IMY, such Lender must also attach the additional documentation that must be transmitted with Internal Revenue Service Form W-8IMY, including the appropriate forms described in this Section 2.20(d). Each Lender that is a United States person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) and whose name does not indicate that it is an "exempt recipient" (as such term is defined in Section 1.6049-4(c) of the United States Treasury Regulations) shall deliver to Borrower and Administrative Agent on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of Borrower and Administrative Agent (each in the reasonable exercise of its discretion) two copies of Internal Revenue Service Form W-9 (or successor forms). Notwithstanding anything to

the contrary contained herein, a Lender shall not be required to deliver any form or statement pursuant to this Section 2.20(d) that such Lender is not legally able to deliver. Each Lender required to deliver any forms, certificates or other evidence with respect to United States federal income tax withholding matters pursuant to this Section 2.20(d) hereby agrees, from time to time after the initial delivery by such Lender of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that such Lender shall promptly upon request deliver to Administrative Agent for transmission to Borrower two new copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable, W-8EXP, W-8ECI, W-8IMY or W-9, or a Certificate re Non-Bank Status and two original copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable or W-8IMY (or any successor form), as the case may be, properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code or reasonably requested by Borrower or Administrative Agent to confirm or establish that such Lender is not subject to (or is subject to a reduced rate of) deduction or withholding of United States federal income tax with respect to payments to such Lender under the Credit Documents, or notify Administrative Agent and Borrower of its inability to deliver any such forms, certificates or other evidence. Administrative Agent shall provide documentation to Borrower pursuant to this Section 2.20(d) as if it were Lender.

(e) Evidence of Exemption from Non-U.S. Withholding Tax. A Lender that is entitled to an exemption from or reduction of non-U.S. withholding tax under the law of the jurisdiction in which Borrower is subject to tax, or any tax treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver, within a reasonable period of time, to Borrower (with a copy to Administrative Agent), as reasonably requested by Borrower, such properly completed and executed documentation prescribed by applicable law (including, if relevant, a certificate of residence) as will permit such payments to be made without withholding or at a reduced rate, provided that such Lender is able to complete, execute and deliver such documentation legally and without undue prejudice.

(f) Borrower Indemnification for Failure to Pay Required Taxes, etc. Borrower shall indemnify Administrative Agent and the Lenders for any Taxes (including Taxes imposed or asserted on or attributable to amounts payable under this Section 2.20) payable or paid by Administrative Agent or Lender or required to be withheld or deducted from a payment to Administrative Agent or Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Payment under this indemnification must be made within fifteen days from the date any of Administrative Agent or any Lender or any of their respective Affiliates makes written demand therefore accompanied by appropriate evidence of the Tax and its payment. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(g) Treatment of Certain Refunds. If Administrative Agent or a

Lender or any other Recipient determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified pursuant to this Section 2.20 or Section 9.9 or with respect to which the Credit Party has paid additional amounts pursuant to this Section 2.20, it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, under this Section 2.20 or Section 9.9 with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the indemnifying party, upon the request of the indemnified party, agrees to repay the amount paid over to the indemnifying party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the indemnified party in the event the indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to any indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require the indemnified party to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to any indemnifying party or any other Person.

(h) FATCA. If a payment made to a Lender under any Credit Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by Borrower or Administrative Agent as may be necessary for Borrower and Administrative Agent to comply with their obligations under FATCA and to determine whether such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.20(h), "FATCA" shall include any amendments made to FATCA after the Closing Date that are not already included in the definition of "FATCA".

(i) Survival. Each party's obligations under this Section 2.20 shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of any Commitment and the repayment, satisfaction or discharge of all obligations under any Credit Document.

2.21. Obligation to Mitigate; Limitation on Additional Amounts, etc..

(a) Obligation to Mitigate. Each Lender agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Loans

becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such Lender to receive payments under Sections 2.18, 2.19 or 2.20, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts to (a) make, issue, fund or maintain its Credit Extensions, including any Affected Loans, through another office of such Lender, or (b) take such other measures as such Lender may deem reasonable, if as a result thereof the circumstances which would cause such Lender to be an Affected Lender would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender pursuant to Sections 2.18, 2.19 or 2.20 would be materially reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of such Loans through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Loans or the interests of such Lender; provided, such Lender will not be obligated to utilize such other office pursuant to this Section 2.21 unless Borrower agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by Borrower pursuant to this Section 2.21 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Borrower (with a copy to Administrative Agent) shall be conclusive absent manifest error.

2.22. Defaulting Lender Cure. If Borrower and Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, fund any Loans that such Lender has failed to fund, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; and provided further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

2.23. Removal or Replacement of a Lender. Anything contained herein to the contrary notwithstanding, in the event that: (a) (i) any Lender (an **"Increased-Cost Lender"**) shall give notice to Borrower that such Lender is an Affected Lender or that such Lender is entitled to receive payments under Section 2.18, 2.19 or 2.20, (ii) the circumstances which have caused such Lender to be an Affected Lender or which entitle such Lender to receive such payments shall remain in effect, and (iii) such Lender shall fail to withdraw such notice within five Business Days after Borrower's request for such withdrawal; or (b) (i) any Lender shall become and continues to be a Defaulting Lender, and (ii) such Defaulting Lender shall fail to cure the default pursuant to Section 2.22 within five Business Days after Borrower's request that it cure such default and with respect to each such Increased-Cost Lender or Defaulting Lender (the **"Terminated Lender"**), Borrower may, by giving written notice to Administrative Agent and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Loans and unused Commitments in full to one or more Eligible Assignees (each a **"Replacement Lender"**) in accordance with the provisions of Section 10.6 except no fee shall be payable thereunder in

connection with any such assignment from an Increased-Cost Lender and the Defaulting Lender shall pay the fees, if any, payable thereunder in connection with any such assignment from such Defaulting Lender; provided, (1) on the date of such assignment, the Replacement Lender shall pay to Terminated Lender an amount equal to the principal of, and all accrued but unpaid interest on, all outstanding Loans of the Terminated Lender; and (2) on the date of such assignment, Borrower shall pay any amounts payable to such Terminated Lender pursuant to Section 2.11, 2.18(c), 2.19 or 2.20; or otherwise as if it were a prepayment; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender; provided, no such assignment will be required if it results from a claim for compensation under Section 2.19 or payments required to be made pursuant to Section 2.20 unless it will result in a reduction of such compensation or payments thereafter. Each Lender agrees that if Borrower exercises its option hereunder to cause an assignment by such Lender as a Terminated Lender, such Lender shall, promptly after receipt of written notice of such election, execute and deliver all documentation necessary to effectuate such assignment in accordance with Section 10.6. In the event that a Lender does not comply with the requirements of the immediately preceding sentence within one Business Day after receipt of such notice, each Lender hereby authorizes and directs Administrative Agent to execute and deliver such documentation as may be required to give effect to an assignment in accordance with Section 10.6 on behalf of a Terminated Lender and any such documentation so executed by Administrative Agent shall be effective for purposes of documenting an assignment pursuant to Section 10.6.

2.24. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder that may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

2.25. Priority and Liens; No Discharge.

(a) The relative priorities of the Liens with respect to the Collateral shall be as set forth in the Interim Order (and, when entered, the Final Order). All of the Liens described herein shall be effective and perfected upon entry of the Interim Order without the necessity of the execution or recordation of filings by the Debtors of security agreements, mortgages, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Administrative Agent or Collateral Agent, as applicable, of, or over, any Collateral, as set forth in the Interim Order and, when entered, the Final Order.

(b)

(i) Each Credit Party that is a Debtor hereby confirms and acknowledges that, pursuant to the Interim Order (and, when entered, the Final Order), the Liens in favor of the Collateral Agent on behalf of and for the benefit of the Secured Parties in all of the DIP Collateral (as defined in the Interim Order, but in any case, excluding any Excluded Assets and Avoidance Actions (but including, subject to the entry of the Final Order, the proceeds thereof)), which includes, without limitation, all of such Debtor's Real Estate Assets (other than Excluded Assets), now existing or hereafter acquired, shall be created and perfected without the recordation or filing in any land records or filing offices of any mortgage, assignment or similar instrument.

(ii) Further to Section 2.25(b)(i) and the Interim Order (and, when entered, the Final Order), subject to Section 2.25(b)(iv) below, to secure the full and timely payment and performance of the Secured Obligations, each Credit Party that is a Debtor hereby MORTGAGES, GRANTS, BARGAINS, ASSIGNS, SELLS, CONVEYS and CONFIRMS, to the Collateral Agent, for the ratable benefit of the Secured Parties, all or any Real Estate Assets (in any case, excluding any Real Estate Assets that are Excluded Assets), but which, for the avoidance of doubt, shall include all of such Credit Party's right, title and interest now or hereafter acquired in and to (a) any and all easements, rights-of-way, reversions, sidewalks, strips and gores of land, drives, roads, curbs, streets, ways, alleys, passages, passageways, sewer rights, waters, water courses, water rights, mineral, gas and oil rights, as-extracted collateral and all power, air, light and other rights, estates, titles, interests, privileges, liberties, servitudes, licenses, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining thereto, or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto; (b) the lessee's interest and estate in, to and under any leases and subleases to which such Credit Party is a party (as such leases and subleases may be extended, amended, supplemented, modified or restated), together with any and all easements, rights-of-way, reversions, sidewalks, strips and gores of land, drives, roads, curbs, streets, ways, alleys, passages, passageways, sewer rights, waters, water courses, water rights, mineral, gas and oil rights, as-extracted collateral and all power, air, light and other rights, estates, titles, interests, privileges, liberties, servitudes, licenses, tenements, hereditaments and appurtenances whatsoever, in any way demised under such leases and subleases; (c) any and all tipples, loading and coal washing facilities, railroad tracks, buildings, foundations, structures and other fixtures and improvements and any and all alterations and all materials now or hereafter intended for construction, reconstruction or repair thereof; (d) any and all permits, certificates, authorizations,

consents, approvals, licenses, franchises, waivers or other instruments now or hereafter required by any Governmental Authority to operate or use and occupy the Real Estate Assets and related assets for its intended uses; (e) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by such Credit Party, and water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or not situated in easements or used or useful in connection with mining coal or other minerals or in connection with any related activities or the maintenance or preservation thereof; (f) all goods, accounts, general intangibles, instruments, documents, chattel paper, as-extracted collateral and all other personal property of any kind or character, including such items of personal property as defined in the UCC; (g) all reserves, escrows or impounds and all deposit accounts; (h) such Credit Party's right, title and interest as lessor, landlord, sublessor, sublandlord, franchisor, licensor or grantor, in all leases and subleases (including, without limitation, intercompany leases) of land or improvements, leases and subleases of space, oil, gas and mineral leases, franchise agreements, licenses, occupancy or concession agreements or other agreements which grant to any Person (other than such Credit Party) a possessory interest in, or the right to use any Real Estate Assets, including, all rents, additional rents, royalties, cash, guaranties, letters of credit, bonds, sureties or securities deposited thereunder to secure performance of the lessee's, sublessee's, franchisee's, licensee's or obligee's obligations thereunder, revenues, earnings, profits and income, advance rental or royalties, payments, payments incident to assignment, sublease or surrender of a lease, claims for forfeited deposits and claims for damages, now due or hereafter to become due, with respect to any lease, any indemnification against, or reimbursement for, sums paid and costs and expenses incurred by such Credit Party under any lease or otherwise, and any award in the event of the bankruptcy of any tenant or lessee under or guarantor of a lease; (i) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of any Real Estate Assets; (j) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing; (k) all property tax refunds payable to such Credit Party; (l) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof; (m) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by such Credit Party; and (n) any awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Real Estate Assets (BUT EXCLUDING from the foregoing grants, Excluded Assets), TO HAVE AND TO HOLD to the Collateral Agent, and such Credit Party does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to such property, assets and interests unto the Collateral Agent.

(iii) Each Credit Party that is a Debtor further agrees that upon the request of the Collateral Agent (acting at the direction of the Requisite Term Lenders), such Credit Party shall execute and deliver to the Collateral Agent, as soon as reasonably practicable following such request but in any event within 45 days following such request (or such later date as may be extended by the Administrative Agent), with respect to Real

Estate Assets owned or leased by such Credit Party (in any case, excluding any Real Estate Assets that are Excluded Assets) and identified by the Collateral Agent, the applicable Credit Party shall deliver:

1. fully executed and notarized Mortgages, in proper form for recording in all appropriate places in all applicable jurisdictions, encumbering each such Real Estate Asset, and any ancillary deliverables as reasonably requested by the Collateral Agent (including, without limitation, memoranda of leases in recordable form, duly executed by the applicable landlord and Credit Party);

2. an opinion of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) in each state in which each such Real Estate Asset is located with respect to the enforceability of the form(s) of Mortgages to be recorded in such state and such other matters as Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to Collateral Agent; and

3. (A) a completed Flood Certificate with respect to any Real Estate Asset that constitutes Collateral and that is improved with structures eligible for flood insurance under the Flood Program , which Flood Certificate shall (x) be addressed to the Collateral Agent and (y) otherwise comply with the Flood Program; (B) if the Flood Certificate states that such Real Estate Asset is located in a Flood Zone, Debtor's written acknowledgment of receipt of written notification from the Collateral Agent (x) as to the existence of each such Real Estate Asset and (y) as to whether the community in which such Real Estate Asset is located is participating in the Flood Program; and (C) if such Real Estate Asset is located in a Flood Zone and is located in a community that participates in the Flood Program, evidence that Debtor has obtained a policy of flood insurance that is in compliance with all applicable requirements of the Flood Program.

(iv) Notwithstanding anything to the contrary herein, except as set forth in the Orders, in no event shall the Collateral of the Debtors include any Excluded Assets and/or any other property specifically excluded pursuant to the Orders.

(v) Each of the Credit Parties agrees that to the extent that its Obligations have not been Paid in Full, (i) its obligations shall not be discharged by any order confirming a Reorganization Plan (and each of the Credit Parties, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (ii) the Superpriority Claim granted to the Secured Parties pursuant to the Orders and the Liens granted to the Secured Parties pursuant to the Orders shall not be affected in any manner by any order confirming a Reorganization Plan; *provided* that such Obligations shall be discharged upon such Payment in Full, and such Obligations may be otherwise treated in accordance with an Acceptable Plan and such treatment will provide for the discharge of the Obligations arising hereunder if so provided by such Acceptable Plan.

2.26. Release. Each of the Borrower and the Guarantors hereby acknowledge that the Borrower, the Guarantors and any of their Subsidiaries have no defense, counterclaim, offset, recoupment, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all of any part of the Borrower's, the Guarantors' or their respective Subsidiaries' liability to repay the Secured Parties as provided in this Agreement or to seek affirmative relief or damages of any kind or nature from any Secured Party. The Borrower and the Guarantors, each in their own right and on behalf of their bankruptcy estates, and on behalf of all their successors, assigns, Subsidiaries and any Affiliates and any Person acting for and on behalf of, or claiming through them, (collectively, the "**Releasing Parties**"), hereby fully, finally and forever release and discharge the Agents and Lenders and all of Agents', Lenders', and the other Secured Parties' officers, directors, servants, agents, attorneys, assigns, heirs, parents, subsidiaries, and each Person acting for or on behalf of any of them, each solely in their capacity as such (collectively, the "**Released DIP Parties**") of and from any and all actions, causes of action, demands, suits, claims, liabilities, Liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, in each case, existing at the time of entry of the Interim Order, whether in law, equity or otherwise (including, without limitation, those arising under sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), directly or indirectly arising out of, connected with or relating to this Agreement, the Interim Order, the Final Order and the transactions contemplated hereby, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing provided, however, that the Credit Parties do not release, discharge or acquit any Released DIP Party from its obligations specifically set forth in this Agreement.

SECTION 3. CONDITIONS PRECEDENT

3.1. Closing Date. The effectiveness of this Agreement and the borrowing to be made on the Closing Date are subject to the satisfaction (or waiver) of the following conditions on or before the Closing Date (and the date such conditions are satisfied or waived, the "**Closing Date**"):

(a) Petition Date. The Petition Date shall have occurred and each of the Borrower and each Guarantor shall be a debtor and debtor-in-possession in the Cases.

(b) Credit Documents. Administrative Agent shall have received each Credit Document required to be delivered on the Closing Date, originally executed and delivered by each applicable Credit Party.

(c) Organizational Documents; Incumbency. Administrative Agent shall have received, in respect of each Credit Party, (i) the Organizational Documents of such Credit Party and, to the extent applicable; (ii) signature and incumbency certificates of the officers of such Credit Party; (iii) resolutions of the Board of Directors or similar governing body of such Credit Party approving and authorizing the execution, delivery and performance of this Agreement and the other Credit Documents to which it is a party

as of the Closing Date, certified as of the Closing Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; and (iv) a good standing certificate from the applicable Governmental Authority of such Credit Party's jurisdiction of incorporation, organization or formation, each dated the Closing Date or a recent date prior thereto.

(d) Organizational and Capital Structure. The organizational structure and capital structure of Holdings and its Subsidiaries, after giving effect to transactions contemplated by this Agreement, shall be as set forth on Schedule 4.1.

(e) ABL Refinancing. The Borrower shall have delivered to Administrative Agent evidence reasonably satisfactory to Administrative Agent of the ABL Refinancing substantially concurrently with the Closing Date.

(f) Existing Indebtedness. Borrower and its Restricted Subsidiaries shall have no outstanding Indebtedness other than Indebtedness permitted under this Agreement.

(g) [reserved].

(h) [reserved].

(i) [reserved].

(j) Personal Property Collateral. Each Credit Party shall have delivered to Collateral Agent:

(i) evidence reasonably satisfactory to Collateral Agent of the compliance by each Credit Party of their obligations under the Collateral Documents (including their obligations to execute or authorize, as applicable, and deliver UCC financing statements, originals of securities, instruments and chattel paper and any agreements governing deposit and/or securities accounts (other than Excluded Assets) as provided therein);

(ii) a completed Collateral Questionnaire dated the Closing Date and executed by an Authorized Officer of each Credit Party, together with all attachments contemplated thereby;

(iii) fully executed Intellectual Property Security Agreements, in proper form for filing or recording in the United States Patent and Trademark Office and the United States Copyright Office, as applicable, memorializing and recording the encumbrance of the Intellectual Property assets listed in Schedule 5.2 to the Pledge and Security Agreement; and

(iv) evidence that each Credit Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument (including any intercompany notes evidencing Indebtedness permitted to be incurred pursuant to Section 6.1(b) to the extent

not delivered to the Prepetition Collateral Trustee) and made or caused to be made any other filing and recording (other than as set forth herein) reasonably required by Collateral Agent.

(k) Financial Statements. Administrative Agent shall have received from Borrower (i) the Historical Financial Statements, (ii) a pro forma consolidated balance sheet of Borrower and its Restricted Subsidiaries on a consolidated basis as of the last day of the most recently completely four-fiscal quarter period for which financial statements were delivered under clause (i) of the definition of the term "Historical Financial Statements", the related financings and the other transactions contemplated by the Credit Documents to occur on or prior to the Closing Date as if such transactions occurred as of such date.

(l) Opinions of Counsel to Credit Parties. Administrative Agent shall have received executed copies of the favorable written opinions of counsel for Credit Parties in jurisdictions to be agreed (which shall be substantially consistent (taking into account the Cases) with the opinions delivered pursuant to the Prepetition Superpriority Credit Agreement), as to such matters as Administrative Agent may reasonably request, dated as of the Closing Date and in form and substance reasonably satisfactory to Administrative Agent and the Lenders (and each Credit Party hereby instructs such counsel to deliver such opinions to Administrative Agent).

(m) Fees. Administrative Agent shall have received a fee letter in form and substance satisfactory to the Administrative Agent, executed and delivered by the Borrower and the Administrative Agent, and Borrower shall have paid to the Agents the fees payable on or before the Closing Date referred to in Section 2.11, all expenses payable pursuant to, and to the extent required by, Section 10.2.

(n) Expenses. (i) The Administrative Agent shall have received, in each case for the account of the applicable Persons all fees and other amounts due and payable by any Credit Party to any of the Agents or Lenders on or prior to the Closing Date, including, to the extent invoiced (each such invoice to be accompanied by customary backup documentation) [•] [5] Business Days prior to the Petition Date, reimbursement or payment of all reasonable out-of-pocket expenses required to be reimbursed or paid by any Credit Party under the Credit Documents or any fee, engagement or similar letter and (ii) Davis Polk & Wardwell LLP shall have received all invoiced and unpaid fees and expenses of Davis Polk & Wardwell LLP through the Closing Date and (iii) Wilmer Cutler Pickering Hale and Dorr LLP shall have received all invoiced and unpaid fees and expenses of Wilmer Cutler Pickering Hale and Dorr LLP through the Closing Date and (iv) Sidley Austin LLP shall have received all invoiced and unpaid fees and expenses of Sidley Austin LLP through the Closing Date (in each case of clauses (ii) and (iii) and (iv), it being agreed that such amounts may be funded with the proceeds of the Term Loans requested to be made on the Closing Date).

(o) Closing Date Certificate. Borrower shall have delivered to

[5] NTD: to match time period in the Orders

Administrative Agent a Closing Date Certificate, together with all attachments thereto.

(p) USA PATRIOT Act. At least three (3) days prior to the Closing Date, the Lenders shall have received all documentation and other information with respect to the Credit Parties that shall have been reasonably requested by the Agents or the Lenders in writing at least five (5) days prior to the Closing Date (including a Beneficial Ownership Certificate to the extent required under 31 C.F.R. §1010.230) and that the Agents and the Lenders reasonably determine is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001) the **"PATRIOT Act"**).

(q) DIP Budget; Cash Flow Forecast. The Administrative Agent shall have received (i) monthly operating and cash flow projections for the Debtors for the nine (9) months after the Closing Date dated as of a date not more than 3 Business Days prior to the Closing Date and in a form customary for "DIP budgets" and in form and substance satisfactory to the Financial Advisor (the "**DIP Budget**") and (ii) an Approved Cash Flow Forecast dated as of a date not more than three (3) Business Days prior to the Closing Date.

(r) Interim Order. The Interim Order Entry Date shall have occurred not later than 5 days following the Petition Date (or such later date as the Requisite Term Lenders and Requisite Roll-Up Lenders may agree) and the Interim Order shall not have been vacated, reversed, modified, amended or stayed in any respect without the prior written consent of the Requisite Term Lenders and Requisite Roll-Up Lenders.

(s) Material Adverse Effect. Since December 31, 2018, there has been no Material Adverse Effect (after giving effect to the qualifications set forth in such definition).

(t) [reserved].

(u) First Day Orders. All "first day" orders intended to be entered by the Bankruptcy Court at or immediately after the Debtors' "first day" hearing shall be in form and substance reasonably acceptable to the Requisite Term Lenders and shall have been entered by the Bankruptcy Court.

(v) [Reserved].

(w) [reserved].

(x) Credit Extension Conditions. Each of the conditions set forth in Section 3.3 shall have been satisfied.

3.2. Conditions to Borrowing on the Full Availability Date. The obligation of each Lender to make any Loan in an amount equal to its Delayed Draw Commitment, is subject to the satisfaction of the following conditions precedent:

(a) Closing Date. The Closing Date shall have occurred and the conditions set forth in Section 3.1 have been satisfied.

(b) Final Order. The Final Order Entry Date shall have occurred no later than forty-five (45) days after the Petition Date and the Final Order shall approve the full amount of the Term Loan Facility and the Roll-Up Facility.

(c) Second Day Motions. All "second day" orders approving on a final basis the relief granted under any first day orders shall have been entered by the Bankruptcy Court, shall be reasonably satisfactory to the Requisite Term Lenders, shall be in full force and effect, shall not have been vacated or reversed, shall not be subject to a stay and shall not have been modified or amended other than as reasonably acceptable to the Requisite Term Lenders. All pleadings related to procedures for approval of significant transactions, including, without limitation, asset sale procedures, regardless of when filed or entered, shall be reasonably satisfactory in form and substance to the Requisite Term Lenders.

(d) Officer's Certificate. The Administrative Agent shall have received a certificate from an Authorized Officer of the Borrower, dated the Full Availability Date certifying that the conditions set forth in paragraphs (a), (b) and (e) of Section 3.3 have been satisfied.

(e) Collateral. The requirements set forth in Section 3.1(j) shall have been satisfied.

(f) Fees. The Administrative Agent shall have received, in each case for the account of the applicable Persons all fees and other amounts due and payable by any Credit Party to any of the Agents or Lenders on or prior to the Full Availability Date, including, to the extent invoiced (each such invoice to be accompanied by customary backup documentation) [●] [6] Business Days prior to the Full Availability Date, reimbursement or payment of all reasonable out-of-pocket expenses required to be reimbursed or paid by any Credit Party under the Credit Documents or any fee, engagement or similar letter (it being agreed that such amounts may be funded with the proceeds of the Term Loans requested to be made on the Closing Date).

(g) Credit Extension Conditions. Each of the conditions set forth in Section 3.3 shall have been satisfied.

3.3. Conditions to each Credit Extension. The obligation of each Lender to make a Loan on the occasion of any Credit Extension, is subject to the satisfaction of the following conditions:

(a) Accuracy of Representations. As of the date of such Credit Extension, the representations and warranties set forth in Section 4 and in the other Credit Documents shall be true and correct in all material respects on and as of the date of such Credit Extension (both immediately prior to and after giving effect to the funding of the

[6] NTD: to match time period in the Orders.

applicable Term Loans) to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date; provided that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof.

(b) No Default. At the time of and immediately after giving effect to such Credit Extension, no event shall have occurred and be continuing that would constitute a Default or an Event of Default.

(c) Funding Notice. Administrative Agent shall have received a fully executed and delivered Funding Notice pursuant to Section 2.1(c)(i), executed by an Authorized Officer no later than three Business Day prior to the date of the relevant Credit Extension or such shorter period of time acceptable to Administrative Agent.

(d) Effective Interim Order. At any time prior to the Final Order Entry Date, the Interim Order shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed in any respect without the prior written consent of the Requisite Term Lenders and Requisite Roll-Up Lenders.

(e) Effective Final Order. With respect to any Credit Extension on or after the Final Order Entry Date, the Final Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the prior written consent of the Requisite Term Lenders and Requisite Roll-Up Lenders.

(f) Restructuring Support Agreement. The RSA shall have become effective and binding in accordance with its terms, and no Consenting Superpriority Lenders Termination Event, Consenting Equityholders Termination Event or Company Termination Event (as each is defined in the RSA) shall have occurred.

(g) No Trustee. No trustee, examiner, or receiver shall have been appointed or designated with respect to the Credit Parties' business, properties or assets.

(h) Dismissal; Conversion. The Cases of any Debtors shall have not been dismissed or converted to cases under Chapter 7 of the Bankruptcy Code.

SECTION 4. REPRESENTATIONS AND WARRANTIES

In order to induce Agents and Lenders to enter into this Agreement and to make each Credit Extension to be made thereby, each Credit Party represents and warrants to each Agent, on the Closing Date and the date of each Credit Extension, that the following statements are true and correct :

4.1. Organization; Requisite Power and Authority; Qualification. Each of Holdings and its Restricted Subsidiaries (a) is duly organized, validly existing and in good

standing under the laws of its jurisdiction of organization as identified in Schedule 4.1, (b) has all requisite power and authority to (i) own and operate its properties, to carry on its business as now conducted and as proposed to be conducted and (ii) subject, in case of each Credit Party that is a Debtor, to the entry of the Orders and the terms thereof, enter into the Credit Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect.

4.2. Equity Interests and Ownership. The Equity Interests of each of Borrower and its Restricted Subsidiaries have been duly authorized and validly issued and is fully paid and to the extent applicable thereto, non-assessable. Except as set forth on Schedule 4.2, as of the Closing Date, there is no existing option, warrant, call, right, commitment or other agreement to which Borrower or any of its Restricted Subsidiaries is a party requiring, and there is no membership interest or other Equity Interests of Borrower or any of its Restricted Subsidiaries outstanding which upon conversion or exchange would require, the issuance by Borrower or any of its Restricted Subsidiaries of any additional membership interests or other Equity Interests of Borrower or any of its Restricted Subsidiaries or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Equity Interests of Borrower or any of its Restricted Subsidiaries. Schedule 4.2 correctly sets forth the ownership interest of Borrower and each of its Subsidiaries (including Unrestricted Subsidiaries) in their respective Subsidiaries (including Unrestricted Subsidiaries) as of the Closing Date.

4.3. Due Authorization. Subject, in the case of each Credit Party that is a Debtor, to the entry of the Orders and the terms thereof, the execution, delivery and performance of the Credit Documents have been duly authorized by all necessary corporate, limited liability company or other action on the part of each Credit Party that is a party thereto.

4.4. No Conflict. Subject, in the case of each Credit Party that is a Debtor, to the entry of the Orders and the terms thereof, the execution, delivery and performance by Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not and will not (a) violate (i) any provision of any law or any governmental rule or regulation applicable to Holdings or any of its Restricted Subsidiaries, (ii) any of the Organizational Documents of Holdings or any of its Restricted Subsidiaries, or (iii) any order, judgment or decree of any court or other agency of government binding on Holdings or any of its Restricted Subsidiaries, except in the case of clauses (i) or (iii), such violations as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of Holdings or any of its Restricted Subsidiaries (other than, in the case of a Debtor, any Prepetition Debt) except to the extent such conflict, breach or default could not reasonably be expected to have a Material Adverse Effect; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of Holdings or any of its Restricted Subsidiaries (other than any Liens created under the Orders, or Liens created under any of the Credit Documents in favor of Collateral Agent, for the benefit of the Secured Parties); or (d) require any approval of stockholders, members or partners or any approval or consent of any Person under any Contractual Obligation of Holdings or any of its Restricted Subsidiaries, except for such

approvals or consents which will be obtained on or before the Closing Date and except for any such approvals or consents the failure of which to obtain will not have a Material Adverse Effect.

4.5. Governmental Consents. Except as would not be reasonably expected to result in a Material Adverse Effect, the execution, delivery and performance by Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents to which they are a party do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority except as otherwise set forth herein, and except for filings and recordings with respect to the Collateral to be made, or otherwise delivered to Collateral Agent for filing and/or recordation, as of the Closing Date.

4.6. Binding Obligation. Subject, in the case of each Credit Party that is a Debtor, to the entry of the Orders and the terms thereof, each Credit Document has been duly executed and delivered by each Credit Party that is a party thereto and is the legally valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by general equitable principles relating to enforceability (whether enforcement is sought by proceedings in equity or at law).

4.7. Historical Financial Statements. The Historical Financial Statements were prepared in conformity with GAAP (except as indicated in any notes thereto) and fairly present, in all material respects, the financial position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments.

4.8. Security Interest in Collateral. Subject, in the case of each Credit Party that is a Debtor, to the entry of the Orders and the terms thereof, the provisions of the Orders, this Agreement and the other Credit Documents create legal and valid Liens on all the Collateral in favor of the Collateral Agent, for the benefit of the Secured Parties, and upon entry of the Orders, such Liens constitute perfected and continuing Liens on the Collateral, securing the Secured Obligations (as defined in any applicable Collateral Document), enforceable (except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or similar laws affecting creditors' rights generally and general principles of equity (regardless of whether the application of such principles is considered in a proceeding in equity or at law)) against the applicable Credit Party and all third parties, and having priority over all other Liens on the Collateral as contemplated by the Orders.

4.9. No Material Adverse Effect. Since December 31, 2018, there has been no Material Adverse Effect (after giving effect to the qualifications set forth in such definition).

4.10. [Reserved].

4.11. Adverse Proceedings, Etc. Except as set forth in Schedule 4.11, there are no Adverse Proceedings that could reasonably be expected to have a Material Adverse Effect. Neither Holdings nor any of its Restricted Subsidiaries (a) is in violation of any applicable laws that could reasonably be expected to have a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that could reasonably be expected to have a Material Adverse Effect.

4.12. Payment of Taxes. Except as otherwise permitted under Section 5.3, all material tax returns and reports of Holdings and its Restricted Subsidiaries required to be filed by any of them have been timely filed, and all material post-petition Taxes due and payable and all other material post-petition assessments, fees and other governmental charges upon Holdings and its Restricted Subsidiaries and upon their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable except those which are being actively contested by Holdings or such Restricted Subsidiary in good faith by appropriate proceedings and for which reserves or other appropriate provisions, if any, required by GAAP shall have been made or provided therefor.

4.13. Properties.

(a) Title. Each of Holdings and its Restricted Subsidiaries has (i) good and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), (iii) valid ownership of, valid licensed rights in or the valid right to use (in the case of interests in Intellectual Property) or (iv) good title to (in the case of all other personal property), all of their respective properties and assets; in each case of the foregoing except where failure to do so would not reasonably be expected to result in a Material Adverse Effect. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens other than Permitted Liens.

(b) Real Estate. As of the Closing Date, Schedule 4.13 contains a true, accurate and complete list of (i) all Real Estate Assets, and (ii) all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting each Real Estate Asset of any Credit Party, regardless of whether such Credit Party is the landlord or tenant (whether directly or as an assignee or successor in interest) under such lease, sublease or assignment. Each agreement listed in clause (b) of the immediately preceding sentence is in full force and effect, and each such agreement constitutes the legally valid and binding obligation of each applicable Credit Party, enforceable against such Credit Party in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.14. Environmental Matters. Except as set forth in Schedule 4.14 or would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, there are no pending or, to the knowledge of Holdings or Borrower, threatened Environmental Claims

against Holdings or any of its Restricted Subsidiaries. Neither Holdings nor any of its Restricted Subsidiaries nor any of their respective Credit Facilities or operations are subject to any outstanding written order, notice, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim, or any Hazardous Materials Activity that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. Holdings and each of its Restricted Subsidiaries have received all Governmental Authorizations required pursuant to Environmental Law for its business as currently conducted and are, and at all times have been, in compliance with all applicable Environmental Laws (including compliance with Environmental Laws with respect to any Real Estate Asset or governing its business and the requirements of any Governmental Authorizations issued under such Environmental Laws with respect to any such Real Estate Asset or the operations of Holdings or any of its Restricted Subsidiaries) except for such failure to receive or such non-compliance which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. There are and, to each of Holdings' and Borrower's knowledge, have been, no conditions, occurrences, or Hazardous Materials Activities which would reasonably be expected to form the basis of an Environmental Claim against or any liability under Environmental Law of Holdings or any of its Restricted Subsidiaries that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. None of Holdings' or any of its Restricted Subsidiaries' operations involves the transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260-270 or any state equivalent, that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. To the knowledge of Holdings or Borrower, no event or condition has occurred or is occurring with respect to Holdings or any of its Restricted Subsidiaries or on any Real Estate Asset relating to any Environmental Law, any Release of Hazardous Materials, or any Hazardous Materials Activity which event or condition individually or in the aggregate has had, or would, individually or in the aggregate, reasonably be expected to have, a Material Adverse Effect.

4.15. Permits and Monitoring of the Environmental and Mining Laws.

(a) Holdings and its Restricted Subsidiaries possess, maintain in full force and effect, and are in compliance with all Governmental Authorizations required by the United States Environmental Protection Agency, the United States Army Corps of Engineers, the United States Department of Interior, the United States Office of Surface Mining Reclamation and Enforcement and corresponding state agencies, as are necessary under applicable law (including, without limitation, any Environmental and Mining Law) to own, lease or operate their current properties and conduct their current businesses, except to the extent that the failure to possess, maintain or be in compliance with any such Governmental Authorizations would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Each of Holdings and its Restricted Subsidiaries has fulfilled and performed all of its obligations with respect to the Governmental Authorizations, and no event has occurred that allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other impairment of the rights of the holder or any such Governmental Authorizations, except to the extent that any such failure to fulfill or perform, revocation, termination or impairment would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(b) Except as would not, individually or in the aggregate, be reasonably expected to result in a Material Adverse Effect, Holdings and its Restricted Subsidiaries: (i) are conducting their businesses and operations in compliance with Environmental and Mining Laws; (ii) have not received any written notice from a Governmental Authority or any other third party alleging any violation of Environmental and Mining Law or liability thereunder (including, without limitation, liability as a "potentially responsible party" and/or for costs of investigating or remediating sites containing Hazardous Materials and/or reclamation or damages to natural resources and/or for fines or penalties and/or exposure to Hazardous Materials); (iii) do not have knowledge of any release of Hazardous Materials that, individually or in the aggregate, can reasonably be expected to require any material capital expenditures by Holdings or any of its Restricted Subsidiaries regarding the investigation, remediation or cleanup thereof; (iv) are not subject to any pending or, to the knowledge of Holdings or Borrower, threatened claim or other legal proceeding under any Environmental and Mining Laws against Holdings or any of its Restricted Subsidiaries; (v) possess and maintain in full force and effect all bonds, letters of credit, and other financial assurances required under Environmental and Mining Laws; (vi), except as set forth on Schedule 4.15(b),have not agreed to assume, undertake or provide indemnification for any liability of any other Person under any Environmental and Mining Law, including any obligation of any other Person for reclamation, cleanup or remedial action, except as set forth on Schedule 4.15(b); and (vii) are not aware of any facts or issues with respect to Holdings or any of its Restricted Subsidiaries regarding compliance with Environmental and Mining Laws, pending legal proceedings or liabilities under the Environmental and Mining Laws or other obligations under Environmental and Mining Laws, including the release or threatened release of Hazardous Materials.

The representations and warranties in Sections 4.14 and 4.15 are the sole representations and warranties with respect to Environmental Law, Environmental and Mining Laws, Mining Laws, Hazardous Materials, and Hazardous Materials Activities.

4.16. [Reserved].

4.17. Governmental Regulation. Neither Holdings nor any of its Restricted Subsidiaries is subject to regulation under the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness such that it will render all or any portion of the Obligations unenforceable. Neither Holdings nor any of its Restricted Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.18. Federal Reserve Regulations; Exchange Act. Neither Holdings nor any of its Restricted Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Loans made to such Credit Party will be used to purchase or carry any such Margin Stock in violation of Regulation T, Regulation U or Regulation X of the Board of Governors or to extend credit to others for the purpose of purchasing or carrying any such

Margin Stock or for any purpose that violates the provisions of Regulation T, Regulation U or Regulation X of the Board of Governors.

4.19. [Reserved].

4.20. Employee Benefit Plans and the Coal Industry Retiree Health Benefit Act and the Black Lung Benefits Act.

(a) Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, no ERISA Event has occurred or is reasonably expected to occur.

(b) Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect with respect to any of the following: (i) each of Holdings and its Restricted Subsidiaries are in compliance with the Coal Industry Retiree Health Benefit Act (the "**Coal Act**") and the regulations promulgated thereunder, and none of Holdings or any of its Restricted Subsidiaries has incurred or reasonably expects to incur any liability under the Coal Act (including any liability due to non-compliance with the Coal Act by any of their respective "related persons" (within the meaning of Section 9701(c) of the Internal Revenue Code)), except with respect to premiums, benefit plans under Section 9711 of the Internal Revenue Code and other payments required thereunder which have been paid when due; and (ii) each of Holdings and its Restricted Subsidiaries is in compliance with the Black Lung Act and the regulations promulgated thereunder.

4.21. [Reserved].

4.22. [Reserved].

4.23. Compliance with Statutes, Etc. Each of Holdings and its Restricted Subsidiaries is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities, in respect of the conduct of its business and the ownership of its property, except such non-compliance that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

4.24. Disclosure. The representations and warranties of any Credit Party contained in any Credit Document or in any other documents, certificates or written statements furnished to any Agent or Lender by or on behalf of Holdings or any of its Restricted Subsidiaries for use in connection with the transactions contemplated hereby (other than projections, pro forma financial information, other forward-looking information and general economic or industry data or third party data), when taken as a whole, as of the date furnished, do not contain any untrue statement of a material fact or omits to state a material fact (known to Holdings or Borrower, in the case of any document not furnished by either of them) necessary in order to make the statements contained herein or therein not materially misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information of the Credit Parties contained in such materials are based upon good faith estimates and assumptions believed by Holdings or Borrower to be reasonable at the time made, it being recognized by Agents and Lenders that such projections as to future events are not to be viewed as facts and that actual

results during the period or periods covered by any such projections may differ materially from the projected results.

4.25. Foreign Corrupt Practices Act. Neither Holdings nor any of its Restricted Subsidiaries, nor, to the knowledge of Holdings or Borrower, any director, officer, agent, employee or other person associated with or acting on behalf of Holdings or any of its Restricted Subsidiaries has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds, (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977 or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment.

4.26. PATRIOT Act. To the extent applicable, each Credit Party and each Subsidiary thereof is in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) the PATRIOT Act. No part of the proceeds of the Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

4.27. Bankruptcy Related Matters.

(a) The Cases were commenced on the Petition Date in accordance with applicable laws and proper notice thereof was given for (i) the motion seeking approval of the Credit Documents and the Interim Order and Final Order, (ii) the hearing for the entry of the Interim Order, and (iii) the hearing for the entry of the Final Order (provided that notice of the final hearing will be given as soon as reasonably practicable after such hearing has been scheduled).

(b) After the entry of the Interim Order, and pursuant to and to the extent permitted in the Interim Order and the Final Order, the Obligations will constitute allowed administrative expense claims in the Cases having priority over all administrative expense claims and unsecured claims against the Debtors now existing or hereafter arising, of any kind whatsoever, including all administrative expense claims of the kind specified in Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under Section 364(c)(l) of the Bankruptcy Code, subject to (i) the Carve Out and (ii) the priorities set forth in the Interim Order or Final Order, as applicable.

(c) After the entry of the Interim Order and pursuant to and to the extent provided in the Interim Order and the Final Order, the Obligations will be secured by a valid and perfected Lien on all of the Collateral subject, as to priority, to the extent set forth in the Interim Order or the Final Order and to the extent such Collateral is not subject to valid, enforceable, perfected and non-avoidable Liens as of the Petition Date, and in any case, (i) subject to Permitted Liens and (ii) excluding claims and causes of

action under sections 502(d), 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code (collectively "**Avoidance Actions**") (but including, upon entry of the Final Order, the proceeds thereof).

(d) The Interim Order (with respect to the period on and after entry of the Interim Order and prior to entry of the Final Order) or the Final Order (with respect to the period on and after entry of the Final Order), as the case may be, is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), vacated, or, without the Requisite Lenders' (and with respect to any provision that affects the rights or duties of any Agent, the Administrative Agent's) consent, modified or amended. The Credit Parties are in compliance in all material respects with the Order.

SECTION 5. AFFIRMATIVE COVENANTS

Each of Borrower and each Guarantor Subsidiary covenants and agrees that, until Payment in Full of all Obligations (other than (i) contingent indemnification obligations for which no claim has been asserted and (ii) obligations and liabilities in respect of any Hedge Agreement or Designated Coal Contract), each such Person shall perform, and shall cause each of its Restricted Subsidiaries to perform, all covenants in this Section 5.

5.1. Financial Statements and Other Reports. Borrower will deliver to Administrative Agent (other than with respect to clauses (a), (p), (q), (r), (s) and (t), which shall be delivered to the Financial Advisor (which shall be entitled to deliver such information to Term Lenders in its sole discretion) and the Roll-Up Lenders):

(a) Monthly Financial Reports. (x) Within 30 days after the end of each Fiscal Month of each Fiscal Year, commencing with the Fiscal Month ending October 31, 2019, the Monthly Consolidated Financial Report, together with a Financial Officer Certification, and (y) within 15 days after the end of each Fiscal Month of each Fiscal Year, commencing with the fiscal month ending October 31, 2019, the Monthly Mine-Level Financial Report, together with a Financial Officer Certification.

(b) Quarterly Financial Statements. Within 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, commencing with the Fiscal Quarter ending September 30, 2019 (or, in the case of the Fiscal Quarter ending September 30, 2019, within 60 days), (i) the consolidated balance sheets of Borrower and its Subsidiaries as at the end of such Fiscal Quarter and the related consolidated statements of income, stockholders' equity and cash flows of Borrower and its Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail together with a Financial Officer Certification and a Narrative Report with respect thereto (which shall include revenue guidance and cost per ton amounts in a form consistent with the guidance delivered to the Lenders under the Prepetition Superpriority Credit Agreement) and (ii) unaudited consolidating financial information covering the same periods reflecting adjustments necessary to eliminate the

accounts of Unrestricted Subsidiaries, if any, from such financial statements delivered under this clause (b);

(c) Annual Financial Statements. Within 90 days after the end of each Fiscal Year, commencing with the Fiscal Year in which the Closing Date occurs, (i) the consolidated balance sheets of Borrower and its Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows of Borrower and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto; (ii) with respect to such consolidated financial statements a report thereon of Ernst & Young LLP or other independent certified public accountants of recognized national standing selected by Borrower (which report shall not be subject to any scope of audit qualification (other than an emphasis of matter paragraph) (except for qualifications relating to changes in accounting principles or practices reflecting changes in GAAP and required or approved by Borrower's independent certified public accountants and which may contain a "going concern" qualification), and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards) and (iii) unaudited consolidating information covering the same periods reflecting adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries, if any, from such financial statements delivered under this clause (c).

(d) Compliance Certificate. Together with each delivery of financial statements of Borrower pursuant to Sections 5.1(b) and (c), commencing with the financial statements for the Fiscal Quarter ending September 30, 2019, a duly executed and completed Compliance Certificate;

(e) Statements of Reconciliation after Change in Accounting Principles. If, as a result of any change in accounting principles and policies from those used in the preparation of the Historical Financial Statements, the consolidated financial statements of Borrower delivered pursuant to Section 5.1(a), (b) and (c) will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation reflecting such change;

(f) Notice of Default. Promptly upon any Authorized Officer of Borrower obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that written notice has been given by Administrative Agent or any Lender to Borrower with respect thereto; (ii) that any Person has given any default notice to Borrower or any of its Restricted Subsidiaries, in each case, with respect to any event or condition set forth in Section 8.1(b); or (iii) of the occurrence of any event or change

that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, a certificate of its Authorized Officer specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action Borrower has taken, is taking and proposes to take with respect thereto;

(g) Notice of Litigation. Promptly upon any Authorized Officer of Borrower obtaining knowledge of (i) the institution of, or non-frivolous threat of, any Adverse Proceeding (other than litigation related to the Cases) not previously disclosed in writing by Borrower to Lenders, or (ii) any material development in any Adverse Proceeding that, in the case of either clause (g) or (g) as to which there is a reasonable possibility of adverse determination and which, if adversely determined would be reasonably expected to have a Material Adverse Effect, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, written notice thereof together with such other information as may be reasonably available to Borrower to enable Lenders and their counsel to evaluate such matters;

(h) ERISA. (i) Promptly upon any Authorized Officer of Borrower obtaining knowledge of the occurrence of or forthcoming occurrence of any ERISA Event that would result in a Material Adverse Effect, a written notice specifying the nature thereof, what action the applicable Credit Party or ERISA Affiliate of a Credit Party has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; and (ii) with reasonable promptness after a request has been made by the Administrative Agent, copies of (1) all notices received by the Credit Parties or their ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and (2) to the extent in possession of a Credit Party or ERISA Affiliate of a Credit Party, copies of such other documents or governmental reports or filings relating to any Pension Plan or Multiemployer Plan as Administrative Agent shall reasonably request; provided that if the relevant Credit Party or ERISA Affiliate has not requested any documents that it may request under Section 101(k) or Section 101(l) of ERISA from the administrator or sponsor of the applicable Multiemployer Plan, then, upon reasonable request of the Administrative Agent, such Credit Party or ERISA Affiliate shall promptly make a request for such documents from such administrator or sponsor and Borrower shall provide copies of such documents to the Administrative Agent promptly after receipt thereof; provided, further, that the Administrative Agent shall have no duty to make such request;

(i) [Reserved];

(j) Insurance Report. At Administrative Agent's reasonable request (but no more than once per year other than during the continuance of an Event of Default), a certificate from Borrower's insurance broker(s) in form and substance reasonably satisfactory to Administrative Agent outlining all material insurance coverage maintained as of the date of such certificate by Borrower and its Restricted Subsidiaries;

(k) Certain Restricted Subsidiaries. Together with each delivery of financial statements or reports of Borrower pursuant to Sections 5.1(a), (b) and (c), a report with respect to Murray South America of F.O.B. mine realizations from API2.

(l) Information Regarding Collateral. Borrower will furnish to Administrative Agent and Collateral Agent reasonable prior written notice of any change (i) in any Credit Party's corporate name, (ii) in any Credit Party's form of formation or incorporation, (iii) in any Credit Party's jurisdiction of organization or (iv) in any Credit Party's Federal Taxpayer Identification Number or state organizational identification number. Borrower also agrees promptly to notify Administrative Agent and Collateral Agent if any material portion of the Collateral is damaged or destroyed;

(m) Annual Collateral Verification. Each year, at the time of delivery of annual financial statements with respect to the preceding Fiscal Year pursuant to Section 5.1(c) (or such later date as reasonably agreed by the Administrative Agent acting upon the instruction of the Requisite Lenders), Borrower shall deliver to Administrative Agent and Collateral Agent a certificate of its Authorized Officer either confirming that there has been no change in the information required by Sections 2(b), 14 and 16 of the Collateral Questionnaire since the date of the Collateral Questionnaire delivered on the Closing Date or the date of the most recent certificate delivered pursuant to this Section 5.1 and/or identifying such changes;

(n) Other Information. (A) Promptly upon their becoming available, copies of (i) all financial statements, reports, notices and proxy statements sent or made available generally by Holdings to its security holders acting in such capacity or by any Restricted Subsidiary of Holdings to its security holders other than Holdings or another Subsidiary of Holdings, (ii) all regular and periodic reports and all registration statements and prospectuses, if any, filed by Borrower or any of its Restricted Subsidiaries with any securities exchange or with the Securities and Exchange Commission or any other Governmental Authority, (iii) all press releases made available generally by Holdings or any of its Restricted Subsidiaries to the public concerning material developments in the business of Holdings or any of its Restricted Subsidiaries, and (B) such other information and data with respect to Holdings or any of its Restricted Subsidiaries as from time to time may be reasonably requested by Administrative Agent or any Lender (through the Administrative Agent) that is reasonably available without undue cost or burden;

(o) Public Information. Holdings, Borrower and each Lender acknowledge that certain of the Lenders may be Public Lenders and, if documents or notices required to be delivered pursuant to this Section 5.1 or otherwise are being distributed through IntraLinks/IntraAgency, SyndTrak or another relevant website or other information platform (the **"Platform"**), any document or notice that Holdings or Borrower has indicated contains Non-Public Information shall not be posted on that portion of the Platform designated for such Public Lenders. If Borrower has not indicated whether a document or notice delivered pursuant to this Section 5.1 contains Non-Public Information, Administrative Agent reserves the right to post such document or notice solely on that portion of the Platform designated for Lenders who wish to receive material Non-Public Information with respect to Holdings, its Subsidiaries and

their Securities;

(p) Cash Flow Forecast. No later than 12:00 p.m. on the Wednesday following the end of every fourth calendar week, commencing with the Wednesday of the fourth calendar week following the week in which the Petition Date occurs, a Cash Flow Forecast. Each Cash Flow Forecast shall be reasonably acceptable to the Requisite Term Lenders and no such Cash Flow Forecast shall be effective until so approved; *provided* that the Requisite Term Lenders shall be deemed to have approved a Cash Flow Forecast delivered after the Closing Date pursuant to this Section 5.1(p) unless Lenders constituting the Requisite Term Lenders shall have objected to such Cash Flow Forecast prior to 11.59 p.m. on the Monday immediately succeeding the delivery of such Cash Flow Forecast. Upon such approval or deemed approval by the Requisite Term Lenders pursuant to this Section 5.1(p), a Cash Flow Forecast delivered pursuant to this Section 5.1(p) and the Cash Flow Forecast delivered pursuant to Section 3.1 shall constitute an "**Approved Cash Flow Forecast**". The Borrower may, at its option, at other times propose that an amendment or supplement to or replacement of any Cash Flow Forecast that has become effective (any such proposal to be submitted at least three (3) Business Days prior to the proposed effectiveness thereof) and (ii) any proposed amended, supplemented or replacement Cash Flow Forecast delivered pursuant to this Section 5.1(p) shall become an Approved Cash Flow Forecast once approved by the Requisite Term Lenders; *provided further* that, until any such proposed amended, supplemented or replacement cash flow forecast is so approved, the then-current form of the Approved Cash Flow Forecast shall remain in effect;

(q) Budget Variance Reports. No later than 7:00 p.m. on the Thursday of the first week after each Reporting Period (commencing with the Thursday of the first week after the first Reporting Period ending following the Petition Date), a Budget Variance Report for the immediately preceding Reporting Period. Each such report shall be certified by an Authorized Officer of the Borrower as being prepared in good faith and fairly presenting in all material respects the information set forth therein;

(r) Critical Vendor Reports. No later than 7:00 p.m. on the Thursday of every other week (commencing with the Thursday of the first full week following the Petition Date), a Critical Vendor Report. Each such report shall be certified by an Authorized Officer of the Borrower as being prepared in good faith and fairly presenting in all material respects the information set forth therein; and

(s) Liquidity Reports. No later than 7:00 p.m. on the Thursday of every week (commencing with the Thursday of the first full week following the Petition Date), a report detailing the Liquidity of the Borrower for close of business on Friday of the preceding week. Each such report shall be certified by an Authorized Officer of the Borrower as being prepared in good faith and fairly presenting in all material respects the information set forth therein.

(t) Current Assets Reports. No later than 7:00 p.m. on the Thursday of every week (commencing with the Thursday of the first full week following the Petition Date), a report detailing the Current Assets of the Credit Parties (the "**Current**

Assets Report") for close of business on Friday of the preceding week. Each such report shall be certified by an Authorized Officer of the Borrower as being prepared in good faith and fairly presenting in all material respects the information set forth therein.

(u) Carve Out Reports. No later than 7:00 p.m. on the Thursday of every week (commencing with the Thursday of the first full week following the Petition Date), a report detailing the aggregate amount that has been funded into the Funded Reserve Account (as defined in the Interim Order), including the identification of the amount of proceeds of any ABL Collateral that has been funded into the Funded Reserve Account in the preceding week. Each such report shall be certified by an Authorized Officer of the Borrower as being prepared in good faith and fairly presenting in all material respects the information set forth therein.

Documents required to be delivered pursuant to this Section 5.1 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which such documents are sent via e-mail to Administrative Agent for posting on Borrower's behalf on IntraLinks/IntraAgency or another relevant website, if any, established on its behalf by Administrative Agent and to which each Lender and Administrative Agent have access or Borrower has posted on its own website to which each Lender and Administrative Agent have access. Each Lender shall be solely responsible for timely accessing posted documents. If the delivery of any of the foregoing shall fall on a day that is not a Business Day, such deliverable shall be due on the next succeeding Business Day.

5.2. Existence. Subject to Bankruptcy Law, the terms of the applicable Orders and any required approval by the Bankruptcy Court, and except as otherwise permitted under Section 6.8, each Credit Party will, and will cause each of its Restricted Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business; provided, no Credit Party (other than Borrower with respect to existence) or any of its Restricted Subsidiaries shall be required to preserve any such existence, right or franchise, licenses and permits if such Credit Party shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof would not reasonably be expect to result in a Material Adverse Effect.

5.3. Payment of Taxes Subject to Bankruptcy Law, the terms of the applicable Orders and any required approval by the Bankruptcy Court, and except as would not reasonably be expected to have a Material Adverse Effect, each Credit Party will, and will cause each of its Restricted Subsidiaries to, file all material Tax returns and pay all material post-petition Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon; provided, no such Tax need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (a) adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor, and (b) in the case of a Tax which has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax. No Credit Party will, nor will it permit any of its Restricted Subsidiaries to, file or consent to the filing of any consolidated, combined or unitary income Tax return with any Person (other than Holdings or any of its current or future Restricted Subsidiaries).

5.4. Maintenance of Properties. Each of Borrower and Guarantor Subsidiaries will, and will cause each of its Restricted Subsidiaries to, maintain or cause to be maintained in working order and condition, ordinary wear and tear, casualty and condemnation excepted, all material tangible properties used or useful in the business of the Restricted Group and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof in its commercially reasonable business judgment, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

5.5. Insurance. Borrower will maintain or cause to be maintained, with financially sound and reputable insurers (or pursuant to self-insurance to the extent commercially reasonable), such public liability insurance, third party property damage insurance, business interruption insurance and casualty insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of Borrower and its Restricted Subsidiaries, in each case in such amounts (giving effect to self-insurance) and with such deductibles, covering such risks and otherwise, in each case, as are prudent in the good faith judgment of the officers of Borrower and its Restricted Subsidiaries (after giving effect to any reasonable and customary self-insurance). Without limiting the generality of the foregoing, Borrower will maintain or cause to be maintained (a) flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the Flood Program, in each case in compliance with any applicable regulations of the Board of Governors, and (b) replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies (or pursuant to self-insurance to the extent commercially reasonable), in such amounts, with such deductibles, and covering such risks as are prudent in the good faith judgment of the officers of Borrower and its Subsidiaries. Each such policy of insurance (other than directors and officers liability, workers compensation insurance, other employee benefits related insurance and business interruption insurance) shall (i) name Collateral Agent, for the benefit of the Secured Parties as an additional insured thereunder as its interests may appear and (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement, reasonably satisfactory in form and substance to Collateral Agent, that names Collateral Agent, for the benefit of the Secured Parties, as the loss payee thereunder and Borrower will use commercially reasonable efforts to cause such policy to provide for at least 30 days' prior written notice to Collateral Agent of any material modification or cancellation of such policy.

5.6. Books and Records; Inspections. Each Credit Party will, and will cause each of its Restricted Subsidiaries to, keep proper books of record and accounts in which complete, true and correct entries in conformity in all material respects with GAAP shall be made of all dealings and transactions in relation to its business and activities. Each Credit Party will, and will cause each of its Restricted Subsidiaries to, permit any authorized representatives designated by any Lender (coordinated through Administrative Agent), upon reasonable advance notice during normal business hours, to visit and inspect any of the properties of any Credit Party and any of its respective Restricted Subsidiaries, to inspect, copy and take extracts from its and their financial and accounting records, to conduct field examinations, evaluate and make physical verifications of the Inventory following an Inventory Appraisal Trigger Event, and to discuss its and their affairs, finances and accounts with its and their officers and (so long as Borrower is afforded an opportunity to be present) independent public accountants, all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested; provided, so long as no Event of Default is continuing, Borrower shall not be

required to pay or reimburse the expenses (to the extent otherwise required to do so hereunder) of more than one such visit and inspection during any Fiscal Year. Upon an Inventory Appraisal Trigger Event, the Requisite Roll-Up Lenders shall have the right to conduct an Inventory Appraisal; it being agreed that Borrower shall pay to the Initial Roll-Up Lenders' agents or representatives as directed by the Initial Roll-Up Lender) for its own use and benefit reasonable charges for examinations of the Collateral performed by the agents or representatives of the Initial Roll-Up Lender in such amounts as the Initial Roll-Up Lender may from time to time request (the Requisite Roll-Up Lenders acknowledging and agreeing that such charges shall be computed in the same manner as it at the time customarily uses for the assessment of charges for similar collateral examinations and shall in any event not exceed $1,000 per man per day for collateral examinations ordered after the Closing Date).

5.7. Lender Calls.

(a) Borrower will participate in a telephonic conference call with (x) Administrative Agent and Lenders once during each two-week period at such time as may be agreed to by Borrower and Administrative Agent and (y) the Financial Advisor once during each week at such time as may be agreed to by Borrower and Financial Advisor (which at the request of the Roll-Up Financial Advisor, may include the Roll-Up Financial Advisor), in each case, to discuss cash flows and operations of the Borrower and its Subsidiaries; it being understood and agreed that the calls in clauses (x) and (y) shall be conducted separately.

5.8. Compliance with Laws. Except as otherwise excused by Bankruptcy Law, the Borrower and each of its Restricted Subsidiaries will comply with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws), except for any noncompliance which would not reasonably be expected to have, in the aggregate, a Material Adverse Effect.

5.9. Environmental.

(a) Environmental Disclosure. Borrower will deliver to Administrative Agent:

(i) as soon as practicable following receipt thereof, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of Borrower or any of its Restricted Subsidiaries or by independent consultants, Governmental Authorities or any other Persons, with respect to environmental matters at any Facility or with respect to any Environmental Claims that, in either case, would reasonably be expected to result in liability of Borrower or any of its Restricted Subsidiaries in excess of $10,000,000;

(ii) promptly upon the occurrence thereof, written notice describing in reasonable detail any of the following that would reasonably be expected to results in liabilities of Borrower or any of its Restricted Subsidiaries in excess of $10,000,000: (1) any Release of Hazardous Materials required to be reported to any federal, state or local governmental or regulatory agency under any applicable Environmental Laws, (2) any

remedial action taken by Borrower or any other Person in response to (A) any Hazardous Materials Activities the existence of which has a reasonable possibility of resulting in one or more Environmental Claims, or (B) any Environmental Claims and (3) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Facility that would reasonably be expected to cause such Facility or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws;

(iii) as soon as practicable following the sending or receipt thereof by Holdings or any of its Restricted Subsidiaries, a copy of any and all written communications with respect to any of the following that would reasonably be expected to result in liabilities of Holdings or any of its Restricted Subsidiaries in excess of $10,000,000 (1) any Environmental Claims, (2) any Release required to be reported to any Governmental Authority, and (3) any request for information from any Governmental Authority that suggests such Governmental Authority is investigating whether Holdings or any of its Restricted Subsidiaries may be potentially responsible for any liability (including penalties, fine or enforcement actions) arising from any Hazardous Materials Activity;

(iv) reasonably prompt written notice describing in reasonable detail (1) any proposed acquisition of stock, assets, or property by Holdings or any of its Restricted Subsidiaries that would reasonably be expected to (A) expose Holdings or any of its Restricted Subsidiaries to, or result in, Environmental Claims that would reasonably be expected to result in liabilities of Holdings or any of its Restricted Subsidiaries in excess of $10,000,000 or (B) affect the ability of Holdings or any of its Restricted Subsidiaries to maintain in full force and effect all Governmental Authorizations required under any Environmental Laws for their respective operations that would reasonably be expected to result in liabilities of Holdings or any of its Restricted Subsidiaries in excess of $10,000,000 and (2) any proposed action to be taken by Holdings or any of its Restricted Subsidiaries to modify current operations in a manner that would reasonably be expected to subject Holdings or any of its Restricted Subsidiaries to any additional obligations or requirements under any Environmental Laws resulting in liabilities of Holdings or any of its Restricted Subsidiaries in excess of $10,000,000; and

(v) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by Administrative Agent in relation to any matters disclosed pursuant to this Section 5.9(a).

(b) Hazardous Materials Activities, Etc. Each Credit Party shall promptly take, and shall cause each of its Restricted Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws or any Environmental and Mining Laws by such Credit Party or its Restricted Subsidiaries that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, or if remained uncured would cause any Credit Party or any Restricted Subsidiaries to be "permit blocked" pursuant to the Applicant Violator System, and (ii) make an appropriate response to any Environmental Claim against such Credit Party or any of its Restricted Subsidiaries and discharge any obligations it may have to any Person

thereunder, except where failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.10. Subsidiaries.

(a) In the event that (1) any Person becomes a wholly-owned subsidiary of Borrower (other than an Excluded Subsidiary), (2) [reserved], (3) any Person becomes a wholly-owned Subsidiary of a Guarantor Subsidiary (other than an Excluded Subsidiary) or (4) any Unrestricted Subsidiary is converted by the Borrower into a Restricted Subsidiary that is a wholly-owned subsidiary of the Borrower (other than an Excluded Subsidiary) after the Closing Date (it being understood and agreed that none of the events described in clauses (1) through (4) above shall occur without the consent of the Requisite Lenders), Borrower shall (i) within 45 days (or such later date as Administrative Agent (acting on the instructions of the Requisite Lenders (or as otherwise provided in Section9.2) may agree)) cause such subsidiary to become a Debtor and become a Guarantor hereunder and a Grantor under the Pledge and Security Agreement or Specified Pledge Agreement, as applicable, by executing and delivering to Administrative Agent and Collateral Agent a Counterpart Agreement and (ii) cause such Subsidiary within 45 days (or such later date as Administrative Agent may agree (acting on the instructions of the Requisite Lenders (or as otherwise provided in Section 9.2) may agree)), to take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates reasonably requested by Administrative Agent or Collateral Agent, including those which are similar to those described in Section 2.25(b)(iii) and Sections 3.1(c), 3.1(j) and 3.1(l). In the event that (i) any Person becomes a Foreign Subsidiary that is a Restricted Subsidiary of Borrower, or (ii) any Unrestricted Subsidiary is converted by the Borrower into a Restricted Subsidiary that is a Foreign Subsidiary after the Closing Date, and, in each case, the ownership interests of such Foreign Subsidiary are directly owned by Borrower or by any Guarantor Subsidiary thereof (it being understood and agreed that none of the events described in clauses (i) or (ii) shall occur without the consent of the Requisite Lenders), Borrower shall, or shall cause such Guarantor Subsidiary to, deliver all such documents, instruments, agreements, and certificates as are similar to those described in Section 3.1(c), and Borrower shall take, or shall cause such Domestic Subsidiary to take, all of the actions referred to in Section 3.1(j)(i) necessary to grant and to perfect a First Priority Lien in favor of Collateral Agent, for the benefit of Secured Parties in 100% of such ownership interests. In the event that Borrower or any Guarantor Subsidiary acquires any Equity Interests of Foresight GP or Foresight LP after the Closing Date, Borrower shall take, or shall cause such Guarantor Subsidiary to take, all of the actions referred to in Section 3.1(j)(i) necessary to grant and to perfect a First Priority Lien in favor of Collateral Agent, for the benefit of Secured Parties in 100% of such ownership interests. With respect to each such Subsidiary, Borrower shall promptly send to Administrative Agent written notice setting forth with respect to such Person (i) the date on which such Person became a Restricted Subsidiary of Borrower or was converted into a Restricted Subsidiary, and (ii) all of the data required to be set forth in Schedules 4.1 and 4.2 with respect to all Restricted Subsidiaries of Borrower (to the extent not previously provided); and such written notice shall be deemed to supplement Schedule 4.1 and 4.2 for all purposes hereof. The Borrower may designate any Restricted

Subsidiary that is not a Guarantor Subsidiary on the Closing Date to be a Guarantor Subsidiary in accordance with this Section 5.10(a). Notwithstanding anything to the contrary herein or in the other Credit Documents, neither Holdings nor any of its Subsidiaries shall be required to grant a security interest in the Equity Interests of any Unrestricted Subsidiary (other than any Equity Interests of Foresight GP or Foresight LP or any of their subsidiaries).

(b) Notwithstanding anything in Section 5.10 or 5.11 or in any other Credit Document to the contrary, neither Holdings nor any of its Restricted Subsidiaries shall be required to take any actions in order to perfect the security interest in the Collateral granted to Collateral Agent for the ratable benefit of the Secured Parties under the laws of any jurisdiction outside the United States, except the pledge of the Pledged Equity Interests in Javelin (as such terms are defined in the Specified Pledge Agreement).

5.11. Additional Real Estate Assets. In the event that any Credit Party that is a Debtor acquires a Real Estate Asset or a Person that is required to become a Guarantor pursuant to Section 5.10 after the Closing Date or any Unrestricted Subsidiary that owns or leases a Real Estate Asset is converted into a Restricted Subsidiary that is required to become a Guarantor pursuant to Section 5.10 after the Closing Date, then, such Real Estate Asset shall automatically become subject to the Lien as provided in Section 2.25 and Section 2.25 (b)(iii) shall apply to such Real Estate Assets. In addition to the foregoing, Borrower shall, at the reasonable request of Administrative Agent or Collateral Agent, deliver to Administrative Agent and Collateral Agent such appraisals as are required by law or regulation of Real Estate Assets with respect to which Collateral Agent has been granted a Lien.

5.12. Use of Proceeds. The Borrower and each other Credit Party shall use the proceeds of the Loans solely for the purposes described in Section 2.6.

5.13. Further Assurances. At any time or from time to time upon the reasonable request of Administrative Agent, each Credit Party will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as Administrative Agent or Collateral Agent may reasonably request in order to effect fully the purposes of the Orders and Credit Documents. In furtherance and not in limitation of the foregoing, each Credit Party shall take such actions as Administrative Agent or Collateral Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by substantially all of the assets of Holdings, and its Restricted Subsidiaries (except for the Excluded Subsidiaries and other than Excluded Assets) and all of the outstanding Equity Interests of Borrower and its Restricted Subsidiaries (other than Excluded Subsidiaries (other than any Equity Interests of Foresight GP or Foresight LP or any of their subsidiaries)), in each case subject to the limitation set forth herein and in the other Credit Documents and subject to the priorities set forth in the Orders.

5.14. Maintenance of Ratings. The Borrower shall use commercially reasonable efforts to obtain by no later than 30 days after the Petition Date and shall thereafter use commercially reasonable efforts to maintain at all times a private credit rating from each of Moody's and S&P with respect to the Loans.

5.15. Designation of Subsidiaries. The Borrower may at any time with the consent of the Requisite Term Lenders and Requisite Roll-Up Lenders, designate (a) any Restricted Subsidiary as an Unrestricted Subsidiary or (b) any Unrestricted Subsidiary as a Restricted Subsidiary; provided that (i) immediately before and after such designation, no Default or Event of Default shall have occurred and be continuing, (ii) no Subsidiary may be designated as an Unrestricted Subsidiary if it is a "Restricted Subsidiary" (or other similarly limited designation), in each case, for the purpose of any of the Prepetition Revolving Credit Agreement or any Permitted Refinancing Indebtedness thereof or any Indebtedness subordinated in right of payment to the Obligations and (iii) Borrower shall deliver to Administrative Agent a certificate of an Authorized Officer of Borrower certifying compliance with the foregoing clauses (i) and (ii) of this Section 5.15. The designation of any Subsidiary as an Unrestricted Subsidiary shall constitute an Investment by the Borrower therein at the date of designation in an amount equal to the Fair Market Value of the Investments of Borrower and its Restricted Subsidiaries in such Subsidiary; provided that upon a redesignation of such subsidiary as a Restricted Subsidiary, Borrower shall be deemed to continue to have a permanent Investment in an Unrestricted Subsidiary in an amount (if positive) equal to (i) the lesser of (A) the Fair Market Value of Investments of Borrower and its Subsidiaries in such Unrestricted Subsidiary at the time of such redesignation, combination or transfer (or of the assets transferred or conveyed, as applicable) and (B) the Fair Market Value of Investments of Borrower and its Subsidiaries made in connection with the designation of such Subsidiary as an Unrestricted Subsidiary minus (ii) the portion (proportionate to Borrower's and its Subsidiaries' Equity Interest in such Subsidiary) of the Fair Market Value of the net assets of such Subsidiary at the time of such redesignation. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall, in each case, constitute the incurrence at the time of such designation of any Indebtedness or Liens of such Subsidiary existing at such time.

5.16. Post-Closing Covenants. Each of the Credit Parties shall satisfy the requirements set forth on Schedule 5.16 on or before the date specified for such requirement or, except with respect to the payment of any fees and expenses, such later date to be determined by the Administrative Agent.[7]

5.17. First and Second Day Orders. The Borrower shall cause all proposed "first day" orders, "second day" orders and all other orders establishing procedures for administration of the Cases or approving significant or outside the ordinary course of business transactions submitted to the Bankruptcy Court to be in accordance with and permitted by the terms of this Agreement and reasonably acceptable to the Requisite Term Lenders in all material respects, it being understood and agreed that the forms of orders approved by the Requisite Term Lenders prior to the Petition Date are in accordance with and permitted by the terms of this Agreement in all respects and are acceptable.

5.18. Milestones.

(a) no later than thirty-five (35) calendar days after the Petition Date (or such later date acceptable to the Requisite Term Lenders), the Debtors shall have filed with the Bankruptcy Court (i) an Acceptable Plan, Acceptable Roll-Up Plan, an

[7] Note that control agreements will be required [_] days following the Closing Date.

Acceptable Disclosure Statement and motion to approve the Acceptable Disclosure Statement, in form and substance reasonably acceptable to the Requisite Term Lenders or (ii) a motion (the "**Bidding Procedures Motion**") seeking entry of an order (the "**Bidding Procedures Order**"), which Bidding Procedures Motion and Bidding Procedures Order shall be in form and substance reasonably acceptable to the Requisite Term Lenders and shall seek (A) approval of procedures governing the sale and marketing process for all or substantially all of the assets of the Debtors and a stalking horse credit bid from the Prepetition Lenders or their designees (which bid may be in the form of a plan of reorganization) that contemplates, among other things, cash payment of administrative expenses and wind-down costs set forth in a wind down budget acceptable to the Prepetition Lenders or their designees in their sole discretion and (B) to establish dates for the submission of bids and the Auction (if any) in accordance with such procedures;

(b) no later than thirty-five (35) calendar days after the Petition Date (or such later date acceptable to the Requisite Term Lenders), the Debtors shall have filed a motion seeking approval of incentive compensation plans for key members of the Debtors' executive management team, which motion and compensation plans shall be reasonably acceptable to the Requisite Term Lenders;

(c) no later than forty (40) calendar days after the Petition Date (or such later date acceptable to the Requisite Term Lenders), the Debtors shall have made proposals in accordance with sections 1113 and 1114 of the Bankruptcy Code to the applicable authorized representatives of the employees and retirees regarding modifications to the Debtors' collective bargaining agreements and retiree benefits, in form and substance reasonably acceptable to the Requisite Term Lenders;

(d) no later than forty-five (45) calendar days after the Petition Date (or such later date acceptable to the Requisite Term Lenders and the Requisite Roll-Up Lenders), the Bankruptcy Court shall have entered the Final Order;

(e) subject to the entry of the Final Order, in the event the Bidding Procedures Motion is filed, no later than seventy (70) calendar days after the Petition Date (or such later date acceptable to the Requisite Term Lenders), the Bankruptcy Court shall have entered the Bidding Procedures Order;

(f) subject to the entry of the Final Order, no later than one hundred and six (106) calendar days after the Petition Date (or such later date acceptable to the Requisite Term Lenders), the Debtors shall have (x) reached an agreement with the applicable authorized representatives of the employees and retirees regarding modifications to the Debtors' collective bargaining agreements and retiree benefits, respectively, in form and substance acceptable to the Requisite Term Lenders in their reasonable discretion, or (y) absent such agreement, filed a motion in form and substance acceptable to the Requisite Term Lenders in their reasonable discretion under section 1113 of the Bankruptcy Code for rejection of

the Debtors' collective bargaining agreements and under section 1114 of the Bankruptcy Code for modification of the Debtors' retiree benefits (the "**1113/1114 Motion**");

(g) subject to the entry of the Final Order, in the event the Bidding Procedures Motion is filed, no later than one-hundred and twenty-five (125) calendar days after the Petition Date (or such later date acceptable to the Requisite Term Lenders), the Bid Deadline (as defined in the Bidding Procedures Order) shall have passed;

(h) subject to the entry of the Final Order, in the event the Bidding Procedures Motion is filed, no later than one hundred thirty-five (135) calendar days after the Petition Date (or such later date acceptable to the Requisite Term Lenders), the Auction (as defined in the Bidding Procedures Order), if any, shall have occurred;

(i) subject to the entry of the Final Order, in the event the 1113/1114 Motion is filed, no later than one hundred and fifty (150) calendar days after the Petition Date (or such later date acceptable to the Requisite Term Lenders), the Bankruptcy Court shall have entered an order in form and substance acceptable to the Requisite Term Lenders approving in their reasonable discretion the 1113/1114 Motion;

(j) subject to the entry of the Final Order, in the event the Bidding Procedures Motion is filed, the Auction has occurred, and the winning bid (which is not the Credit Bid (as defined in the RSA)) contemplates a sale that is not pursuant to a Reorganization Plan, no later than one hundred and forty (140) calendar days after the Petition Date (or such later date acceptable to the Requisite Term Lenders), the Bankruptcy Court shall have entered a sale order (the "**Sale Order**") approving the sale of all or substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code, which order shall be in form and substance acceptable to the Requisite Term Lenders in their reasonable discretion;

(k) subject to the entry of the Final Order, in the event the Bidding Procedures Motion is filed, the Auction has occurred, and the winning bid (which is not the Credit Bid (as defined in the RSA)) contemplates a sale that is not pursuant to a Reorganization Plan, no later than 14 calendar days after entry of the Sale Order (or such later date acceptable to the Requisite Term Lenders), the sale transactions contemplated thereby shall have closed;

(l) subject to the entry of the Final Order, no later than one hundred and fifty (150) calendar days after the Petition Date (or such later date acceptable to the Requisite Term Lenders), the Debtors shall obtain entry by the Bankruptcy Court of an Acceptable Disclosure Statement Order;

(m) subject to the entry of the Final Order, no later than one hundred and ninety-five (195) calendar days after the Petition Date, the Debtors shall obtain entry by the Bankruptcy Court of an Acceptable Confirmation Order;

(n) subject to the entry of the Final Order, no later than two hundred and ten (210)

calendar days after the Petition Date, the confirmed Acceptable Plan shall have become effective.

5.19. Bankruptcy Notices. The Borrower will furnish to the Financial Advisor, [counsel to] the Administrative Agent, counsel to the Backstop Lenders and counsel to the Roll-Up Lenders:

(a) copies of any informational packages provided to potential bidders, draft agency agreements, purchase agreements, status reports, and updated information related to the sale or any other transaction and copies of any such bids and any updates, modifications or supplements to such information and materials;

(b) as soon as reasonably practicable in advance of, but no later than one day prior to the earlier of (x) filing with the Bankruptcy Court or (y) delivering to any statutory committee appointed in the Cases or the United States Trustee (the "**U.S. Trustee**"), as the case may be, all proposed orders and pleadings related to the Loans and the Credit Documents, any other financing or use of cash collateral, any sale or other disposition of Collateral outside the ordinary course, cash management, adequate protection, any Reorganization Plan and/or any disclosure statement related thereto (except that with respect to any emergency pleading or document for which, despite the Debtors' best efforts, such advance notice is impracticable, the Debtors shall be required to furnish such documents as soon as reasonably practicable and in no event later than concurrently with such filings or deliveries thereof, as applicable); and

(c) by the earlier of (1) two Business Days prior to being filed (and if impracticable, then as soon as possible and in no event later than as promptly practicable before being filed) on behalf of any of the Debtors with the Bankruptcy Court or (2) at the same time as such documents are provided by any of the Debtors to any statutory committee appointed in the Cases or the U.S. Trustee, all other notices, filings, motions, pleadings or other information concerning the financial condition of the Borrower or any of its Subsidiaries or any request to approve any compromise and settlement of claims or for relief under Section 363, 365, 1113 or 1114 of the Bankruptcy Code or Bankruptcy Rule 9019 or any other request for relief (to the extent not covered by Section 5.19(b) above).

5.20. Business and Property of the Credit Parties. Unless the Administrative Agent otherwise agrees, upon the instruction of the Requisite Lenders, upon and after the Closing Date, no Credit Party nor any of their respective Subsidiaries proposes to engage in any business other than those businesses in which such entity is engaged on the date of this Agreement or that are reasonably related thereto and activities necessary to conduct the foregoing. On the Closing Date, subject to the entry of the Interim Order and the other "first day orders," the Credit Parties and their Subsidiaries has good and marketable title to, valid leasehold interests in, or valid licenses or other rights to use all personal property and possess all of the rights and consents necessary for the conduct of such businesses.

5.21. Bankruptcy Related Matters. The Borrower will and will cause each of the other Credit Parties to:

(a) cause all proposed (i) "first day" orders, (ii) "second day" orders, (iii) orders related to or affecting the Loans and other Obligations, the Prepetition Debt and the Credit Documents, any other financing or use of Cash Collateral, any sale or other disposition of Collateral outside the ordinary course, cash management, adequate protection, any plan of reorganization and/or any disclosure statement related thereto, (iv) orders concerning the financial condition of the Borrower or any of its Subsidiaries or other Indebtedness of the Credit Parties or seeking relief under section 363, 365, 1113 or 1114 of the Bankruptcy Code or section 9019 of the Federal Rules of Bankruptcy Procedure, (v) orders authorizing additional payments to critical vendors (outside of the relief approved in the "first day" and "second day" orders) and (vi) orders establishing procedures for administration of the Cases or approving significant transactions submitted to the Bankruptcy Court, in each case, proposed by the Debtors to be in accordance with and permitted by the terms of this Agreement and reasonably acceptable to the Requisite Term Lenders (and (i) with respect to any provision that affects the rights or duties of any Agent, the Administrative Agent and (ii) with respect to any orders described in clause (v) above, acceptable to the Requisite Term Lenders in their reasonable discretion) in all respects, it being understood and agreed that the forms of orders approved by the Requisite Term Lenders (and with respect to any provision that affects the rights or duties of any Agent, the Administrative Agent) prior to the Petition Date are in accordance with and permitted by the terms of this Agreement and are reasonably acceptable in all respects;

(b) comply in all material respects with each order entered by the Bankruptcy Court in connection with the Cases;

(c) comply in a timely manner with their obligations and responsibilities as debtors-in-possession under the Bankruptcy Code, the Bankruptcy Rules, the Interim Order and the Final Order, as applicable, and any other order of the Bankruptcy Court; and

(d) deliver to counsel to the Requisite Term Lenders and to counsel to the Administrative Agent (to the extent practicable) promptly as soon as available but no later than two (2) Business Days prior to filing, copies of all proposed non-ministerial or administrative pleadings, motions, applications, orders, financial information and other documents to be filed by or on behalf of the Credit Parties with the Bankruptcy Court in the Cases, or distributed by or on behalf of the Credit Parties to any official or unofficial committee appointed or appearing in the Cases or any other party in interest, and shall consult in good faith with the Requisite Term Lenders' advisors regarding the form and substance of any such document.

5.22. PATRIOT Act. Promptly following any request therefor, information and documentation reasonably requested by the Administrative Agent (including on behalf of any Lender) for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the PATRIOT Act and the Beneficial Ownership Certificate (to the extent required under 31 C.F.R. §1010.230).

5.23. Segregated Account. Subsequent to each Credit Extension, except with respect to the Initial Funding Amount or as otherwise agreed by the Requisite Term Lenders, hold the proceeds of the Term Loans in (i) the Segregated Account subject to Draws made by the Borrower in accordance with Section 2.2(b) or (ii) a Fixed Asset Collateral Proceeds Account following Draws in accordance with Section 2.2(b).

5.24. Inventory Appraisals. Following the occurrence of an Inventory Appraisal Trigger Event, Initial Roll-Up Lender shall conduct Inventory Appraisals and field exams from time to time and Borrower agrees to cooperate, and cause each other Credit Party to cooperate, in such appraisal process and Borrower agrees to reimburse Initial Roll-Up Lender for all fees and expenses of the applicable appraisers.

5.25. Chief Executive Officer. At all times following the Closing Date, the Borrower shall cause Robert D. Moore to hold the position of chief executive officer of the Borrower.

SECTION 6. NEGATIVE COVENANTS

Until Payment in Full of all Obligations (other than (i) contingent indemnity obligations for which no claim has been asserted and (ii) obligations and liabilities in respect of any Hedge Agreement or Designated Coal Contract), none of Holdings (solely with respect to Section 6.13), nor Borrower, nor any Guarantor Subsidiary shall, nor shall it permit any Restricted Subsidiary to, directly or indirectly:

6.1. Indebtedness. Create, incur, issue or assume or guaranty, or otherwise become or remain liable with respect (collectively, "incur") to any Indebtedness or Disqualified Equity Interests, except:

(a) the Obligations;

(b) (A) Indebtedness of any Restricted Subsidiary to Borrower or to any other Subsidiary that is a Debtor, or of Borrower to any Subsidiary that is a Debtor, and (B) Indebtedness of Holdings to Borrower or to any other Subsidiary that is a Debtor; provided, (i) all such Indebtedness shall be unsecured and subordinated in right of payment to the Payment in Full of the Obligations and (ii) such Indebtedness is permitted as an Investment under Section 6.6;

(c) Outstanding LCs secured by Outstanding LC Cash Collateral not to exceed 103% of the stated amount of such outstanding LCs;

(d) [reserved];

(e) the incurrence by Borrower or its Restricted Subsidiaries of Indebtedness in respect of Mining Financial Assurances, reclamation liabilities, water treatment, workers' compensation claims, payment obligations in connection with health or social security benefits, unemployment or other insurance obligations, statutory obligations, bankers' acceptances, performance, letter of credit or completion or performance guarantees (including, without limitation, performance guarantees pursuant

to coal supply agreements or equipment leases) and surety, performance, utility, bid, stay, statutory, appeal bonds or similar obligations in the ordinary course of business;

(f) Indebtedness in respect of any customary cash management, cash pooling or netting or setting off arrangements in the ordinary course of business and/or in connection with the Segregated Account;

(g) the guarantee by Borrower or any Guarantor Subsidiary of Indebtedness of Borrower or a Guarantor Subsidiary of Borrower that is not a Specified Guarantor, in each case to the extent that the guaranteed Indebtedness was permitted to be incurred by another provision of this Section 6.1; provided that (i) if the Indebtedness being guaranteed is subordinated to or pari passu with the Obligations, then the guarantee must be subordinated or pari passu, as applicable, to the same extent as the Indebtedness guaranteed and (ii) if incurred by the Borrower or a Restricted Subsidiary, such guarantee shall be permitted as an Investment pursuant to Section 6.6;

(h) Capital Lease Obligations incurred prior to the Petition Date and Indebtedness set forth on Schedule 6.1 (including Capital Lease Obligations incurred to renew, roll-over, refund, refinance, replace, defease or discharge any Indebtedness outstanding pursuant to this clause (h));

(i) [reserved];

(j) the incurrence by Borrower or any of its Restricted Subsidiaries of Indebtedness represented by Capital Lease Obligations, mortgage financings, or purchase money obligations or other financings, in each case, incurred for the purpose of financing all or any part of the purchase price or cost of design, construction or installation of property, plant or equipment used in the business of Borrower or any of its Restricted Subsidiaries, in an aggregate principal amount, including Permitted Refinancing Indebtedness incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this clause (j), not to exceed $25,000,000 at any time outstanding;

(k) [reserved];

(l) [reserved];

(m) [reserved];

(n) [reserved];

(o) [reserved];

(p) other Indebtedness of Borrower or its Guarantor Subsidiaries in an aggregate amount not to exceed at any time $1,000,000; provided, that the proceeds of any Indebtedness incurred in reliance on this clause (p) may not be used, directly or indirectly, for Restricted Junior Payments;

(q) Indebtedness supported by letters of credit in a principal amount outstanding not in excess of the stated amount of such letter of credit to finance insurance policy premiums in the ordinary course of business; and

(r) the incurrence by Borrower or any of its Restricted Subsidiaries of Hedging Obligations in the ordinary course of business and Hedging Obligations incurred to hedge any interest rate, commodity price, or currency rate, risk.; and

(s) the incurrence by Borrower or its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five Business Days.

The accrual of interest or preferred stock dividends, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, the reclassification of preferred stock as Indebtedness due to a change in accounting principles, and the payment of dividends on preferred stock or Disqualified Equity Interests in the form of additional shares of the same class of preferred stock or Disqualified Equity Interests will not be deemed to be an incurrence of Indebtedness or an issuance of preferred stock or Disqualified Equity Interests for purposes of this Section 6.1. For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be utilized, calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred. Notwithstanding any other provision of this covenant, the maximum amount of Indebtedness that Borrower or any Restricted Subsidiary may incur pursuant to this Section 6.1 shall not be deemed to be exceeded solely as a result of fluctuations in exchange rates or currency values.

The amount of any Indebtedness outstanding as of any date will be:

(1) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;

(2) the principal amount of the Indebtedness, in the case of any other Indebtedness; and

(3) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of:

(a) the Fair Market Value of such assets at the date of determination; and

(b) the amount of the Indebtedness of the other Person.

6.2. Liens. Create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of Borrower or any of its Restricted Subsidiaries, whether now owned or hereafter acquired (and including any license right), or any income or profits therefrom, except:

(a) Liens in favor of Collateral Agent for the benefit of Secured Parties granted pursuant to any Credit Document;

(b) Liens for (i) pre-petition taxes, assessments or government charges or claims or unpaid utilities that are not yet delinquent as of the Petition Date or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded; provided that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor, and (ii) taxes, assessments or government charges or claims or unpaid utilities that are not yet delinquent as of the Petition Date or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded; provided that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor;

(c) Liens imposed by law, such as carriers', warehousemen's, landlord's, mechanics' Liens, repairmen's and other like Liens, (other than any such Lien imposed on the assets of a Credit Party pursuant to Section 430(k) of the Internal Revenue Code or Section 303(k) ERISA with respect to a Pension Plan), in each case incurred in the ordinary course of business;

(d) Liens to secure the performance of Mining Financial Assurances, statutory obligations, insurance, performance, trade contracts, utility services, government contracts, return of money bonds, surety or appeal bonds and other obligations of like nature (including surety bonds obtained as required in connection with federal coal leases), reclamation liabilities, workers compensation obligations, unemployment insurance and other types of social security and deposits securing liability to insurance carriers under insurance or self-insurance arrangements, performance bonds or other obligations of a like nature incurred in the ordinary course of business (including Liens to secure letters of credit issued to assure payment of such obligations); *provided*, that no more than $1,250,000 of cash may be posted following the Petition Date under this Section 6.2(d);

(e) survey exceptions, easements or reservations of, rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions or similar encumbrances as to the use of real property that were not incurred in connection with Indebtedness and that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of Borrower or any of its Restricted Subsidiaries;

(f) any interest or title of a lessor, licensor, sublicensor or sublessor under any lease or license agreement entered into in the ordinary course of business, and rights of owners of interest in overlying, underlying or intervening strata and/or mineral interests not owned by Borrower or one of its Restricted Subsidiaries with respect to tracts of real property where Borrower or the applicable Restricted Subsidiary's ownership is only surface or severed mineral or is otherwise subject to mineral severances of one or more third parties; other defects and exceptions to title of real property where such defects or exceptions are not material to the value of such real

property;

(g) Liens arising from (i) protective filings of UCC financing statements regarding operating leases entered into by Borrower and its Restricted Subsidiaries in the ordinary course of business and (ii) filings of UCC financing statements as a precautionary measure in connection with operating leases;

(h) Liens securing Capital Lease obligations outstanding on the Petition Date and Liens described in Schedule 6.2 securing Indebtedness and other obligations outstanding on the Petition Date;

(i) Liens securing Indebtedness permitted pursuant to Section 6.1(j); provided, such Liens shall encumber only the asset acquired with the proceeds of such Indebtedness;

(j) [reserved];

(k) Liens on Borrower's or its Subsidiaries cash resulting from deposits or prepayments of royalties;

(l) Liens securing Indebtedness or other liabilities in an aggregate amount not to exceed $500,000 at any one time outstanding;

(m) [reserved];

(n) [reserved];

(o) Liens granted to provide adequate protection pursuant to the Interim Order or the Final Order;

(p) [reserved];

(q) Liens securing Cash Management Obligations with an aggregate principal amount that do not exceed $2,500,000 at any one time outstanding;

(r) Outstanding LC Cash Collateral and Liens on the Segregated Account in favor of the Escrow Agent;

(s) Liens on insurance policies and proceeds thereof, or other deposits, to secure insurance premium financings;

(t) Liens on specific items of inventory or other goods (and the proceeds thereof) of any Person securing such Person's obligations in respect of bankers' acceptances issued or created in the ordinary course of business for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(u) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;

(v) Liens on Equity Interests of an Unrestricted Subsidiary (other than Foresight LP or Foresight GP) that secure Indebtedness of such Unrestricted Subsidiary; and

(w) Liens in favor of banking institutions arising as a matter of law or contract encumbering deposits (including the right of setoff) which are within the general parameters customary in the banking industry.

Notwithstanding any other provision of this covenant, the maximum amount of liabilities that may be secured by Liens pursuant to this Section 6.2 shall not be deemed to be exceeded solely as a result of fluctuations in exchange rates or currency values. In addition, with respect to any Lien securing Indebtedness or other obligations that is outstanding on the Petition Date, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness or other obligation.

"**Increased Amount**" of any Indebtedness shall (A) mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms, accretion of original issue discount or liquidation preference and, in each case under this clause (A), at the rate in effect on the Petition Date and (B) increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness.

6.3. No Further Negative Pledges. Enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired, to secure the Obligations except with respect to (a) specific property encumbered to secure payment of particular Indebtedness or to be sold pursuant to an executed agreement with respect to a permitted Asset Sale, (b) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses and similar agreements entered into in the ordinary course of business (provided that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be) (c) [reserved], (d) restrictions in any Prepetition Debt as in effect on the Petition Date, (e) [reserved] (f) [reserved], (g) [reserved], (h) restrictions in the Credit Documents, (i) restrictions in any Permitted Refinancing Indebtedness of Indebtedness described in clauses (c) through (h) above, provided such restrictions are no less favorable to the Borrower or any Restricted Subsidiary and the Lenders than those in the debt so refinanced and (j) any restrictions permitted pursuant to Section 6.5.

6.4. Restricted Junior Payments. Declare or make any Restricted Junior Payment except:

(a) Any Restricted Subsidiary of Borrower may declare and pay dividends or make other distributions ratably to its equity holders; and

(b) Permitted Payments to Holdings.

6.5. Restrictions on Subsidiary Distributions. Create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of

any Restricted Subsidiary of Borrower to (a) pay dividends or make any other distributions on any of such Restricted Subsidiary's Equity Interests owned by Borrower or any other Restricted Subsidiary of Borrower, (b) repay or prepay any Indebtedness owed by such Restricted Subsidiary to Borrower or any other Restricted Subsidiary of Borrower, (c) make loans or advances to Borrower or any other Restricted Subsidiary of Borrower, or (d) transfer, lease or sell any of its property or assets to Borrower or any other Restricted Subsidiary of Borrower.

Notwithstanding the foregoing, the preceding restrictions will not apply to encumbrances or restrictions existing under or by reason of (i) [reserved]; (ii) agreements evidencing Indebtedness permitted by (A) Section 6.1(i) that impose restrictions on the property so acquired, and (B) Section 6.1(p) that impose restrictions only on Restricted Subsidiaries that are not Guarantors; (iii) any agreement or Equity Interest of a Person acquired by Borrower or any of its Restricted Subsidiaries as in effect at the time of such acquisition (except to the extent such agreement was entered into or Equity Interests were incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired; provided that, in the case of Indebtedness, such Indebtedness was permitted by the terms of the agreement to be incurred; (iv) customary non-assignment provisions in contracts, leases, sub-leases and licenses entered into in the ordinary course of business; (v) purchase money obligations and Capital Lease Obligations that impose restrictions on the property purchased or leased of the nature described in Section 6.2(k); (vi) any agreement for the sale or other disposition of a Restricted Subsidiary that restricts distributions by that Restricted Subsidiary pending its sale or other disposition; (vii) agreements evidencing Permitted Refinancing Indebtedness; provided that the restrictions contained in the agreements governing such Permitted Refinancing Indebtedness, as applicable, are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced; (viii) Liens, including real property mortgages, permitted to be incurred pursuant to Section 6.2 that limit the right of the debtor to dispose of the assets subject to such Liens; (ix) provisions limiting the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements, which limitation is applicable only to the assets that are the subject of such agreements; and (x) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business.

6.6. Investments. Make any Investment in any Person, except:

(a) (i) Investments in Cash and assets that were Cash Equivalents when such Investments were made and (ii) Investments in the nature of cash collateral made to secure obligations described in Section 6.2(d) incurred in the ordinary course of business;

(b) equity Investments owned as of the Closing Date in any Subsidiary (including Equity Interests of Foresight GP and Foresight LP);

(c) Investments by and among the Borrower and Non-Specified Guarantors; *provided*, that Investments in the Western Kentucky Guarantors shall be capped at $7,500,000 taken together with the Fair Market Value of Asset Sales made in

accordance with clause (ii)(A) of the definition thereof;

(d) (A) Investments by the Borrower or any Non-Specified Guarantor in any Specified Guarantor (other than a Murray South America, Inc. and its Subsidiaries) or its Restricted Subsidiaries in an aggregate amount not to exceed solely in the case of Mission Guarantors, (x) $10,000,000 in the form of equipment financing loans on terms approved by the Requisite Backstop Lenders plus, (y) with the consent of the Requisite Backstop Lenders, an additional $10,000,000 (in each case, less the Fair Market Value of Asset Sales made in accordance with clause (ii)(B) of the definition thereof) (less the Fair Market Value of Asset Sales made in accordance with clause (ii)(B)(y) of the definition thereof), (B) Investments by Specified Guarantors and Restricted Subsidiaries that are not Credit Parties in Borrower and any Non-Specified Guarantor, (C) Investments by Specified Guarantors in Restricted Subsidiaries that are not Credit Parties using direct proceeds of Investments made to such Specified Guarantors pursuant to clause (A), and (D) intercompany loans by Borrower or a Guarantor to Holdings as long as had such intercompany loan been made as a Restricted Junior Payment to Holdings, it would have been permitted by clause (i), (ii) or (iii) of the definition of the term "Permitted Payment to Holdings";

(e) [reserved];

(f) [reserved];

(g) [reserved];

(h) Investments described in Schedule 6.6 and existing on the Petition Date;

(i) Secured Hedge Agreements and other Hedging Obligations and Designated Coal Contracts which constitute Investments;

(j) [reserved];

(k) [reserved];

(l) [reserved];

(m) Investments received in compromise or resolution of (A) obligations of trade creditors or customers that were incurred in the ordinary course of business of Borrower or any of its Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (B) litigation, arbitration or other disputes;

(n) [reserved];

(o) [reserved];

(p) Investments consisting of purchases and acquisitions of inventory

or supplies or the granting of non-exclusive licenses of Intellectual Property pursuant to joint marketing arrangements with other Persons, in each case in the ordinary course of business;

(q) [reserved];

(r) [reserved];

(s) [reserved];

(t) [reserved];

(u) Restricted Junior Payments permitted pursuant to Section 6.4;

(v) Liens permitted pursuant to Section 6.2; and

(w) any Investments received in exchange for providing management and other related services and/or in exchange for the assumption of liabilities.

[Notwithstanding the foregoing, Investments made using ABL Collateral shall not be permitted in any person that is not a Roll-Up Guarantor.]

6.7. Financial Covenants.

(a) Variance Covenant. (x) Beginning with the delivery of the initial Budget Variance Report and tested, as of the last day of each applicable Two-Week Test Period commencing with the last day of the first Two-Week Test Period ending after the Closing Date, for such Two-Week Test Period (i) the negative variance (as compared to the Operative Approved Cash Flow Forecast) of the actual aggregate operating cash receipts of the Credit Parties shall not exceed 15% and (ii) the positive variance (as compared to the Operative Approved Cash Flow Forecast) of the aggregate operating disbursements (excluding professional fees) made by the Credit Parties shall not exceed 15% and (y) beginning with the delivery of the third Budget Variance Report, as of the last day of each applicable Four-Week Test Period commencing with the last day of the first Four-Week Test Period ending after the Closing Date, for such Four-Week Test Period, (i) the negative variance (as compared to the Operative Approved Cash Flow Forecast Forecast) of the actual aggregate operating cash receipts of the Credit Parties shall not exceed 10% and (ii) the positive variance (as compared to the Operative Approved Cash Flow Forecast) of the aggregate operating disbursements (excluding professional fees) made by the Credit Parties shall not exceed 10% (such variance that does not breach this covenant, the "**Permitted Variance**").

(b) Minimum Liquidity. The Borrower shall not permit Liquidity to be less than $50,000,000 as of the close of business on Friday of any week.

(c) Minimum Cumulative Consolidated Adjusted EBITDA. The Borrower shall not permit the cumulative Consolidated Adjusted EBITDA of the Borrower and its Restricted Subsidiaries, for any period beginning on November 1, 2019

and ending on the date set forth in the table below, to be less than the amount set forth in the table below opposite such period.

Period	Minimum Cumulative Consolidated Adjusted EBITDA
January 31, 2020	$90,390,000
February 29, 2020	$120,619,000
March 31, 2020	$153,109,000
April 30, 2020	$192,611,000
May 31, 2020	$226,865,000
June 30, 2020	$258,741,000
July 31, 2020	$283,230,000

(d) Current Assets Test. The Borrower shall not permit Current Assets to be less than $175,000,000 as of the close of business on Friday of any week, in each case tested as of the required date of the delivery of the Current Asset Report, commencing with the first such delivery occurring after the Closing Date; *provided* that, for any three (3) non-consecutive weeks at the Borrower's election, there shall not be any Default or Event of Default resulting from this Section 6.7(d) to the extent the Roll-Up has occurred and the Current Assets reported in the Current Asset Report for such week are equal to or greater than $160,000,000.

6.8. Fundamental Changes; Disposition of Assets. Merge or consolidate, liquidate, wind-up, transfer all or substantially all of its assets or dissolve itself (or suffer any liquidation or dissolution), or, in the case of the Borrower or any Restricted Subsidiary, consummate an Asset Sale, except:

(a) any Subsidiary of Borrower may be merged with or into or liquidate or dissolve into (or transfer all or substantially all of its assets to) Borrower or any Credit Party that is a Restricted Subsidiary of Borrower; provided, that (i) in the case of such a merger, if Borrower is a party to such merger then Borrower shall be the continuing or surviving Person, (ii) if Borrower is not a party to such merger or transfer but a Credit Party that is a Guarantor Subsidiary is a party to such merger or transfer, then a Credit Party that is a Non-Specified Guarantor shall be the continuing or surviving Person of such merger or transferee; *provided* that, if any Capital Stock of any Subsidiary party to any merger referred to in this clause (a) constitutes Collateral, the Capital Stock of the surviving entity of such merger shall constitute Collateral to the same extent;

(b) sales or other dispositions of assets that do not constitute Asset Sales;

(c) [reserved];

(d) sales, licenses, abandonments, or other dispositions of Intellectual

Property that is immaterial and no longer used in or necessary for the conduct of the business;

(e) sales, transfers or other dispositions of assets with respect to any Debtor pursuant to any order of the Bankruptcy Court, in form and substance reasonably satisfactory to the Administrative Agent, permitting a de minimis asset disposition without further order of the Bankruptcy Court, so long as the proceeds thereof are applied in accordance with Section 2.14, if applicable; and

(f) to the extent Investments pursuant to the Designated Coal Contracts under Section 6.6(i) involve sales of coal, sales of coal made pursuant thereto.

6.9. [Reserved].

6.10. Sales and Lease-Backs. Become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Person (a) has sold or transferred or is to sell or to transfer to any other Person (other than Holdings or any other Credit Party that is not a Specified Guarantor), or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Person to any Person (other than Holdings or any of its Restricted Subsidiaries) in connection with such lease.

6.11. Transactions with Affiliates. Enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of Borrower or Holdings (each, an **"Affiliate Transaction"**) unless the Affiliate Transaction is on terms, taken as a whole, that are no less favorable to Borrower or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by Borrower or such Restricted Subsidiary with an unrelated Person; provided, the foregoing restriction shall not apply to:

(a) any employment agreement, consulting agreement, severance agreement, employee benefit plan, officer or director indemnification agreement or any similar arrangement entered into by Borrower or any of its Restricted Subsidiaries in effect on the Closing Date and made in accordance with the Operative Approved Cash Flow Forecast (subject to Permitted Variances);

(b) transactions between or among Credit Parties that are not Specified Guarantors;

(c) [reserved];

(d) payment of reasonable and customary fees and reimbursements of expenses (pursuant to indemnity arrangements or otherwise) of officers, directors, employees or consultants of Borrower or any of its Restricted Subsidiaries and made in accordance with the Operative Approved Cash Flow Forecast (subject to Permitted Variances);

(e) [reserved];

(f) [reserved];

(g) [reserved];

(h) [reserved];

(i) Permitted Payments to Holdings;

(j) payments and other agreements set forth in the lease agreement with Chagrin Executive Offices LLC, regarding Borrower's principal executive office located in Pepper Pike, Ohio, as in effect on the Closing Date, and as such lease agreement may be amended and renewed on an arms-length basis; and

(k) any transaction entered into by an Unrestricted Subsidiary with an Affiliate (other than Holdings, Borrower or any of its Restricted Subsidiaries) prior to the redesignation of any such Unrestricted Subsidiary as a Restricted Subsidiary in accordance with Section 5.15; provided that such transaction was not entered into in connection with or in contemplation of such redesignation.

6.12. Conduct of Business. From and after the Closing Date, engage in any business other than Permitted Business, except to such extent as would not be material to Borrower and its Restricted Subsidiaries taken as a whole.

6.13. Permitted Activities of Holdings. Holdings shall not (a) incur, directly or indirectly, any Indebtedness or any other obligation or liability whatsoever other than the Indebtedness and obligations under this Agreement, the other Credit Documents [and the Prepetition Revolving Credit Agreement] and other Indebtedness that Holdings is expressly permitted to incur by the terms of this Agreement; (b) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired by it other than (i) the Liens created under the Collateral Documents to which it is a party, (ii) Liens pursuant to the Prepetition Revolving Credit Agreement, or (iii) Liens permitted pursuant to Section 6.2 as if such Section is applicable to Holdings; (c) engage in any business or activity or own any assets other than (i) holding Cash, Cash Equivalents, and 100% of the Equity Interests of Borrower and activities incidental thereto, (ii) performing its obligations and activities under the Credit Documents, and to the extent not inconsistent therewith and the Prepetition Revolving Credit Agreement, and other Indebtedness that Holdings is expressly permitted to incur by the terms of this Agreement; (iii) issuing its own Equity Interests subject to the terms hereof; (iv) filing tax reports and paying taxes in the ordinary course (and contesting any taxes); (v) preparing reports to Governmental Authorities and to its shareholders; (vi) holding directors and shareholders meetings, preparing corporate records and other corporate activities required to maintain its separate corporate structure or to comply with applicable legal requirements; (vii) [reserved] and (viii) making Restricted Junior Payments; (d) consolidate with or merge with or into, or convey, transfer, lease or license all or substantially all its assets to, any Person; (e) sell or otherwise dispose of any Equity Interests of any of its Restricted Subsidiaries or (f) create or acquire any Subsidiary or make or own any Investment in any Person other than Borrower.

6.14. Amendments or Waivers of Organizational Documents. Agree to any material amendment, restatement, supplement or other modification to, or waiver of, any of its

Organizational Documents after the Closing Date that is materially adverse to the Lenders without in each case obtaining the prior written consent of Administrative Agent to such amendment, restatement, supplement or other modification or waiver.

6.15. [Reserved].

6.16. Fiscal Year. Change its Fiscal Year-end from December 31.

6.17. Subrogation. No Credit Party shall, and no Credit Party shall permit any of its Restricted Subsidiaries to, assert any right of subrogation or contribution against any other Debtors until the Payment in Full in cash of all the Obligations (other than contingent indemnity obligations with respect to then unasserted claims).

6.18. Draws. Make any Draw unless each of the following conditions have been satisfied on or prior to the date of such Draw (unless waived by the Requisite Term Lenders):

(a) on such date, both immediately prior to and after giving effect to such Draw, no Default or Event of Default shall have occurred or be continuing; and

(b) the amount of such Draw shall be in an amount required by the Credit Parties to (x) maintain a minimum cash balance (not including amounts in the Segregated Account and any Outstanding LC Cash Collateral) of $25,000,000 *provided*, that amounts funded from Draws under this clause (x) shall be at all times segregated in a Fixed Asset Collateral Proceeds Account and/or (y) after taking into account existing cash or Cash Equivalent balances of the Borrower and its Subsidiaries in excess of $25,000,000, to meet cash needs for the following ten Business Days in accordance with the Operative Approved Cash Flow Forecast and this Agreement.

(c) the amount of the Draw shall be deposited in a segregated Fixed Asset Collateral Proceeds Account.

6.19. Additional Bankruptcy Matters.. No Credit Party shall, and no Credit Party shall permit any of its Restricted Subsidiaries to, without the Requisite Term Lenders' prior written consent, do any of the following:

(a) use any portion or proceeds of the Loans or the Collateral, or disbursements set forth in the Operative Approved Cash Flow Forecast, for payments or purposes that would violate the terms of the Interim Order or the Final Order;

(b) incur, create, assume, suffer to exist or permit any other superpriority administrative claim which is pari passu with or senior to the claim of the Secured Parties against any Credit Party, except for the Carve Out or as otherwise expressly permitted by the Orders;

(c) assert, join, investigate, support or prosecute any claim or cause of action against any of the Secured Parties (in their capacities as such), unless such claim or cause of action is in connection with the enforcement of the Credit Documents against any of the Secured Parties;

(d) enter into any agreement to return any of its inventory to any of its creditors for application against any pre-petition Indebtedness, pre-petition trade payables or other pre-petition claims under Section 546(c) of the Bankruptcy Code or allow any creditor to take any setoff or recoupment against any of its pre-petition Indebtedness, pre-petition trade payables or other pre-petition claims based upon any such return pursuant to Section 553(b)(1) of the Bankruptcy Code or otherwise if, after giving effect to any such agreement, setoff or recoupment, the aggregate amount applied to pre-petition Indebtedness, pre-petition trade payables and other pre-petition claims subject to all such agreements, setoffs and recoupments since the Petition Date would exceed $250,000;

(e) seek, consent to, or permit to exist, without the prior written consent of the Administrative Agent, at the direction of Requisite Term Lenders and Requisite Roll-Up Lenders, any order granting authority to take any action that is prohibited by the terms of this Agreement, the Interim Order, the Final Order or the other Credit Documents or refrain from taking any action that is required to be taken by the terms of this Agreement, the Interim Order, the Final Order or any of the other Credit Documents;

(f) subject to the terms of the Orders and subject to Article 8, object to, contest, delay, prevent or interfere with in any material manner the exercise of rights and remedies by the Agents, the Lenders or other Secured Parties with respect to the Collateral following the occurrence of an Event of Default, including without limitation a motion or petition by any Secured Party to lift an applicable stay of proceedings to do the foregoing (provided that any Credit Party may contest or dispute whether an Event of Default has occurred in accordance with the terms of the Orders); or

(g) except as expressly provided or permitted hereunder (including, without limitation, to the extent pursuant to any "first day" or "second day" orders complying with the terms of this Agreement) or, with the prior consent of the Requisite Term Lenders, make any payment or distribution to any non-Debtor Affiliate or insider of any Debtor outside of the ordinary course of business or as otherwise contemplated in the Operative Approved Cash Flow Forecast (subject to Permitted Variances).

SECTION 7. GUARANTY

7.1. Guaranty of the Obligations. Subject to the provisions of Section 7.2,

(a) The Term Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to Administrative Agent, for the ratable benefit of the Beneficiaries, the due and punctual Payment in Full of all Obligations (other than Roll-up Obligations) when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the Automatic Stay) (collectively, the **"Guaranteed Term Obligations"**); and

(b) The Roll-Up Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to Administrative Agent, for the ratable benefit of the

Beneficiaries, the due and punctual Payment in Full of all Roll-Up Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) (collectively, the **"Guaranteed Roll-Up Obligations"** and, together with the Guaranteed Term Obligations, the **"Guaranteed Obligations**").

7.2. Contribution by Guarantors. All Guarantors desire to allocate among themselves (collectively, the **"Contributing Guarantors"**), in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor (a **"Funding Guarantor"**) under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. **"Fair Share"** means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the Applicable Guaranteed Obligations. **"Fair Share Contribution Amount"** means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty in respect of Applicable Guaranteed Obligations that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the **"Fair Share Contribution Amount"** with respect to any Contributing Guarantor for purposes of this Section 7.2, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. **"Aggregate Payments"** means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (1) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guaranty (including, without limitation, in respect of this Section 7.2), minus (2) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 7.2. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 7.2 shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 7.2.

7.3. Payment by Guarantors. Subject to Section 7.2, Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of Borrower to pay any of the Applicable Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration,

demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), Guarantors will upon demand pay, or cause to be paid, in Cash, to Administrative Agent for the ratable benefit of Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Applicable Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Applicable Guaranteed Obligations (including interest which, but for Borrower's becoming the subject of a case under the Bankruptcy Code, would have accrued on such Applicable Guaranteed Obligations, whether or not a claim is allowed against Borrower for such interest in the related bankruptcy case) and all other Applicable Guaranteed Obligations then owed to Beneficiaries as aforesaid.

7.4. Liability of Guarantors Absolute. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than Payment in Full of the Applicable Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability. This Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(b) Administrative Agent may enforce this Guaranty upon the occurrence, but only during the continuance, of an Event of Default notwithstanding the existence of any dispute between Borrower and any Beneficiary with respect to the existence of such Event of Default;

(c) the obligations of each Guarantor hereunder are independent of the obligations of Borrower and the obligations of any other guarantor (including any other Guarantor) of the obligations of Borrower, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against Borrower or any of such other guarantors and whether or not Borrower is joined in any such action or actions;

(d) payment by any Guarantor of a portion, but not all, of the Applicable Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Applicable Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Applicable Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Applicable Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Applicable Guaranteed Obligations;

(e) any Beneficiary, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's

liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith or the applicable Hedge Agreement and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any other Credit Party or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Credit Documents, any Secured Hedge Agreements or any Designated Coal Contract; and

(f) this Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than Payment in Full of the Applicable Guaranteed Obligations (other than contingent indemnity obligations not then due and payable), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Credit Documents, any Secured Hedge Agreements or any Designated Coal Contracts, at law, in equity or otherwise) with respect to the Applicable Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Applicable Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Credit Documents, any of the Secured Hedge Agreements, any of the Designated Coal Contracts, or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Applicable Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Credit Document, such Secured Hedge Agreement, such Designated Coal Contract or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the

application of payments received from any source (other than payments received pursuant to the other Credit Documents, any of the Secured Hedge Agreements, any of the Designated Coal Contracts or from the proceeds of any security for the Applicable Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Applicable Guaranteed Obligations) to the payment of indebtedness other than the Applicable Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Applicable Guaranteed Obligations; (v) any Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of Holdings or any of its Subsidiaries and to any corresponding restructuring of the Applicable Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Applicable Guaranteed Obligations (subject to the limitations set forth in the Collateral Documents); (vii) any defenses, set-offs or counterclaims which Borrower may allege or assert against any Beneficiary in respect of the Applicable Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Applicable Guaranteed Obligations.

7.5. Waivers by Guarantors. Each Guarantor hereby waives, to the extent permitted by applicable law, for the benefit of Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (i) proceed against Borrower, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from Borrower, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any deposit account or credit on the books of any Beneficiary in favor of any Credit Party or any other Person, or (iv) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Borrower or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Borrower or any other Guarantor from any cause other than Payment in Full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder, the Secured Hedge Agreements, the Designated Coal Contracts or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit

to Borrower and notices of any of the matters referred to in Section 7.4 and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

7.6. Guarantors' Rights of Subrogation, Contribution, Etc. Until the Applicable Guaranteed Obligations (other than contingent obligations under general indemnification provisions as to which no claim is pending) shall have been Paid in Full, each Guarantor hereby waives, to the extent permitted by law, any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against Borrower or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against Borrower with respect to the Applicable Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against Borrower, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Applicable Guaranteed Obligations (other than contingent obligations under general indemnification provisions as to which no claim is pending) shall have been Paid in Full, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Applicable Guaranteed Obligations, including any such right of contribution as contemplated by Section 7.2. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against Borrower or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against Borrower, to all right, title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Applicable Guaranteed Obligations (other than contingent obligations under general indemnification provisions as to which no claim is pending) shall not have been finally and Paid in Full, such amount shall, to the extent possible under applicable law, be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Applicable Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

7.7. Subordination of Other Obligations. Any Indebtedness of Borrower or any Guarantor now or hereafter held by any Guarantor (the **"Obligee Guarantor"**) is hereby subordinated in right of payment to the Guaranteed Obligations, and any such Indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall, to the extent permitted by applicable law, be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations but

without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

7.8. Continuing Guaranty. This Guaranty is a continuing guaranty and shall remain in effect until all of the Applicable Guaranteed Obligations (other than contingent obligations under general indemnification provisions as to which no claim is pending) shall have been Paid in Full. Each Guarantor hereby irrevocably waives, to the extent permitted by applicable law, any right to revoke this Guaranty as to future transactions giving rise to any Applicable Guaranteed Obligations.

7.9. Authority of Guarantors or Borrower. It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or Borrower or the officers, directors or any agents acting or purporting to act on behalf of any of them.

7.10. Financial Condition of Borrower. Any Credit Extension may be made to Borrower or continued from time to time, and any Secured Hedge Agreements and Designated Coal Contracts may be entered into from time to time, in each case without notice to or authorization from any Guarantor regardless of the financial or other condition of Borrower at the time of any such grant or continuation or at the time such Secured Hedge Agreement or Designated Coal Contract is entered into, as the case may be. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of Borrower. Each Guarantor has adequate means to obtain information from Borrower on a continuing basis concerning the financial condition of Borrower and its ability to perform its obligations under the Credit Documents, the Secured Hedge Agreements and the Designated Coal Contracts, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of Borrower and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives, to the extent permitted by applicable law, and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of Borrower now known or hereafter known by any Beneficiary.

7.11. Bankruptcy, Etc.

(a) So long as any Applicable Guaranteed Obligations remain outstanding (other than contingent obligations under general indemnification provisions as to which no claim is pending or reasonably foreseeable), no Guarantor shall, without the prior written consent of Administrative Agent acting pursuant to the instructions of Requisite Lenders, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against Borrower or any other Guarantor. The obligations of Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Borrower or any other Guarantor or by any defense which Borrower or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any

portion of the Applicable Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Applicable Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Applicable Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Applicable Guaranteed Obligations because it is the intention of Guarantors and Beneficiaries that the Applicable Guaranteed Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve Borrower of any portion of such Applicable Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar Person to pay Administrative Agent, or allow the claim of Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Applicable Guaranteed Obligations are paid by Borrower, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Applicable Guaranteed Obligations for all purposes hereunder.

7.12. Discharge of Guaranty Upon Sale of Guarantor. If all of the Equity Interests of any Guarantor or any of its successors in interest hereunder shall be sold or otherwise disposed of (including by merger or consolidation) in accordance with the terms and conditions hereof, then the Guaranty of such Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Beneficiary or any other Person effective as of the time of such Asset Sale.

7.13. Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Credit Party to honor all of its obligations under this Guaranty or the Pledge and Security Agreements in respect of Swap Obligations under any Secured Hedge Agreement (provided, however, that each Qualified ECP Guarantor shall only be liable under this Guaranty for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 7.13, or otherwise under this Guaranty or the Pledge and Security Agreements, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 7.13 shall remain in full force and effect until the guarantees in respect of Swap Obligations under each Secured Hedge Agreement have been discharged, or otherwise released or terminated in accordance with the terms of this Agreement (other than contingent obligations under general indemnification provisions as to which no claim is pending). Each Qualified ECP Guarantor intends that this Section 7.13 constitute, and this Section 7.13 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

SECTION 8. EVENTS OF DEFAULT

8.1. Events of Default. If any one or more of the following conditions or events shall occur:

(a) Failure to Make Payments When Due. Failure by Borrower to pay (i) when due any amount of principal of any Loan, whether at stated maturity, by acceleration, by mandatory prepayment or otherwise; or (ii) any interest on any Loan or any fee or any other amount due hereunder and such payment is not made within five Business Days after the date due; or

(b) Default in Other Agreements. (i) Failure of any Credit Party or any of their respective Restricted Subsidiaries to pay when due any principal of or interest on or any other amount, including any payment in settlement, payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in Section 8.1(a), and other than any Prepetition Debt) with an aggregate principal amount (or Net Mark-to-Market Exposure) of $10,000,000 or more, in each case beyond the grace period, if any, provided therefor; (ii) breach or default by any Credit Party with respect to any other material term of (1) one or more items of Indebtedness (other than any Prepetition Debt) in the individual or aggregate principal amounts (or Net Mark-to-Market Exposure) referred to in clause (b) above or (2) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness, in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; or (iii) any termination of a Designated Coal Contract resulting in a Termination Amount payable by any applicable Credit Party, together with the aggregate Termination Amount payable by all applicable Credit Parties, with respect to all other Designated Coal Contracts, in an aggregate amount of $10,000,000 or more; provided further that this clause (b) shall not apply to (i) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and (ii) any Indebtedness if the sole remedy of the holder thereof in the event of the non-payment of such Indebtedness or the non-payment or non-performance of obligations related thereto is to convert such Indebtedness into Equity Interests (other than Disqualified Equity Interests) and cash in lieu of fractional shares; provided, further, that an Event of Default under this clause (b) shall no longer be deemed to exist or to be continuing if it has been remedied or has been waived by the holders of such Indebtedness prior to any termination of the Commitments or acceleration of the Loans pursuant to this Section 8.1; or

(c) Breach of Certain Covenants. Failure of any Credit Party, to perform or comply with any term or condition contained in (i) Section 5.1(f)(i), Section 5.2 (with respect to Borrower), Section 5.17, Section 5.18, Section 5.19, Section 5.20 or Section 6, (ii) Section 5.1(p), Section 5.1(q), Section 5.1(r), Section 5.1(s), 5.1(t) or Section 5.16 and such failure under this clause (b) shall continue for 15 days;

provided, that (x) a Default or Event of Default by any Credit Party under Sections 6.7(a), (b) or (c) (a "**Term Financial Covenant Event of Default**") shall not constitute a Default or an Event of Default with respect to the Roll-Up Obligations, unless and until the Requisite Term Lenders shall have declared all amounts outstanding under the Term Loan Facility to be due and payable and (y) a Default or Event of Default by any Credit Party under Section 6.7(d) (a "**Roll-Up Financial Covenant Event of Default**") shall not constitute a Default or an Event of Default with respect to the Guaranteed Term Obligations (including for purposes of Section 2.2 and 6.18), unless and until the Requisite Roll-Up Lenders shall have declared all amounts outstanding under the Roll-Up Facility to be due and payable; or

(d) Breach of Representations, Etc. Any representation, warranty, certification or other statement of fact made or deemed made by any Credit Party, in any Credit Document shall be false in any material respect as of the date made or deemed made; or

(e) Other Defaults Under Credit Documents. Any Credit Party, shall default in the performance of or compliance with any term contained herein or any of the other Credit Documents, other than any such term referred to in any other paragraph of this Section 8.1, such default shall not have been remedied or waived within thirty days after receipt by Borrower of notice from Administrative Agent or the Requisite Lenders of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, Etc. In each case, other than as it relates to any Subsidiary of Murray South America, Inc., (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of any Restricted Subsidiary of Holdings that is not a Debtor, in an involuntary case under any Debtor Relief Laws now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against any of Restricted Subsidiary of Holdings that is not a Debtor, under any Debtor Relief Laws now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over any Restricted Subsidiary of Holdings that is not a Debtor, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of any Restricted Subsidiary of Holdings that is not a Debtor for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of any Restricted Subsidiary that is not a Debtor, and any such event described in this clause (f) shall continue for sixty days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, Etc. In each case, other than as it relates to any Subsidiary of Murray South America, Inc., (i) any Restricted Subsidiary of Holdings that is not a Debtor, shall have an order for relief entered with respect to it or shall commence a voluntary case under any Debtor Relief Laws now or hereafter in effect, or shall consent to the entry of an order for relief in an

involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or any Restricted Subsidiary of Holdings that is not a Debtor, shall make any assignment for the benefit of creditors; or (ii) any Restricted Subsidiary of Holdings that is not a Debtor, shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the board of directors (or similar governing body) of any Restricted Subsidiary of Holdings that is not a Debtor (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 8.1(f); or

(h) Judgments and Attachments. Any judgment, order or decree for the payment of money involving in the aggregate at any time an amount in excess of $10,000,000, except as set forth on Schedule 8.1(h), (to the extent not covered by independent, third party insurance that has not denied coverage in writing) shall be entered or filed against Holdings or any of its Restricted Subsidiaries (which, in the case of the Debtors only, arose following the Petition Date) or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty days; or

(i) Dissolution. Any order, judgment or decree shall be entered against any Credit Party decreeing the dissolution or split up of such Credit Party and such order shall remain undischarged or unstayed for a period in excess of thirty days; or

(j) Employee Benefit Plans. There shall occur one or more ERISA Events which individually or in the aggregate results in or would reasonably be expected to result in a Material Adverse Effect; or

(k) Change of Control. A Change of Control shall occur;

(l) Guaranties, Collateral Documents and other Credit Documents. At any time after the execution and delivery thereof, (i) any material portion of the Guaranty for any reason, other than the satisfaction in full of all Obligations (other than contingent indemnity obligations), shall cease to be in full force and effect (other than in accordance with its terms or in connection with a transaction permitted by Section 6.8) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) any portion of this Agreement or any material Collateral Document or any Order ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations (other than contingent indemnity obligations) or in connection with a transaction permitted by Section 6.8) or shall be declared null and void, or Collateral Agent shall not have or shall cease to have a valid and perfected First Priority Lien (to the extent required by the Pledge and Security Agreements or set forth in the Orders), subject to Permitted Liens, in any material portion of the Collateral in which the Secured Parties are meant to have a Lien purported to be covered by the Collateral Documents or the Orders with the priority required by the Orders, in each case for any reason other than the failure of Collateral Agent or any Secured Party to take any action within its control, or (iii) any

Credit Party shall contest the validity or enforceability of any Credit Document or any Order in writing or repudiate or rescind (or purport to repudiate or rescind) or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any provision of any Credit Document to which it is a party or shall contest the validity or perfection of any Lien in any Collateral purported to be covered by the Collateral Documents or any Order;

(m) RSA Termination. The RSA is terminated for any reason by the Debtors, the Requisite Consenting Superpriority Lenders (as such term is defined in the RSA) or the Consenting Equityholders (as such term is defined in the RSA) for any reason, or modified, amended or waived in any manner materially adverse to the Secured Parties without the prior consent of the Administrative Agent at the direction of Requisite Term Lenders.

(n) Cases. There occurs any of the following in the Cases:

(i) the bringing of a motion or taking of any action by any of the Credit Parties or any Subsidiary, or any Person claiming to act by or through any Credit Party or any Subsidiary (A) to grant any Lien other than Liens permitted pursuant to Section 6.2 upon or affecting any Collateral, (B) to use cash collateral of the Agents and the other Secured Parties under section 363(c) of the Bankruptcy Code without the prior written consent of the Requisite Term Lenders, except as provided in the Interim Order or Final Order, or (C) that could result in an event or outcome materially adverse to the Agents, Lenders, or other Secured Party, their interest in the Collateral or their rights and remedies hereunder or under any other Credit Documents;

(ii) the entry of an order in any of the Cases confirming a Reorganization Plan that is not an Acceptable Plan;

(iii) (A) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the Interim Order or the Final Order in any material respect without the written consent of the Requisite Term Lenders and Requisite Roll-Up Lenders, the filing of a motion for reconsideration with respect to the Interim Order or the Final Order, or the Interim Order or the Final Order shall otherwise not be in full force and effect or (B) any Credit Party or any Subsidiary shall fail to comply with the Orders in any material respect;

(iv) the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against, any Agent, any Lender, any other Secured Party or any of the Collateral;

(v) (A) the appointment of a trustee, receiver or an examiner (other than a fee examiner) in the Cases with expanded powers to operate or manage the financial affairs, the business, or reorganization of the Credit Parties, or (B) the sale without the Requisite Term Lenders' consent of all or substantially all of the Debtors' assets either through a sale under Section 363 of the Bankruptcy Code, through a confirmed Reorganization Plan in the Cases or otherwise that does not result in Payment

in Full in cash of all of the Obligations under this Agreement at the closing of such sale or initial payment of the purchase price or effectiveness of such Reorganization Plan, as applicable;

(vi) the dismissal of any Case, or the conversion of any Case from one under Chapter 11 to one under Chapter 7 of the Bankruptcy Code or any Credit Party shall file a motion or other pleading seeking the dismissal of the Case under Section 1112 of the Bankruptcy Code or otherwise or the conversion of the Cases to Chapter 7 of the Bankruptcy Code;

(vii) any Credit Party shall file a motion seeking, or the Bankruptcy Court shall enter an order granting relief from or modifying the Automatic Stay (A) to allow any creditor (other than the Agents) to execute upon or enforce a Lien on any Collateral, (B) approving any settlement or other stipulation not approved by the Requisite Term Lenders (which approval shall not be unreasonably withheld) with any secured creditor of any Credit Party providing for payments as adequate protection or otherwise to such secured creditor, (C) with respect to any Lien on or the granting of any Lien on any Collateral to any federal, state or local environmental or regulatory agency or authority or (D) permit other actions that would have a Material Adverse Effect on the Debtors or their estates (taken as a whole);

(viii) the commencement of a suit or an action (but not including a motion for standing to commence a suit or an action) against any Agent, any Lender or any other Secured Party and, as to any suit or action brought by any Person other than a Credit Party or a Subsidiary, officer or employee of a Credit Party, the continuation thereof without dismissal for thirty (30) days after service thereof on the Administrative Agent, or such any Secured Party, where such suit or action asserts or seeks by or on behalf of a Credit Party, a claim or any legal or equitable remedy that would (x) have the effect of invalidating, subordinating or challenging any or all of the Obligations or Liens of any Agent (on behalf of the Secured Parties) to any other claim, or (y) have a Material Adverse Effect on the rights and remedies of any Agent or the collectability of all or any portion of the Obligations (other than a challenge as to whether an Event of Default has, in fact, occurred and is continuing);

(ix) the entry of an order in the Cases avoiding or permitting recovery of any portion of the payments made on account of the Obligations owing under this Agreement;

(x) the entry of an order in the Cases terminating or modifying the exclusive right of any Credit Party to file a Chapter 11 plan pursuant to Section 1121 of the Bankruptcy Code;

(xi) the failure of any Credit Party to perform in all material respects any of its obligations under the Acceptable Confirmation Order or the Sale Order or to perform in any material respect its obligations under any order of the Bankruptcy Court approving bidding procedures;

(xii) the existence of any claims or charges, or the entry of any order of the Bankruptcy Court authorizing any claims or charges, other than the Obligations in, or as otherwise permitted under the applicable Credit Documents or permitted under the Orders, entitled to superpriority administrative expense claim status in any Case pursuant to Section 364(c)(1) of the Bankruptcy Code *pari passu* with or senior to the claims of the Agents and the Secured Parties under this Agreement and the other Credit Documents, or there shall arise or be granted by the Bankruptcy Court (A) any claim having priority over any or all administrative expenses of the kind specified in clause (b) of Section 503 of the Bankruptcy Code or clause (b) of Section 507 of the Bankruptcy Code (other than the Carve-Out) or (B) any Lien on the Collateral having a priority senior to or *pari passu* with the Liens and security interests granted herein, except, in each case, as expressly provided in the Credit Documents or in the Orders then in effect (but only in the event specifically consented to by the Administrative Agent (at the direction of the Requisite Term Lenders)), whichever is in effect;

(xiii) the Interim Order (prior to the Final Order Entry Date) or, on and after entry thereof, the Final Order shall cease to create a valid and perfected Lien on the Collateral or to be in full force and effect, shall have been reversed, modified, amended, stayed, vacated, or subject to stay pending appeal, in the case of modification or amendment, without prior written consent of the Requisite Term Lenders);

(xiv) an order in the Cases shall be entered limiting the extension under Section 552(b) of the Bankruptcy Code of the Liens of the Prepetition Collateral Trustee on the Collateral to any proceeds, products, offspring, or profits of the Collateral acquired by any Credit Party after the Petition Date;

(xv) an order of the Bankruptcy Court shall be entered denying or terminating use of cash collateral by the Credit Parties;

(xvi) an order materially adversely impacting the rights and interests of the Agents and the Lenders under the Credit Documents, as reasonably determined by the Requisite Term Lenders and Requisite Roll-Up Lenders in good faith, shall have been entered by the Bankruptcy Court or any other court of competent jurisdiction;

(xvii) any Credit Party shall challenge, support or encourage a challenge of any payments made to any Agent, any Lender, or any Secured Party with respect to the Obligations, or without the consent of the Requisite Term Lenders and, if required by Section 10.5, any other Secured Party, the filing of any motion by the Credit Parties seeking approval of (or the entry of an order by the Bankruptcy Court approving) adequate protection to any Prepetition Agent, or the Prepetition Lenders, that is inconsistent with an Order;

(xviii) without the Requisite Term Lenders' consent, the entry of any order by the Bankruptcy Court granting, or the filing by any Credit Party or any of its Subsidiaries of any motion or other request with the Bankruptcy Court (in each case, other than the Orders and motions seeking entry thereof or permitted amendments or modifications thereto) seeking, authority to use any cash proceeds of any of the Collateral

without the consent of the Administrative Agent (at the direction of the Requisite Lenders) or to obtain any financing under Section 364 of the Bankruptcy Code other than the Credit Documents;

(xix) any Credit Party or any person on behalf of any Credit Party shall file any motion seeking authority to consummate a sale of assets (constituting Collateral or otherwise) outside the ordinary course of business and not permitted hereunder;

(xx) any Credit Party shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any pre-petition Indebtedness or payables other than payments permitted under this Agreement to the extent authorized or required by one or more "first day" or "second day" orders or any of the Orders (or other orders with the consent of Requisite Term Lenders) and consistent with the Operative Approved Cash Flow Forecast (subject to Permitted Variances);

(xxi) without the Requisite Term Lenders' consent, any Credit Party or any Subsidiary thereof shall file any motion or other request with the Bankruptcy Court seeking (A) to grant or impose, under Section 364 of the Bankruptcy Code or otherwise, liens or security interests in any Collateral, whether senior, equal or subordinate to the Collateral Agent's liens and security interests; or (B) to modify or affect any of the rights of the Agents, the Lenders or the Secured Parties under the Orders or the Credit Documents and related documents by any plan of reorganization confirmed in the Cases or subsequent order entered in the Cases;

(xxii) the filing by any of the Credit Parties of a Reorganization Plan other than an Acceptable Plan;

(xxiii) any Credit Party or any Subsidiary thereof shall take any action in support of any matter set forth in this Section 8.1(m) or any other Person shall do so and such application is not contested in good faith by the Credit Parties and the relief requested.

THEN, in every such event and any time thereafter during the continuance of such event (including any event arising by virtue of the termination and declaration contemplated by the proviso to Section 8.1(c)), but subject to the terms of the Orders in all respects each of the following shall, at the request of (or with the consent of) the Requisite Lenders (and, if (x) a Term Financial Covenant Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Requisite Term Lenders only, and in such case, without limiting the proviso to Section 8.1(c), only with respect to the Term Loan Facility or (y) a Roll-Up Financial Covenant Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Requisite Roll-Up Lenders only, and in such case, without limiting the proviso to Section 8.1(c), only with respect to the Roll-Up Facility), upon notice to Borrower by Administrative Agent, immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each Credit Party: (I) the unpaid principal amount of and accrued interest and premium on the Loans, and (II) all other Obligations (and all

unused Commitments shall terminate immediately); and (B) following five (5) Business Days following such event, Administrative Agent (at the direction of Requisite Lenders) may cause Collateral Agent to enforce any and all Liens and security interests created pursuant to Collateral Documents or any Order.

8.2. Application of Funds On the Maturity Date, subject to the terms of the Orders, and after the exercise of remedies provided for in Section 8.1 and, (x) in the case of proceeds of Shared Collateral, subject to Section 8.3 and (y) in the case of proceeds of Term Loan Only Collateral and Term Loan Only Guaranties, subject to Section 8.4, any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

(a) *First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including any fee, as well as fees, charges and disbursements of counsel to the Agents, the Requisite Lenders and the Lenders and amounts payable under Sections 2.18, 2.19 and 2.20) payable to the Agents, the Requisite Lenders, Lenders and/or the other Secured Parties in their capacities as such;

(b) *Second*, to payment of that portion of the Obligations constituting interest on the Loans and other Obligations, ratably among the Lenders and other Secured Parties in proportion to the respective amounts described in this clause Second payable to them;

(c) *Third*, to payment of that portion of the Obligations constituting unpaid principal of the Loans and the payment of all such outstanding Secured Designated Coal Contract Obligations, ratably among the Lenders and/or other Secured Parties in proportion to the respective amounts described in this clause Third held by them;

(d) *Fourth*, to payment of any remaining Obligations, ratably among the Lenders and the other Secured Parties in proportion to the respective amounts described in this clause Fourth held by them; and

(e) *Last*, the balance, if any, after all of the Obligations have been indefeasibly Paid in Full, to the Borrower or as otherwise required by law;

provided, that the application to the Obligations of amounts received in respect of the Collateral is expressly subject to the priorities set forth in the Interim Order (and, when entered, the Final Order), and all such amounts shall first be allocated in accordance with such priorities.

8.3. Application of Shared Collateral Proceeds On the date of each prepayment made in accordance with Section 2.15(a) and on the Maturity Date, subject to the Orders, and after the exercise of remedies provided for in Section 8.1,

(a) any Fixed Assets Collateral that is Shared Collateral or proceeds thereof received on account of the Obligations shall be applied by the Administrative Agent in the following order:

(i) *First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including any fees, charges and disbursements of counsel to the Agents and amounts payable to the Agents under Sections 2.18, 2.19 and 2.20) payable to the Agents in their capacities as such;

(ii) *Second*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including any fees, charges and disbursements of counsel to the Backstop Lenders and the Lenders and amounts payable to the Lenders under Sections 2.18, 2.19 and 2.20) payable to the Backstop Lenders, the Term Lenders and/or the other Secured Parties in their capacities as such;

(iii) *Third*, to payment of that portion of the Obligations constituting interest on that portion of the Term Loans and interest on other Obligations (other than the Roll-Up Obligations), ratably among the Term Lenders and other Secured Parties (other than the Roll-Up Lenders) in proportion to the respective amounts described in this clause Third payable to them;

(iv) *Fourth*, to payment of that portion of the Obligations constituting unpaid principal of the Term Loans and principal of other Obligations (other than the Roll-Up Obligations), ratably among the Term Lenders and/or other Secured Parties (other than the Roll-Up Lenders) in proportion to the respective amounts described in this clause Fourth held by them;

(v) *Fifth*, to payment of any remaining Obligations with respect to the Term Loan Facility and the Secured Designated Coal Contracts Obligations, ratably among the Term Lenders and the other Secured Parties (other than the Roll-Up Lenders) in proportion to the respective amounts described in this clause Fifth held by them;

(vi) *Sixth*, to payment of that portion of the Obligations constituting interest on that portion of the Roll-Up Loans and interest on other Obligations, ratably among the Roll-Up Lenders and other Secured Parties in proportion to the respective amounts described in this clause Seventh payable to them;

(vii) *Seventh*, to payment of that portion of the Obligations constituting unpaid principal of the Roll-Up Loans, ratably among the Roll-Up Lenders and/or other Secured Parties in proportion to the respective amounts described in this clause Seventh held by them;

(viii) *Eighth*, to payment of any remaining Obligations with respect to the Roll-Up Facility, ratably among the Roll-Up Lenders and the other Secured Parties in proportion to the respective amounts described in this clause Eighth held by them;

(ix) *Ninth*, to payment of any remaining Obligations, ratably among the Lenders and the other Secured Parties in proportion to the respective amounts described in this clause Ninth held by them; and

(x) *Last*, the balance, if any, after all of the Obligations have been indefeasibly Paid in Full, to the Borrower or as otherwise required by law; and

(b) any ABL Collateral that is Shared Collateral or proceeds thereof received on account of the Obligations shall be applied by the Administrative Agent in the following order:

(i) *First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including any fees, charges and disbursements of counsel to the Agents and amounts payable to the Agents under Sections 2.18, 2.19 and 2.20) payable to the Agents in their capacities as such;

(ii) *Second*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including any Fees, as well as fees, charges and disbursements of counsel to the Backstop Lenders and the Term Lenders and amounts payable to the Term Lenders under Sections 2.18, 2.19 and 2.20) not in excess of the then-remaining Term Loan ABL Collateral Cap, ratably among the Backstop Lenders and the Term Lenders in proportion to the respective amounts described in this clause Second payable to them;

(iii) *Third*, to payment of that portion of the Obligations constituting interest on the Term Loans not in excess of the then-remaining Term Loan ABL Collateral Cap, ratably among the Term Lenders in proportion to the respective amounts described in this clause Third payable to them;

(iv) *Fourth*, to payment of that portion of the Obligations constituting unpaid principal of the Term Loans not in excess of to the then-remaining Term Loan ABL Collateral Cap, ratably among the Term Lenders in proportion to the respective amounts described in this clause Fourth held by them;

(v) *Fifth*, to payment of any remaining Obligations with respect to the Term Loan Facility, ratably among the Term Lenders not in excess of the then-remaining Term Loan ABL Collateral Cap in proportion to the respective amounts described in this clause Fifth held by them;

(vi) *Sixth*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including any Fees, as well as fees, charges and disbursements of counsel to the Roll-Up Lenders and amounts payable to the Roll-Up Lenders under Sections 2.18, 2.19 and 2.20) on that portion of the Roll-Up Loans having a principal amount not in excess of the then-remaining Roll-Up Cap, ratably among the Roll-Up in proportion to the respective amounts described in this clause Sixth payable to them;

(vii) *Seventh*, to payment of that portion of the Obligations constituting interest on that portion of the Roll-Up Loans having a principal amount not in excess of the Roll-Up Cap, ratably among the then-remaining Roll-Up Lenders in proportion to the respective amounts described in this clause Seventh payable to them;

(viii) *Eighth*, to payment of that portion of the Obligations constituting unpaid principal of the Roll-Up Loans having a principal amount not in excess of the then-remaining Roll-Up Cap, ratably among the Roll-Up Lenders in proportion to the

respective amounts described in this clause Eighth held by them;

(ix) *Ninth*, to payment of any remaining Obligations with respect to the Roll-Up Facility, ratably among the then-remaining Roll-Up Lenders not in excess of the Roll-Up Cap in proportion to the respective amounts described in this clause Ninth held by them;

(x) *Tenth*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including any Fees, as well as fees, charges and disbursements of counsel to the Backstop Lenders and the Term Lenders and amounts payable to the Term Lenders under Sections 2.18, 2.19 and 2.20), ratably among the Backstop Lenders, Term Lenders, and other Secured Parties (other than the Roll-Up Lenders) in proportion to the respective amounts described in this clause Tenth payable to them;

(xi) *Eleventh,* to payment of that portion of the Obligations constituting interest the Term Loans and interest on other Obligations, ratably among the Term Lenders and the other Secured Parties in proportion to the respective amounts described in this clause Eleventh payable to them;

(xii) *Twelfth*, to payment of that portion of the Obligations constituting unpaid principal of the Term Loans and principal of other Obligations (other than the Roll-Up Obligations), ratably among the Term Lenders and/or other Secured Parties (other than the Roll-Up Lenders) in proportion to the respective amounts described in this clause Twelfth held by them;

(xiii) *Thirteenth*, to payment of any remaining Obligations with respect to the Term Loan Facility and the Secured Designated Coal Contracts Obligations, ratably among the Term Lenders and the other Secured Parties in excess of in proportion to the respective amounts described in this clause Thirteenth held by them;

(xiv) *Fourteenth*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including any Fees, as well as fees, charges and disbursements of counsel to the Roll-Up Lenders and amounts payable to the Term Lenders under Sections 2.18, 2.19 and 2.20) on that portion of the Roll-Up Loans having a principal amount in excess of the Roll-Up Cap, ratably among the Roll-Up in proportion to the respective amounts described in this clause Fourteenth payable to them;

(xv) *Fifteenth*, to payment of that portion of the Obligations constituting interest on that portion of the Roll-Up Loans and interest on other Obligations consisting of principal or swap termination value having a principal amount in excess of the Roll-up Cap, ratably among the Roll-Up Lenders and other Secured Parties in proportion to the respective amounts described in this clause Fifteenth payable to them;

(xvi) *Sixteenth*, to payment of that portion of the Obligations constituting unpaid principal of the Roll-Up Loans and the payment of all such Obligations consisting of principal or swap termination value having a principal amount

in excess of the Roll-Up Cap, ratably among the Roll-Up Lenders and/or other Secured Parties in proportion to the respective amounts described in this clause Sixteenth held by them;

(xvii) *Seventeenth*, to payment of any remaining Obligations with respect to the Roll-Up Facility, ratably among the Roll-Up Lenders and the other Secured Parties in excess of the Roll-Up Cap in proportion to the respective amounts described in this clause Seventeenth held by them;

(xviii) *Eighteenth*, to payment of any remaining Obligations, ratably among the Lenders and the other Secured Parties in proportion to the respective amounts described in this clause Eighteenth held by them; and

(xix) *Last*, the balance, if any, after all of the Obligations (other than the Roll-Up Obligations) have been indefeasibly Paid in Full, to the Borrower or as otherwise required by law.

8.4. Application of Term Loan Only Collateral Proceeds On the date of each prepayment made in accordance with Section 2.15(a) and on the Maturity Date, subject to the Orders, and after the exercise of remedies provided for in Section 8.1, payments in respect of Term Loan Only Guaranties and Term Loan Only Collateral or proceeds thereof received on account of the Obligations shall be applied by the Administrative Agent in the following order:

(i) *First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including any fees, charges and disbursements of counsel to the Agents and amounts payable to the Agents under Sections 2.18, 2.19 and 2.20) payable to the Agents in their capacities as such;

(ii) *Second*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including any fees, charges and disbursements of counsel to the Backstop Lenders and the Term Lenders and amounts payable to the Lenders under Sections 2.18, 2.19 and 2.20) payable to the Backstop Lenders, the Term Lenders and/or the other Secured Parties (other than the Roll-Up Lenders) in their capacities as such;

(iii) *Third*, to payment of that portion of the Obligations constituting interest on that portion of the Term Loans and interest on other Obligations (other than the Roll-Up Obligations), ratably among the Term Lenders and other Secured Parties (other than the Roll-Up Lenders) in proportion to the respective amounts described in this clause Third payable to them;

(iv) *Fourth*, to payment of that portion of the Obligations constituting unpaid principal of the Term Loans and principal of other Obligations (other than the Roll-Up Obligations), ratably among the Term Lenders and/or other Secured Parties (other than the Roll-Up Lenders) in proportion to the respective amounts described in this clause Fourth held by them;

(v) *Fifth*, to payment of any remaining Obligations with respect to the

Term Loan Facility and the Secured Designated Coal Contracts Obligations, ratably among the Term Lenders and the other Secured Parties (other than the Roll-Up Lenders) in proportion to the respective amounts described in this clause Fifth held by them;

(vi) *Last*, the balance, if any, after all of the Obligations have been indefeasibly Paid in Full, to the Borrower or as otherwise required by law.

SECTION 9. AGENTS

9.1. Appointment of Agents. GLAS USA is hereby appointed Administrative Agent and GLAS Americas is hereby appointed as Collateral Agent and Escrow Agent hereunder and under the other Credit Documents and each Lender and Designated Coal Contract Counterparty hereby authorizes GLAS USA to act as Administrative Agent and GLAS Americas to act as Collateral Agent and Escrow Agent in accordance with the terms hereof and the other Credit Documents. Each such Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and the other Credit Documents, as applicable. The provisions of this Section 9 are solely for the benefit of Agents and Lenders, as the case may be, the Designated Coal Contract Counterparties, and no Credit Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Holdings or any of its Subsidiaries.

9.2. Powers and Duties. Each Lender irrevocably authorizes each Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Each Agent's duties under the Credit Documents are solely mechanical and administrative in nature. Each Agent shall have only those duties and responsibilities that are expressly specified herein and in the other Credit Documents (and no others shall be implied). Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. No Agent shall have, by reason hereof or any of the other Credit Documents, a fiduciary relationship in respect of any Lender or any other Person; and nothing herein or any of the other Credit Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or any of the other Credit Documents except as expressly set forth herein or therein. If the Borrower makes a request to the Agent to extend a delivery date for a specified item pursuant to Section 5.10 or Section 5.16, the Agent shall be authorized to approve such request if it has notified the Lenders of such request and the Requisite Lenders have not instructed the Agent within five Business Days after such notification that it shall not approve such request.

Each Secured Party irrevocably authorizes the Agents to execute and deliver each Collateral Document and to take such action, and to exercise the powers, rights and remedies granted to the Collateral Agent thereunder and with respect thereto.

Subject to the Orders, each Secured Party agrees (a) to be bound by, and consents to, the

terms and provisions of the Collateral Documents and (b) that it will take no actions contrary to the provisions of Collateral Documents.

9.3. General Immunity.

(a) No Responsibility for Certain Matters. No Agent shall be responsible to any Lender or Designated Coal Contract Counterparty for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Credit Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to Lenders or by or on behalf of any Credit Party to any Agent or any Lender in connection with the Credit Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Credit Party or any other Person liable for the payment of any Obligations, nor shall any Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Credit Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, no Agent shall have any liability arising from confirmations of the amount of outstanding Loans or the component amounts thereof.

(b) Exculpatory Provisions. None of any Agent or any of their respective officers, partners, directors, employees or agents shall be liable to Lenders for any action taken or omitted by any Agent under or in connection with any of the Credit Documents except to the extent caused by such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Credit Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5 or otherwise pursuant to this Agreement) and, upon receipt of such instructions from Requisite Lenders (or such other Lenders, as the case may be), such Agent shall be entitled to act or refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions, including for the avoidance of doubt refraining from any action that, in its opinion or the opinion of its counsel, may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law. Without prejudice to the generality of the foregoing, (i) each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Holdings and its Subsidiaries), accountants, experts and other professional advisors selected by it; (ii) no Lender or Credit Party shall have any right of action

whatsoever against any Agent as a result of such Agent acting or refraining from acting hereunder or under any of the other Credit Documents in accordance with the instructions of Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5 or otherwise pursuant to this Agreement) or as a result of any Agent acting or refraining from acting hereunder or under any of the other Credit Documents before it has received any indemnification that it may in its discretion require (which may be greater in extent than that contained in the relevant Credit Documents for any cost, loss or liability which it may incur in complying with instructions from Requisite Lenders (or such other Lenders as may be required to give instructions to the Agents under Section 10.5 or otherwise pursuant to this Agreement); (iii) each Agent shall be entitled to request instructions, or clarification of any instruction, from Requisite Lenders (or such other Lenders as may be required to give instructions to such Agent under Section 10.5 or otherwise pursuant to this Agreement) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and each Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested; (iv) no Agent is obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality; (v) no Agent is obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, such risk or liability is not reasonably assured to it and (vi) in no event shall any Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services.

(c) Delegation of Duties. Each Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Credit Document by or through any one or more sub-agents appointed by such Agent. Each Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory, indemnification and other provisions of this Section 9.3 and of Section 9.6 and Section 10.2 shall apply to Affiliates of the Agents and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Section 9.3 and of Section 9.6 and Section 10.2 shall apply to any such sub-agent and to the Affiliates of any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by any Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly,

without the consent or joinder of any other Person, against any or all of Credit Parties and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, and (iii) such sub-agent shall only have obligations to the Agents and not to any Credit Party, Lender or any other Person and no Credit Party, Lender or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent.

9.4. Agents Entitled to Act as Lender. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loans, each Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Lender" shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. Any Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with Holdings or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Borrower for services in connection herewith and otherwise without having to account for the same to Lenders.

9.5. Lenders' Representations, Warranties and Acknowledgment.

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of Holdings and its Subsidiaries in connection with Credit Extensions hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Holdings and its Subsidiaries. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) Each Lender, by delivering its signature page to this Agreement or an Assignment Agreement and funding its Term Loan on the Closing Date (or, in the case of Roll-Up Loans, upon the Roll-Up) shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by any Agent, Requisite Lenders or Lenders, as applicable, on the Closing Date.

9.6. Right to Indemnity. Each Lender, in proportion to its Ratable Portion, severally agrees to indemnify each Agent, to the extent that such Agent shall not have been reimbursed by any Credit Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Agent in exercising its powers, rights and remedies or performing its duties hereunder or under the other Credit Documents or otherwise in its capacity as such Agent or such

arranger in any way relating to or arising out of this Agreement or the other Credit Documents; provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Ratable Portion thereof; and provided further, this sentence shall not be deemed to require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

9.7. Successor Administrative Agent.

(a) Administrative Agent shall have the right to resign and appoint one of its controlled Affiliates as successor at any time by giving prior written notice to the Lenders and Borrower. Alternatively, Administrative Agent shall have the right to resign at any time by giving 30 days' prior written notice thereof to Lenders and Borrower and Administrative Agent may be removed at any time with or without cause by an instrument or concurrent instruments in writing delivered to Borrower and Administrative Agent and signed by Requisite Lenders. Upon any such notice of resignation or any such removal, Requisite Lenders shall have the right, with the Borrower's consent (not to be unreasonably withheld or delayed; provided that Borrower consent shall not be required if an Event of Default pursuant to Section 8.1(a), (f) or (g) has occurred and is continuing), to appoint a successor Administrative Agent. If no successor shall have been so appointed by the Requisite Lenders (and consented to by Borrower, if applicable) and shall have accepted such appointment within 15 days after the retiring Administrative Agent gives notice of its intent to resign, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor (subject to the same Borrower consent right set forth above).

(b) Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Administrative Agent and the retiring or removed Administrative Agent shall promptly transfer to such successor Administrative Agent all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Credit Documents, whereupon such retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder. Notwithstanding the foregoing, in the event no successor shall have been so appointed and shall have accepted such appointment within 15 days after the retiring Administrative Agent gives notice of its intent to resign, the retiring Administrative Agent may give notice of the effectiveness of its resignation to the Lenders and Borrower, whereupon, on the date of effectiveness of such resignation stated in such notice, (a) the retiring Administrative Agent shall be

discharged from its duties and obligations hereunder and under the other Credit Documents and (b) the Requisite Lenders shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, provided that all payments required to be made hereunder or under any other Credit Document to the Administrative Agent for the account of any Person other than the Administrative Agent shall be made directly to such Person. After any retiring or removed Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder.

9.8. Collateral Documents and Guaranty.

(a) Collateral Agent. Each Secured Party hereby further authorizes Administrative Agent to appoint the Collateral Agent to act on behalf of the Secured Parties. Each Secured Party hereby further authorizes Administrative Agent or Collateral Agent, as applicable, on behalf of and for the benefit of Secured Parties, to be the agent for and representative of Secured Parties with respect to the Guaranty, the Collateral, the Collateral Documents and any security granted pursuant to the Orders; provided that, without limiting the express obligations of Administrative Agent or Collateral Agent under any Collateral Document or any Order to holders of Obligations under any Designated Coal Contract, no Agent shall owe any fiduciary duty, duty of loyalty, duty of care, duty of disclosure or any other obligation whatsoever to any holder of Obligations with respect to any Secured Hedge Agreement or Designated Coal Contract. Subject to Section 10.5, without further written consent or authorization from any Secured Party, Administrative Agent or Collateral Agent, as applicable, may execute any documents or instruments necessary to (i) in connection with a sale or disposition of assets permitted by this Agreement or designation of a Guarantor as an Unrestricted Subsidiary in accordance with Section 5.15, release any Lien encumbering any item of Collateral that is the subject of such sale or other disposition of assets or that is owned or held by such designated Guarantor or to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 10.5 or otherwise pursuant to this Agreement) have otherwise consented, (ii) release any Guarantor from the Guaranty pursuant to Section 7.12 or with respect to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 10.5 or otherwise pursuant to this Agreement) have otherwise consented or (iii) subordinate any Lien encumbering Collateral to any Permitted Lien thereon that may be prior to such Lien in accordance with the terms of this Agreement (subject to the discretion of Collateral Agent as to whether such Permitted Lien is intended to be prior to the Liens securing the Secured Obligations (as defined in any applicable Collateral Document)), it being agreed that the Lien of the Collateral Agent encumbering any item of Collateral may be subordinated to any Lien permitted under Section 6.2(e) and (i). Subject to Section 10.5 to the extent applicable, without further written consent or authorization from any Secured Party, Administrative Agent or Collateral Agent, as applicable, may execute any documents or instruments necessary to enter into any intercreditor or subordination arrangement in connection with any Indebtedness permitted to be incurred under this Agreement including any Indebtedness under the Prepetition Revolving Credit Agreement; *provided* however, that the Agents shall not release the Lien of the Roll-Up Lenders on the ABL

Collateral without the consent of the Requisite Roll-Up Lenders unless the sale or disposition of such ABL Collateral is at least equal to the fair market value thereof.

(b) Right to Realize on Collateral and Enforce Guaranty. Anything contained in any of the Credit Documents to the contrary notwithstanding, but at all times subject to the Bankruptcy Court and the Orders, Borrower, each Agent and each Secured Party hereby agree that (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder and under any of the other Credit Documents (other than Collateral Documents) may be exercised solely by Administrative Agent, for the benefit of Secured Parties in accordance with the terms hereof or thereof, and all powers, rights and remedies under the Collateral Documents may be exercised solely by Collateral Agent for the benefit of the Secured Parties in accordance with the terms thereof, and (ii) in the event of a foreclosure or similar enforcement action by Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition (including, without limitation, pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code), Collateral Agent (or any Lender, except with respect to a "credit bid" pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code,) may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and Collateral Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities) shall be entitled, upon instructions from Requisite Lenders, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale or disposition, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Collateral Agent at such sale or other disposition; *provided* however, that the Agents shall not release the Lien of the Roll-Up Lenders on the ABL Collateral without the consent of the Requisite Roll-Up Lenders unless the sale or disposition of such ABL Collateral is at least equal to the fair market value thereof.

(c) Rights under Hedge Agreements, Secured Commodities Agreements and Designated Coal Contracts. No Hedge Agreement will create (or be deemed to create) in favor of any Lender Counterparty that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Guarantor under the Credit Documents or any Order except as expressly provided in Sections 10.5(c)(iii) and (v) of this Agreement and Section 8.2. By accepting the benefits of the Collateral, such Lender Counterparty shall be deemed to have appointed Collateral Agent as its agent and agreed to be bound by the Credit Documents as a Secured Party, subject to the limitations set forth in this clause (c). No Secured Commodities Agreement will create (or be deemed to create) in favor of any Commodities Hedge Provider that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Guarantor under the Credit Documents except as expressly provided in Sections 10.5(c)(iii) and (v) of this Agreement and Section 8.2. By accepting the benefits of the Collateral, such Commodities Hedge Provider shall be deemed to have appointed Collateral Agent as its agent and agreed to be bound by the Credit Documents as a Secured Party, subject to the limitations set forth in this clause (c). No Designated Coal Contract will create (or be deemed to create) in favor

of any Designated Coal Contract Counterparty that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Guarantor under the Credit Documents except as expressly provided in Sections 10.5(c)(iii) and (v) of this Agreement and Section 8.2. By accepting the benefits of the Collateral, such Designated Coal Contract Counterparty shall be deemed to have appointed Collateral Agent as its agent and agreed to be bound by the Credit Documents as a Secured Party, subject to the limitations set forth in this clause (c).

(d) Release of Guarantees, Termination of this Agreement. Notwithstanding anything to the contrary contained herein or any other Credit Document, when all Obligations (other than (i) contingent indemnity obligations that are not due and payable and (ii) obligations and liabilities in respect of any Secured Hedge Agreement or Designated Coal Contract) have been Paid in Full, and all Commitments have terminated or expired, the guarantees made herein shall automatically terminate and, upon request of Borrower, Administrative Agent shall (without notice to, or vote or consent of, any Lender, or any Affiliate of any Lender that is a party to any Hedge Agreement, any Commodities Hedge Provider that is a party to any Secured Commodities Agreement or any Designated Coal Contract Counterparty that is a party to a Designated Coal Contract) take such actions as shall be required to terminate this Agreement and to release all guarantee obligations provided for in any Credit Document, whether or not on the date of such release there may be outstanding Obligations in respect of Hedge Agreements, Secured Commodities Agreements or Designated Coal Contracts. Any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(e) The Collateral Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor shall the Collateral Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

(f) Notwithstanding anything in the Credit Documents to the contrary, no Agent shall have any responsibility for the preparation, filing or recording of any instrument, document or financing statement or for the perfection or maintenance of any security interest created hereunder or under any other Credit Document.

9.9. Withholding Taxes. To the extent required by any applicable law, Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that Administrative Agent did not properly withhold Tax from amounts

paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, or if Administrative Agent reasonably determines that a payment was made to a Lender pursuant to this Agreement without deduction of applicable withholding Tax from such payment, such Lender shall indemnify Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrower and without limiting the obligation of the Borrower to do so) fully for all amounts paid, directly or indirectly, by Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses and out-of-pocket expenses) incurred.

9.10. Administrative Agent May File Bankruptcy Disclosure and Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Laws relative to any Credit Party, Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor;

(b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel and all other amounts due to the Agents and/or the Indemnitees under Sections 2.11, 10.2 and 10.3 allowed in such judicial proceeding; and

(c) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts due to the Agents and/or the Indemnitees under Sections 2.11, 10.2 and 10.3. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Agents, their respective agents and counsel, and any other amounts due to the Agents and/or the Indemnitees under Sections 2.11, 10.2 and 10.3 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

(d) Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

9.11. Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or;

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately

preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Credit Document or any documents related hereto or thereto).

SECTION 10. MISCELLANEOUS

10.1. Notices.

(a) Notices Generally. Any notice or other communication herein required or permitted to be given to a Credit Party or Administrative Agent, shall be sent to such Person's address as set forth on Appendix B or in the other relevant Credit Document, and in the case of any Lender, the address as indicated on Appendix B or otherwise indicated to Administrative Agent in writing. Except as otherwise set forth in paragraph (b) below, each notice hereunder shall be in writing and may be personally served or sent by telefacsimile (except for any notices sent to Administrative Agent), email or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile, or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided, no notice to any Agent or Borrower shall be effective until received by such Person; provided further, any such notice or other communication shall at the request of Administrative Agent be provided to any sub-agent appointed pursuant to Section 9.3(c) as designated by Administrative Agent from time to time.

(b) Electronic Communications.

(i) Notices and other communications to any Agent and Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites, including the Platform) pursuant to procedures approved by Administrative Agent, provided that the foregoing shall not apply to notices to any Agent or any Lender pursuant to Section 2 if such Person has notified Borrower and Administrative Agent that it is incapable of receiving notices under such Section by electronic communication. Administrative Agent or Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless Administrative Agent otherwise prescribes, (1) notices and other communications sent to

an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (2) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(ii) Each Credit Party understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of Administrative Agent, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(iii) The Platform and any Approved Electronic Communications are provided "as is" and "as available". None of the Agents or any of their respective affiliates nor any of the Agents' or their respective affiliates' officers, partners, members, directors, trustees, employees, attorneys, agents, sub-agents, controlling parties, advisors or other representatives (the **"Agent Affiliates"**) warrant the accuracy, adequacy, or completeness of the Approved Electronic Communications or the Platform and each expressly disclaims liability for errors or omissions in the Platform and the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects is made by the Agent Affiliates in connection with the Platform or the Approved Electronic Communications.

(iv) Each Credit Party, each Lender and each Agent agrees that Administrative Agent may, but shall not be obligated to, store any Approved Electronic Communications on the Platform in accordance with Administrative Agent's customary document retention procedures and policies.

(v) Any notice of Default or Event of Default may be provided by telephone if confirmed promptly thereafter by delivery of written notice thereof.

(c) Private Side Information Contacts. Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable law, including United States federal and state securities laws, to make reference to information that is not made available through the "Public Side Information" portion of the Platform and that may contain Non-Public Information with respect to Holdings, its Subsidiaries or their

securities for purposes of United States federal or state securities laws. In the event that any Public Lender has determined for itself to not access any information disclosed through the Platform or otherwise, such Public Lender acknowledges that (i) other Lenders may have availed themselves of such information and (ii) neither Borrower nor any Agent has any responsibility for such Public Lender's decision to limit the scope of the information it has obtained in connection with this Agreement and the other Credit Documents.

10.2. Expenses. Borrower agrees to pay, within 30 days of written request (or on the Closing Date, in the case of amounts required to be paid in order to satisfy the condition in Section 3.1(l)) (a) all the actual, reasonable and documented out-of-pocket costs and expenses (including any costs and expenses in connection with seasoning of the Loans on the Closing Date) of (i) the Agents, (ii) the Term Lenders and (iii) the Roll-Up Lenders, in each case, incurred in connection with the negotiation, preparation and execution of the Credit Documents and any consents, amendments, waivers or other modifications thereto; (b) all the costs of furnishing all opinions by counsel for Borrower and the other Credit Parties; (c) the reasonable, actual and documented out-of-pocket fees, expenses and disbursements of (i) Wilmer Cutler Pickering Hale and Dorr, LLP, as primary counsel to the Agents ("**Additional Counsel to the Agent**") and (ii) (A) Davis Polk & Wardwell LLP, as counsel to certain of the Term lenders and (B) Sidley Austin LLP, as counsel to the Roll-Up Lenders, in each case, in connection with the negotiation, preparation, execution and administration of the Credit Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Borrower in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of this Agreement, the notes and the other documents to be delivered hereunder, including, without limitation, all fees and expenses of counsel for the Agents and each lender in connection with the enforcement of rights under this subsection (c), including, for the avoidance of doubt, in connection with the Cases (limited, in the case of counsel under this clause (c)(ii) (in addition to counsel expressly specified above), to one firm of outside local counsel for each of the Agents and the Lenders in any applicable jurisdiction as to which the Requisite Lenders reasonably determined local counsel is appropriate, and one specialty counsel for each of the Agents and the Lenders with respect to each subject matter as to which Requisite Lenders reasonably determines specialty counsel is appropriate; provided, that if any Agent or Lender has been advised by counsel that there is an actual or reasonable likelihood of a conflict of interest, such affected Agent or Lender may retain its own counsel); (d) all the actual costs and reasonable and documented out-of-pocket expenses of creating, perfecting, recording, maintaining and preserving Liens in favor of Collateral Agent, for the benefit of Secured Parties, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums (limited, in the case of counsel, to Additional Counsel to the Agents and one firm of outside local counsel for the Agents in any applicable jurisdiction as to which Administrative Agent reasonably determines local counsel is appropriate; provided, that if any Agent or Lender has been advised by counsel that there is an actual or reasonable likelihood of a conflict of interest, such affected Agent may retain its own counsel); (e) all (i) the actual and reasonable and documented out-of-pocket costs, fees, expenses and disbursements of any auditors, accountants, consultants or appraisers, including the Financial Advisor, of the Term Lenders and (ii) the actual and reasonable and documented out-of-pocket costs, fees, expenses and disbursements of a financial advisor to the Roll-Up Lenders (not to exceed, in the case of this clause (ii), $50,000 through the second monthly anniversary of the

Closing Date, and $35,000 for each monthly anniversary of the Closing Date thereafter); (f) all the actual and reasonable and documented out-of-pocket costs and reasonable expenses of the Agents (including the reasonable and documented out-of-pocket fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by Administrative Agent or Collateral Agent and its counsel) in connection with the custody or preservation of any of the Collateral (limited, in the case of counsel, to Additional Counsel to the Agents and one firm of primary outside counsel for the Agents and one firm of outside local counsel for the Agents in any applicable jurisdiction as to which Administrative Agent reasonably determines local counsel is appropriate; provided, that if any Agent or Collateral Agent has been advised by counsel that there is an actual or reasonable likelihood of a conflict of interest, such affected Agent may retain its own counsel); (g) all other actual out-of-pocket, reasonable and documented costs and expenses incurred by each Agent and the Backstop Lenders in connection with the primary syndication of the Loans and Commitments; and (h) all documented out-of-pocket costs and expenses, including reasonable and documented out-of-pocket attorneys' fees (including fees of Additional Counsel to the Agents) and costs of settlement, incurred by any Agent and Lenders in preserving or enforcing any Obligations of or in collecting any payments due from any Credit Party hereunder or under the other Credit Documents by reason of such Event of Default (including in connection with the sale, lease or license of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" or pursuant to any insolvency or bankruptcy cases or proceedings (limited, in the case of counsel, to Additional Counsel to the Agents and one other firm of primary outside counsel for the Agents and Lenders and one firm of outside local counsel for the Agents and Lenders in any applicable jurisdiction as to which Administrative Agent reasonably determines local counsel is appropriate; provided, that if any Agent or any Lender has been advised by counsel that there is an actual or reasonable likelihood of a conflict of interest, such affected Agent or affected Lender, as applicable, may retain its own counsel) provided that the Borrower can at any time following the Closing Date, upon five Business Days' prior written notice to the Additional Counsel to the Agents, terminate its obligation to reimburse the fees described in clauses (c)(i), (d), (f) and (h) above (but not any other third party expenses set out in clauses (a)-(h) hereof) for work to be undertaken by the Additional Counsel to the Agents following Additional Counsel to the Agents' receipt of such prior written notice (for the avoidance of doubt, such termination will (x) only be effective in [__]'s capacity as "Additional Counsel to the Agents" and not in any other capacity and (y) will be without prejudice to any Agent's rights to be reimbursed for expenses under any other provision of this Agreement. Except as specifically provided in this Section 10.2, this Section 10.2 shall not apply to Taxes, which are the subject to Section 2.20).

10.3. Indemnity.

(a) In addition to the payment of expenses pursuant to Section 10.2, each Credit Party agrees to indemnify, pay and hold harmless, each Agent and Lender and each of their Affiliates and each of their and their Affiliates' respective officers, partners, members, directors, trustees, advisors, employees, attorneys, agents, sub-agents and controlling persons (each, an **"Indemnitee"**), from and against any and all Indemnified Liabilities; provided, no Credit Party shall have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities (i) to the extent such

Indemnified Liabilities resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee, (ii) arises out of or is in connection with any claim, litigation, loss or proceeding not involving an act or omission of any Credit Party or any of Credit Party's related parties and that is brought by an Indemnitee against another Indemnitee (other than against the applicable Indemnitee in its capacity as Agent hereunder) or (iii) resulted from material breach by such Indemnitee of the terms of this Agreement or any other Credit Documents, in each case of clauses (a) - (a), as determined by a final, non-appealable judgment of a court of competent jurisdiction (collectively, the **"Excluded Damages"**). To the extent that the undertakings to indemnify, pay and hold harmless set forth in this Section 10.3 (other than any Excluded Damage) may be unenforceable in whole or in part because they are violative of any law or public policy or are otherwise unavailable to any Indemnitee or are insufficient to hold such Indemnitee harmless, the applicable Credit Party shall contribute to the amount paid or payable by such Indemnitee as a result of such Indemnified Liabilities in such proportion as is appropriate to reflect the relative economic interests of (a) such Credit Party and its affiliates, shareholders, partners, members or other equity holders on the one hand and (b) such Indemnitee on the other hand in the matters contemplated by this Agreement as well as the relative fault of (1) such Credit Party and its affiliates, shareholders, partners, members or other equity holders and (2) such Indemnitee with respect to such Indemnified Liabilities and any other relevant equitable considerations. Promptly after receipt by any Indemnitee of notice of its involvement in any action, proceeding or investigation, such Indemnitee shall, if a claim for indemnification in respect thereof is to be made against the Credit Parties under this Section 10.3, notify Borrower of such involvement. Failure by such Indemnitee to so notify Borrower shall not relieve any Credit Party from its obligation to indemnify such Indemnitee under this Section 10.3 except to the extent that such Credit Party suffers actual prejudice as a result of such failure, and shall not relieve any Credit Party from its obligation to provide reimbursement and contribution to such Indemnitee. With respect to an Indemnitee hereunder in the event of any action or proceeding brought by a third party, Borrower shall be entitled, but not required, to assume the defense of any such action or proceeding with counsel reasonably satisfactory to the Indemnitee. Upon assumption by Borrower of the defense of any such action or proceeding, the Indemnitee shall have the right to participate in such action or proceeding and to retain its own counsel but Borrower shall not be liable for any legal expenses of other counsel subsequently incurred by the Indemnitee in connection with the defense thereof unless (x) Borrower has agreed to pay such fees and expenses, (y) Borrower has failed to employ counsel reasonably satisfactory to the Indemnitee in a timely manner and Borrower has been advised in writing of such circumstance by the Indemnitee, or (z) the Indemnitee advises Borrower in writing that the Indemnitee has been advised by counsel that there are actual or potential conflicting interests between Borrower and the Indemnitee, including situations in which there are one or more legal defenses available to the Indemnitee that are different from or additional to those available to Borrower; provided, however, that Borrower shall not, in connection with any one such action or proceeding or separate but substantially similar actions or proceedings arising out of the same general allegations, be liable for the fees and expenses of more than one separate firm of attorneys at any time for all Indemnitees, except to the extent that local counsel, in addition to its regular

counsel, is required in order to effectively defend against such action or proceeding. Borrower shall not consent to the terms of any compromise or settlement of any action or proceeding defended by Borrower in accordance with the foregoing without the prior written consent of the Indemnitee unless such compromise or settlement (A) includes an unconditional release of the Indemnitee from all liability arising out of such action and (B) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any Indemnitee. No Credit Party shall be required to indemnify any Indemnitee for any amount paid or payable by the Indemnitee in the settlement of any action, proceeding or investigation without the written consent of Borrower, which consent shall not be unreasonably withheld, conditioned or delayed; provided that the foregoing indemnity will apply to any such settlement in the event that Borrower was expressly offered the ability to assume the defense of the action that was the subject matter of such settlement and elected not to so assume. The reimbursement, indemnity and contribution obligations of the Credit Parties under this paragraph will be in addition to any liability which the Credit Parties may otherwise have, and will be binding upon and inure to the benefit of any successors, and assigns of the Credit Parties and the Indemnitees. Notwithstanding anything in this Agreement or any other Credit Document to the contrary, the Credit Parties shall not be required to indemnify any Agent, Lender or other Indemnitee hereunder for any matter, claim, fees, costs or expenses arising in such Agent's, Lender's or Indemnitees', as applicable, capacity as either (A) Lender Counterparty, or (B) in any role in connection with the Prepetition Revolving Credit Agreement or (C) in any role in connection with the Cases (other than as Agents and/or Lenders hereunder).

(b) To the extent permitted by applicable law, no party hereto shall assert, and each party hereto hereby waives, any claim against each other party hereto and their respective Affiliates and their and their Affiliates' respective officers, partners, members, directors, trustees, advisors, employees, attorneys, agents, sub-agents or controlling parties, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each party hereto hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor; provided that nothing contained in this Section 10.3(b) shall limit any Credit Party's indemnification obligations set forth in Section 10.3 to the extent such special, indirect, consequential or punitive damages are included in any third party claim in connection with which such Indemnitee is entitled to indemnification hereunder.

(c) Each Credit Party also agrees that no Lender, Agent nor their respective Affiliates nor their or their Affiliates' respective officers, partners, members, directors, trustees, advisors, employees, attorneys, agents, sub-agents or controlling parties will have any liability based on its exclusive or contributory negligence or

otherwise to any Credit Party or any person asserting claims on behalf of or in right of any Credit Party or any other person in connection with or as a result of this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, in each case, except in the case of any Credit Party to the extent that any losses, claims, damages, liabilities or expenses incurred by such Credit Party or its affiliates, shareholders, partners or other equity holders have been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Lender, Agent or their respective Affiliates or their or their Affiliates' respective officers, partners, members, directors, trustees, advisors, employees, attorneys, agents, sub-agents or controlling parties in performing the services or its express obligations under this Agreement or any Credit Document or any material breach by such Lender or Agent of the terms hereof or thereof; provided, however, that in no event will such Lender, Agent or their respective Affiliates or their or their Affiliates' respective officers, partners, members, directors, trustees, advisors, employees, attorneys, agents, sub-agents or controlling parties have any liability for any indirect, consequential, special or punitive damages in connection with or as a result of such Lender's, Agent's or their respective Affiliates' or their or their respective Affiliates' officers', partners', members', directors', trustees', advisors', employees', attorneys', agents', sub-agents' or controlling parties' activities related to this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein.

(d) [Reserved].

(e) [Reserved].

10.4. Set-Off. Subject to the Orders and the final sentence of Section 8.1, in addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default each Lender is hereby authorized by each Credit Party at any time or from time to time subject to the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed), without notice to any Credit Party or to any other Person (other than Administrative Agent), any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by such Lender to or for the credit or the account of any Credit Party against and on account of the obligations and liabilities of any Credit Party to such Lender hereunder, and under the other Credit Documents, including all claims of any nature or description arising out of or connected hereto, or with any other Credit Document, irrespective of whether or not (a) such Lender shall have made any demand hereunder or (b) the principal of or the interest on the Loans or any other amounts due hereunder shall have become due and payable pursuant to Section 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so setoff shall be paid over immediately to Administrative Agent for further application in accordance with the provisions of Sections 2.17 and 2.22 and, pending such

payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this Section 10.4 are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have.

10.5. Amendments and Waivers.

(a) Requisite Lenders' Consent. Subject to the additional requirements of Sections 10.5(b) and 10.5(c), no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall in any event be effective without the written concurrence of Requisite Lenders and Borrower; provided that Administrative Agent or Collateral Agent, as applicable, may, with the consent of Borrower only, amend, modify or supplement this Agreement or any other Credit Document (i) to cure any ambiguity, omission, defect or inconsistency (as reasonably determined by Administrative Agent), so long as Requisite Lenders agree that such amendment, modification or supplement to cure any such ambiguity, omission, defect or inconsistency does not adversely affect the rights of any Lender or the Lenders shall have received five Business Days' prior written notice thereof and Administrative Agent shall not have received, within five Business Days of the date of such notice to the Lenders, a written notice from the Requisite Lenders stating that the Requisite Lenders object to such amendment and (ii) to add terms that are favorable to the Lenders and that Requisite Lenders have not objected to within five Business Days of receipt of written notice thereof.

(b) Affected Lenders' Consent. Without the written consent of each Lender (other than a Defaulting Lender) that would be directly adversely affected thereby (but, for the avoidance of doubt, without the consent of the Requisite Lenders) no amendment, modification, termination, or consent shall be effective if the effect thereof would:

(i) extend the scheduled final maturity of any Loan or Note of such Lender (it being understood that a waiver of any condition precedent set forth in Section 3.1 or the waiver of any Default, Event of Default or mandatory prepayment shall not constitute such an extension);

(ii) waive, reduce or postpone any scheduled repayment owing to such Lender (but not prepayment);

(iii) modify the pro rata sharing provisions set forth in Section 2.17 or the right of the Lenders under the Loans to receive a no less than ratable share of any payment pursuant to Section 2.15 with respect to such Loan to the extent required under Section 2.15; provided, Requisite Lenders may waive, in whole or in part, any mandatory prepayment so long as the application, as between Lenders, of any portion of such prepayment which is still required to be made is not altered;

(iv) reduce the rate of interest on any Loan (other than any waiver of any increase in the interest rate applicable to any Loan pursuant to Section 2.10 and provided that no waiver of any Default or Event of Default shall constitute a reduction in the rate of interest) or any fee or any premium payable hereunder to such Lender;

(v) extend the time for payment of any such interest, fees or premium;

(vi) reduce the principal amount of any Loan;

(vii) amend, modify, terminate or waive any provision of this Section 10.5(b), Section 10.5(c) or any other provision of this Agreement that expressly provides that the consent of all Lenders is required;

(viii) amend the definition of "Requisite Lenders", "Requisite Term Lenders", "Requisite Backstop Lenders", "Requisite Roll-Up Lenders", "Supermajority Backstop Lenders", "Ratable Portion" or "Pro Rata Share"; provided, with the consent of Requisite Lenders, additional extensions of credit pursuant hereto may be included in the determination of "Requisite Lenders", "Ratable Portion" or "Pro Rata Share" on substantially the same basis as the Commitments and the Loans are included on the Closing Date;

(ix) release all or substantially all of the Collateral or all or substantially all of the Guarantors from the Guaranty except as expressly provided in the Credit Documents and except in connection with a "credit bid" undertaken by the Collateral Agent at the direction of the Requisite Lenders pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code or other sale or disposition of assets in connection with an enforcement action with respect to the Collateral permitted pursuant to the Credit Documents (in which case only the consent of the Requisite Lenders will be needed for such release); or

(x) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under any Credit Document (other than in connection with a transaction permitted under this Agreement).

provided that for the avoidance of doubt, all Lenders shall be deemed directly affected thereby with respect to any amendment described in clauses (vii), (viii), (ix) or (x).

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall:

(i) (A) change the definitions of "Current Assets", "ABL Collateral" or "Inventory Appraisal" (or any component definition therein); (B) change Sections 5.1(t), 5.6 (solely with respect to on-site examinations of the Collateral), 5.24, the penultimate paragraph of 6.4, and/or 6.7(d) in any manner adverse to the interests of the Roll-Up Lenders; (C) change or waive the Events of Default described in: Section 8.1(a) or 8.1(c) relating to Sections 5.1(t), 5.6, 5.24 and/or 6.7(d), in each case under this clause (C) to the extent adverse to the interests of the Roll-Up Lenders, in each case, (D) amend

Section 6.8 or the definition of "Asset Sale" to permit Asset Sales constituting ABL Collateral, solely to the extent, after giving effect to such Asset Sales contemplated by such amendment, the Current Assets provided in the most recent report is equal to less than $175,000,000 *less* the amount of the proceeds of such Asset Sales constituting ABL Collateral used to repay or prepay the Term Loans, (E) extend the time required for the Interim Order or the Final Order to be filed with the Bankruptcy Court or (F) change the definitions of "Asset Sale" or "Investment" in any manner adverse to the interests of the Roll-Up Lenders, in each case, without the consent of the Requisite Roll-Up Lenders;

(ii) amend or modify this Agreement to change the Superpriority Claims status of the Lenders or Designated Coal Contract Counterparty under the Orders or under any Credit Document without the written consent of each Lender and Designated Coal Contract Counterparty directly and adversely affected thereby;

(iii) modify the order of payment or application of proceeds of Collateral pursuant to Section 8.2, Section 8.3, Section 8.4, this Section 10.5 or Section 9.2 of the Pledge and Security Agreement, (A) without the written consent of each Lender (other than a Defaulting Lender) that would be directly adversely affected thereby and (B) in each case in a manner adverse to any Lender Counterparty, Commodities Hedge Provider or Designated Coal Contract Counterparty with Obligations then outstanding without the written consent of any such Lender Counterparty, Commodities Hedge Provider and or Designated Coal Contract Counterparty, as applicable directly and adversely affected thereby;

(iv) amend, modify or waive Section 6.7(a), (b) and/or (c) and/or Section 8.1(m) (and any component definitions therein) in any manner adverse to the interests of the Term Lenders without the consent of the Requisite Term Lenders (it being agreed that only the consent of the Requisite Term Lenders shall be required to amend, modify, terminate or waive any such provisions);

(v) amend, modify or waive this Agreement, or any other Credit Document so as to alter the ratable treatment of Obligations arising under the Credit Documents and Obligations arising under Hedge Agreements, Secured Commodities Agreements or Designated Coal Contracts or the definition of "Designated Coal Contract Counterparty", "Designated Coal Contract", "Existing Designated Coal Contract", "Existing Designated Coal Contract Counterparty," "Lender Counterparty," "Commodities Hedge Provider", "Hedge Agreement," "Secured Commodities Agreement," "Roll-Up Obligations", "Obligations," or "Secured Obligations" (as defined in this Agreement or any applicable Collateral Document) in each case in a manner directly adverse to any Lender Counterparty, Commodities Hedge Provider or Designated Coal Contract Counterparty without the written consent of any such Lender Counterparty, Commodities Hedge Provider and or Designated Coal Contract Counterparty, as applicable;

(vi) amend, modify, terminate or waive any provision of the Credit Documents as the same applies to any Agent, or any other provision hereof as the same applies to the rights or obligations of any Agent, in each case without the consent of such

Agent;

(vii) increase the Commitment of any Lender over the amount thereof then in effect without the consent of such Lender; provided, no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default shall constitute an increase in any Commitment of any Lender;

(viii) no amendment or waiver without the consent of the Roll-Up Lenders or the Term Lenders directly and adversely affected thereby shall modify the order of payment or application of proceeds of Collateral pursuant to Section 8.3 (it being agreed that only the consent of the Requisite Roll-Up Lenders (in the case the Roll-Up Lenders are directly and adversely affected thereby) or the Requisite Term Lenders (in the case the Term Lenders are directly and adversely affected thereby) shall be required for such amendment or waiver); or

(ix) no amendment or waiver shall permit additional Investments in and/or Asset Sales to (a) the Specified Guarantors or their subsidiaries or (b) the Western Kentucky Guarantors and their subsidiaries, in each case, without the consent of the Supermajority Backstop Lenders (it being agreed that only the consent of the Supermajority Backstop Lenders shall be required to amend, modify, terminate or waive any such provisions).

(d) Certain Authorizations. Notwithstanding anything herein to the contrary, Administrative Agent and Collateral Agent may, without the consent of any Secured Party, (i) waive, amend or modify any provision in any Collateral Document, or consent to a departure by any Credit Party therefrom, to the extent Administrative Agent or Collateral Agent determines that such waiver, amendment, modification or consent is necessary in order to eliminate any conflict between such provision and the terms of this Agreement and (ii) waive, amend or modify any provision in this Agreement, or consent to a departure by any Credit Party therefrom, to the extent Administrative Agent or Collateral Agent determines that such waiver, amendment, modification or consent is necessary in order to eliminate any conflict between such provision and the terms of the Orders.

(e) Execution of Amendments, Etc. Each Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.5 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Credit Party, on such Credit Party.

Notwithstanding the foregoing, no Secured Party consent is required to effect any amendment, modification or supplement to any intercreditor agreement or arrangement permitted under this Agreement or in any document pertaining to any Indebtedness permitted hereby that is

permitted to be secured by the Collateral, for the purpose of adding the holders of such Indebtedness (or their representative) as a party thereto and otherwise causing such Indebtedness to be subject thereto, in each case as contemplated by the terms of such intercreditor agreement or arrangement permitted under this Agreement, as applicable (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing and *provided* that such other changes are not adverse, in any material respect (taken as a whole), to the interests of the Secured Parties and provided that the Administrative Agent and the Collateral Agent, as applicable, shall be authorized to approve any such intercreditor agreement or arrangement, amendment, modification or supplement not otherwise contemplated by the terms of such intercreditor agreement or arrangement if it has notified the Lenders of such request and the Requisite Lenders have not instructed the Administrative Agent within five Business Days after such notification that it shall not approve such request); *provided*, *further*, that no such agreement shall amend, modify or otherwise affect the rights or duties of any Agent hereunder or under any other Credit Document without the prior written consent of such Agent.

Notwithstanding anything to the contrary contained in this Section 10.5, guarantees, collateral security documents and related documents executed by the Credit Parties or the Subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local law or advice of local counsel or (ii) to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Credit Documents.

10.6. Successors and Assigns; Participations.

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lenders. No Credit Party's rights or obligations hereunder nor any interest therein may be assigned or delegated by any Credit Party without the prior written consent of all Lenders (except in the case of any such assignment or delegation as a result of any merger or consolidation or liquidation or amalgamation or otherwise permitted by Section 6.8). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of each of the Agents and Lenders and other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. Borrower, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Loan shall be effective, in each case, unless and until recorded in the Register following receipt of a fully executed Assignment Agreement effecting the assignment or transfer thereof, together with the required forms

and certificates regarding tax matters and any fees payable in connection with such assignment, in each case, as provided in Section 10.6(b). Each assignment shall be recorded in the Register promptly following receipt by Administrative Agent of the fully executed Assignment Agreement and all other necessary documents and approvals, prompt notice thereof shall be provided to Borrower and a copy of such Assignment Agreement shall be maintained, as applicable. The date of such recordation of a transfer shall be referred to herein as the **"Assignment Effective Date."** Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans.

(c) Right to Assign. Each Lender shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including all or a portion of its Commitment and Loans owing to it or other Obligations (provided, however, that pro rata assignments shall be required as between Term Loans and Commitments and each assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any Term Loan and any unfunded Commitments; provided that assignments of Roll-Up Loans, on the one hand, and Term Loans and Commitments, on the other, need not be pro rata):

(i) to any Person meeting the criteria of clause (i) of the definition of the term "Eligible Assignee" upon the giving of notice to Borrower and Administrative Agent; and

(ii) to any Person meeting the criteria of clause (ii) of the definition of the term "Eligible Assignee" upon giving of notice to Borrower and Administrative Agent and to any such Person, consented to by each of Borrower and Administrative Agent (such consent not to be (x) unreasonably withheld or delayed or, (y) in the case of Borrower, required at any time an Event of Default shall have occurred and then be continuing); provided further that (A) Borrower shall be deemed to have consented to any such assignment (i) during the initial primary syndication of the Term Loans to lenders under the Prepetition Superpriority Credit Agreement and parties to the RSA and (ii) unless it shall object thereto by written notice to Administrative Agent within ten (10) Business Days after having received written notice thereof and (B) each such assignment pursuant to this Section 10.6(c)(ii) shall be in an aggregate amount of not less than (w) $1,000,000, (x) such lesser amount as agreed to by Borrower and Administrative Agent, (y) the aggregate amount of the Loans of the assigning Lender or (z) the amount assigned by an assigning Lender to an Affiliate or Related Fund of such Lender.

(d) Mechanics.

(i) Subject to the other requirements of this Section 10.6, assignments and assumptions of Loans and Commitments by Lenders shall be effected by manual execution and delivery to Administrative Agent of an Assignment Agreement. Assignments made pursuant to the foregoing provision shall be effective as of the Assignment Effective Date. In connection with all assignments there shall be delivered to Administrative Agent such forms, certificates or other evidence, if any, with respect to

United States federal income tax withholding matters as the assignee under such Assignment Agreement may be required to deliver pursuant to Section 2.20(d), together with payment to Administrative Agent of a registration and processing fee of $3,500 (which fee may be waived or reduced in the sole discretion of Administrative Agent). No such registration and processing fee shall be payable in the case of an assignee which is already a Lender or is an affiliate or Related Fund of a Lender or a Person under common management with a Lender.

(ii) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of Borrower and Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to Administrative Agent, and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(e) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Commitments and Loans, as the case may be, represents and warrants as of the Closing Date or as of the Assignment Effective Date that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitments or Loans, as the case may be; and (iii) it will make or invest in, as the case may be, its Commitments or Loans for its own account in the ordinary course and without a view to distribution of such Commitments or Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 10.6, the disposition of such Commitments or Loans or any interests therein shall at all times remain within its exclusive control).

(f) Effect of Assignment. Subject to the terms and conditions of this Section 10.6, as of the Assignment Effective Date (i) the assignee thereunder shall have the rights and obligations of a "Lender" hereunder to the extent of its interest in the Loans and Commitments as reflected in the Register and shall thereafter be a party hereto and a "Lender" for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned to the assignee, relinquish its rights (other than any rights which survive the termination hereof under Section 10.8) and be released from its obligations hereunder (and, in the case of an assignment covering all or the remaining portion of an assigning Lender's rights and obligations hereunder, such

Lender shall cease to be a party hereto on the Assignment Effective Date; provided, anything contained in any of the Credit Documents to the contrary notwithstanding, and (y) such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder); (iii) the Commitments shall be modified to reflect any Commitment of such assignee; and (iv) if any such assignment occurs after the issuance of any Note hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to Administrative Agent for cancellation, and thereupon Borrower shall issue and deliver new Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new outstanding Loans of the assignee and/or the assigning Lender.

(g) Participations.

(i) Each Lender shall have the right at any time to sell one or more participations to any Person (other than to Holdings, any of its Subsidiaries or any of its Affiliates) in all or any part of its Commitments, Loans or in any other Obligation. Each Lender that sells a participation pursuant to this Section 10.6(g) shall, acting solely for U.S. federal income tax purposes as an agent of Borrower, maintain a register on which it records the name and address of each participant and the principal amounts (and stated interest) of each participant's participation interest with respect to the Loan (each, a **"Participant Register"**); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any participant or any information relating to a participant's interest in any Commitments, Loans or its other obligations under this Agreement) except to the extent that the relevant parties, acting reasonably and in good faith, determine that such disclosure is necessary to establish that such Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations (or successor provision). Unless otherwise required by the Internal Revenue Service, any disclosure required by the foregoing sentence shall be made by the relevant Lender directly and solely to the Internal Revenue Service. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of a participation with respect to the Loan for all purposes under this Agreement, notwithstanding any notice to the contrary.

(ii) The holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (A) extend the final scheduled maturity of any Loan, Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Commitment shall not constitute a change in the terms of such participation, and that an increase in any Commitment or Loan shall be permitted without

the consent of any participant if the participant's participation is not increased as a result thereof), (B) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under this Agreement or (C) release all or substantially all of the Collateral under the Collateral Documents or all or substantially all of the Guarantors from the Guaranty (in each case, except as expressly provided in the Credit Documents) supporting the Loans hereunder in which such participant is participating.

(iii) Borrower agrees that each participant shall be entitled to the benefits of Sections 2.18(c), 2.19 and 2.20 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (c) of this Section (it being understood that the documentation required under Sections 2.20(d) and (e) shall be delivered to the Lender who sells the participation); provided, (x) a participant shall not be entitled to receive any greater payment under Section 2.19 or 2.20 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, unless the sale of the participation to such participant is made with Borrower's prior written consent (not to be unreasonably withheld or delayed) or except to the extent such entitlement to receive a greater payment results from a change in law that occurs after such participant acquired the applicable participation and (y) such participant agrees, for the benefit of Borrower, to comply with Section 2.20 as though it were a Lender (it being understood that the documentation required under Sections 2.20(d) and (e) shall be delivered to the Lender who sells the participation); provided further that, except as specifically set forth in clauses (x) and (y) of this sentence, nothing herein shall require any notice to Borrower or any other Person in connection with the sale of any participation. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 10.4 as though it were a Lender, provided such participant agrees to be subject to Section 2.17 as though it were a Lender.

(h) Certain Other Assignments and Participations. In addition to any other assignment or participation permitted pursuant to this Section 10.6 any Lender may assign, pledge and/or grant a security interest in all or any portion of its Loans, the other Obligations owed by or to such Lender, and its Notes, if any, to secure obligations of such Lender including any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors and any operating circular issued by such Federal Reserve Bank; provided, that no Lender, as between Borrower and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided further, that in no event shall the applicable Federal Reserve Bank, pledgee or trustee, be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder.

(i) [reserved]

(i) [reserved].

10.7. Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within

the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

10.8. Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Credit Party set forth in Sections 2.18(c), 2.19, 2.20, 10.2, 10.3 and 10.4 and the agreements of Lenders set forth in Sections 2.17, 9.3(b) and 9.6 shall survive the payment of the Loans and the termination hereof.

10.9. No Waiver; Remedies Cumulative. No failure or delay on the part of any Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to each Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents, any of the Secured Hedge Agreements or any of the Designated Coal Contracts. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

10.10. Termination.

(a) A Guarantor Subsidiary shall automatically be released from its obligations under the Credit Documents upon the Payment in Full of the Obligations and/or consummation of any transaction permitted by this Agreement as a result of which such Guarantor Subsidiary is not a Subsidiary of Holdings; provided that, if so required by this Agreement, the Requisite Lenders shall have consented to such transaction and the terms of such consent shall not have provided otherwise.

(b) Any security interest and Liens created under the Collateral Documents shall be automatically released upon Payment in Full of the Obligations and/or any sale or other transfer by any Credit Party of any Collateral that is permitted under this Agreement (other than a sale or other transfer to a Credit Party) or upon effectiveness of any written direction by the consent to the release of the security interest created under any Collateral Document in any Collateral pursuant to Section 10.5.

(c) Notwithstanding anything to the contrary contained herein or in any other Credit Document, in connection with any termination or release pursuant to this Section 10.10, the Administrative Agent and/or Collateral Agent are hereby irrevocably authorized by each Lender (without requirement of notice to or consent of any Lender) to execute and deliver, and shall promptly execute and deliver to any the applicable Credit Party, at such Credit Party's expense, all documents that such Credit Party shall reasonably request to evidence such termination or release. Any execution and delivery of documents pursuant to this Section 10.10 shall be without recourse to or warranty by

the Administrative Agent or the Collateral Agent.

10.11. Marshalling; Payments Set Aside. Neither any Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Credit Party makes a payment or payments to the Agents or Lenders (or to Administrative Agent, on behalf of Lenders), or any Agent or Lender enforces any security interests or exercises any right of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any Bankruptcy Law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

10.12. Severability. In case any provision in or obligation hereunder or under any other Credit Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

10.13. Obligations Several; Independent Nature of Lenders' Rights. The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a Joint Venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

10.14. Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

10.15. APPLICABLE LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER (INCLUDING, WITHOUT LIMITATION, ANY CLAIMS SOUNDING IN CONTRACT LAW OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK AND (TO THE EXTENT APPLICABLE) THE BANKRUPTCY CODE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK AND (TO THE EXTENT APPLICABLE) THE BANKRUPTCY CODE.

10.16. CONSENT TO JURISDICTION. SUBJECT TO CLAUSE (E) OF THE FOLLOWING SENTENCE, ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY

PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER CREDIT DOCUMENTS, OR ANY OF THE OBLIGATIONS, SHALL BE BROUGHT IN THE BANKRUPTCY COURT, AND IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, ANY FEDERAL COURT OF THE UNITED STATES SITTING IN THE BOROUGH OF MANHATTAN OR, IF THAT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, IN ANY STATE COURT LOCATED IN THE CITY AND COUNTY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (A) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS (OTHER THAN WITH RESPECT TO ACTIONS BY ANY AGENT IN RESPECT OF RIGHTS UNDER ANY COLLATERAL DOCUMENT GOVERNED BY LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK OR WITH RESPECT TO ANY COLLATERAL SUBJECT THERETO); (B) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (C) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.1; (D) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (C) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (E) AGREES THAT AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY CREDIT PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY SECURITY DOCUMENT OR THE ENFORCEMENT OF ANY JUDGMENT.

10.17. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER CREDIT DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL

WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.17 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER CREDIT DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

10.18. Confidentiality. Each Agent and each Lender shall hold confidential all non-public information regarding Holdings, Borrower and their respective Subsidiaries, Affiliates and their businesses obtained by such Agent or such Lender pursuant to the requirements hereof in accordance with such Agent's and such Lender's customary procedures for handling confidential information of such nature, it being understood and agreed by Borrower that, in any event, each Agent may disclose such information to the Lenders and each other Agent and each Lender and each Agent may make (i) disclosures of such information to Affiliates of such Lender or Agent and to their or their Affiliates' respective officers, directors, partners, members, employees, legal counsel, independent auditors and other advisors, experts or agents who need to know such information and on a confidential basis (and to other Persons authorized by a Lender or Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.18) (it being understood and agreed that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and who have agreed to treat such information confidentially), (ii) disclosures of such information reasonably required by any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation of any Loans or any participations therein or by any direct or indirect contractual counterparties (or the professional advisors thereto) to any swap or derivative transaction relating to Borrower and its obligations or by any Designated Coal Contract Counterparty (provided, such assignees, transferees, participants, counterparties and advisors are advised of and agree to be bound by either the provisions of this Section 10.18 or other provisions at least as restrictive as this Section 10.18), (iii) disclosure to any rating agency when required by it, provided that, prior to any disclosure, such rating agency shall undertake in writing to preserve the confidentiality of any confidential information relating to Credit Parties received by it from any Agent or any Lender, (iv) disclosure on a confidential basis to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loans, (v) disclosures in connection with the exercise of any remedies hereunder or under any other Credit Document, (vi) disclosures made pursuant to the order of any court or administrative agency or a judicial, administrative or legislative body or committee or in any pending legal or administrative proceeding, or otherwise as required by applicable law or compulsory legal process (in which case such Person agrees to inform Borrower promptly thereof to the extent not prohibited by law), (vii) disclosures made upon the request or demand of any regulatory or quasi-regulatory authority purporting to have jurisdiction over such Person or any of its Affiliates (in which case such Person agrees to inform the Borrower promptly thereof to the extent not prohibited by law), (viii) disclosures of information received by such Person on a non-confidential basis from a source (other than Borrower or any of Borrower's affiliates, advisors, members, directors, employees, accountants, attorneys, agents or other representatives) not known by such Person to be prohibited from disclosing such information to such Person by a legal, contractual or fiduciary obligation, (ix) disclosures of such

information to the extent that such information is publicly available or becomes publicly available other than by reason of improper disclosure in violation of this Section 10.18, (x) disclosures to the extent that such information was already in such Person's possession (and disclosure by such Person is not otherwise prohibited by a contractual obligation) or is independently developed by such Person (from information not otherwise prohibited from being disclosed pursuant to a separate contractual obligation), and (xi) disclosures for purposes of establishing a "due diligence" defense. In addition, each Agent and each Lender may disclose the existence of this Agreement and the information about this Agreement to market data collectors, similar services providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement and the other Credit Documents.

10.19. Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Borrower shall pay to Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and Borrower to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Loans made hereunder or be refunded to Borrower.

10.20. Effectiveness; Counterparts; Orders Control. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Borrower and Administrative Agent of written notification of such execution and authorization of delivery thereof. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic format (i.e., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement. This Agreement shall become effective on the date the conditions set forth in Section 3.1 have been satisfied. In the event of any conflict between the provisions of this Agreement and those of any other Credit Document, the provisions of this Agreement shall control. To the extent that any specific provision hereof is inconsistent with any of the Orders, the Interim Order or Final Order (as applicable) shall control.

10.21. PATRIOT Act. Each Lender and each Agent (for itself and not on behalf of any Lender) hereby notifies each Credit Party that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies each Credit Party, which information includes the name and address of each Credit Party and other information that will allow such Lender or such Agent, as applicable, to identify such Credit Party in accordance with the PATRIOT Act.

10.22. Electronic Execution of Assignments . The words "execution," "signed," "signature," and words of like import in any Assignment Agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

10.23. No Fiduciary Duty; Lender Counterparty. Each Agent, each Lender and their Affiliates (collectively, solely for purposes of this paragraph, the **"Lenders"**), may have economic interests that conflict with those of the Credit Parties, their stockholders and/or their affiliates. Each Credit Party agrees that nothing in the Credit Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and such Credit Party, its stockholders or its affiliates, on the other. The Credit Parties acknowledge and agree that (i) the transactions contemplated by the Credit Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lenders, on the one hand, and the Credit Parties, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of any Credit Party, its stockholders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise any Credit Party, its stockholders or its Affiliates on other matters) or any other obligation to any Credit Party except the obligations expressly set forth in the Credit Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of any Credit Party, its management, stockholders, creditors or any other Person. Each Credit Party acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Credit Party agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Credit Party, in connection with such transaction or the process leading thereto.

10.24. Designated Coal Contracts. Notwithstanding anything to the contrary in this Agreement, the Credit Parties shall be entitled to enter into Designated Coal Contracts governing the sale of coal from mines located in the United States not to exceed 10,000,000 tons in any 12-month period.

SECTION 11. LEASEHOLD PROPERTY

11.1. Special Rights with respect to Leasehold Property.

(a) No Credit Party shall, nor shall it permit any of its Restricted Subsidiaries to, pursuant to Section 365 of the Bankruptcy Code, reject or otherwise terminate (including, without limitation, as a result of the expiration of the assumption period provided for in Section 365(d)(4) of the Bankruptcy Code to the extent applicable) (x) a Material Lease or (y) during the continuance of an Event of Default, Leasehold Property, in each case, without first providing 30 days' prior written notice to the Administrative Agent (unless such notice provision is waived by the Administrative Agent (with the consent of the Requisite Lenders) during which time the Administrative Agent shall be permitted to find an acceptable (in the Administrative Agent's good faith and reasonable discretion (with the consent of the Requisite Lenders)) replacement lessee (which may include the Administrative Agent, any Lender or their respective Affiliates) to whom such lease may be assigned. If a prospective assignee is not found within such 30-day notice period, the Credit Party may proceed to reject such lease If such a prospective assignee is timely found, the Credit Parties shall (i) not seek to reject such lease, (ii) promptly withdraw any previously filed rejection motion, (iii) promptly file a motion seeking expedited relief and a hearing on the earliest court date available for purposes of assuming such lease and assigning it to such prospective assignee and (iv) cure any defaults that have occurred and are continuing under such lease unless the Borrower and the Administrative Agent (with the consent of the Requisite Lenders) agree that any such cure obligation is overly burdensome on the cash position of the Debtors with such agreement not to be unreasonably withheld; provided that this Section 11.1(a) shall not apply to Leasehold Property that is rejected on the effective date of an Acceptable Plan. For the avoidance of doubt, it is understood and agreed that on or prior to the 30th day prior to the Automatic Rejection Date, the Credit Parties shall have delivered (and hereby agree to deliver) written notice to the Administrative Agent of each outstanding Leasehold Property that they intend to reject (including, without limitation, through automatic rejection on the Automatic Rejection Date, to the extent applicable) from and after the date of such notice (or, if applicable, notice that the Credit Parties will seek to extend the Automatic Rejection Date as provided in Section 365(d)(4) of the Bankruptcy Code); *provided* that if the Credit Parties fail to deliver any such notice to the Administrative Agent prior to such date with respect to any Leasehold Property (or a notice indicating that such Leasehold Property shall not be rejected), the Credit Parties shall be deemed, for all purposes hereunder, to have delivered notice to the Administrative Agent as of such date that it intends to reject such Leasehold Property.

(b) If an Event of Default shall have occurred and be continuing, the Administrative Agent may exercise any Debtor's rights pursuant to Section 365(f) of the Bankruptcy Code with respect to any Leasehold Property or group of Leasehold Property and, subject to the Bankruptcy Court's approval after notice and hearing, assign any such Leasehold Property in accordance with Section 365 of the Bankruptcy Code notwithstanding any language to the contrary in any of the applicable lease documents or executory contracts. In connection with the exercise of such rights, the Administrative Agent may (w) access the leasehold interests of the Credit Parties in any such Leasehold

Property for the purposes of marketing such property or properties for sale, (x) find an acceptable (in the Administrative Agent's good faith and reasonable discretion (with the consent of the Requisite Lenders)) replacement lessee (which may include the Administrative Agent or its designee, any Lender or their respective Affiliates) to whom a Leasehold Property may be assigned, (y) hold, and manage all aspects of, an auction or other bidding process to find such reasonably acceptable replacement lessee, and (z) in connection with any such auction, agree, on behalf of the Credit Parties and subject to Bankruptcy Court approval, to a breakup fee or to reimburse fees and expenses of any stalking horse bidder up to an amount not to exceed [3.00]% of the purchase price of such Leasehold Property and may make any such payments on behalf of such Credit Party and any amount used by the Administrative Agent to make such payments shall, at the election of the Administrative Agent, at the written direction of the Requisite Lenders in their reasonable discretion and subject to satisfaction of the conditions in Sections 5.4 and 5.5, be deemed a borrowing of Term Loans hereunder. Upon receipt of notice that the Administrative Agent elects to exercise its rights under this Section 11.1(b), the Credit Parties shall promptly file a motion seeking expedited relief and a hearing on the earliest court date available for purposes of assuming such Leasehold Property and assigning it to such assignee and cure any defaults that have occurred and are continuing under such Leasehold Property. Notwithstanding the foregoing, this Section 11.1(b) shall not apply to Leasehold Property that is rejected on the effective date of an Acceptable Plan. Notwithstanding anything to the contrary in this Section 11.1(b), or any consent or direction of the Requisite Lenders, in no event shall any Leasehold Property be assigned to the Administrative Agent without the express written consent of the Administrative Agent in its sole discretion.

(c) If an Event of Default shall have occurred and be continuing, the Administrative Agent shall have the right, at the written direction of the Requisite Lenders, to direct any Debtor that is a lessee under a Leasehold Property to assign such Leasehold Property to the Administrative Agent or its designee, on behalf of the Administrative Agent and the Lenders, as collateral for the Obligations and to direct such Debtor lessee to assume such Leasehold Property to the extent assumption is required under the Bankruptcy Code as a prerequisite to such assignment. Upon receipt of notice that the Administrative Agent elects to exercise its rights under this Section 11.1(c), the Credit Parties shall (i) promptly file a motion seeking expedited relief and a hearing on the earliest court date available for purposes of, if necessary, assuming such Leasehold Property and assigning it to the Administrative Agent and (ii) cure any defaults that have occurred and are continuing under such Leasehold Property. Notwithstanding the foregoing, this Section 11.1(c) shall not apply to Leasehold Property that are rejected on the effective date of an Acceptable Plan. Notwithstanding anything to the contrary in this Section 11.1(c), or any consent or direction of the Requisite Lenders, in no event shall any Leasehold Property be assigned to the Administrative Agent without the express written consent of the Administrative Agent in its sole discretion.

(d) Any order of the Bankruptcy Court approving the assumption (but not the assignment) of any Leasehold Property shall specifically provide that the applicable Debtor shall be authorized to assign such Leasehold Property pursuant to Section 365(f) of the Bankruptcy Code subsequent to the date of such assumption

designated by the Administrative Agent.

(e) No Credit Party shall, nor shall it permit any of its Subsidiaries to, pursuant to Section 365 of the Bankruptcy Code, sell or assign a Leasehold Property without first providing fifteen (15) days' prior written notice to the Administrative Agent (unless such notice provision is waived by the Administrative Agent (with the consent of the Requisite Lenders)) of any hearing in the Bankruptcy Court seeking approval of a sale or assignment, and the Administrative Agent, on behalf of the Administrative Agent and the Lenders, shall be permitted to credit bid forgiveness of some or all of the outstanding Obligations in respect of the Term Loan Facility (in an amount equal to at least the consideration offered by any other party in respect of such assignment) as consideration in exchange for any such Leasehold Property. In connection with the exercise of any of the Administrative Agent's rights under Sections 11.1(b) and 11.1(c) to direct or compel a sale or assignment of any Leasehold Property, the Administrative Agent, on behalf of the Administrative Agent and the Lenders, shall be permitted to credit bid forgiveness of a portion of the Indebtedness (in an amount equal to at least the consideration offered by any other party in respect of such sale or assignment) outstanding under the Term Loans in exchange for such Leasehold Property.

If any Credit Party is required to cure any monetary default under any Leasehold Property under this Section 11.1, or otherwise in connection with any assumption of such Leasehold Property pursuant to Section 365 of the Bankruptcy Code, and such monetary default is not cured within five (5) Business Days of the receipt by such Credit Party of notice from the Administrative Agent under Sections 11.1(a), (b) or (c) or any other notice from the Administrative Agent requesting the cure of such monetary default, then the Administrative Agent (with the consent of the Requisite Lenders) may, but shall not be obligated to, cure any such monetary default on behalf of such Credit Party and any such payments shall, at the election of the Administrative Agent, at the written direction of the Requisite Lenders in their reasonable discretion and subject to satisfaction of the conditions in Section 3.3, be deemed a borrowing of Term Loans hereunder.

[Remainder of page intentionally left blank]

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

MURRAY ENERGY CORPORATION

By:_____
Name:
Title:

MURRAY ENERGY HOLDINGS CO.

By:_____
Name:
Title:

[AMCA COAL LEASING, INC.
AMCOAL HOLDINGS, INC.
THE AMERICAN COAL COMPANY
AMERICAN COMPLIANCE COAL, INC.
AMERICAN EQUIPMENT & MACHINE, INC.
AMERICAN NATURAL GAS, INC.
ANDALEX RESOURCES, INC.
ANDALEX RESOURCES MANAGEMENT, INC.
AVONMORE RAIL LOADING, INC.
BELMONT COAL, INC.
CANTERBURY COAL COMPANY
COAL RESOURCES HOLDINGS CO.
COAL RESOURCES, INC.
CONSOLIDATED LAND COMPANY
KANAWHA TRANSPORTATION CENTER, INC.
KENAMERICAN RESOURCES, INC.
MILL CREEK MINING COMPANY
MURRAY AMERICAN RESOURCES, INC.
MURRAY GLOBAL COMMODITIES, INC.
OHIOAMERICAN ENERGY, INCORPORATED
OHIO ENERGY TRANSPORTATION, INC.
ONEIDA COAL COMPANY, INC.
PENNAMERICAN COAL, INC.
PINSKI CORP.
PLEASANT FARMS, INC.
PREMIUM COAL, INC.
SPRING CHURCH COAL COMPANY
UTAHAMERICAN ENERGY, INC.
WEST RIDGE RESOURCES, INC.]

By:_____
Name: Robert D. Moore
Title: Authorized Signature

[THE AMERICAN COAL SALES COMPANY
AMERICAN ENERGY CORPORATION
AMERICANMOUNTAINEER ENERGY, INC.
ANCHOR LONGWALL AND REBUILD, INC.
CORPORATE AVIATION SERVICES, INC.
EMPIRE DOCK, INC.
ENERGY RESOURCES, INC.
ENERGY TRANSPORTATION, INC.
MONVALLEY TRANSPORTATION CENTER, INC.
THE OKLAHOMA COAL COMPANY
PENNSYLVANIA TRANSLOADING, INC.
T D K COAL SALES, INCORPORATED]

By: _____
Name: Anthony C. Vcelka, II
Title: Authorized Signature

[AMERICANHOCKING ENERGY, INC.]

By: _____
Name: Ronnie D. Dietz
Title: Assistant Treasurer

[MAPLE CREEK MINING, INC.
MAPLE CREEK PROCESSING, INC.
THE OHIO VALLEY COAL COMPANY
OHIO VALLEY RESOURCES, INC.
THE OHIO VALLEY TRANSLOADING COMPANY
SUNBURST RESOURCES, INC.
UMCO ENERGY, INC.]

By:_____
Name: Ronnie D. Dietz
Title: Authorized Signature

[PENNAMERICAN COAL L.P.]
By: PINSKI CORP.
Its: Managing Partner

By: _____
Name: Robert D. Moore
Title: Treasurer and Secretary

[AMERICAN MINE SERVICES, INC.
AMERICANMOUNTAINEER PROPERTIES, INC.
CCC LAND RESOURCES LLC
CCC RCPC LLC
CENTRAL OHIO COAL COMPANY
CONSOLIDATION COAL COMPANY
EIGHTY-FOUR MINING COMPANY
THE FRANKLIN COUNTY COAL COMPANY
THE HARRISON COUNTY COAL COMPANY
KEYSTONE COAL MINING CORPORATION
THE MARION COUNTY COAL COMPANY
THE MARSHALL COUNTY COAL COMPANY
THE MCLEAN COUNTY COAL COMPANY
MCELROY COAL COMPANY
THE MEIGS COUNTY COAL COMPANY
THE MONONGALIA COUNTY COAL COMPANY
MON RIVER TOWING, INC.
MURRAY AMERICAN RIVER TOWING, INC.
MURRAY AMERICAN TRANSPORTATION, INC.
MURRAY KEYSTONE PROCESSING, INC.
THE MUSKINGUM COUNTY COAL COMPANY
THE OHIO COUNTY COAL COMPANY
SOUTHERN OHIO COAL COMPANY
TWIN RIVERS TOWING COMPANY
THE WASHINGTON COUNTY COAL COMPANY
WEST VIRGINIA RESOURCES, INC.]

By: _____
Name: Robert D. Moore
Title: Vice President

[MURRAY AMERICAN KENTUCKY TOWING, INC.]

By: _____
Name: Anthony C. Vcelka, II
Title: Treasurer

[GENWAL RESOURCES, INC.]

By: _____
Name: Robert D. Moore
Title: Treasurer

[MURRAY AMERICAN ENERGY, INC.]
[MURRAY AMERICAN COAL, INC.]

By: _____
Name: Robert D. Moore
Title: President

[MURRAY EQUIPMENT & MACHINE, INC.]

By: _____
Name: Robert D. Moore
Title: President and Treasurer

[MURRAY SOUTH AMERICA, INC.], as a
Guarantor Subsidiary

By: _____
Name:
Title:

[MURRAY KENTUCKY ENERGY, INC.], as a
Guarantor Subsidiary

By: _____
Name:
Title:

[WESTERN KENTUCKY COAL RESOURCES, LLC], as a Guarantor Subsidiary

By: _____
Name:
Title:

WESTERN KENTUCKY RESOURCES FINANCING, LLC
WESTERN KENTUCKY CONSOLIDATED RESOURCES, LLC
WESTERN KENTUCKY RAIL LOADOUT, LLC
WESTERN KENTUCKY RESOURCES, LLC
WESTERN KENTUCKY RIVER LOADOUT, LLC
THE WESTERN KENTUCKY COAL COMPANY, LLC
THE MUHLENBERG COUNTY COAL COMPANY, LLC
WESTERN KENTUCKY LAND HOLDING, LLC,
each as a Guarantor Subsidiary

By: _____
Name:
Title:

GLAS USA LLC,
as Administrative Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

GLAS AMERICAS LLC,
as Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

[ENTITY NAME],
as a Lender

By: _____
Name:
Title:

GACP FINANCE CO., LLC,
as Initial Roll-Up Lender

By: _____
Name:
Title:

APPENDIX A
TO CREDIT AND GUARANTY AGREEMENT

Loan Commitments

EXHIBIT B
TO CREDIT AND GUARANTY AGREEMENT

FORM OF TERM LOAN NOTE

$[_____]

[_____ __], 2018 New York, New York

FOR VALUE RECEIVED, **MURRAY ENERGY CORPORATION**, an Ohio corporation ("**Borrower**"), promises to pay **[NAME OF LENDER]** (**"Payee"**) or its registered assigns the principal amount of **[_____]** DOLLARS ($**[_____]**) in the installments referred to below.

Borrower also promises to pay interest on the unpaid principal amount hereof, from the date hereof until Paid in Full, at the rates and at the times which shall be determined in accordance with the provisions of that certain Superpriority Debtor-In-Possession Credit and Guaranty Agreement, dated as of [_], 2019 (as it may be amended, restated, supplemented or otherwise modified, the "**Credit Agreement**"; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among Borrower, **MURRAY ENERGY HOLDINGS CO.**, a Delaware corporation, certain Subsidiaries of Borrower, as Guarantors, the Lenders party thereto from time to time, and **GLAS USA LLC**, a limited liability company organized and existing under the laws of the State of New Jersey, as Administrative Agent.

This Note is one of the "Term Loan Notes" and is issued pursuant to and entitled to the benefits of the Credit Agreement, to which reference is hereby made for a more complete statement of the terms and conditions under which the Term Loan evidenced hereby was made and is to be repaid.

All payments of principal and interest in respect of this Note shall be made in lawful money of the United States of America in same day funds at the Principal Office of Administrative Agent or at such other place as shall be designated in writing for such purpose in accordance with the terms of the Credit Agreement. Unless and until an Assignment Agreement effecting the assignment or transfer of the obligations evidenced hereby shall have been accepted by Administrative Agent and recorded in the Register, Borrower, each Agent and Lenders shall be entitled to deem and treat Payee as the owner and holder of this Note and the obligations evidenced hereby. Payee hereby agrees, by its acceptance hereof, that before disposing of this Note or any part hereof it will make a notation hereon of all principal payments previously made hereunder and of the date on which interest hereon has been paid; provided, the failure to make a notation of any payment made on this Note shall not limit or otherwise affect the obligations of Borrower hereunder with respect to payments of principal of or interest on this Note.

This Note is subject to mandatory prepayment and to prepayment at the option of Borrower, each as provided in the Credit Agreement.

THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF BORROWER AND

PAYEE HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.

Upon the occurrence of an Event of Default, the unpaid balance of the principal amount of this Note, together with all accrued and unpaid interest thereon, may become, or may be declared to be, due and payable in the manner, upon the conditions and with the effect provided in the Credit Agreement.

The terms of this Note are subject to amendment only in the manner provided in the Credit Agreement.

No reference herein to the Credit Agreement and no provision of this Note or the Credit Agreement shall alter or impair the obligations of Borrower, which are absolute and unconditional, to pay the principal of and interest on this Note at the place, at the respective times, and in the currency herein prescribed.

Borrower promises to pay all costs and expenses, including reasonable and documented out-of-pocket attorneys' fees, all as provided in the Credit Agreement, incurred in the collection and enforcement of this Note. Borrower and any endorsers of this Note hereby consent to renewals and extensions of time at or after the maturity hereof, without notice, and hereby waive diligence, presentment, protest, demand notice of every kind and, to the extent permitted by applicable law, the right to plead any statute of limitations as a defense to any demand hereunder.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed and delivered by its officer thereunto duly authorized as of the date and at the place first written above.

MURRAY ENERGY CORPORATION

By: _____
Name:
Title:

IT IS SO ORDERED.

John E. Hoffman, Jr.
United States Bankruptcy Judge

Dated: December 12, 2019

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re:	)	Chapter 11
MURRAY ENERGY HOLDINGS CO., *et al.*,[1]	)	Case No. 19-56885 (JEH)
	)	Judge John E. Hoffman
Debtors.	)	(Jointly Administered)

FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING AND (B) USE CASH COLLATERAL, (II) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (III) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES, (IV) MODIFYING THE AUTOMATIC STAY, AND (V) GRANTING RELATED RELIEF [RELATED TO DOCKET NOS. 28 AND 93]

[1] Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. Such information may be obtained on the website of the Debtors' claims and noticing agent at https://cases.primeclerk.com/MurrayEnergy. The location of Debtor Murray Energy Holdings Co.'s principal place of business and the Debtors' service address in these chapter 11 cases is 46226 National Road, St. Clairsville, Ohio 43950.

Upon the motion (the "**Motion**")[2] of Murray Energy Corporation (the "**Company**", or the "**Borrower**"), and its affiliated debtors, each as a debtor and debtor in possession (collectively, the "**Debtors**") in the above-captioned cases (the "**Chapter 11 Cases**") pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506(c) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**"), Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and the Local Bankruptcy Rules for the Southern District of Ohio (the "**Local Bankruptcy Rules**") seeking, among other things:

(i) authorization for the Borrower to obtain the obligations of the postpetition financing in an aggregate principal amount of up to approximately $440 million (the "**DIP Financing**"), under a superpriority debtor-in-possession credit facility (the "**DIP Facility**") consisting of, among other things, (a) new money term loans (the "**DIP Term Loans**") in an aggregate principal amount of up to $350 million to be provided by certain Prepetition Superpriority Lenders (as defined below) (in their capacity as lenders under the DIP Credit Agreement (as defined below), the "**DIP Term Lenders**") and (b) rolled-up loans (the "**DIP FILO Loans**") in an aggregate principal amount of up to $90 million to be provided by the Prepetition FILO Lender (as defined below) (in its capacity as a lender under the DIP Credit Agreement, the "**DIP FILO Lender**," and, together with the DIP Term Lenders, the "**DIP Lenders**");

(ii) authorization for (x) Murray Energy Holdings Company ("**Holdings**") and all of the Borrower's Debtor subsidiaries (the "**DIP Term Guarantors**") to guarantee the obligations arising under the DIP Credit Agreement related to the DIP Term Loans and the obligations arising under the DIP Credit Agreement related to the Designated Coal Contracts[3] (the "**DIP Term Obligations**") and (y) Holdings and certain of the Borrower's Debtor subsidiaries (the "**DIP FILO Guarantors**" and, together with the DIP Term Guarantors, the "**Guarantors**") to guarantee the obligations arising under the DIP Credit Agreement related to the DIP FILO Loans (the "**DIP FILO Obligations**" and, together with the DIP Term Obligations, the "**DIP Obligations**");

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[2] Capitalized terms used herein and not herein defined have the meaning ascribed to such terms in the Motion or the DIP Credit Agreement (as defined herein).

[3] "**Designated Coal Contracts**" means "Designated Coal Contracts" as defined in the DIP Credit Agreement.

(iii) authorization for the Credit Parties[4] to (a) execute and enter into that certain *Superpriority Debtor-In-Possession Credit And Guaranty Agreement*, dated as of October 31, 2019 (as may be amended, restated, supplemented, waived or otherwise modified from time to time in accordance with the terms hereof and thereof, the "**DIP Credit Agreement**"), among the Borrower, as borrower, the Guarantors, as guarantors, the DIP Lenders, GLAS USA LLC, as the administrative agent for the DIP Facility (solely in such capacity, the "**DIP Administrative Agent**"), GLAS Americas LLC, as collateral agent (solely in such capacity, the "**DIP Collateral Agent**"; the DIP Administrative Agent, together with the DIP Collateral Agent, the "**DIP Agents,**" and (x) the DIP Agents together with the DIP Term Lenders and the Designated Coal Contract Counterparties,[5] the "**DIP Term Secured Parties**", (y) the DIP Agents together with the DIP FILO Lender, the "**DIP FILO Secured Parties**") and (z) the DIP Agents, collectively with the DIP Lenders and the Designated Coal Contract Counterparties, the "**DIP Secured Parties**"), substantially in the form attached to the Motion as **Exhibit B** and any other agreements, instruments, pledge agreements, guarantees, security agreements, intellectual property security agreements, control agreements, notes and other Credit Documents (as defined in the DIP Credit Agreement) and documents related thereto (as amended, restated, supplemented, waived, and/or modified from time to time in accordance with the terms hereof and thereof, and collectively with the DIP Credit Agreement, the "**DIP Documents**") and (b) perform their respective obligations thereunder and all such other and further acts as may be necessary, appropriate, or desirable in connection with the DIP Documents;

(iv) authorization for the Credit Parties (a) upon entry of the *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* (the "**Interim Order**") [Docket No. 93], to incur in a single draw on the Closing Date (as defined in the DIP Credit Agreement), DIP Term Loans in an aggregate principal amount of up to $200 million (the "**Initial DIP Term Loans**") and (b) upon entry of this order (this "**Final Order**"), to incur in a single draw DIP Term Loans in an aggregate principal amount of up to $150 million (the "**Delayed Draw DIP Term Loans**"), for a total aggregate principal amount of up to $350 million;

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[4] As used herein, the term "**Credit Parties**" shall mean, (a) with respect to the DIP FILO Obligations, DIP FILO Superpriority Claims, and the DIP Liens securing the DIP FILO Obligations, the Borrower and the DIP FILO Guarantors and (b) with respect to the DIP Term Obligations, DIP Term Superpriority Claims, and the DIP Liens securing the DIP Term Obligations, the Borrower and DIP Term Guarantors.

[5] "**Designated Coal Contract Counterparties**" means "Designated Coal Contract Counterparties" as defined in the DIP Credit Agreement.

(v) authorization for (a) the Credit Parties, the Prepetition ABL Secured Parties (as defined below), and the DIP FILO Secured Parties to, upon entry of the Interim Order, convert the entire outstanding balance of the Prepetition FILO Debt (as defined herein) into DIP FILO Loans and (b) certain of the Credit Parties and that certain Prepetition ABL Secured Party, as Prepetition LC Issuer (as defined herein) (the "**Outstanding LC Issuer**"), to enter into and perform under that certain Payoff Letter, dated as of October 30, 2019 (including provisions of the Prepetition ABL Credit Documents incorporated thereby, the "**Payoff Letter**") and to continue to maintain cash collateral, for existing cash-collateralized letters of credit issued under the Prepetition ABL Credit Agreement (as defined below) (the "**Outstanding LCs**"), in each case, pursuant to the terms and conditions set forth herein, the Payoff Letter and in the DIP Documents;

(vi) authorization for the Debtors to (a) upon entry of the Interim Order, use proceeds of the Initial DIP Term Loans to refinance all of the Prepetition ABL Revolving Debt (as defined herein) in full, which refinancing shall be indefeasible upon the occurrence of the ABL Satisfaction Date,[6] and fund LC Cash Collateral (as defined herein) in an amount equal to 103% of the face amount of Outstanding LCs (as defined herein), which amounts shall be replenished as and if depleted, each in accordance with the Payoff Letter; and (b) use proceeds of the DIP Term Loans for working capital and general corporate purposes in accordance with the terms of the DIP Documents and Approved Cash Flow Forecast (subject to permitted variances);

(vii) subject to the restrictions set forth in the DIP Documents and this Final Order, authorization for the Credit Parties to continue to use Cash Collateral (as defined below) and all other Prepetition Collateral (as defined below) in which any of the Prepetition Secured Parties (as defined below) has an interest, and to grant adequate protection to the Prepetition Secured Parties with respect to, *inter alia*, such use of Cash Collateral and other Prepetition Collateral;

(viii) authorization for the Credit Parties to pay, on a final and irrevocable basis, the principal, interest, fees, expenses and other amounts payable under the DIP Documents and Outstanding LCs as such become earned, due and payable, including, but not limited to, upfront fees, put premiums, letter of credit fees, closing date fees, exit fees, prepayment fees, agency fees, audit

[6] "**ABL Satisfaction Date**" means the date on which the Prepetition ABL Revolving Debt is indefeasibly refinanced or repaid in full in cash, including interest and fees (including early termination fees) through the date of repayment (at the default contract rate). The ABL Satisfaction Date shall be deemed to have occurred if (i) the Challenge Period (as defined herein) expires without the timely and proper commencement of a Challenge (as defined herein) in accordance with paragraph 31 of this Final Order with respect to the Prepetition ABL Revolving Debt or against the Prepetition ABL Secured Parties or (ii) if a Challenge is timely and properly asserted prior to the expiration of the Challenge Period, upon the final disposition of such adversary proceeding or contested matter in favor of the Prepetition ABL Secured Parties by final order of a court of competent jurisdiction (for the avoidance of doubt the Court is a court of competent jurisdiction).

fees, appraisal fees, valuation fees, administrative agents' fees, the reasonable fees and disbursements of the DIP Agents' and certain DIP Lenders' attorneys, advisors, accountants, appraisers, bankers, and other consultants, all to the extent provided in, and in accordance with, the DIP Documents;

(ix) approval of certain stipulations by the Debtors with respect to the Prepetition Credit Documents (as defined below) and the liens and security interests arising therefrom;

(x) subject only to (a) the Carve-Out (as defined below), (b) solely with respect to the DIP FILO Priority Collateral (as defined below), the claims of the DIP FILO Secured Parties arising under the DIP Credit Agreement, the Interim Order, and this Final Order, except to the extent of the Term Loan ABL Collateral Cap (as defined in the DIP Credit Agreement), and (c) solely with respect to the Prepetition ABL Priority Collateral, the claims of the Prepetition ABL Secured Parties arising under the Prepetition ABL Credit Documents (each as defined below) and this Final Order, the granting to the DIP Term Secured Parties of allowed superpriority claims pursuant to section 364(c)(1) of the Bankruptcy Code payable from and having recourse to all prepetition and postpetition property of the Credit Parties' estates and all proceeds thereof (other than Avoidance Actions,[7] but including, without limitation, Avoidance Proceeds[8]);

(xi) subject only to (a) the Carve-Out solely to the extent of the Term Loan ABL Collateral Cap, (b) solely with respect to the DIP Term Priority Collateral, the claims of the DIP Term Secured Parties arising under the DIP Credit Agreement and this Final Order, (c) solely with respect to the DIP FILO Priority Collateral, the claims of the DIP Term Secured Parties arising under the DIP Credit Agreement and this Final Order, solely to the extent of the Term Loan ABL Collateral Cap to the extent such Term Loan ABL Collateral Cap has not been exhausted under clause (a), and (d) solely with respect to the Prepetition Term Priority Collateral, the claims of the Prepetition Term Secured Parties arising under the Prepetition Term Credit Documents (each as defined below) and this Final Order, the granting to the DIP FILO Secured Parties of allowed superpriority claims pursuant to section 364(c)(1) of the Bankruptcy Code payable from and having recourse to all prepetition and postpetition property of the Credit Parties' estates and all proceeds thereof (other than Avoidance Actions, but including, without limitation, Avoidance Proceeds);

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[7] "**Avoidance Actions**" means, collectively, claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code.

[8] "**Avoidance Proceeds**" means any proceeds or property recovered, unencumbered or otherwise, from Avoidance Actions, whether by judgment, settlement or otherwise.

(xii) the granting to the DIP Agents (for the benefit of the DIP Term Secured Parties) of valid, enforceable, nonavoidable, and fully perfected security interests and liens (including liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code) on all DIP Term Collateral, subject to (a) the Carve-Out, (b) the Prepetition Permitted Prior Liens (as defined below), (c) the liens on the DIP FILO Priority Collateral securing the claims of the DIP FILO Secured Parties arising under the DIP Credit Agreement, subject to the liens on the DIP FILO Priority Collateral securing the claims of the DIP Term Secured Parties up to the Term Loan ABL Collateral Cap, (d) the liens on the Prepetition ABL Priority Collateral securing the claims of the Prepetition ABL Secured Parties arising under the Prepetition ABL Credit Agreement, and this Final Order and (e) Permitted Liens (as defined in the DIP Credit Agreement);

(xiii) the granting to the DIP Agents (for the benefit of the DIP FILO Secured Parties) of valid, enforceable, nonavoidable, and fully perfected security interests and liens (including liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code) on all DIP FILO Collateral, subject to (a) the Carve-Out, (b) the Prepetition Permitted Prior Liens (as defined below), (c) the liens on the DIP FILO Priority Collateral securing the claims of the DIP Term Secured Parties arising under the DIP Credit Agreement up to the Term Loan ABL Collateral Cap, (d) the liens on the Prepetition Term Priority Collateral securing the claims of the Prepetition Term Secured Parties arising under the Prepetition Term Credit Documents (each as defined below) and this Final Order, and (e) Permitted Liens;

(xiv) the granting to the Outstanding LC Issuer as security for the Outstanding LCs of valid, enforceable, nonavoidable, and fully perfected first-priority security interests and liens on all cash collateral cash-collateralizing the Outstanding LCs (such cash collateral, the "**LC Cash Collateral**"), which, for avoidance of doubt, shall not be DIP Collateral (as defined below) and shall not be subject to the Carve-Out;

(xv) (a) a waiver of the Debtors' right to surcharge the Prepetition Collateral and the DIP Collateral (as defined below) (together, the "**Collateral**") pursuant to section 506(c) of the Bankruptcy Code, and (b) a waiver of any right of the Debtors under the "equities of the case" exception under section 552(b) of the Bankruptcy Code;

(xvi) modification of the automatic stay to the extent set forth herein and in the DIP Documents; and

(xvii) waiver of any applicable stay (including under Bankruptcy Rule 6004) and provision for immediate effectiveness of this Final Order.

The Court having considered the relief requested in the Motion, the exhibits attached thereto, the Berube Declaration, the First Day Declarations (collectively with the Berube Declaration, the "**Declarations**"), the DIP Documents, and the evidence submitted and arguments made at the interim hearing held on October 30, 2019 (the "**Interim Hearing**") and the final hearing held on December 4, 2019 (the "**Final Hearing**," and collectively with the Interim Hearing, the "**Hearings**"); and the Court having entered the Interim Order; and due and sufficient notice of the Final Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Bankruptcy Rules; and the Final Hearing having been held and concluded; and all objections, if any, to the final relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval of the final relief requested in the Motion is fair and reasonable and in the best interests of the Debtors and their estates, and is essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Documents is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor.

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

1. *Disposition.* The relief requested in the Motion is GRANTED ON A FINAL BASIS in accordance with the terms of this Final Order. Any and all objections to the Motion with respect to the entry of this Final Order that have not been withdrawn, waived, settled, or

resolved and all reservations of rights included therein, are hereby denied and overruled on the merits. This Final Order shall become effective immediately upon its entry.

2. *Commencement Date*. On October 29, 2019 (the "**Commencement Date**"), each Debtor filed a voluntary petition (each, a "**Petition**") under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Ohio (this "**Court**").

3. *Debtors in Possession.* The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in any of the Chapter 11 Cases.

4. *Jurisdiction and Venue.* This Court has core jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334 and the *General Order 30-2* from the United States Bankruptcy Court for the Southern District of Ohio, dated October 10, 2019. Venue for the Chapter 11 Cases and proceedings on the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. *Committee Formation*. On November 7, 2019, the United States Trustee for the Southern District of Ohio (the "**U.S. Trustee**") appointed an official committee of unsecured creditors in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (the "**Creditors' Committee**") [Docket No. 168].

6. *Notice*. Appropriate notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules, and no other or further notice of the Motion or the entry of this Final Order shall be required.

7. *Debtors' Stipulations*. Without prejudice to the rights of any other party in interest and subject to the limitations thereon contained in paragraphs 31 and 35 below, the Debtors acknowledge, admit, stipulate, and agree that:

(a)

(i) pursuant to that certain *Amended and Restated Revolving Credit Agreement*, dated as of June 29, 2018 (as amended, supplemented, restated or otherwise modified prior to the Commencement Date, the "**Prepetition ABL Credit Agreement**," and collectively with the other Loan Documents (as defined in the Prepetition ABL Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, waived or otherwise modified from time to time, the "**Prepetition ABL Credit Documents**"), among (a) Murray Energy Corporation, as borrower (the "**Prepetition Borrower**"), (b) the Prepetition 1L/2L Guarantors (as defined below) and additional guarantors party thereto (the "**Prepetition Additional ABL Guarantors**" and, collectively with the Prepetition 1L/2L Guarantors, the "**Prepetition ABL Guarantors**"), (c) Goldman Sachs Bank USA, as administrative agent (solely in such capacity, the "**Prepetition ABL Agent**"), and (d) the lenders (including GACP Finance Co. LLC, as Last-Out Lender (as defined in the Prepetition ABL Credit Agreement) (the "**Prepetition FILO Lender**")) party thereto (the "**Prepetition ABL Lenders**," and collectively with the Prepetition ABL Agent, the Prepetition LC Issuer (as defined below) and all other holders of Prepetition ABL Debt (as defined below), the "**Prepetition ABL Secured Parties**"), the Prepetition ABL Lenders provided revolving credit and other financial accommodations to, and Goldman Sachs Bank USA, as letter of credit issuer (the "**Prepetition LC Issuer**"), issued letters of credit for the account of, the Prepetition Borrower pursuant to the Prepetition ABL Credit Documents

(the "**Prepetition ABL Credit Facility**"), and the Prepetition ABL Guarantors guaranteed on a joint and several basis the obligations under the Prepetition ABL Credit Agreement and the other Prepetition ABL Credit Documents;

(ii) pursuant to that certain *Superpriority Credit and Guaranty Agreement*, dated as of June 29, 2018 (as amended, supplemented, restated or otherwise modified prior to the Commencement Date, the "**Prepetition Superpriority Credit Agreement**," collectively with the other Credit Documents (as defined in the Prepetition Superpriority Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, waived or otherwise modified from time to time, the "**Prepetition Superpriority Credit Documents**"), among (a) the Prepetition Borrower, as borrower, (b) the Prepetition ABL Guarantors and additional guarantors party thereto (the "**Prepetition Additional Superpriority/Superparity Guarantors**" and, collectively with the 1L/2L Guarantors and the Prepetition Additional ABL Guarantors, the "**Prepetition Superpriority/Superparity Guarantors**"), (c) GLAS Trust Company LLC, as administrative agent (solely in such capacity, the "**Prepetition Superpriority Agent**") and (d) the lenders party thereto (the "**Prepetition Superpriority Lenders**," collectively with the Prepetition Superpriority Agent, the Prepetition Collateral Trustee (as defined below), all other holders of Prepetition Superpriority Debt (as defined below), and the other Secured Parties (as defined in the Prepetition Superpriority Credit Agreement), the "**Prepetition Superpriority Secured Parties**"), the Prepetition Superpriority Lenders provided term loans to the

Prepetition Borrower pursuant to the Prepetition Superpriority Credit Documents (the "**Prepetition Superpriority Credit Facility**"), and the Prepetition Superpriority/Superparity Guarantors guaranteed on a joint and several basis the obligations under the Prepetition Superpriority Credit Agreement and the other Prepetition Superpriority Credit Documents;

(iii) pursuant to that certain *Credit and Guaranty Agreement*, dated as of April 16, 2015 (as amended, supplemented, restated or otherwise modified prior to the Commencement Date, the "**Prepetition Term Loan Credit Agreement**," and collectively with the other Credit Documents (as defined in the Prepetition Term Loan Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, waived or otherwise modified from time to time, the "**Prepetition Term Loan Credit Documents**"), among (a) the Prepetition Borrower, as borrower, (b) the guarantors party thereto (collectively, the "**Prepetition 1L/2L Guarantors**"), (c) Black Diamond Commercial Finance, L.L.C., as successor administrative agent (solely in such capacity, the "**Prepetition Term Agent**"), and (d) the lenders party thereto (the "**Prepetition Term Loan Lenders**," collectively with the Prepetition Term Agent, the Prepetition Collateral Trustee and all other holders of Prepetition Term Loan Debt (as defined below), the "**Prepetition Term Loan Secured Parties**"), the Prepetition Term Loan Lenders provided term loans to the Prepetition Borrower pursuant to the Prepetition Term Loan Credit Documents (the "**Prepetition Term Loan Credit Facility**"), and the Prepetition 1L/2L Guarantors guaranteed on a joint and several basis the obligations of the

Prepetition Borrower under the Prepetition Term Loan Credit Agreement and the other Prepetition Term Loan Credit Documents;

(iv) pursuant to that certain indenture for certain 12.00% senior secured notes due 2024 dated as of June 29, 2018 (as amended, supplemented, restated or otherwise modified prior to the Commencement Date, the "**Prepetition 12.00% Superparity Indenture**," and collectively with the other Note Documents (as defined in the Prepetition 12.00% Superparity Indenture) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, waived, or otherwise modified from time to time, the "**Prepetition 12.00% Superparity Credit Documents**"), among (a) Murray Energy Corporation, as issuer (the "**Prepetition Issuer**"), (b) the Prepetition Superpriority/Superparity Guarantors, as guarantors, (c) The Bank of New York Mellon Trust Company, N.A., as trustee (solely in such capacity, the "**Prepetition 12.00% Superparity Trustee**"), and (d) the Prepetition Collateral Trustee, as collateral trustee for the benefit of the holders of the Prepetition 12.00% Superparity Notes (the "**Prepetition 12.00% Superparity Noteholders**", collectively with the Prepetition 12.00% Superparity Trustee, the Prepetition Collateral Trustee, the Secured Debt Representatives (as defined in the Prepetition 12.00% Superparity Indenture) and all other holders of Prepetition 12.00% Superparity Debt (as defined below), the "**Prepetition 12.00% Superparity Secured Parties**"), the Prepetition Issuer incurred indebtedness to the Prepetition 12.00% Superparity Noteholders of 12.00% Senior Secured Notes Due 2024 (collectively, the "**Prepetition 12.00% Superparity Notes**") and the Prepetition Superpriority/Superparity Guarantors

guaranteed on a joint and several basis the obligations of the Prepetition Issuer under the Prepetition 12.00% Superparity Indenture and the other Prepetition 12.00% Superparity Credit Documents;

(v) pursuant to that certain indenture for certain 9.50% senior secured notes due 2020 dated as of May 8, 2014 (as amended, supplemented, restated or otherwise modified prior to the Commencement Date, the "**Prepetition 9.50% Superparity Indenture**" (together with the Prepetition 12.00% Superparity Indenture, the "**Prepetition Superparity Indentures**"), and collectively with the other Note Documents (as defined in the Prepetition 9.50% Superparity Indenture) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, waived, or otherwise modified from time to time, the "**Prepetition 9.50% Superparity Credit Documents**" (together with the Prepetition 12.00% Superparity Credit Documents, the "**Prepetition Superparity Credit Documents**")), among (a) the Prepetition Issuer, as issuer, (b) the Prepetition Superpriority/Superparity Guarantors, as guarantors, (c) Delaware Trust Company, as successor trustee to The Bank of New York Mellon Trust Company, N.A., as trustee (solely in such capacity, the "**Prepetition 9.50% Superparity Trustee**", and, in its capacities as Prepetition 12.00% Superparity Trustee and Prepetition 9.50% Superparity Trustee, the "**Prepetition Superparity Trustee**"), and (d) the Prepetition Collateral Trustee, as collateral trustee, for the benefit of the holders of the Prepetition 9.50% Superparity Notes (the "**Prepetition 9.50% Superparity Noteholders**" (together with the Prepetition 12.00% Superparity Noteholders, the "**Prepetition Superparity**

Noteholders"), collectively with the Prepetition 9.50% Superparity Trustee and the Prepetition Collateral Trustee, the Secured Debt Representatives (as defined in the Prepetition 9.50% Superparity Indenture) and all other holders of Prepetition 9.50% Superparity Debt (as defined below), the "**Prepetition 9.50% Superparity Secured Parties**," and the Prepetition 9.50% Superparity Secured Parties, together with the Prepetition 12.00% Superparity Secured Parties, the "**Prepetition Superparity Secured Parties**"), the Prepetition Issuer incurred indebtedness to the Prepetition 9.50% Superparity Noteholders of 9.50% Senior Secured Notes Due 2020 (collectively, the "**Prepetition 9.50% Superparity Notes**," and, together with the Prepetition 12.00% Superparity Notes, the "**Prepetition Superparity Notes**") and the Prepetition Superpriority/Superparity Guarantors guaranteed on a joint and several basis the obligations of the Prepetition Issuer under the Prepetition 9.50% Superparity Indenture and the other Prepetition 9.50% Superparity Credit Documents;

(vi) pursuant to that certain indenture for certain 11.25% senior secured notes due 2021 dated as of April 16, 2015 (as amended, supplemented, restated or otherwise modified prior to the Commencement Date, the "**Prepetition Parity Indenture**," and collectively with the other Note Documents (as defined in the Prepetition Parity Indenture) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, waived, or otherwise modified from time to time, the "**Prepetition Parity Credit Documents,**" and collectively with the Prepetition Superpriority Credit Documents, the Prepetition Term Loan Credit Documents, the Prepetition

Superparity Credit Documents, the "**Prepetition Term Credit Documents**," and the Prepetition Term Credit Documents, together with the Prepetition ABL Credit Documents, the "**Prepetition Credit Documents**"), among (a) the Prepetition Issuer, as issuer, (b) the Prepetition 1L/2L Guarantors, as guarantors, (c) Wilmington Savings Fund Society, FSB, as successor trustee to The Bank of New York Mellon Trust Company, N.A. (solely in such capacity, the "**Prepetition Parity Trustee,**" and in its capacities as the Prepetition Superparity Trustee and the Prepetition Parity Trustee, the "**Prepetition Indenture Trustee**"), and (d) the Prepetition Collateral Trustee, as collateral trustee, for the benefit of the holders of the Prepetition Parity Notes (the "**Prepetition Parity Noteholders**," collectively with the Prepetition Parity Trustee and the Prepetition Collateral Trustee, the Secured Debt Representatives (as defined in the Prepetition Parity Indenture) and all other holders of Prepetition Parity Debt (as defined below), the "**Prepetition Parity Secured Parties**" and collectively with the Prepetition Superpriority Secured Parties, the Prepetition Term Loan Secured Parties, the Prepetition Superparity Secured Parties, the "**Prepetition Term Secured Parties**," and the Prepetition Term Secured Parties, together with the Prepetition ABL Secured Parties, the "**Prepetition Secured Parties**"), the Prepetition Issuer incurred indebtedness to the Prepetition Parity Noteholders of 11.25% Senior Secured Notes Due 2021 (collectively, the "**Prepetition Parity Notes**") and the Prepetition 1L/2L Guarantors guaranteed on a joint and several basis the obligations of the Prepetition Issuer under the Prepetition Parity Indenture and the other Prepetition Parity Credit Documents;

(b) as of the Commencement Date:

(i) the Prepetition Borrower and the Prepetition ABL Guarantors were justly and lawfully indebted and liable to the Prepetition ABL Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, in the aggregate principal amount of not less than $232,187,084.00, consisting of (a) $60,743,542.00 in outstanding principal amount of Revolving Loans (as defined in the Prepetition ABL Credit Agreement) (inclusive of interest and fees (including early termination fees) through the date of repayment (at the default contract rate) "**Prepetition ABL Revolving Debt**"), plus $81,443,542.00 of the aggregate stated principal amount available for drawing under all outstanding letters of credit and all unpaid reimbursement obligations with respect to drawn letters of credit (the "**Prepetition Letters of Credit**") and (b) $90,000,000.00 in outstanding principal amount of Last-Out Term Loans (as defined in the Prepetition ABL Credit Agreement) (collectively, with interest through the date of repayment (at the contractual default rate), the "**Prepetition FILO Debt**"), which loans (the "**Prepetition ABL Loans**") were made by the Prepetition ABL Lenders and which Prepetition Letters of Credit were issued by the Prepetition LC Issuer, pursuant to, and in accordance with the terms of, the Prepetition ABL Credit Documents, plus, to the extent not otherwise included, accrued and unpaid interest thereon and fees, expenses (including any attorneys', accountants', appraisers', and financial advisors' fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition ABL Credit Documents), costs, charges, indemnities, and other obligations incurred in connection therewith (whether arising before or after the

Commencement Date) as provided in the Prepetition ABL Credit Documents (collectively, the "**Prepetition ABL Debt**"), which Prepetition ABL Debt has been guaranteed on a joint and several basis by all of the Prepetition ABL Guarantors;

(ii) the Prepetition Borrower and the Prepetition Superpriority/Superparity Guarantors were justly and lawfully indebted and liable to the Prepetition Superpriority Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, in the aggregate principal amount of not less than $1,726,555,184.84, consisting of, among other things, (a) $1,568,720,555.84 in outstanding principal amount of Prepetition Superpriority Term B-2 Loans[9] and (b) $157,834,629 in outstanding principal amount of Prepetition Superpriority Term B-3 Loans,[10] which loans (the "**Prepetition Superpriority Loans**") were made by the Prepetition Superpriority Lenders pursuant to, and in accordance with the terms of, the Prepetition Superpriority Credit Documents, plus accrued and unpaid interest thereon and fees, expenses (including any attorneys', accountants', appraisers', and financial advisors' fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition Superpriority Credit Documents), costs, charges, indemnities, and other obligations incurred in connection therewith (whether arising before or after the Commencement Date) as provided in the Prepetition Superpriority Credit Documents (together with the other Prepetition Superpriority Obligations, the

[9] "**Prepetition Superpriority Term B-2 Loans**" means "Superpriority Term B-2 Loans" as defined in the Prepetition Superpriority Credit Agreement.

[10] "**Prepetition Superpriority Term B-3 Loans**" means "Superpriority Term B-3 Loans" as defined in the Prepetition Superpriority Credit Agreement.

"**Prepetition Superpriority Debt**"), which Prepetition Superpriority Debt and other Prepetition Superpriority Obligations[11] have been guaranteed on a joint and several basis by all of the Prepetition Superpriority/Superparity Guarantors;

(iii) the Prepetition Borrower and the Prepetition 1L/2L Guarantors were justly and lawfully indebted and liable to the Prepetition Term Loan Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, in the aggregate principal amount of not less than $51,094,229.89, consisting of (a) $38,283,236.81 in outstanding principal amount of Prepetition Term B-2 Loans[12] and (b) $12,810,993.08 in outstanding principal amount of Prepetition Term B-3 Loans[13] (the "**Prepetition Term Loan Loans**"), which loans were made by the Prepetition Term Loan Lenders pursuant to, and in accordance with the terms of, the Prepetition Term Loan Credit Documents, plus accrued and unpaid interest thereon and fees, expenses (including any attorneys', accountants', appraisers', and financial advisors' fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition Term Loan Credit Documents), costs, charges, indemnities, and other obligations incurred in connection therewith (whether arising before or after the Commencement Date) as provided in the Prepetition Term Loan Credit Documents (collectively, the "**Prepetition Term Loan Debt**"),

[11] "**Prepetition Superpriority Obligations**" means "Obligations" as defined in the Prepetition Superpriority Credit Agreement.

[12] "**Prepetition Term B-2 Loans**" means "Term B-2 Loans" as defined in the Prepetition Term Loan Credit Agreement.

[13] "**Prepetition Term B-3 Loans**" means "Term B-3 Loans" as defined in the Prepetition Term Loan Credit Agreement.

which Prepetition Term Loan Debt has been guaranteed on a joint and several basis by all of the Prepetition 1L/2L Guarantors;

(iv) the Prepetition Issuer and the Prepetition Superpriority/Superparity Guarantors were justly and lawfully indebted and liable to the Prepetition 12.00% Superparity Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, in the aggregate principal amount of not less than $498,121,115.00 of the outstanding Prepetition 12.00% Superparity Notes, which notes were issued by the Prepetition Issuer pursuant to, and in accordance with the terms of, the Prepetition 12.00% Superparity Credit Documents, plus accrued and unpaid interest thereon and fees, expenses (including any attorneys', accountants', appraisers', and financial advisors' fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition 12.00% Superparity Credit Documents), costs, charges, indemnities, and other obligations incurred in connection therewith (whether arising before or after the Commencement Date) as provided in the Prepetition 12.00% Superparity Credit Documents (collectively, the "**Prepetition 12.00% Superparity Debt**"), which Prepetition 12.00% Superparity Debt has been guaranteed on a joint and several basis by all of the Prepetition Superpriority/Superparity Guarantors;

(v) the Prepetition Issuer and the Prepetition Superpriority/Superparity Guarantors were justly and lawfully indebted and liable to the Prepetition 9.50% Superparity Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, in the aggregate principal amount of not less than $1,916,000.00 of the outstanding Prepetition 9.50%

Superparity Notes, which notes were issued by the Prepetition Issuer pursuant to, and in accordance with the terms of, the Prepetition 9.50% Superparity Credit Documents, plus accrued and unpaid interest thereon and fees, expenses (including any attorneys', accountants', appraisers', and financial advisors' fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition 9.50% Superparity Credit Documents), costs, charges, indemnities, and other obligations incurred in connection therewith (whether arising before or after the Commencement Date) as provided in the Prepetition 9.50% Superparity Credit Documents (collectively, the "**Prepetition 9.50% Superparity Debt**," and, together with the Prepetition 12.00% Superparity Debt, the "**Prepetition Superparity Debt**"), which Prepetition 9.50% Superparity Debt has been guaranteed on a joint and several basis by all of the Prepetition Superpriority/Superparity Guarantors;

(vi) the Prepetition Issuer and the Prepetition 1L/2L Guarantors were justly and lawfully indebted and liable to the Prepetition Parity Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, in the aggregate principal amount of not less than $294,764,642.00 of the outstanding Prepetition Parity Notes, which notes were issued by the Prepetition Issuer pursuant to, and in accordance with the terms of, the Prepetition Parity Credit Documents, plus accrued and unpaid interest thereon and fees, expenses (including any attorneys', accountants', appraisers', and financial advisors' fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition Parity Credit Documents), costs, charges, indemnities, and other obligations incurred in

connection therewith (whether arising before or after the Commencement Date) as provided in the Prepetition Parity Credit Documents (collectively, the **"Prepetition Parity Debt**" and collectively with the Prepetition Superpriority Debt, the Prepetition Superpriority Obligations, the Prepetition Term Loan Debt, the Prepetition Superparity Debt, the "**Prepetition Term Debt**" and, the Prepetition Term Debt together with the Prepetition ABL Debt, the "**Prepetition Debt**"), which Prepetition Parity Debt has been guaranteed on a joint and several basis by all of the Prepetition 1L/2L Guarantors;

(c) (i) the Prepetition Debt constitutes the legal, valid, binding, and non-avoidable obligations of the Prepetition Borrower or the Prepetition Issuer, as applicable, and the Prepetition ABL Guarantors, the Prepetition Superpriority/Superparity Guarantors or the Prepetition 1L/2L Guarantors, as applicable, enforceable in accordance with its terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code) and (ii) no portion of the Prepetition Debt or any payment made to the Prepetition Secured Parties or applied to or paid on account of the obligations owing under the Prepetition Credit Documents prior to the Commencement Date is subject to any contest, attack, rejection, recovery, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim (as such term is used in the Bankruptcy Code), cause of action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law (a "**Claim**");

(d) as of the Commencement Date, pursuant to and in connection with the Prepetition ABL Credit Documents, the Prepetition Borrower and the Prepetition ABL Guarantors granted to the Prepetition ABL Agent, for the benefit of itself and the other Prepetition ABL Secured Parties, a security interest in and continuing lien on (the "**Prepetition ABL Liens**")

substantially all of their assets and property, including, (i) a valid, binding, properly perfected, enforceable, first priority security interest in and continuing lien on the Shared ABL Collateral and Additional ABL Collateral (each as defined in that certain Prepetition Non-Specified Intercreditor Agreement referred to below) (which, for the avoidance of doubt, includes Cash Collateral (as defined below)) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (collectively, the "**Prepetition ABL Priority Collateral**"), and (ii) a valid, binding, properly perfected, enforceable, junior priority security interest in and continuing lien on the Shared Fixed Asset Collateral (as defined in that certain Prepetition Non-Specified Intercreditor Agreement referred to below) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (collectively and together with the Additional Fixed Asset Collateral (as defined in that certain Prepetition Non-Specified Intercreditor Agreement referred to below), the "**Prepetition Term Priority Collateral**," (which, for the avoidance of doubt, includes Cash Collateral (as defined below)) and together with the Prepetition ABL Priority Collateral, the "**Prepetition Collateral**") which are not subject to avoidance, recharacterization, subordination (whether equitable, contractual, or otherwise), recovery, attack, disgorgement, effect, rejection, reduction, disallowance, impairment, counterclaim, offset, crossclaim, defense or Claim under the Bankruptcy Code or applicable non-bankruptcy law, subject and subordinate only to the liens of Prepetition Collateral Trustee on the Prepetition Term Priority Collateral and certain other liens permitted by the Prepetition ABL Credit Documents, solely to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable and *pari passu* or senior in priority to the Prepetition ABL Liens (the "**Prepetition ABL Permitted Prior Liens**");

(e) as of the Commencement Date, pursuant to and in connection with the applicable Prepetition Term Credit Documents, the Prepetition Borrower or the Prepetition Issuer, as applicable, the Prepetition Additional ABL Guarantors and the Prepetition Additional Superpriority/Superparity Guarantors granted to the Prepetition Collateral Trustee, for the benefit of itself and the Prepetition Superpriority Secured Parties and the Prepetition Superparity Secured Parties, a security interest in and continuing lien on (the "**Prepetition Superpriority/Superparity Term Liens**") substantially all of their assets and property, including, a valid, binding, properly perfected, enforceable, first priority security interest in and continuing lien on the Additional Fixed Asset Collateral (as defined in that certain Prepetition Non-Specified Intercreditor Agreement referred to below), which are not subject to avoidance, recharacterization, subordination (whether equitable, contractual, or otherwise), recovery, attack, disgorgement, effect, rejection, reduction, disallowance, impairment, effect, counterclaim, offset, crossclaim, defense, or Claim under the Bankruptcy Code or applicable non-bankruptcy law subject and subordinate only to certain other liens permitted by the Prepetition Superpriority Credit Documents and the Prepetition Superparity Credit Documents, solely to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable and *pari passu* or senior in priority to the Prepetition Superpriority/Superparity Term Liens (the "**Prepetition Superpriority/Superparity Term Permitted Prior Liens**"); *provided*, that, the priority of Prepetition Superpriority/Superparity Term Liens with respect to the Additional Fixed Asset Collateral securing each of the Prepetition Superpriority Debt, the Prepetition Superpriority Obligations and the Prepetition Superparity Debt is set forth in section 2.4 of the Prepetition Specified Collateral Trust Agreement;

(f) as of the Commencement Date, pursuant to and in connection with the Prepetition Term Credit Documents, the Prepetition Borrower or the Prepetition Issuer, as

applicable, and the Prepetition 1L/2L Guarantors granted to the Prepetition Collateral Trustee, for the benefit of itself and the Prepetition Superpriority Secured Parties, the Prepetition Term Loan Secured Parties, the Prepetition Superparity Secured Parties and the Prepetition Parity Secured Parties, a security interest in and continuing lien on (the "**Prepetition 1L/2L Term Liens**," and together with the Prepetition Superpriority/Superparity Term Liens, the "**Prepetition Term Liens**,"[14] the Prepetition Term Liens, together with the Prepetition ABL Liens, the "**Prepetition Liens**") substantially all of their assets and property, including, (i) a valid, binding, properly perfected, enforceable, first priority security interest in and continuing lien on the Shared Fixed Asset Collateral (as defined in that certain Prepetition Non-Specified Intercreditor Agreement referred to below) and (ii) a valid, binding, properly perfected, enforceable, second priority security interest in and continuing lien on the Shared ABL Collateral (as defined in that certain Prepetition Non-Specified Intercreditor Agreement referred to below), which are not subject to avoidance, recharacterization, subordination (whether equitable, contractual, or otherwise), recovery, attack, disgorgement, effect, rejection, reduction, disallowance, impairment, effect, counterclaim, offset, crossclaim, defense, or Claim under the Bankruptcy Code or applicable non-bankruptcy law subject and subordinate only to the liens of Prepetition ABL Agent on the Prepetition ABL Priority Collateral and certain other liens permitted by the Prepetition Superpriority Credit Documents, the Prepetition Term Loan Credit Documents, the Prepetition

[14] "**Prepetition Superpriority Liens**" means the Prepetition Superpriority/Superparity Term Liens and the Prepetition 1L/2L Liens securing the Prepetition Superpriority Debt and the Prepetition Superpriority Obligations.

"**Prepetition Term Loan Liens**" means the Prepetition 1L/2L Liens securing the Prepetition Term Loan Debt.

"**Prepetition Superparity Liens**" means the Prepetition Superpriority/Superparity Term Liens and the Prepetition 1L/2L Liens securing the Prepetition Superparity Debt.

"**Prepetition Parity Liens**" means the Prepetition 1L/2L Term Liens securing the Prepetition Parity Debt.

Superparity Credit Documents and the Prepetition Parity Credit Documents solely to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable and *pari passu* or senior in priority to the Prepetition 1L/2L Term Liens (the "**Prepetition 1L/2L Term Permitted Prior Liens**" and, together with the Prepetition Superpriority/Superparity Term Permitted Prior Liens, the "**Prepetition Term Permitted Prior Liens**"; the Prepetition Term Permitted Prior Liens, together with the Prepetition ABL Permitted Prior Liens, the "**Prepetition Permitted Prior Liens**"); *provided*, that, the priority of Prepetition 1L/2L Term Liens with respect to the Shared Fixed Asset Collateral and Shared ABL Collateral securing each of the Prepetition Term Debt is set forth in section 2.6 of the Prepetition Non-Specified Collateral Trust Agreement.

(g) as of the Commencement Date, except for the Prepetition Permitted Prior Liens and the Permitted Liens, there were no liens on or security interests in the Prepetition Collateral other than the Prepetition Liens. Nothing herein shall constitute a finding or ruling by this Court that any alleged Prepetition Permitted Prior Lien or Permitted Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing herein shall prejudice the rights of any party-in-interest, including, but not limited to the Debtors, the DIP Agents, the DIP Term Lenders, the DIP FILO Lender, the Prepetition Secured Parties, or the Creditors' Committee, to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Prepetition Permitted Prior Lien or Permitted Lien. The right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Prepetition Permitted Prior Lien or Permitted Lien and is expressly subject to the Prepetition Liens, DIP Term Liens (as defined below), and DIP FILO Liens (as defined below);

(h) none of the Prepetition Secured Parties control the Debtors or their properties or operations, have authority to determine the manner in which any Debtor's operations

are conducted or are control persons or insiders of the Debtors by virtue of any of the actions taken with respect to, in connection with, related to or arising from the Prepetition Credit Documents;

(i) no claims, counterclaims, offsets, objections, defenses, challenges or causes of action exist against, or with respect to, the Prepetition Secured Parties or any of their respective affiliates, agents, subsidiaries, partners, controlling persons, attorneys, advisors, professionals, officers, directors and employees, whether arising under applicable state or federal law (including, without limitation, any recharacterization, or other equitable relief that might otherwise impair the aforementioned parties or their interest in the Prepetition Collateral, subordination, avoidance or other claims, including any claims or causes of action arising under or pursuant to sections 105, 502(d), 510, 542 through 553(b) or 724(a) of the Bankruptcy Code), in connection with or arising under any Prepetition Credit Documents or the transactions contemplated thereunder or the Prepetition Debt or Prepetition Liens, including without limitation, any right to assert any disgorgement or recovery; and the Debtors and their estates hereby release and discharge any and all such claims, counterclaims, objections, defenses, set-off rights, challenges and causes of actions;

(j) the Debtors hereby absolutely, irrevocably, and unconditionally release and forever discharge and acquit the DIP Secured Parties, the Prepetition Superpriority Secured Parties, the Prepetition ABL Secured Parties, and their respective Representatives (as defined below), in each case, solely in their capacities as such (collectively, the "**Released Parties**"), from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all claims, controversies, disputes, obligations, counterclaims, offsets, demands, debts, damages, expenses (including, without limitation, reasonable attorneys' and financial advisors' fees and expenses), liens, accounts, contracts, liabilities, actions, and causes of action arising prior to the Commencement Date (collectively, the "**Released Claims**") of any kind, nature or description,

whether known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, or liquidated or unliquidated, arising in law or equity or upon contract or tort or under any state or federal law or otherwise, arising out of or related to (as applicable) the DIP Facility, the DIP Documents, the Prepetition Superpriority Credit Documents, the Prepetition ABL Credit Documents, the obligations owing and the financial obligations made thereunder, the negotiation thereof and the transactions reflected thereby, and the obligations and financial obligations made thereunder, in each case that the Debtors at any time had, now have or may have, or that their successors or assigns hereafter can or may have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of this Final Order, whether such Released Claims are matured, contingent, liquidated, unliquidated, unmatured, known, unknown or otherwise; *provided*, that, for the avoidance of doubt, the foregoing release shall not constitute a release of any rights of the Debtors arising under the DIP Documents;

(k) that certain Second Amended and Restated Intercreditor Agreement, dated as of June 29, 2018 (as amended, supplemented, restated or otherwise modified and as in effect on the Commencement Date, the "**Prepetition Non-Specified Intercreditor Agreement**") among Goldman Sachs Bank USA, as ABL agent, and U.S. Bank National Association, as term debt trustee, that certain Intercreditor and Collateral Access Agreement, dated as of June 29, 2018 (as amended, supplemented, restated or otherwise modified and as in effect on the Commencement Date, the "**Prepetition Specified Intercreditor Agreement**" and together with the Prepetition Non-Specified Intercreditor Agreement, the "**Prepetition Intercreditor Agreements**") among Goldman Sachs Bank USA, as ABL agent, and U.S. Bank National Association, as term debt trustee, that certain Second Amended and Restated Collateral Trust Agreement, dated as of

June 29, 2018 (as amended, supplemented, restated or otherwise modified and as in effect on the Commencement Date, the "**Prepetition Non-Specified Collateral Trust Agreement**") among Murray Energy Corporation, as borrower, the grantors from time to time party thereto, GLAS Trust Company LLC, as superpriority lien administrative agent, each additional superpriority lien representative, Black Diamond Commercial Finance, L.L.C., as successor priority lien administrative agent, each additional priority lien representative, The Bank of New York Mellon Trust Company, N.A., as 12.00% superparity trustee, The Bank of New York Mellon Trust Company, N.A., as 9.50% superparity trustee, each additional superparity lien representative, The Bank of New York Mellon Trust Company, N.A., as 11.25% parity trustee, each additional parity lien representative, each midparity lien representative, J. Aron & Company, as an existing designated coal contract counterparty, Javelin Global Commodities (UK) Ltd., as an existing designated coal contract counterparty, Uniper Global Commodities UK Limited, as an existing designated coal contract counterparty and U.S. Bank National Association, as collateral trustee (solely in such capacity, the "**Prepetition Non-Specified Collateral Trustee**") and that certain Specified Collateral Trust Agreement, dated as of June 29, 2018 (as amended, supplemented, restated or otherwise modified and as in effect on the Commencement Date, the "**Prepetition Specified Collateral Trust Agreement**", together with the Prepetition Non-Specified Collateral Trust Agreement, the "**Prepetition Collateral Trust Agreements**") among Murray Energy Corporation, as borrower, the grantors from time to time party thereto, GLAS Trust Company LLC, as superpriority lien administrative agent, each additional superpriority lien representative, The Bank of New York Mellon Trust Company, N.A., as superparity trustee, each additional superparity lien representative, each midparity lien representative, J. Aron & Company, as an existing designated coal contract counterparty, Javelin Global Commodities (UK) Ltd., as an

existing designated coal contract counterparty, Uniper Global Commodities UK Limited, as an existing designated coal contract counterparty and U.S. Bank National Association, as collateral trustee (solely in such capacity, the "**Prepetition Specified Collateral Trustee**" and in its capacities as the Prepetition Specified Collateral Trustee and the Prepetition Non-Specified Collateral Trustee, the "**Prepetition Collateral Trustee**"), all of which govern, among other things, the relative priorities of the Prepetition Liens in respect of the applicable Prepetition Collateral, are binding and enforceable against the Prepetition Borrower, the Prepetition Superpriority/Superparity Guarantors and the Prepetition Secured Parties in accordance with their terms, and the Prepetition Borrower, the Prepetition Superpriority/Superparity Guarantors and the Prepetition Secured Parties are not entitled to take any action that would be contrary to the provisions thereof; and

(l) all cash, securities or other property of the Credit Parties (and the proceeds therefrom) as of the Commencement Date, including, without limitation, all cash, securities or other property (and the proceeds therefrom) and other amounts on deposit or maintained by the Credit Parties in any account or accounts (collectively, the "**Depository Institutions**") were subject to any applicable rights of set-off under the Prepetition Credit Documents and applicable law, for the benefit of the Prepetition Secured Parties. All proceeds of the Prepetition Collateral (including cash on deposit at the Depository Institutions as of the Commencement Date, securities or other property, whether subject to control agreements or otherwise, in each case that constitutes Prepetition Collateral) are "cash collateral" of the Prepetition Secured Parties within the meaning of section 363(a) of the Bankruptcy Code (the "**Cash Collateral**").

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

(a) Good and sufficient cause has been shown for the entry of this Final Order and for authorization of the Credit Parties to obtain financing pursuant to the DIP Facility.

(b) The Credit Parties have a need to obtain the DIP Financing and to continue to use the Prepetition Collateral (including Cash Collateral) in order to, among other things, avoid the liquidation of these estates, and: (i) permit the orderly continuation of the operation of their businesses, including maintaining, amending, renewing, or modifying insurance policies and surety bonds in the ordinary course of business, (ii) maintain business relationships with customers, vendors and suppliers, including purchasing necessary materials and services to maintain compliance with all applicable regulatory and safety requirements, (iii) make payroll, (iv) satisfy other working capital, capital improvement and operational needs, (v) pay professional fees, expenses, and obligations benefitting from the Carve-Out, and (vi) pay costs, fees, and expenses associated with or payable under the DIP Financing under the terms of the Interim Order, this Final Order, and the DIP Documents. The Credit Parties' use of Cash Collateral alone would be insufficient to meet the Debtors' cash disbursement needs during the pendency of the Chapter 11 Cases. The access by the Credit Parties to sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition Collateral, incurrence of new indebtedness under the DIP Documents and other financial accommodations provided under the DIP Documents are necessary and vital to avoid an immediate liquidation and for the preservation and maintenance of the going concern values of the Credit Parties and to a successful restructuring of the Credit Parties. The terms of the proposed DIP Financing pursuant to the DIP Documents and this Final Order are fair and reasonable, reflect each Credit Party's exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration.

(c) The Credit Parties are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Credit Parties are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the Credit Parties granting to the DIP Secured Parties, subject to the Carve-Out, the DIP Liens and the DIP Superpriority Claims (as defined below) and, subject to the Carve-Out, incurring the Adequate Protection Obligations (as defined below), in each case, under the terms and conditions set forth in this Final Order and in the DIP Documents.

(d) Based on the Motion, the Declarations filed in support of the Motion, and the record presented to the Court at the Hearings, (i) the terms of the DIP Financing (including the refinancing of the Prepetition ABL Revolving Debt, the full roll-up of the Prepetition FILO Debt, and the maintenance of the Outstanding LCs), (ii) the terms of the adequate protection granted to the Prepetition Secured Parties as provided in paragraph 21 of this Final Order (the "**Adequate Protection**") and (iii) the terms on which the Credit Parties may continue to use the Prepetition Collateral (including Cash Collateral), in each case pursuant to this Final Order and the DIP Documents, are in each case fair and reasonable, reflect the Credit Parties' exercise of prudent business judgment consistent with their fiduciary duties, constitute reasonably equivalent value and fair consideration, and represent the best financing available. The Adequate Protection provided in this Final Order and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code.

(e) To the extent such consent is required, the Prepetition Secured Parties have consented or are deemed under the Prepetition Intercreditor Agreements and the Prepetition

Collateral Trust Agreements to have consented to the Credit Parties' use of Cash Collateral and the other Prepetition Collateral, and the Credit Parties' entry into the DIP Documents, in accordance with and subject to the terms and conditions in this Final Order and the DIP Documents.

(f) The DIP Financing, the Adequate Protection and the use of the Prepetition Collateral (including Cash Collateral) have been negotiated in good faith and at arm's length among the Credit Parties, the DIP Secured Parties, and their respective advisors, and all of the Credit Parties' obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing and the DIP Documents, including, without limitation, all loans made to and guarantees issued by the Credit Parties pursuant to the DIP Documents and any DIP Obligations shall be deemed to have been extended by the DIP Agents and the DIP Lenders and their respective affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim Order or any provisions thereof, or this Final Order or any provisions hereof, are vacated, reversed or modified, on appeal or otherwise.

(g) The Prepetition Secured Parties have acted in good faith regarding the DIP Financing and the Credit Parties' continued use of the Prepetition Collateral (including Cash Collateral) to fund the administration of the Credit Parties' estates and continued operation of their businesses (including the incurrence and payment of the Adequate Protection Obligations and the granting of the Adequate Protection Liens (as defined herein)), in accordance with the terms hereof, and the Prepetition Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of section 363(m) of the Bankruptcy Code in the event that the Interim Order or any

provision thereof, or this Final Order or any provisions hereof, are vacated, reversed or modified, on appeal or otherwise.

(h) The Prepetition Secured Parties are entitled to the Adequate Protection provided in this Final Order as and to the extent set forth herein pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code. Based on the Motion, the Declarations filed in support of the Motion, and the record presented to the Court at the Hearings, the terms of the proposed Adequate Protection arrangements and of the use of the Prepetition Collateral (including Cash Collateral) are fair and reasonable, reflect the Credit Parties' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the use of the Prepetition Collateral (including Cash Collateral); *provided* that nothing in this Final Order or the DIP Documents shall (x) be construed as the affirmative consent by any of the Prepetition Secured Parties for the use of Cash Collateral other than on the terms set forth in this Final Order and the Approved Cash Flow Forecast (subject to permitted variances) and in the context of the DIP Financing authorized by this Final Order, (y) be construed as a consent by any Prepetition Secured Party to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior or junior) or (z) prejudice, limit or otherwise impair the rights of any of the Prepetition Secured Parties, subject to any applicable provisions of the Prepetition Intercreditor Agreements and the Prepetition Collateral Trust Agreements, to seek modification of the grant of the Adequate Protection provided hereby so as to provide new, different or additional adequate protection or assert the interests of any of the Prepetition Secured Parties, and without prejudice to the right of the Debtors and any other party in interest's rights to contest such modification.

(i) None of the DIP Secured Parties control the Debtors or their properties or operations, have authority to determine the manner in which any Debtor's operations are

conducted or are control persons or insiders of the Debtors by virtue of any of the actions taken with respect to, in connection with, related to or arising from this Final Order or the DIP Documents.

(j) The Debtors have prepared and delivered to the DIP Agents and the DIP Secured Parties a 13-week cash flow forecast (the "**Initial Cash Flow Forecast**"), a copy of which is attached hereto as **Exhibit 1**. The Initial Cash Flow Forecast reflects the Debtors' anticipated cash receipts and anticipated disbursements for the calendar week during which the Commencement Date occurs and through and including the end of the twelfth (12th) calendar week following such week. The Initial Cash Flow Forecast may be modified, amended and updated from time to time in accordance with the DIP Credit Agreement, and once approved by, in form and substance reasonably satisfactory to the DIP Term Requisite Lenders,[15] shall supplement and replace the Initial Cash Flow Forecast (together with each subsequent approved 13-week cash flow forecast, shall constitute without duplication, an "**Approved Cash Flow Forecast**"). The Debtors believe that the Initial Cash Flow Forecast is reasonable under the facts and circumstances known to them, taken as a whole, as of the Commencement Date. The DIP Agents and the DIP Secured Parties are relying, in part, upon the Debtors' agreement to comply with the Approved Cash Flow Forecast, the other DIP Documents, and this Final Order in determining to enter into the postpetition financing arrangements provided for in this Final Order.

(k) The refinancing of the Prepetition ABL Revolving Debt, the full roll-up of the Prepetition FILO Debt, and the maintenance of the Outstanding LCs reflect the Debtors' good faith exercise of prudent business judgment consistent with their fiduciary duties. The entry into the Payoff Letter and funding and maintenance of the LC Cash Collateral in accordance therewith

[15] "**DIP Term Requisite Lenders**" means "Requisite Term Lenders" as defined in the DIP Credit Agreement.

reflect the Debtors' good faith exercise of prudent business judgment consistent with their fiduciary duties.

(l) For the reasons set forth in the Motion, the Declarations filed in support of the Motion, and the record presented to the Court at the Hearings, consummation of the DIP Financing and the use of Prepetition Collateral (including Cash Collateral), in accordance with this Final Order and the DIP Documents are therefore in the best interests of the Credit Parties, their estates and their creditors.

(m) The Motion and this Final Order comply with the requirements of Local Bankruptcy Rule 4001-2.

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

(a) Subject to the terms and conditions of this Final Order, the Credit Parties are hereby authorized to execute, enter into and perform all obligations under the DIP Documents. The DIP Documents and this Final Order shall govern the financial and credit accommodations to be provided to the Debtors by the DIP Lenders and Designated Coal Contract Counterparties in connection with the DIP Financing. The Borrower is hereby authorized to forthwith borrow money pursuant to the DIP Credit Agreement, and the Guarantors are hereby authorized to guarantee the Credit Parties' DIP Obligations with respect to such borrowings and Secured Designated Coal Contract Obligations (as defined in the DIP Credit Agreement), in each case up to an aggregate principal amount equal to $350 million DIP Term Loans, inclusive of amounts authorized by the Interim Order, and in each case together with applicable interest, protective advances, expenses, fees and other charges payable in connection the DIP Facility, subject to any limitations on borrowing or incurrence under the DIP Documents, which shall be used for all purposes permitted under the DIP Documents and this Final Order, including, without limitation, (1) to provide

working capital and capital improvements, to fund vendor payments and to pay for other general corporate purposes for the Borrower and certain of its Subsidiaries (as defined in the DIP Credit Agreement), (2) to pay interest, fees and expenses and make adequate protection and other payments in accordance with this Final Order and the DIP Documents, (3) to refinance the Prepetition ABL Revolving Debt, and (4) to fund and maintain LC Cash Collateral in accordance with the Payoff Letter. Notwithstanding anything to the contrary herein, the DIP Term Loans, and all cash proceeds thereof, shall at no time constitute DIP FILO Priority Collateral or Prepetition ABL Priority Collateral and shall at all times constitute DIP Term Priority Collateral, whether or not such DIP Term Loans or the cash proceeds thereof are located in or transferred to an account that constitutes DIP FILO Priority Collateral, and whether or not such DIP Term Loans or the cash proceeds thereof are commingled with any other cash or assets of the Debtors that constitute DIP FILO Priority Collateral.

(b) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized and directed to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of pledge and security agreements, mortgages, deeds of trust and financing statements), and to pay all fees that may be reasonably required or necessary for the Credit Parties to implement the terms of, performance of their obligations under or effectuate the purposes of and transactions contemplated by this Final Order or the DIP Financing, including, without limitation:

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

(ii) the execution and delivery of, and performance under, one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each

case, in such form as the Credit Parties and the DIP Administrative Agent, acting at the direction of the DIP Requisite Lenders,[16] DIP FILO Requisite Lenders[17] or DIP Term Requisite Lenders, as applicable pursuant to the terms of the DIP Documents, may agree, it being understood that no further approval of the Court shall be required for authorizations, amendments, waivers, consents or other modifications to and under the DIP Documents (and any fees and other expenses (including any attorneys', accountants', appraisers' and financial advisors' fees), amounts, charges, costs, indemnities and other obligations paid in connection therewith) that do not shorten the maturity of the extensions of credit thereunder or increase the aggregate commitments or the rate of interest payable thereunder; *provided*, for the avoidance of doubt, updates and supplements to the Approved Cash Flow Forecast required to be delivered by the Credit Parties under the DIP Documents shall not be considered amendments or modifications to the Approved Cash Flow Forecast or the DIP Documents; *provided, further*, that a copy (which may be provided through electronic mail or facsimile) of the substantial final form of the amendment, modification, or supplement shall be provided to counsel to the Creditors' Committee two (2) calendar days prior to its execution or as soon as reasonably practicable if two (2) calendar days' advance notice is impracticable; *provided, further*, that if the Creditors' Committee objects to such amendment, modification, or supplement, the Creditors' Committee may seek a hearing on expedited notice in respect of any such objection and, if such a hearing is sought, such amendment, modification, or supplement shall not be effective absent further order of the Court;

(iii) the non-refundable and, upon entry of the Interim Order, irrevocable payment to the DIP Agents and/or the DIP Lenders, as the case may be, of all fees, whether paid

[16] "**DIP Requisite Lenders**" means "Requisite Lenders" as defined in the DIP Credit Agreement.

[17] "**DIP FILO Requisite Lenders**" means "Requisite Roll-Up Lenders" as defined in the DIP Credit Agreement.

pursuant to the Interim Order or this Final Order, including, without limitation, any closing date fee, upfront fee, exit fee, prepayment fee or agency fee (which fees, in each case, were, and were deemed to have been, approved upon entry of the Interim Order, and which fees shall not be subject to any challenge, contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise) and any amounts due (or that may become due) in respect of the indemnification obligations, in each case referred to in the DIP Credit Agreement (and in any separate letter agreements between any or all Credit Parties, on the one hand, and any of the DIP Agents and/or DIP Lenders, on the other, in connection with the DIP Financing) and the costs and expenses as may be due from time to time, including, without limitation, fees and expenses of the following professionals retained by the DIP Agents and/or DIP Lenders, whether incurred before or after the Commencement Date: (i) Wilmer Cutler Pickering Hale and Dorr LLP, counsel to the DIP Agents, (ii) one local bankruptcy counsel to the DIP Agents in the Southern District of Ohio, and, solely to the extent necessary to enforce rights and remedies under the DIP Documents, one counsel to the DIP Agents in each local jurisdiction, in each case which counsel may be the same as counsel representing the Ad Hoc Group of Superpriority Lenders (as defined below) in such capacity, (iii) Davis Polk & Wardwell LLP, counsel to the ad hoc group of certain Prepetition Superpriority Lenders and DIP Term Lenders (the "**Ad Hoc Group of Superpriority Lenders**"), (iv) Frost Brown Todd LLC, as local counsel for the Ad Hoc Group of Superpriority Lenders; (v) Houlihan Lokey Capital, Inc., financial advisor to the Ad Hoc Group of Superpriority Lenders; (vi) Drinker Biddle & Reath LLP, as special labor counsel for the Ad Hoc Group of Superpriority Lenders; (vii) any other advisors retained by the Ad Hoc Group of Superpriority Lenders; (viii) Sidley Austin LLP, counsel to the

Prepetition FILO Lender and DIP FILO Lender, (ix) local bankruptcy counsel to the Prepetition FILO Lender and DIP FILO Lender in the Southern District of Ohio, and (x) one financial advisor to the Prepetition FILO Lender and DIP FILO Lender, and (x) in each case of the foregoing (i)-(x), solely to the extent provided for in the DIP Documents (the "**DIP Fees and Expenses**"), without the need to file retention motions or fee applications or to provide notice to any party, but subject to the provisions of paragraph 29 hereof; and

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

(c) Upon execution and delivery of the DIP Documents, each of the DIP Documents shall constitute valid, binding, enforceable, and non-avoidable obligations of the Credit Parties, fully enforceable against each Credit Party in accordance with the terms of the DIP Documents and this Final Order. No obligation, payment, transfer or grant of security under the DIP Documents or this Final Order to the DIP Agents (including their Representatives) and/or the DIP Lenders and other DIP Secured Parties (including their Representatives) shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, 548 or 549 of the Bankruptcy Code, any applicable Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or other similar state statute or common law), or subject to any defense, reduction, recoupment, recharacterization, subordination, disallowance, impairment, cross-claim, claim, counterclaim, or offset.

(d) No DIP Lender, Designated Coal Contract Counterparty, DIP Administrative Agent or the DIP Collateral Agent shall have any obligation or responsibility to monitor any Credit Party's use of the DIP Financing, and each DIP Lender, each Designated Coal

Contract Counterparty, or each DIP Agent may rely upon each Credit Party's representations that the amount of DIP Financing requested at any time and the use thereof are in accordance with the requirements of this Final Order and the DIP Documents.

(e) Subject to the terms and conditions of this Final Order, the DIP Agents are hereby authorized and directed to execute, enter into and perform all rights and obligations under the DIP Documents.

10. *Authorization of the Payoff Letter.*

(a) Subject to the terms and conditions of this Final Order, the Credit Parties are hereby authorized to execute, enter into and perform all obligations under the Payoff Letter. The Payoff Letter and this Final Order shall govern the financial and credit accommodations to be provided to the Debtors by the Outstanding LC Issuer in connection with the Outstanding LCs. In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized to perform all acts, to make, execute and deliver all instruments and documents and to pay all fees that may be reasonably required or necessary for the Credit Parties to implement the terms of, perform their obligations under, or effectuate the purposes of and transactions contemplated by this Final Order and the Payoff Letter, and the rights of the Outstanding LC Issuer under the Payoff Letter, the Prepetition ABL Credit Documents, and this Final Order are fully preserved.

(b) Subject to the rights set forth in paragraph 31 below, the Payoff Letter constitutes a valid, enforceable, and non-avoidable obligation of the Credit Parties, fully enforceable against each Credit Party in accordance with the terms of the Payoff Letter and this Final Order. Except as provided in footnote 6 hereof, no obligation, payment, transfer or grant of security under the Payoff Letter or this Final Order to the Prepetition ABL Agent (on behalf of the Outstanding LC Issuer) or the Outstanding LC Issuer (including their Representatives) shall be

stayed, restrained, voidable or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, 548 or 549 of the Bankruptcy Code, any applicable Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or other similar state statute or common law), or subject to any defense, reduction, recoupment, recharacterization, subordination, disallowance, impairment, cross-claim, claim, counterclaim, or offset.

(c) All of the outstanding obligations with respect to the Prepetition ABL Revolving Debt were refinanced by proceeds of the DIP Term Loans.

(d) The Debtors made a payment to the Prepetition ABL Agent, for the benefit of the Outstanding LC Issuer, to increase the amount of LC Cash Collateral to equal 103% of the face amount of Outstanding LCs, which amount of funding the Debtors shall maintain at all times and replenish if amounts are paid or applied from LC Cash Collateral in accordance with the terms of the Final Order and the Payoff Letter.

11. *Roll-Up of Prepetition FILO Debt into DIP FILO Obligations; Maintenance of Outstanding LCs*. Upon entry of the Interim Order and the occurrence of the Closing Date, without any further action by the Debtors or any other party, all Prepetition Letters of Credit continued in place and all obligations under or in connection with such Prepetition Letters of Credit were deemed Outstanding LCs. Upon entry of the Interim Order and the occurrence of the Closing Date, without any further action by the Debtors or any other party, all outstanding Prepetition FILO Debt was converted into DIP FILO Loans. The conversion (or "roll-up") was authorized as compensation for, in consideration for, and solely on account of, the agreement of the Prepetition FILO Lender to remove or otherwise waive certain reporting obligations and covenants otherwise required by the Prepetition FILO Debt and the agreement of the Prepetition LC Issuer to provide other consideration during these Chapter 11 Cases and not as payments under, adequate protection

for, or otherwise on account of, any Prepetition FILO Debt or Prepetition Letters of Credit. Notwithstanding any other provisions of the Interim Order, this Final Order or the DIP Documents, all rights of the Prepetition ABL Secured Parties shall be fully preserved. The Prepetition ABL Secured Parties would not otherwise consent to the use of their Cash Collateral or the subordination of their liens to any DIP Liens, and the DIP Agents and the DIP Lenders would not be willing to provide the DIP Facility or extend credit to the Debtors thereunder without the inclusion of the DIP FILO Obligations and the Outstanding LCs. Moreover, the roll-up of all outstanding Prepetition FILO Debt into DIP FILO Loans and all Prepetition Letters of Credit into Outstanding LCs has enabled the Debtors to obtain urgent financing that is needed to administer these Chapter 11 Cases and fund their operations. Because the DIP FILO Obligations are subject to the reservation of rights set forth in paragraph 31 below, they will not prejudice the right of any other party in interest.

12. *Carve-Out*.

(a) Notwithstanding anything to the contrary herein, the Debtors' obligations to the DIP Secured Parties and the liens, security interests and superpriority claims granted herein and/or under the DIP Documents, including the DIP Liens, DIP Priming Liens, the DIP Superpriority Claims, the Superpriority Adequate Protection Liens, and the Superpriority 507(b) Claims, shall be subject in all respects and subordinate to the Carve-Out; *provided, however*, that solely in the case of the Liens and Claims on the DIP FILO Priority Collateral and the Prepetition ABL Priority Collateral, the amount of the Carve-Out shall be capped at the amount of the Term Loan ABL Collateral Cap.

(b) Carve-Out. As used in this Final Order, the "**Carve-Out**" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States

Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to $50,000.00 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (including any restructuring, sale, financing, or other success fee of any investment bankers or financial advisors of the Debtors or the Creditors' Committee, in each case solely to the extent such fee is earned pursuant to the terms of the applicable agreement giving rise to such fee, prior to delivery of a Carve-Out Trigger Notice) (the "**Allowed Professional Fees**") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "**Debtor Professionals**") and the Creditors' Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the "**Committee Professionals**" and, together with the Debtor Professionals, the "**Professional Persons**") at any time before or on the first business day following delivery by the DIP Administrative Agent of a Carve-Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed $7,500,000.00 incurred after the first business day following delivery by the DIP Administrative Agent of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "**Post-Carve-Out Trigger Notice Cap**"); *provided, however*, that solely with respect to the DIP FILO Priority Collateral and the Prepetition ABL Priority Collateral (other than the LC Cash Collateral), the "Carve-Out" shall mean the sum of (i) through (iv) up to the amount of the Term Loan ABL Collateral Cap. For purposes of the foregoing, "**Carve-Out Trigger Notice**" shall mean a written notice delivered by email (or other

electronic means) by the DIP Administrative Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Creditors' Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the DIP Obligations under the DIP Facilities, stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

(c) Carve-Out Reserves. The Debtors shall establish and fund a segregated account (the "**Funded Reserve Account**") for purposes of funding the Carve-Out. The Funded Reserve Account will be funded first from the DIP Term Funding Account,[18] then from the DIP FILO Priority Collateral (up to the Term Loan ABL Collateral Cap) and the DIP Term Priority Collateral; *provided* that any funding of the Funded Reserve Account from DIP FILO Priority Collateral shall reduce, on a dollar-for-dollar basis, the amount of DIP Term Superpriority Claims secured by the DIP Term Priming Lien (as defined below). Notwithstanding anything to the contrary in this Final Order, the DIP Documents, or the Prepetition Credit Documents, (i) in no circumstances (which, for the avoidance of doubt, includes but is not limited to an Event of Default or a termination of the DIP Credit Agreement or DIP Documents) shall the Debtors be prohibited in any way from accessing or drawing upon the DIP Term Funding Account for the purpose of funding the Funded Reserve Account, and (ii) the DIP Term Funding Account shall not be DIP FILO/LC Priority Collateral (as defined below) or Prepetition ABL Priority Collateral. Upon entry of the Interim Order, the Debtors deposited in the Funded Reserve Account an amount equal to the aggregate amount of Allowed Professional Fees projected to accrue from the Commencement Date through November 30, 2019 (the "**Initial Funded Reserve Amount**"). Commencing

[18] "**DIP Term Funding Account**" means the segregated account in which the proceeds of the DIP Term Loans are funded.

December 1, 2019 (or the first business day thereafter), on the first business day of each month, the Debtors shall deposit in the Funded Reserve Account an amount equal to the aggregate amount of Allowed Professional Fees projected to accrue for the following month in the Approved Cash Flow Forecast *plus* twenty percent of such aggregate amount of Allowed Professional Fees projected to accrue in the following month in the Approved Cash Flow Forecast (the "**Monthly Funded Reserve Amount**"). Each Professional Person may deliver to the Debtors a good-faith estimate of the cumulative total amount of unreimbursed fees and expenses incurred in preceding month (each such statement, a "**Fee Statement**"), and to the extent the amount of Allowed Professional Fees accrued and claimed in a Fee Statement exceeds the Initial Funded Reserve Amount or the Monthly Funded Reserve Amount for the applicable period or month, respectively, and such fees and expenses have otherwise not been paid by the Debtors, the Debtors shall, within one business day, fund additional amounts into the Funded Reserve Account equal to the difference between, as applicable, the Initial Funded Reserve Amount or the Monthly Funded Reserve Amount and the amount accrued and claimed in the applicable Fee Statement (each, a "**Top Off Amount**"). At any time, if the Debtors in good faith believe a restructuring, sale, financing, or other success fee has been earned by a Professional Person, the Debtors shall deposit in the Funded Reserve Account an amount equal to such fee. The Funded Reserve Account shall be maintained, and the funds therein (the "**Funded Reserve Amount**") shall be held in trust for the benefit of Professional Persons. Any and all amounts in the Funded Reserve Account shall not be subject to any cash sweep and/or foreclosure provisions in the Prepetition Credit Documents or DIP Documents and neither the Prepetition Secured Parties nor the DIP Secured Parties shall be entitled to sweep or foreclose on such amounts notwithstanding any provision to the contrary in the Prepetition Credit Documents or DIP Financing Agreements.

(d) On the day on which a Carve-Out Trigger Notice is given by the DIP Administrative Agent to the Debtors with a copy to counsel to the Creditors' Committee (the "**Termination Declaration Date**"), the Carve-Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees in excess of the Funded Reserve Amount; *provided* that in the event that a Termination Declaration Date occurs, Professional Persons shall have 2 business days to deliver additional Fee Statements to the Debtors, and the Debtors shall fund into the Funded Reserve Amount any Top Off Amounts; *provided, further*, that any funding from DIP FILO Priority Collateral after the Termination Declaration Date shall be *solely* up to the Term Loan ABL Collateral Cap. The Debtors shall deposit and hold such amounts in the Funded Reserve Account in trust to pay such then unpaid Allowed Professional Fees (the "**Pre-Carve-Out Trigger Notice Reserve**") prior to any and all other claims. On the Termination Declaration Date, after funding the Pre-Carve-Out Trigger Notice Reserve, the Debtors shall utilize all remaining cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the Post-Carve-Out Trigger Notice Cap (the "**Post-Carve-Out Trigger Notice Reserve**" and, together with the Pre-Carve-Out Trigger Notice Reserve, the "**Carve-Out Reserves**") prior to any and all other claims; *provided, further*, that any funding from DIP FILO Priority Collateral after the Termination Declaration Date shall be *solely* up to the Term Loan ABL Collateral Cap. All funds in the Pre-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve-Out set forth above (the "**Pre-Carve-Out Amounts**"), but not, for the avoidance of doubt, the Post-Carve-Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve-Out Trigger Notice Reserve

has not been reduced to zero, to pay the DIP Administrative Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all DIP Commitments (as defined and used in the DIP Credit Agreement) (the "**DIP Commitments**") have been terminated, in which case any such excess shall be paid to the Prepetition Secured Parties in accordance with their rights and priorities as of the Commencement Date. All funds in the Post-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve-Out set forth above (the "**Post-Carve-Out Amounts**"), and then, to the extent the Post-Carve-Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Administrative Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all DIP Commitments have been terminated, in which case any such excess shall be paid to the Prepetition Secured Parties in accordance with their rights and priorities as of the Commencement Date. Notwithstanding anything to the contrary in the DIP Documents or this Final Order, if either of the Carve-Out Reserves is not funded in full in the amounts set forth in this paragraph 12(d), then, any excess funds in one of the Carve-Out Reserves following the payment of the Pre-Carve-Out Amounts and Post-Carve-Out Amounts, respectively, shall be used to fund the other Carve-Out Reserve, up to the applicable amount set forth in this paragraph 12(d), prior to making any payments to the DIP Administrative Agent or the Prepetition Secured Parties, as applicable. Notwithstanding anything to the contrary in the DIP Documents or this Final Order, following delivery of a Carve-Out Trigger Notice, the DIP Administrative Agent and the Prepetition Secured Parties shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve-Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve-Out Reserves, with any excess paid to the DIP Administrative Agent for application in accordance with

the DIP Documents. Further, notwithstanding anything to the contrary in this Final Order, (i) disbursements by the Debtors from the Carve-Out Reserves shall not constitute Loans (as defined in the DIP Credit Agreement) or increase or reduce the DIP Obligations, (ii) the failure of the Carve-Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve-Out, and (iii) in no way shall the Approved Cash Flow Forecast, Carve-Out, Post-Carve-Out Trigger Notice Cap, Carve-Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this Final Order, the DIP Facilities or in any Prepetition Credit Documents, the Carve-Out shall be senior to all liens and claims securing the DIP Facilities, the Adequate Protection Liens, and the 507(b) Claim, and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations or the Prepetition Debt; *provided, however*, that solely in the case of liens and claims on the DIP FILO Priority Collateral and the Prepetition ABL Priority Collateral, the amount of the Carve-Out shall be capped at the amount of the then-outstanding Term Loan ABL Collateral Cap.

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

(f) No Direct Obligation To Pay Allowed Professional Fees. None of the DIP Agents, DIP Lenders, Designated Coal Contract Counterparties, or the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Final Order or otherwise shall be construed to obligate the DIP Agents, the DIP Lenders, the Designated Coal Contract Counterparties, or the

Prepetition Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(g) Payment of Carve-Out On or After the Termination Declaration Date. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve-Out on a dollar-for-dollar basis.

13. *DIP Superpriority Claims.*

(a) *DIP Term Superpriority Claims*. Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Term Obligations shall constitute allowed superpriority administrative expense claims against the Credit Parties on a joint and several basis (without the need to file any proof of claim) with priority over any and all claims against each of the Credit Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code (including the Adequate Protection Obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims (the "**DIP Term Superpriority Claims**") shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which DIP Term Superpriority Claims shall be payable from and have recourse to all pre- and postpetition property of the Credit Parties and all proceeds thereof (excluding Avoidance Actions but including, without limitation, Avoidance

Proceeds) in accordance with the DIP Credit Agreement and this Final Order, subject only to (i) the Carve-Out, (ii) solely with respect to the DIP FILO Priority Collateral, except to the extent of, in the case of the DIP Term Obligations, the Term Loan ABL Collateral Cap, the claims of the DIP FILO Secured Parties arising under the DIP Credit Agreement, and (iii) solely with respect to the Prepetition ABL Priority Collateral, the claims of the Prepetition ABL Secured Parties arising under the Prepetition ABL Credit Documents. The DIP Term Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Final Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise. Subject to the Carve-Out in all respects, the DIP Term Superpriority Claims shall be senior to the Adequate Protection 507(b) Claims (as defined below).

(b) *DIP FILO Superpriority Claims*. Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP FILO Obligations shall constitute allowed superpriority administrative expense claims against the Credit Parties on a joint and several basis (without the need to file any proof of claim) with priority over any and all claims against each of the Credit Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code (including the Adequate Protection Obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims (the "**DIP FILO Superpriority Claims**," and together with the DIP Term Superpriority Claims, the "**DIP Superpriority Claims**") shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under

section 503(b) of the Bankruptcy Code, and which DIP FILO Superpriority Claims shall be payable from and have recourse to all pre- and postpetition property of the Credit Parties and all proceeds thereof (excluding Avoidance Actions but including, without limitation, Avoidance Proceeds) in accordance with the DIP Credit Agreement and this Final Order, subject only to (i) the Carve-Out solely to the extent of the Term Loan ABL Collateral Cap, (ii) solely with respect to the DIP Term Priority Collateral, the claims of the DIP Term Secured Parties arising under the DIP Credit Agreement, (iii) solely with respect to the DIP FILO Priority Collateral, the claims of the DIP Term Secured Parties solely to the extent of the Term Loan ABL Collateral Cap, and (iv) solely with respect to the Prepetition Term Priority Collateral, the claims of the Prepetition Term Secured Parties arising under the Prepetition Term Credit Documents. The DIP FILO Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim Order or any provision thereof, or this Final Order or any provision hereof, is vacated, reversed or modified, on appeal or otherwise. Subject to the Carve-Out in all respects, the DIP FILO Superpriority Claims shall be senior to the Adequate Protection 507(b) Claims (as defined below).

14. *DIP Liens.*

(a) *DIP Term Liens.* As security for the DIP Term Obligations, effective and perfected upon the date of the Interim Order and without the necessity of the execution, recordation or filing by the Credit Parties or the DIP Collateral Agent of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, any notation of certificates of title for a titled good or the possession or control by the DIP Collateral Agent of, or over, any DIP Term Collateral, the following security interests and liens (all such liens and security interests granted to the DIP Collateral Agent, for its benefit and for the benefit

of the DIP Term Lenders and Designated Coal Contract Counterparties, pursuant to this Final Order and the DIP Documents, the "**DIP Term Liens**") are hereby granted to the DIP Collateral Agent for its own benefit and the benefit of the DIP Term Lenders and the Designated Coal Contract Counterparties (all property identified in clauses (i)-(iii) below being collectively referred to as the "**DIP Term Collateral**")[19]:

(i) Liens on Unencumbered Property. Subject and subordinate in all respects to the Carve-Out, pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all tangible and intangible pre- and postpetition property of the Credit Parties, whether existing on the Commencement Date or thereafter acquired, and the proceeds, products, rents, and profits thereof, that, on or as of the Commencement Date, is not subject to a valid, perfected and non-avoidable lien or is subject to a valid and non-avoidable lien in existence as of the Commencement Date that is perfected subsequent to the Commencement Date as permitted by section 546(b) of the Bankruptcy Code, including, without limitation, any and all unencumbered cash of the Credit Parties (whether maintained with the DIP Collateral Agent or otherwise) and any investment of such cash, inventory, accounts receivable, other rights to payment whether arising before or after the Commencement Date, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, capital stock of subsidiaries, wherever located, and the proceeds, products, rents and profits of the foregoing, whether arising under section 552(b) of the

[19] Notwithstanding anything to the contrary herein, the DIP Term Collateral shall not include any Excluded Assets (as defined in the DIP Credit Agreement).

Bankruptcy Code or otherwise, of all the foregoing (the "**Unencumbered Property**"), in each case other than the Avoidance Actions (but including, without limitation, Avoidance Proceeds), but in each case subject and subordinate in all respects to the Carve-Out;

(ii) Liens Priming Certain Prepetition Secured Parties' Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, and subject and subordinate in all respects to the Carve-Out, a valid, binding, continuing, enforceable, fully-perfected first priority priming security interest in and lien upon all pre- and postpetition property of the Credit Parties of the same nature, scope, and type as the Prepetition Term Priority Collateral (the "**DIP Term Priority Collateral**"), regardless of where located, regardless of whether or not any liens on such assets are voided, avoided, invalidated, lapsed or unperfected, which security interest and lien shall prime the Prepetition Liens (the "**DIP Term Priming Liens**"). Notwithstanding anything herein to the contrary, the DIP Term Priming Liens shall be (A) subject and junior to the Carve-Out in all respects and shall otherwise be junior only to Prepetition Permitted Prior Liens and Permitted Liens, (B) senior in all respects to the other Prepetition Liens on DIP Term Priority Collateral, (C) senior to any Adequate Protection Liens on DIP Term Priority Collateral and (D) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code. The Prepetition Liens with respect to the Prepetition Term Priority Collateral shall be primed by and made subject and subordinate to the Carve-Out and the DIP Term Priming Liens;

(iii) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, and subject and subordinate in all respects to the Carve-Out and the DIP FILO Liens, a valid, binding, continuing, enforceable, fully-perfected junior security interest in and lien upon pre- and postpetition property of the Credit Parties of the same nature, scope and type as the

Prepetition ABL Priority Collateral (other than the LC Cash Collateral (the "**LC Priority Collateral**")) (the "**DIP FILO Priority Collateral**" and, together with the LC Priority Collateral, the "**DIP FILO/LC Priority Collateral**") that, on or as of the Commencement Date, is subject to valid, perfected and non-avoidable senior Prepetition ABL Liens and Prepetition ABL Permitted Prior Liens (but senior, and not junior, to the Prepetition Term Liens secured by the Prepetition ABL Priority Collateral) or valid and non-avoidable senior liens in existence immediately prior to the Commencement Date that are perfected subsequent to the Commencement Date as permitted by section 546(b) of the Bankruptcy Code; *provided*, that the DIP Term Liens on the DIP FILO Priority Collateral securing DIP Term Loans in the amount of the Term Loan ABL Collateral Cap shall not be subject and subordinate, and shall be senior, to the DIP FILO Liens on the DIP FILO Priority Collateral *provided*, that nothing in the foregoing shall limit the rights of the DIP Term Secured Parties under the DIP Documents to the extent such liens are not permitted thereunder;

(iv) Liens Senior to Certain Other Liens. The DIP Term Liens shall not be (i) subject or subordinate to or made *pari passu* with (A) any lien or security interest that is avoided and preserved for the benefit of the Credit Parties and their estates under section 551 of the Bankruptcy Code, (B) unless otherwise provided for in the DIP Documents or in this Final Order, any liens or security interests arising after the Commencement Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit (including any regulatory body), commission, board or court for any liability of the Credit Parties, or (C) any intercompany or affiliate liens of the Credit Parties or security interests of the Credit Parties; or (ii) subordinated to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code.

(b) *DIP FILO Liens*. As security for the DIP FILO Obligations, effective and perfected upon the date of the Interim Order and without the necessity of the execution, recordation or filing by the Credit Parties or the DIP Collateral Agent of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, any notation of certificates of title for a titled good or the possession or control by the DIP Collateral Agent of, or over, any DIP Collateral of the Credit Parties, the following security interests and liens (all such liens and security interests granted to the DIP Collateral Agent, for its benefit and for the benefit of the DIP FILO Lender, pursuant to this Final Order and the DIP Documents, the "**DIP FILO Liens**," and together with the DIP Term Liens, the "**DIP Liens**") are hereby granted to the DIP Collateral Agent for its own benefit and the benefit of the DIP FILO Lender (all property identified in clauses (i)-(iii) below being collectively referred to as the "**DIP FILO Collateral**," and together with the DIP Term Collateral, the "**DIP Collateral**")[20]:

(i) Liens Priming Certain Prepetition Secured Parties' Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, and subject and subordinate in all respects to the Carve-Out and the DIP Term Liens on the DIP FILO Priority Collateral securing DIP Term Loans in both cases, up to the amount of the Term Loan ABL Collateral Cap, a valid, binding, continuing, enforceable, fully-perfected first priority priming security interest in and lien upon all pre- and postpetition property of the Credit Parties of the same nature, scope and type as the Prepetition ABL Priority Collateral, regardless of where located, regardless of whether or not any liens on such assets are voided, avoided, invalidated, lapsed or unperfected, which security interest and lien shall prime the Prepetition Liens (the "**DIP FILO Priming Liens**," and together with the DIP

[20] Notwithstanding anything to the contrary herein, the DIP FILO Collateral shall not include any Excluded Assets (as defined in the DIP Credit Agreement).

Term Priming Liens, the "**DIP Priming Liens**"). Notwithstanding anything herein to the contrary, the DIP FILO Priming Liens shall (A) be junior only to Prepetition Permitted Prior Liens and Permitted Liens, (B) be senior in all respects to the other Prepetition Liens on Prepetition ABL Priority Collateral (other than LC Cash Collateral), (C) be senior to any Adequate Protection Liens on Prepetition ABL Priority Collateral and (D) not be subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code. The Prepetition Liens with respect to the Prepetition ABL Priority Collateral (other than the LC Cash Collateral) shall be primed by and made subject and subordinate to the DIP FILO Priming Liens. The Prepetition Liens with respect to the Prepetition ABL Priority Collateral (other than the LC Cash Collateral) shall be primed by and made subject and subordinate to the DIP FILO Priming Liens; and

(ii) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, and subject and subordinate in all respects to the Carve-Out and the DIP Term Liens, a valid, binding, continuing, enforceable, fully-perfected junior security interest in and lien upon pre- and postpetition property of the Credit Parties of the same nature, scope and type as the Prepetition Term Priority Collateral that, on or as of the Commencement Date, is subject to valid, perfected and non-avoidable senior Prepetition Term Liens and Prepetition Term Permitted Prior Liens (but senior, and not junior, to the Prepetition ABL Liens secured by the Prepetition Term Priority Collateral) or valid and non-avoidable senior liens in existence immediately prior to the Commencement Date that are perfected subsequent to the Commencement Date as permitted by section 546(b) of the Bankruptcy Code; *provided*, that nothing in the foregoing shall limit the rights of the DIP FILO Secured Parties under the DIP Documents to the extent such liens are not permitted thereunder;

(iii) Liens Senior to Certain Other Liens. The DIP FILO Liens shall not be (i) subject or subordinate to or made *pari passu* with (A) any lien or security interest that is avoided and preserved for the benefit of the Credit Parties and their estates under section 551 of the Bankruptcy Code, (B) unless otherwise provided for in the DIP Documents or in this Final Order, any liens or security interests arising after the Commencement Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit (including any regulatory body), commission, board or court for any liability of the Credit Parties, or (C) any intercompany or affiliate liens of the Credit Parties or security interests of the Credit Parties; or (ii) subordinated to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code.

(c) Specified Leases. Notwithstanding anything to the contrary in the Motion, the DIP Documents, or this Final Order, for purposes of this Final Order, in no event shall the DIP Collateral include or the DIP Liens or Adequate Protection Liens granted under this Final Order attach to any lease or other real property right, to which any Debtor is a party or any of such relevant Debtor's rights or interests thereunder, if and for so long as the grant of such security interest would constitute or result in: (x) the abandonment, invalidation, unenforceability or other impairment of any right, title or interest of any Debtor therein, or (y) a breach or termination pursuant to the terms of, or a default under, any such lease or other real property right pursuant to any provision thereof, unless, in the case of each of clauses (x) and (y), the applicable provision is rendered ineffective, unenforceable, and/or invalid by applicable non-bankruptcy law or the Bankruptcy Code (such leases the "**Specified Lease**"); *provided* that, the foregoing shall not preclude any counterparty to a Specified Lease from an opportunity to be heard in this Court on notice with respect to whether applicable non-bankruptcy law or the Bankruptcy Code renders

such provision ineffective, unenforceable, and/or invalid if requested by this non-Debtor party to the Specified Lease, and the Court shall retain jurisdiction to hear and adjudicate issues related thereto; *provided, further*, that DIP Collateral shall include and the DIP Liens and Adequate Protection Liens granted under this Final Order shall attach to any proceeds of any Specified Lease.

(d) *Automatic Effectiveness of Liens*. The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby vacated and modified to effectuate all of the terms and provisions of this Final Order, including to (i) permit the Credit Parties to grant the liens and security interests to the DIP Collateral Agent, the other DIP Secured Parties and the Prepetition Secured Parties, (ii) authorize the Credit Parties to pay, and the DIP Secured Parties and Prepetition Secured Parties to retain and apply, payments made in accordance with this Final Order, to the extent, in cases (i) and (ii), contemplated by this Final Order and the other DIP Documents, and (iii) permit the Outstanding LC Issuer to exercise all rights and remedies against the LC Cash Collateral (including, for the avoidance of doubt, to apply such LC Cash Collateral to any obligations of the Debtors with respect to the Outstanding LCs or other obligations under the Payoff Letter, including professional fees and expenses of the Outstanding LC Issuer).

15. *Protection of DIP Term Lenders' and Designated Coal Contract Counterparties' Rights.*

(a) So long as there are any DIP Term Obligations outstanding or the DIP Term Secured Parties have any outstanding Commitments under the DIP Credit Agreement, the Prepetition Secured Parties (other than the Prepetition ABL Secured Parties with respect to Prepetition ABL Priority Collateral) shall: (i) have no right to and shall take no action to foreclose upon, or recover in connection with, the liens granted thereto pursuant to the Prepetition Credit Documents or this Final Order, or otherwise seek to exercise or enforce any rights or remedies

against such DIP Term Collateral, including in connection with the Prepetition Liens or the Adequate Protection Liens; (ii) be deemed to have consented to any transfer, disposition or sale of, or release of liens on, such DIP Term Collateral (but not any proceeds of such transfer, disposition or sale to the extent remaining after payment in cash in full of the DIP Term Obligations and termination of the DIP Commitments), to the extent such transfer, disposition, sale or release is authorized under the DIP Documents; (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in such DIP Term Collateral unless, solely as to this clause (iii), the DIP Collateral Agent or the DIP Term Lenders file financing statements or other documents to perfect the liens granted pursuant to this Final Order, or as may be required by applicable state law to continue the perfection of valid and non-avoidable liens or security interests as of the Commencement Date and (iv) at the request of the DIP Collateral Agent, deliver or cause to be delivered, at the Credit Parties' cost and expense, any termination statements, releases and/or assignments in favor of the DIP Collateral Agent or the DIP Term Lenders or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of liens on any portion of such DIP Collateral subject to any sale or disposition permitted by the DIP Documents and this Final Order.

(b) Except with respect to Prepetition ABL Secured Parties solely with respect to the Prepetition ABL Priority Collateral prior to the Prepetition ABL Debt being Paid in Full,[21] and so long as any Outstanding LCs are outstanding, the Outstanding LC Issuer with respect to the

[21] For purposes of this Final Order, the terms "Paid in Full," and "Payment in Full" shall mean, with respect to any referenced DIP Obligations and/or Prepetition Debt, (i) the indefeasible payment in full in cash (or other agreed consideration) of such obligations, and (ii) the termination of all commitments under the DIP Documents and/or the Prepetition Superpriority Credit Agreement, the Prepetition Term Loan Credit Agreement or the Prepetition ABL Credit Agreement, as applicable.

LC Cash Collateral, to the extent any Prepetition Secured Party has possession of any Prepetition Collateral or DIP Term Collateral or has control with respect to any Prepetition Collateral or DIP Term Collateral, or has been noted as a secured party on any certificate of title for a titled good constituting Prepetition Collateral or DIP Term Collateral, then such Prepetition Secured Party shall be deemed to maintain such possession or notation or exercise such control as a gratuitous bailee and/or gratuitous agent for perfection for the benefit of the DIP Collateral Agent, the DIP Term Lenders and the Designated Coal Contract Counterparties, and, it shall comply with the instructions of the DIP Collateral Agent with respect to the exercise of such control. The Prepetition ABL Agent, the Prepetition Superpriority Agent, the Prepetition Term Agent, the Prepetition Indenture Trustee and the Prepetition Collateral Trustee are not and shall not be deemed to be fiduciaries of any kind for the DIP Agents, the DIP Term Lenders or the Designated Coal Contract Counterparties, and the DIP Agents, on behalf of themselves, the DIP Term Lenders and Designated Coal Contract Counterparties, are hereby deemed to waive and release the Prepetition ABL Agent, the Prepetition Superpriority Agent, the Prepetition Term Agent, the Prepetition Indenture Trustee and the Prepetition Collateral Trustee from all claims and liabilities arising pursuant to their role under this paragraph 15(b) as gratuitous bailee and agent with respect to the Prepetition Collateral or the DIP Term Collateral.

(c) Except with respect to the Prepetition ABL Priority Collateral prior to the Prepetition ABL Debt being Paid in Full and so long as any Outstanding LCs are outstanding, except with respect to the LC Cash Collateral, any proceeds of Prepetition Collateral received by any Prepetition Secured Party in connection with the exercise of any right or remedy relating to the Prepetition Collateral or otherwise received by any Prepetition Secured Party shall be segregated and held in trust for the benefit of and forthwith paid over to the DIP Collateral Agent

for the benefit of the applicable DIP Term Secured Parties in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. The DIP Collateral Agent is hereby authorized to make any such endorsements as agent for any such Prepetition Secured Party. This authorization is coupled with an interest and is irrevocable.

(d) The automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent necessary to permit the DIP Term Secured Parties to enforce all of their rights under the applicable DIP Documents and take any or all of the following actions, at the same or different time, in each case without further order or application of the Court: (i) immediately upon the occurrence of an Event of Default, declare (A) the termination, reduction or restriction of any further DIP Commitment to the extent any such DIP Commitment remains, (B) all DIP Term Obligations to be immediately due, owing and payable, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Credit Parties, notwithstanding anything herein or in any DIP Document to the contrary, and (C) the termination of the applicable DIP Documents as to any future liability or obligation of the DIP Agents and the applicable DIP Term Lenders and Designated Coal Contract Counterparties (but, for the avoidance of doubt, without affecting any of the DIP Term Liens or the DIP Term Obligations), (ii) upon the occurrence of an Event of Default and the giving of five (5) business days' prior written notice (which shall run concurrently with any notice required to be provided under the DIP Documents) (the "**Term Remedies Notice Period**") via email to counsel to the Debtors, the Creditors' Committee, counsel to the DIP FILO Lender and the U.S. Trustee, unless this Court orders otherwise during the Term Remedies Notice Period after a hearing, (A) whether or not the maturity of any of the DIP Term Obligations shall have been accelerated, proceed to protect, enforce and exercise all rights and remedies of the DIP Term Secured Parties under the DIP Documents or

applicable law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in any such DIP Document or any instrument pursuant to which such DIP Term Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of any of such DIP Term Secured Parties, and (B) withdraw consent to the Credit Parties' continued use of Cash Collateral and exercise all other rights and remedies provided for in the DIP Documents and under applicable law with respect to the DIP Term Collateral; *provided*, that no such notice shall be required for any exercise of rights or remedies to block or limit withdrawals from any bank accounts that are a part of the Collateral (including, without limitation, by sending any control activation notices to depositary banks pursuant to any control agreement).

(e) During the Term Remedies Notice Period, the Credit Parties shall be permitted to use Cash Collateral solely to (A) pay payroll and other critical administrative expenses to keep the business of the Credit Parties operating, strictly in accordance with the Approved Cash Flow Forecast (subject to any permitted variances), or as otherwise agreed by the DIP Administrative Agent acting at the direction of the DIP Requisite Lenders, and (B) fund the Carve-Out. During the Term Remedies Notice Period, the Debtors shall be entitled to seek an emergency hearing with the Court within the Term Remedies Notice Period solely for the purpose of contesting whether, in fact, an Event of Default has occurred and is continuing. Except as set forth in this Final Order, the Debtors shall waive their right to seek relief under the Bankruptcy Code, including, without limitation, under section 105 of the Bankruptcy Code, to the extent that such relief would in any way impair or restrict the rights or remedies of the DIP Term Secured Parties set forth in this Final Order or the DIP Documents. Any party-in-interest shall be entitled

to seek an emergency hearing for the purpose of contesting whether assets constitute assets of the Debtors' estates and nothing in this Final Order shall affect any party-in-interest's rights or positions at such hearing.

(f) In no event shall the DIP Agents, the DIP Term Lenders, the Designated Coal Contract Counterparties or the Prepetition Secured Parties be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Prepetition Collateral or the DIP Term Collateral. Further, in no event shall the "equities of the case" exception in section 552(b) of the Bankruptcy Code apply to the secured claims of the Prepetition Secured Parties. Notwithstanding the foregoing, the Prepetition Secured Parties and the DIP Secured Parties shall use commercially reasonable efforts to first use all DIP Collateral or Prepetition Collateral other than Avoidance Proceeds or the proceeds of any commercial tort claim (including, without limitation, any claims and causes of action brought against the Prepetition Secured Parties in a timely filed Challenge) to repay the DIP Superpriority Claims or Adequate Protection Claims, including the 507(b) Claims, as applicable.

(g) No rights, protections or remedies of the DIP Agents, the DIP Term Lenders, the Designated Coal Contract Counterparties or the Prepetition Secured Parties granted by the provisions of this Final Order or the DIP Documents shall be limited, modified or impaired in any way by: (i) any actual or purported withdrawal of the consent of any party to the Credit Parties' authority to continue to use Cash Collateral; (ii) any actual or purported termination of the Credit Parties' authority to continue to use Cash Collateral; or (iii) the terms of any other order or stipulation related to the Credit Parties' continued use of Cash Collateral or the provision of adequate protection to any party.

16. *Protection of DIP FILO Lender's Rights*.

(a) So long as there are any DIP FILO Obligations outstanding under the DIP Credit Agreement, the Prepetition Secured Parties (other than the Prepetition Term Secured Parties with respect to Prepetition Term Priority Collateral) shall: (i) have no right to and shall take no action to foreclose upon, or recover in connection with, the liens granted thereto pursuant to the Prepetition Credit Documents or the Interim Order, or otherwise seek to exercise or enforce any rights or remedies against such DIP FILO Collateral, including in connection with the Prepetition Liens or the Adequate Protection Liens; (ii) be deemed to have consented to any transfer, disposition or sale of, or release of liens on, such DIP FILO Collateral (but not any proceeds of such transfer, disposition or sale to the extent remaining after payment in cash in full of the DIP FILO Obligations), to the extent such transfer, disposition, sale or release is authorized under the DIP Documents; (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in such DIP FILO Collateral unless, solely as to this clause (iii), the DIP Administrative Agent files financing statements or other documents to perfect the liens granted pursuant to this Final Order, or as may be required by applicable state law to continue the perfection of valid and non-avoidable liens or security interests as of the Commencement Date and (iv) at the request of the DIP Administrative Agent, deliver or cause to be delivered, at the Credit Parties' cost and expense, any termination statements, releases and/or assignments in favor of the DIP Administrative Agent or the DIP FILO Lender or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of liens on any portion of such DIP FILO Collateral subject to any sale or disposition permitted by the DIP Documents and this Final Order.

(b) Except with respect to Prepetition Term Secured Parties solely with respect to the Prepetition Term Priority Collateral, to the extent any Prepetition Secured Party has possession of any Prepetition Collateral or DIP FILO Collateral or has control with respect to any Prepetition Collateral or DIP FILO Collateral, or has been noted as a secured party on any certificate of title for a titled good constituting Prepetition Collateral or DIP FILO Collateral, then such Prepetition Secured Party shall be deemed to maintain such possession or notation or exercise such control as a gratuitous bailee and/or gratuitous agent for perfection for the benefit of the DIP Administrative Agent and the DIP FILO Lender and, it shall comply with the instructions of the DIP Administrative Agent with respect to the exercise of such control. The Prepetition ABL Agent, the Prepetition Superpriority Agent, the Prepetition Term Agent, the Prepetition Indenture Trustee and the Prepetition Collateral Trustee are not and shall not be deemed to be fiduciaries of any kind for the DIP Administrative Agent or the DIP FILO Lender, and the DIP Administrative Agent, on behalf of itself and the DIP FILO Lender, is hereby deemed to waive and release the Prepetition ABL Agent, the Prepetition Superpriority Agent, the Prepetition Term Agent, the Prepetition Indenture Trustee and the Prepetition Collateral Trustee from all claims and liabilities arising pursuant to their role under this paragraph 16(b) as gratuitous bailee and agent with respect to the Prepetition Collateral or the DIP FILO Collateral.

(c) Except with respect to the Prepetition Term Priority Collateral, any proceeds of Prepetition Collateral received by any Prepetition Secured Party in connection with the exercise of any right or remedy relating to the Prepetition Collateral or otherwise received by any Prepetition Secured Party shall be segregated and held in trust for the benefit of and forthwith paid over to the DIP Administrative Agent for the benefit of the applicable DIP FILO Secured Parties in the same form as received, with any necessary endorsements, or as a court of competent

jurisdiction may otherwise direct. The DIP Administrative Agent is hereby authorized to make any such endorsements as agent for any such Prepetition Secured Party. This authorization is coupled with an interest and is irrevocable.

(d) The automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent necessary to permit the DIP FILO Secured Parties to enforce all of their rights under the applicable DIP Documents in respect to the DIP FILO Loans and take any or all of the following actions, at the same or different time: (i) immediately upon the occurrence of an Event of Default, declare (A) all DIP FILO Obligations to be immediately due, owing and payable, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Credit Parties, notwithstanding anything herein or in any DIP Document to the contrary, and (B) the termination of the applicable DIP Documents as to any future liability or obligation of the DIP Administrative Agent and the applicable DIP FILO Lender (but, for the avoidance of doubt, without affecting any of the DIP FILO Liens or the DIP FILO Obligations), (ii) upon the occurrence of an Event of Default and the giving of five (5) business days' prior written notice (which shall run concurrently with any notice required to be provided under the DIP Documents) (the "**FILO Remedies Notice Period**," and together with the Term Remedies Notice Period, the "**Remedies Notice Periods**") via email to counsel to the Debtors, counsel to the DIP Term Lenders, the Creditors' Committee, and the U.S. Trustee, unless this Court orders otherwise during the FILO Remedies Notice Period after a hearing, (A) whether or not the maturity of any of the DIP FILO Obligations shall have been accelerated, proceed to protect, enforce and exercise all rights and remedies of the DIP FILO Secured Parties under the DIP Documents or applicable law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement

contained in any such DIP Document or any instrument pursuant to which such DIP FILO Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of any of such DIP FILO Secured Parties, and (B) withdraw consent to the Credit Parties' continued use of Cash Collateral and exercise all other rights and remedies provided for in the DIP Documents and under applicable law with respect to the DIP FILO Collateral; *provided*, that no such notice shall be required for any exercise of rights or remedies to block or limit withdrawals from any bank accounts that are a part of the Collateral (including, without limitation, by sending any control activation notices to depositary banks pursuant to any control agreement).

(e) During the FILO Remedies Notice Period, the Credit Parties shall be permitted to use Cash Collateral solely to (A) pay payroll and other critical administrative expenses to keep the business of the Credit Parties operating, strictly in accordance with the Approved Cash Flow Forecast (subject to any permitted variances), or as otherwise agreed by the DIP Administrative Agent acting at the direction of the DIP FILO Requisite Lenders, and (B) fund the Carve-Out. During the FILO Remedies Notice Period, the Debtors shall be entitled to seek an emergency hearing with the Court within the FILO Remedies Notice Period solely for the purpose of contesting whether, in fact, an Event of Default has occurred and is continuing. Except as set forth in this Final Order, the Debtors shall waive their right to seek relief under the Bankruptcy Code, including, without limitation, under section 105 of the Bankruptcy Code, to the extent that such relief would in any way impair or restrict the rights or remedies of the DIP FILO Secured Parties set forth in this Final Order or the DIP Documents.

(f) In no event shall the DIP Administrative Agent, the DIP FILO Lender or the Prepetition Secured Parties be subject to the equitable doctrine of "marshaling" or any similar

doctrine with respect to the Prepetition Collateral or the DIP FILO Collateral. In no event shall the "equities of the case" exception in section 552(b) of the Bankruptcy Code apply to the secured claims of the Prepetition Secured Parties.

(g) No rights, protections or remedies of the DIP Administrative Agent, the DIP FILO Lender or the Prepetition Secured Parties granted by the provisions of this Final Order or the DIP Documents shall be limited, modified or impaired in any way by: (i) any actual or purported withdrawal of the consent of any party to the Credit Parties' authority to continue to use Cash Collateral; (ii) any actual or purported termination of the Credit Parties' authority to continue to use Cash Collateral; or (iii) the terms of any other order or stipulation related to the Credit Parties' continued use of Cash Collateral or the provision of adequate protection to any party.

17. *Proceeds of Subsequent Financing.* Without limiting the provisions and protections herein, but subject in all respects to the Carve-Out, if at any time prior to the repayment in full in accordance with the DIP Documents of all the DIP Obligations (including subsequent to the confirmation of any chapter 11 plan or plans with respect to any of the Debtors), the Debtors' estates, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed shall obtain credit or incur debt pursuant to sections 364(b), 364(c), 364(d), or any other provision of the Bankruptcy Code in violation of this Final Order or the DIP Documents, then all of the cash proceeds derived from such credit or debt and all Cash Collateral shall immediately be turned over to the DIP Collateral Agent for application to the DIP Obligations until such DIP Obligations are Paid in Full.

18. *Limitation on Charging Expenses Against Collateral.* Except to the extent of the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the

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

19. *Payments Free and Clear*. Any and all payments or proceeds remitted to the DIP Agents by, through or on behalf of the DIP Secured Parties pursuant to the provisions of the Interim Order or this Final Order, the DIP Documents (including, without limitation, the Approved Cash Flow Forecast (subject to permitted variances)) or any subsequent order of the Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including without limitation, any such claim or charge arising out of or based on, directly or indirectly, sections 506(c) or 552(b) of the Bankruptcy Code, whether asserted or assessed by through or on behalf of the Debtors.

20. *Use of Cash Collateral*. The Credit Parties are hereby authorized, subject to the terms and conditions of this Final Order, to use Cash Collateral; *provided*, that (a) the Prepetition Secured Parties are granted the Adequate Protection as hereinafter set forth and (b) except on the terms and conditions of this Final Order, the Credit Parties shall be enjoined and prohibited from at any time using the Cash Collateral absent further order of the Court; and *provided, further*, that the LC Cash Collateral shall be held by the Outstanding LC Issuer for its own account and shall not be subject to use by the Debtors except as provided in the Payoff Letter.

21. *Adequate Protection of Prepetition Secured Parties.* Subject to the Carve-Out in all respects, the Prepetition Secured Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, to adequate protection of their interests in all Prepetition Collateral, including Cash Collateral, for and equal in amount to the aggregate diminution in the value of the Prepetition Secured Parties' interests in the Prepetition Collateral (including Cash Collateral) from and after the Commencement Date, if any ("**Diminution in Collateral Value**"), for any reason provided for under the Bankruptcy Code (the "**Adequate Protection Claims**"). To the extent of any Diminution in Collateral Value, the Prepetition Secured Parties are hereby granted the following, in each case subject to the Carve-Out (collectively, the "**Adequate Protection Obligations**"):

(a) ABL Adequate Protection Liens. Until the ABL Satisfaction Date and the date upon which the full roll-up of the Prepetition FILO Debt into DIP FILO Loans occurs, the Prepetition ABL Agent, for itself and for the benefit of the Prepetition ABL Lenders and Prepetition LC Issuer, is hereby granted (effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of the Prepetition ABL Secured Parties' Adequate Protection Claims, a valid, perfected replacement security interest in and lien upon all of the DIP Collateral (the "**ABL Adequate Protection Liens**"), subject and subordinate to (i) in the case of DIP Term Priority Collateral, (A) the Carve-Out, (B) the DIP Liens and any liens to which the DIP Liens are junior (including the Prepetition Permitted Prior Liens and Permitted Liens), (C) Prepetition Term Liens, and (D) Term Adequate Protection Liens (as defined below) and (ii) in the case of Prepetition ABL Priority Collateral, the Carve-Out.

(b) Prepetition ABL Secured Parties' Adequate Protection Fees and Expenses. Until the ABL Satisfaction Date and the date upon which the full roll-up of the Prepetition FILO Debt into DIP FILO Loans occurs, as further adequate protection, subject to the Carve-Out as set forth in this Final Order, the Credit Parties shall provide the Prepetition ABL Agent, for the benefit of the Prepetition ABL Lenders and the Prepetition LC Issuer, current cash payments of the reasonable and documented prepetition and postpetition fees and expenses of the Prepetition ABL Agent under the Prepetition ABL Credit Documents and the Prepetition FILO Lender, including, but not limited to, the reasonable and documented fees and out-of-pocket expenses of Latham & Watkins LLP (solely in its capacity as counsel to the Prepetition ABL Agent), Sidley Austin LLP (solely in its capacity as counsel to the Prepetition FILO Lender), local counsel to the Prepetition FILO Lender, one financial advisor to the Prepetition FILO Lender, and any other advisors retained by Prepetition ABL Agent and/or the Prepetition FILO Lender in accordance with the Prepetition ABL Credit Agreement) (the "**ABL Adequate Protection Fees and Expenses**"), subject to the review procedures set forth in paragraph 29 of this Final Order.

(c) Prepetition ABL Secured Parties' Section 507(b) Claim. Until the ABL Satisfaction Date and the date upon which the full roll-up of the Prepetition FILO Debt into DIP FILO Loans occurs, the Prepetition ABL Agent, for itself and for the benefit of the Prepetition ABL Lenders and Prepetition LC Issuer, is hereby granted, subject to the Carve-Out, an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of the Prepetition ABL Secured Parties' Adequate Protection Claims solely with respect to its interest in the DIP Term Priority Collateral (the "**Term Priority Collateral ABL 507(b) Claims**"), which Term Priority Collateral ABL 507(b) Claims shall be payable from and have recourse to all DIP Term Priority Collateral and all proceeds thereof (excluding

Avoidance Actions but including, without limitation, the Avoidance Proceeds). The Term Priority Collateral ABL 507(b) Claims shall be subject and subordinate only to the Carve-Out, the DIP Term Superpriority Claims, the Term 507(b) Claims and the prepetition claims of the Prepetition Term Loan Secured Parties. The Prepetition ABL Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Term Priority Collateral ABL 507(b) Claims unless and until the DIP Term Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and any claims having a priority superior to or *pari passu* with the DIP Superpriority Claims have indefeasibly been paid in cash in full and all DIP Commitments have been terminated. The Prepetition ABL Agent, for itself and for the benefit of the Prepetition ABL Lenders and Prepetition LC Issuer, is hereby granted, subject to the Carve-Out up to the Term Loan ABL Collateral Cap, an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of the Prepetition ABL Secured Parties' Adequate Protection Claims solely with respect to its interest in the Prepetition ABL Priority Collateral, with, except as set forth in this Final Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code (as defined below) (the "**ABL Priority Collateral ABL 507(b) Claims**", together with the Term Priority Collateral ABL 507(b) Claims, the "**ABL 507(b) Claims**"), which ABL Priority Collateral ABL 507(b) Claims shall be payable from and have recourse to all Prepetition ABL Priority Collateral and all proceeds thereof. The ABL Priority Collateral ABL 507(b) Claims shall be subject and subordinate only to the Carve-Out up to the Term Loan ABL Collateral Cap.

(d) Prepetition FILO Lender's Adequate Protection Payments. Until the date upon which the full roll-up of the Prepetition FILO Debt into DIP FILO Loans occurs, as additional

adequate protection, subject to the Carve-Out as set forth in this Final Order, the Prepetition ABL Agent shall receive, for the benefit of the Prepetition FILO Lender, current payment of interest (at the contractual default rate) due under the Prepetition ABL Credit Agreement with respect to outstanding Last-Out Obligations (as defined in the Prepetition ABL Credit Agreement), whether due prior to, on, or subsequent to the Commencement Date, subject to the rights reserved in paragraph 31 of this Final Order.

(e) Superpriority Adequate Protection Liens. The Prepetition Collateral Trustee, for itself and for the benefit of other Prepetition Superpriority Secured Parties, is hereby granted (effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of the Prepetition Superpriority Secured Parties' Adequate Protection Claims, a valid, perfected replacement security interest in and lien upon all of the DIP Collateral, in each case subject and subordinate only to (A) the Carve-Out and (B) the DIP Liens and any liens to which the DIP Liens are junior (including the Prepetition Permitted Prior Liens and Permitted Liens and, solely with respect to the Prepetition ABL Priority Collateral, the Prepetition ABL Liens and the ABL Adequate Protection Liens), except, solely with respect to DIP Term Priority Collateral, the DIP FILO Liens (the "**Superpriority Adequate Protection Liens**");

(f) Prepetition Superpriority Secured Parties' Section 507(b) Claim. Solely to the extent of any diminution in value, the Prepetition Superpriority Agent, for itself and for the benefit of other Prepetition Superpriority Secured Parties, is hereby granted, subject to the Carve-Out, an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of the Prepetition Superpriority Secured Parties' Adequate

Protection Claims, with, except as set forth in this Final Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code (the "**Superpriority 507(b) Claims**"), which Superpriority 507(b) Claims shall be payable from and have recourse to all prepetition and postpetition property of the Credit Parties and all proceeds thereof (excluding Avoidance Actions, but including, without limitation, Avoidance Proceeds). The Superpriority 507(b) Claims shall be subject and subordinate only to the Carve-Out, the DIP Superpriority Claims granted in respect of the DIP Obligations (except, with respect to the DIP Term Priority Collateral, the DIP FILO Superpriority Claims) and, solely with respect to the Prepetition ABL Priority Collateral, the claims of the Prepetition ABL Secured Parties and the ABL 507(b) Claims. Except to the extent expressly set forth in the Interim Order, this Final Order or the DIP Documents, the Prepetition Superpriority Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Superpriority 507(b) Claims unless and until the DIP Term Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and any claims having a priority superior to or *pari passu* with the DIP Term Superpriority Claims have indefeasibly been paid in cash in full and all DIP Commitments have been terminated.

(g) Prepetition Superpriority Secured Parties' Adequate Protection Fees and Expenses. The Credit Parties shall provide the Prepetition Superpriority Agent, for the benefit of the Prepetition Superpriority Lenders, and the Ad Hoc Group of Superpriority Lenders current cash payments of the reasonable and documented prepetition and postpetition fees and expenses of the Prepetition Superpriority Agent under the Prepetition Superpriority Credit Documents and the Ad Hoc Group of Superpriority Lenders, including, but not limited to, the reasonable and documented fees and out-of-pocket expenses of Wilmer Cutler Pickering Hale and Dorr LLP

(solely in its capacity as counsel to the Prepetition Superpriority Agent), one local bankruptcy counsel to the Prepetition Superpriority Agent in the Southern District of Ohio, and, solely to the extent necessary to enforce rights and remedies under the Prepetition Superpriority Credit Documents, one counsel to the Prepetition Superpriority Agent in each local jurisdiction, Dorsey & Whitney LLP (solely in its capacity as counsel to the Prepetition Collateral Trustee), Davis Polk & Wardwell LLP, Frost Brown Todd LLC, Houlihan Lokey Capital, Inc., Drinker Biddle & Reath LLP, and any other advisors retained by the Ad Hoc Group of Superpriority Lenders (the "**Superpriority Adequate Protection Fees and Expenses**," and, together with the ABL Adequate Protection Fees and Expenses, the "**Adequate Protection Fees and Expenses**"), subject to the review procedures set forth in paragraph 29 of this Final Order.

(h) Prepetition Superpriority Secured Parties' Adequate Protection Payment. Only after the DIP Obligations are fully discharged, the Prepetition Superpriority Agent, on behalf of the Prepetition Superpriority Secured Parties, shall receive from the Credit Parties, cash payments in an amount equal to the amount of the net cash proceeds received by the Debtors of the sale of any Prepetition Term Priority Collateral (including, for the avoidance of doubt, net cash proceeds from the sale of Prepetition Term Priority Collateral in connection with an Asset Sale (as such term is defined in the DIP Credit Agreement)), payable not later than the fifth business day following the date of receipt of such proceeds. Subject to paragraph 31 of this Final Order, any payment made to the Prepetition Superpriority Secured Parties under this section (h) shall be without prejudice, and with a full reservation of rights, as to whether such payment should be disgorged, recharacterized or reallocated pursuant to section 506(b) of the Bankruptcy Code as payments under the Prepetition Superpriority Credit Agreements (whether as principal, interest or otherwise).

(i) Prepetition Superpriority Secured Parties and Prepetition ABL Secured Parties' Information Rights. The Debtors shall promptly provide the Prepetition Superpriority Agent, on behalf of itself and on behalf of the Prepetition Superpriority Secured Parties, and, until the ABL Satisfaction Date and the date upon which the full roll-up of the Prepetition FILO Debt into DIP FILO Loans occurs, the Prepetition ABL Agent, on behalf of itself and on behalf of the Prepetition ABL Lenders, with all required written financial reporting and other periodic reporting to the extent required to be provided to the DIP Administrative Agent or the DIP Secured Parties in accordance with the DIP Documents, including but not limited to the reporting required under section 5.1 of the DIP Credit Agreement. In addition to the Prepetition Superpriority Secured Parties and Prepetition ABL Secured Parties set forth above, the Creditors' Committee shall be entitled to receive all required written financial reporting and other periodic reporting that is required to be provided to the DIP Administrative Agent or the DIP Secured Parties under the DIP Documents, including but not limited to the reporting required under section 5.1 of the DIP Credit Agreement.

(j) Prepetition Superpriority Secured Parties and Prepetition ABL Secured Parties' Adequate Protection Milestones. The Prepetition Superpriority Secured Parties and, until the ABL Satisfaction Date and the date upon which the full roll-up of the Prepetition FILO Debt into DIP FILO Loans occurs, the Prepetition ABL Secured Parties, are hereby entitled to performance of the milestones set forth in section 5.18 of the DIP Credit Agreement (the "**Adequate Protection Milestones**"), which cannot be waived, amended, modified or extended from time to time, in each case as to the Prepetition Superpriority Secured Parties, absent prior

written consent of the Superpriority Requisite Lenders, and as to the Prepetition ABL Secured Parties, absent prior written consent of the ABL Requisite Lenders.[22]

(k) Prepetition Superpriority Secured Parties' Entitlement to Financial Covenant Compliance. The Prepetition Superpriority Secured Parties are hereby entitled to compliance by the Credit Parties with those certain financial covenants set forth in section 6.7 of the DIP Credit Agreement, which may be extended or waived with the consent of a majority of the Prepetition Superpriority Secured Parties.

(l) The Adequate Protection Milestones, reporting obligations and financial covenants compliance obligations in the subparagraphs above shall survive any termination of the DIP Credit Agreement or the DIP Commitments thereunder. Following any such termination of the DIP Credit Agreement or the DIP Commitments thereunder, the Adequate Protection Milestones may be waived, amended, modified or extended from time to time by the Superpriority Requisite Lenders (in their sole discretion).

(m) Prepetition Superpriority Secured Parties' Additional Adequate Protection. In the event the Debtors file, support, make a proposal or counterproposal in writing to any party relating to, or take any other similar action in furtherance of a plan of reorganization that does not propose to pay all claims on account of the Prepetition Superpriority Debt and the Prepetition Superpriority Obligations in cash or with such other consideration acceptable to the Superpriority Requisite Lenders or the Designated Coal Contract Counterparties, the Prepetition Superpriority Secured Parties shall have the right to immediately terminate Debtors' right to use Cash Collateral pursuant to this Final Order.

[22] "**Superpriority Requisite Lenders**" means "Requisite Lenders" as defined in the Prepetition Superpriority Credit Agreement, and "**ABL Requisite Lenders**" means "Required Lenders" as defined in the Prepetition ABL Credit Agreement.

(n) Prepetition ABL Secured Parties' Additional Adequate Protection. In the event the Debtors file, support, make a proposal or counterproposal in writing to any party relating to, or take any other similar action in furtherance of a plan of reorganization that does not propose to pay all claims on account of the Prepetition ABL Debt in cash or with such other consideration acceptable to the Prepetition ABL Lenders, such event shall constitute an Event of Default under this Final Order, and the Prepetition ABL Secured Parties shall have the right to immediately terminate Debtors' right to use Cash Collateral pursuant to this Final Order and such event shall constitute an Event of Default under this Final Order.

(o) Term Loan Adequate Protection Liens. The Prepetition Collateral Trustee, for itself and for the benefit of other Prepetition Term Loan Secured Parties, is hereby granted (effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of the Prepetition Term Loan Secured Parties' Adequate Protection Claims, a valid, perfected replacement security interest in and lien upon all of the DIP Collateral of the Borrower and the Prepetition 1L/2L Guarantors, in each case subject and subordinate only to (A) the Carve-Out, (B) the DIP Liens and any liens to which the DIP Liens are junior (including the Prepetition Permitted Prior Liens and Permitted Liens and, solely with respect to the Prepetition ABL Priority Collateral, the Prepetition ABL Liens and the ABL Adequate Protection Liens) (except, solely with respect the DIP Term Priority Collateral, the DIP FILO Liens), (C) the Prepetition Superpriority Liens and (D) Superpriority Adequate Protection Liens (the "**Term Loan Adequate Protection Liens**");

(p) Prepetition Term Loan Secured Parties' Section 507(b) Claim. Solely to the extent of any diminution in value, the Prepetition Term Agent, for itself and for the benefit of

other Prepetition Term Loan Secured Parties, is hereby granted, subject to the Carve-Out, an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of the Prepetition Term Loan Secured Parties' Adequate Protection Claims, with, except as set forth in this Final Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code other than the Superpriority 507(b) Claims (the "**Term Loan 507(b) Claims**"), which Term Loan 507(b) Claims shall be payable from and have recourse to all prepetition and postpetition property of the Borrower and the Prepetition 1L/2L Guarantors and all proceeds thereof (excluding Avoidance Actions but including, without limitation, Avoidance Proceeds). The Term Loan 507(b) Claims shall be subject and subordinate only to the Carve-Out, the DIP Superpriority Claims granted in respect of the DIP Obligations, the Superpriority 507(b) Claims (except, with respect the DIP Term Priority Collateral, the DIP FILO Superpriority Claims), the prepetition claims of the Prepetition Superpriority Secured Parties and, solely with respect to the Prepetition ABL Priority Collateral, the claims of the Prepetition ABL Secured Parties and the ABL 507(b) Claims. Except to the extent expressly set forth in the Interim Order, this Final Order or the DIP Documents, the Prepetition Term Loan Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Term Loan 507(b) Claims unless and until the DIP Term Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and any claims having a priority superior to or *pari passu* with the DIP Term Superpriority Claims have indefeasibly been paid in cash in full and all DIP Commitments have been terminated.

(q) Superparity Adequate Protection Liens. The Prepetition Collateral Trustee, for itself and for the benefit of other Prepetition Superparity Secured Parties, is hereby granted

(effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of the Prepetition Superparity Secured Parties' Adequate Protection Claims, a valid, perfected replacement security interest in and lien upon all of the DIP Collateral, in each case subject and subordinate only to (A) the Carve-Out, (B) the DIP Liens and any liens to which the DIP Liens are junior (including the Prepetition Permitted Prior Liens and Permitted Liens and, solely with respect to the Prepetition ABL Priority Collateral, the Prepetition ABL Liens and the ABL Adequate Protection Liens) (except, with respect the DIP Term Priority Collateral, the DIP FILO Liens), (C) the Prepetition Superpriority Liens, (D) Superpriority Adequate Protection Liens, (E) the Prepetition Term Loan Liens and (F) Term Loan Adequate Protection Liens (the "**Superparity Adequate Protection Liens**");

(r) Prepetition Superparity Secured Parties' Section 507(b) Claim. Solely to the extent of any diminution in value, the Prepetition Superparity Trustee, for itself and for the benefit of other Prepetition Superparity Secured Parties, is hereby granted, subject to the Carve-Out, an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of the Prepetition Superparity Secured Parties' Adequate Protection Claims, with, except as set forth in this Final Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code other than the Superpriority 507(b) Claims and the Term Loan 507(b) Claims (the "**Superparity 507(b) Claims**"), which Superparity 507(b) Claims shall be payable from and have recourse to all prepetition and postpetition property of the Credit Parties and all proceeds thereof (excluding Avoidance Actions but including, without limitation, Avoidance Proceeds). The Superpriority 507(b) Claims shall be subject and subordinate only to the Carve-Out, the DIP

Superpriority Claims granted in respect of the DIP Obligations (except, with respect the DIP Term Priority Collateral, the DIP FILO Superpriority Claims), the Superpriority 507(b) Claims, the prepetition claims of the Prepetition Superpriority Secured Parties, the Term Loan 507(b) Claims, the prepetition claims of the Prepetition Term Loan Secured Parties and, solely with respect to the Prepetition ABL Priority Collateral, the claims of the Prepetition ABL Secured Parties and the ABL 507(b) Claims. Except to the extent expressly set forth in the Interim Order, this Final Order or the DIP Documents, the Prepetition Superparity Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Superparity 507(b) Claims unless and until the DIP Term Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and any claims having a priority superior to or *pari passu* with the DIP Term Superpriority Claims have indefeasibly been paid in cash in full and all DIP Commitments have been terminated.

(s) Parity Adequate Protection Liens. The Prepetition Collateral Trustee, for itself and for the benefit of other Prepetition Parity Secured Parties, is hereby granted (effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of the Prepetition Parity Secured Parties' Adequate Protection Claims, a valid, perfected replacement security interest in and lien upon all of the DIP Collateral of the Borrower and the Prepetition 1L/2L Guarantors, in each case subject and subordinate only to (A) the Carve-Out, (B) the DIP Liens and any liens to which the DIP Liens are junior (including the Prepetition Permitted Prior Liens and Permitted Liens and, solely with respect to the Prepetition ABL Priority Collateral, the Prepetition ABL Liens and the ABL Adequate Protection Liens) (except, with respect the DIP Term Priority Collateral, the DIP FILO Liens), (C) the Prepetition

Superpriority Liens, (D) Superpriority Adequate Protection Liens, (E) the Prepetition Term Loan Liens, (F) Term Loan Adequate Protection Liens, (G) the Prepetition Superparity Liens and (H) Superparity Adequate Protection Liens (the "**Parity Adequate Protection Liens**", and collectively with the Superpriority Adequate Protection Liens, Term Loan Adequate Protection Liens and Superparity Adequate Protection Liens, the "**Term Adequate Protection Liens**"; the Term Adequate Protection Liens, together with ABL Adequate Protection Liens, the "**Adequate Protection Liens**");

(t) Prepetition Parity Secured Parties' Section 507(b) Claim. Solely to the extent of any diminution in value, the Prepetition Parity Trustee, for itself and for the benefit of the Prepetition Parity Noteholders, is hereby granted, subject to the Carve-Out, an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of the Prepetition Parity Secured Parties' Adequate Protection Claims, with, except as set forth in this Final Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code other than the Superpriority 507(b) Claims, the Term Loan 507(b) Claims and the Superparity 507(b) Claims (the "**Parity 507(b) Claims**", and collectively with the Superpriority 507(b) Claims, the Term Loan 507(b) Claims and the Superparity 507(b) Claims, the "**Term 507(b) Claims**"; the Term 507(b) Claims, together with ABL 507(b) Claims, the "**Adequate Protection 507(b) Claims**"), which Parity 507(b) Claims shall be payable from and have recourse to all prepetition and postpetition property of the Borrower and the Prepetition 1L/2L Guarantors and all proceeds thereof (excluding Avoidance Actions but including, without limitation, Avoidance Proceeds). The Parity 507(b) Claims shall be subject and subordinate only to the Carve-Out, the DIP Superpriority Claims granted in respect of the DIP Obligations (except, with respect the DIP Term

Priority Collateral, the DIP FILO Superpriority Claims), the Superpriority 507(b) Claims, the prepetition claims of the Prepetition Superpriority Secured Parties, the Term Loan 507(b) Claims, the prepetition claims of the Prepetition Term Loan Secured Parties, the Superparity 507(b) Claims, the prepetition claims of the Prepetition Superparity Secured Parties and, solely with respect to the Prepetition ABL Priority Collateral, the claims of the Prepetition ABL Secured Parties and the ABL 507(b) Claims. Except to the extent expressly set forth in the Interim Order, this Final Order or the DIP Documents, the Prepetition Parity Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Parity 507(b) Claims unless and until the DIP Term Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and any claims having a priority superior to or *pari passu* with the DIP Term Superpriority Claims have indefeasibly been paid in cash in full and all DIP Commitments have been terminated.

22. *Adequate Protection Liens, Prepetition Intercreditor Agreements and Prepetition Collateral Trust Agreements*. Notwithstanding anything to the contrary herein, the Adequate Protection Liens shall retain the same priority between and among the Prepetition Secured Parties as the liens such parties held prior to the Commencement Date as governed by the Prepetition Intercreditor Agreements and Prepetition Collateral Trust Agreements, and the Prepetition Intercreditor Agreements and the Prepetition Collateral Trust Agreements shall continue in full force and effect, including the reinstatement provisions, and nothing herein shall be construed as modifying, amending, waiving or in any way impacting the effectiveness and enforceability thereof. The Prepetition ABL Secured Parties are deemed to consent to the priming of their Prepetition ABL Liens with respect to the Shared Fixed Asset Collateral by the DIP Liens pursuant to the terms of the Prepetition Intercreditor Agreements. Each of the Prepetition Superpriority

Secured Parties, the Prepetition Term Loan Secured Parties, the Prepetition Superparity Secured Parties and the Prepetition Parity Secured Parties are deemed to consent to the priming of their Prepetition Superpriority Liens, the Prepetition Term Loan Liens, the Prepetition Superparity Liens and the Prepetition Parity Liens, as applicable, by the DIP Liens pursuant to the terms of the Prepetition Collateral Trust Agreements.

23. *Reservation of Rights of Prepetition Secured Parties*. Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, the Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Prepetition Secured Parties; *provided* that, subject to the terms of the Prepetition Intercreditor Agreements and the Prepetition Collateral Trust Agreements, any of the Prepetition Secured Parties may request further or different adequate protection.

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

(a) The DIP Collateral Agent, the DIP Secured Parties and the Prepetition Secured Parties are hereby authorized, but not required, to file or record (and to execute in the name of the Credit Parties, as their true and lawful attorneys, with full power of substitution, to the maximum extent permitted by law) financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over cash or securities or other property, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Collateral Agent (on behalf of the DIP Secured Parties) or the Prepetition Secured Parties shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over any cash or securities or other property, or otherwise confirm perfection of the liens and security interests granted to

them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination (subject to the priorities set forth in this Final Order), at the time and on the date of entry of this Final Order or thereafter. Upon the request of the DIP Collateral Agent, the Prepetition ABL Agent or the Prepetition Collateral Trustee, as applicable, each of the Prepetition Secured Parties and the Credit Parties, without any further consent of any party, is authorized to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Collateral Agent, the Prepetition ABL Agent or the Prepetition Collateral Trustee to further validate, perfect, preserve and enforce the DIP Liens and the applicable Adequate Protection Liens, respectively. All such documents will be deemed to have been recorded and filed as of the Commencement Date.

(b) A certified copy of the Interim Order or this Final Order may, in the discretion of the DIP Collateral Agent, the Prepetition ABL Agent or the Prepetition Collateral Trustee, as applicable, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of the Interim Order or this Final Order for filing and/or recording, as applicable. The automatic stay of section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit the DIP Collateral Agent, the Prepetition ABL Agent or the Prepetition Collateral Trustee to take all actions, as applicable, referenced in this subparagraph (b) and the immediately preceding subparagraph (a).

(c) To the extent that any Prepetition Secured Party is the secured party under any account control agreements, listed as loss payee or additional insured under any of the Credit Parties' insurance policies or is the secured party under any other agreement, the DIP Collateral

Agent, on behalf of the DIP Secured Parties, is also deemed to be the secured party under such account control agreements, loss payee or additional insured under the Credit Parties' insurance policies and the secured party under each such agreement (in any such case with the same priority of liens and claims thereunder relative to the priority of (x) the Prepetition Liens and Adequate Protection Liens and (y) the DIP Liens, as set forth herein), and shall have all rights and powers in each case attendant to that position (including, without limitation, rights of enforcement, but subject in all respects to the terms of this Final Order), and shall, subject to the terms of this Final Order, except with respect to the Prepetition ABL Priority Collateral, act in that capacity and distribute any proceeds recovered or received in respect of any of the foregoing, first, to the payment in full of the DIP Obligations, and second, to the payment of the Prepetition Debt (consistent with the Prepetition Intercreditor Agreements and Prepetition Collateral Trust Agreements). In accordance with the terms of this Final Order and the other DIP Documents, the Prepetition Collateral Trustee and the Prepetition ABL Agent, as applicable, shall serve as agent for the DIP Collateral Agent for purposes of perfecting the DIP Collateral Agent's security interests in and liens on all Collateral that is of a type such that perfection of a security interest therein may be accomplished only by possession or control by a secured party.

25. *Preservation of Rights Granted Under This Final Order.*

(a) Other than (i) the Carve-Out, (ii) the Prepetition Permitted Prior Liens, (iii) Permitted Liens; (iv) solely with respect to the Prepetition ABL Priority Collateral, the liens and claims of the Prepetition ABL Secured Parties; (v) with respect to the LC Cash Collateral, the liens and claims of the Outstanding LC Issuer; and (vi) other claims and liens expressly granted by this Final Order, no claim or lien having a priority superior to or *pari passu* with those granted by this Final Order to the DIP Secured Parties or the Prepetition Secured Parties shall be permitted

while any of the DIP Obligations or the Adequate Protection Obligations remain outstanding, and, except as otherwise expressly provided in paragraphs 10, 11, or 19 of this Final Order, the DIP Liens and the Adequate Protection Liens shall not be: (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Credit Parties' estates under section 551 of the Bankruptcy Code; (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise; (iii) subordinated to or made *pari passu* with any liens arising after the Commencement Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the Credit Parties; or (iv) subject or junior to any intercompany or affiliate liens or security interests of the Credit Parties.

(b) The occurrence of (a) any Event of Default (as defined in the DIP Credit Agreement) or (b) any violation of any of the terms of this Final Order, shall, after notice by the DIP Administrative Agent in writing to the Borrower, constitute an event of default under this Final Order (each an "**Event of Default**") and, subject to the Term Remedies Notice Period and the FILO Remedies Notice Period, as applicable, terminate the right of the Credit Parties to use Cash Collateral pursuant to this Final Order and upon any such Event of Default, interest, including, where applicable, default interest, shall accrue and be paid as set forth in the DIP Credit Agreement. Notwithstanding any order that may be entered dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code: (A) the DIP Superpriority Claims, the Adequate Protection 507(b) Claims, the DIP Liens, and the Adequate Protection Liens, and any claims related to the foregoing, shall continue in full force and effect and shall maintain their priorities as provided in this Final Order until all DIP Obligations and Adequate Protection shall have been paid in full (and

that such DIP Superpriority Claims, Adequate Protection 507(b) Claims, DIP Liens and Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest); (B) the other rights granted by this Final Order shall not be affected; and (C) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in this paragraph and otherwise in this Final Order.

(c) If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect: (i) the validity, priority or enforceability of any DIP Obligations or Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Administrative Agent, the DIP Collateral Agent, the Prepetition ABL Agent, the Prepetition Collateral Trustee, the Prepetition Superpriority Agent, the Prepetition Term Agent, the Prepetition Indenture Trustee or the Prepetition Collateral Trustee, as applicable, of the effective date of such reversal, modification, vacation or stay; or (ii) the validity, priority or enforceability of the DIP Liens, the Adequate Protection Liens, the Prepetition Liens or the Prepetition Debt. Notwithstanding any such reversal, modification, vacation or stay of any use of Cash Collateral or Collateral, any DIP Obligations, DIP Liens, Adequate Protection Obligations or Adequate Protection Liens incurred by the Credit Parties to the DIP Secured Parties or the Prepetition Secured Parties, as the case may be, prior to the actual receipt of written notice by the DIP Administrative Agent, the DIP Collateral Agent, the Prepetition ABL Agent, the Prepetition Collateral Trustee, the Prepetition Superpriority Agent, the Prepetition Term Agent, the Prepetition Indenture Trustee or the Prepetition Collateral Trustee, as applicable, of the effective date of such reversal, modification, vacation or stay shall be governed in all respects by the original provisions of this Final Order, and the DIP Agents, the DIP Lenders and the Prepetition Secured Parties shall be entitled to all the rights, remedies,

privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Final Order and the DIP Documents with respect to all uses of Cash Collateral, the DIP Obligations and Adequate Protection.

(d) Except as expressly provided in this Final Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Prepetition Liens, the Prepetition Debt and the Adequate Protection and all other rights and remedies of the DIP Secured Parties, and the Prepetition Secured Parties granted by the provisions of this Final Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by: (i) the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7, dismissing any of the Chapter 11 Cases, substantively consolidating any of the cases with another case, terminating the joint administration of these Chapter 11 Cases or by any other act or omission; (ii) the entry of an order approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents); or (iii) the entry of an order confirming a chapter 11 plan in any of the Chapter 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Credit Parties have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations and with respect to the Prepetition Debt. The Borrower and DIP FILO Guarantors shall not propose or support any plan of reorganization or sale of all or substantially all of the Borrower's and DIP FILO Guarantors' assets, or order confirming such plan or approving such sale, that is not conditioned upon the indefeasible payment in full, no later than the effective date of such plan or sale, of (i) all allowed claims of the DIP FILO Lender on account of the Prepetition FILO Debt and (ii) all allowed Adequate Protection Claims of the Prepetition FILO Lender, in each case in cash or such other consideration acceptable to the DIP FILO Lender and the Prepetition FILO Lender, as applicable, regardless of whether the

DIP FILO Superpriority Claims become undersecured at any point during the Chapter 11 Cases and regardless of the value of the Prepetition ABL Priority Collateral and the value of the gross accounts receivable and gross inventory; *provided, however*, that in the event that the Adequate Protection Claims of the Prepetition FILO Lender become undersecured, such Adequate Protection Claims shall receive treatment that is, in the reasonable determination of the Prepetition FILO Lender, no worse than the treatment of the Adequate Protection Claims of the Prepetition Superpriority Lenders. The terms and provisions of this Final Order and the DIP Documents shall continue in these Chapter 11 Cases, in any successor cases if these Chapter 11 Cases cease to be jointly administered and in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Prepetition Debt, the Prepetition Liens and the Adequate Protection Claims and all other rights and remedies of the DIP Secured Parties and the Prepetition Secured Parties granted by the provisions of this Final Order and the DIP Documents shall continue in full force and effect until the DIP Obligations are paid in full, as set forth herein and in the DIP Documents, and the DIP Commitments have been terminated.

26. *Limitation on Use of DIP Financing Proceeds and Collateral*. Notwithstanding any other provision of this Final Order or any other order entered by the Court, no DIP Term Loans or DIP FILO Loans, DIP Collateral, Prepetition Collateral or any portion of the Carve-Out, may be used directly or indirectly by any Debtor, any Committee (as defined below), or any trustee appointed in the Chapter 11 Cases or any successor case, including any chapter 7 case, or any other person, party or entity (i) in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (a) against the DIP Secured Parties, or the Prepetition Secured Parties, or their respective predecessors-in-interest, agents,

affiliates, representatives, attorneys, or advisors, or any action purporting to do the foregoing in respect of the Prepetition Debt, liens on the Prepetition Collateral, DIP Obligations, DIP Liens, DIP Superpriority Claims and/or the adequate protection, adequate protection liens and superpriority claims granted to the Prepetition Secured Parties under this Final Order, as applicable, or (b) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset with respect to, the Prepetition Debt, the DIP Obligations and/or the liens, claims, rights, or security interests granted under the Interim Order, this Final Order, the DIP Documents or the Prepetition Credit Documents including, in each case, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; (ii) to prevent, hinder, or otherwise delay the Prepetition Secured Parties', or the DIP Secured Parties', as applicable, enforcement or realization on the Prepetition Debt, Prepetition Collateral, DIP Obligations, DIP Collateral, and the liens, claims and rights granted to such parties under the Interim Order or this Final Order, as applicable, each in accordance with the DIP Documents, the Prepetition Credit Documents or this Final Order; (iii) to seek to modify any of the rights and remedies granted to the Prepetition Secured Parties, the DIP Secured Parties under this Final Order, the Prepetition Credit Documents or the DIP Documents, as applicable; (iv) to apply to the Court for authority to approve superpriority claims or grant liens (other than the liens permitted pursuant to the DIP Documents) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Liens, DIP Superpriority Claims, adequate protection liens and superpriority claims and liens granted to the Prepetition Secured Parties, unless all DIP Obligations, Prepetition Debt, Adequate Protection, and claims granted to the DIP Secured Parties or Prepetition Secured Parties under this Final Order, have been refinanced or paid in full or otherwise agreed to in writing by

the DIP Secured Parties; or (v) to seek to pay any amount on account of any claims arising prior to the Commencement Date unless such payments are agreed to in writing by the DIP Lenders, in or are otherwise included in the "Approved Cash Flow Forecast" (as initially attached to the Motion, and as updated in accordance with the terms of the DIP Documents); *provided*, that, notwithstanding anything to the contrary herein, the Creditors' Committee may use the proceeds of the DIP Term Loans, DIP Collateral (including Cash Collateral) and/or the Carve-Out to investigate, but not prosecute, an actual or potential Challenge; *provided, further*, that no more than an aggregate of $250,000 of the proceeds of the DIP Term Loans, DIP Collateral (including Cash Collateral) and/or the Carve-Out may be used by the Creditors' Committee for the foregoing in the immediately preceding proviso (the "**Investigation Budget**"); *provided, further*, that to the extent the Creditors' Committee incurs fees and expenses in an amount in excess of the Investigation Budget, the Creditors' Committee may seek payment of such fees as an administrative expense as part of its professionals' fee applications; *provided, further*, that all parties' rights to object to such fees and expenses on the grounds that such fees and expenses are not reasonable are reserved.

27. *Real Property Leases*. As a requirement and precondition to the DIP Secured Parties' willingness to lend and in furtherance of the DIP Superpriority Claims provided for in this Final Order and pursuant to the DIP Documents, which are payable from and have recourse to all of the Debtors' pre- and post-petition property including, among other things, each lease of Leasehold Property (as defined in the DIP Credit Agreement) to which a Debtor is a counterparty (each, a "**Real Property Lease**"), the DIP Secured Parties shall have the following protections with respect to the Debtors' Real Property Leases, regardless of whether any particular Real Property Lease or group of Real Property Leases constitutes Collateral, which protections shall be

enforced by the DIP Agents or DIP Secured Parties as authorized, approved, and granted pursuant to the provisions of this Final Order and in accordance with the terms of the DIP Credit Agreement (and, after the indefeasible Payment in Full of the DIP Obligations, (i) the rights of the DIP Agents and the DIP Secured Parties shall automatically transfer and be available to the Prepetition Secured Parties, subject to the terms of the Prepetition Intercreditor Agreements and the Prepetition Collateral Trust Agreements, (ii) defined terms used in this paragraph 27 relating to the DIP Documents shall be deemed to be references to corresponding defined terms relating to the Prepetition Credit Documents, (iii) any notice herein required to be delivered pursuant to this paragraph 27 to the DIP Agents shall instead be required to be delivered to each of the Prepetition ABL Agent and the Prepetition Collateral Trustee, and (iv) the automatic stay provisions pursuant to section 362 of the Bankruptcy Code are vacated and modified to the extent necessary so as to permit the DIP Agents, the DIP Secured Parties, the Prepetition ABL Agent and the Prepetition Collateral Trustee, as applicable, and the Prepetition Secured Parties to exercise any of their rights with respect to Real Property Leases under this paragraph 27):

(a) Remedies Upon an Event of Default. If an Event of Default shall have occurred and be continuing, the DIP Agents for the benefit of the DIP Secured Parties shall, with respect to any Real Property Lease or group of Real Property Leases, be permitted, and are hereby authorized, approved, and granted the following rights and remedies:

(i) to exercise the Debtors' rights pursuant to section 365(f) of the Bankruptcy Code with respect to any such Real Property Lease(s) and, subject to this Court's approval after notice and hearing, assign any such Real Property Lease(s) in accordance with section 365 of the Bankruptcy Code notwithstanding any language to the contrary in any of the applicable lease documents or executory contracts;

(ii) to require any Debtor to complete promptly, pursuant to section 363 of the Bankruptcy Code, subject to the rights of the DIP Agents, DIP Secured Parties or applicable Prepetition Secured Parties (if applicable) to credit bid

(unless otherwise ordered by the Court), an Asset Sale[23] of any such Real Property Lease(s) in one or more parcels at public or private sales, at the DIP Agents' offices or elsewhere, for cash, at such time or times and at such price or prices and upon such other terms as the DIP Agents or DIP Secured Parties may deem commercially reasonable;

(iii) to access the leasehold interests of the Debtors or debtors in possession in any such Real Property Lease(s) for the purpose of (A) marketing such property or properties for sale and (B) removing any Collateral thereon or arranging for the Asset Sale of any such Collateral except to the extent prohibited by the terms of the Real Property Lease (unless the applicable provision is rendered ineffective by applicable non-bankruptcy law or the Bankruptcy Code); *provided* that the foregoing shall not preclude any counterparty to a Real Property Lease from an opportunity to be heard in this Court on notice with respect to the foregoing;

(iv) (A) to find an acceptable (in the DIP Agents' or the DIP Requisite Lenders' good faith and reasonable discretion) replacement lessee, which may include the DIP Agents, the DIP Secured Parties or any of their affiliates, to whom such Real Property Lease(s) may be assigned, (B) to hold, and manage all aspects of, an auction or other bidding process to find such acceptable replacement lessee, (C) in connection with any such auction, agree, on behalf of the Debtors, to reimburse reasonable fees and expenses of any stalking horse bidder, if necessary, and/or (D) to notify the Debtors of the selection of any replacement lessee pursuant to this paragraph 27, upon receipt of which the Debtors shall promptly (1) file a motion seeking, on an expedited basis, approval of the Debtors' assumption and assignment of such Real Property Lease(s) to such proposed assignee, and (2) cure any defaults, if any, that have occurred and are continuing under such Real Property Lease(s) to the extent required by the Court (subject to the DIP Secured Parties' right to cure defaults as set forth in paragraph 27(e) of this Final Order); or

(v) to direct the Debtors to (A) assign any such Real Property Lease(s) to the DIP Agents or DIP Secured Parties as Collateral securing the DIP Obligations, subject to clause (B), if applicable, (B) seek this Court's approval of the assumption of any such Real Property Lease(s) to the extent that this Court determines pursuant to a final order that an assumption is required in order to assign such lease or leases as Collateral, and (C) promptly cure any default that has occurred and is continuing under such Real Property Lease(s) to the extent required by the Court; *provided* that any assignment of any such Real Property Lease(s) as Collateral

[23] "**Asset Sale"** shall mean (a) the sale, lease, transfer, assignment, conveyance or other disposition (including any sale and lease back transaction) of any assets or rights by the Company or any of its Restricted Subsidiaries (as defined in the DIP Credit Agreement); or (b) the issuance or sale of equity interests by any Restricted Subsidiary or the sale by the Company or any of its Restricted Subsidiaries of equity interests in any Restricted Subsidiary.

securing the applicable DIP Obligations shall not impair the Debtors' ability to subsequently assume (if not already assumed) and assign such Real Property Lease(s) pursuant to section 365 of the Bankruptcy Code or to enjoy the protections of section 365(f) of the Bankruptcy Code with respect to any such assignment.

(b) Right to Credit Bid. Prior to any assignment of any Real Property Lease or group of Real Property Leases, the Debtors shall first provide at least five (5) business days' prior written notice (the "**Initial Notice Period**") to the DIP Agents, unless such notice provision is waived by the DIP Agents and the DIP Requisite Lenders, which Initial Notice Period may be extended up to a further twenty-five (25) days by the DIP Agents or the DIP Requisite Lenders in each of their sole discretion by delivering written notice of such extension to the Debtors prior to expiration of the Initial Notice Period, and by any further period as is mutually agreeable between the DIP Agents or the DIP Requisite Lenders and the Company (such notice period being the "**Aggregate Notice Period**"). During such notice period, the DIP Agents shall be permitted, subject to the terms of the DIP Documents and unless otherwise ordered by the Court, to credit bid forgiveness of some or all of the outstanding DIP Obligations (in an amount equal to at least the consideration offered by any other party in respect of such assignment) outstanding under the DIP Facilities as consideration in exchange for any such Real Property Lease(s) *provided* that to the extent the Company is entitled to retain a portion of the total consideration paid in respect of such assignment in accordance with the DIP Credit Agreement, the applicable portion of the consideration to be retained by Company shall be paid in cash (*provided* that such proceeds shall constitute DIP Collateral and Cash Collateral). In addition, in connection with the exercise of any of the DIP Agents' or the DIP Requisite Lenders' rights pursuant to the DIP Credit Agreement or this Final Order to direct or compel a sale or other Asset Sale of any Real Property Lease(s), the DIP Agents, on behalf of the DIP Lenders, shall be permitted to credit bid forgiveness of some or

all of the outstanding DIP Obligations (in an amount equal to at least the consideration offered by any other party in respect of such sale or other Asset Sale) as consideration in exchange for such Real Property Lease(s). Pursuant to section 364(e) of the Bankruptcy Code, absent a stay pending appeal, the DIP Lenders' right to credit bid shall not be affected by the reversal or modification on appeal of the Debtors' authorization pursuant to this Final Order to obtain credit and incur debt as and in accordance with the terms set forth herein.

(c) Right of First Refusal with Respect to Proposed Assignments and Rejections of Real Property Leases. Unless all DIP Obligations shall have indefeasibly been satisfied pursuant to the DIP Credit Agreement, the Debtors shall not seek, and it shall constitute an Event of Default and terminate the right of the Debtors under the DIP Credit Agreement and this Final Order if any of the Debtors seeks, the sale or other Asset Sale of, or the rejection or other termination of, or if there is entered an order pursuant to section 365 of the Bankruptcy Code assigning or rejecting, any Real Property Lease or group of Real Property Leases, or if any Real Property Lease or group of Real Property Leases is deemed rejected due to the expiration of the assumption period provided for in section 365(d)(4) (the "**Statutory Rejection Date**"), without the Debtors' first providing thirty (30) days' prior written notice to the DIP Agents, or if such notice is given more than thirty (30) days in advance of the Statutory Rejection Date, prior written notice at least equal to the Aggregate Notice Period; *provided, however*, that the right of first refusal of the DIP Agents as set forth in this paragraph 27(c) shall not apply to (x) any assignment or sale of a Real Property Lease or group of Real Property Leases to a winning bidder at an auction authorized by this Court, and (y) so long as no Event of Default has occurred and is ongoing, or to the extent such action would result in an Event of Default, any assignment or sale of a Real Property Lease or group of Real Property Leases that are not material leases generating cash proceeds (net of reasonable costs,

expenses, and any applicable taxes) up to $250,000 in the aggregate value for all such sales or assignments. During such notice period, the DIP Agents shall be permitted to:

(i) (A) notify the Debtors that it elects to take action pursuant to this paragraph, upon receipt of which the Debtors shall promptly withdraw any previously filed rejection motion, (B) find an acceptable (in the DIP Agents' or DIP Requisite Lenders' good faith and reasonable discretion) replacement lessee, which may include the DIP Agents, the DIP Lenders or any of their affiliates, to whom any such any Real Property Lease or group of Real Property Leases may be assigned (subject to Court approval), (C) hold, and manage all aspects of, an auction or other bidding process to find such acceptable replacement lessee, (D) in connection with any such auction, agree, on behalf of the Debtors (and subject to Court approval) to reimburse the reasonable fees and expenses of any stalking horse bidder, if necessary, and (E) notify the Debtors of the selection of any replacement lessee pursuant to this paragraph, upon receipt of which the Debtors shall (1) not seek to reject any such Real Property Lease(s), (2) promptly withdraw any pending motion to reject any such Real Property Lease(s), (3) promptly file a motion seeking, on an expedited basis, approval of the Debtors' assumption and assignment of such Real Property Lease(s) to the DIP Agents or the DIP Requisite Lenders' proposed assignee, and (4) promptly cure any defaults that have occurred and are continuing under such Real Property Lease(s) to the extent authorized by the Court; or

(ii) direct the Debtors to (A) assign any Real Property Lease or group of Real Property Leases as Collateral securing the DIP Obligations (subject to Court approval), (B) seek the Court's approval of the assumption of any such Real Property Lease(s) if it is determined pursuant to a final order of this Court that an assumption is required in order to assign such lease(s) as Collateral, and (C) promptly cure any defaults that have occurred and are continuing under such Real Property Lease(s) (subject to the DIP Lenders' right to cure defaults as set forth in paragraph 27(e) of this Final Order) to the extent authorized by the Court; *provided* that any assignment of any Real Property Lease(s) as Collateral securing the DIP Obligations shall not impair the Debtors' ability to subsequently assume (if not already assumed) and assign any such Real Property Lease(s) pursuant to section 365 of the Bankruptcy Code or to enjoy the protections of section 365(f) of the Bankruptcy Code with respect to any such assignment.

(iii) Notwithstanding anything to the contrary herein, the foregoing rights of the DIP Agents set forth in this paragraph shall not apply to Real Property Leases that are rejected, terminated, sold, or assigned on the effective date of any plan of reorganization in any of the Chapter 11 Cases that, among other things, indefeasibly repays the DIP Obligations in full on the effective date thereof. For the avoidance of doubt, on or prior to the thirtieth (30)

day prior to the Statutory Rejection Date (as provided in section 365(d)(4) of the Bankruptcy Code), the Debtors shall have delivered written notice to the DIP Agents of each outstanding Real Property Lease that they intend to reject (including, without limitation, through statutory rejection on the Statutory Rejection Date) from and after the date of such notice (or, if applicable, notice that the Debtors have obtained the applicable landlord's consent to extension of the Statutory Rejection Date); *provided* that if the Debtors fail to deliver any such notice to the DIP Agents prior to such date with respect to any such Real Property Lease(s) (or a notice indicating that no such Real Property Lease(s) shall be rejected), the Debtors shall be deemed, for all purposes hereunder, to have delivered notice to the DIP Agents as of such date that they intend to reject all outstanding Real Property Leases.

(d) Assumption Orders. Any order of this Court approving the assumption of any Real Property Lease shall specifically provide that the applicable Debtor shall be authorized to assign such Real Property Lease pursuant to, and to enjoy the protections of, section 365(f) of the Bankruptcy Code subsequent to the date of such assumption. To the extent that such provision is for any reason not included in any order of the Court approving the assumption of any Real Property Lease, then such Real Property Lease may not be assumed by the applicable Debtor unless the order approving the assumption provides for the assignment of such Real Property Lease, on the date of such order, to an acceptable (in the DIP Agents' or the DIP Requisite Lenders' good faith and reasonable discretion) replacement lessee (which may include the DIP Agents, the DIP Lenders, or their respective affiliates).

(e) DIP Lenders' Right to Cure Defaults. If any of the Debtors are required to cure any monetary defaults under any Real Property Lease pursuant to any order of this Court or otherwise in connection with any assumption or assumption and assignment of any such Real Property Lease pursuant to section 365(f) of the Bankruptcy Code, and such monetary default is not, within five (5) business days of the receipt by such Debtor of notice from the DIP Agents pursuant to the applicable provision(s) of the DIP Credit Agreement or any other notice from the

DIP Agents requesting the cure of such monetary default, cured in accordance with the provisions of such applicable court order as arranged by the DIP Agents, the DIP Agents may cure any such monetary defaults on behalf of the applicable Debtor(s).

(f) Priorities. For the avoidance of doubt, nothing set forth in this paragraph 27 shall affect the relative priorities of liens and claims set forth herein and in the Prepetition Intercreditor Agreements and Prepetition Collateral Trust Agreements. Unless and until Payment in Full of the Prepetition ABL Debt, nothing set forth in this paragraph 27 shall permit the DIP Agents or the DIP Lenders, or any of their designees or agents, to exercise any rights or remedies with respect to Prepetition ABL Priority Collateral.

28. *Approved Cash Flow Forecast*. The Approved Cash Flow Forecast is approved on a final basis. Proceeds of the DIP Facility and Cash Collateral under this Final Order shall be used by the Credit Parties in accordance with the DIP Credit Agreement and this Final Order and consistent with the Approved Cash Flow Forecast or as otherwise agreed by the DIP Administrative Agent (subject to permitted variances). None of the DIP Secured Parties' consent (if any) to, or acknowledgment of, the Approved Cash Flow Forecast shall be construed as consent to use of the proceeds of the DIP Facilities or Cash Collateral beyond the maturity date set forth in the DIP Credit Agreement, regardless of whether the aggregate funds shown on the Approved Cash Flow Forecast have been expended.

29. *Payment of Fees and Expenses*. The Credit Parties are authorized to pay the DIP Fees and Expenses, as provided in the DIP Documents. Subject to the review procedures set forth in this paragraph 29, payment of all DIP Fees and Expenses and Adequate Protection Fees and Expenses shall not be subject to allowance or review by the Court. Professionals for the DIP Secured Parties and the Prepetition Secured Parties shall not be required to comply with the U.S.

Trustee fee guidelines, however any time that such professionals seek payment of fees and expenses from the Debtors prior to confirmation of a chapter 11 plan, each professional shall provide summary copies of its invoices (which shall not be required to contain time entries and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney client privilege or of any benefits of the attorney work product doctrine) to the Debtors, the U.S. Trustee and counsel for the Creditors' Committee (together, the "**Review Parties**"). Any objections raised by the Debtors, the U.S. Trustee or the Creditors' Committee with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional within ten (10) days of the receipt of such invoice (the "**Review Period**"). If no written objection is received by 12:00 p.m., prevailing Eastern Time, on the end date of the Review Period, the Credit Parties shall pay such invoices within five (5) days. If an objection to a professional's invoice is received within the Review Period, the Credit Parties shall promptly pay the undisputed amount of the invoice and this Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. Notwithstanding the foregoing, the Debtors are authorized and directed to pay on or after the Closing Date the DIP Fees and Expenses and Adequate Protection Fees and Expenses incurred on or prior to such date without the need for any professional engaged by the DIP Secured Parties or the Prepetition Secured Parties to first deliver a copy of its invoice or other supporting documentation to the Review Parties (other than the Debtors). No attorney or advisor to the DIP Secured Parties or any Prepetition Secured Party shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. Any and all fees, costs,

and expenses paid prior to the Commencement Date by any of the Debtors to the (i) DIP Secured Parties in connection with or with respect to the DIP Facility; and (ii) Prepetition Secured Parties in connection or with respect to these matters, are hereby approved in full and shall not be subject to recharacterization, avoidance, subordination, disgorgement or any similar form of recovery by the Debtors or any other person.

30. *Limits to Lender Liability*. Nothing in this Final Order, the DIP Documents, or any other documents related to these transactions shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties (in each case, in their capacities as such) of any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their business, or in connection with their restructuring efforts. So long as the DIP Secured Parties comply with their obligations under the DIP Documents and their obligations, if any, under applicable law (including the Bankruptcy Code), (a) the DIP Secured Parties shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person and (b) all risk of loss, damage or destruction of the Collateral shall be borne by the Credit Parties.

31. *Effect of Stipulations on Third Parties.* The Debtors' stipulations, admissions, agreements and releases contained in this Final Order, including, without limitation, in paragraph 7 of this Final Order, shall be binding upon the Debtors and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors) in all circumstances and for all purposes. The Debtors' stipulations, admissions, agreements and releases contained in this Final Order, including, without limitation, in paragraph

7 of this Final Order, shall be binding upon all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases (a "**Committee**"), and any other person or entity acting or seeking to act on behalf of the Debtors' estates, in all circumstances and for all purposes unless: (a) such party in interest with requisite standing (subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so), has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, *inter alia*, in this paragraph) or, solely with respect to the Creditors' Committee, has filed a motion seeking standing to pursue a Challenge on behalf of the Debtors' estates that attaches as an exhibit a complaint that sets forth with specificity the basis of the claims (x) by the Creditors' Committee within 90 calendar days after the appointment of the Creditors' Committee, (y) for any other party in interest with requisite standing within 75 calendar days after entry of the Interim Order, and (z) for Black Diamond Commercial Finance, L.L.C., through and including January 27, 2020 (the time period established by the foregoing clauses (x), (y) and (z), or any such later date as has been agreed to, in writing, by the Superpriority Requisite Lenders, the ABL Requisite Lenders and counsel to the DIP Agents, or as has been ordered by the Court for cause shown, the "**Challenge Period**"), (A) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Debt or the Prepetition Liens (including, but not limited to, the liens and claims under the Prepetition ABL Credit Facility) or (B) otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "**Challenges**"), against any of the Prepetition Secured Parties or their respective affiliates and subsidiaries and predecessors and each of their respective former, current or future officers,

partners, directors, managers, members, principals, employees, agents, related funds, investors, financing sources, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case in their respective capacity as such (each a "**Representative**" and, collectively, the "**Representatives**") in connection with matters related to the Prepetition Credit Documents, the Prepetition Debt, the Prepetition Liens and the Prepetition Collateral; and (b) there is a final non-appealable order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter; *provided, however*, that any pleadings filed in connection with any Challenge shall set forth with specificity the basis for such challenge or claim and any challenges or claims not so specified prior to the expiration of the Challenge Period shall be deemed forever, waived, released and barred. If no such Challenge is timely and properly filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such proceeding then: (a) the Debtors' stipulations, admissions, agreements and releases contained in this Final Order, including, without limitation, those contained in paragraph 7 of this Final Order, shall be binding on all parties in interest; (b) the obligations of the Credit Parties under the Prepetition Credit Documents, including the Prepetition Debt, shall constitute allowed claims not subject to defense, claim, counterclaim, recharacterization, subordination, offset or avoidance, for all purposes in the Chapter 11 Cases, and any subsequent chapter 7 case(s); (c) the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Commencement Date, legal, valid, binding, perfected, security interests and liens, not subject to recharacterization, subordination, avoidance or other defense; and (d) the Prepetition Debt and the Prepetition Liens on the Prepetition Collateral shall not be subject to any other or further claim or challenge by any Committee, or any other party in interest acting or seeking to act on behalf of the Debtors' estates,

including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors) and any defenses, claims, causes of action, counterclaims and offsets by any Committee, if any, or any other party acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors), whether arising under the Bankruptcy Code or otherwise, against any of the Prepetition Secured Parties and their Representatives arising out of or relating to any of the Prepetition Credit Documents shall be deemed forever waived, released and barred. If any such Challenge is timely filed during the Challenge Period, the stipulations, admissions, agreements and releases contained in this Final Order, including, without limitation, those contained in paragraph 7 of this Final Order, shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on any Committee and on any other person or entity, except to the extent that such stipulations, admissions, agreements and releases were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in this Final Order vests or confers on any Person (as defined in the Bankruptcy Code), including any Committee, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, Challenges with respect to the Prepetition Credit Documents, the Prepetition Debt or the Prepetition Liens, and, in the event that any Person, including any Committee, seeks to pursue any claim or cause of action belonging to the Debtors or their estates, nothing in this Final Order shall excuse such Person from any requirement under applicable law to establish standing or authority to pursue such claims. Furthermore, the terms of this Final Order are without prejudice to any party's right to contest any Challenge pursued by any party in interest (whether or not such

party in interest is acting or seeking to act on behalf of the Debtors' estates), including with respect to such party's standing to pursue such Challenge. Any motion seeking standing shall attach a draft complaint or other pleading that sets forth such Challenge, and any Challenge not included therein shall be deemed forever waived, released, and barred. For the avoidance of doubt, none of the foregoing challenge provisions set forth in this paragraph shall apply to any DIP Secured Party, in their capacities as such, and in no event shall the DIP Facility, DIP Obligations or DIP Liens be subject to challenge pursuant to this paragraph on avoidance or any other grounds by any party. For the avoidance of doubt, nothing in this paragraph shall be deemed to waive, release or bar the actions brought by Black Diamond Commercial Finance, L.L.C. ("**Black Diamond**") in the complaint [Docket No. 245] (the "**Black Diamond Complaint**") filed by Black Diamond on November 20, 2019 against certain of the Debtors and other parties named as defendants therein. The Black Diamond Complaint is a timely filed Challenge (timely filed within the 75 calendar day period set forth in this Final Order) to certain of the stipulations, admissions, agreements and releases contained in this Final Order, including, without limitation, in paragraph 7 of this Final Order, subject to all claims and defenses of the Debtors, named defendants, and other parties in interest.

32. *Postpetition Release*. In addition, notwithstanding anything to the contrary set forth herein, upon the repayment of all DIP Obligations owed to the DIP Agents and the DIP Secured Parties by Debtors and termination of the rights and obligations arising under the DIP Documents (which payment and termination shall be on terms and conditions acceptable to the DIP Agents), the DIP Agents and the DIP Lenders shall be released from any and all obligations, liabilities, actions, duties, responsibilities and causes of action arising or occurring, on or prior to the date of such repayment and termination, in connection with or related to the DIP Documents,

or this Final Order (including without limitation any obligation or responsibility (whether direct or indirect, absolute or contingent, due or not due, primary or secondary, liquidated or unliquidated) to pay or otherwise fund the Carve-Out on terms and conditions acceptable to the DIP Agents).

33. *Landlord Agreements; Access.*

(a) All collateral access agreements to which the Prepetition ABL Agent or the Prepetition Collateral Trustee is a party shall hereby continue to be deemed to be amended to include the DIP Agents as a beneficiary thereunder, and such agreements shall thereafter be additionally enforceable by the DIP Agents against, and binding upon, each landlord party thereto. Any title, landlord's lien, right of distraint or levy, security interest or other interest that any landlord or mortgagee may have in any DIP Collateral or Prepetition Collateral of the Debtors located on such leased premises, to the extent the same is not avoidable under sections 544, 545, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise, is hereby expressly subordinated to the liens of the DIP Secured Parties and the Prepetition Secured Parties.

(b) Without limiting any other rights or remedies of the DIP Agents or the other DIP Secured Parties set forth in this Final Order, the DIP Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Documents, upon three (3) business days' written notice to counsel to the Debtors and any landlord, lienholder, licensor, or other third party owner of any leased or licensed premises or intellectual property, after the expiration of the Remedies Notice Period, that an Event of Default has occurred and is continuing, the DIP Agents, (i) may, unless otherwise expressly provided in any separate agreement by and between the applicable landlord or licensor and the DIP Agents, enter upon any leased or licensed premises of the Debtors for the purpose of exercising any remedy with respect to DIP Collateral located thereon,

and (ii) shall be entitled to all of the Debtors' rights and privileges as lessee or licensee under the applicable license and to use any and all trademarks, trade names, copyrights, licenses, patents, or any other similar assets of the Debtors, which are owned by or subject to a lien of any third party and which are used by Debtors in their businesses, without unreasonable interference from landlords, lienholders, or licensors thereunder; *provided*, *however*, that the DIP Agents (on behalf of the DIP Lenders) shall pay only rent and additional rent, fees, royalties, or other monetary obligations of the Debtors that first arise after the written notice referenced above from the DIP Agents and that accrue during the period of such occupancy or use by DIP Agents calculated on a per diem basis. For the avoidance of doubt, (A) all of the Debtors' obligations under any applicable lease or license shall not be affected, limited, or otherwise modified by the rights granted to the DIP Agents pursuant to this paragraph and (B) any affected landlords, lienholders, and/or licensors shall retain all remedies available under applicable non-bankruptcy law. Nothing herein shall require the Debtors, the DIP Agents or the other DIP Secured Parties, to assume any lease or license under Bankruptcy Code section 365(a) as a precondition to the rights afforded to the DIP Agents and the other DIP Secured Parties herein.

34. *Final Order Governs*. In the event of any inconsistency between the provisions of this Final Order, the DIP Documents or any other order entered by this Court, the provisions of this Final Order shall govern. Notwithstanding anything to the contrary in any other order entered by this Court, any payment made pursuant to, or authorization contained in, any other order entered by this Court shall be consistent with and subject to the requirements set forth in this Final Order and the DIP Documents, including, without limitation, the Approved Cash Flow Forecast (subject to permitted variances).

35. *Binding Effect; Successors and Assigns*. Subject only to paragraph 31, the DIP Documents and the provisions of this Final Order, including all findings herein, shall be binding upon all parties in interest in these Chapter 11 Cases, including, without limitation, the DIP Secured Parties, the Prepetition Secured Parties, any Committee, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Secured Parties, the Prepetition Secured Parties and the Debtors and their respective successors and assigns; *provided*, that the DIP Secured Parties and the Prepetition Secured Parties shall have no obligation to permit the use of the Prepetition Collateral (including Cash Collateral) by, or to extend any financing to, any chapter 7 trustee, chapter 11 trustee or similar responsible person appointed for the estates of the Debtors.

36. *Exculpation*. Nothing in this Final Order, the DIP Documents, the existing agreements or any other documents related to the transactions contemplated hereby shall in any way be construed or interpreted to impose or allow the imposition upon any DIP Secured Party or any Prepetition Secured Party of any liability for any claims arising from the prepetition or postpetition activities of the Credit Parties in the operation of their businesses, or in connection with their restructuring efforts.

37. *Limitation of Liability*. In determining to make any loan or other extension of credit under the DIP Credit Agreement, to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Final Order or the DIP Documents, none of the DIP Secured Parties, or the Prepetition Secured Parties shall (i) be deemed to be in "control" of

the operations or participating in the management of the Debtors; (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates; or (iii) be deemed to be acting as a "Responsible Person" or "Owner" or "Operator" with respect to the operation or management of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq., as amended, or any similar federal or state statute).

38. *Master Proof of Claim*. The Prepetition ABL Agent, the Prepetition Superpriority Agent, the Prepetition Term Agent and the Prepetition Indenture Trustee shall not be required to file proofs of claim in the Chapter 11 Cases or any successor case in order to assert claims on behalf of itself and the applicable Prepetition Secured Parties for payment of the applicable Prepetition Debt arising under the applicable Prepetition Credit Documents, nor shall any other Prepetition Secured Party be required to file any proofs of claim in the Chapter 11 Cases or any successor case in order to assert claims on behalf of itself for payment of the Prepetition Debt arising under the Prepetition Credit Documents, *provided*, that Prepetition Secured Parties are required to file proofs of claim for any claim that does not arise under the Prepetition Credit Documents. The statements of claim in respect of the Prepetition Debt set forth in this Final Order, together with any evidence accompanying the Motion and presented at the Hearings, are deemed sufficient to and do constitute proofs of claim in respect of such debt and such secured status. However, in order to facilitate the processing of claims, to ease the burden upon the Court and to reduce an unnecessary expense to the Debtors' estates, each of the Prepetition ABL Agent, the Prepetition Superpriority Agent, the Prepetition Term Agent, the Prepetition Indenture Trustee and/or other Prepetition Secured Party is authorized to file in the Debtors' lead chapter 11 case, *In re Murray Energy Holdings Co., et al.*, Case No. 19-56885 (JEH), a single, master proof of claim

on behalf of the relevant Prepetition Secured Parties on account of any and all of their respective claims arising under the applicable Prepetition Credit Documents and hereunder (each, a "**Master Proof of Claim**"), which shall be deemed asserted against each of the Debtors. Upon the filing of a Master Proof of Claim, insofar as deemed asserted against each of the Debtors, the Prepetition ABL Agent, the Prepetition Superpriority Agent, the Prepetition Term Agent, the Prepetition Indenture Trustee and the Prepetition Secured Parties, and each of their respective successors and assigns, as applicable, shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims (which names may be redacted in the publicly filed version of the Master Proof of Claim) against each of the Debtors of any type or nature whatsoever with respect to the applicable Prepetition Credit Documents, and the claim of each Prepetition Secured Party (and each of its respective successors and assigns), named in a Master Proof of Claim shall be treated as if such entity had filed a separate proof of claim in each of these Chapter 11 Cases. The Master Proofs of Claim shall not be required to identify whether any Prepetition Secured Party acquired its claim from another party and the identity of any such party or to be amended to reflect a change in the holders of the claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from the transfer of all or any portion of such claims. The provisions of this paragraph 38 and each Master Proof of Claim are intended solely for the purpose of administrative convenience and shall not affect the right of each Prepetition Secured Party (or its successors in interest) to vote separately on any plan proposed in these Chapter 11 Cases. The Master Proofs of Claim shall not be required to attach any instruments, agreements or other documents evidencing the obligations owing by each of the Debtors to the applicable Prepetition Secured Parties, which instruments, agreements or other documents will be

provided upon written request to counsel to the Prepetition ABL Agent, the Prepetition Superpriority Agent, the Prepetition Term Agent, the Prepetition Indenture Trustee, as applicable.

39. *Effectiveness*. This Final Order shall constitute findings of fact and conclusions of law[24] and shall take effect and be fully enforceable *nunc pro tunc* to the Commencement Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014 of the Bankruptcy Rules, or any Local Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Final Order.

40. *Modification of DIP Documents and Approved Cash Flow Forecast*. The Credit Parties are hereby authorized, without further order of this Court, to enter into agreements with the DIP Secured Parties providing for any consensual non-material modifications to the Approved Cash Flow Forecast or the DIP Documents, or of any other modifications to the DIP Documents necessary to conform the terms of the DIP Documents to this Final Order, in each case consistent with the amendment provisions of the DIP Documents.

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

42. *Payments Held in Trust*. Except as expressly permitted in this Final Order or the DIP Documents, and, for the avoidance of doubt, excepting payments permitted by or made in accordance with or pursuant to this Final Order, the DIP Documents, the Approved Cash Flow Forecast (subject to any permitted variances), the ordinary course of business, and/or other order of this Court, in the event that any person or entity receives any payment on account of a security

[24] Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

interest in DIP Collateral, receives any DIP Collateral or any proceeds of DIP Collateral or receives any other payment with respect thereto from any other source prior to Payment in Full of all DIP Obligations under the DIP Documents and termination of the DIP Commitments in accordance with the DIP Documents, such person or entity shall be deemed to have received, and shall hold, any such payment or proceeds of Collateral in trust for the benefit of the DIP Secured Parties (as applicable based on the specific asset at issue) and shall immediately turn over such proceeds to any DIP Agent, or as otherwise instructed by this Court, for application in accordance with the DIP Documents and this Final Order.

43. *Credit Bidding*. Unless otherwise ordered by the Court, (a) subject to the express written direction of the DIP Requisite Lenders and the terms of the DIP Documents, each of the DIP Collateral Agent, on behalf of itself and the DIP Term Lenders and the DIP FILO Lender, shall have the right to credit bid, in accordance with the DIP Documents, up to the full amount of the DIP Term Obligations and DIP FILO Obligations, respectively, in any sale of the DIP Collateral (or any part thereof); and (b) subject to the express written direction of the Requisite Lenders as defined in and under each of the Prepetition Superpriority Credit Agreement and the Prepetition Term Loan Credit Agreement, the Required Lenders as defined in the under Prepetition ABL Credit Agreement and the holders holding at least a majority in aggregate principal amount of the then outstanding notes under each of the Prepetition 12.00% Superparity Indenture, Prepetition 9.50% Superparity Indenture and Prepetition Parity Indenture and the terms of the applicable Prepetition Credit Documents, the Prepetition ABL Agent and the Prepetition Collateral Trustee, on behalf of itself and the applicable Prepetition Secured Parties, shall have the right to credit bid up to the full amount of their respective Prepetition Debt in any sale of the respective Prepetition Collateral (or any part thereof), subject in all respects to the Prepetition Intercreditor

Agreements and the Prepetition Collateral Trust Agreements, as applicable, in each case of (a) and (b), as provided for in section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing the same and whether any such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise. The foregoing is without prejudice to any right the Creditors' Committee may have to argue that the Prepetition Secured Parties' right to credit bid under section 363(k) of the Bankruptcy Code should be limited for cause.

44. *Maintenance of Letters of Credit; Modification of Stay with Respect to LC Cash Collateral; Administrative Expense Status*.

(a) All Prepetition Letters of Credit issued for the account of the Debtors under the Prepetition ABL Credit Agreement shall continue in place and be deemed Outstanding LCs. The Credit Parties are authorized to maintain the Outstanding LCs on an uninterrupted basis and to take all actions reasonably appropriate with respect thereto on an uninterrupted basis.

(b) The automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent necessary to permit the Outstanding LC Issuer to enforce all of their rights in respect to the Outstanding LCs and to protect, enforce and exercise all rights and remedies of the Outstanding LC Issuer under the Payoff Letter or applicable law, including, but not limited to, application of the LC Cash Collateral to reimburse the Outstanding LC Issuer for amounts paid due to presentment of Outstanding LCs and use of LC Cash Collateral to pay the professional fees and expenses of the Outstanding LC Issuer.

(c) The Outstanding LC Issuer are authorized to maintain cash collateral accounts (each, a "**L/C Cash Collateral Account**") in which amounts shall be deposited in accordance with the Payoff Letter and this Final Order, to cash collateralize the Outstanding LCs.

The Outstanding LC Issuer holding such L/C Cash Collateral Account shall have a perfected, unavoidable first-priority lien, senior to all other prepetition and postpetition liens on any L/C Cash Collateral Account and any investment of the funds contained therein to secure the Outstanding LC Issuer's obligations under the Payoff Letter and in respect of the Outstanding LCs being secured by such L/C Cash Collateral Account, and a superpriority administrative expense claim under section 364(c)(1) of the Bankruptcy Code senior to all other administrative expense claims against the Debtors' estates (but junior to the DIP Term Superpriority Claims, the Adequate Protection Claims and the claims of the Prepetition Term Secured Parties arising under the Prepetition Term Credit Documents with respect to Prepetition Term Priority Collateral) to secure the Debtors' obligations under the Payoff Letter and in respect of the Outstanding LCs. Subject to the immediately following sentence, the Debtors and their estates (and any successors thereto, including any Chapter 7 trustee) shall not have any authority, and are hereby prohibited from requesting authority, (i) under section 363 of the Bankruptcy Code or otherwise to use the funds deposited (or any investment of those funds) in any of the L/C Cash Collateral Accounts for any purpose at any time during these Chapter 11 Cases or in any Chapter 7 case of any Debtor converted thereto or (ii) to grant or suffer to exist a lien of any priority on any L/C Cash Collateral Account or the funds therein (or any investment of those funds) (in each case until such funds are released from such L/C Cash Collateral Account in accordance with this Final Order) to secure any other obligations of the Debtors or their estates. Notwithstanding the foregoing, the DIP Liens shall attach to the Debtors' rights with respect to funds released from the L/C Cash Collateral

Accounts when any Outstanding LC terminates or expires and the Outstanding LC Issuer have returned to the Debtors such amounts.

(d) The Outstanding LC Issuer have no obligation to renew Outstanding LCs and may issue notices of non-renewal in accordance with the terms of the Payoff Letter, the issuance of which, for the avoidance of doubt, shall not violate the automatic stay provisions of section 362 of the Bankruptcy Code.

45. *Certain Governmental Matters*

(a) Notwithstanding anything to the contrary in this Final Order or DIP Documents, nothing in this Final Order or the DIP Documents shall relieve the Debtors of any obligations under federal, state or local police or regulatory laws or under 28 U.S.C. § 959(b), provided that nothing herein shall limit or impair the Debtors' rights to assert defenses under applicable law and nothing herein shall create new defenses to obligations under police or regulatory laws or 28 U.S.C. § 959(b).

(b) Notwithstanding anything to the contrary in this Final Order or the DIP Documents, nothing in this Final Order or the DIP Documents shall impair or adversely affect the United States of America's rights, claims and defenses of set-off and recoupment, or those of any State or any of the foregoing's respective agencies, departments or agents, and all such rights, claims and defenses shall be preserved in their entirety.

(c) Paragraphs 30, 31, and 36 of this Final Order shall apply with respect to liabilities to governmental units under police or regulatory law only so long as the actions of the DIP Agent, DIP Lenders, or the Prepetition Secured Parties, as applicable, have not constituted and do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a vessel or facility owned or operated by the Debtors, or

otherwise cause lender liability to arise or the status of control, responsible person, owner, or operator to exist under applicable federal, state, or local law. Paragraphs 32 and 37 of this Order shall apply with respect to liabilities to governmental units under police or regulatory law only so long as the actions of the DIP Agent, DIP Lenders, or the Prepetition Secured Parties, as applicable, do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a vessel or facility owned or operated by the Debtors, or otherwise cause lender liability to arise or the status of control, responsible person, owner, or operator to exist under applicable federal, state, or local law. For the avoidance of doubt, in determining to make any loan or other extension of credit under the DIP Credit Agreement, permitting the use of Cash Collateral, performing under this Final Order and the DIP Documents in the ordinary course, no DIP Agent, DIP Lender or Prepetition Secured Party shall be deemed to have participated in the management or operational affairs of a vessel or facility owned or operated by the Debtors, or to have otherwise caused lender liability to arise or assumed the status of control, responsible person, owner, or operator, *provided, however*, that foreclosing, exercising remedies, or becoming involved in decision making on debtors' compliance with police or regulatory laws or regulations would not be ordinary course performance. Each DIP Agent, DIP Lender and Prepetition Secured Party preserves and is not waiving any defenses it may have to any claims as set forth in 42 U.S.C. § 9601(20)(F) or comparable federal, state and local law.

(d) Notwithstanding anything to the contrary in this Final Order or the DIP Documents, nothing in this Final Order or the DIP Documents shall impair or adversely affect any right under applicable law of any governmental unit with respect to any financial assurance, letter of credit, trust, or bond or limit any governmental unit in the exercise of its police powers in accordance with section 362(b)(4) of the Bankruptcy Code.

(e) Notwithstanding anything to the contrary in this Final Order or the DIP Documents, nothing in this Final Order or the DIP Documents shall impair or adversely affect the right of the United States or any State to object to any credit bid for cause.

(f) Notwithstanding anything to the contrary in this Final Order or the DIP Documents, nothing in this Final Order or the DIP Documents shall be deemed to authorize the assumption, sale, assignment or other transfer by the Debtors, the DIP Agent, DIP Lenders, or the Prepetition Secured Parties of any agreements, grants, grant funds, licenses, permits, authorizations, contracts, leases, or other interests of the federal government (collectively, "**Federal Interests"**), without compliance with all terms of any statute, regulation or contract giving rise to the Federal Interests and with all applicable non-bankruptcy law; *provided, however*, that, for the avoidance of doubt, the foregoing shall in no way limit the granting of the DIP Liens and the Adequate Protection Liens on the DIP Collateral as set forth in this Final Order; *provided, further*, that all leases of the federal government shall be deemed Specified Leases under this Final Order.

46. Nothing herein shall be deemed or construed as approval by the Court of the Debtors' entry into, or the terms of, any restructuring support agreement, including that certain restructuring support agreement entered into among the Debtors, certain consenting Lenders, and consenting Equity holders on October 28, 2019, and filed as Exhibit B to the First Day Declaration [Docket No. 10].

47. The Debtors hereby agree that the lien and security interest in favor of the Huntington National Bank ("**Huntington**") in that certain Account Number XXXXXX6899 with a balance of approximately $400,000 pledged by the Company in favor of Huntington (the "**Pledged Account**") shall irrevocably constitute a Permitted Lien pursuant to section 6.2(q) of the

DIP Credit Agreement ("**Cash Management Obligation**"), in accordance with and subject to the terms of the DIP Credit Agreement, and shall not be subject to any priming lien granted in favor of the DIP Lenders or otherwise be impaired by this Final Order or the DIP Credit Agreement and such Pledged Account shall continue to serve as collateral for all obligations owing to Huntington under that certain Commercial Card Account Agreement dated November 30, 2018, together with all renewals, extensions and amendments thereto.

48. *CONSOL Energy Inc. and Affiliates.* Notwithstanding anything to the contrary in the Interim Order, this Final Order, or the DIP Documents:

(a) nothing in the Interim Order, this Final Order, or the DIP Documents shall be deemed or interpreted to authorize the Debtors, the DIP Agents, the DIP Term Secured Parties, the DIP FILO Secured Parties, the DIP Secured Parties, the Prepetition Secured Parties, or any other person, without CONSOL's prior, express, written consent (which consent CONSOL may condition or withhold in its sole discretion), to sell, lease, convey, otherwise transfer, assume, or assume and assign any of the CONSOL Property Interests (as that term is defined in the Objection [Docket No. 267] that CONSOL Energy Inc. and its affiliates (collectively, "**CONSOL**") filed in the Chapter 11 Cases) solely to the extent such CONSOL Property Interests are valid and enforceable property rights of CONSOL; *provided, however*, that the preceding sentence shall in no way limit (i) the granting of the DIP Liens and the Adequate Protection Liens on the DIP Collateral as set forth in this Final Order or (ii) the Debtors' capacity (subject to compliance with section 363 of the Bankruptcy Code and other applicable law) to sell or convey the Debtors' or their estates' interests in the DIP Collateral. For the avoidance of doubt, and notwithstanding anything to the contrary in the Interim Order, this Final Order, or the DIP Documents, and solely to the extent the CONSOL Property Interests are valid and enforceable property rights of CONSOL,

(x) nothing in the Interim Order, this Final Order, or the DIP Documents (and none of the DIP Liens or Adequate Protection Liens) shall or does divest, attach to, or otherwise encumber, limit, or otherwise affect the CONSOL Property Interests, (y) the CONSOL Interests (as that term is defined in the CONSOL Objection) (and all of CONSOL's claims, defenses, rights, and remedies relating to or in connection with the CONSOL Interests, including, without limitation, any defenses or rights of recoupment or set-off), to the extent such CONSOL Interests are valid and enforceable, shall be and hereby are preserved in their entirety, and (z) from and after the Petition Date, the applicable Debtors shall continue to comply with the Bankruptcy Code with respect to their respective covenants and other obligations under each executory contract and unexpired lease with CONSOL, pending the Court's decision on whether to approve the assumption, assumption and assignment, or rejection thereof, *provided* that nothing in this (z) requires the Debtors to make any payments or comply with any obligations related to prepetition unsecured claims pending the assumption or assumption and assignment of such executory contract or unexpired lease (and nothing prevents the Debtors from asserting that any such claims are not due or prevents CONSOL from arguing that such amounts are due) or prevents the Debtors from seeking (or CONSOL from opposing any request by the Debtors or any other party in interest) to assume, assume and assign, or reject any such executory contract or unexpired lease.

(b) Subject to a commercially reasonable non-disclosure agreement reasonably acceptable to the Debtors and CONSOL, the Debtors will provide to CONSOL, on an "advisor's eyes only" basis, weekly reporting on budget-to-actual variances with respect to the Debtors' compliance with the Approved Cash Flow Forecast containing the same detail as is being provided to any other party in these bankruptcy cases. The Debtors shall consult with and respond in a

commercially reasonable manner with CONSOL's advisors regarding the information contained in the weekly reporting.

49. *No Third Party Rights*. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect or incidental beneficiary.

50. Nothing in the DIP Credit Agreement and/or this Final Order, or any related documents, shall alter or modify the terms and conditions of any insurance policies or related agreements.

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

52. *Necessary Action*. The Debtors are authorized to take any and all such necessary actions as are reasonable and appropriate to implement the terms of this Final Order.

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

54. The Debtors shall serve this order in accordance with all applicable rules and orders and shall file a certificate of service evidencing compliance therewith.

SO ORDERED.

Copies to Default List.

Exhibit 1

Approved Cash Flow Forecast

Consolidated view (MEC + WKY)
DIP Budget - Proposal

($m)	Fcst Week 1	Fcst Week 2	Fcst Week 3	Fcst Week 4	Fcst Week 5	Fcst Week 6	Fcst Week 7	Fcst Week 8	Fcst Week 9	Fcst Week 10	Fcst Week 11	Fcst Week 12	Fcst Week 13	
Week Ending:	**11/30/19**	**12/07/19**	**12/14/19**	**12/21/19**	**12/28/19**	**01/04/20**	**01/11/20**	**01/18/20**	**01/25/20**	**02/01/20**	**02/08/20**	**02/15/20**	**02/22/20**	**13 week Forecast**
Cash Receipts	$ 55.7	$ 29.2	$ 18.4	$ 56.3	$ 62.0	$ 20.3	$ 48.2	$ 12.3	$ 89.9	$ 8.9	$ 27.0	$ 15.5	$ 114.6	$ 558.2
Cash Disbursements														
Payroll and Benefits	(7.0)	(16.8)	(12.0)	(19.0)	(8.3)	(18.7)	(10.1)	(21.2)	(8.3)	(17.6)	(9.5)	(19.4)	(7.4)	(175.4)
Opex	(30.4)	(24.2)	(22.1)	(22.7)	(21.5)	(18.2)	(23.6)	(20.4)	(26.0)	(20.3)	(21.6)	(23.7)	(19.3)	(294.0)
Taxes	(12.0)	(2.7)	(0.9)	(0.9)	(0.9)	(4.5)	-	(1.6)	(0.9)	(7.5)	-	(1.0)	(0.9)	(34.0)
Net Operating Cash Flow	**$ 6.4**	**$ (14.5)**	**$ (16.7)**	**$ 13.6**	**$ 31.3**	**$ (21.1)**	**$ 14.5**	**$ (30.9)**	**$ 54.6**	**$ (36.6)**	**$ (4.0)**	**$ (28.7)**	**$ 86.9**	**$ 54.8**
Restructuring Related Disbursements	(20.0)	(21.0)	(11.8)	(10.0)	(9.0)	(16.5)	(9.0)	(10.8)	(9.0)	(14.0)	(6.7)	(8.5)	(8.5)	(152.8)
Financing	(2.9)	-	-	-	-	(5.2)	-	-	-	(4.4)	-		-	(12.5)
Net Cash Flow	**$ (16.6)**	**$ (35.5)**	**$ (28.5)**	**$ 3.6**	**$ 22.3**	**$ (42.8)**	**$ 5.5**	**$ (41.7)**	**$ 45.6**	**$ (54.9)**	**$ (10.8)**	**$ (35.2)**	**$ 78.4**	**$ (110.5)**
Cash Balance														
Beginning Balance	$ 81.7	$ 65.2	$ 29.7	$ 1.2	$ 4.8	$ 27.1	$ (15.7)	$ (10.2)	$ (51.9)	$ (6.3)	$ (61.2)	$ (72.0)	$ (107.2)	$ 81.7
Net Cash Flow	(16.6)	(35.5)	(28.5)	3.6	22.3	(42.8)	5.5	(41.7)	45.6	(54.9)	(10.8)	(35.2)	78.4	(110.5)
Ending balance	**$ 65.2**	**$ 29.7**	**$ 1.2**	**$ 4.8**	**$ 27.1**	**$ (15.7)**	**$ (10.2)**	**$ (51.9)**	**$ (6.3)**	**$ (61.2)**	**$ (72.0)**	**$ (107.2)**	**$ (28.7)**	**$ (28.7)**
GLAS Segregated Account	**$ 57.0**	**$ 57.0**	**$ 207.0**	**$ 207.0**	**$ 207.0**	**$ 207.0**	**$ 207.0**	**$ 207.0**	**$ 207.0**	**$ 207.0**	**$ 207.0**	**$ 207.0**	**$ 207.0**	**$ 207.0**
Total Liquidity	**$ 122.2**	**$ 86.7**	**$ 208.2**	**$ 211.8**	**$ 234.1**	**$ 191.3**	**$ 196.8**	**$ 155.1**	**$ 200.7**	**$ 145.8**	**$ 135.0**	**$ 99.8**	**$ 178.3**	**$ 178.3**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
BUMBLE BEE PARENT, INC., *et al.*,[1]	Case No. 19-12502 (LSS)
Debtors.	(Jointly Administered)
	Ref. Docket Nos. 12 & 68

FINAL ORDER: (I) AUTHORIZING DEBTORS TO (A) OBTAIN POSTPETITION SECURED FINANCING AND (B) UTILIZE CASH COLLATERAL; (II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS; (III) GRANTING ADEQUATE PROTECTION; (IV) MODIFYING AUTOMATIC STAY; AND (V) GRANTING RELATED RELIEF

Upon the motion (the "**DIP Motion**"), dated November 21, 2019, of Bumble Bee Parent, Inc. and its debtor affiliates, as debtors and debtors in possession (collectively, the "**Debtors**") in the above-captioned chapter 11 cases (the "**Cases**"), pursuant to sections 105, 361, 362, 363, 364, 503, 507, and 552 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rules 2002, 4001-1, 4001-2, and 9013-1 of the Local Rules for the United States Bankruptcy Court, District of Delaware (the "**Local Rules**") seeking, among other things:

i. authorization for the Debtors to obtain a senior secured asset-based debtor in possession credit facility with the priority set forth in the waterfall attached hereto as **Exhibit C** (the "**Priority Waterfall**") and, as to the Term Loan DIP Facility (as defined below), the priority set forth in the Priority Waterfall and in the DIP Intercreditor

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Bumble Bee Parent, Inc. (5118); Bumble Bee Holdings, Inc. (1051); Bumble Bee Foods, LLC (0146); Anova Food, LLC (2140); and Bumble Bee Capital Corp. (7816). The headquarters for the above-captioned Debtors is 280 Tenth Avenue, San Diego, CA 92101.

Agreement (as defined herein) (the "**ABL DIP Facility**") consisting of up to $200,000,000 in revolving credit commitments, subject to the terms, conditions, and limitations set forth herein and in the documentation regarding the ABL DIP Facility (the commitments thereunder the "**Revolving DIP Commitments**" and the loans thereunder the "**Revolving DIP Loans**"), which shall include (a) the immediate conversion (i.e. "roll up") of all outstanding Prepetition ABL Credit Agreement Indebtedness (as defined below) into obligations under the ABL DIP Facility (the "**Prepetition ABL Roll Up**") upon entry of the Interim Order, (b) funding of those certain expenditures set forth in the Approved Budget (as defined below), and (c) an amount equal to $10,000,000 of the Revolving DIP Commitments available in the form of standby letters of credit, inclusive of all outstanding letters of credit existing under the Prepetition ABL Credit Agreement (as defined herein) converting to letters of credit under the ABL DIP Facility, provided by Wells Fargo Capital Finance, LLC ("**Wells Fargo**"), as administrative agent (in such capacity, the **"ABL DIP Agent")**, and the lenders thereunder (collectively, and together with Wells Fargo, in such capacity, the "**ABL DIP Lenders**");

ii. authorization for the Debtors to enter into the ABL DIP Facility, and approving the terms and conditions thereof, as set forth in this Final Order (as defined herein) and the ABL DIP Documents (as defined herein) entered into, by and among Bumble Bee Foods, LLC (the "**U.S. ABL DIP Borrower**"), Connors Bros. Clover Leaf Seafoods Company as Canadian Borrower (the "**Canadian Borrower**"), Bumble Bee Foods S.À.R.L. ("**Holdings**"), certain subsidiaries of Holdings as guarantors, the ABL DIP Agent, and the ABL DIP Lenders (in the form attached hereto as **Exhibit A**, and as hereafter amended, restated, amended and restated, supplemented or otherwise modified

from time to time in accordance with the terms thereof and hereof, the "**ABL DIP Agreement**," and, together with all agreements, documents, certificates and instruments delivered or executed from time to time in connection therewith, as hereafter amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and hereof, collectively, the "**ABL DIP Documents**," including, without limitation, any fee letters executed by the Debtors, the ABL DIP Agent, and the ABL DIP Lenders, as necessary, collectively, the "**ABL Fee Letters**");

iii. authorization for the Debtors to execute and deliver the ABL DIP Agreement and the other ABL DIP Documents and to perform such other and further acts as may be necessary or appropriate in connection therewith;

iv. authorization for the ABL DIP Agent to terminate the ABL DIP Agreement in accordance with the terms hereof and thereof;

v. effective upon entry of this Final Order, authorization to grant liens to the DIP Agents and DIP Lenders on all of the proceeds or property recovered (collectively, the "**Avoidance Proceeds**") on account of the Debtors' claims and causes of action (but not on the actual claims and causes of action) arising under sections 544, 545, 547, 548 and 550 of the Bankruptcy Code (collectively, the "**Avoidance Actions**");

vi. allowance of the ABL DIP Superpriority Claims (as defined herein) in favor of the ABL DIP Agent and the ABL DIP Lenders;

vii. authorization for Bumble Bee Foods, LLC (the "**Term Loan DIP Borrower**") to obtain a senior secured term loan debtor in possession credit facility with the priority set forth in the Priority Waterfall and, as to the ABL DIP Facility, the priority set forth in the Priority Waterfall and in the DIP Intercreditor Agreement (the "**Term**

Loan DIP Facility" together with the ABL DIP Facility, the "**DIP Facilities**") consisting of up to $80 million in term loan credit commitments (the commitments thereunder, the "**Term Loan DIP Commitments**" and, together with the ABL DIP Commitments, the "**DIP Commitments**"; the loans thereunder the "**Term DIP Loans**" and, together with the ABL DIP Loans, the "**DIP Loans**"), provided by the lenders thereunder (collectively, the "**Term Loan DIP Lenders**" and, together with the ABL DIP Lenders, the "**DIP Lenders**");

viii. authorization for the Debtors to enter into the Term Loan DIP Facility, and approving the terms and conditions thereof, as set forth in this Final Order and the Term Loan DIP Documents (as defined herein) entered into, by and among the Term Loan DIP Borrower, Holdings and certain subsidiaries of Holdings as guarantors, Brookfield Principal Credit LLC, as administrative agent (in such capacity, the "**Term Loan DIP Agent**") (the Term Loan DIP Agent with the ABL DIP Agent, collectively, the "**DIP Agents**"), and the Term Loan DIP Lenders (in the form attached hereto as **Exhibit B**, and as hereafter amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the "**Term Loan DIP Agreement**" and, together with the ABL DIP Agreement, the "**DIP Agreements**") and, together with all agreements, documents, certificates and instruments delivered or executed from time to time in connection therewith, as hereafter amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and hereof, (collectively, the "**Term Loan DIP Documents**" and, together with the ABL DIP Documents, the "**DIP Documents**"), including, without limitation, any fee letters executed by the Debtors, the Term Loan DIP

Agent, and the Term Loan DIP Lenders, as necessary (collectively, the "**Term Loan Fee Letters**" and, together with the ABL Fee Letters, the "**Fee Letters**");

ix. authorization for the Debtors to execute and deliver the Term Loan DIP Agreement and the other Term Loan DIP Documents and to perform such other and further acts as may be necessary or appropriate in connection therewith;

x. approving that certain DIP Intercreditor Agreement by and between the ABL DIP Agent, the Term Loan DIP Agent, the Prepetition ABL Agent (as defined herein) and the Prepetition Term Loan Agent (as defined herein) (in the form attached hereto as **Exhibit E**, and as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the "**DIP Intercreditor Agreement**");

xi. authorization for the Term Loan DIP Agent to terminate the Term Loan DIP Agreement in accordance with the terms thereof;

xii. allowance of the Term Loan DIP Superpriority Claims (as defined herein) in favor of the Term Loan DIP Agent and the Term Loan DIP Lenders;

xiii. authorization, subject to the terms and provisions hereof, for the Debtors to use, among other things, Cash Collateral (as defined herein), within the meaning of section 363(a) of the Bankruptcy Code;

xiv. the granting of adequate protection to the (a) lenders under the Prepetition ABL Credit Agreement (as defined herein), and (b) lenders under the Prepetition Term Loan Credit Agreement (as defined herein);

xv. entry of this Final Order providing that (a) the Debtors waive any right to surcharge against the DIP Collateral and the Prepetition Collateral (each as defined

herein), including pursuant to section 506(c) of the Bankruptcy Code or otherwise, (b) the Prepetition Secured Parties (as defined herein) are not subject to the "equities of the case" exception contained in section 552(b) of the Bankruptcy Code, and (c) subject to Paragraph 19 hereof, the Prepetition Secured Parties are not subject to the equitable doctrine of "marshaling," or any other similar doctrine with respect to the DIP Collateral;

xvi. pursuant to Bankruptcy Rule 4001(c)(2), requesting an interim hearing on the DIP Motion be held before this Court to consider entry of an interim order (the "**Interim Order**") (A) (i) authorizing the U.S. ABL DIP Borrower, on an interim basis, to borrow under the ABL DIP Facility an amount not to exceed $200 million (the "**Interim ABL Commitment Amount**"), and (ii) authorizing the Term Loan DIP Borrower, on an interim basis, to borrow under the Term Loan DIP Facility an amount not to exceed $40 million (the "**Interim Term Loan Commitment Amount**" and together with the Interim ABL Commitment Amount, the "**Interim Order Commitment Amount")**, where a portion of the Interim ABL Commitment Amount shall be accessed to effectuate the Prepetition ABL Roll Up, and the rest of the Interim Order Commitment Amount shall be accessed to meet the Debtors' working capital and other needs pending the final hearing and as set forth in the Approved Budget (as defined herein), (B) authorizing the Debtors' use of Cash Collateral, and (C) granting the adequate protection and other relief described therein;

xvii. scheduling a final hearing (the "**Final Hearing**") to consider entry of a final order (the "**Final Order**") approving the DIP Motion and approving the Debtors' notice with respect thereto; and

xviii. granting related relief.

The Court having held an interim hearing pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) on November 22, 2019 (the "**Interim Hearing**"), and the Court having entered the Interim Order on November 25, 2019 [Docket No. 68] granting the relief requested in the DIP Motion on an interim basis as set forth in the Interim Order and the Court having held the Final Hearing on December 19, 2019 to consider entry of the Final Order; and upon the record of the Interim Hearing and the Final Hearing and upon the Court's consideration of the DIP Motion and all exhibits thereto; and upon the First Day Declaration and the Winthrop Declaration; and upon due deliberation and consideration and sufficient cause appearing therefor;

THE COURT HEREBY FINDS AND CONCLUDES THAT:[2]

A. Petition Date: On November 21, 2019 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Court. The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases. On December 3, 2019, an official committee of unsecured creditors (the "**Committee**") was appointed in the Cases pursuant to section 1102 of the Bankruptcy Code.

B. Jurisdiction. This Court has core jurisdiction over these Cases, this DIP Motion, and the parties and property affected hereby under 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. Consideration of the DIP Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). This Court may enter a final order consistent with Article III of the United States Constitution.

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

C. Notice. The notice given by the Debtors of the DIP Motion, the DIP Documents, entry of the Interim Order, and the Final Hearing was proper, timely, and adequate and sufficient notice and complies with Bankruptcy Rules 4001(b) and (c).

D. Debtors' Stipulations. After consultation with their attorneys and financial advisors, and without prejudice to the rights of any other party in interest (but subject to the limitations thereon contained in paragraph 34 below), the Debtors admit, stipulate and agree that:

(a) Prepetition ABL Credit Agreement and Prepetition Term Loan Credit Agreement.

(i) The U.S. ABL DIP Borrower, the Canadian Borrower, Holdings and the other Guarantors party thereto (collectively, the "**Prepetition ABL Credit Parties**"), Wells Fargo Capital Finance, LLC, as administrative agent (in such capacity, the "**Prepetition ABL Agent**"), and the lenders from time to time party thereto (the "**Prepetition ABL Lenders**" and, together with the Prepetition ABL Agent, the "**Prepetition ABL Secured Parties**"), are party to that certain ABL Credit Agreement, dated as of August 18, 2017 (as the same has been and may be amended, restated, amended and restated, refinanced, replaced, supplemented, or otherwise modified prior to the Petition Date, the "**Prepetition ABL Credit Agreement**") and, together with all agreements, documents, certificates and instruments delivered or executed from time to time in connection therewith (including the Prepetition ABL Security Agreement (as defined below)), as hereafter amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and hereof (collectively, the "**Prepetition ABL Documents**").

(ii) As of the Petition Date, the outstanding aggregate principal amount under the Prepetition ABL Credit Agreement was not less than $192,420,215 consisting of $186,817,599 in revolving loans and $5,602,616 in letters of credit (together with all other outstanding Obligations, as defined in the Prepetition ABL Credit Agreement, including interest, fees and expenses, the "**Prepetition ABL Credit Agreement Indebtedness**").

(iii) As more fully set forth in the Prepetition ABL Documents, prior to the Petition Date, the Prepetition ABL Credit Parties granted to the Prepetition ABL Agent, for the benefit of itself and the Prepetition ABL Lenders, a security interest in and continuing lien on (the "**Prepetition ABL Credit Agreement Liens**") substantially all of their assets and property (with certain exceptions set out in the Prepetition ABL Documents) including (a) a first priority security interest in and continuing lien on the ABL Priority Collateral (as defined in the Prepetition Intercreditor Agreement referred to below) (which for the avoidance of doubt, includes "cash collateral" as defined in section 363(a) of the Bankruptcy Code ("**Cash Collateral**")) *other than* (x) Term Loan Priority Accounts (as defined in the Prepetition Intercreditor Agreement) and (y) Cash Collateral (in the case of each of (x) and (y), that is proceeds of Term Loan Priority Collateral (as defined in the Prepetition Intercreditor Agreement)) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (collectively, the "**Prepetition ABL Priority Collateral**"), and (b) a second priority security interest in and continuing lien on the Term Loan Priority Collateral (as defined in that certain Prepetition Intercreditor Agreement, defined below) and proceeds, products, and rents of any of the foregoing (collectively, the

"**Prepetition Term Loan Priority Collateral**," and together with the Prepetition ABL Priority Collateral, the "**Prepetition Collateral**"), subject only to Permitted Prior Liens (as defined herein) and the liens of the Prepetition Term Loan Agent on the Prepetition Term Loan Priority Collateral and excluding the Excluded Assets (as defined in the Prepetition ABL Security Agreement).

(iv) The Term Loan DIP Borrower, Holdings and the other Guarantors (collectively, the "**Prepetition Term Loan Credit Parties**" and, together with the Prepetition ABL Credit Parties, the "**Prepetition Credit Parties**"), Brookfield Principal Credit LLC, as administrative agent thereunder (the "**Prepetition Term Loan Agent**" and, together with the Prepetition ABL Agent, the "**Prepetition Agents**"), the lenders from time to time party to the Prepetition Term Loan Agreement (the "**Prepetition Term Loan Lenders**"; the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders, together with the Prepetition ABL Secured Parties, the "**Prepetition Secured Parties**"), are party to that certain Term Loan Credit Agreement, dated as of August 15, 2017 (as the same has been and may be amended, restated, amended and restated, refinanced, replaced, supplemented, or otherwise modified prior to the Petition Date, the "**Prepetition Term Loan Credit Agreement**" and, together with all agreements, documents, certificates and instruments delivered or executed from time to time in connection therewith (including the Prepetition Term Loan Security Agreement (as defined below)), as hereafter amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and hereof (collectively, the "**Prepetition Term Loan Documents**", and together with the Prepetition ABL Documents, the "**Prepetition Credit Documents**").

(v) As of the Petition Date, the outstanding aggregate principal amount of term loans under the Prepetition Term Loan Credit Agreement was $649,233,814 and the outstanding Prepayment Premium (as defined in the Prepetition Term Loan Credit Agreement) that was due and payable was $32,461,691 (collectively with all other outstanding obligations including all accrued and unpaid interest, fees, costs, charges, any other premiums and expenses, the "**Prepetition Term Loan Credit Agreement Indebtedness**" and, together with the Prepetition ABL Credit Agreement Indebtedness, the "**Prepetition Credit Agreement Indebtedness**").

(vi) As more fully set forth in the Prepetition Term Loan Documents, prior to the Petition Date, the Prepetition Term Loan Credit Parties granted to the Prepetition Term Loan Agent, for the benefit of itself and the Prepetition Term Loan Lenders, a security interest in and continuing liens on (the "**Prepetition Term Loan Credit Agreement Liens**," and, together with the Prepetition ABL Credit Agreement Liens, the "**Prepetition Liens**") substantially all of their assets and property (with certain exceptions set out in the Prepetition Term Loan Documents), including (a) a first priority security interest and continuing lien on the Prepetition Term Loan Priority Collateral, and (b) a second priority security interest in and continuing lien on the Prepetition ABL Priority Collateral, subject only to Permitted Prior Liens (as defined herein) and the liens of the Prepetition ABL Administrative Agent on the Prepetition ABL Priority Collateral and excluding the Excluded Assets (as defined in the Prepetition Term Loan Security Agreement).

(vii) The Prepetition ABL Agent and the Prepetition Term Loan Agent entered into that certain prepetition Intercreditor Agreement dated as of August 15, 2017

(as amended, restated, supplemented, or otherwise modified in accordance with its terms, the "**Prepetition Intercreditor Agreement**") to govern the respective rights, interests, obligations, priority, and positions of the Prepetition Secured Parties with respect to the assets and properties of the Debtors and other Prepetition Credit Parties that are not Debtors. Each of the Prepetition Credit Parties under the Prepetition Credit Documents acknowledged and agreed to the Prepetition Intercreditor Agreement.

(b) The Prepetition ABL Credit Agreement Indebtedness constitutes the legal, valid and binding obligations of the Prepetition ABL Credit Parties, enforceable against them in accordance with their respective terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and no portion of the Prepetition ABL Credit Agreement Indebtedness is subject to avoidance, recharacterization, recovery, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

(c) The Debtors acknowledge and agree that as of the Petition Date: (i) the Prepetition ABL Credit Agreement Liens on the Prepetition Collateral and the Prepetition ABL Credit Agreement Indebtedness were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition ABL Secured Parties; (ii) the Prepetition ABL Credit Agreement Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to (1) the Prepetition Term Loan Liens on the Prepetition Term Loan Priority Collateral, and (2) certain liens otherwise permitted by the Prepetition ABL Documents (solely to the extent any such permitted liens were valid, properly perfected, non-avoidable, and senior in priority to the Prepetition ABL Credit Agreement Liens as of the Petition Date, the "**Prepetition ABL Permitted Prior Liens**"); (iii) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the

Prepetition ABL Credit Agreement Liens or Prepetition ABL Credit Agreement Indebtedness exist, and no portion of the Prepetition ABL Credit Agreement Liens, Prepetition ABL Credit Agreement Indebtedness or any amounts paid to the Prepetition ABL Secured Parties or applied to the obligations owing under the Prepetition ABL Documents prior to the Petition Date is subject to any challenge or defense including avoidance, disallowance, disgorgement, recharacterization, subordination (equitable or otherwise), recovery, attack, offset, contest, objection, reclassification, reduction or counterclaim of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (iv) the Debtors and their estates have no claims, objections, challenges, defenses, setoff rights, causes of action, and/or choses in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition ABL Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the Prepetition ABL Credit Agreement; and (v) the Prepetition ABL Credit Agreement Indebtedness constitutes an allowed, secured claim within the meaning of sections 502 and 506 of the Bankruptcy Code.

(d) The Prepetition Term Loan Credit Agreement Indebtedness constitutes the legal, valid and binding obligations of the Prepetition Term Loan Credit Parties, enforceable against them in accordance with their respective terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and no portion of the Prepetition Term Loan Credit Agreement Indebtedness is subject to avoidance, recharacterization, recovery, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

(e) The Debtors acknowledge and agree that as of the Petition Date: (i) the Prepetition Term Loan Credit Agreement Liens on the Prepetition Collateral and the Prepetition

Term Loan Credit Agreement Indebtedness were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Term Loan Agent; (ii) the Prepetition Term Loan Credit Agreement Liens were senior in priority over any and all other liens in the Prepetition Term Loan Credit Agreement Collateral, subject only to (1) the Prepetition ABL Credit Agreement Liens on the Prepetition ABL Priority Collateral, and (2) certain liens otherwise permitted by the Prepetition Term Loan Documents (solely to the extent any such permitted liens were valid, properly perfected, non-avoidable, and senior in priority to the Prepetition Term Loan Liens as of the Petition Date, the "**Prepetition Term Loan Permitted Prior Liens**" and, together with the Prepetition ABL Permitted Prior Liens, the "**Permitted Prior Liens**"); (iii) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Term Loan Credit Agreement Liens or Prepetition Term Loan Credit Agreement Indebtedness exist, and no portion of the Prepetition Term Loan Credit Agreement Liens or Prepetition Term Loan Credit Agreement Indebtedness or any amounts paid to the Prepetition Term Loan Agent or applied to the obligations owing under the Prepetition Term Loan Documents prior to the Petition Date is subject to any challenge or defense including avoidance, disallowance, disgorgement, recharacterization, subordination (equitable or otherwise), recovery, attack, offset, contest, objection, reclassification, reduction or counterclaim of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (iv) the Debtors and their estates have no claims, objections, challenges, defenses, setoff rights, causes of action, and/or choses in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against the Prepetition Term Loan Agent, Prepetition Term Loan Lenders, or any of their respective affiliates, agents, attorneys, advisors, professionals,

officers, directors, and employees arising out of, based upon or related to the Prepetition Term Loan Credit Agreement; and (v) the Prepetition Term Loan Credit Agreement Indebtedness constitutes an allowed, secured claim within the meaning of sections 502 and 506 of the Bankruptcy Code.

(f) Each of the Debtors and the Debtors' estates, on its own behalf and on behalf of its past, present and future predecessors, successors, heirs, subsidiaries, and assigns hereby unconditionally, irrevocably and fully, forever waives, discharges, and releases (i) any right to challenge any of the Prepetition Credit Agreement Indebtedness, the priority of the Debtors' obligations thereunder, and the validity, extent, and priority of the liens securing the Prepetition Credit Agreement Indebtedness and (ii) each of the Prepetition Agents and the other Prepetition Secured Parties, and each of their respective former or current officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accounts, attorneys, affiliates, and predecessors in interest of any and all Claims (as defined in section 101(5) of the Bankruptcy Code), counterclaims, causes of action, defenses or setoff rights that exist on the date hereof relating to any of the Prepetition Credit Documents or the transactions contemplated under such documents, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending or threatened, arising at law or in equity, including, without limitation, any so-called "lender liability," recharacterization, subordination, avoidance or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of state or federal law and any and all claims and causes of action regarding the validity, priority, perfection or avoidability of the liens or the claims of the Prepetition Secured Parties and Prepetition Agents.

(g) Subject to paragraph 34 hereof, the Debtors' acknowledgements, stipulations and releases (as set forth in this paragraph) shall be binding on the Debtors and their respective representatives, successors and assigns, and on each of the Debtors' estates, all creditors thereof and each of their respective representatives, successors and assigns, including, without limitation, any trustee or other representative appointed in the Cases, whether such trustee or representative is appointed under chapter 7 or chapter 11 of the Bankruptcy Code.

E. Prepetition Intercreditor Agreement. Pursuant to section 510 of the Bankruptcy Code, the Prepetition Intercreditor Agreement and any other applicable intercreditor or subordination provisions contained in any of the Prepetition Credit Documents (i) shall remain in full force and effect, (ii) shall continue to govern the relative priorities, rights, and remedies of the Prepetition Secured Parties (including the relative priorities, rights and remedies of such parties with respect to the replacement liens and administrative expense claims and superpriority administrative expense claims granted, or amounts payable, by the Debtors under this Final Order or otherwise and the modification of the automatic stay), and (iii) shall not be deemed to be amended, altered, or modified by the terms of this Final Order or the DIP Documents, unless expressly set forth herein or therein.

F. Findings Regarding DIP Facilities and Use of Cash Collateral.

(a) Good cause has been shown for the entry of this Final Order.

(b) The Debtors have a critical need to obtain the DIP Facilities and to use Cash Collateral as well as other collateral to continue the operation of their businesses. Without such funds, the Debtors will not be able to meet their payroll obligations or to pay operating and other expenses during this critical period. The ability of the Debtors to finance their operations through the incurrence of new indebtedness is vital to the preservation and maintenance of the

going concern value of the Debtors' estates and necessary to avoid immediate and irreparable harm to the estates.

(c) The Debtors are unable to obtain sufficient financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable solely under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code.

(d) The DIP Agents and the DIP Lenders are willing to provide the DIP Facilities, and the Prepetition Secured Parties are willing to consent to the use of their Cash Collateral and other Prepetition Collateral, subject to the terms and conditions set forth in the DIP Documents and the provisions of this Final Order, as applicable, and provided that the DIP Liens, the DIP Superpriority Claims and other protections granted by this Final Order and the DIP Documents will not be affected by any subsequent reversal or modification of this Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facilities and the Cash Collateral use approved by this Final Order. The DIP Agents and the DIP Lenders have acted in good faith in agreeing to provide the DIP Facilities approved by this Final Order and to be further evidenced by the DIP Documents, and the Prepetition Secured Parties have acted in good faith in consenting to the Debtors' use of their Cash Collateral and other Prepetition Collateral pursuant to the terms of this Final Order, and their reliance on the assurances referred to above is in good faith.

(e) Among other things, entry of this Final Order will minimize disruption of the Debtors' businesses and operations by enabling them to meet payroll and other critical expenses, including vendor and professional fees. The DIP Facilities and the use of Cash

Collateral as set forth herein are vital to avoid immediate and irreparable loss or harm to the Debtors' estates, which will otherwise occur if immediate access to the DIP Facilities and to the use of Cash Collateral is not obtained. Consummation of the DIP Facilities and the use of Cash Collateral pursuant to the terms of this Final Order therefore are in the best interests of the Debtors' estates.

(f) The DIP Documents and the use of Cash Collateral, each as authorized hereunder, have been negotiated in good faith and at arm's length among the Debtors, the ABL DIP Agent, the ABL DIP Lenders, the Term Loan DIP Agent, the Term Loan DIP Lenders, and the Prepetition Secured Parties, among other parties, and the ABL DIP Facility, the Term Loan DIP Facility and the use of Cash Collateral reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration. All of the Debtors' obligations and indebtedness arising under, in respect of or in connection with the DIP Facilities and the DIP Documents including, without limitation, all loans, including the Prepetition ABL Roll Up, made to, guarantees issued by, and all letters of credit issued (or deemed issued) for the account of, the Debtors pursuant to the DIP Documents, and any other obligations under the DIP Documents, including bank product and hedging obligations (individually, the "**ABL DIP Obligations**" and the "**Term Loan DIP Obligations**", and collectively, the "**DIP Obligations**"), shall be deemed to have been extended by the DIP Agents and the DIP Lenders and their respective affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Final Order or any provision hereof is vacated, reversed, or modified on appeal.

(g) To the extent necessary, the Prepetition Secured Parties have either consented to the DIP Facilities and the Debtors' use of the Prepetition Collateral, including Cash Collateral, or their respective interests therein are being adequately protected by, among other things, the adequate protection described by this Final Order. This Court concludes that the adequate protection provided to the Prepetition Secured Parties hereunder for, among other things, the Debtors' incurrence of the DIP Obligations on a priming basis, as described herein, and the Debtors' use of the Prepetition Collateral, including Cash Collateral, is consistent with and authorized by sections 361, 362, 363, and 364 of the Bankruptcy Code.

G. Based on the foregoing findings, acknowledgements, and conclusions, and upon the record made before the Court at the Interim Hearing and at the Final Hearing, and good and sufficient cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Approval of DIP Motion. The DIP Motion is granted on a final basis on the terms and conditions set forth in this Final Order and the DIP Documents; provided, however, that if there are any inconsistencies between the terms of this Final Order and the DIP Documents, the terms of this Final Order shall govern. Any objections or responses to the relief requested in the DIP Motion that have not been previously resolved or withdrawn, waived or settled are hereby overruled on the merits and denied with prejudice. This Final Order shall become effective immediately upon its entry.

2. Authorization of DIP Facilities and DIP Documents.

(a) The ABL DIP Facility and the Term Loan DIP Facility are each hereby approved on a final basis. The Debtors are hereby authorized to execute, issue, deliver, enter into and adopt, as the case may be, the ABL DIP Agreement, all ABL DIP Documents, the Term

Loan DIP Agreement and all Term Loan DIP Documents to be delivered pursuant hereto or thereto or in connection herewith or therewith, including, without limitation, the Approved Budget (as defined herein). The U.S. ABL DIP Borrower is hereby authorized to borrow money under the ABL DIP Facility and the Term Loan DIP Borrower is authorized to borrow money under the Term Loan DIP Facility, on a final basis, up to an aggregate principal or face amount not to exceed $280 million. The Debtors that are Guarantors are hereby authorized to guarantee such borrowings and the other DIP Obligations, all in accordance with the terms of this Final Order, the DIP Agreements, and all other DIP Documents.

(b) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements), and, without further application to the Court, to pay all fees referred to in this Final Order, the ABL DIP Agreement, the ABL DIP Documents, the Term Loan DIP Agreement and the Term Loan DIP Documents including, without limitation, the reasonable and documented prepetition and postpetition fees and out-of-pocket expenses of the professionals of the DIP Agents, including Paul Hastings LLP, Blake, Cassels & Graydon LLP, Womble Bond Dickinson LLP, FTI Consulting, Weil, Gotshal & Manges LLP, Richards Layton & Finger LLP, Rothschild & Co., Goodmans LLP (subject to the same procedures, including with respect to the ability to object, provided for in paragraph 22(e) regarding payment of the fees and expenses of the Prepetition Secured Parties).

(c) Subject to the provisions contained in paragraph 40 hereof, the Debtors are hereby authorized to execute, deliver and perform one or more amendments or modifications to the ABL DIP Documents and/or Term Loan DIP Documents for the purpose of adding additional

financial institutions as ABL DIP Lenders and/or Term Loan DIP Lenders and reallocating the commitments for the ABL DIP Facility among the ABL DIP Lenders and/or the Term Loan DIP Facility among the Term Loan DIP Lenders, in each case in such form as the Debtors, the ABL DIP Agent and the ABL DIP Lenders or the Term Loan DIP Agent and the Term Loan DIP Lenders, as applicable, may agree (it being understood that no further approval of this Court shall be required for non-material amendments to the ABL DIP Documents and/or the Term Loan DIP Documents).

3. Binding Effect. Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid and binding obligations of the Debtors, enforceable against each Debtor party thereto in accordance with their terms. No obligation, payment, transfer or grant of a security or other interest under the DIP Documents, the Interim Order or this Final Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or any applicable law (including, without limitation, under section 502(d) of the Bankruptcy Code), or subject to any defense, reduction, set-off, recoupment or counterclaim.

4. ABL DIP Loans and Roll Up.

(a) All loans made or monies advanced under the ABL DIP Facility to or for the benefit of the "Loan Parties" under and as defined in the ABL DIP Agreement (the "**ABL DIP Loan Parties**") on or after the Petition Date including, without limitation, loans made or monies advanced or deemed advanced under or in connection with the ABL DIP Facility, shall: (i) be evidenced by the books and records of the ABL DIP Agent; (ii) bear interest payable at the rates set forth in the ABL DIP Agreement; (iii) be secured in the manner set forth in this Final Order and in the ABL DIP Documents; (iv) be payable in accordance with the terms of the ABL DIP

Documents; and (v) otherwise be governed by the terms set forth in this Final Order and in the ABL DIP Documents.

(b) The Advances (as defined in the Prepetition ABL Credit Agreement) outstanding as of the Petition Date under the Prepetition ABL Credit Agreement constitute a portion of the Revolving DIP Loans outstanding under the ABL DIP Facility. For all purposes of the ABL DIP Documents, the sum of the Pre-Petition Revolving Loans and any other Revolving DIP Loans made on the Closing Date shall constitute all of the Revolving DIP Loans outstanding on the Closing Date. Each Pre-Petition Letter of Credit (as defined in the ABL DIP Agreement) shall constitute a "Letter of Credit" for all purposes of the ABL DIP Documents and shall be deemed issued under the ABL DIP Agreement as of the Closing Date. All Letter of Credit Outstandings (as defined in the Prepetition ABL Credit Agreement) shall constitute Letter of Credit Outstandings for all purposes of the ABL DIP Documents.

(c) For the avoidance of doubt, the Prepetition ABL Roll Up shall be subject to paragraph 34 of this Final Order.

5. Use of ABL DIP Loans. Subject to the terms and conditions of this Final Order and the ABL DIP Documents (including, without limitation, satisfaction of the conditions precedent to borrowing set forth therein), and other restrictions set forth in the DIP Documents, an amount not to exceed $200 million of the ABL DIP Loans shall be available on or after the Closing Date and shall be used by the U.S. ABL DIP Borrower, in each case in accordance with the Approved Budget (as defined herein) to (a) effectuate the Prepetition ABL Roll Up as set forth in the ABL DIP Agreement and paragraph 4(b) of this Final Order, (b) fund general corporate needs, including, without limitation, working capital needs, (c) pay administrative expenses of the Cases, including reasonable fees and expenses of professionals, (d) pay

Adequate Protection Provisions and (e) pay any prepetition obligations authorized to be paid pursuant to any "first day order" entered by the Court, in each case, in accordance with the Approved Budget (as defined herein).

6. Term DIP Loans. All loans made or monies advanced under the Term Loan DIP Facility to or for the benefit of the "Credit Parties" under and as defined in the Term Loan DIP Agreement (the "Term DIP Loan Parties" and, together with the ABL DIP Loan Parties, the "**Loan Parties**") on or after the Petition Date including, without limitation, loans made or monies advanced or deemed advanced under or in connection with the Term Loan DIP Facility, shall: (a) be evidenced by the books and records of the Term Loan DIP Agent; (b) bear interest payable at the rates set forth in the Term Loan DIP Agreement; (c) be secured in the manner set forth in this Final Order and in the Term Loan DIP Documents; (d) be payable in accordance with the terms of the Term Loan DIP Documents; and (e) otherwise be governed by the terms set forth in this Final Order and in the Term Loan DIP Documents.

7. Use of Term DIP Loans. Subject to the terms and conditions of this Final Order and the Term Loan DIP Agreement (including, without limitation, satisfaction of the conditions precedent to borrowing set forth therein), the proceeds of the Term DIP Loans shall be available on or after the Closing Date and shall be used by the Term Loan DIP Borrower, in each case in accordance with the Approved Budget (as defined herein) to (a) pay transaction fees and expenses, administrative expenses of the cases (including the professional fees and expenses of the Term Loan DIP Agent and/or the Term Loan DIP Lenders, to the extent the ABL DIP Facility does not provide sufficient funds to pay such needs) and to fund general corporate needs, including, without limitation, working capital needs and repayments of borrowings under the ABL DIP Facility (solely to the extent not accompanied by a corresponding reduction of

commitments under such ABL DIP Facility), and (b) pay any prepetition obligations authorized to be paid pursuant to any "first day order" entered by the Court, in each case, in accordance with the Approved Budget.

8. Payment of DIP Fees and Expenses. The Debtors are authorized to pay or otherwise incur all fees, expenses, and other amounts payable under the Fee Letters and under the terms of the ABL DIP Agreement, any other ABL DIP Documents, the Term Loan DIP Agreement and any other Term Loan DIP Documents including, without limitation, the commitment fee, the unused line fee, the servicing fee, the closing/upfront fee, the exit fee, the administrative agent fee, and any letter of credit fees (collectively, the "**DIP Fees**") as well as all reasonable and documented out-of-pocket costs and expenses of the DIP Agents in accordance with the terms of the DIP Agreements (collectively, the "**Expenses**"). The DIP Fees and Expenses approved pursuant to this paragraph shall include, without limitation, the reasonable and documented prepetition and postpetition fees and expenses of counsel and financial advisors retained by the DIP Agents associated with the arrangement, preparation, execution, delivery and administration of the DIP Documents (and any amendment or waiver with respect thereto), and the Cases and, subject to the same procedures provided in paragraph 22(e) regarding payment of the fees and expenses of the Prepetition Secured Parties, none of the DIP Fees and Expenses shall be subject to Court approval or U.S. Trustee guidelines, and no recipient of any such payment shall be required to file any interim or final fee application with this Court with respect to such fees and expenses. In addition, the Debtors are hereby authorized to indemnify the DIP Agents, the DIP Lenders, and their respective affiliates and other parties, as provided in the DIP Agreements. All fees and expenses approved pursuant to this paragraph shall constitute DIP Obligations and the repayment thereof shall be secured by the DIP Collateral and afforded all of

the priorities and protections afforded to the DIP Obligations under this Final Order and the DIP Documents. The Debtors are hereby authorized to pay all DIP Fees and Expenses in accordance with the DIP Documents.

9. ABL DIP Superpriority Claims. Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the ABL DIP Obligations shall constitute allowed claims against the Debtors (without the need to file any proofs of claim) including priority over any and all administrative expenses, diminution claims (including all Adequate Protection Provisions (as defined herein)), and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 or 1114 or any other provision of the Bankruptcy Code (the "**ABL DIP Superpriority Claims**"), which allowed claims, shall, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expense claims allowed under section 503(b) of the Bankruptcy Code and shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and their estates and all proceeds thereof, subject only to the Carve Out and senior to the Adequate Protection 507(b) Claims (as defined herein).

10. Term Loan DIP Superpriority Claims. Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the Term Loan DIP Obligations shall constitute allowed superpriority administrative expense claims against the Debtors (without the need to file any proofs of claim), including priority over any and all administrative expenses, diminution claims (including all Adequate Protection Provisions (as defined herein)), and all other claims against the Debtors, now existing or hereafter arising, in these Cases or a Successor Case (as defined herein), of any kind whatsoever, including, without limitation, all administrative expenses or other claims

arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 or 1114 or any other provision of the Bankruptcy Code (the "**Term Loan DIP Superpriority Claims**" and, together with the ABL DIP Superpriority Claims, the "**DIP Superpriority Claims**"), which allowed claims, shall, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expense claims allowed under section 503(b) of the Bankruptcy Code and shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and their estates and all proceeds thereof, subject only to the Carve Out; provided, however, that the ABL DIP Superpriority Claims and Term Loan DIP Superpriority Claims shall be *pari passu* with each other, without otherwise impairing the lien priorities as set forth herein, and shall be subject to the Carve Out and senior to the Adequate Protection 507(b) Claims (as defined herein).

11. Carve Out.

(a) For purposes hereof, the "Carve Out" means the sum of: (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time by the Bankruptcy Court, whether by interim order, procedural order, or otherwise, unpaid fees and expenses (the "**Allowed Professional Fees**") incurred by persons or firms retained by the Debtors pursuant to sections 327, 328, 363, or 1103 of the Bankruptcy Code (the "**Debtor Professionals**") and the Committee, pursuant to sections 328 or 1103 of the Bankruptcy Code and, with respect to Committee professionals (the "**Committee Professionals**") (solely with respect to any

Committee and the Committee Professionals strictly subject to the Approved Budget and the line items applicable to such Committee and Committee Professionals set forth therein) and the Debtor Professionals (together with the Committee Professionals, the "**Professional Persons**") at any time before or on the first business day following delivery by a Creditor Representative (defined below) of a Carve Out Trigger Notice (as defined herein), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice, and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed $3 million incurred after the first business day following delivery by one of the Creditor Representatives (defined below) of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "**Post-Carve Out Trigger Notice Cap**"). For purposes of the foregoing, "**Carve Out Trigger Notice**" shall mean a written notice delivered by e-mail (or other electronic means) by the ABL DIP Agent or the Term Loan DIP Agent (each, a "**Creditor Representative**") to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default (as defined in paragraph 36), stating that the Post-Carve Out Trigger Notice Cap has been invoked and describing the alleged default that is continuing under the DIP Documents. In addition, without duplication of any Allowed Professional Fees, and only after the funding of the Carve Out Reserves in full, an additional amount shall be funded to the Post-Carve Out Trigger Notice Reserve from the DIP Term Funding Account up to the lesser of (x) the remaining amount in the DIP Term Funding Account and (y) $8.6 million if a Sale Order has been entered by the Bankruptcy Court approving the Stalking Horse APA substantially in the form filed on the Petition Date or $10 million if the Sale Order has not been entered by the Bankruptcy Court,

which amount shall be available solely to pay any transaction, restructuring, sale or other similar fees then due and owing or that thereafter become due and owing to Houlihan Lokey Capital Inc.

(b) Carve Out Reserves. On the day on which a Carve Out Trigger Notice is given by a Creditor Representative to the Debtors (the "**Termination Declaration Date**"), the Carve Out Trigger Notice shall: (i) be deemed a borrowing request and notice of borrowing by the Debtors for ABL DIP Loans under the ABL DIP Agreement, in an amount equal to (a) the maximum amount provided for in paragraph 11(a)(ii) above, plus (b) the then unpaid amounts (including the good-faith estimated Professional Fees accrued and not yet invoiced) of the Allowed Professional Fees (any such amounts actually advanced shall constitute DIP Loans), as provided for in paragraph 11(a)(iii) above; and (ii) also constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees. The Debtors shall deposit and hold such amounts in a segregated account not subject to the control of the DIP Agents or any Prepetition Secured Party in trust to pay such then unpaid Allowed Professional Fees (the "**Pre-Carve Out Trigger Notice Reserve**") prior to any and all other claims to the fullest extent allowable under the Bankruptcy Code and applicable non-bankruptcy law. On the Termination Declaration Date, the Carve Out Trigger Notice shall also be deemed a request by the Debtors for ABL DIP Loans under the ABL DIP Agreement (on a *pro rata* basis based on the then-outstanding ABL DIP Loans), in an amount equal to the Post-Carve Out Trigger Notice Cap (any such amounts actually advanced shall constitute DIP Loans). The Debtors shall deposit and hold such amounts in a segregated account not subject to the control of the DIP Agents or any Prepetition Secured Party in trust to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap (the "**Post-Carve Out**

Trigger Notice Reserve" and, together with the Pre-Carve Out Trigger Notice Reserve, the "**Carve Out Reserves**") prior to any and all other claims. On the first business day after a DIP Agent provides notice of a Carve Out Trigger Notice to the ABL DIP Lenders, notwithstanding anything in the ABL DIP Agreement or any other DIP Document, including Section 8.04(n) of the DIP Term Loan Agreement, to the contrary, including with respect to the existence of a Default (as defined in the ABL DIP Agreement) or Event of Default, the failure of the Debtors to satisfy any or all of the conditions precedent for ABL DIP Loans under the ABL DIP Facility, any termination of the ABL DIP Loan Commitments following an Event of Default, or the occurrence of the Maturity Date (as defined in the ABL DIP Agreement), each ABL DIP Lender with an outstanding ABL DIP Loan Commitment (on a *pro rata* basis based on the then-outstanding ABL DIP Loan Commitments) shall make available to the ABL DIP Agent such ABL DIP Lender's *pro rata* share with respect to such borrowing in accordance with the ABL DIP Facility; provided, however, that notwithstanding anything to the contrary in this paragraph 11, no ABL DIP Lender shall be required to make ABL DIP Loans in excess of the lesser of its ABL DIP Loan Commitment and its *pro rata* share of the Borrowing Base. Notwithstanding anything to the contrary set forth herein or in the DIP Documents, if the amount of all the ABL DIP Loans available to the Debtors following delivery of the Carve Out Trigger Notice is insufficient to fund the full amount of the Carve Out Reserves, then the Carve Out Trigger Notice shall be deemed to be a withdrawal request for proceeds solely from the DIP Term Funding Account (as defined in the Term Loan DIP Agreement) in an amount necessary solely to fund any unfunded portion of the Carve Out Reserves outstanding after application of all the ABL DIP Loans, regardless of anything in the Term Loan DIP Agreement to the contrary, including under Section 2.13(a)(iii) thereunder or with respect to the existence of a Default (as

defined in the Term Loan DIP Agreement) or Event of Default, the failure of the Debtors to satisfy any or all of the conditions precedent for Term DIP Loans under the Term Loan DIP Facility, any termination of the Term DIP Loan Commitments following an Event of Default, or the occurrence of the Maturity Date (as defined in the Term Loan DIP Agreement) up to the full amount of any proceeds. All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (ii) through (iii) of the definition of Carve Out set forth above (the "**Pre-Carve Out Amounts**"), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full and then, to the extent the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, all remaining funds shall be distributed ratably (based on the proportion of the Pre-Carve Our Trigger Notice Reserve funded by or from the ABL DIP Lenders or the DIP ABL Priority Collateral or the Term DIP Lenders or the DIP Term Loan Collateral, respectively) to: (a) the ABL DIP Agent on behalf of the ABL DIP Lenders, and (b) the Term Loan DIP Agent on behalf of the Term DIP Lenders.

(c) All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the "**Post-Carve Out Amounts**"), and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, all remaining funds shall be distributed ratably (based on the proportion of the Pre-Carve Our Trigger Notice Reserve funded by or from the ABL DIP Lenders or the DIP ABL Priority Collateral or the Term DIP Lenders or the DIP Term Loan Collateral, respectively) to: (a) the ABL DIP Agent on behalf of the ABL DIP Lenders, and (b) the Term Loan DIP Agent on behalf of the Term DIP Lenders. Notwithstanding anything to the contrary in the DIP Documents or this Final Order, if either of the Carve Out Reserves are not funded in full in the amounts set forth in this paragraph 11, then, any excess funds in one of

the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively, shall be used to fund the other Carve Out Reserve, up to the applicable amount set forth in this paragraph 11, prior to making any payments to the ABL DIP Agent or the Term Loan DIP Agent, as applicable. Notwithstanding anything to the contrary in the DIP Documents, the Interim Order, or this Final Order, following delivery of a Carve Out Trigger Notice, the ABL DIP Agent and the Term Loan DIP Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid in accordance with this paragraph (c) and paragraphs (a) and (b) above. Further, notwithstanding anything to the contrary in this Final Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not constitute Advances (as defined in the ABL DIP Agreement) or increase or reduce the DIP Obligations, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the Approved Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary herein or in the ABL DIP Agreement or in the Term Loan DIP Agreement, the Carve Out shall be senior to all liens and claims securing the DIP Facilities, the DIP Liens, the DIP Superpriority Claims, and the Adequate Protection Liens, and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations or the Prepetition Credit Agreement Indebtedness. Notwithstanding anything herein, but subject to paragraph 35, no proceeds of Prepetition Collateral, the DIP Loans or the Carve Out shall be used for the purpose of: (a) investigating,

objecting to, challenging, or contesting in any manner, or in raising any defenses to, the amount, validity, extent, perfection, priority, enforceability, or avoidability of the Prepetition Credit Agreement Indebtedness, the Prepetition Liens or any liens or security interests with respect thereto, or any other rights or interests of any of the Prepetition Secured Parties, whether in their capacity as such or otherwise, including with respect to the Adequate Protection Liens, or in asserting any claims or causes of action against any of the Prepetition Secured Parties (whether in their capacity as such or otherwise), including, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise.

(d) No Direct Obligation to Pay Allowed Professional Fees; No Waiver of Right to Object to Fees. The DIP Agents and the DIP Lenders shall not be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Cases or any Successor Case (as defined herein) under any chapter of the Bankruptcy Code. Nothing in this Final Order or otherwise shall (i) be construed to obligate the DIP Agents or the DIP Lenders, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement or (ii) require any DIP Lender to make DIP Loans in excess of its DIP Commitment. Notwithstanding any provision in this paragraph 11 to the contrary, no portion of the Carve-Out, any Cash Collateral, any DIP Collateral, or any proceeds of the DIP Facilities (including any disbursements set forth in the Approved Budget or obligations benefitting from the Carve-Out) shall be utilized for the payment of professional fees and disbursements to the extent restricted under paragraph 35 hereof. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors,

any Committee, any other official or unofficial committee in these Cases or any Successor Case (as defined herein) or of any other person or entity, or shall affect the right of the DIP Agents or the DIP Lenders to object to the allowance and payment of any such fees and expenses.

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

(f) Payment of Carve Out On or After Termination Declaration Date. Any payment or reimbursement from the Carve-Out Reserves made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis. Any funding of the Carve Out shall be added to, and made a part of, the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under this Final Order, the DIP Documents, the Bankruptcy Code, and applicable law.

12. DIP Liens. As security for the ABL DIP Obligations and Term Loan DIP Obligations, effective and perfected automatically upon the date of the Interim Order and without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by any DIP Agent of any DIP Collateral (as defined herein), the following security interests and liens (all such liens and security interests granted to the ABL DIP Agent and Term Loan DIP Agent, for their benefit and for the benefit of the respective ABL DIP Lenders and Term Loan Lenders, pursuant to the Interim Order, this Final Order and the DIP Documents, (the "**DIP Liens**") are hereby granted to the ABL DIP Agent and Term Loan DIP Agent:

(a) pursuant to section 364(d) of the Bankruptcy Code, perfected senior priming liens on all assets securing the Prepetition Credit Agreement Indebtedness, regardless of whether any lien or any security interest securing or purporting to secure the Prepetition Credit Agreement Indebtedness is valid or invalid, perfected or unperfected, or avoidable or non-avoidable, subject and subordinate to all perfected non-avoidable senior pre-existing liens as of the Petition Date securing claims other than liens securing the Prepetition Credit Agreement Indebtedness;

(b) pursuant to section 364(c)(2) of the Bankruptcy Code, perfected senior liens on all assets of the Debtors not subject to a valid, perfected, and non-avoidable lien in existence as of on the Petition Date (or as such lien may be perfected after the Petition Date to the extent permitted by section 546 of the Bankruptcy Code) including the Avoidance Proceeds; and

(c) pursuant to section 364(c)(3) of the Bankruptcy Code, perfected junior security interests on other assets of the Debtors subject to permitted liens (excluding the Prepetition Credit Agreement Liens) on the Petition Date (the assets referenced in clauses (a)-(c) of this paragraph 12 collectively, the "**DIP Collateral**").

13. The DIP Collateral includes all tangible and intangible prepetition and postpetition property and interests in property of the Debtors, whether existing on or as of the Petition Date or thereafter acquired, including, without limitation: (a) all accounts, chattel paper, deposit accounts, documents, equipment, general intangibles, intellectual property, instruments, insurance, inventory, investment property, letter-of-credit rights, money and any supporting obligations related thereto; (b) all commercial tort claims; (c) all books and records pertaining to the DIP Collateral; (d) all property of any Prepetition Credit Party held by the ABL DIP Agent,

the ABL DIP Lenders, the Term Loan DIP Agent, Term Loan DIP Lenders, or any Prepetition Secured Party, including all property of every description, in the custody of or in transit to the DIP Agents, the DIP Lenders or any Prepetition Secured Party for any purpose, including safekeeping, collection or pledge, for the account of such party or as to which such party may have any right or power, including, but not limited to cash; (e) all other goods (including, but not limited to, fixtures) and personal property, whether tangible or intangible and wherever located; (f) all owned real property interests, and all proceeds of all owned and leased property (except that the DIP Liens granted to the ABL DIP Agent shall not include the DIP Collateral described in this paragraph 13(f)); (g) any Indebtedness of Holdings or any of its Subsidiaries owing to Holdings or any of its Subsidiaries; (h) actions brought under section 549 of the Bankruptcy Code to recover any post-petition transfer of DIP Collateral; and (i) all proceeds of the foregoing, plus all Prepetition Collateral. The DIP Collateral shall include the Avoidance Proceeds, which includes any proceeds or property recovered, unencumbered or that is the otherwise subject of a successful Avoidance Action, whether by judgment, settlement, or otherwise.

14. DIP Collateral that is: (a) of a type that would be ABL Priority Collateral; and (b) of a type that would be ABL Priority Collateral, but that was not otherwise subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date, shall, in each case, constitute "**DIP ABL Priority Collateral**"; provided, however, that neither the DIP Term Funding Account (as defined in the Term Loan DIP Agreement) nor any funds held therein shall constitute the DIP ABL Priority Collateral. DIP Collateral that is: (a) of a type that would be Term Priority Collateral; (b) of a type that would be Term Priority Collateral but that was not otherwise subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date; and (c) the DIP Term Funding Account and all funds held therein, shall, in each case, constitute

"**DIP Term Loan Priority Collateral**". Notwithstanding anything in this paragraph 14 or paragraph 15, the priority of DIP Liens on DIP Collateral consisting of Avoidance Proceeds shall be *pari passu* as between the DIP ABL Agent and the DIP Term Loan Agent.

15. DIP Lien Priority. The DIP Liens securing the DIP ABL Obligations (the "**DIP ABL Liens**") and the DIP Liens securing the DIP Term Loan Obligations (the "**DIP Term Loan Liens**") are valid, automatically perfected, non-avoidable, senior in priority, and superior to any security mortgage, collateral interest, lien or claim to any of the DIP Collateral, except that the DIP ABL Liens and the DIP Term Loan Liens shall be subject to the Carve Out as set forth in this Final Order and shall otherwise have the priority set forth in the Priority Waterfall. Notwithstanding anything herein to the contrary, the DIP Liens shall be subordinate to the Carve Out.

16. Remedies. (a) Any automatic stay otherwise applicable to the DIP Agents and the DIP Lenders is hereby modified, without requiring prior notice to or authorization of this Court, to the extent necessary to permit the DIP Agents and the DIP Lenders to: (i) declare all DIP Obligations to be due and payable; (ii) declare the termination, reduction, or restriction of any further commitment to extend credit to the Debtors, to the extent any such commitment remains; and/or (iii) terminate the applicable DIP Documents as to any future liability or obligation of the DIP Agents and the DIP Lenders, but without affecting any of the DIP Obligations or the DIP Liens securing the DIP Obligations.

(b) In addition to the rights and remedies described above, upon not less than five (5) business days' prior written notice to the Debtors (with a copy to counsel to each of the Prepetition Agents, the Committee and the U.S. Trustee) following the occurrence and continuance of an Event of Default (as defined herein), the DIP Agents are hereby granted relief

from the automatic stay provisions of section 362 of the Bankruptcy Code without further notice, hearing, motion, order or together action of any kind, to foreclose on, or otherwise enforce and realize on, their DIP Liens on all or any portion of the DIP Collateral, including by collecting accounts receivable and applying the proceeds thereof to the applicable DIP Obligations, and by occupying the Debtors' premises (subject to paragraph 16(c) below) to sell or otherwise dispose of the DIP Collateral, with the exercise of remedies as among the ABL DIP Agent and Term Loan DIP Agent being subject to the DIP Intercreditor Agreement, except as expressly provided herein, in all cases subject to the Carve Out. During the foregoing five (5) business day period objections may be raised by the Debtors or the Committee; provided, however, that during such five (5) business day period, the Debtors may only use Cash Collateral pursuant to paragraph 37 of this Order.

(c) Notwithstanding anything contained herein to the contrary, and without limiting any other rights or remedies of the DIP Agents and the DIP Lenders contained in this Final Order or the DIP Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Documents, upon five (5) business days' written notice to the Debtors and any landlord, lienholder, licensor, or other third party owner of any leased or licensed premises or intellectual property that a Cash Collateral Termination Event has occurred and is continuing, the DIP Agents (i) may, unless otherwise provided in any separate agreement by and between the applicable landlord, licensor, or third party owner and the DIP Agents (the terms of which shall be reasonably acceptable to the parties thereto), enter any leased or licensed premises of the Debtors for the purpose of exercising any remedy with respect to any DIP Collateral located thereon and (ii) shall be entitled to all of the Debtors' rights and privileges as lessee or licensee under the applicable lease or license and to use any and all trademarks, trade names, copyrights,

licenses, patents, or any other similar assets of the Debtors that are owned by or subject to a lien of any third party and that are used by Debtors in their businesses, in the case of either subparagraph (i) or (ii) of this paragraph 16(b) without interference from lienholders or licensors thereunder, subject to such lienholders' or licensors' rights under applicable law; provided, however, that the DIP Agents and DIP Lenders can only enter onto any leased premises after a Cash Collateral Termination Event has occurred and is continuing, in accordance with (x) a separate agreement with the landlord of the applicable leased premises; (y) upon entry of an order of this Court after the filing of a motion and appropriate notice and an opportunity for landlords to object and be heard; or (z) as permitted by applicable law; provided, further, that the DIP Agents, on behalf of the DIP Lenders, shall pay only rent and additional rent, fees, royalties, or other monetary obligations of the Debtors that first arise after the written notice referenced above from the DIP Agents and that accrue during the period of such occupancy or use by such DIP Agent calculated on a daily basis. Nothing herein shall require the Debtors, the DIP Agents, or the other DIP Lenders to assume any lease, license or other contract under Bankruptcy Code section 365(a) as a precondition to the rights afforded to the DIP Agents and the DIP Lenders in this paragraph 16(c).

17. Budget. For purposes of this Final Order, the term "Approved Budget" means a cash flow forecast detailing cash receipts, cash disbursements, inventory levels and accrued and unpaid professional fees on a weekly basis for (a) the applicable 13-week period or (b) the period until the projected closing of the 363 Sale (as defined in the Term Loan DIP Agreement and ABL DIP Agreement), whichever is shorter, for such weekly period on a regional and consolidated basis, in each case substantially consistent with the manner in which such information is presented in the Budget attached hereto as **Exhibit D**, filed with the Bankruptcy

Court on or before the date of entry of this Final Order, and shall initially refer to the Approved Budget delivered by the Debtors on or before the date of entry of this Final Order and thereafter shall refer to the Approved Budget delivered by the Debtors pursuant to Schedule 5.1 to the ABL DIP Agreement and Section 7.1(f) of the Term Loan DIP Agreement on the second Wednesday following the end of each fiscal month of Holdings falling after the Petition Date (each such date, a "**Budget Delivery Date**"), in each case, in form and substance acceptable to the ABL DIP Agent and the Term Loan DIP Agent; provided, however that the Committee shall receive the Approved Budget and any other documents provided pursuant to Schedule 5.1 to the ABL DIP Agreement and Section 7.1(f) of the Term Loan DIP Agreement contemporaneously with the DIP Agents and the DIP Lenders. On each Wednesday on or before 11:59 pm Pacific Time (the "**Reporting Date**") starting the week after the first full calendar week following the Petition Date, delivery of the following will be made to the DIP Agents, the DIP Lenders and the Committee: (a) a budget variance report covering the cumulative period commencing on the Sunday immediately following the Budget Delivery Date for the then-effective Approved Budget through the Saturday immediately preceding the Reporting Date (such period, the "**Budget Testing Period**") setting forth the variances (whether positive or negative) of actual total operating receipts and total operating expenses as compared to the Approved Budget then in effect covering the applicable Budget Testing Period, together with an explanation, in reasonable detail, for any budget variances, and additional discussion and other information related to any budget variances as the ABL DIP Agent or the Term Loan DIP Agent may reasonably request; and (b) a certification that no proceeds of the ABL Revolving Loans or the Term DIP Loans have been used for purposes other than as set forth in the Approved Budget (subject to permitted variances).

18. Budget Covenants.

(a) Except as otherwise provided in the DIP Agreements or approved by the DIP Agents and the requisite lenders under the applicable DIP Agreement (and regardless of whether or not a Carve Out Trigger Notice has been delivered), the Debtors and their Subsidiaries shall not, directly or indirectly (i) use any cash or the proceeds of any DIP Loans in a manner or for a purpose other than those consistent with the DIP Agreements, the Interim Order, this Final Order, and the Approved Budget (and any variances permitted thereunder), (ii) permit a disbursement causing any variance other than any variances permitted thereunder without the prior written consent of the ABL DIP Agent, the Term Loan DIP Agent, and the requisite lenders under the applicable DIP Agreement or (iii) make any payment (as adequate protection or otherwise), or application for authority to pay, on account of any claim or Indebtedness arising prior to the Petition Date other than payments set forth in the Approved Budget and authorized by the Bankruptcy Court.

(b) Prior to the occurrence of an Event of Default, the Debtors shall be permitted to pay compensation and reimbursement of fees and expenses of Professional Persons solely to the extent that such fees and expenses are authorized to be paid under sections 328, 330, 331, and 363 of the Bankruptcy Code pursuant to an order of the Court, as the same may be due and payable. Upon the occurrence of an Event of Default and delivery of a Carve Out Trigger Notice, the right of the Debtors to pay professional fees of Professional Persons outside the Carve Out shall terminate, and the Debtors shall provide immediate notice to all Professional Persons informing them that the Debtors' ability to pay such Professional Persons is subject to and limited by the Carve Out.

(c) Following the Petition Date: (i) total operating expenses (excluding professional fees and expenses) paid by the Loan Parties and their subsidiaries shall not exceed the amounts in the then effective Approved Budget by more than (A) in the case of any Budget Testing Period with a duration of one or two week(s), 15%, and (B) in the case of any other Budget Testing Period, 12.5%, in each case, on a cumulative basis for such Budget Testing Period; and (ii) total operating receipts (excluding any borrowings or other cash receipts not constituting trade receipts) of the Loan Parties and their subsidiaries shall not be less than (A) in the case of any Budget Testing Period with a duration of one or two week(s), 85%, and (B) in the case of any other Budget Testing Period, 87.5%, in each case, on a cumulative basis for such Budget Testing Period, of the amounts in the then effective Approved Budget, and in the case of each of clause (i) and (ii), such variances shall be tested weekly, starting the week after the first full calendar week following the Petition Date.

19. Limitation on Charging Expenses Against DIP Collateral. No expenses of administration of the Cases or any future proceeding that may result therefrom, including a case under chapter 7 of the Bankruptcy Code, shall be charged against or recovered from the Prepetition Collateral and the DIP Collateral pursuant to section 506(c) of the Bankruptcy Code, the enhancement of collateral provisions of section 552 of the Bankruptcy Code, or any other legal or equitable doctrine (including, without limitation, unjust enrichment) or any similar principle of law, without the prior written consent of the DIP Agents, and no consent shall be implied from any action, inaction or acquiescence by the ABL DIP Agent, the ABL DIP Lenders, the Term Loan DIP Agent, the Term Loan DIP Lenders, or the Prepetition Secured Parties. In no event shall the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties be subject to (a) the "equities of the case" exception contained in section 552(b) of the Bankruptcy

Code or (b) the equitable doctrine of "marshaling," or any other similar doctrine with respect to the DIP Collateral; provided that the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties may only use Avoidance Proceeds to satisfy outstanding DIP Obligations and obligations under the Prepetition Term Loan Credit Agreement or Prepetition ABL Credit Agreement, as applicable, if such obligations are not otherwise indefeasibly paid in full from proceeds of DIP Collateral or Prepetition Collateral, as applicable, that are not Avoidance Proceeds.

20. Cash Collateral. Subject to the terms of this Final Order and the Approved Budget, and, in the case of Cash Collateral held in the DIP Term Funding Account, subject to the Term Loan DIP Agreement, the Debtors are hereby authorized to use all Cash Collateral, solely in accordance with the Carve Out and the Approved Budget, in which the Prepetition Agents or any other Prepetition Secured Party has, and in which the DIP Agents and DIP Lenders have, a perfected security interest as of the Petition Date or at any time thereafter, including any cash on deposit in any deposit account or other account over which any of the Prepetition Agents or DIP Agents have control.

21. Use of Cash Collateral. Cash Collateral may be used only: (a) to effectuate the Prepetition ABL Roll Up; (b) to pay the Adequate Protection Provisions, (c) to pay the DIP Obligations, including, without limitation, to pay principal, interest, reimbursement obligations on account of letters of credit, fees, costs and expenses under the DIP Facilities; (d) for working capital and other general corporate purposes of the Debtors in accordance with the Approved Budget and the DIP Documents; (e) to pay the allowed administrative costs and expenses of the Cases, including the Carve Out; (f) to pay prepetition obligations authorized pursuant to "first day orders;" and with respect to (d), (e), and (f) above, solely in accordance with the Approved

Budget, the DIP Documents, and this Final Order, or as otherwise ordered by the Court after notice and a hearing.

22. Prepetition Secured Parties' Adequate Protection. The Prepetition Secured Parties are entitled, until the indefeasible repayment in full in cash of (a) in the case of the Prepetition ABL Secured Parties, the Prepetition ABL Credit Agreement Indebtedness and (b) in the case of the Prepetition Term Loan Agent, the Prepetition Term Loan Credit Agreement Indebtedness, pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, to adequate protection of their respective interests in the Prepetition Collateral (each, a "Diminution Claim"). As adequate protection for and to secure payment of an amount equal to, such Diminution Claims, the Prepetition Secured Parties are granted, *nunc pro tunc* as of the Petition Date, the following adequate protection (collectively, the "Adequate Protection Provisions"):

(a) Adequate Protection Liens.

(i) As adequate protection of the interests of the Prepetition ABL Agent and the Prepetition ABL Lenders in the Prepetition ABL Priority Collateral for their Diminution Claims, the Prepetition ABL Agent, for itself and for the benefit of the Prepetition ABL Lenders, is hereby granted valid and perfected security interests in and liens on the DIP Collateral (the "**ABL Adequate Protection Liens**").

(ii) As adequate protection of the interests of the Prepetition Term Loan Agent in the Prepetition Term Loan Credit Agreement Collateral for its Diminution Claims, the Prepetition Term Loan Agent, for itself and for the benefit of the Prepetition Term Loan Lenders, is hereby granted valid, binding,

continuing, enforceable and fully-perfected security interests in, and liens on, the DIP Collateral (the "**Term Loan Adequate Protection Liens**").

(b) Adequate Protection Lien Priority

(i) The ABL Adequate Protection Liens and Term Loan Adequate Protection Liens shall be subject to the Carve Out as set forth in this Final Order and shall otherwise have the priority set forth in the Priority Waterfall.

(c) Section 507(b) Claim.

(i) As adequate protection for, and to secure payment of an amount equal to, the Prepetition ABL Secured Parties' Diminution Claims, the Prepetition ABL Secured Parties are hereby granted to the extent provided by Bankruptcy Code Section 507(b) allowed superpriority administrative expense claims against the Debtors with priority over any and all administrative expenses, diminution claims and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code (the "**ABL 507(b) Claim**").

(ii) As adequate protection for, and to secure payment of an amount equal to, the Prepetition Term Loan Agent's Diminution Claim, the Prepetition Term Loan Secured Parties are hereby granted to the extent provided by Bankruptcy Code Section 507(b) allowed superpriority administrative expense claims against the Debtors with priority over any and all administrative expenses, diminution claims and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all

administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code (the "**Term Loan 507(b) Claim**" and, together with the Prepetition ABL 507(b) Claim, the "**Adequate Protection 507(b) Claims**").

(iii) Except as set forth herein, the Adequate Protection 507(b) Claims shall have priority over all administrative expense claims, secured claims (except secured claims secured by Permitted Prior Liens), and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 and 114 of the Bankruptcy Code; provided, however, that the Adequate Protection 507(b) Claims shall be *pari passu* with each other, without otherwise impairing the lien priorities set forth herein, and subject to the Carve Out as set forth in this Final Order and junior to the DIP Superpriority Claims.

(d) Interest, Fees, Expenses, and Interest Accrual. Without further application to this Court, the Debtors shall pay forthwith in cash (i) upon entry of the Interim Order, all accrued and unpaid interest through the Petition Date owed to the Prepetition Secured Parties under the Prepetition ABL Credit Agreement and Prepetition Term Loan Credit Agreement (including, without limitation, payment of all outstanding default interest); (ii) on the last business day of each month, a payment to the Prepetition Term Loan Agent on behalf of the Prepetition Term Loan Lenders, of the cash pay portion of interest that accrued on the loans under the Prepetition Term Loan Credit Agreement, which, for the avoidance of doubt,

shall not include the Prepayment Premium, at the non-default rate during such monthly period (or portion thereof) pursuant to Section 2.07(a)(ii) of the Prepetition Term Loan Credit Agreement; (iii) on the last business day of each month, payment in kind of all PIK Interest (as defined in the Prepetition Term Loan Credit Agreement) that accrued on the loans under the Prepetition Term Loan Credit Agreement, which, for the avoidance of doubt, shall not include the Prepayment Premium, during such monthly period (or portion thereof) (which PIK Interest shall be capitalized and added to the principal amount of the loans under the Prepetition Term Loan Credit Agreement, including for the purposes of the foregoing clause (ii)); (iv) upon entry of the Interim Order, all accrued and unpaid fees and disbursements owed to the Prepetition ABL Agent and Prepetition Term Loan Agent, respectively, including all reasonable and documented out-of-pocket fees and expenses of counsel and other professionals of the Prepetition ABL Agent and Prepetition Term Loan Agent, respectively, as provided under the Prepetition ABL Credit Agreement and Prepetition Term Loan Credit Agreement, as applicable and, in each case, whether incurred before or after the Petition Date; and (v) during the pendency of the Chapter 11 Cases, (A) interest shall accrue on the Prepayment Premium at the default rate set forth in Section 2.07(b) of the Prepetition Term Loan Credit Agreement and (B) the additional interest of 2.00% shall continue to accrue on the loans under the Prepetition Term Loan Credit Agreement pursuant to Section 2.07(b) of the Prepetition Term Loan Credit Agreement; provided, that the interest payments described in this clause (v) shall not be capitalized and added to the principal

amount of the loans under Prepetition Term Loan Credit Agreement for the purposes of calculating the interest payable to the Prepetition Term Loan Agent on behalf of the Prepetition Term Loan Lenders pursuant to this paragraph.

(e) Payment of Prepetition Secured Parties' Professional Fees and Expenses. The Debtors shall pay the Prepetition Secured Parties' prepetition and postpetition Professional Fees and Expenses within ten (10) days (if no written objection is received within such ten (10) day period) after such professional has delivered an invoice substantially in the form provided to the Debtors to date describing such fees and expenses; provided, however, that any such invoice may be redacted to protect privileged, confidential or proprietary information, with a copy of such invoice to the DIP Agents, the Prepetition ABL Agent, the Prepetition Term Loan Agent, the U.S. Trustee and the Committee. Written objections to payment of such fees and expenses, which may only be asserted by the Debtors, the DIP Agents, the U.S. Trustee and the Committee, must contain a specific basis for the objection. None of the fees and expenses shall be subject to Court approval or required to be maintained in accordance with the U.S. Trustee Guidelines and no recipient of any such payment shall be required to file any interim or final fee application with the Court with respect thereto; provided, however, if an objection to a professional's invoice is timely received, the Debtors shall only be required to pay the undisputed amount of such invoice and the Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute.

(f) Adequate Protection Condition. As a condition to receiving the Adequate Protection Provisions of this Order, each of the Prepetition Term Loan Lenders, Prepetition Term Loan Agent, Term Loan DIP Lenders, and Term Loan DIP Agent shall, upon or substantially concurrently with the consummation of a sale or other disposition of all or substantially all of the assets of the Debtors under section 363 of the Bankruptcy Code and of their non-debtor affiliates, whether pursuant to section 36 of the *Companies' Creditors Arrangement Act* (Canada), R.S.C. 1985, c. C-36 or otherwise (and not, for the avoidance of doubt, upon the occurrence of the Maturity Date due to any other event), so long as the proceeds of such sale or disposition shall satisfy in full in cash the Term Loan DIP Obligations and the obligations under the Prepetition Term Loan Credit Agreement (or if such obligations are otherwise satisfied and discharged or reduced pursuant to an arrangement satisfactory to the Term Loan DIP Agent in its sole discretion; it being understood and agreed that the satisfaction and discharge or reduction of the Term Loan DIP Obligations and the Prepetition Term Loan Credit Agreement Indebtedness in connection with (1) a sale pursuant to and in accordance with the Stalking Horse APA (as defined in the Term Loan DIP Agreement), as in effect on the date hereof, without giving effect to any amendment, waiver, consent or other modification thereto that is adverse to the interests of the Term Loan DIP Lenders or the Prepetition Term Loan Lenders and not otherwise approved by the Required Lenders as defined in and under the Term Loan DIP Agreement), and (2) any sale pursuant to the Sale Order (as defined in the Term Loan DIP Agreement) pursuant to any offer that is deemed

higher or better by the Bankruptcy Court shall be satisfactory to the Term Loan DIP Agent) (any such sale, a "**Qualified Sale Closing**"), shall provide a full release of each of the RMI Subs (as defined below), Holdings and Clover Leaf Seafood S.à. r.l. ("**Luxco Parent**") from their respective Term Loan DIP Obligations and the obligations arising under the Prepetition Term Loan Documents, duly executed by each of the Prepetition Term Loan Lenders, Prepetition Term Loan Agent, Term Loan DIP Lenders, and Term Loan DIP Agent then party to the DIP Term Loan Documents and the Prepetition Term Loan Documents as of the Sale Closing in a form and substance reasonably acceptable to the Debtors.

23. Credit Bid; Application of Sale Proceeds. (a) Subject to section 363(k) of the Bankruptcy Code, the DIP Agents and the Prepetition Secured Parties, respectively, shall have the right to credit bid all of their respective claims (subject to the provisions of paragraph 34 herein) (including, for the avoidance of doubt, all of the Prepetition Credit Agreement Indebtedness and the DIP Obligations) in connection with a sale of the Debtors' assets under section 363 of the Bankruptcy Code or under a chapter 11 plan or otherwise, unless the Court orders otherwise. The Prepetition Term Loan Agent, the Term Loan DIP Agent, Prepetition ABL Agent and ABL DIP Agent shall each be deemed a "Qualified Bidder" with respect to their rights to acquire all or any of the assets by Credit Bid. Notwithstanding anything herein and subject to paragraph 47 of this Order and the Carve Out: (i) the right of each of the DIP Agents to consent to the sale of any portion of its collateral, including, without limitation, any Assets, on terms and conditions acceptable to the DIP Agents, are hereby expressly reserved and not modified, waived or impaired and (ii) unless otherwise ordered by the Court, including without

limitation pursuant to the Sale Order (as defined in the DIP Documents), all cash proceeds generated from the sale of any assets secured by Prepetition Liens or DIP Liens shall be paid to the DIP Agents upon the closing of such sale for permanent application against the obligations owing by the Debtors under the DIP Documents in accordance with the terms and conditions of the DIP Order and the DIP Documents and thereafter, against the obligations owing by the Debtors under the Prepetition Credit Documents in accordance with the terms of this Order, the DIP Intercreditor Agreement, and the Prepetition Intercreditor Agreement, until such time as all DIP Obligations and Prepetition Credit Agreement Indebtedness has been paid in full in cash in accordance with the terms and conditions of the DIP Documents, the DIP Order and the Prepetition Credit Documents, as applicable.

(b) Upon consummation of a sale or other disposition of all or substantially all of the assets of the Debtors under section 363 or 1129 of the Bankruptcy Code, all amounts outstanding under the ABL DIP Documents, and, to the extent not discharged prior to Closing, under the Prepetition ABL Documents, shall be repaid in full in cash (unless the Court orders otherwise or the Prepetition ABL Secured Parties and/or ABL DIP Agent and ABL DIP Lenders, as applicable, otherwise agree). Nothing in this paragraph 23 or this Final Order shall alter the rights and obligations of the parties to the DIP Intercreditor Agreement thereunder with respect to ABL Priority Collateral (as defined in the DIP Intercreditor Agreement) (or the proceeds thereof) or Term Priority Collateral (as defined in the DIP Intercreditor Agreement) (or the proceeds thereof).

24. Milestones. The DIP Agents and the DIP Lenders are hereby entitled to performance of the milestones set forth in section 7.18 of the Term Loan DIP Agreement and Schedule 5.21 to the ABL DIP Agreement (as such Milestones may be, or may have been,

amended by agreement as between the DIP Agents and the Debtors, collectively, the "**Milestones**"), a schedule reflecting the Milestones is attached hereto as **Exhibit F**. For the avoidance of doubt, the failure of the Debtors to comply with any of the Milestones shall constitute an Event of Default under the DIP Agreements and this Final Order and permit the DIP Agents, subject to paragraph 16, to exercise the rights and remedies provided for in this Final Order and the DIP Documents.

25. Reservation of Rights of Prepetition Secured Parties. Notwithstanding any other provision hereof, the grant of adequate protection to the Prepetition Secured Parties pursuant hereto is without prejudice to the right of any of the Prepetition Secured Parties to seek modification of the grant of adequate protection so as to provide different or additional adequate protection.

26. Perfection of DIP Liens and Adequate Protection Liens. The DIP Agents, the DIP Lenders, and the Prepetition Agents are hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction, take possession or control over, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Agents, the DIP Lenders, or the Prepetition Agents choose to file such financing statements, intellectual property filings, mortgages, notices of lien or similar instruments, take possession of or control over, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination immediately upon entry of the Interim Order, but subject in all respects to the provisions of this Final Order.

27. Secured Party Status. To the extent that any Prepetition Agent is the secured party under any account control agreements, listed as loss payee or additional insured under any of the Debtors' insurance policies, or is the secured party under any Prepetition Credit Document, the ABL DIP Agent, for itself and on behalf of the ABL DIP Lenders, or the Term Loan DIP Agent, for itself and on behalf of the Term Loan DIP Lenders, as applicable, is also deemed to be the secured party under such account control agreements, loss payee or additional insured under each such insurance policy, and the secured party under each such Prepetition Credit Document (in any such case with the same priority of liens and claims thereunder relative to the priority of (a) the DIP ABL Liens, (b) the DIP Term Loan Liens, and (c) the Prepetition Liens and Adequate Protection Liens, in each case, as set forth in the Priority Waterfall and this Final Order), and shall have all rights and powers in each case attendant to that position (including rights of enforcement but subject in all respects to the terms of this Final Order), and shall act in that capacity and distribute any proceeds recovered or received in accordance with the terms of this Final Order and the applicable DIP Documents.

28. Optional Recordation. A certified copy of this Final Order may, in the discretion of the DIP Agents or the Prepetition Agents, be filed with or recorded in filing or recording offices in addition to or in lieu of or in addition to such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Final Order for filing and recording.

29. Delivery of Instruments and Documents. The Debtors shall execute and deliver to the DIP Agents or the Prepetition Agents, as the case may be, all such agreements, financing statements, instruments and other documents as the DIP Agents or the Prepetition Agents may

reasonably request to evidence, confirm, validate or perfect the DIP Liens or the Adequate Protection Liens.

30. Preservation of Rights Granted Under this Final Order. Except with respect to (a) the Carve Out, (b) any replacement financing that indefeasibly repays in full in cash the DIP Obligations and the Diminution Claims prior to or simultaneously with the allowance of any claims or expenses in connection with such financing, or (c) as expressly provided herein or in the DIP Agreements, no claim or lien having a priority senior to or *pari passu* with those granted by this Final Order shall be granted or allowed while any portion of the DIP Obligations or the Diminution Claims, as the case may be, remain outstanding, and the DIP Liens and the Adequate Protection Liens shall not be subject to or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code or subordinate to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise, in each case, whether in these Cases or any Successor Case (as defined herein), without the express written consent of the DIP Agents given in accordance with the DIP Documents (which consent may be withheld in each DIP Agent's sole discretion).

31. Certain Limits on Rights of Debtors. Unless all DIP Obligations and Diminution Claims shall have been indefeasibly paid in full in cash, the Debtors shall not seek, and it shall constitute an Event of Default under the DIP Agreements and a Cash Collateral Termination Event hereunder if any of the Debtors seek, or if there is entered: (a) any stay, vacatur, rescission, or modification of this Final Order without the prior written consent of the DIP Agents and the Prepetition Secured Parties that is not reversed or vacated within five (5) days, and no such consent shall be implied by any other action, inaction or acquiescence by the DIP

Agents or the Prepetition Secured Parties; or (b) an order converting the Cases to cases under chapter 7 of the Bankruptcy Code or dismissing any of the Cases that are not reversed or vacated within five (5) days. If the Debtors seek an order dismissing any of the Cases under section 1112 of the Bankruptcy Code, the proposed order submitted to the Court by the Debtors shall be in a form and substance reasonably acceptable to the DIP Agents. Notwithstanding the dismissal of any of the Cases under section 1112 of the Bankruptcy Code or otherwise (x) the DIP Superpriority Claims and other administrative claims granted under this Final Order, the DIP Liens and the Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities as provided in this Final Order until all DIP Obligations and all Diminution Claims shall have been paid and satisfied in full (and such DIP Superpriority Claims, the other administrative claims granted under this Final Order, the DIP Liens and the Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest) and (y) to the fullest extent permitted by law or ordered by this Court, this Court shall retain exclusive jurisdiction notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (x) above.

32. Effect of Reversal, Etc. Upon any reversal or modification on appeal of this Final Order, section 364(e) of the Bankruptcy Code applies to any DIP Obligations, the Adequate Protection Provisions, the DIP Liens, the Adequate Protection Liens, and the ABL DIP Agent, the ABL DIP Lenders, the Term Loan DIP Agent, Term Loan DIP Lenders, and the Prepetition Secured Parties and are entitled to all of the benefits and protections afforded by section 364(e).

33. Survival of Rights. Except as expressly provided in this Final Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Provisions, and all other rights and remedies of the ABL DIP Agent, the ABL DIP Lenders, the Term Loan

DIP Agent, Term Loan DIP Lenders, or the Prepetition Secured Parties granted by the provisions of this Final Order and the DIP Documents and any actions taken pursuant hereto or thereto shall survive, and shall not be modified, impaired, or discharged by: (a) the entry of an order converting any of the Cases to a case under chapter 7 of the Bankruptcy Code, dismissing any of the Cases, or by any other act or omission; (b) the entry of an order confirming a plan of reorganization in any of the Cases; or (c) consummation of any chapter 11 plan(s). The terms and provisions of this Final Order and the DIP Documents shall continue in the Cases, in any successor cases if the Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code (each, a "**Successor Case**"), and the DIP Liens, the Adequate Protection Liens, the DIP Obligations, the DIP Superpriority Claims, and all other administrative claims granted pursuant to this Final Order and all other rights and remedies of the ABL DIP Agent, the ABL DIP Lenders, the Term Loan DIP Agent, the Term Loan DIP Lenders, and the Prepetition Secured Parties granted by the provisions of this Final Order and the DIP Documents shall continue in full force and effect until all DIP Obligations, all Diminution Claims, and all allowed claims payable in cash arising from the Adequate Protection Provisions are indefeasibly paid in full in cash.

34. Effect of Stipulations on Third Parties. The stipulations and admissions contained in paragraph D of this Final Order shall be binding on the Debtors and all parties in interest, including, without limitation, any Committee, unless, and solely to the extent that an adversary proceeding or other contested matter has been commenced by a party in interest (other than the Debtors) with the requisite standing and authority, against the Prepetition Secured Parties in connection with any matter related to the Prepetition Credit Agreements (a "**Challenge**"), by (i) in the case of such adversary proceeding or other contested matter filed by a party in interest

with required standing other than the Committee, no later than seventy-five (75) days from the date of entry of the Interim Order; or (ii) in the case of an adversary proceeding or other contested matter filed by the Committee, no later than sixty (60) days after the appointment of the Committee (the "**Challenge Deadline**"); provided, however, that if the Cases convert to Chapter 7, or if a Chapter 11 trustee is appointed, in each case prior to the Challenge Deadline, the Challenge Deadline shall be extended for the Chapter 7 or Chapter 11 trustee by the longer of 30 days or the time remaining in the Challenge Period. If the Cases convert to Chapter 7, the Chapter 7 trustee will have standing to commence a Challenge, notwithstanding any other provision in this Order to the contrary. The Challenge Deadline may be extended in writing from time to time in the sole discretion of the Prepetition ABL Agent (with respect to the Prepetition ABL Credit Agreement), the Prepetition Term Loan Agent (with respect to the Prepetition Term Loan Credit Agreement), or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline. Notwithstanding anything to the contrary in the Interim Order or this Final Order, if, prior to the Challenge Deadline, the Committee files a motion seeking standing to file a Challenge with a draft complaint identifying and describing all such Challenge(s), the Challenge Deadline will be tolled solely with respect to the Challenges asserted in such draft complaint and solely with respect to the Committee until the earlier of (i) two (2) business days subsequent to the date of entry of an order granting the Committee standing to file any such Challenge(s) described in the complaint, and (ii) entry of an order denying such motion; provided, however, that such extension shall only apply to those Challenges asserted in the draft complaint that this Court has specifically found that the Committee has standing to assert; provided, further that the Challenge Deadline shall not be tolled for more than thirty (30) days from the filing of the Committee's

motion seeking standing to file a Challenge, but allowing for additional time as necessary to accommodate the Court's schedule. If no such adversary proceeding or contested matter is timely and properly filed by the Challenge Deadline or the Court does not rule in favor of the plaintiff in any such proceeding, then the: (w) stipulations, admissions and releases contained in paragraph D of this Final Order shall become binding on all parties in interest, including, for the avoidance of doubt, any Committee appointed in the Cases; (x) Prepetition Credit Agreement Indebtedness shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance, for all purposes in the Cases and any subsequent chapter 7 case; (y) Prepetition Credit Agreement Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected and of the priority specified in paragraph D, not subject to defense, counterclaim, recharacterization, subordination or avoidance; and (z) Prepetition Credit Agreement Indebtedness and the Prepetition Credit Agreement Liens shall not be subject to any other or further challenge by the Debtors, any Committee, or any other party in interest, each of whom shall be enjoined from seeking to exercise the rights of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any estate representative or a chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors with respect thereto). If any such adversary proceeding or contested matter is timely and properly filed, the stipulations, admissions and releases contained in paragraph D of this Final Order shall nonetheless remain binding and preclusive on the Debtors, any Committee, and any other person or entity, except as to any such stipulations and admissions that were expressly and successfully challenged in such timely and properly filed adversary proceeding or contested matter. Nothing in this Final Order vests or confers on any Person (as defined in the Bankruptcy Code), including the Committee, standing

or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, claims and defenses with respect to the Prepetition Credit Agreement Indebtedness or the Prepetition Credit Agreement Liens.

35. Limitation on Use of DIP Facility Proceeds, DIP Collateral, and Cash Collateral. Notwithstanding anything herein or in any other order by this Court to the contrary, without the prior written consent of the DIP Agents or the Prepetition Agents, none of the DIP Obligations, the Cash Collateral, DIP Collateral, or the Carve Out may be used for the following purposes: (a) to object to or contest the validity or enforceability of the Interim Order or this Final Order or any obligations outstanding under the DIP Documents or the Prepetition Credit Agreement; provided, however, that the Committee may expend up to $100,000 (the "**Investigation Budget**") for the fees and expenses incurred in connection with the investigation of, but not litigation, objection or any challenge to, the stipulations and admissions contained in paragraph D; (b) to assert or prosecute any claim or cause of action against the DIP Agents, any DIP Lender, or any Prepetition Secured Party; (c) to seek to modify any of the rights granted under the Interim Order or this Final Order to the DIP Agents, any DIP Lender or any Prepetition Secured Party; (d) to make any payment in settlement or satisfaction of any prepetition or administrative claim, unless in compliance with the covenants related to the Approved Budget (as set forth herein or in the DIP Agreements) and, with respect to the payment of any prepetition claim or non-ordinary course administrative claim, separately approved by this Court; (e) to object to, contest, delay, prevent or interfere in any way with the exercise of rights and remedies by the ABL DIP Agent, the ABL DIP Lenders, Term Loan DIP Agent, or Term Loan DIP Lenders under the DIP Documents or with respect to the DIP Collateral once an Event of Default has occurred and any applicable notice period has expired (except that, prior to the expiration of

such notice period, the rights of the Debtors and other parties in interest with respect to any such exercise of remedies are preserved); or (f) except as expressly provided or permitted under the DIP Agreements and the Budget, to make any payment or distribution to any non-Debtor affiliate, equity holder, or insider of any Debtor outside of the ordinary course of business.

36. Events of Default. Except as otherwise provided in this Final Order, unless waived by the DIP Agents in writing and in accordance with the terms of the DIP Agreements, each of the following shall constitute an event of default (each, an "**Event of Default**"): (a) failure of the Debtors to perform or comply with any of the terms, provision, conditions, covenants, or obligations under this Final Order in any material respect; or (b) the occurrence of an Event of Default as defined in either of the DIP Agreements.

37. Termination of Cash Collateral Use. In the absence of a further order of this Court, and notwithstanding anything herein or in the DIP Documents to the contrary except the Carve Out, and after delivery (including delivery by electronic mail or facsimile) of notice of the occurrence of a Cash Collateral Termination Event by one or more of the DIP Agents, as applicable, to the Debtors, the Committee, the Prepetition Secured Parties and the U.S. Trustee, the Debtors shall no longer be authorized pursuant to this Final Order to use Cash Collateral other than with respect to the Carve Out and such Cash Collateral use shall automatically terminate the date upon which any of the following events occurs (such date being referred to herein as the "**Cash Collateral Termination Date**," and each of the following events, a "**Cash Collateral Termination Event**"); provided that, notwithstanding anything to the contrary herein or in the DIP Documents, during the five (5) business day period following the Cash Collateral Termination Event, the Debtors may, use Cash Collateral to pay regular payroll and other expenses critical to keep the business of the Debtors operating solely in accordance with the

Approved Budget (subject to permitted variances) in the aggregate amount not to exceed $12 million; provided, however, Cash Collateral shall not include any amounts in the DIP Term Funding Account that are not yet drawn or permitted to be drawn in accordance with the Term Loan DIP Agreement:

(a) the appointment of a trustee or the appointment of an examiner with enlarged powers in any of the Cases unless such appointment is approved by the Prepetition Agents;

(b) the delivery of a Carve Out Trigger Notice;

(c) the occurrence of an Event of Default as defined in either of the DIP Agreements;

(d) the entry of an order by this Court or any other Court having jurisdiction over these Cases granting other superpriority liens with priority over or *pari passu* with the DIP Liens;

(e) the filing by the Debtors of a motion to approve postpetition financing without the prior written consent of the DIP Agents acting at the direction of the relevant required DIP Lenders, which consent shall not be unreasonably withheld if the postpetition financing provides for full payment in cash of the DIP Obligations;

(f) the filing by the Debtors of a motion to approve any material sale of assets of the Debtors under section 363 of the Bankruptcy Code, whether pursuant to a chapter 11 plan or otherwise, in each case without the prior written consent of the DIP Agents acting at the direction of the relevant requisite DIP Lenders;

(g) the entry of an order granting relief from the automatic stay to the holder or holders of security interests to permit foreclosures (or granting similar relief) on any property

of the Debtors having a value in excess of $1 million without the prior written consent of the DIP Agents, except as permitted by the DIP Agreements;

(h) the filing of a motion by any Debtor (or any party in interest) that is not dismissed or denied within thirty (30) days after the date of filing such motion seeking, or the entry of any order permitting, recovery from any portion of the Prepetition Collateral (or from any Prepetition Secured Party directly) any costs or expenses of preserving or disposing of the Prepetition Collateral under section 506(c) or section 552(b) of the Bankruptcy Code (or otherwise);

(i) the termination of the commitments under the DIP Documents or acceleration of the DIP Obligations; or

(j) any of the liens securing the Prepetition Credit Agreement Indebtedness or the Adequate Protection Liens granted to the Prepetition Secured Parties shall cease to be valid, binding, and perfected liens with the priority and to the extent provided in this Final Order.

38. Rights of Prepetition Agents. Notwithstanding the occurrence of the Cash Collateral Termination Date, all of the rights, remedies, benefits and protections provided to the Prepetition Agents under this Final Order as of such Cash Collateral Termination Date shall survive the Cash Collateral Termination Date.

39. Access to the Debtors. In accordance with the terms of the DIP Documents and the Prepetition Credit Agreements, the DIP Agents and the Prepetition Agents, respectively, and their respective professionals shall be afforded continued reporting as to DIP Collateral amounts and reasonable access to the DIP Collateral and the Debtors' business premises, during normal business hours and upon reasonable advance notice, for purposes of verifying the Debtors' compliance with the terms of this Final Order.

40. Modifications of DIP Documents. The Debtors, the DIP Agents, and the DIP Lenders are hereby authorized to implement, in accordance with the terms of the respective DIP Documents, any non-material modifications of the respective DIP Documents without further order of this Court; provided, however, that notice of any material modification or amendment to the respective DIP Documents shall be filed with the Court and provide parties a five (5) business day notice period in which to object, provided, that after such time the modification may be approved by the Court.

41. Binding Effect; Successors and Assigns. The DIP Documents and the provisions of this Final Order, including all findings herein, shall be binding upon all parties in interest in these Cases, including, without limitation, the DIP Agents, the DIP Lenders, the Prepetition Secured Parties, any Committee appointed in these Cases, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors; provided, however, for the avoidance of doubt, that the Debtors' acknowledgements, stipulations, and releases set forth in paragraph D are subject to paragraph 34 hereof and shall inure to the benefit of the ABL DIP Agent, the ABL DIP Lenders, the Term Loan DIP Agent, Term Loan DIP Lenders, the Prepetition Secured Parties, and the Debtors and their respective successors and assigns, as applicable; provided, however, that the DIP Agents and the DIP Lenders shall have no obligation to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors. In determining to make any loan under the DIP Agreements or in exercising any rights or remedies as and when permitted pursuant to this Final Order or the DIP Documents, the DIP Agents and the DIP Lenders shall not be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the

Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, as amended, or any similar federal or state statute).

42. Master Proof of Claim. Notwithstanding any order entered by this Court in relation to the establishment of a bar date in any of the Cases or any Successor Case to the contrary, none of the Prepetition Secured Parties will be required to file (a) proofs of claim for claims arising under the Prepetition Credit Documents; or (b) requests for payment of administrative expenses in any of the Cases or any Successor Case with respect to any Adequate Protection Obligations or Adequate Protection Payments, and the Debtors' stipulations, admissions, and acknowledgements and the provisions of this Final Order shall, subject to paragraph 34, be deemed to constitute a timely filed proof of claim for the Prepetition Secured Parties with regard to all claims arising under the Prepetition Credit Documents. Notwithstanding the foregoing, each of the Prepetition Agents, for the benefit of itself and its respective Prepetition Secured Parties, are authorized and entitled, in their sole discretion, but are not required, to file (and amend and/or supplement, as each sees fit), for any claim or administrative expense claim described herein: (x) a master proof of claim; (y) proofs of claim; and/or (z) requests for payment of administrative expenses, in each of the Cases or any Successor Case. The failure to file any such proof of claim or request for payment of an administrative expense shall not affect the validity or enforceability of any of the Prepetition Credit Agreement Indebtedness or this Final Order. The DIP Agents and the DIP Lenders shall similarly not be required to file proofs of claim to maintain their respective claims for payment of the DIP Obligations, and the evidence presented with the DIP Motion and the record established at the

Interim Hearing and at the Final Hearing are deemed sufficient to, and do, constitute proofs of claim with respect to such obligations and secured status.

43. Forbearance of the Prepetition Secured Parties. Prior to the occurrence of an Event of Default or a Cash Collateral Termination Event, except as expressly permitted pursuant to the terms of this Final Order or the DIP Loan Documents, the Prepetition Secured Parties shall not (a) exercise any rights or remedies with respect to any Prepetition Liens or Prepetition Collateral, (b) enforce or pursue an event of default or other breach under any Prepetition Credit Document, or (c) assert any demand for payment of any kind whatsoever, in each case with respect to (i) Holdings, Luxco Parent, Coral Triangle Processors, LLC ("**Coral Triangle**") and Anova Technical Services, LLC ("**Anova**" and, together with Coral Triangle, the "**RMI Subs**"), on account of any Prepetition Credit Agreement Indebtedness and (ii) Connors Bros. Clover Leaf Seafoods Company, Clover Leaf Holdings Company, K.C.R. Fisheries Ltd., and 6162410 Canada Limited (collectively, with the entities listed in the foregoing clause (i), the "**Non-Debtor Credit Parties**"); provided that such forbearance shall terminate (x) upon the delivery of a Carve-Out Trigger Notice; (y) with respect to any Non-Debtor Credit Party, if such Non-Debtor Credit Party receives any written charge, complaint, claim, demand, suit, or notice (copy of which shall immediately be provided to the DIP Agents and the Prepetition Agents) seeking payment or remedies in excess of $100,000; and (z) solely with respect to either Holdings or the Luxco Parent, upon three (3) business days' notice that, in the reasonable discretion of the ABL DIP Agent or the Term DIP Agent, Holdings or Luxco Parent (as applicable) is in breach of its obligations under the DIP Documents or the Stalking Horse APA (as defined in the DIP Documents) and such breach or alleged breach is not cured within such three (3) business days period.

44. Effectiveness. This Final Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof, and there shall be no stay of execution of effectiveness of this Final Order.

45. Preservation of Intercompany Claims. Notwithstanding anything to the contrary in this Final Order or the DIP Documents, or as a result of the incurrence of the DIP Obligations, the Debtors' compliance with any of the Adequate Protection Provisions, or any repayment or satisfaction of the DIP Obligations or any Prepetition Credit Agreement Indebtedness, the rights, defenses, claims, causes of action, and other legal entitlements of each Credit Party (as defined in the Term Loan DIP Agreement) and Loan Party (as defined in the ABL DIP Agreement) (collectively, the "**DIP Credit Parties**") and each Prepetition Credit Party (collectively, the "**Credit Parties**"), including any entitlement to set-off, subrogation or contribution, against any other Credit Party arising under or related to the DIP Facilities or the Prepetition Secured Debt are expressly preserved; provided that any such legal entitlements with respect to the Debtors shall be subject to paragraph 47 and the Carve-Out and junior to the DIP Liens, Prepetition Liens, DIP Superpriority Claims, and Adequate Protection 507(b) Claims and, in each case, subject to the satisfaction in full of the DIP Obligations and the Prepetition Credit Agreement Indebtedness; provided, further that any such legal entitlements of the CCAA Debtors (as defined in the Term Loan DIP Agreement) arising under the ABL DIP Facility with respect to the Debtors shall, pursuant to section 364(c)(1) of the Bankruptcy Code, constitute allowed claims against the Debtors (without the need to file any proofs of claim) including priority over any and all administrative expenses, diminution claims, and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b),

506(c), 507(a), 507(b), 546(c), 726, 1113 or 1114 or any other provision of the Bankruptcy Code, which shall be subject to paragraph 47 and the Carve-Out and junior to the DIP Liens, Prepetition Liens, DIP Superpriority Claims, and Adequate Protection 507(b) Claims and, in each case, subject to the satisfaction in full of the DIP Obligations and the Prepetition Credit Agreement Indebtedness.

46. CCAA Initial Order. Notwithstanding anything in this Final Order, the DIP Facilities, the DIP Documents or elsewhere, no Debtor shall provide an intercompany advance to any Canadian affiliate that is not an Debtor until such time as the Ontario Superior Court of Justice (Commercial List) has issued the CCAA Initial Order (as defined in the Term Loan DIP Documents), approving, among other things, the DIP Facilities and containing a paragraph in substance substantially similar to paragraph 45 herein.

47. Closing Escrow Accounts. Notwithstanding anything to the contrary herein or in the DIP Documents and provided that no Event of Default has occurred and is continuing under any DIP Document, immediately prior to any Qualified Sale Closing (and not, for the avoidance of doubt, upon the occurrence of the Maturity Date (as defined in the ABL DIP Agreement or the Term Loan DIP Agreement, as applicable) due to any other event), the Debtors shall be entitled to submit (1) a borrowing request and notice of borrowing for ABL DIP Loans under the ABL DIP Credit Agreement and/or (2) a withdrawal request for proceeds of the DIP Term Funding Account, subject to the limitations contained in the DIP Documents, and utilize and direct the transfer of proceeds of such borrowing request and notice of borrowing and/or withdrawal request into one or more escrow accounts established by the Debtors (the "**Closing Escrow Accounts**"), in an amount equal to the lesser of (such lesser amount, the "**Permitted Funding Amount**") (x)(I) on or prior to January 31, 2020, $250,000,000 and (II) on or after February 1,

2020, $255,000,000, in each case, *less* the principal amount of (1) Advances (under and as defined in the ABL DIP Agreement and the Prepetition ABL Credit Agreement), (2) Letter of Credit Disbursements (under and as defined in the ABL DIP Agreement) not yet reimbursed, including outstanding Advances (under and as defined in the ABL DIP Agreement) made with respect to such Letter of Credit Disbursements, and (3) undrawn Letters of Credit (under and as defined in the ABL DIP Agreement) to the extent such Letters of Credit were not outstanding (or are not replacements of Letters of Credit that are outstanding on the Closing Date (as defined in the DIP Documents), in an aggregate undrawn face amount no greater than that of the Letters of Credit being replaced) on the Closing Date (as defined in the DIP Documents), in each case, on the date of the withdrawal immediately prior to giving effect to the incurrence of the Permitted Funding Amount *less* the outstanding principal amount of loans outstanding under the Term Loan DIP Agreement on the date of withdrawal immediately prior to giving effect to the incurrence of the Permitted Funding Amount and (y) the Closing Escrow Amount (as defined below). The "**Closing Escrow Amount**" shall mean an amount equal to the sum of, without duplication, (a) the amount required to satisfy the obligations of the Debtors under the Stalking Horse APA and/or the Sale Order, in accordance with the terms of the Stalking Horse APA and/or the Sale Order, as applicable, including any amounts earned, due and payable under the line item "Utility Deposit/Other APA Schedule Items" (the "**Transaction Expense Amount**"); provided, that, to the extent that any portion of the Transaction Expense Amount is not itemized in the Approved Budget or is insufficient to satisfy the applicable liability, such portion of the Transaction Expense Amount based on a good faith estimate of the Debtors may nevertheless be withdrawn from the DIP Term Funding Account, and (b) the amount necessary to fund (i) the administration of the Cases in an amount not to exceed the Wind-Down Amount (as defined in

the Term Loan DIP Documents), (ii) all accrued and unpaid professional fees, (iii) the amounts earned, owing, due and payable under line item "KEIP/KERP/MIP/SIP" in the Approved Budget in an amount not to exceed the KEIP/KERP Amount (as defined in the Term Loan DIP Documents), and (iv) any other line item amount provided in the Approved Budget, other than under the line items (1) "Restructuring Professional Fee", (2) "KEIP/KERP/MIP/SIP", (3) "Wind-Down Budget", and (4) "Utility Deposit/Other APA Schedule Items", that is unpaid as of the date of such borrowing request and notice of borrowing and/or withdrawal request, up to the aggregate amount unpaid and budgeted to be drawn upon such Qualified Sale Closing for all such line item amounts in the Approved Budget. The Closing Escrow Accounts and the Closing Escrow Amounts shall not be subject to any pre- or postpetition liens or claims against the Debtors or their assets, including any liens or claims securing the DIP Facilities or the Prepetition Credit Agreement Indebtedness, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, or any and all other forms of adequate protection, liens, or claims against the Debtors or the Debtors' assets arising from the DIP Facilities or the Prepetition Credit Agreement Indebtedness; provided that the Prepetition Term Loan Credit Parties shall retain any Adequate Protection Liens, Adequate Protection 507(b) Claims, and any liens or claims securing any Prepetition Term Loan Credit Agreement Indebtedness in any residual amounts remaining in the Closing Escrow Accounts after the satisfaction in full of all obligations comprising the Closing Escrow Amounts.

48. Bank Products. Pre-Petition U.S. Bank Products (other than Hedge Agreements) under the Prepetition ABL Documents shall be deemed to constitute U.S. Bank Products under the ABL DIP Documents with the same effect as if such Pre-Petition U.S. Bank Products were provided by a Bank Product Provider at the request of the U.S. Borrower on the date of entry of this Final Order. All Pre-Petition Canadian Bank Products (other than Hedge Agreements) under the Prepetition ABL Documents shall constitute Canadian Bank Products under the ABL DIP Documents with the same effect as if such Pre-Petition Canadian Bank Products were provided by a Bank Product Provider at the request of the Canadian Borrower on the date of entry of this Final Order.

49. Employee Credit Card Program. (a) The Debtors are authorized to continue to use the commercial card program under the WellsOne Commercial Card Agreement, dated on or around April 14, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "Card Agreement"), between Bumble Bee Foods, LLC and Wells Fargo subject to the terms and conditions thereof. Wells Fargo is authorized to make advances from time to time to Bumble Bee Foods, LLC with a maximum exposure at any time up to $25,000. All prepetition charges and fees are authorized and required to be paid. The indebtedness owed by Bumble Bee Foods, LLC to Wells Fargo in respect of the Card Agreement was secured by certain collateral (the "**Card Program Collateral**") pursuant to the terms of that certain Credit and Security Agreement, dated as of September 1, 2011, between Bumble Bee Foods, LLC and Wells Fargo, as such agreement may have been amended, restated, supplemented or otherwise modified from time to time. Wells Fargo has and shall continue to have a valid and perfected, non-avoidable first-priority lien in such Card Program Collateral and any proceeds thereof. Such lien shall not be primed by any lien granted to any post-petition lender or other person. To satisfy the

requirement that Wells Fargo continue to have a valid and perfected, non-avoidable first-priority lien in such Card Program Collateral and any proceeds thereof, Debtor grants Wells Fargo a priming lien and security interest pursuant to Bankruptcy Code section 364(d)(1) with respect to such Card Program Collateral.

(b) Wells Fargo may rely on the representations of Bumble Bee Foods, LLC with respect to its use of the commercial card program pursuant to the Card Agreement, and Wells Fargo shall not have any liability to any party for relying on such representations by Bumble Bee Foods, LLC as provided for herein.

50. Chubb Reservation of Rights. For the avoidance of doubt, (i) to the extent ACE American Insurance Company, Federal Insurance Company and/or any of its affiliates (collectively, and together with each of their successors, "Chubb") had a Permitted Prior Lien, such lien and/or security interest shall be senior to any liens and/or security interests granted pursuant to this Order, (ii) this Order does not grant the Debtors any right to use any property (or the proceeds thereof) held by Chubb as collateral to secure obligations under any insurance policies and related agreements; and (iii) nothing, including the DIP Documents and/or this Order, alters or modifies the terms and conditions of any insurance policies or related agreements issued by Chubb.

51. Retention of Jurisdiction. This Court has and will retain jurisdiction to enforce this Final Order.

25738781.1

Dated: December 19th, 2019
Wilmington, Delaware

LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

ABL DIP Agreement

SENIOR SECURED SUPER-PRIORITY

DEBTOR-IN-POSSESSION

CREDIT AGREEMENT

by and among

BUMBLE BEE FOODS S.À R.L.

as Holdings,

BUMBLE BEE FOODS, LLC

as U.S. Borrower,

CONNORS BROS. CLOVER LEAF SEAFOODS COMPANY

as Canadian Borrower,

THE LENDERS FROM TIME TO TIME PARTY HERETO

as the Lenders,

WELLS FARGO CAPITAL FINANCE, LLC

as administrative agent and as joint lead arranger and bookrunner,

BANK OF AMERICA, N.A.

as joint lead arranger and bookrunner, and

MUFG UNION BANK, N.A.

as syndication agent

Dated as of November 26, 2019

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SENIOR SECURED SUPER-PRIORITY
DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This **SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT** (this "Agreement"), is entered into as of November 26, 2019, by and among the banks, financial institutions and other investors from time to time party hereto (such banks, financial institutions and other investors, each individually as a "Lender" and collectively as the "Lenders"; each as hereinafter further defined), **WELLS FARGO CAPITAL FINANCE, LLC**, a Delaware limited liability company ("WFCF"), as administrative agent for the Lenders (in such capacity, together with its successors in such capacity, "Agent"), and as joint lead arranger and bookrunner, **BANK OF AMERICA, N.A.** ("BOA"), as joint lead arranger and bookrunner, **MUFG UNION BANK, N.A.** ("MUFG"), as syndication agent, **BUMBLE BEE FOODS S.À R.L.**, a *Luxembourg société à responsabilité limitée*, incorporated and existing under the laws of the Grand-Duchy of Luxembourg, having its registered office at 8, rue Lou Hemmer, L-1748 Luxembourg Findel, registered with the Luxembourg Trade and Companies' Register (*Registre de Commerce et des Sociétés*) under number B 140.339 ("Holdings"), **CONNORS BROS. CLOVER LEAF SEAFOODS COMPANY**, a Nova Scotia unlimited company ("Canadian Borrower"), and **BUMBLE BEE FOODS, LLC**, a Delaware limited liability company ("U.S. Borrower"; together with Canadian Borrower, each, individually, a "Borrower" and, collectively, jointly and severally, as "Borrowers").

RECITALS:

WHEREAS, capitalized terms used and not defined in the preamble and these recitals shall have the respective meanings set forth for such terms in Schedule 1.1 hereof;

WHEREAS, Borrowers entered into an Amended and Restated Credit Agreement, dated as of August 18, 2017 (as amended and in effect prior to the Petition Date, the "Pre-Petition Credit Agreement"), among Holdings, U.S. Borrower, Canadian Borrower, WFCF, as United States administrative agent and collateral agent for the lenders party thereto, Wells Fargo Capital Finance Corporation Canada, as Canadian administrative agent for the Canadian Lenders (as defined therein), and each lender from time to time party thereto;

WHEREAS, on November 21, 2019 (the "Petition Date"), U.S. Borrower and the U.S. Subsidiary Guarantors (in such capacities, the "Debtors") each filed a voluntary petition for relief (collectively, the "Cases") under Chapter 11 of the Bankruptcy Code within the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). The Debtors are continuing in the possession of their assets and continuing to operate their businesses and manage their respective properties as debtors and debtors in possession under Section 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, on November 22, 2019 (the "CCAA Filing Date"), the Canadian Loan Parties (in such capacity, each a "CCAA Debtor" and collectively the "CCAA Debtors") filed an application with the Ontario Superior Court of Justice (Commercial List) (the "CCAA Court") pursuant to the CCAA (collectively, the "CCAA Cases" and each a "CCAA Case") seeking the CCAA Initial Order and have continued in the possession of their assets and in the management of their businesses pursuant to the CCAA Initial Order;

WHEREAS, the Debtors and the CCAA Debtors have requested that the Lenders make available to the Borrowers, from and after the later of the date of entry of the Interim Order and the CCAA Initial Order, a senior secured super-priority debtor-in-possession asset-based revolving credit facility on the terms and conditions set forth in this Agreement to, among other things, fund the working capital requirements and other financial needs of the Debtors and the CCAA Debtors during the pendency of the

Cases and the CCAA Cases, including a "roll-up" of all the existing outstanding obligations under the Pre-Petition Credit Agreement, which shall be secured by a first priority lien on all ABL Priority Collateral, and a second priority lien on all Term Loan Priority Collateral. Concurrently therewith, the Debtors and the CCAA Debtors will also obtain a new $80,000,000 senior secured debtor-in-possession term loan facility secured by a first priority lien on the Term Loan Priority Collateral and a second priority lien on the ABL Priority Collateral pursuant to the DIP Term Loan Credit Agreement.

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

1. DEFINITIONS AND CONSTRUCTION

1.1 **Definitions**. Capitalized terms used in this Agreement shall have the meanings specified therefor on Schedule 1.1.

1.2 **Accounting Terms**.

(a) All accounting terms not specifically defined herein shall be construed in accordance with, and all financial data (including financial ratios and other financial calculations required to be submitted pursuant to this Agreement) shall be prepared in conformity with, GAAP applied in a manner consistent with that used in preparing the Historical Financial Statements, except as otherwise specifically prescribed herein; provided, however, that if Holdings notifies the Agent that it requests an amendment to any provision (including any definitions) hereof to eliminate the effect of any Accounting Change occurring after the Closing Date or in the application thereof on the operation of such provision (or if Agent notifies Holdings that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such Accounting Change or in the application thereof, then Agent, Holdings and Borrowers agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such Accounting Change with the intent of having the respective positions of the Lenders, Holdings and Borrowers after such Accounting Change conform as nearly as possible to their respective positions as of the Closing Date and, until any such amendments have been agreed upon, the provisions in this Agreement shall be calculated as if no such Accounting Change had occurred. When used herein, the term "financial statements" shall include the notes and schedules thereto. Whenever the term "Holdings" is used in respect of a financial covenant or a related definition, it shall be understood to mean Holdings and its Subsidiaries (on a consolidated basis) unless the context clearly requires otherwise.

(b) [Intentionally Omitted].

(c) Notwithstanding anything to the contrary contained herein, in the event of any Accounting Change requiring all leases to be capitalized, any lease that would be characterized as an operating lease in accordance with GAAP on the Closing Date (as defined in the Pre-Petition Credit Agreement) (whether or not such operating lease was in effect on such date) shall continue to be accounted for as an operating lease (and not as a capital lease) for purposes of this Agreement, regardless of any change in GAAP following the Closing Date (as defined in the Pre-Petition Credit Agreement) (and without giving effect to any treatment of leases under Accounting Standards Codification 842 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect)) that would otherwise require such lease to be re-characterized (on a prospective or retroactive basis or otherwise) as a capitalized lease, and all calculations and deliverables under this Agreement or any other Loan Document shall be made in accordance therewith.

1.3 **Code**. Any terms used in this Agreement and the other Loan Documents that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein; provided, however, that to the extent that the Code is used to define any term herein and such term is defined differently in different Articles of the Code, the definition of such term contained in Article 9 of the Code shall govern. Notwithstanding the foregoing, and where the context so requires, (i) any term defined in this Agreement by reference to the "Code", the "UCC" or the "Uniform Commercial Code" shall also have any extended, alternative or analogous meaning given to such term in applicable Canadian personal property security and other laws (including, without limitation, the Personal Property Security Act of each applicable province of Canada, the *Civil Code of Quebec*, the *Bills of Exchange Act* (Canada) and the *Depository Bills and Notes Act* (Canada)), in all cases for the extension, preservation or betterment of the security and rights of the Agent, (ii) all references in this Agreement to "Article 8" shall be deemed to refer also to applicable Canadian securities transfer laws (including, without limitation, the *Securities Transfer Act, 2006* (Ontario) and an *Act Respecting the Transfer of Securities and the Establishment of Security Entitlements* (Quebec)), (iii) all references in this Agreement to a financing statement, continuation statement, amendment or termination statement shall be deemed to refer also to the analogous documents used under applicable Canadian personal property security laws, (iv) all references to the United States of America, or to any subdivision, department, agency or instrumentality thereof shall be deemed to refer also to Canada, or to any subdivision, department, agency or instrumentality thereof, and (v) all references to federal or state securities law of the United States shall be deemed to refer also to analogous federal and provincial securities laws in Canada.

1.4 **Construction**. Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms "includes" and "including" are not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or". The words "hereof", "herein", "hereby", "hereunder", and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, restatements, amendment and restatements, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, restatements, amendment and restatements, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). The words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights. Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of any Obligation shall mean the repayment in full in cash or immediately available funds (or, (a) in the case of contingent reimbursement obligations with respect to Letters of Credit, providing Letter of Credit Collateralization, and (b) in the case of obligations with respect to Bank Products (other than Hedge Obligations), only to the extent required in the underlying Bank Product Agreement, providing Bank Product Collateralization) of all of the Obligations (including the payment of any termination amount then owing (or which becomes payable as a result of the repayment of the other Obligations) under Hedge Agreements provided by Hedge Providers) other than (i) unasserted contingent indemnification Obligations, (ii) any Bank Product Obligations (other than Hedge Obligations) that, by the terms of the applicable Bank Product Agreement are not required to be repaid or cash collateralized as a result of the repayment of other Obligations, and (iii) any Hedge Obligations that, by the terms of the applicable Bank Product Agreement are not required to be repaid as a result of the repayment of other Obligations. References to any Applicable Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Applicable Law. Any reference herein to any Person shall be construed to include such Person's successors and permitted assigns. Any requirement of a

writing contained herein or in any other Loan Document shall be satisfied by the transmission of a Record. The words "month" and "monthly" refer to calendar months unless expressly stated to refer to fiscal months.

1.5 **Schedules and Exhibits**. All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference. All schedules attached hereto or to any other Loan Document shall be deemed to incorporate by reference all information disclosed in the Orders, in each case as of the Petition Date and the CCAA Filing Date, in the form delivered to the Agent prior to the date hereof, which Orders shall not have been modified or amended without the consent of the Agent in its sole discretion.

1.6 **[Intentionally Omitted]**.

1.7 **Rounding**. Any financial ratios required to be maintained or complied with by Holdings pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.8 **Classification of Loans and Borrowings**. For purposes of this Agreement, Advances may be classified and referred to by Class (e.g., a "U.S. Advance") or by type (e.g., a "LIBOR Rate Loan"). Borrowings also may be classified and referred to by Class (e.g., a "U.S. Advance Borrowing") or by type (e.g., a "LIBOR Rate Borrowing").

1.9 **Interpretation in Québec**. For all purposes pursuant to which the interpretation or construction of this Agreement may be subject to the laws of the Province of Québec or a court or tribunal exercising jurisdiction in the Province of Québec, (i) "personal property" shall include "movable property", (ii) "real property" shall include "immovable property", (iii) "tangible property" shall include "corporeal property", (iv) "intangible property" shall include "incorporeal property", (v) "security interest", "mortgage" and "lien" shall include a "hypothec", "prior claim" and a "resolutory clause", (vi) all references to filing, registering or recording under the Code shall include publication under the Register of Personal and Movable Real Rights of Québec, (vii) all references to "perfection" of or "perfected" liens or security interest shall include a reference to an "opposable" or "set up" lien or security interest as against third parties, (viii) any "right of offset", "right of setoff" or similar expression shall include a "right of compensation", (ix) "goods" shall include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (x) an "agent" shall include a "mandatary", (xi) "construction liens" shall include "legal hypothecs", (xii) "joint and several" shall include solidary, (xiii) "gross negligence or willful misconduct" shall be deemed to be "intentional or gross fault", (xiv) "beneficial ownership" shall include "ownership on behalf of another as "mandatary", (xv) "easement" shall include "servitude", (xvi) "priority" shall include "prior claim", (xvii) "survey" shall include "certificate of location and plan", (xviii) "fee simple title" shall include "absolute ownership" and (xix) "leasehold interest" shall include "valid lease" ", (xx) "leasehold interest" shall include "valid lease", (xxi) "accounts" and "accounts receivable" shall include "claims", (xxii) "guarantee" and "guarantor" shall include "suretyship" and "surety" respectively, and (xxiii) "Deposit Account" shall include a "financial account" (as defined in the *Civil Code of Quebec*). The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. *Les parties aux présentes confirment que c'est leur volonté que cette convention et les autres documents de crédit soient rédigés en langue anglaise seulement et que tous les documents, y compris tous avis, envisagés par cette convention et les autres documents peuvent être rédigés en langue anglaise seulement.*

1.10 **Divisions**. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Stock at such time.

2. LOAN AND TERMS OF PAYMENT

2.1 **U.S. Revolver Advances**.

(a) Subject to the terms and conditions of this Agreement, and during the term of this Agreement, each Lender with a U.S. Revolver Commitment agrees (severally, not jointly or jointly and severally) to make revolving loans ("U.S. Advances") to U.S. Borrower in U.S. Dollars in an amount at any one time outstanding not to exceed *the lesser of*:

(i) such Lender's U.S. Revolver Commitment, or

(ii) such Lender's Pro Rata Share of an amount equal to *the lesser of*:

(1) the Maximum U.S. Revolver Amount *less* the sum of (1) the U.S. Letter of Credit Usage at such time, plus (2) the principal amount of U.S. Swing Loans outstanding at such time, and

(2) the U.S. Borrowing Base at such time *less* the sum of (1) the U.S. Letter of Credit Usage at such time, *plus* (2) the principal amount of U.S. Swing Loans outstanding at such time.

(b) Amounts borrowed pursuant to this Section 2.1 may be repaid and, subject to the terms and conditions of this Agreement, reborrowed at any time during the term of this Agreement. The outstanding principal amount of the U.S. Advances, together with interest accrued thereon, shall be due and payable on the Maturity Date or, if earlier, on the date on which they are declared due and payable pursuant to the terms of this Agreement.

(c) Anything to the contrary in this Section 2.1 notwithstanding, in addition to (but with respect to the U.S. Borrowing Base, without duplication of) other reserves provided for in the definition of U.S. Borrowing Base, Agent shall have the right (but not the obligation) to establish, increase, reduce, eliminate, or otherwise adjust reserves from time to time against the U.S. Borrowing Base (and in the case of the U.S. Bank Product Reserve Amount and the Carve Out Reserve, at the election of Agent in its Permitted Discretion, also against the Maximum U.S. Revolver Amount) in such amounts, and with respect to such matters, as Agent in its Permitted Discretion shall deem necessary or appropriate but with respect to the U.S. Borrowing Base without duplication of any reserve otherwise provided for herein, including reserves with respect to (i) sums due and owing and that any U.S. Loan Party is required to pay under any Section of this Agreement or any other Loan Document (such as taxes, assessments, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay when due, (ii) amounts owing or alleged to be owing by a U.S. Loan Party to any Person to the extent secured by (or alleged to be secured by) a Lien on, or trust over, any of the ABL Priority Collateral (other than a Permitted Lien which is a permitted purchase money Lien or the interest of a lessor under a Capital Lease), which Lien or trust, in the Permitted Discretion of Agent likely would have a priority superior to Agent's Liens (such as Liens or trusts in favor of landlords, warehousemen, carriers, mechanics, materialmen, laborers, or suppliers, or Liens or trusts for *ad valorem*, excise, sales, or other taxes where

given priority under Applicable Law) in and to such item of the ABL Priority Collateral, or which may give rise to a right of offset, set-off or recoupment in favor of any Account Debtor of such U.S. Loan Party, (iii) reserves (determined from time to time by Agent in its Permitted Discretion) for (A) the estimated costs relating to unpaid freight charges, warehousing or storage charges, taxes, duties, and other similar unpaid costs associated with the acquisition of Eligible In-Transit Inventory by any U.S. Loan Party, plus (B) the estimated reclamation claims of unpaid sellers of Inventory sold to any U.S. Loan Party to the extent that the applicable U.S. Loan Party is not Solvent at such time, and (iv) any amounts from time to time that may be payable (but remain unpaid at such time) pursuant to the Orders.

(d) Any advance rate, standard of eligibility or reserve established or modified by Agent shall have a reasonable relationship to circumstances, conditions, events or contingencies which are the basis for such advance rates, standards of eligibility or reserve, as reasonably determined by Agent in good faith in accordance with customary business practices for asset-based lending transactions and in its Permitted Discretion.

(e) Notwithstanding anything herein to the contrary, Reserves shall not duplicate eligibility criteria contained in the definition of "Eligible Account", "Eligible Landed Inventory", "Eligible In-Transit Inventory" and vice versa.

(f) Notwithstanding anything to the contrary contained in this Section 2.1 or Section 2.2, the Loan Parties hereby, acknowledge, confirm and agree that (i) immediately prior to the Closing Date, the Pre-Petition Obligations under the Pre-Petition Credit Agreement were not less than $192,420,215.00, (ii) such Pre-Petition Obligations shall be re-evidenced by this Agreement as a portion of the Advances outstanding hereunder, (iii) for all purposes of this Agreement and the other Loan Documents, the sum of the Pre-Petition Obligations and any other Advances made on the Closing Date shall constitute all of the Advances outstanding on the Closing Date, and (iv) the "Revolver Commitments" (as defined under the Pre-Petition Credit Agreement) shall hereinafter be deemed to be assigned or re-allocated among the Revolver Commitments hereunder and after giving effect hereto, the Revolver Commitments as of the Closing Date shall be as set forth on Schedule C-1.

2.2 **Canadian Revolver Advances**.

(a) Subject to the terms and conditions of this Agreement, and during the term of this Agreement, each Lender with a Canadian Revolver Commitment agrees (severally, not jointly or jointly and severally) to make revolving loans ("Canadian Advances") to Canadian Borrower in U.S. Dollars in an amount at any one time outstanding not to exceed *the lesser of*:

(i) such Lender's Canadian Revolver Commitment, or

(ii) such Lender's Pro Rata Share of an amount equal to *the lesser of*:

(1) the Maximum Canadian Revolver Amount *less* the sum of (1) the Canadian Letter of Credit Usage at such time, plus (2) the principal amount of Canadian Swing Loans outstanding at such time, and

(2) the U.S. Dollar Equivalent of the Canadian Borrowing Base at such time *less* the sum of (1) the Canadian Letter of Credit Usage at such time, *plus* (2) the principal amount of Canadian Swing Loans outstanding at such time.

(b) Amounts borrowed pursuant to this Section 2.2 may be repaid and, subject to the terms and conditions of this Agreement, reborrowed at any time during the term of this Agreement. The

outstanding principal amount of the Canadian Advances, together with interest accrued thereon, shall be due and payable on the Maturity Date or, if earlier, on the date on which they are declared due and payable pursuant to the terms of this Agreement.

(c) Anything to the contrary in this Section 2.2 notwithstanding, in addition to (but with respect to the Canadian Borrowing Base, without duplication of) other reserves provided for in the definition of Canadian Borrowing Base, Agent shall have the right (but not the obligation) to establish, increase, reduce, eliminate, or otherwise adjust reserves from time to time against the Canadian Borrowing Base (and in the case of the Canadian Bank Product Reserve Amount, at the election of Agent in its Permitted Discretion, also against the Maximum Canadian Revolver Amount) in such amounts, and with respect to such matters, as Agent in its Permitted Discretion shall deem necessary or appropriate but with respect to the Canadian Borrowing Base without duplication of any reserve otherwise provided for herein, including reserves with respect to (i) sums that any Canadian Loan Party is required to pay under any Section of this Agreement or any other Loan Document (such as taxes, assessments, employee wages (including accrued vacation pay and severance obligations), unpaid pension plan contributions, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay when due, (ii) amounts owing or alleged to be owing by a Canadian Loan Party to any Person to the extent secured by (or alleged to be secured by) a Lien on, or trust over, any of the ABL Priority Collateral (other than a Permitted Lien which is a permitted purchase money Lien or the interest of a lessor under a Capital Lease), which Lien or trust, in the Permitted Discretion of Agent likely would have a priority superior to Agent's Liens (such as Liens or trusts in favor of landlords, warehousemen, carriers, mechanics, materialmen, laborers, or suppliers, or Liens or trusts for *ad valorem*, excise, sales, or other taxes where given priority under Applicable Law) in and to such item of the ABL Priority Collateral, or which may give rise to a right of offset, set-off or recoupment in favor of any Account Debtor of such Canadian Loan Party, (iii) reserves (determined from time to time by Agent in its Permitted Discretion) for (A) the estimated costs relating to unpaid freight charges, warehousing or storage charges, taxes, duties, and other similar unpaid costs associated with the acquisition of Eligible In-Transit Inventory by any Canadian Loan Party, plus (B) the estimated claims of unpaid suppliers of Inventory sold to any Canadian Loan Party (including, without limitation, claims arising under the *Bankruptcy and Insolvency Act* (Canada)), and (iv) any amounts from time to time that may be payable (but remain unpaid at such time) pursuant to the Orders.

(d) Any advance rate, standard of eligibility or reserve established or modified by Agent shall have a reasonable relationship to circumstances, conditions, events or contingencies which are the basis for such advance rates, standards of eligibility or reserve, as reasonably determined by Agent in good faith in accordance with customary business practices for asset-based lending transactions and in its Permitted Discretion.

(e) Notwithstanding anything herein to the contrary, Reserves shall not duplicate eligibility criteria contained in the definition of "Eligible Account", "Eligible Landed Inventory", "Eligible In-Transit Inventory" and vice versa.

2.3 **Borrowing Procedures and Settlements**.

(a) **Procedure for Borrowing.** Each Borrowing shall be made by a written request by an Authorized Person delivered to Agent (which may be delivered though Agent's electronic platform or portal) and received by Agent no later than 10:00 a.m. (California time) (i) on the Business Day that is the requested Funding Date in the case of a request for a Swing Loan, (ii) on the Business Day that is one Business Day prior to the requested Funding Date in the case of a request for a Base Rate Loan, and (iii) on the Business Day that is three Business Days prior to the requested Funding Date in the case of all other requests, specifying (A) the amount of such Borrowing, (B) whether such Borrowing is a U.S. Advance

or a Canadian Advance, and (C) the requested Funding Date, which shall be a Business Day; provided, that Agent may, in its sole discretion, elect to accept as timely requests that are received later than 10:00 a.m. (California time) on the applicable Business Day. All Borrowing requests which are not made on-line via Agent's electronic platform or portal shall be subject to (and unless Agent elects otherwise in the exercise of its sole discretion, such Borrowings shall not be made until the completion of) Agent's authentication process (with results satisfactory to Agent) prior to the funding of any such requested Advance. Each Advance shall be made in U.S. Dollars.

(b) **Making of Swing Loans**. In the case of a request for an Advance and so long as either (i) the aggregate amount of Swing Loans made since the last Settlement Date, minus the amount of Collections or payments applied to Swing Loans since the last Settlement Date, plus the amount of the requested Advance does not exceed $20,000,000 or (ii) (A) in the case of a request for a U.S. Advance, Swing Lender, in its sole discretion, shall agree to make a U.S. Swing Loan notwithstanding the foregoing limitation, Swing Lender shall make a U.S. Advance in the amount of such Borrowing (any such U.S. Advance made solely by Swing Lender pursuant to this Section 2.3(b) being referred to as a "U.S. Swing Loan" and such U.S. Advances being referred to collectively as "U.S. Swing Loans") available to U.S. Borrower on the Funding Date applicable thereto by transferring immediately available funds in U.S. Dollars to U.S. Borrower's Designated U.S. Account, or (B) in the case of a request for a Canadian Advance, Swing Lender, in its sole discretion, shall agree to make a Canadian Swing Loan notwithstanding the foregoing limitation, Swing Lender shall make a Canadian Advance in the amount of such Borrowing (any such Canadian Advance made solely by Swing Lender pursuant to this Section 2.3(b) being referred to as a "Canadian Swing Loan" and such Canadian Advances being referred to collectively as "Canadian Swing Loans"; and together with the U.S. Swing Loans, each a "Swing Loan" and collectively the "Swing Loans") available to Canadian Borrower on the Funding Date applicable thereto by transferring immediately available funds in U.S. Dollars, to Canadian Borrower's Designated Canadian Account. Each U.S. Swing Loan shall be deemed to be a U.S. Advance hereunder and shall be subject to all the terms and conditions applicable to other U.S. Advances, except that all payments on any U.S. Swing Loan shall be payable to Swing Lender solely for its own account. Each Canadian Swing Loan shall be deemed to be a Canadian Advance hereunder and shall be subject to all the terms and conditions applicable to other Canadian Advances, except that all payments on any Canadian Swing Loan shall be payable to Swing Lender solely for its own account. Subject to the provisions of Section 2.3(d)(ii), Swing Lender shall not make or be obligated to make any Swing Loan if Swing Lender has actual knowledge that (i) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing, (ii) in the case of a request for a U.S. Advance, the requested U.S. Advance would exceed the U.S. Availability on such Funding Date, or (iii) in the case of a request for a Canadian Advance, the requested Canadian Advance would exceed the Canadian Availability on such Funding Date. No Swing Lender shall otherwise be required to determine whether the applicable conditions precedent set forth in Section 3.2 have been satisfied on the Funding Date applicable thereto prior to making any Swing Loan. The U.S. Swing Loans shall be secured by Agent's Liens, constitute U.S. Advances and Obligations hereunder, and bear interest at the rate applicable from time to time to U.S. Advances that are Base Rate Loans. The Canadian Swing Loans shall be secured by Agent's Liens, constitute Canadian Advances and Obligations hereunder, and bear interest at the rate applicable from time to time, to Canadian Advances that are Base Rate Loans.

(c) **Making of Loans**.

(i) In the event that the Swing Lender is not obligated to make a Swing Loan, then promptly after receipt of a request for a Borrowing pursuant to Section 2.3(a), (A) in the case of a request for a U.S. Advance, Agent shall notify the U.S. Lenders, or (B) in the case of a request for a Canadian Advance, Agent shall notify the Canadian Lenders, in each case not later than 1:00 p.m. (California time) (x) in the case of a Base Rate Loan, at least one Business Day prior to the requested

Funding Date, or (y) in the case of a LIBOR Rate Loan, at least three Business Days prior to the requested Funding Date, in each case by telecopy, telephone, or other form of electronic transmission, of the requested Borrowing. In the case of a request for a U.S. Advance, each U.S. Lender shall make the amount of such U.S. Lender's Pro Rata Share of the requested U.S. Advance available to Agent in immediately available funds in U.S. Dollars, to Agent's Account, not later than 10:00 a.m. (California time) on the Funding Date applicable thereto. In the case of a request for a Canadian Advance, each Canadian Lender shall make the amount of such Canadian Lender's Pro Rata Share of the requested Canadian Advance available to Agent in immediately available funds in U.S. Dollars to Agent's Account, not later than 10:00 a.m. (California time) on the Funding Date applicable thereto. After (X) in the case of the request for a U.S. Advance, Agent's receipt of the proceeds of such U.S. Advances, Agent shall make the proceeds thereof available to U.S. Borrower on the applicable Funding Date by transferring immediately available funds equal to such proceeds received by Agent to the Designated U.S. Account, or (Y) in the case of the request for a Canadian Advance, Agent's receipt of the proceeds of such Canadian Advances, Agent shall make the proceeds thereof in to Canadian Borrower on the applicable Funding Date by transferring immediately available funds equal to such proceeds received by Agent to the Designated Canadian Account; provided, however, that, subject to the provisions of Section 2.3(d)(ii), Agent shall not request any Lender to make, and no Lender shall have the obligation to make, any Advance if (1) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing unless such condition has been waived, (2) in the case of a request for a U.S. Advance, the requested U.S. Advance would exceed the U.S. Availability on such Funding Date, or (3) in the case of a request for a Canadian Advance, the requested Canadian Advance would exceed the Canadian Availability on such Funding Date.

(ii) Unless Agent receives notice from a Lender prior to 9:00 a.m. (California time) on the date of a Borrowing, that such Lender will not make available as and when required hereunder to Agent for the account of Borrower the amount of that Lender's Pro Rata Share of the Borrowing, Agent may assume that each Lender has made or will make such amount available to Agent in immediately available funds on the Funding Date and Agent may (but shall not be so required), in reliance upon such assumption, make available to the applicable Borrower on such date a corresponding amount. If any Lender shall not have made its full amount available to Agent in immediately available funds and if Agent in such circumstances has made available to the applicable Borrower such amount, that Lender shall on the Business Day following such Funding Date make such amount available to Agent, together with interest at the Defaulting Lender Rate for each day during such period. A notice submitted by the Agent to any Lender with respect to amounts owing under this subsection shall be conclusive, absent manifest error. If such amount is so made available, such payment to the Agent shall constitute such Lender's Advance on the date of Borrowing for all purposes of this Agreement. If such amount is not made available to Agent on the Business Day following the Funding Date, Agent will notify the applicable Borrower of such failure to fund and, upon demand by Agent, such Borrower shall pay such amount to Agent for Agent's account, together with interest thereon for each day elapsed since the date of such Borrowing, at a rate per annum equal to the interest rate applicable at the time to the Advances composing such Borrowing. The failure of any Lender to make any Advance on any Funding Date shall not relieve any other Lender of any obligation hereunder to make such Advance on such Funding Date, but no Lender shall be responsible for the failure of any other Lender to make the Advance to be made by such other Lender on any Funding Date.

(d) **Protective Advances and Optional Overadvances**.

(i) Any contrary provision of this Agreement or any other Loan Document notwithstanding, but subject to Section 2.3(d)(iv), Agent hereby is authorized by Borrowers and the Lenders, from time to time in Agent's sole discretion, (A) after the occurrence and during the continuance of a Default or an Event of Default, or (B) at any time that any of the other applicable conditions precedent set forth in Section 3 are not satisfied, to (x) make U.S. Advances to U.S. Borrower on behalf of the

U.S. Lenders, and (y) make Canadian Advances to Canadian Borrower on behalf of the Canadian Lenders, in each case that Agent, in its Permitted Discretion deems necessary or desirable (1) to preserve or protect the Collateral, or any portion thereof, or (2) to enhance the likelihood of repayment of the Obligations (other than the Bank Product Obligations) (any of the Advances described in this Section 2.3(d)(i) shall be referred to as "Protective Advances"). Agent may elect in its discretion to designate such Protective Advance as a U.S. Advance or a Canadian Advance.

(ii) Any contrary provision of this Agreement or any other Loan Document notwithstanding, but subject to Section 2.3(d)(iv), (A) the U.S. Lenders hereby authorize Agent or Swing Lender, as applicable, and either Agent or Swing Lender, as applicable, may, but is not obligated to, knowingly and intentionally, continue to make U.S. Advances (including U.S. Swing Loans) to U.S. Borrower notwithstanding that a Overadvance Amount exists or thereby would be created, so long as (1) after giving effect to such U.S. Advances, the outstanding U.S. Revolver Usage does not exceed the U.S. Borrowing Base by more than 10% of the lesser of (x) the Maximum U.S. Revolver Amount at such time and (y) the U.S. Borrowing Base at such time, and (2) after giving effect to such U.S. Advances, the outstanding U.S. Revolver Usage (except for and excluding any portion of such U.S. Revolver Usage that is in respect of amounts charged to the Loan Account for interest, fees, or Lender Group Expenses in accordance with the provisions of the Loan Documents) does not exceed the Maximum U.S. Revolver Amount, and (B) the Canadian Lenders hereby authorize Agent or Swing Lender, as applicable, and either Agent or Swing Lender, as applicable, may, but is not obligated to, knowingly and intentionally, continue to make Canadian Advances (including Canadian Swing Loans) to Canadian Borrower notwithstanding that a Overadvance Amount exists or thereby would be created, so long as (1) after giving effect to such Canadian Advances, the outstanding Canadian Revolver Usage does not exceed the Canadian Borrowing Base by more than 10% of the lesser of (x) the Maximum Canadian Revolver Amount at such time and (y) the Canadian Borrowing Base at such time, and (2) after giving effect to such Canadian Advances, the outstanding Canadian Revolver Usage (except for and excluding any portion of such Revolver Usage that is in respect of amounts charged to the Loan Account for interest, fees, or Lender Group Expenses in accordance with the provisions of the Loan Documents) does not exceed the Maximum Canadian Revolver Amount. In the event (x) Agent obtains actual knowledge that the U.S. Revolver Usage exceeds the amounts permitted by the immediately foregoing provisions, or (y) Agent obtains actual knowledge that the Canadian Revolver Usage exceeds the amounts permitted by the immediately foregoing provisions, in each case regardless of the amount of, or reason for, such excess, Agent shall notify the Lenders as soon as practicable and prior to making any (or any additional) intentional Overadvances (except for and excluding any portion of such Revolver Usage that is in respect of amounts charged to the Loan Account for interest, fees, or Lender Group Expenses in accordance with the provisions of the Loan Documents), unless Agent determines that prior notice would result in imminent harm to the Collateral or its value, in which case Agent may make such Overadvances and provide notice as promptly as practicable thereafter, and the applicable Lenders thereupon shall, together with the Agent jointly determine the terms of arrangements that shall be implemented with the applicable Borrower intended to reduce, within a reasonable time, the outstanding principal amount of the Advances to such Borrower to an amount permitted by the preceding sentence. In such circumstances, if any Lender objects to the proposed terms of reduction or repayment of any Overadvance, the terms of reduction or repayment thereof shall be implemented according to the determination of the Required Lenders. In any event: (x) if any Overadvance not otherwise made or permitted pursuant to this Section 2.3(d) remains outstanding for more than 60 days, unless otherwise agreed to by the Required Lenders, the applicable Borrower shall immediately repay Advances in an amount sufficient to eliminate all such Overadvances not otherwise made or permitted to this Section 2.3(d), and (y) after the date all such Overadvances have been eliminated, there must be at least five consecutive days before additional Advances are made pursuant to this Section 2.3(d)(ii) are made. The foregoing provisions are meant for the benefit of the Lenders and the Agent and are not meant for the benefit of Borrowers, which shall continue to be bound by the provisions of Sections 2.4(e)(ii) and 2.4(e)(iii). Each U.S. Lender with a U.S. Revolver Commitment shall be obligated to settle with Agent as provided in

Section 2.3(e) or Section 2.3(g), as applicable, for the amount of such U.S. Lender's Pro Rata Share of any Overadvances not otherwise made or permitted pursuant to this Section 2.3(d) by Agent reported to such U.S. Lender, any Overadvances made by Agent as permitted under this Section 2.3(d), and any Overadvances consisting of U.S. Advances resulting from the charging to the U.S. Borrower's Loan Account of interest, fees, or Lender Group Expenses. Each Canadian Lender with a Canadian Revolver Commitment shall be obligated to settle with Agent as provided in Section 2.3(e) or Section 2.3(g), as applicable, for the amount of such Canadian Lender's Pro Rata Share of any Overadvances not otherwise made or permitted pursuant to this Section 2.3(d) by Agent reported to such Canadian Lender, any Overadvances made by Agent as permitted under this Section 2.3(d), and any Overadvances consisting of Canadian Advances resulting from the charging to Canadian Borrower's Loan Account of interest, fees, or Lender Group Expenses.

(iii) Each Protective Advance and each Overadvance by Agent shall be deemed to be a U.S. Advance or a Canadian Advance (as applicable) hereunder, except that no Protective Advance or Overadvance shall be eligible to be a LIBOR Rate Loan and, prior to U.S. Settlement or Canadian Settlement, as applicable, therefor all payments on the Protective Advances by Agent shall be payable to Agent solely for its own account. The Protective Advances and Overadvances shall be repayable on demand, secured by Agent's Liens, constitute Obligations hereunder, and bear interest at the rate applicable from time to time to Advances that are Base Rate Loans. The ability of Agent to make Protective Advances is separate and distinct from its ability to make Overadvances and its ability to make Overadvances is separate and distinct from its ability to make Protective Advances. For the avoidance of doubt, the limitations on Agent's ability to make Protective Advances do not apply to Overadvances and the limitations on Agent's ability to make Overadvances do not apply to Protective Advances. The provisions of this Section 2.3(d) are for the exclusive benefit of Agent, Swing Lenders, and the Lenders and are not intended to benefit any Borrower in any way.

(iv) Notwithstanding anything contained in this Agreement or any other Loan Document to the contrary: no Overadvance or Protective Advance may be made by Agent if such Advance would (A) cause the aggregate principal amount of Overadvances and Protective Advances outstanding to exceed an amount equal to ten percent (10%) of Aggregate Availability, (B) cause the aggregate U.S. Revolver Usage to exceed the Maximum U.S. Revolver Amount, or (C) cause the aggregate Canadian Revolver Usage to exceed the Maximum Canadian Revolver Amount.

(e) **Settlement Regarding U.S. Advances**. It is agreed that each U.S. Lender's funded portion of the U.S. Advances is intended by the U.S. Lenders to equal, at all times, such U.S. Lender's Pro Rata Share of the outstanding U.S. Advances. Such agreement notwithstanding, Agent, Swing Lender, and the other U.S. Lenders agree (which agreement shall not be for the benefit of U.S. Borrower) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among the U.S. Lenders as to the U.S. Advances, the U.S. Swing Loans, and the Protective Advances by Agent shall take place on a periodic basis in accordance with the following provisions:

(i) Agent shall request settlement ("U.S. Settlement") with the U.S. Lenders on a weekly basis, or on a more frequent basis if so determined by Agent (1) on behalf of Swing Lender, with respect to the outstanding U.S. Swing Loans, (2) for itself, with respect to the outstanding Protective Advances that constitute U.S. Advances, and (3) with respect to payments received from any Loan Party, including any amounts received pursuant to Section 2.4(d) or Section 2.4(e) and any Collections required to be paid to Agent in respect of U.S. Advances pursuant to the provisions of this Agreement or any other Loan Document, as to each by notifying the U.S. Lenders by written notice, telecopy, electronic mail or other similar form of transmission, of such requested U.S. Settlement, no later than 2:00 p.m. (California time) on the Business Day immediately prior to the date of such requested U.S. Settlement (the date of such

requested U.S. Settlement being the "U.S. Settlement Date"). Such notice of a U.S. Settlement Date shall include a summary statement of the amount of outstanding U.S. Advances, U.S. Swing Loans, and Protective Advances that constitute U.S. Advances for the period since the prior U.S. Settlement Date. Subject to the terms and conditions contained herein (including Section 2.3(g)): (y) if the amount of the U.S. Advances (including U.S. Swing Loans and Protective Advances that constitute U.S. Advances) made by a U.S. Lender that is not a Defaulting Lender exceeds such U.S. Lender's Pro Rata Share of the U.S. Advances (including U.S. Swing Loans and Protective Advances that constitute U.S. Advances) as of a U.S. Settlement Date, then Agent shall, by no later than 12:00 p.m. (California time) on the U.S. Settlement Date, transfer in immediately available funds to a Deposit Account of such U.S. Lender (as such U.S. Lender may designate), an amount such that each such U.S. Lender shall, upon receipt of such amount, have as of the U.S. Settlement Date, its Pro Rata Share of the U.S. Advances (including U.S. Swing Loans and Protective Advances that constitute U.S. Advances), and (z) if the amount of the U.S. Advances (including U.S. Swing Loans and Protective Advances that constitute U.S. Advances) made by a U.S. Lender is less than such U.S. Lender's Pro Rata Share of the U.S. Advances (including U.S. Swing Loans and Protective Advances that constitute U.S. Advances) as of a U.S. Settlement Date, such U.S. Lender shall no later than 12:00 p.m. (California time) on the U.S. Settlement Date transfer in immediately available funds to the Agent's Account, an amount such that each such U.S. Lender shall, upon transfer of such amount, have as of the U.S. Settlement Date, its Pro Rata Share of the U.S. Advances (including U.S. Swing Loans and Protective Advances that constitute U.S. Advances). Such amounts made available to Agent under clause (z) of the immediately preceding sentence shall be applied against the amounts of the applicable U.S. Swing Loans or Protective Advances that constitute U.S. Advances and, together with the portion of such U.S. Swing Loans or Protective Advances that constitute U.S. Advances representing Swing Lender's Pro Rata Share thereof, shall constitute U.S. Advances of such U.S. Lenders. If any such amount is not made available to Agent by any U.S. Lender on the U.S. Settlement Date applicable thereto to the extent required by the terms hereof, Agent shall be entitled to recover for its account such amount on demand from such U.S. Lender together with interest thereon at the Defaulting Lender Rate.

(ii) In determining whether a U.S. Lender's balance of the U.S. Advances, U.S. Swing Loans, and Protective Advances that constitute U.S. Advances is less than, equal to, or greater than such U.S. Lender's Pro Rata Share of the U.S. Advances, U.S. Swing Loans, and Protective Advances that constitute U.S. Advances as of a U.S. Settlement Date, Agent shall, as part of the relevant U.S. Settlement, apply to such balance the portion of payments actually received in good funds by Agent with respect to principal, interest, fees payable by U.S. Borrower and allocable to the U.S. Lenders hereunder, and proceeds of Collateral.

(iii) Between U.S. Settlement Dates, Agent, to the extent Protective Advances by Agent or U.S. Swing Loans are outstanding, may pay over to Agent or Swing Lender, as applicable, any payments received from any Loan Party, including any amounts received pursuant to Section 2.4(d) or Section 2.4(e) and any Collections required to be paid to Agent pursuant to the provisions of this Agreement or any other Loan Document, that in accordance with the terms of this Agreement would be applied to the reduction of the U.S. Advances, for application to the Protective Advances that constitute U.S. Advances or U.S. Swing Loans. Between U.S. Settlement Dates, Agent, to the extent no Protective Advances that constitute U.S. Advances or U.S. Swing Loans are outstanding, may pay over to Swing Lender any payments received from any Loan Party, including any amounts received pursuant to Section 2.4(d) or Section 2.4(e) and any Collections required to be paid to Agent pursuant to the provisions of this Agreement or any other Loan Document, that in accordance with the terms of this Agreement would be applied to the reduction of the U.S. Advances, for application to Swing Lender's Pro Rata Share of the U.S. Advances. If, as of any U.S. Settlement Date, payments received from any Loan Party, including any amounts received pursuant to Section 2.4(d) or Section 2.4(e) and any Collections required to be paid to Agent in respect of U.S. Advances pursuant to the provisions of this Agreement or any other Loan Document or payments of

the Loan Parties received since the then immediately preceding U.S. Settlement Date have been applied to Swing Lender's Pro Rata Share of the U.S. Advances other than to U.S. Swing Loans, as provided for in the previous sentence, Swing Lender shall pay to Agent for the accounts of the U.S. Lenders, and Agent shall pay to the U.S. Lenders (other than a Defaulting Lender if Agent has implemented the provisions of Section 2.3(g)), to be applied to the outstanding U.S. Advances of such U.S. Lenders, an amount such that each U.S. Lender shall, upon receipt of such amount, have, as of such U.S. Settlement Date, its Pro Rata Share of the U.S. Advances. During the period between U.S. Settlement Dates, Swing Lender with respect to U.S. Swing Loans, Agent with respect to Protective Advances that constitute U.S. Advances, and each U.S. Lender (subject to the effect of agreements between Agent and individual U.S. Lenders) with respect to the U.S. Advances other than U.S. Swing Loans and Protective Advances that constitute U.S. Advances, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the daily amount of funds employed by Swing Lender, Agent, or the U.S. Lenders, as applicable.

(iv) Anything in this Section 2.3(e) to the contrary notwithstanding, in the event that a U.S. Lender is a Defaulting Lender, Agent shall be entitled to refrain from remitting settlement amounts to the Defaulting Lender and, instead, shall be entitled to elect to implement the provisions set forth in Section 2.3(g).

(v) Agent, as a non-fiduciary agent for U.S. Borrower, shall maintain a register showing the principal amount of the U.S. Advances, owing to each U.S. Lender, including the U.S. Swing Loans owing to Swing Lender, and Protective Advances owing to Agent, and the interests therein of each U.S. Lender, from time to time and such register shall, absent manifest error, conclusively be presumed to be correct and accurate.

(f) **Settlement Regarding Canadian Advances**. It is agreed that each Canadian Lender's funded portion of the Canadian Advances is intended by the Canadian Lenders to equal, at all times, such Canadian Lender's Pro Rata Share of the outstanding Canadian Advances. Such agreement notwithstanding, Agent, Swing Lender, and the other Canadian Lenders agree (which agreement shall not be for the benefit of Canadian Borrower) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among the Canadian Lenders as to the Canadian Advances, the Canadian Swing Loans, and the Protective Advances by Agent shall take place on a periodic basis in accordance with the following provisions:

(i) Agent shall request settlement ("Canadian Settlement") with the Canadian Lenders on a weekly basis, or on a more frequent basis if so determined by Agent (1) on behalf of Swing Lender, with respect to the outstanding Canadian Swing Loans, (2) for itself, with respect to the outstanding Protective Advances that constitute Canadian Advances, and (3) with respect to payments received from any Loan Party, including any amounts received pursuant to Section 2.4(d) or Section 2.4(e) and any Collections required to be paid to Agent in respect of Canadian Advances pursuant to the provisions of this Agreement or any other Loan Document, as to each by notifying the Canadian Lenders by written notice, telecopy, electronic mail or other similar form of transmission, of such requested Canadian Settlement, no later than 2:00 p.m. (California time) on the Business Day immediately prior to the date of such requested Canadian Settlement (the date of such requested Canadian Settlement being the "Canadian Settlement Date"). Such notice of a Canadian Settlement Date shall include a summary statement of the amount of outstanding Canadian Advances, Canadian Swing Loans, and Protective Advances that constitute Canadian Advances for the period since the prior Canadian Settlement Date. Subject to the terms and conditions contained herein (including Section 2.3(g)): (y) if the amount of the Canadian Advances (including Canadian Swing Loans and Protective Advances that constitute Canadian Advances) made by a Canadian Lender that is not a Defaulting Lender exceeds such Canadian Lender's Pro Rata Share of the Canadian Advances (including Canadian Swing Loans and Protective Advances that constitute Canadian Advances) as of a Canadian Settlement Date, then Agent shall, by no later than 12:00 p.m. (California time) on the

Canadian Settlement Date, transfer in immediately available funds to a Deposit Account of such Canadian Lender (as such Canadian Lender may designate), an amount in U.S. Dollars such that each such Canadian Lender shall, upon receipt of such amount, have as of the Canadian Settlement Date, its Pro Rata Share of the Canadian Advances (including Canadian Swing Loans and Protective Advances that constitute Canadian Advances), and (z) if the amount of the Canadian Advances (including Canadian Swing Loans and Protective Advances that constitute Canadian Advances) made by a Canadian Lender is less than such Canadian Lender's Pro Rata Share of the Canadian Advances (including Canadian Swing Loans and Protective Advances that constitute Canadian Advances) as of a Canadian Settlement Date, such Canadian Lender shall no later than 12:00 p.m. (California time) on the Canadian Settlement Date transfer in immediately available funds and in the relevant Currency to the Agent's Account, an amount such that each such Canadian Lender shall, upon transfer of such amount, have as of the Canadian Settlement Date, its Pro Rata Share of the Canadian Advances (including Canadian Swing Loans and Protective Advances that constitute Canadian Advances). Such amounts made available to Agent under clause (z) of the immediately preceding sentence shall be applied against the amounts of the applicable Canadian Swing Loans or Protective Advances that constitute Canadian Advances and, together with the portion of such Canadian Swing Loans or Protective Advances that constitute Canadian Advances representing Swing Lender's Pro Rata Share thereof, shall constitute Canadian Advances of such Canadian Lenders. If any such amount is not made available to Agent by any Canadian Lender on the Canadian Settlement Date applicable thereto to the extent required by the terms hereof, Agent shall be entitled to recover for its account such amount on demand from such Canadian Lender together with interest thereon at the Defaulting Lender Rate.

(ii) In determining whether a Canadian Lender's balance of the Canadian Advances, Canadian Swing Loans, and Protective Advances that constitute Canadian Advances is less than, equal to, or greater than such Canadian Lender's Pro Rata Share of the Canadian Advances, Canadian Swing Loans, and Protective Advances that constitute Canadian Advances as of a Canadian Settlement Date, Agent shall, as part of the relevant Canadian Settlement, apply to such balance the portion of payments actually received in good funds by Agent with respect to principal, interest, fees payable by Canadian Borrower and allocable to the Canadian Lenders hereunder, and proceeds of Collateral.

(iii) Between Canadian Settlement Dates, Agent, to the extent Protective Advances by Agent or Canadian Swing Loans are outstanding, may pay over to Agent or Swing Lender, as applicable, any payments received from any Loan Party, including any amounts received pursuant to Section 2.4(e) and any Collections required to be paid to Agent pursuant to the provisions of this Agreement or any other Loan Document, that in accordance with the terms of this Agreement would be applied to the reduction of the Canadian Advances, for application to the Protective Advances that constitute Canadian Advances or Canadian Swing Loans. Between Canadian Settlement Dates, Agent, to the extent no Protective Advances that constitute Canadian Advances or Canadian Swing Loans are outstanding, may pay over to Swing Lender any payments received from any Loan Party, including any amounts received pursuant to Section 2.4(e) and any Collections required to be paid to Agent pursuant to the provisions of this Agreement or any other Loan Document, that in accordance with the terms of this Agreement would be applied to the reduction of the Canadian Advances, for application to Swing Lender's Pro Rata Share of the Canadian Advances. If, as of any Canadian Settlement Date, payments received from any Loan Party, including any amounts received pursuant to Section 2.4(d) or Section 2.4(e) and any Collections required to be paid to Agent in respect of Canadian Advances pursuant to the provisions of this Agreement or any other Loan Document or payments of the Loan Parties received since the then immediately preceding Canadian Settlement Date have been applied to Swing Lender's Pro Rata Share of the Canadian Advances other than to Canadian Swing Loans, as provided for in the previous sentence, Swing Lender shall pay to Agent for the accounts of the Canadian Lenders, and Agent shall pay to the Canadian Lenders (other than a Defaulting Lender if Agent has implemented the provisions of Section 2.3(g)), to be applied to the outstanding Canadian Advances of such Canadian Lenders, an amount such that each Canadian Lender shall, upon receipt of such amount, have, as of such Canadian Settlement Date, its Pro Rata Share of the

Canadian Advances. During the period between Canadian Settlement Dates, Swing Lender with respect to Canadian Swing Loans, Agent with respect to Protective Advances that constitute Canadian Advances, and each Canadian Lender (subject to the effect of agreements between Agent and individual Canadian Lenders) with respect to the Canadian Advances other than Canadian Swing Loans and Protective Advances that constitute Canadian Advances, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the daily amount of funds employed by Swing Lender, Agent, or the Canadian Lenders, as applicable.

(iv) Anything in this Section 2.3(f) to the contrary notwithstanding, in the event that a Canadian Lender is a Defaulting Lender, Agent shall be entitled to refrain from remitting settlement amounts to the Defaulting Lender and, instead, shall be entitled to elect to implement the provisions set forth in Section 2.3(g).

(v) Agent, as a non-fiduciary agent for Canadian Borrower, shall maintain a register showing the principal amount of the Canadian Advances, owing to each Canadian Lender, including the Canadian Swing Loans owing to Swing Lender, and Protective Advances owing to Agent, and the interests therein of each Canadian Lender, from time to time and such register shall, absent manifest error, conclusively be presumed to be correct and accurate.

(g) **Defaulting Lenders**.

(i) Agent shall not be obligated to transfer to a Defaulting Lender any payments made by the applicable Borrower to Agent for the Defaulting Lender's benefit or any Collections or proceeds of Collateral that would otherwise be remitted hereunder to the Defaulting Lender, and, in the absence of such transfer to the Defaulting Lender, Agent shall transfer any such payments (A) first, to the Swing Lender to the extent of any Swing Loans that were made by Swing Lender and that were required to be, but were not, repaid by the Defaulting Lender, (B) second, to the Issuing Lender, to the extent of the portion of a Letter of Credit Disbursement that was required to be, but was not, repaid by the Defaulting Lender, (C) third, to each Non-Defaulting Lender ratably in accordance with their Commitments (but, in each case, only to the extent that such Defaulting Lender's portion of an Advance (or other funding obligation) was funded by such other Non-Defaulting Lender), (D) to a suspense account maintained by Agent, the proceeds of which shall be retained by Agent and may be made available to be re-advanced to or for the benefit of Borrowers as if such Defaulting Lender had made its portion of the applicable Advances (or other funding obligations) hereunder, and (E) from and after the date on which all other Obligations have been paid in full, to such Defaulting Lender in accordance with tier (14) of Section 2.4(b)(ii); provided, however, that if such payment is a payment of the principal amount of an Advance or of a Letter of Credit Disbursement, such payment shall be applied solely to pay the relevant Advances of and Letter of Credit Disbursements owed to, the relevant Non-Defaulting Lender prior to being applied in the manner set forth above. Subject to the foregoing, Agent may hold and, in its Permitted Discretion, re-lend to the applicable Borrower for the account of such Defaulting Lender the amount of all such payments received and retained by Agent for the account of such Defaulting Lender. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents (including the calculation of Pro Rata Share in connection therewith) and for the purpose of calculating the fees payable under Section 2.10(b) and Section 2.10(c), such Defaulting Lender shall be deemed not to be a "Lender" and such fees shall cease to accrue with respect to such Lender's Commitment and such Lender's Commitment shall be deemed to be zero; provided, however, that the foregoing shall not apply to any of the matters governed by Section 14.1(a)(i) through (iii). The provisions of this Section 2.3(g) shall remain effective with respect to such Defaulting Lender until the earlier of (y) the date on which the Agent and the applicable Borrower shall have waived, in writing, the application of this Section 2.3(g) to such Defaulting Lender, or (z) the date on which such Defaulting Lender makes payment of all amounts that it was obligated to fund hereunder, pays to Agent all amounts owing by Defaulting Lender in respect of the amounts that it was obligated to fund hereunder, and,

if requested by Agent, provides adequate assurance of its ability to perform its future obligations hereunder. The operation of this Section 2.3(g) shall not be construed to increase or otherwise affect the Commitment of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by any Borrower of its duties and obligations hereunder to Agent or to the Lenders other than such Defaulting Lender. Any failure by a Lender to fund amounts that it was obligated to fund hereunder shall constitute a material breach by such Lender of this Agreement and shall entitle the applicable Borrower, at its option, upon written notice to Agent, to arrange for a substitute Lender to assume the Commitment of such Lender pursuant to the terms of Section 14.2. In connection with the arrangement of such a substitute Lender, the Defaulting Lender shall have no right to refuse to be replaced hereunder, and agrees to execute and deliver a completed form of Assignment and Acceptance in favor of the substitute Lender (and agrees that it shall be deemed to have executed and delivered such document if it fails to do so) subject only to being repaid its share of the outstanding Obligations (other than Bank Product Obligations, but including (1) all interest, fees, and other amounts that may be due and payable in respect thereof, and (2) an assumption of its Pro Rata Share of the Letters of Credit); provided, however, that any such assumption of the Commitment of such Defaulting Lender shall not be deemed to constitute a waiver of any of the Lender Groups' or the applicable Borrower's rights or remedies against any such Defaulting Lender arising out of or in relation to such failure to fund. In the event of a direct conflict between the priority provisions of this Section 2.3(g) and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.3(g) shall control and govern.

(ii) Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the provisions of this Section 2.3(g)(ii) shall apply for so long as such Lender is a Defaulting Lender. If any U.S. Swing Loans are outstanding or if any U.S. Letters of Credit are outstanding at the time a U.S. Lender is or becomes a Defaulting Lender then all or any part of the U.S. Swing Loan Exposure and U.S. Letter of Credit Exposure with respect thereto shall be reallocated among the U.S. Lenders that are Non-Defaulting Lenders of the U.S. Swing Loans and U.S. Letters of Credit in accordance with their respective Pro Rata Share thereof but only to the extent the sum of all such Non-Defaulting Lenders' Pro Rata Share of the U.S. Revolver Usage plus such Defaulting Lender's U.S. Swing Loan Exposure and U.S. Letter of Credit Exposure does not exceed the total of all such Non-Defaulting Lenders' U.S. Revolver Commitments. If any Canadian Swing Loans are outstanding or if any Canadian Letters of Credit are outstanding at the time a Canadian Lender is or becomes a Defaulting Lender then all or any part of the Canadian Swing Loan Exposure and Canadian Letter of Credit Exposure with respect thereto shall be reallocated among the Canadian Lenders that are Non-Defaulting Lenders of the Canadian Swing Loans and Canadian Letters of Credit in accordance with their respective Pro Rata Share thereof but only to the extent the sum of all such Non-Defaulting Lenders' Pro Rata Share of the Canadian Revolver Usage plus such Defaulting Lender's Canadian Swing Loan Exposure and Canadian Letter of Credit Exposure does not exceed the total of all such Non-Defaulting Lenders' Canadian Revolver Commitments.

(iii) If the reallocation described in clause (ii) above cannot, or can only partially, be effected, the applicable Borrower shall within one Business Day following notice by the Agent (x) first, prepay such Defaulting Lender's U.S. Swing Loan Exposure or Canadian Swing Loan Exposure, as applicable, and (y) second, provide Letter of Credit Collateralization with respect to such Defaulting Lender's Letter of Credit Exposure (after giving effect to any partial reallocation pursuant to clause (ii) above) for so long as such Letter of Credit Exposure is outstanding.

(iv) If the applicable Borrower provides Letter of Credit Collateralization with respect to any portion of such Defaulting Lender's Letter of Credit Exposure pursuant to clause (iii) above,

Borrowers shall not be required to pay any fees to such Defaulting Lender with respect to such portion of such Defaulting Lender's Letter of Credit Exposure so long as the applicable Borrower has provided Letter of Credit Collateralization with respect to such portion of such Defaulting Lender's Letter of Credit Exposure.

(v) If any portion of such Defaulting Lender's Letter of Credit Exposure is neither subject to Letter of Credit Collateralization nor reallocated pursuant to clause (ii) above, then, without prejudice to any rights or remedies of any Issuing Lender or any Lender hereunder, then any fees provided for in Sections 2.6(d)(i) and 2.6(d)(ii) payable to such Defaulting Lender with respect to such Defaulting Lender's Letter of Credit Exposure shall be payable to the applicable Issuing Lender until such Letter of Credit Exposure is made subject to Letter of Credit Collateralization or reallocated.

(vi) So long as any Lender is a Defaulting Lender, the Swing Lender shall not be required to fund any Swing Loans and the Issuing Lenders shall not be required to issue, amend or increase any Letters of Credit, unless it is reasonably satisfied that 100% of the related exposure will be covered by the U.S. Revolver Commitments or Canadian Revolver Commitments, as applicable, of the Non-Defaulting Lenders or cash collateralized in accordance with Section 2.3(g)(iii), and participations in any such newly issued or increased Letter of Credit or newly made Swing Loan shall be allocated among Non-Defaulting Lenders in accordance with their respective Pro Rata Share (and Defaulting Lenders shall not participate therein).

(vii) To the extent permitted by Applicable Law, any voluntary prepayment of Advances shall, if the applicable Borrower so directs at the time of making such voluntary prepayment, be applied to the Advances of other Lenders as if such Defaulting Lender had no Advances outstanding and the Revolver Usage of such Defaulting Lender were zero.

(viii) In the event that Agent, Borrowers, each Issuing Lender or Swing Lender, as the case may be, each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Swing Loan Exposure and Letter of Credit Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's U.S. Revolver Commitment or Canadian Revolver Commitment, as applicable, and on such date such Lender shall purchase at par such of the U.S. Advances or Canadian Advances, as applicable, of the other U.S. Lender or Canadian Lenders, as applicable, as the Agent shall determine may be necessary in order for such Lender to hold such Advances in accordance with its Pro Rata Share. The rights and remedies against a Defaulting Lender under this Section 2.3(g) are in addition to other rights and remedies that Borrowers, Agent, the Issuing Lenders, the Swing Lender and the Non-Defaulting Lenders may have against such Defaulting Lender.

(h) **Independent Obligations**. All Advances (other than Swing Loans and Protective Advances) shall be made by the Lenders contemporaneously and in accordance with their Pro Rata Shares. It is understood that (i) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make any Advance (or other extension of credit) hereunder, nor shall any Commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligations hereunder, and (ii) no failure by any Lender to perform its obligations hereunder shall excuse any other Lender from its obligations hereunder.

2.4 **Payments; Reductions of Commitments; Prepayments**.

(a) **Payments by Borrowers**.

(i) Except as otherwise expressly provided herein, all payments by Borrowers shall be made to Agent's Account for the account of the Lender Group and shall be made in immediately

available funds, no later than 11:00 a.m. (California time) on the date specified herein. Any payment received by Agent later than 11:00 a.m. (California time) shall be deemed to have been received on the following Business Day and any applicable interest or fee shall continue to accrue until such following Business Day.

(ii) Unless Agent receives notice from the applicable Borrower prior to the date on which any payment is due to the Lenders that such Borrower will not make such payment in full as and when required, the Agent may assume that such Borrower has made (or will make) such payment in full to Agent on such date in immediately available funds and Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent the applicable Borrower does not make such payment in full to the Agent on the date when due, each Lender severally shall repay to Agent on demand such amount distributed to such Lender, together with interest thereon at the Defaulting Lender Rate for each day from the date such amount is distributed to such Lender until the date repaid.

(b) **Apportionment and Application**.

(i) So long as no Application Event has occurred and is continuing, (x) subject to the provisions of Section 2.4(e) hereof, this Section 2.4(b)(i) shall not apply to any payment made by a Borrower to Agent and specified by such Borrower to be for the payment of specific Obligations then due and payable (or prepayable) under any provision of this Agreement or any other Loan Document, (y) otherwise, all payments to be made hereunder by a Borrower shall be remitted to the Agent and all (subject to Section 2.4(b)(vi), and Section 2.4(e)) such payments, and all proceeds of Collateral received by Agent, shall be applied (A) first, to reduce the balance of the U.S. Advances outstanding until paid in full, and (B) second, to reduce the balance of the Canadian Advances outstanding until paid in full, and thereafter, to the applicable Borrower (to be wired to the applicable Designated Account) or such other Person entitled thereto under Applicable Law, and (z) except as otherwise provided herein with respect to Defaulting Lenders, all principal and interest payments received by the Agent shall be apportioned ratably among the Lenders (according to the unpaid principal balance of the Advances to which such payments relate held by each Lender) and all payments of fees and expenses received by the Agent (other than fees or expenses that are for Agent's separate account or for the separate account of any Issuing Lender, or Swing Lender or any other Lender) shall be apportioned ratably among the Lenders having a Pro Rata Share of the type of Commitment or Obligation to which a particular fee or expense relates.

(ii) At any time that an Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders and subject to the terms of the DIP Intercreditor Agreement, all payments remitted to Agent and all proceeds of Collateral received by Agent shall be applied as follows:

(1) first, to fund amounts required to be paid from the Collateral pursuant the provisions of the Orders and in accordance with the Budget in respect of the Carve Out, in an aggregate amount not to exceed the Carve Out Reserve;

(2) second, ratably to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to the Agent under the Loan Documents, until paid in full,

(3) third, ratably to pay any fees then due to the Agent under the Loan Documents until paid in full,

(4) fourth, (i) first, ratably to pay interest due in respect of all U.S. Protective Advances made by Agent until paid in full, and (ii) second, ratably to pay interest due in respect of all Canadian Protective Advances made by Agent until paid in full,

(5) fifth, (i) first, ratably to pay the principal of all U.S. Protective Advances made by Agent until paid in full, and (ii) second, ratably to pay the principal of all Canadian Protective Advances made by Agent until paid in full,

(6) sixth, ratably to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to any of the Lenders under the Loan Documents, until paid in full,

(7) seventh, ratably to pay any fees then due to any of the Lenders under the Loan Documents, until paid in full,

(8) eighth, (i) first, ratably, to pay interest accrued in respect of the U.S. Swing Loans made by Swing Lender until paid in full, and (ii) second, ratably to pay interest accrued in respect of the Canadian Swing Loans made by Swing Lender until paid in full,

(9) ninth, (i) first, with respect to any Canadian Collections, if Canadian Availability is less than $5,000,000, ratably to pay the principal of all Canadian Swing Loans made by Swing Lender until either (A) such Canadian Swing Loans are paid in full, or (B) Canadian Availability is no less than $5,000,000, (ii) second, with respect to all other amounts, ratably to pay the principal of all U.S. Swing Loans made by Swing Lender until paid in full, and (iii) third, with respect to all other amounts, ratably to pay the principal of all Canadian Swing Loans made by Swing Lender until paid in full,

(10) tenth, (i) first, ratably to pay interest accrued in respect of the U.S. Advances (other than Protective Advances and other than Swing Loans) made by any Lender until paid in full, and (ii) second, ratably to pay interest accrued in respect of the Canadian Advances (other than Protective Advances and other Swing Loans) made by any Lender until paid in full,

(11) eleventh, (i) first, with respect to any Canadian Collections, if Canadian Availability is less than $5,000,000, ratably (A) to pay the principal of all Canadian Advances until paid in full, and (B) to Agent, to be held by Agent, for the benefit of the Issuing Lenders (and for the ratable benefit of each of the Lenders that have an obligation to pay to Agent, for the account of any Issuing Lender, a share of each Letter of Credit Disbursement in respect of a Canadian Letter of Credit), as cash collateral in an amount up to 103% of the Canadian Letter of Credit Usage (to the extent permitted by Applicable Law, such cash collateral shall be applied to the reimbursement of any Letter of Credit Disbursement in respect of a Canadian Letter of Credit as and when such disbursement occurs and, if a Canadian Letter of Credit expires undrawn, the cash collateral held by Agent in respect of such Canadian Letter of Credit shall, to the extent permitted by Applicable Law, be reapplied pursuant to this Section 2.4(b)(ii), beginning with tier (1) hereof), until Canadian Availability is no less than $5,000,000, (ii) second, with respect to all other amounts, ratably (A) to pay the principal of all U.S. Advances until paid in full, and (B) to Agent, to be held by Agent, for the benefit of the Issuing Lenders (and for the ratable benefit of each of the Lenders that have an obligation to pay to Agent, for the account of any Issuing Lender, a share of each Letter of Credit Disbursement in respect of a U.S. Letter of Credit), as cash collateral in an amount up to 103% of the U.S. Letter of Credit Usage (to the extent permitted by Applicable Law, such cash collateral shall be applied to the reimbursement of any Letter of Credit Disbursement in respect of a U.S. Letter of Credit as and when such disbursement occurs and, if a U.S. Letter of Credit expires undrawn, the cash collateral held by Agent in respect of such U.S. Letter of Credit shall, to the extent permitted by

Applicable Law, be reapplied pursuant to this Section 2.4(b)(ii), beginning with tier (1) hereof), and (iii) third, with respect to all other amounts, ratably (A) to pay the principal of all Canadian Advances until paid in full, and (B) to Agent, to be held by Agent, for the benefit of the Issuing Lenders (and for the ratable benefit of each of the Lenders that have an obligation to pay to Agent, for the account of any Issuing Lender, a share of each Letter of Credit Disbursement in respect of a Canadian Letter of Credit), as cash collateral in an amount up to 103% of the Canadian Letter of Credit Usage (to the extent permitted by Applicable Law, such cash collateral shall be applied to the reimbursement of any Letter of Credit Disbursement in respect of a Canadian Letter of Credit as and when such disbursement occurs and, if a Canadian Letter of Credit expires undrawn, the cash collateral held by Agent in respect of such Canadian Letter of Credit shall, to the extent permitted by Applicable Law, be reapplied pursuant to this Section 2.4(b)(ii), beginning with tier (1) hereof),

(12) twelfth, ratably to pay any other Obligations, other than Obligations owed to Defaulting Lenders and other than Bank Product Obligations, until paid in full,

(13) thirteenth, ratably to the Bank Product Providers on account of all amounts then due and payable in respect of Bank Product Obligations in respect of which a Bank Product Reserve Amount was established, and, only to the extent expressly required by the terms of any underlying Bank Product Agreement, to be paid to Agent, to be held by Agent, for the ratable benefit of the applicable Bank Product Providers with respect to Bank Product Obligations in respect of which a Bank Product Reserve Amount was established, as cash collateral (which cash collateral may be released by Agent to the applicable Bank Product Provider and applied by such Bank Product Provider to the payment or reimbursement of any amounts due and payable with respect to such Bank Product Obligations owed to the applicable Bank Product Provider as and when such amounts first become due and payable and, if and at such time as all such Bank Product Obligations are paid or otherwise satisfied in full, the cash collateral held by the Agent in respect of such Bank Product Obligations shall be reapplied pursuant to this Section 2.4(b)(ii), beginning with tier (1) hereof, in each case to the extent of the Bank Product Reserve Amount established in respect of such Bank Product Obligations),

(14) fourteenth, ratably to the Bank Product Providers on account of all amounts then due and payable in respect of all other Bank Product Obligations, and, only to the extent expressly required by the terms of any underlying Bank Product Agreement, to be paid to Agent, to be held by Agent, for the ratable benefit of the applicable Bank Product Providers in respect of all other Bank Product Obligations, as cash collateral (which cash collateral may be released by Agent to the applicable Bank Product Provider and applied by such Bank Product Provider to the payment or reimbursement of any amounts due and payable with respect to such Bank Product Obligations owed to the applicable Bank Product Provider as and when such amounts first become due and payable and, if and at such time as all such Bank Product Obligations are paid or otherwise satisfied in full, the cash collateral held by Agent in respect of such other Bank Product Obligations shall be reapplied pursuant to this Section 2.4(b)(ii), beginning with tier (1) hereof),

(15) fifteenth, ratably to pay any Obligations owed to Defaulting Lenders; and

(16) sixteenth, to Borrowers (to be wired to the Designated Account) or such other Person entitled thereto under Applicable Law.

(iii) Agent promptly shall distribute to each Lender, pursuant to the applicable wire instructions received from each Lender in writing, such funds as it may be entitled to receive, subject to a Settlement delay as provided in Section 2.3(e).

(iv) [intentionally omitted].

(v) For purposes of Section 2.4(b)(ii), "paid in full" of a type of Obligation means payment in cash or immediately available funds of all amounts owing on account of such type of Obligation, including interest accrued after the commencement of any Insolvency Proceeding, default interest, interest on interest, and expense reimbursements, irrespective of whether any of the foregoing would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(vi) In the event of a direct conflict between the priority provisions of this Section 2.4 and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, if the conflict relates to the provisions of Section 2.3(g) and this Section 2.4, then the provisions of Section 2.3(g) shall control and govern, and if otherwise, then the terms and provisions of this Section 2.4 shall control and govern.

(c) **Reduction of Commitments**. The Revolver Commitments shall terminate on the Maturity Date.

(d) **Optional Prepayments**.

(i) **Canadian Advances**. The Canadian Borrower may prepay the principal of any Canadian Advance at any time in whole or in part, without premium or penalty. Any amounts prepaid may be reborrowed, subject to the terms and conditions of this Agreement.

(ii) **U.S. Advances**. The U.S. Borrower may prepay the principal of any U.S. Advance at any time in whole or in part, without premium or penalty. Any amounts prepaid may be reborrowed, subject to the terms and conditions of this Agreement.

(e) **Mandatory Prepayments**.

(i) On each occasion when (x) a Non-Ordinary Course Asset Disposition or Recovery Event occurs at a time when an Asset Disposition Event has occurred and is continuing or (y) any Other Asset Sale or Other Recovery Event occurs that, in each case, would otherwise require any Loan Party to make a mandatory prepayment of the DIP Term Loan Indebtedness or the Term Loan Indebtedness pursuant to Sections 4.02(c) or 4.02(f), respectively, of the DIP Term Loan Credit Agreement or the Term Loan Credit Agreement (after giving effect to any reinvestment rights set forth in the DIP Term Loan Credit Agreement and the Term Loan Credit Agreement, as applicable), within one (1) Business Day of the date of receipt of the Net Cash Proceeds therefrom, (A) U.S. Borrower shall prepay the outstanding principal amount of Advances or cash collateralize Letters of Credit in accordance with Section 2.4(f)(i) in an amount equal to (x) in the case of a disposition of any ABL Priority Collateral or any insurance policy or condemnation awards with respect to any ABL Priority Collateral, 100% of such Net Cash Proceeds (including condemnation awards and payments in lieu thereof) received by U.S. Borrower or any of its Subsidiaries in connection with such sales or dispositions, or (y) in the case of (1) a disposition of all or substantially all of the Stock of any Person that has an interest in ABL Priority Collateral, 100% of the Net Cash Proceeds attributable to such ABL Priority Collateral, with the Net Cash Proceeds attributable to such ABL Priority Collateral in any such sale being equal to the sum (without duplication) of (X) 100% of the book value of any Accounts held by such Person as assessed on the date of such sale, plus (Y) 100% of book value of all Inventory held by such Person as assessed on the date of such sale plus (Z) 100% of the Fair Market Value of other ABL Priority Collateral held by such Person as assessed on the date of such sale or (2) a disposition that includes both ABL Priority Collateral and other assets, 100% of the Net Cash

Proceeds attributable to such ABL Priority Collateral, with the Net Cash Proceeds attributable to such ABL Priority Collateral in any such sale being equal to the sum (without duplication) of (X) 100% of the book value of any Accounts disposed of in connection with such disposition as assessed on the date of such sale, plus (Y) 100% of book value of all Inventory held by such Person as assessed on the date of such sale plus (Z) 100% of the Fair Market Value of other ABL Priority Collateral disposed in such disposition as assessed on the date of such sale, and (B) Canadian Borrower shall prepay the outstanding principal amount of Advances or cash collateralize Letters of Credit in accordance with Section 2.4(f)(i) in an amount equal to (x) in the case of a disposition of any ABL Priority Collateral or any insurance policy or condemnation awards with respect to any ABL Priority Collateral, 100% of such Net Cash Proceeds (including condemnation awards and payments in lieu thereof) received by Canadian Borrower or any of its Subsidiaries in connection with such sales or dispositions, or (y) in the case of (1) a disposition of all or substantially all of the Stock of any Person that has an interest in ABL Priority Collateral, 100% of the Net Cash Proceeds attributable to such ABL Priority Collateral, with the Net Cash Proceeds attributable to such ABL Priority Collateral in any such sale being equal to the sum (without duplication) of (X) 100% of the book value of any Accounts held by such Person as assessed on the date of such sale, plus (Y) 100% of book value of all Inventory held by such Person as assessed on the date of such sale plus (Z) 100% of the Fair Market Value of other ABL Priority Collateral held by such Person as assessed on the date of such sale or (2) a disposition that includes both ABL Priority Collateral and other assets, 100% of the Net Cash Proceeds attributable to such ABL Priority Collateral, with the Net Cash Proceeds attributable to such ABL Priority Collateral in any such sale being equal to the sum (without duplication) of (X) 100% of the book value of any Accounts disposed of in connection with such disposition as assessed on the date of such sale, plus (Y) 100% of book value of all Inventory held by such Person as assessed on the date of such sale plus (Z) 100% of the Fair Market Value of other ABL Priority Collateral disposed in such disposition as assessed on the date of such sale. Nothing contained in this Section 2.4(e) shall permit any Loan Party or any of its Subsidiaries to sell or otherwise dispose of any assets other than in accordance with Section 6.4; provided that no mandatory prepayment pursuant to this Section 2.4(e)(i) shall be required (i) with respect to an Other Asset Sale, until the aggregate amount of Net Cash Proceeds with respect to Other Asset Sales received by Holdings and its Subsidiaries shall exceed $50,000, and (ii) with respect to a Recovery Event or Other Recovery Event, until the amount of Net Cash Proceeds with respect to such Recovery Event or Other Recovery Event received by Holdings and its Subsidiaries shall exceed $50,000 or $100,000 in the aggregate for all Recovery Events and Other Recovery Events for which Holdings and its Subsidiaries have received Net Cash Proceeds.

(ii) Unless otherwise agreed to by Agent and subject to the provisions of Sections 2.3(d)(i), 2.3(d)(ii) and 2.3(g), (A) if, at any time, the U.S. Revolver Usage on such date exceeds the lesser of the (x) the Maximum U.S. Revolver Amount and (y) the U.S. Borrowing Base (such excess being referred to as the "U.S. Overadvance Amount"), then U.S. Borrower shall, within one (1) Business Day, prepay the U.S. Advances or cash collateralize U.S. Letters of Credit in accordance with Section 2.4(f)(i) in an aggregate amount equal to such U.S. Overadvance Amount or (B) if, at any time, the Canadian Revolver Usage on such date exceeds the lesser of (x) the Maximum Canadian Revolver Amount and (y) the U.S. Dollar Equivalent of the Canadian Borrowing Base (such excess being referred to as the "Canadian Overadvance Amount"), then Canadian Borrower shall, within one (1) Business Day, prepay the Canadian Advances or cash collateralize the Canadian Letters of Credit in accordance with Section 2.4(f)(ii)(B) in an aggregate amount equal to such Canadian Overadvance Amount.

(iii) Unless otherwise agreed to by the Agent and subject to the provisions of Section 2.3(g), at all times on each Business Day, Agent shall apply all funds credited to the applicable Controlled Accounts as of 10:00 a.m., California time, on such Business Day in accordance with Section 2.4(f)(i).

(iv) [Intentionally Omitted].

(v) If at any time any Loan Party maintains cash or Cash Equivalents in any Deposit Account or Securities Account in an aggregate amount for all such Deposit Accounts and Securities Accounts in excess of $500,000 for three consecutive Business Days, Borrowers shall prepay the Obligations to the extent of such excess within one Business Day thereof.

(vi) Each Borrower promises to pay the Obligations (including principal, interest, fees, costs, and expenses, but for the avoidance of any doubt, excluding any Bank Product Obligations except to the extent required by the underlying Bank Product Agreement) in Dollars in full on the Maturity Date or, if earlier, on the date on which the Obligations are declared due and payable pursuant to the terms of this Agreement.

(vii) For clarity, none of the mandatory prepayments described in this Section 2.4(e) shall have the effect of reducing the Maximum U.S. Revolver Amount, the U.S. Revolver Commitments, the Maximum Canadian Revolver Amount, or the Canadian Revolver Commitments.

(f) **Application of Payments**.

(i) Each prepayment pursuant to Section 2.4(e)(i), Section 2.4(e)(iii), Section 2.4(e)(v) and Section 2.4(e)(vi) above shall (A) if an Application Event shall have occurred and be continuing, be applied in the manner set forth in Section 2.4(b)(ii) and (B) so long as no Application Event shall have occurred and be continuing, be applied, first, to the outstanding principal amount of the U.S. Advances, until paid in full, second, to the outstanding principal amount of the Canadian Advances, until paid in full, third, to cash collateralize the U.S. Letters of Credit in an amount equal to 103% of then extant U.S. Letter of Credit Usage, until paid in full, and fourth, to cash collateralize the Canadian Letters of Credit in an amount equal to 103% of then extant Canadian Letter of Credit Usage, until paid in full.

(ii) Each prepayment pursuant to (A) Section 2.4(e)(ii)(A) above shall be applied, first, to the outstanding principal amount of the U.S. Advances, until paid in full, and second, to cash collateralize the U.S. Letters of Credit in an amount equal to 103% of then extant U.S. Letter of Credit Usage, until paid in full, or (B) Section 2.4(e)(ii)(B) above shall be applied, first, to the outstanding principal amount of the Canadian Advances, until paid in full, and second, to cash collateralize the Canadian Letters of Credit in an amount equal to 103% of then extant Canadian Letter of Credit Usage, until paid in full.

(iii) In the event that a mandatory prepayment is required to be paid pursuant to both Section 2.4(e)(ii)(A) and Section 2.4(e)(ii)(B), such mandatory prepayment will be applied as set forth above in Section 2.4(f)(i)(B) as if no Application Events had occurred and were continuing. Amounts paid pursuant to this Section 2.4(f) may be reborrowed subject to the terms and conditions of this Agreement.

2.5 **[Intentionally Omitted]**.

2.6 **Interest Rates and Letter of Credit Fee: Rates, Payments, and Calculations**.

(a) **Interest Rates**. Except as provided in Section 2.6(c), all Obligations (except for undrawn Letters of Credit) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest on the Daily Balance thereof as follows:

(i) if the relevant Obligation is a LIBOR Rate Loan, at a per annum rate equal to the LIBOR Rate plus the LIBOR Rate Margin, and

(ii) otherwise, at a per annum rate equal to the Base Rate plus the Base Rate Margin.

(b) Agent, as applicable, upon determining the interest rate for any Borrowing of LIBOR Rate Loans, shall promptly notify Borrowers and the relevant Lenders thereof. Each such determination shall, absent clearly demonstrable error, be final and conclusive and binding on all parties hereto.

(c) Subject to the provisions of Section 2.7, interest on each Advance shall accrue from and including the date of any Borrowing to but excluding the date of repayment thereof.

(d) **Letter of Credit Fee**.

(i) U.S. Borrower shall pay to the Agent (for the ratable benefit of the Lenders with a U.S. Revolver Commitment, subject to any agreements between Agent and individual Lenders), a Letter of Credit fee (in addition to the charges, commissions, fees, and costs set forth in Section 2.11(a)(vii)) in respect of the U.S. Letters of Credit which shall accrue at a per annum rate equal to the LIBOR Rate Margin times the Daily Balance of the undrawn amount of all outstanding U.S. Letters of Credit.

(ii) Canadian Borrower shall pay to the Agent (for the ratable benefit of the Lenders with a Canadian Revolver Commitment, subject to any agreements between Agent and individual Lenders), a Letter of Credit fee (in addition to the charges, commissions, fees, and costs set forth in Section 2.11(b)(vii)) in respect of the Canadian Letters of Credit which shall accrue at a per annum rate equal to the LIBOR Rate Margin times the Daily Balance of the undrawn amount of all outstanding Canadian Letters of Credit.

(e) **Default Rate**. If all or a portion of the principal amount of any Advance, Reimbursement Undertaking, or any interest payable thereon or any fees or other amounts due hereunder or under any other Loan Document shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest (including post-petition interest in any Insolvency Proceeding) at a rate per annum that is (i) in the case of overdue principal, to the extent permitted by Applicable Law, the rate that would otherwise be applicable thereto plus 2% or (ii) in the case of overdue interest, fees or other amounts due hereunder, to the extent permitted by Applicable Law, the rate per annum described in Section 2.6(a)(ii) plus 2% from and including the date of such non-payment to but excluding the date on which such amount is paid in full. All such interest shall be payable on demand.

(f) **Payment**. Except to the extent provided to the contrary in Section 2.10 or Section 2.12(a), (i) all interest and all other fees payable hereunder shall be due and payable, in arrears, on the first day of each month, (ii) all Letter of Credit fees payable hereunder, and all fronting fees and all commissions, other fees, charges and expenses provided for in Section 2.11 shall be due and payable, in arrears, on the first Business Day of each month, and (iii) all costs and expenses payable hereunder or under any of the other Loan Documents, and all other Lender Group Expenses shall, subject to the Orders, be due and payable on the earlier of (A) the first day of the month following the date on which the applicable costs, expenses, or Lender Group Expenses were first incurred, or (B) the date on which demand therefor is made by Agent (it being acknowledged and agreed that any charging of such costs, expenses or Lender Group Expenses to the Loan Account pursuant to the provisions of the following sentence shall be deemed to constitute a demand for payment thereof for the purposes of this subclause (y)). Payments of all other amounts hereunder or under the Loan Documents shall be due and payable on the dates and at the times specified herein or in such other Loan Document. Each Borrower hereby authorizes Agent, from time to time without prior notice to such Borrower, if (subject to the provisions of Section 2.11) to charge the Loan Account, (A) on the first day of each month, all interest accrued during the prior month on the

Advances hereunder, (B) on the first Business Day of each month, all Letter of Credit fees accrued or chargeable hereunder during the prior month, (C) as and when incurred or accrued, all fees and costs provided for in Section 2.10(a) or (c), (D) [intentionally omitted], (E) as and when due and payable, all other fees payable hereunder or under any of the other Loan Documents, (F) on the Closing Date and thereafter as and when incurred or accrued, subject to the Orders, all other Lender Group Expenses, and (G) as and when due and payable all other payment obligations payable under any Loan Document or any Bank Product Agreement (including any amounts due and payable to the Bank Product Providers in respect of Bank Products). All amounts (including interest, fees, costs, expenses, or other amounts payable hereunder or under any other Loan Document or any Bank Product Agreement) relating to Canadian Advances or Canadian Letters of Credit charged to the Loan Account shall thereafter shall constitute Canadian Advances hereunder and shall accrue interest at the rate then applicable to Canadian Advances that are Base Rate Loans. All amounts (including interest, fees, costs, expenses, or other amounts payable hereunder or under any other Loan Document or any Bank Product Agreement) relating to U.S. Advances or U.S. Letters of Credit charged to the Loan Account shall thereafter shall constitute U.S. Advances hereunder and shall accrue interest at the rate then applicable to U.S. Advances that are Base Rate Loans. Agent may elect to deem any amounts charged to the Loan Account in respect of Lender Group Expenses as either a U.S. Advance or a Canadian Advance, and such amount shall accrue interest at the rate then applicable to Advances that are Base Rate Loans. As set out in Section 17.12 in further detail, each payment in respect of any Obligation in respect of Advances shall only be made in Dollars with respect to such Obligation. Borrowers hereby acknowledge and agree that to the extent that any information about interest, fees, costs, and other Obligations hereunder is maintained and available to the Borrowers in an electronic database, (x) the Lender Group shall have no obligation to independently provide such information to Borrowers, and (y) Borrowers shall obtain information regarding interests, fees, costs, and other payments hereunder by accessing such electronic database and shall not rely on the Lender Group to otherwise deliver to Borrowers such information.

(g) **Computation**.

(i) All interest and fees chargeable under the Loan Documents shall be computed on the basis of a 360-day year (or a 365-day year or 366-day year, as the case may, be for Base Rate Loans), in each case, for the actual number of days elapsed in the period during which the interest or fees accrue. In the event the Base Rate is changed from time to time hereafter, the rates of interest hereunder based upon the Base Rate automatically and immediately shall be increased or decreased by an amount equal to such change in the Base Rate.

(ii) For the purposes of the *Interest Act* (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith is to be calculated on the basis of a 360-day year (or 365-day year or 366-day year, as the case may be), the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 (or 365 or 366, as the case may be) The rates of interest under this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement.

(iii) Each Loan Party acknowledges and confirms that:

(A) Clause (ii) above satisfies the requirements of Section 4 of the *Interest Act* (Canada) to the extent it applies to the expression or statement of any interest payable under any Loan Document;

(B) Each Loan Party is able to calculate the yearly rate or percentage of interest payable under any Loan Document based upon the methodology set out in clause (ii) above.

(iv) Each Borrower agrees not to, and to cause each Loan Party not to, plead or assert, whether by way of defence or otherwise, in any proceeding relating to the Loan Documents, that the interest payable thereunder and the calculation thereof has not been adequately disclosed to any Loan Party, whether pursuant to Section 4 of the *Interest Act* (Canada) or any other Applicable Law or legal principle.

(v) Notwithstanding anything to the contrary contained in this Agreement, if the amount of interest payable under any Loan Document is reduced by virtue of the application of Section 4 of the *Interest Act* (Canada), then the Borrowers shall immediately and retroactively be obligated to pay to the Agent for the account of the applicable Lenders, promptly on demand by the Agent (or, if an Event of Default pursuant to Sections 8.4 and 8.5 shall have occurred and be continuing, automatically and without further action by the Agent), an amount equal to the amount of such reduction.

(h) **Intent to Limit Charges to Maximum Lawful Rate**. In no event shall the interest rate or rates payable under this Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Each Borrower and the Lender Group, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, however, that, anything contained herein to the contrary notwithstanding, if said rate or rates of interest or manner of payment exceeds the maximum allowable under applicable law, then, *ipso facto*, as of the Closing Date, each Borrower is and shall be liable only for the payment of such maximum as allowed by law, and payment received from a Borrower in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Advances to the extent of such excess. Without limiting the generality of the foregoing, if any provision of this Agreement would oblige any Loan Party to make any payment of interest or other amount payable to any Lender or the Agent in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by that Lender or the Agent of "interest" at a "criminal rate" (as such terms are construed under the *Criminal Code* (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by that Lender or the Agent of "interest" at a "criminal rate", such adjustment to be effected, to the extent necessary, as follows: first, by reducing the amount or rate of interest, and, thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid which would constitute interest for purposes of section 347 of the *Criminal Code* (Canada). Any provision of this Agreement that would oblige a Loan Party to pay any fine, penalty or rate of interest on any arrears of principal or interest secured by a mortgage on real property that has the effect of increasing the charge on arrears beyond the rate of interest payable on principal money not in arrears shall not apply to such Loan Party, which shall be required to pay interest on money in arrears at the same rate of interest payable on principal money not in arrears.

2.7 **Crediting Payments**. The receipt of any payment item by Agent shall not be considered a payment on account unless such payment item is a wire transfer of immediately available funds made to the Agent's Account or unless and until such payment item is honored when presented for payment. Should any payment item not be honored when presented for payment, then the applicable Borrower shall be deemed not to have made such payment and interest shall be calculated accordingly. Anything to the contrary contained herein notwithstanding, any payment item shall be deemed received by Agent only if it is received into the Agent's Account on a Business Day on or before 11:00 a.m. (California time). If any payment item is received into Agent's Account on a non-Business Day or after 11:00 a.m. (California time)

on a Business Day, it shall be deemed to have been received by Agent as of the opening of business on the immediately following Business Day.

2.8 **Designated Account**. Agent is authorized to make the Advances, and each Issuing Lender is authorized to issue the Letters of Credit, under this Agreement based upon telephonic or other instructions received from anyone purporting to be an Authorized Person or, without instructions, if pursuant to Section 2.3(d) after the occurrence and during the continuance of an Event of Default. Each Borrower agrees to establish and maintain its Designated Account with the applicable Designated Account Bank for the purpose of receiving the proceeds of the Advances requested by such Borrower and made by the Agent or the Lenders hereunder. Unless otherwise agreed by Agent and the applicable Borrower, any Advances, or Swing Loan requested by such Borrower and made by Agent or the Lenders hereunder shall be made to the applicable Designated Account.

2.9 **Maintenance of Loan Account; Statements of Obligations**.

(a) Agent shall maintain an account on its books in the name of Canadian Borrower (the "Canadian Loan Account") on which Canadian Borrower will be charged with all Canadian Advances (including Protective Advances that constitute Canadian Advance) made by Agent, the Swing Lender, or the Lenders to Canadian Borrower or for Canadian Borrower's account, the Canadian Letters of Credit issued or arranged by Canadian Issuing Lender for Canadian Borrower's account, and with all other payment Obligations of Canadian Borrower hereunder or under the other Loan Documents (except for Bank Product Obligations), including, accrued interest, fees and Lender Group Expenses. In accordance with Section 2.7, the Canadian Loan Account will be credited with all payments received by Agent from Canadian Borrower or for Canadian Borrower's account. Agent shall render statements regarding the Canadian Loan Account to Canadian Borrower, including principal, interest, fees, and expenses including an itemization of all charges and expenses owing, and such statements, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between Canadian Borrower and the Lender Group unless, within 30 days after receipt thereof by Canadian Borrower, Canadian Borrower shall deliver to the Agent written objection thereto describing the error or errors contained in any such statements.

(b) Agent shall maintain an account on its books in the name of U.S. Borrower (the "U.S. Loan Account") on which U.S. Borrower will be charged with all U.S. Advances (including Protective Advances that constitute U.S. Advances) made by Agent, the Swing Lender or the Lenders to U.S. Borrower or for U.S. Borrower's account, the U.S. Letters of Credit issued or arranged by U.S. Issuing Lender for U.S. Borrower's account, and with all other payment Obligations of U.S. Borrower hereunder or under the other Loan Documents (except for Bank Product Obligations), including, accrued interest, fees and Lender Group Expenses. In accordance with Section 2.7, the U.S. Loan Account will be credited with all payments received by Agent from U.S. Borrower or for U.S. Borrower's account. Agent shall render statements regarding the U.S. Loan Account to U.S. Borrower, including principal, interest, fees, and expenses including an itemization of all charges and expenses owing, and such statements, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between U.S. Borrower and the Lender Group unless, within 30 days after receipt thereof by U.S. Borrower, U.S. Borrower shall deliver to the Agent written objection thereto describing the error or errors contained in any such statements.

2.10 **Fees**.

(a) Each Borrower shall pay to Agent, as and when due and payable under the terms of the Fee Letter, the fees set forth in the Fee Letter.

(b) Canadian Borrower shall pay to Agent, for the ratable account of the Canadian Lenders, on the first Business Day of each fiscal quarter after the Closing Date up to the first Business Day of the fiscal quarter prior to the Payoff Date and on the Payoff Date, an unused line fee in Dollars in an amount equal to the Applicable Unused Line Fee Rate per annum times the result of (i) the Maximum Canadian Revolver Amount less (ii) the average U.S. Dollar Equivalent of the Daily Balance of the U.S. Dollar Equivalent of the Canadian Revolver Usage during the immediately preceding fiscal quarter (or portion thereof).

(c) U.S. Borrower shall pay to Agent, for the ratable account of the U.S. Lenders, on the first Business Day of each fiscal quarter after the Closing Date up to the first Business Day of the fiscal quarter prior to the Payoff Date and on the Payoff Date, an unused line fee in Dollars in an amount equal to the Applicable Unused Line Fee Rate per annum times the result of (i) the Maximum U.S. Revolver Amount less (ii) the average Daily Balance of the U.S. Revolver Usage during the immediately preceding fiscal quarter (or portion thereof).

2.11 **Letters of Credit**.

(a) **U.S. Letters of Credit**

(i) Subject to the terms and conditions of this Agreement, upon the request of U.S. Borrower made in accordance herewith, the U.S. Issuing Lender agrees to issue, or to cause a U.S. Underlying Issuer (including, as U.S. Issuing Lender's agent) to issue, a requested standby U.S. Letter of Credit or a sight commercial U.S. Letter of Credit for the account of U.S. Borrower. If U.S. Issuing Lender, at its option, elects to cause a U.S. Underlying Issuer to issue a requested U.S. Letter of Credit, then U.S. Issuing Lender agrees that it will enter into arrangements relative to the reimbursement of such U.S. Underlying Issuer (which may include, among, other means, by becoming an applicant with respect to such U.S. Letter of Credit or entering into undertakings which provide for reimbursements of such U.S. Underlying Issuer with respect to such U.S. Letter of Credit; each such obligation or undertaking, irrespective of whether in writing, a "U.S. Reimbursement Undertaking") with respect to U.S. Letters of Credit issued by such U.S. Underlying Issuer. By submitting a request to U.S. Issuing Lender for the issuance of a U.S. Letter of Credit, U.S. Borrower shall be deemed to have requested that U.S. Issuing Lender issue or that a U.S. Underlying Issuer issue the requested U.S. Letter of Credit and to have requested U.S. Issuing Lender to issue a U.S. Reimbursement Undertaking with respect to such requested U.S. Letter of Credit if it is to be issued by a U.S. Underlying Issuer (it being expressly acknowledged and agreed by U.S. Borrower that U.S. Borrower is and shall be deemed to be an applicant (within the meaning of Section 5-102(a)(2) of the Code) with respect to each U.S. Underlying Letter of Credit). Each request for the issuance of a U.S. Letter of Credit, or the amendment, renewal, or extension of any outstanding U.S. Letter of Credit, shall be made in writing by an Authorized Person and delivered to the U.S. Issuing Lender and Agent via hand delivery, telefacsimile, or other electronic method of transmission reasonably in advance of the requested date of issuance, amendment, renewal, or extension. Each such request shall be in form and substance reasonably satisfactory to the Agent and the U.S. Issuing Lender in its Permitted Discretion and shall specify (A) the amount of such U.S. Letter of Credit, (B) the date of issuance, amendment, renewal, or extension of such U.S. Letter of Credit, (C) the expiration date of such U.S. Letter of Credit, (D) the name and address of the beneficiary of the U.S. Letter of Credit, and (E) such other information (including the conditions of drawing and, in the case of an amendment, renewal, or extension, identification of the outstanding U.S. Letter of Credit to be so amended, renewed, or extended) as shall be reasonably necessary to prepare, amend, renew, or extend such U.S. Letter of Credit, and shall be accompanied by such Issuer Documents as Agent or U.S. Issuing Lender or a U.S. Underlying Issuer may request or require, to the extent that such requests or requirements are consistent with the Issuer Documents that U.S. Issuing Lender or U.S. Underlying Issuer, as applicable, generally requests for Letters of Credit in similar circumstances. U.S. Issuing Lender's and U.S. Underlying Issuer's records of the content of any

such request will be conclusive. Each U.S. Letter of Credit shall be denominated in Dollars. Anything contained herein to the contrary notwithstanding, the U.S. Issuing Lender may, but shall not be obligated to issue, or cause the issuance of a U.S. Letter of Credit or to issue a U.S. Reimbursement Undertaking in respect of a U.S. Underlying Letter of Credit, in either case, that supports the obligations of a Loan Party or its Subsidiaries in respect of (1) a lease of real property, or (2) an employment contract. The U.S. Issuing Lender shall have no obligation to issue a U.S. Letter of Credit or a U.S. Reimbursement Undertaking in respect of a U.S. Underlying Letter of Credit, in either case, if any of the following would result after giving effect to the requested issuance:

(1) the U.S. Letter of Credit Usage would exceed the U.S. Borrowing Base *less* the outstanding amount of U.S. Advances (inclusive of U.S. Swing Loans), or

(2) the U.S. Letter of Credit Usage would exceed the U.S. L/C Sublimit, or

(3) the U.S. Letter of Credit Usage would exceed the Maximum U.S. Revolver Amount less the outstanding amount of U.S. Advances (including U.S. Swing Loans).

(ii) U.S. Borrower and the Lender Group hereby acknowledge and agree that all Pre-Petition U.S. Letters of Credit shall constitute U.S. Letters of Credit under this Agreement on and after the Closing Date with the same effect as if such Pre-Petition U.S. Letters of Credit were issued by U.S. Issuing Lender or a U.S. Underlying Issuer under this Agreement at the request of U.S. Borrower on the Closing Date. Any U.S. Issuing Lender or U.S. Underlying Issuer (other than Wells Fargo or any of its Affiliates) shall notify Agent in writing no later than the Business Day prior to the Business Day on which such U.S. Issuing Lender or U.S. Underlying Issuer issues any U.S. Letter of Credit. In addition, each U.S. Issuing Lender and U.S. Underlying Issuer (other than Wells Fargo or any of its Affiliates) shall, on the first Business Day of each week, submit to Agent a report detailing the daily undrawn amount of each U.S. Letter of Credit issued by such U.S. Issuing Lender and U.S. Underlying Issuer during the prior calendar week. Each U.S. Letter of Credit shall be in form and substance reasonably acceptable to the U.S. Issuing Lender, including the requirement that the amounts payable thereunder must be payable in Dollars. If U.S. Issuing Lender makes a payment under a U.S. Letter of Credit or a U.S. Underlying Issuer makes a payment under a U.S. Underlying Letter of Credit, U.S. Borrower shall pay to Agent an amount equal to such U.S. Letter of Credit Disbursement, not later than 11:00 a.m. (California time), on the date that such U.S. Letter of Credit Disbursement is made, if U.S. Borrower shall have received written or telephonic notice of such Letter of Credit Disbursement prior to 10:00 a.m., California time, on such date, or, if such notice has not been received by U.S. Borrower prior to such time on such date, then not later than 11:00 a.m., California time, on the date of receipt, and, in the absence of such payment, the amount of the Letter of Credit Disbursement immediately and automatically shall be deemed to be a U.S. Advance hereunder (notwithstanding any failure to satisfy any condition precedent set forth in Section 3) and, initially, shall bear interest at the rate then applicable to U.S. Advances that are Base Rate Loans. If a U.S. Letter of Credit Disbursement is deemed to be a U.S. Advance hereunder, U.S. Borrower's obligation to pay the amount of such Letter of Credit Disbursement to U.S. Issuing Lender shall be automatically converted into an obligation to pay the resulting U.S. Advance. Promptly following receipt by Agent of any payment from U.S. Borrower pursuant to this paragraph, Agent shall distribute such payment to the U.S. Issuing Lender or, to the extent that U.S. Lenders have made payments pursuant to this Section 2.11(a)(ii) to reimburse the U.S. Issuing Lender, then to such U.S. Lenders and the U.S. Issuing Lender as their interests may appear.

(iii) Each standby U.S. Letter of Credit (and corresponding U.S. Underlying Letter of Credit) shall have an expiry date no later than the date that is twelve months after the issuance or renewal of such U.S. Letter of Credit; provided, that any standby U.S. Letter of Credit may provide for the

automatic extension thereof for any number of additional periods each of up to one year in duration; provided further, that with respect to any U.S. Letter of Credit which extends beyond the Maturity Date, Letter of Credit Collateralization shall be provided therefor on or before the date that is five Business Days prior to the Maturity Date. Each commercial U.S. Letter of Credit shall expire on the earlier of (i) 120 days after the date of the issuance of such commercial U.S. Letter of Credit and (ii) five Business Days prior to the Maturity Date.

(iv) Promptly following receipt of a notice of a Letter of Credit Disbursement pursuant to Section 2.11(a)(i), each U.S. Lender with a U.S. Revolver Commitment agrees to fund its Pro Rata Share of any U.S. Advance deemed made pursuant to the foregoing subsection on the same terms and conditions as if U.S. Borrower had requested the amount thereof as a U.S. Advance and Agent shall promptly pay to U.S. Issuing Lender the amounts so received by it from the U.S. Lenders. By the issuance of a U.S. Letter of Credit or a U.S. Reimbursement Undertaking (or an amendment, renewal or extension of a U.S. Letter of Credit or a U.S. Reimbursement Undertaking increasing the amount thereof) and without any further action on the part of the U.S. Issuing Lender or the U.S. Lenders with U.S. Revolver Commitments, the U.S. Issuing Lender shall be deemed to have granted to each U.S. Lender with a U.S. Revolver Commitment, and each U.S. Lender with a U.S. Revolver Commitment shall be deemed to have purchased, a participation in each U.S. Letter of Credit issued by U.S. Issuing Lender and each U.S. Reimbursement Undertaking, in an amount equal to its Pro Rata Share of such U.S. Letter of Credit or a U.S. Reimbursement Undertaking, and each such U.S. Lender agrees to pay to Agent, for the account of the U.S. Issuing Lender, such U.S. Lender's Pro Rata Share of any Letter of Credit Disbursement made by the U.S. Issuing Lender or a U.S. Underlying Issuer under such U.S. Letter of Credit. In consideration and in furtherance of the foregoing, each U.S. Lender with a U.S. Revolver Commitment hereby absolutely and unconditionally agrees to pay to Agent, for the account of the U.S. Issuing Lender, such U.S. Lender's Pro Rata Share of each U.S. Letter of Credit Disbursement made by the U.S. Issuing Lender or U.S. Underlying Issuer and not reimbursed by U.S. Borrower (each such amount so paid until reimbursed, a "U.S. Unpaid Drawing" and together with the Canadian Unpaid Drawings, "Unpaid Drawings") on the date due as provided in Section 2.11(a)(i), or of any reimbursement payment required to be refunded to U.S. Borrower for any reason. Each U.S. Lender with a U.S. Revolver Commitment acknowledges and agrees that its obligation to deliver to Agent, for the account of the U.S. Issuing Lender, an amount equal to its respective Pro Rata Share of each Letter of Credit Disbursement pursuant to this Section 2.11(a)(iv) shall be absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuation of an Event of Default or Default or the failure to satisfy any condition set forth in Section 3. If any such U.S. Lender fails to make available to Agent the amount of such Lender's Pro Rata Share of a U.S. Letter of Credit Disbursement as provided in this Section, such U.S. Lender shall be deemed to be a Defaulting Lender and Agent (for the account of the U.S. Issuing Lender) shall be entitled to recover such amount on demand from such U.S. Lender together with interest thereon at the Defaulting Lender Rate until paid in full.

(v) U.S. Borrower hereby agrees that each U.S. Underlying Issuer shall be entitled to the benefits of Section 10.3. U.S. Borrower agrees to be bound by the U.S. Underlying Issuer's regulations and interpretations of any U.S. Letter of Credit or by U.S. Issuing Lender's interpretations of any U.S. Reimbursement Undertaking even though this interpretation may be different from U.S. Borrower's own, and U.S. Borrower understands and agrees that none of the U.S. Issuing Lender, the Lender Group, or any U.S. Underlying Issuer shall be liable for any error, negligence, or mistake, whether of omission or commission, in following U.S. Borrower's instructions or those contained in the U.S. Letter of Credit or any modifications, amendments, or supplements thereto. U.S. Borrower understands that the U.S. Reimbursement Undertakings may require U.S. Issuing Lender to indemnify the U.S. Underlying Issuer for certain costs or liabilities arising out of claims by U.S. Borrower against such U.S. Underlying Issuer, except to the extent that a court of competent jurisdiction in a final and non-appealable decision determines that such error, negligence or mistake resulted from the gross negligence or willful misconduct

of any U.S. Issuing Lender, any other member of the Lender Group or any U.S. Underlying Issuer. U.S. Borrower hereby acknowledges and agrees that none of the U.S. Issuing Lender, any other member of the Lender Group, or any U.S. Underlying Issuer shall be responsible for delays, errors, or omissions resulting from the malfunction of equipment in connection with any U.S. Letter of Credit, except to the extent that a court of competent jurisdiction in a final and non-appealable decision determines that such error, delay, negligence or mistake resulted from the gross negligence or willful misconduct of any U.S. Issuing Lender, any other member of the Lender Group or any U.S. Underlying Issuer.

(vi) U.S. Borrower hereby authorizes and directs any U.S. Underlying Issuer to deliver to the U.S. Issuing Lender all instruments, documents, and other writings and property received by such U.S. Underlying Issuer pursuant to such U.S. Underlying Letter of Credit and to accept and rely upon the U.S. Issuing Lender's instructions with respect to all matters arising in connection with such U.S. Underlying Letter of Credit and the related application.

(vii) U.S. Borrower agrees to pay immediately upon demand to the U.S. Issuing Lender a fee in respect of each U.S. Letter of Credit issued hereunder by such U.S. Issuing Lender, for the period from and including the date of issuance of such Letter of Credit to but excluding the termination or expiration date of such Letter of Credit, computed at the rate for each day equal to 0.125% per annum or such other amount as is agreed in a separate writing between the applicable U.S. Issuing Lender and U.S. Borrower on the average Daily Balance of U.S. Letter of Credit Exposure attributable to Letters of Credit issued by it (excluding any portion attributable to Unpaid Drawings) during the immediately preceding month (or portion thereof). Such fee shall be due and payable on the first Business Day of each month and on the Payoff Date. In addition, U.S. Borrower agrees to pay directly to the applicable U.S. Issuing Lender as Lender Group Expenses upon each issuance of, drawing under and/or amendment, renewal or extension of a U.S. Letter of Credit issued by it such amount as such U.S. Issuing Lender and U.S. Borrower shall have agreed upon for issuances of, drawings under or amendments of, renewals or extensions of, Letters of Credit issued by it.

(viii) If by reason of (A) any change after the Closing Date in any Applicable Law, or any change in the interpretation or application thereof by any Governmental Authority, or (B) compliance by the U.S. Issuing Lender, any Lender, or U.S. Underlying Issuer with any direction, request, or requirement (irrespective of whether having the force of law) of any Governmental Authority or monetary authority including, Regulation D of the Board made after the Closing Date:

(1) any reserve, deposit, or similar requirement (other than reserves, deposits, or similar requirements of a *de minimis* nature) is or shall be imposed or modified in respect of any U.S. Letter of Credit issued or caused to be issued hereunder or hereby, or

(2) there shall be imposed on the U.S. Issuing Lender, any Lender, or U.S. Underlying Issuer any other condition regarding any U.S. Letter of Credit or U.S. Reimbursement Undertaking,

and the result of the foregoing is to increase, directly or indirectly, the cost to the U.S. Issuing Lender, any Lender, or a U.S. Underlying Issuer of issuing, making, guaranteeing, or maintaining any U.S. Reimbursement Undertaking or U.S. Letter of Credit or to reduce the amount receivable in respect thereof (other than any such increase or reduction attributable to taxes which is indemnified under Section 16), then, and in any such case, Agent may, at any time within a reasonable period after the additional cost is incurred or the amount received is reduced, notify in writing U.S. Borrower, and U.S. Borrower shall pay within 30 days after demand therefor, such amounts as Agent may specify to be necessary to compensate the U.S. Issuing Lender, any Lender, or a U.S. Underlying Issuer for such additional cost or reduced receipt, together with interest on such amount from the date of such demand until payment in full thereof at the rate

then applicable to Base Rate Loans hereunder; provided, however, that U.S. Borrower shall not be required to provide any compensation pursuant to this Section for any such amounts incurred more than 180 days prior to the date on which the demand for payment of such amounts is first made to U.S. Borrower; provided further that if an event or circumstance giving rise to such amounts is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof. The determination by Agent of any amount due pursuant to this Section, as set forth in a certificate setting forth the basis for the determination of such reimbursement and calculation thereof in reasonable detail, shall, in the absence of manifest or demonstrable error, be final and conclusive and binding on all of the parties hereto.

(ix) U.S. Borrower is responsible for the final text of the U.S. Letters of Credit as issued by a U.S. Issuing Lender or a U.S. Underlying Issuer, irrespective of any assistance any U.S. Issuing Lender or any U.S. Underlying Issuer may provide such as drafting or recommending text or by such U.S. Issuing Lender's or such U.S. Underlying Issuer's use or refusal to use text submitted by U.S. Borrower. U.S. Borrower understands that the final form of any U.S. Letter of Credit may be subject to such revisions and changes as are deemed necessary or appropriate by a U.S. Issuing Lender or a U.S. Underlying Issuer, and U.S. Borrower hereby consents to such revisions and changes not materially different from the application executed in connection therewith. U.S. Borrower is solely responsible for the suitability of the U.S. Letter of Credit for U.S. Borrower's purposes. If U.S. Borrower requests U.S. Issuing Lender or a U.S. Underlying Issuer to issue a U.S. Letter of Credit for an affiliated or unaffiliated third party (a "U.S. Account Party"), (i) such U.S. Account Party shall have no rights against any U.S. Issuing Lender or any U.S. Underlying Issuer; (ii) U.S. Borrower shall be responsible for the application and obligations under this Agreement; and (iii) communications (including notices) related to the respective U.S. Letter of Credit shall be among U.S. Issuing Lender, the U.S. Underlying Issuer and U.S. Borrower. U.S. Borrower will examine the copy of the U.S. Letter of Credit and any other documents sent by a U.S. Issuing Lender or a U.S. Underlying Issuer in connection therewith and shall promptly notify U.S. Issuing Lender (not later than three (3) Business Days following U.S. Borrower's receipt of documents from a U.S. Issuing Lender or a U.S. Underlying Issuer) of any non-compliance with U.S. Borrower's instructions and of any discrepancy in any document under any presentment or other irregularity. U.S. Borrower understands and agrees that any U.S. Issuing Lender and any U.S. Underlying Issuer is not required to extend the expiration date of any U.S. Letter of Credit for any reason. With respect to any U.S. Letter of Credit containing an "automatic amendment" to extend the expiration date of such U.S. Letter of Credit, U.S. Issuing Lender or U.S. Underlying Issuer, in its sole and absolute discretion, may give notice of nonrenewal of such U.S. Letter of Credit and, if U.S. Borrower does not at any time want the then current expiration date of such U.S. Letter of Credit to be extended, U.S. Borrower will so notify Agent and U.S. Issuing Lender and U.S. Underlying Issuer at least 30 calendar days before U.S. Issuing Lender or the U.S. Underlying Issuer is required to notify the beneficiary of such U.S. Letter of Credit or any advising bank of such non-extension pursuant to the terms of such U.S. Letter of Credit.

(x) Borrowers' reimbursement and payment obligations under this Section 2.11(a) are absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever; provided, that subject to Section 2.11(a)(iv) above, the foregoing shall not release any U.S. Issuing Lender or any U.S. Underlying Issuer from such liability to U.S. Borrower as may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction against a U.S. Issuing Lender or a U.S. Underlying Issuer following reimbursement or payment of the obligations and liabilities, including reimbursement and other payment obligations, of Borrowers to a U.S. Issuing Lender or a U.S. Underlying Issuer arising under, or in connection with, this Section 2.11(a) or any U.S. Letter of Credit.

(xi) Without limiting any other provision of this Agreement, U.S. Issuing Lender, U.S. Underlying Issuer and each other Letter of Credit Related Person (if applicable) shall not be responsible to Borrowers for, and U.S. Issuing Lender's and U.S. Underlying Issuer's rights and remedies

against U.S. Borrower and the obligation of Borrowers to reimburse such U.S. Issuing Lender or such U.S. Underlying Issuer for each drawing under each U.S. Letter of Credit shall not be impaired by:

(1) honor of a presentation under any U.S. Letter of Credit that on its face substantially complies with the terms and conditions of such U.S. Letter of Credit, even if the U.S. Letter of Credit requires strict compliance by the beneficiary;

(2) honor of a presentation of any Drawing Document that appears on its face to have been signed, presented or issued (A) by any purported successor or transferee of any beneficiary or other Person required to sign, present or issue such Drawing Document or (B) under a new name of the beneficiary;

(3) acceptance as a draft of any written or electronic demand or request for payment under a U.S. Letter of Credit, even if nonnegotiable or not in the form of a draft or notwithstanding any requirement that such draft, demand or request bear any or adequate reference to the U.S. Letter of Credit;

(4) the identity or authority of any presenter or signer of any Drawing Document or the form, accuracy, genuineness or legal effect of any Drawing Document (other than U.S. Issuing Lender's or Underlying Issuer's determination that such Drawing Document appears on its face substantially to comply with the terms and conditions of the U.S. Letter of Credit);

(5) acting upon any instruction or request relative to a U.S. Letter of Credit or requested U.S. Letter of Credit that U.S. Issuing Lender or a U.S. Underlying Issuer in good faith believes to have been given by a Person authorized to give such instruction or request;

(6) any errors, omissions, interruptions or delays in transmission or delivery of any message, advice or document (regardless of how sent or transmitted) or for errors in interpretation of technical terms or in translation or any delay in giving or failing to give notice to U.S. Borrower;

(7) any acts, omissions or fraud by, or the insolvency of, any beneficiary, any nominated person or entity or any other Person or any breach of contract between any beneficiary and U.S. Borrower or any of the parties to the underlying transaction to which the U.S. Letter of Credit relates;

(8) assertion or waiver of any provision of the ISP or UCP that primarily benefits an issuer of a letter of credit, including any requirement that any Drawing Document be presented to it at a particular hour or place;

(9) payment to any presenting bank (designated or permitted by the terms of the applicable U.S. Letter of Credit) claiming that it rightfully honored or is entitled to reimbursement or indemnity under Standard Letter of Credit Practice applicable to it;

(10) acting or failing to act as required or permitted under Standard Letter of Credit Practice applicable to where U.S. Issuing Lender or U.S. Underlying Issuer has issued, confirmed, advised or negotiated such U.S. Letter of Credit, as the case may be;

(11) honor of a presentation after the expiration date of any U.S. Letter of Credit notwithstanding that a presentation was made prior to such expiration date and dishonored by

U.S. Issuing Lender or U.S. Underlying Issuer if subsequently U.S. Issuing Lender, U.S. Underlying Issuer or any court or other finder of fact determines such presentation should have been honored;

(12) dishonor of any presentation that does not strictly comply or that is fraudulent, forged or otherwise not entitled to honor; or

(13) honor of a presentation that is subsequently determined by U.S. Issuing Lender or U.S. Underlying Issuer to have been made in violation of international, federal, state or local restrictions on the transaction of business with certain prohibited Persons.

(xii) If (i) any Event of Default shall occur and be continuing, or (ii) Availability shall at any time be less than zero, then on the Business Day following the date when the Borrowers receives notice from Agent or the Required Lenders (or, if the maturity of the Obligations has been accelerated, Revolving Lenders with U.S. Letter of Credit Exposure representing greater than 50% of the total U.S. Letter Credit Exposure) demanding Letter of Credit Collateralization pursuant to this Section 2.11(a) upon such demand, Borrowers shall provide Letter of Credit Collateralization with respect to the then existing U.S. Letter of Credit Usage. If Borrowers fail to provide Letter of Credit Collateralization as required by this Section 2.11(a), the U.S. Lenders may (and, upon direction of Agent, shall) advance, as a U.S. Advance, the amount of the cash collateral required pursuant to the Letter of Credit Collateralization provision so that the then existing U.S. Letter of Credit Usage is cash collateralized in accordance with the Letter of Credit Collateralization provision, whether or not the U.S. Revolver Commitments have terminated, an Overadvance exists or the conditions in Section 3 are satisfied.

(xiii) Unless otherwise expressly agreed by U.S. Issuing Lender, U.S. Underlying Issuer and U.S. Borrower when a U.S. Letter of Credit is issued (including any such agreement applicable to Pre-Petition Letters of Credit), (i) the rules of the ISP shall apply to each standby U.S. Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial U.S. Letter of Credit.

(xiv) U.S. Issuing Lender and U.S. Underlying Issuer shall be deemed to have acted with due diligence and reasonable care if U.S. Issuing Lender's or U.S. Underlying Issuer's conduct is in accordance with Standard Letter of Credit Practice or in accordance with this Agreement

(xv) At U.S. Borrower's costs and expense, U.S. Borrower shall execute and deliver to U.S. Issuing Lender and U.S. Underlying Issuer such additional certificates, instruments and/or documents and take such additional action as may be reasonably requested by U.S. Issuing Lender or U.S. Underlying Issuer to enable U.S. Issuing Lender or U.S. Underlying Issuer to issue any U.S. Letter of Credit pursuant to this Agreement and related Issuer Document, to protect, exercise and/or enforce U.S. Issuing Lenders' or U.S. Underlying Issuer's rights and interests under this Agreement or to give effect to the terms and provisions of this Agreement or any Issuer Document. U.S. Borrower irrevocably appoints U.S. Issuing Lender and U.S. Underlying Issuer as its attorney-in-fact and authorizes U.S. Issuing Lender and U.S. Underlying Issuer, without notice to any Borrower, to execute and deliver ancillary documents and letters customary in the letter of credit business that may include but are not limited to advisements, indemnities, checks, bills of exchange and issuance documents. The power of attorney granted by U.S. Borrower is limited solely to such actions related to the issuance, confirmation or amendment of any U.S. Letter of Credit and to ancillary documents or letters customary in the letter of credit business. This appointment is coupled with an interest.

(xvi) U.S. Borrower agrees to indemnify, defend and hold harmless each member of the Lender Group (including U.S. Issuing Lender, U.S. Underlying Issuer and their respective branches, Affiliates, and correspondents) and each such Person's respective directors, officers, employees, attorneys and agents (each, including U.S. Issuing Lender and U.S. Underlying Issuer, a "Letter of Credit

Related Person") (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), which may be incurred by or awarded against any Letter of Credit Related Person (other than Taxes, which shall be governed by Section 16) (the "Letter of Credit Indemnified Costs"), and which arise out of or in connection with, or as a result of this Agreement, any Letter of Credit, any Issuer Document, or any Drawing Document referred to in or related to any Letter of Credit, or any action or proceeding arising out of any of the foregoing (whether administrative, judicial or in connection with arbitration); in each case, including that resulting from the Letter of Credit Related Person's own negligence; provided, that such indemnity shall not be available to any Letter of Credit Related Person claiming indemnification to the extent that such Letter of Credit Indemnified Costs may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted directly from the gross negligence or willful misconduct of the Letter of Credit Related Person claiming indemnity. This indemnification provision shall survive termination of this Agreement and all Letters of Credit. The liability of U.S. Issuing Lender or U.S. Underlying Issuer (or any other Letter of Credit Related Person) under, in connection with or arising out of any U.S. Letter of Credit (or pre-advice), regardless of the form or legal grounds of the action or proceeding, shall be limited to direct damages suffered by U.S. Borrower that are caused directly by U.S. Issuing Lender's or U.S. Underlying Issuer's gross negligence or willful misconduct in (i) honoring a presentation under a U.S. Letter of Credit that on its face does not at least substantially comply with the terms and conditions of such U.S. Letter of Credit, (ii) failing to honor a presentation under a U.S. Letter of Credit that strictly complies with the terms and conditions of such U.S. Letter of Credit, or (iii) retaining Drawing Documents presented under a U.S. Letter of Credit. U.S. Borrowers' aggregate remedies against U.S. Issuing Lender and any other Letter of Credit Related Person for wrongfully honoring a presentation under any U.S. Letter of Credit or wrongfully retaining honored Drawing Documents shall in no event exceed the aggregate amount paid by U.S. Borrower to U.S. Issuing Lender in respect of the honored presentation in connection with such U.S. Letter of Credit under Sections 2.11(a)(ii), *plus* interest at the rate then applicable to Base Rate Loans hereunder. U.S. Borrower shall take action to avoid and mitigate the amount of any damages claimed against U.S. Issuing Lender, U.S. Underlying Issuer or any other Letter of Credit Related Person, including by enforcing its rights against the beneficiaries of the U.S. Letters of Credit. Any claim by U.S. Borrower under or in connection with U.S. Letter of Credit shall be reduced by an amount equal to the sum of (x) the amount (if any) saved by U.S. Borrowers as a result of the breach or alleged wrongful conduct complained of, and (y) the amount (if any) of the loss that would have been avoided had U.S. Borrower taken all reasonable steps to mitigate any loss, and in case of a claim of wrongful dishonor, by specifically and timely authorizing U.S. Issuing Lender or U.S. Underlying Issuer to effect a cure.

(xvii) In the event of a direct conflict between the provisions of this Section 2.11(a) and any provision contained in any Issuer Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.11(a) shall control and govern.

(xviii) The provisions of this Section 2.11 shall survive the termination of this Agreement and the repayment in full of the Obligations with respect to any U.S. Letters of Credit that remain outstanding.

(b) **Canadian Letters of Credit**

(i) Subject to the terms and conditions of this Agreement, upon the request of Canadian Borrower made in accordance herewith, the Canadian Issuing Lender agrees to issue, or to cause

a Canadian Underlying Issuer (including, as Canadian Issuing Lender's agent) to issue, a requested standby Canadian Letter of Credit or a sight commercial Canadian Letter of Credit for the account of Canadian Borrower. If Canadian Issuing Lender, at its option, elects to cause a Canadian Underlying Issuer to issue a requested Canadian Letter of Credit, then Canadian Issuing Lender agrees that it will enter into arrangements relative to the reimbursement of such Canadian Underlying Issuer (which may include, among, other means, by becoming an applicant with respect to such Canadian Letter of Credit or entering into undertakings which provide for reimbursements of such Canadian Underlying Issuer with respect to such Canadian Letter of Credit; each such obligation or undertaking, irrespective of whether in writing, a "Canadian Reimbursement Undertaking") with respect to Canadian Letters of Credit issued by such Canadian Underlying Issuer. By submitting a request to Canadian Issuing Lender for the issuance of a Canadian Letter of Credit, Canadian Borrower shall be deemed to have requested that Canadian Issuing Lender issue or that a Canadian Underlying Issuer issue the requested Canadian Letter of Credit and to have requested Canadian Issuing Lender to issue a Canadian Reimbursement Undertaking with respect to such requested Canadian Letter of Credit if it is to be issued by a Canadian Underlying Issuer (it being expressly acknowledged and agreed by Canadian Borrower that Canadian Borrower is and shall be deemed to be an applicant (within the meaning of Section 5-102(a)(2) of the Code) with respect to each Canadian Underlying Letter of Credit). Each request for the issuance of a Canadian Letter of Credit, or the amendment, renewal, or extension of any outstanding Canadian Letter of Credit, shall be made in writing by an Authorized Person and delivered to the Canadian Issuing Lender and Agent via hand delivery, telefacsimile, or other electronic method of transmission reasonably in advance of the requested date of issuance, amendment, renewal, or extension. Each such request shall be in form and substance reasonably satisfactory to the Agent and the Canadian Issuing Lender in its Permitted Discretion and shall specify (A) the amount of such Canadian Letter of Credit, (B) the date of issuance, amendment, renewal, or extension of such Canadian Letter of Credit, (C) the expiration date of such Canadian Letter of Credit, (D) the name and address of the beneficiary of the Canadian Letter of Credit, and (E) such other information (including the conditions of drawing and, in the case of an amendment, renewal, or extension, identification of the outstanding Canadian Letter of Credit to be so amended, renewed, or extended) as shall be reasonably necessary to prepare, amend, renew, or extend such Canadian Letter of Credit, and shall be accompanied by such Issuer Documents as Agent or Canadian Issuing Lender or a Canadian Underlying Issuer may request or require, to the extent that such requests or requirements are consistent with the Issuer Documents that Canadian Issuing Lender or Canadian Underlying Issuer, as applicable, generally requests for Canadian Letters of Credit in similar circumstances. Canadian Issuing Lender's and Canadian Underlying Issuer's records of the content of any such request will be conclusive. Each Canadian Letter of Credit shall be denominated in U.S. Dollars. Anything contained herein to the contrary notwithstanding, the Canadian Issuing Lender may, but shall not be obligated to issue, or cause the issuance of a Canadian Letter of Credit or to issue a Canadian Reimbursement Undertaking in respect of a Canadian Underlying Letter of Credit, in either case, that supports the obligations of a Loan Party or its Subsidiaries in respect of (1) a lease of real property, or (2) an employment contract. The Canadian Issuing Lender shall have no obligation to issue a Canadian Letter of Credit or a Canadian Reimbursement Undertaking in respect of a Canadian Underlying Letter of Credit, in either case, if any of the following would result after giving effect to the requested issuance:

(1) the Canadian Letter of Credit Usage would exceed the U.S. Dollar Equivalent of the Canadian Borrowing Base *less* the outstanding amount of Canadian Advances (inclusive of Canadian Swing Loans), or

(2) the Canadian Letter of Credit Usage would exceed the Canadian L/C Sublimit, or

(3) the Canadian Letter of Credit Usage would exceed the Maximum Canadian Revolver Amount less the outstanding amount of Canadian Advances (including Canadian Swing Loans).

(ii) Canadian Borrower and the Lender Group hereby acknowledge and agree that all Pre-Petition Canadian Letters of Credit shall constitute Canadian Letters of Credit under this Agreement on and after the Closing Date with the same effect as if such Pre-Petition Canadian Letters of Credit were issued by Canadian Issuing Lender or a Canadian Underlying Issuer under this Agreement at the request of Canadian Borrower on the Closing Date. Any Canadian Issuing Lender or Canadian Underlying Issuer (other than The Toronto Dominion Bank, Wells Fargo or any of their Affiliates) shall notify Agent in writing no later than the Business Day prior to the Business Day on which such Canadian Issuing Lender or Canadian Underlying Issuer issues any Canadian Letter of Credit. In addition, each Canadian Issuing Lender and Canadian Underlying Issuer (other than The Toronto Dominion Bank, Wells Fargo or any of their Affiliates) shall, on the first Business Day of each week, submit to Agent a report detailing the daily undrawn amount of each Canadian Letter of Credit issued by such Canadian Issuing Lender and Canadian Underlying Issuer during the prior calendar week. Each Canadian Letter of Credit shall be in form and substance reasonably acceptable to the Canadian Issuing Lender, including the requirement that the amounts payable thereunder must be payable in either Canadian Dollars or U.S. Dollars. If Canadian Issuing Lender makes a payment under a Canadian Letter of Credit or a Canadian Underlying Issuer makes a payment under a Canadian Underlying Letter of Credit, Canadian Borrower shall pay to Agent an amount equal to such Canadian Letter of Credit Disbursement, not later than 11:00 a.m. (California time), on the date that such Canadian Letter of Credit Disbursement is made, if Canadian Borrower shall have received written or telephonic notice of such Letter of Credit Disbursement prior to 10:00 a.m., California time, on such date, or, if such notice has not been received by Canadian Borrower prior to such time on such date, then not later than 11:00 a.m., California time, on the Business Day that Canadian Borrower receives such notice, if such notice is received prior to 10:00 a.m., California time, on the date of receipt, and, in the absence of such payment, the amount of the Letter of Credit Disbursement immediately and automatically shall be deemed to be a Canadian Advance hereunder (notwithstanding any failure to satisfy any condition precedent set forth in Section 3) and, initially, shall bear interest at the rate then applicable to Canadian Advances that are Base Rate Loans. If a Canadian Letter of Credit Disbursement is deemed to be a Canadian Advance hereunder, Canadian Borrower's obligation to pay the amount of such Letter of Credit Disbursement to Canadian Issuing Lender shall be automatically converted into an obligation to pay the resulting Canadian Advance. Promptly following receipt by Agent of any payment from Canadian Borrower pursuant to this paragraph, Agent shall distribute such payment to the Canadian Issuing Lender or, to the extent that Canadian Lenders have made payments pursuant to this Section 2.11(b)(ii) to reimburse the Canadian Issuing Lender, then to such Canadian Lenders and the Canadian Issuing Lender as their interests may appear.

(iii) Each standby Canadian Letter of Credit (and corresponding Canadian Underlying Letter of Credit) shall have an expiry date no later than the date that is twelve months after the issuance or renewal of such Canadian Letter of Credit; provided, that any standby Canadian Letter of Credit may provide for the automatic extension thereof for any number of additional periods each of up to one year in duration; provided further, that with respect to any Canadian Letter of Credit which extends beyond the Maturity Date, Letter of Credit Collateralization shall be provided therefor on or before the date that is five Business Days prior to the Maturity Date. Each commercial Canadian Letter of Credit shall expire on the earlier of (i) 120 days after the date of the issuance of such commercial Canadian Letter of Credit and (ii) five Business Days prior to the Maturity Date.

(iv) Promptly following receipt of a notice of a Letter of Credit Disbursement pursuant to Section 2.11(b)(i), each Canadian Lender with a Canadian Revolver Commitment agrees to fund its Pro Rata Share of any Canadian Advance deemed made pursuant to the foregoing subsection on

the same terms and conditions as if Canadian Borrower had requested the amount thereof as a Canadian Advance and Agent shall promptly pay to Canadian Issuing Lender the amounts so received by it from the Canadian Lenders. By the issuance of a Canadian Letter of Credit or a Canadian Reimbursement Undertaking (or an amendment, renewal or extension of a Canadian Letter of Credit or a Canadian Reimbursement Undertaking increasing the amount thereof) and without any further action on the part of the Canadian Issuing Lender or the Canadian Lenders with Canadian Revolver Commitments, the Canadian Issuing Lender shall be deemed to have granted to each Canadian Lender with a Canadian Revolver Commitment, and each Canadian Lender with a Canadian Revolver Commitment shall be deemed to have purchased, a participation in each Canadian Letter of Credit issued by Canadian Issuing Lender and each Canadian Reimbursement Undertaking, in an amount equal to its Pro Rata Share of such Canadian Letter of Credit or a Canadian Reimbursement Undertaking, and each such Canadian Lender agrees to pay to Agent, for the account of the Canadian Issuing Lender, such Canadian Lender's Pro Rata Share of any Letter of Credit Disbursement made by the Canadian Issuing Lender or a Canadian Underlying Issuer under such Canadian Letter of Credit. In consideration and in furtherance of the foregoing, each Canadian Lender with a Canadian Revolver Commitment hereby absolutely and unconditionally agrees to pay to Agent, for the account of the Canadian Issuing Lender, such Canadian Lender's Pro Rata Share of each Canadian Letter of Credit Disbursement made by the Canadian Issuing Lender or Canadian Underlying Issuer and not reimbursed by Canadian Borrower (each such amount so paid until reimbursed, a "Canadian Unpaid Drawing") on the date due as provided in Section 2.11(b)(i), or of any reimbursement payment required to be refunded to Canadian Borrower for any reason. Each Canadian Lender with a Canadian Revolver Commitment acknowledges and agrees that its obligation to deliver to Agent, for the account of the Canadian Issuing Lender, an amount equal to its respective Pro Rata Share of each Letter of Credit Disbursement pursuant to this Section 2.11(b)(iv) shall be absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuation of an Event of Default or Default or the failure to satisfy any condition set forth in Section 3. If any such Canadian Lender fails to make available to Agent the amount of such Lender's Pro Rata Share of a Canadian Letter of Credit Disbursement as provided in this Section, such Canadian Lender shall be deemed to be a Defaulting Lender and Agent (for the account of the Canadian Issuing Lender) shall be entitled to recover such amount on demand from such Canadian Lender together with interest thereon at the Defaulting Lender Rate until paid in full.

(v) Canadian Borrower hereby agrees that each Canadian Underlying Issuer shall be entitled to the benefits of Section 10.3. Canadian Borrower agrees to be bound by the Canadian Underlying Issuer's regulations and interpretations of any Canadian Letter of Credit or by Canadian Issuing Lender's interpretations of any Canadian Reimbursement Undertaking even though this interpretation may be different from Canadian Borrower's own, and Canadian Borrower understands and agrees that none of the Canadian Issuing Lender, the Lender Group, or any Canadian Underlying Issuer shall be liable for any error, negligence, or mistake, whether of omission or commission, in following Canadian Borrower's instructions or those contained in the Canadian Letter of Credit or any modifications, amendments, or supplements thereto. Canadian Borrower understands that the Canadian Reimbursement Undertakings may require Canadian Issuing Lender to indemnify the Canadian Underlying Issuer for certain costs or liabilities arising out of claims by Canadian Borrower against such Canadian Underlying Issuer, except to the extent that a court of competent jurisdiction in a final and non-appealable decision determines that such error, negligence or mistake resulted from the gross negligence or willful misconduct of any U.S. Issuing Lender, any other member of the Lender Group, or any U.S. Underlying Issuer. Canadian Borrower hereby acknowledges and agrees that none of the Canadian Issuing Lender, any other member of the Lender Group, or any Canadian Underlying Issuer shall be responsible for delays, errors, or omissions resulting from the malfunction of equipment in connection with any Canadian Letter of Credit, except to the extent that a court of competent jurisdiction in a final and non-appealable decision determines that such error, delay, negligence or mistake resulted from the gross negligence or willful misconduct of any Canadian Issuing Lender, any other member of the Lender Group, or any Canadian Underlying Issuer.

(vi) Canadian Borrower hereby authorizes and directs any Canadian Underlying Issuer to deliver to the Canadian Issuing Lender all instruments, documents, and other writings and property received by such Canadian Underlying Issuer pursuant to such Canadian Underlying Letter of Credit and to accept and rely upon the Canadian Issuing Lender's instructions with respect to all matters arising in connection with such Canadian Underlying Letter of Credit and the related application.

(vii) Canadian Borrower agrees to pay immediately upon demand to the Canadian Issuing Lender a fee in respect of each Canadian Letter of Credit issued hereunder by such Canadian Issuing Lender, for the period from and including the date of issuance of such Letter of Credit to but excluding the termination or expiration date of such Letter of Credit, computed at the rate for each day equal to 0.125% per annum or such other amount as is agreed in a separate writing between the applicable Canadian Issuing Lender and Canadian Borrower on the average Daily Balance of Canadian Letter of Credit Exposure attributable to Letters of Credit issued by it (excluding any portion attributable to Unpaid Drawings) during the immediately preceding month (or portion thereof). Such fee shall be due and payable on the first Business Day of each month and on the Payoff Date. In addition, Canadian Borrower agrees to pay directly to the applicable Canadian Issuing Lender as Lender Group Expenses upon each issuance of, drawing under and/or amendment, renewal or extension of a Canadian Letter of Credit issued by it such amount as such Canadian Issuing Lender and Canadian Borrower shall have agreed upon for issuances of, drawings under or amendments of, renewals or extensions of, Letters of Credit issued by it.

(viii) If by reason of (A) any change after the Closing Date in any Applicable Law, or any change in the interpretation or application thereof by any Governmental Authority, or (B) compliance by the Canadian Issuing Lender, any Lender, or Canadian Underlying Issuer with any direction, request, or requirement (irrespective of whether having the force of law) of any Governmental Authority or monetary authority including, Regulation D of the Board made after the Closing Date:

(1) (A) any reserve, deposit, or similar requirement (other than reserves, deposits, or similar requirements of a de minimis nature) is or shall be imposed or modified in respect of any Canadian Letter of Credit issued or caused to be issued hereunder or hereby, or

(2) there shall be imposed on the Canadian Issuing Lender, any Lender, or Canadian Underlying Issuer any other condition regarding any Canadian Letter of Credit or Canadian Reimbursement Undertaking,

and the result of the foregoing is to increase, directly or indirectly, the cost to the Canadian Issuing Lender, any Lender, or a Canadian Underlying Issuer of issuing, making, guaranteeing, or maintaining any Canadian Reimbursement Undertaking or Canadian Letter of Credit or to reduce the amount receivable in respect thereof (other than any such increase or reduction attributable to taxes which is indemnified under Section 16), then, and in any such case, Agent may, at any time within a reasonable period after the additional cost is incurred or the amount received is reduced, notify in writing Canadian Borrower, and Canadian Borrower shall pay within 30 days after demand therefor, such amounts as Agent may specify to be necessary to compensate the Canadian Issuing Lender, any Lender, or a Canadian Underlying Issuer for such additional cost or reduced receipt, together with interest on such amount from the date of such demand until payment in full thereof at the rate then applicable to Base Rate Loans hereunder; provided, however, that Canadian Borrower shall not be required to provide any compensation pursuant to this Section for any such amounts incurred more than 180 days prior to the date on which the demand for payment of such amounts is first made to Canadian Borrower; provided further that if an event or circumstance giving rise to such amounts is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof. The determination by Agent of any amount due pursuant to this Section, as set forth in a certificate setting forth the basis for the determination of such reimbursement and

calculation thereof in reasonable detail, shall, in the absence of manifest or demonstrable error, be final and conclusive and binding on all of the parties hereto.

(ix) Canadian Borrower is responsible for the final text of the Canadian Letters of Credit as issued by a Canadian Issuing Lender or a Canadian Underlying Issuer, irrespective of any assistance any Canadian Issuing Lender or any Canadian Underlying Issuer may provide such as drafting or recommending text or by such Canadian Issuing Lender's or such Canadian Underlying Issuer's use or refusal to use text submitted by Canadian Borrower. Canadian Borrower understands that the final form of any Canadian Letter of Credit may be subject to such revisions and changes as are deemed necessary or appropriate by a Canadian Issuing Lender or a Canadian Underlying Issuer, and Canadian Borrower hereby consents to such revisions and changes not materially different from the application executed in connection therewith. Canadian Borrower is solely responsible for the suitability of the Canadian Letter of Credit for Canadian Borrower's purposes. If Canadian Borrower requests Canadian Issuing Lender or a Canadian Underlying Issuer to issue a Canadian Letter of Credit for an affiliated or unaffiliated third party (a "Canadian Account Party"), (i) such Canadian Account Party shall have no rights against any Canadian Issuing Lender or any Canadian Underlying Issuer; (ii) Canadian Borrower shall be responsible for the application and obligations under this Agreement; and (iii) communications (including notices) related to the respective Canadian Letter of Credit shall be among Canadian Issuing Lender, the Canadian Underlying Issuer and Canadian Borrower. Canadian Borrower will examine the copy of the Canadian Letter of Credit and any other documents sent by a Canadian Issuing Lender or a Canadian Underlying Issuer in connection therewith and shall promptly notify Canadian Issuing Lender (not later than three (3) Business Days following Canadian Borrower's receipt of documents from a Canadian Issuing Lender or a Canadian Underlying Issuer) of any non-compliance with Canadian Borrower's instructions and of any discrepancy in any document under any presentment or other irregularity. Canadian Borrower understands and agrees that any Canadian Issuing Lender and any Canadian Underlying Issuer is not required to extend the expiration date of any Canadian Letter of Credit for any reason. With respect to any Canadian Letter of Credit containing an "automatic amendment" to extend the expiration date of such Canadian Letter of Credit, Canadian Issuing Lender or Canadian Underlying Issuer, in its sole and absolute discretion, may give notice of nonrenewal of such Canadian Letter of Credit and, if Canadian Borrower does not at any time want the then current expiration date of such Canadian Letter of Credit to be extended, Canadian Borrower will so notify Agent and Canadian Issuing Lender and Canadian Underlying Issuer at least 30 calendar days before Canadian Issuing Lender or the Canadian Underlying Issuer is required to notify the beneficiary of such Canadian Letter of Credit or any advising bank of such non-extension pursuant to the terms of such Canadian Letter of Credit.

(x) Borrowers' reimbursement and payment obligations under this Section 2.11(b) are absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever; provided, that subject to Section 2.11(b)(iv) above, the foregoing shall not release any Canadian Issuing Lender or any Canadian Underlying Issuer from such liability to Canadian Borrower as may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction against a Canadian Issuing Lender or a Canadian Underlying Issuer following reimbursement or payment of the obligations and liabilities, including reimbursement and other payment obligations, of Borrowers to a Canadian Issuing Lender or a Canadian Underlying Issuer arising under, or in connection with, this Section 2.11(b) or any Canadian Letter of Credit.

(xi) Without limiting any other provision of this Agreement, Canadian Issuing Lender, Canadian Underlying Issuer and each other Letter of Credit Related Person (if applicable) shall not be responsible to Borrowers for, and Canadian Issuing Lender's and Canadian Underlying Issuer's rights and remedies against Canadian Borrower and the obligation of Borrowers to reimburse such Canadian Issuing Lender or such Canadian Underlying Issuer for each drawing under each Canadian Letter of Credit shall not be impaired by:

(1) honor of a presentation under any Canadian Letter of Credit that on its face substantially complies with the terms and conditions of such Canadian Letter of Credit, even if the Canadian Letter of Credit requires strict compliance by the beneficiary;

(2) honor of a presentation of any Drawing Document that appears on its face to have been signed, presented or issued (A) by any purported successor or transferee of any beneficiary or other Person required to sign, present or issue such Drawing Document or (B) under a new name of the beneficiary;

(3) acceptance as a draft of any written or electronic demand or request for payment under a Canadian Letter of Credit, even if nonnegotiable or not in the form of a draft or notwithstanding any requirement that such draft, demand or request bear any or adequate reference to the Canadian Letter of Credit;

(4) the identity or authority of any presenter or signer of any Drawing Document or the form, accuracy, genuineness or legal effect of any Drawing Document (other than Canadian Issuing Lender's or Underlying Issuer's determination that such Drawing Document appears on its face substantially to comply with the terms and conditions of the Canadian Letter of Credit);

(5) acting upon any instruction or request relative to a Canadian Letter of Credit or requested Canadian Letter of Credit that Canadian Issuing Lender or a Canadian Underlying Issuer in good faith believes to have been given by a Person authorized to give such instruction or request;

(6) any errors, omissions, interruptions or delays in transmission or delivery of any message, advice or document (regardless of how sent or transmitted) or for errors in interpretation of technical terms or in translation or any delay in giving or failing to give notice to Canadian Borrower;

(7) any acts, omissions or fraud by, or the insolvency of, any beneficiary, any nominated person or entity or any other Person or any breach of contract between any beneficiary and Canadian Borrower or any of the parties to the underlying transaction to which the Canadian Letter of Credit relates;

(8) assertion or waiver of any provision of the ISP or UCP that primarily benefits an issuer of a letter of credit, including any requirement that any Drawing Document be presented to it at a particular hour or place;

(9) payment to any presenting bank (designated or permitted by the terms of the applicable Canadian Letter of Credit) claiming that it rightfully honored or is entitled to reimbursement or indemnity under Standard Letter of Credit Practice applicable to it;

(10) acting or failing to act as required or permitted under Standard Letter of Credit Practice applicable to where Canadian Issuing Lender or Canadian Underlying Issuer has issued, confirmed, advised or negotiated such Canadian Letter of Credit, as the case may be;

(11) honor of a presentation after the expiration date of any Canadian Letter of Credit notwithstanding that a presentation was made prior to such expiration date and dishonored by Canadian Issuing Lender or Canadian Underlying Issuer if subsequently Canadian Issuing Lender, Canadian Underlying Issuer or any court or other finder of fact determines such presentation should have been honored;

(12) dishonor of any presentation that does not strictly comply or that is fraudulent, forged or otherwise not entitled to honor; or

(13) honor of a presentation that is subsequently determined by Canadian Issuing Lender or Canadian Underlying Issuer to have been made in violation of international, federal, state or local restrictions on the transaction of business with certain prohibited Persons.

(xii) If (i) any Event of Default shall occur and be continuing, or (ii) Availability shall at any time be less than zero, then on the Business Day following the date when the Borrowers receives notice from Agent or the Required Lenders (or, if the maturity of the Obligations has been accelerated, Revolving Lenders with Canadian Letter of Credit Exposure representing greater than 50% of the total Canadian Letter Credit Exposure) demanding Letter of Credit Collateralization pursuant to this Section 2.11(b) upon such demand, Borrowers shall provide Letter of Credit Collateralization with respect to the then existing Canadian Letter of Credit Usage. If Borrowers fail to provide Letter of Credit Collateralization as required by this Section 2.11(b), the Canadian Lenders may (and, upon direction of Agent, shall) advance, as a Canadian Advance, the amount of the cash collateral required pursuant to the Letter of Credit Collateralization provision so that the then existing Canadian Letter of Credit Usage is cash collateralized in accordance with the Letter of Credit Collateralization provision, whether or not the Canadian Revolver Commitments have terminated, an Overadvance exists or the conditions in Section 3 are satisfied.

(xiii) Unless otherwise expressly agreed by Canadian Issuing Lender, Canadian Underlying Issuer and Canadian Borrower when a Canadian Letter of Credit is issued (including any such agreement applicable to Pre-Petition Letters of Credit), (i) the rules of the ISP shall apply to each standby Canadian Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Canadian Letter of Credit.

(xiv) Canadian Issuing Lender and Canadian Underlying Issuer shall be deemed to have acted with due diligence and reasonable care if Canadian Issuing Lender's or Canadian Underlying Issuer's conduct is in accordance with Standard Letter of Credit Practice or in accordance with this Agreement

(xv) At Canadian Borrower's costs and expense, Canadian Borrower shall execute and deliver to Canadian Issuing Lender and Canadian Underlying Issuer such additional certificates, instruments and/or documents and take such additional action as may be reasonably requested by Canadian Issuing Lender or Canadian Underlying Issuer to enable Canadian Issuing Lender or Canadian Underlying Issuer to issue any Canadian Letter of Credit pursuant to this Agreement and related Issuer Document, to protect, exercise and/or enforce Canadian Issuing Lenders' or Canadian Underlying Issuer's rights and interests under this Agreement or to give effect to the terms and provisions of this Agreement or any Issuer Document. Canadian Borrower irrevocably appoints Canadian Issuing Lender and Canadian Underlying Issuer as its attorney-in-fact and authorizes Canadian Issuing Lender and Canadian Underlying Issuer, without notice to any Borrower, to execute and deliver ancillary documents and letters customary in the letter of credit business that may include but are not limited to advisements, indemnities, checks, bills of exchange and issuance documents. The power of attorney granted by Canadian Borrower is limited solely to such actions related to the issuance, confirmation or amendment of any Canadian Letter of Credit and to ancillary documents or letters customary in the letter of credit business. This appointment is coupled with an interest.

(xvi) Canadian Borrower agrees to indemnify, defend and hold harmless each member of the Lender Group (including Canadian Issuing Lender, Canadian Underlying Issuer and their respective branches, Affiliates, and correspondents) and each such Person's respective directors, officers,

employees, attorneys and agents (each, including Canadian Issuing Lender and Canadian Underlying Issuer, a "Letter of Credit Related Person") (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), which may be incurred by or awarded against any Letter of Credit Related Person (other than Taxes, which shall be governed by Section 16) (the "Letter of Credit Indemnified Costs"), and which arise out of or in connection with, or as a result of this Agreement, any Letter of Credit, any Issuer Document, or any Drawing Document referred to in or related to any Letter of Credit, or any action or proceeding arising out of any of the foregoing (whether administrative, judicial or in connection with arbitration); in each case, including that resulting from the Letter of Credit Related Person's own negligence; provided, that such indemnity shall not be available to any Letter of Credit Related Person claiming indemnification to the extent that such Letter of Credit Indemnified Costs may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted directly from the gross negligence or willful misconduct of the Letter of Credit Related Person claiming indemnity. This indemnification provision shall survive termination of this Agreement and all Letters of Credit. The liability of Canadian Issuing Lender or Canadian Underlying Issuer (or any other Letter of Credit Related Person) under, in connection with or arising out of any Canadian Letter of Credit (or pre-advice), regardless of the form or legal grounds of the action or proceeding, shall be limited to direct damages suffered by Canadian Borrower that are caused directly by Canadian Issuing Lender's or Canadian Underlying Issuer's gross negligence or willful misconduct in (i) honoring a presentation under a Canadian Letter of Credit that on its face does not at least substantially comply with the terms and conditions of such Canadian Letter of Credit, (ii) failing to honor a presentation under a Canadian Letter of Credit that strictly complies with the terms and conditions of such Canadian Letter of Credit, or (iii) retaining Drawing Documents presented under a Canadian Letter of Credit. Canadian Borrowers' aggregate remedies against Canadian Issuing Lender and any other Letter of Credit Related Person for wrongfully honoring a presentation under any Canadian Letter of Credit or wrongfully retaining honored Drawing Documents shall in no event exceed the aggregate amount paid by Canadian Borrower to Canadian Issuing Lender in respect of the honored presentation in connection with such Canadian Letter of Credit under Sections 2.11(b)(ii), *plus* interest at the rate then applicable to Base Rate Loans hereunder. Canadian Borrower shall take action to avoid and mitigate the amount of any damages claimed against Canadian Issuing Lender, Canadian Underlying Issuer or any other Letter of Credit Related Person, including by enforcing its rights against the beneficiaries of the Canadian Letters of Credit. Any claim by Canadian Borrower under or in connection with Canadian Letter of Credit shall be reduced by an amount equal to the sum of (x) the amount (if any) saved by Canadian Borrowers as a result of the breach or alleged wrongful conduct complained of, and (y) the amount (if any) of the loss that would have been avoided had Canadian Borrower taken all reasonable steps to mitigate any loss, and in case of a claim of wrongful dishonor, by specifically and timely authorizing Canadian Issuing Lender or Canadian Underlying Issuer to effect a cure.

(xvii) In the event of a direct conflict between the provisions of this Section 2.11(b) and any provision contained in any Issuer Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.11(b) shall control and govern.

(xviii) The provisions of this Section 2.11 shall survive the termination of this Agreement and the repayment in full of the Obligations with respect to any Canadian Letters of Credit that remain outstanding.

(c) **Defaulting Lenders.** In the event there is a Defaulting Lender as of the date of any request for the issuance of a Letter of Credit, no Issuing Lender shall be required to issue or arrange for such Letter of Credit to the extent (i) the Defaulting Lender's Letter of Credit Exposure with respect to such Letter of Credit may not be reallocated pursuant to Section 2.3(g), or (ii) such Issuing Lender has not otherwise entered into arrangements reasonably satisfactory to it and Borrowers to eliminate Issuing Lender's risk with respect to the participation in such Letter of Credit of the Defaulting Lender, which arrangements may include a Borrower cash collateralizing such Defaulting Lender's Letter of Credit Exposure in accordance with Section 2.3(g). Additionally, an Issuing Lender shall have no obligation to issue or extend a Letter of Credit if (A) any order, judgment, or decree of any Governmental Authority or arbitrator shall, by its terms, purport to enjoin or restrain Issuing Lender from issuing such Letter of Credit, or any law applicable to Issuing Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Lender shall prohibit or request that such Issuing Lender refrain from the issuance of letters of credit generally or such Letter of Credit in particular, or (B) the issuance of such Letter of Credit would violate one or more policies of such Issuing Lender applicable to letters of credit generally.

(d) **New or Successor Letter of Credit Issuer**. Any Issuing Lender may resign as an Issuing Lender upon 30 days' prior written notice to the Agent, the Lenders and Borrowers. Subject to the terms of the following sentence, Borrowers may add Issuing Lenders at any time upon notice to the Agent and with the consent (not to be unreasonably withheld or delayed) of the Agent. If an Issuing Lender shall resign, then Borrowers may appoint a successor issuer of Letters of Credit, or if Borrowers shall decide to add a new Issuing Lender under this Agreement, then Borrowers may appoint a new Issuing Lender, as the case may be, in either case, with the consent of the Agent (such consent not to be unreasonably withheld), whereupon such successor issuer shall succeed to the rights, powers and duties of the resigning Issuing Lender under this Agreement and the other Loan Documents, or such new issuer of Letters of Credit shall be granted the rights, powers and duties of a Issuing Lender hereunder, and the term "U.S. Issuing Lender" or "Canadian Issuing Lender" shall mean such successor or such new issuer of Letters of Credit effective upon such appointment. At the time such resignation shall become effective, Borrowers shall pay to the resigning Issuing Lender all accrued and unpaid fees pursuant to Sections 2.11(a)(vii) and 2.11(b)(vii), as applicable. The acceptance of any appointment as a Issuing Lender hereunder whether as a successor issuer or new issuer of Letters of Credit in accordance with this Agreement, shall be evidenced by an agreement entered into by such new or successor issuer of Letters of Credit, in a form satisfactory to Borrowers and the Agent and, from and after the effective date of such agreement, such new or successor issuer of Letters of Credit shall become a "U.S. Issuing Lender" or "Canadian Issuing Lender" hereunder. After the resignation of an Issuing Lender hereunder, the resigning Issuing Lender shall remain a party hereto and shall continue to have all the rights and obligations of a Issuing Lender under this Agreement and the other Loan Documents with respect to Letters of Credit issued by it prior to such resignation, but shall not be required to issue additional Letters of Credit. In connection with any resignation pursuant to this Section 2.11(d), only to the extent that a successor issuer of Letters of Credit shall have been appointed, either (i) Borrowers, the resigning Issuing Lender and the successor issuer of Letters of Credit shall arrange to have any outstanding Letters of Credit issued by the resigning Issuing Lender replaced with Letters of Credit issued by the successor issuer of Letters of Credit or (ii) Borrowers shall cause the successor issuer of Letters of Credit, if such successor issuer is reasonably satisfactory to the resigning Issuing Lender, to issue "back-stop" Letters of Credit naming the resigning Issuing Lender as beneficiary for each outstanding Letter of Credit issued by the resigning Issuing Lender, which new Letters of Credit shall have a face amount equal to the Letters of Credit being back-stopped and the sole requirement for drawing on such new Letters of Credit shall be a drawing on the corresponding back-stopped Letters of Credit. After any resigning Issuing Lender's resignation as Issuing Lender, the provisions of this Agreement relating to a Issuing Lender shall inure to its benefit as to any actions taken or omitted to be taken by it (A) while it was a Issuing Lender under this Agreement or (B) at any time with respect to Letters of Credit issued by such Issuing Lender.

2.12 **LIBOR Option**.

(a) **Interest and Interest Payment Dates**. Borrower, in lieu of having interest charged at the rate based upon the Base Rate, shall have the option, subject to Section 2.12(b) below (the "LIBOR Option") to have interest on all or a portion of its Advances be charged (whether at the time when made (unless otherwise provided herein), upon conversion from a Base Rate Loan to a LIBOR Rate Loan, or upon continuation of a LIBOR Rate Loan as a LIBOR Rate Loan) at a rate of interest based upon the LIBOR Rate. Interest on LIBOR Rate Loans shall be payable on the earliest of (i) the last day of the Interest Period applicable thereto, (ii) the date on which all or any portion of the Obligations are accelerated pursuant to the terms hereof, or (iii) the date on which this Agreement is terminated pursuant to the terms hereof. On the last day of each applicable Interest Period, unless the Borrower properly has exercised the LIBOR Option with respect thereto the interest rate applicable to such LIBOR Rate Loan automatically shall convert to the rate of interest then applicable to Base Rate Loans, of the same type hereunder. At any time that an Event of Default has occurred and is continuing, at the written election of Agent or the Required Lenders, no Borrower shall any longer have the option to request that Advances bear interest at a rate based upon the LIBOR Rate and the Agent shall have the right to convert the interest rate on all outstanding LIBOR Rate Loans to the rate applicable to Base Rate Loans hereunder.

(b) **LIBOR Election**.

(i) Either Borrower may, at any time and from time to time, so long as such Borrower has not received a notice from Agent, after the occurrence and during the continuance of an Event of Default, of the election of Agent or the Required Lenders to terminate the right of Borrowers to exercise the LIBOR Option during the continuance of such Event of Default, elect to exercise the LIBOR Option by notifying the Agent prior to 11:00 a.m. (California time) at least three (3) Business Days prior to the commencement of the proposed Interest Period (the "LIBOR Deadline"). Notice of such Borrower's election of the LIBOR Option for a permitted portion of its Advances and an Interest Period pursuant to this Section shall be made by delivery to the Agent of a LIBOR Notice received by Agent before the LIBOR Deadline. Promptly upon its receipt of each such LIBOR Notice, the Agent shall provide a copy thereof to each of the affected Lenders.

(ii) Each LIBOR Notice shall be irrevocable and binding on Borrower. In connection with each LIBOR Rate Loan, the applicable Borrower shall, after receipt of a written request by a Lender (which request shall set forth in reasonable detail the basis for requesting such amount and, absent clearly demonstrable error, the amount requested shall be final and conclusive and binding upon all parties hereto), pay to the Agent for the account of such Lender within 30 days of the date of its receipt of such request any amounts required to compensate such Lender for any additional losses, costs or expenses that such Lender may reasonably incur as a result of (A) the payment of any principal of any LIBOR Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (B) the conversion of any LIBOR Rate Loan other than on the last day of the Interest Period applicable thereto, or (C) the failure to borrow, convert, continue or prepay any LIBOR Rate Loan on the date specified in any LIBOR Notice, delivered pursuant hereto, including any loss, cost or expense (excluding loss of anticipated profits) actually incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund or maintain such LIBOR Rate Loan (such losses, costs, or expenses, "Funding Losses").

(iii) Borrowers shall have no more than seven (7) LIBOR Rate Loans in effect at any given time in the aggregate. Borrowers only may exercise the LIBOR Option for LIBOR Rate Loans of at least $1,000,000.

(c) **Conversion**. Borrowers may convert LIBOR Rate Loans to Base Rate Loans at any time; provided, however, that, in each case, in the event that any LIBOR Rate Loans are converted or prepaid on any date that is not the last day of the Interest Period applicable thereto, including as a result of any automatic prepayment through the required application by Agent of proceeds of the Collections of the Loan Parties to the extent permitted pursuant to the terms of this Agreement, including early termination of the term of this Agreement or acceleration of all or any portion of the Obligations pursuant to the terms hereof, Borrowers shall comply with the requirements of Section 2.12 (b)(ii) above.

(d) **Special Provisions Applicable to the LIBOR Rate**.

(i) If by reason of (X) any change after the Closing Date in any Applicable Law, or any change in the interpretation, implementation or application thereof by any Governmental Authority, or (Y) compliance by any Lender with any direction, request, or requirement (irrespective of whether having the force of law) of any Governmental Authority or monetary authority including, Regulation D of the Board made after the Closing Date:

(1) any reserve, deposit, or similar requirement (other than reserves, deposits, or similar requirements of a *de minimis* nature and reserve requirements taken into account in determining Reserve Percentages) is or shall be imposed or modified in respect of any Lender hereunder, or

(2) there shall be imposed on any Lender or on the London interbank market any other condition or cost or expense affecting this Agreement or LIBOR Rate Loans made by such Lender,

and the result of the foregoing is to increase, directly or indirectly, the cost to such Lender of making, converting into, continuing or maintaining LIBOR Rate Loans or to reduce the amount receivable in respect thereof (other than increases or reductions of a *de minimis* nature and other than any such increase or reduction (i) attributable to taxes indemnified under Section 16, (ii) net income taxes and franchise taxes (imposed in lieu of net income), or any U.S. or Canadian federal or capital taxes, imposed (in each case) on any Lender as a result of a present or former connection between such Lender and the jurisdiction of the Governmental Authority imposing such tax (other than any such connection arising from execution or delivery of, receipt of any payments under, performance under or enforcement of, or any other transactions occurring pursuant to, this Agreement or any other Loan Document)) then, and in any such case, the Agent may, at any time within a reasonable period after the additional cost is incurred or the amount received is reduced, notify in writing applicable Borrower thereof, and applicable Borrower shall pay within 30 days after demand therefor, such amounts as Agent may specify to be necessary to compensate such Lender for such additional cost or reduced receipt, together with interest on such amount from the date of such demand until payment in full thereof at the rate then applicable to Base Rate Loans hereunder; provided, however, that Borrowers shall not be required to provide any compensation pursuant to this Section for any such amounts incurred more than 180 days prior to the date on which the demand for payment of such amounts is first made to the applicable Borrower; provided further that if an event or circumstance giving rise to such amounts is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof. The determination by Agent of any amount due pursuant to this Section, as set forth in a certificate setting forth the basis for the determination of such reimbursement and calculation thereof in reasonable detail, shall, in the absence of manifest or demonstrable error, be final and conclusive and binding on all of the parties hereto.

(ii) In the event that (A) due to any contingency occurring after the Closing Date that adversely affects the interbank LIBOR market or (B) due to any change after the Closing Date in any Applicable Law, or any change in the interpretation or application thereof by any Governmental

Authority, shall in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain LIBOR Rate Loans, or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to the Agent and Borrowers and the Agent promptly shall transmit the notice to each other Lender and (y) in the case of any LIBOR Rate Loans of such Lender that are outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such LIBOR Rate Loans and interest upon the LIBOR Rate Loans of such Lender thereafter shall accrue interest at the rate then applicable to Base Rate Loans, and (z) such Lender shall not be required to provide LIBOR Rate Loans to the Borrower until such time as it determines that it would no longer be unlawful or impractical to do so.

(e) **No Requirement of Matched Funding**. Anything to the contrary contained herein notwithstanding, none of Agent, any Lender, or of their respective Participants, is required actually to acquire eurodollar deposits to fund or otherwise match fund any Advance as to which interest accrues at the LIBOR Rate.

(f) This Section 2.12 shall not apply to taxes to the extent duplicative of Section 16.

2.13 **Capital and Liquidity Requirements**.

(a) If, after the Closing Date, any Lender determines that (i) the adoption of or change in any Applicable Law regarding capital, liquidity or reserve requirements for banks or bank holding companies, or any change in the interpretation implementation, or application thereof by any Governmental Authority charged with the administration thereof, in any such case occurring after the Closing Date, or (ii) compliance by such Lender or its parent bank holding company with any guideline, request or directive of any such entity regarding capital adequacy (whether or not having the force of law) or quantitative liquidity requirements, in each case made or adopted after the Closing Date, has the effect of reducing the return on such Lender's or such holding company's capital as a consequence of such Lender's Commitments hereunder to a level below that which such Lender or such holding company could have achieved but for such adoption, change, or compliance (taking into consideration such Lender's or such holding company's then existing policies with respect to capital adequacy and assuming the full utilization of such entity's capital) by any amount deemed by such Lender to be material, then such Lender may notify Borrowers and Agent in writing thereof. Following receipt of such notice, the applicable Borrower agrees to pay such Lender the amount as will compensate such Lender or the holding company for such reduction of return of capital as and when such reduction is determined, payable within 30 days after presentation by such Lender of a statement in the amount and setting forth in reasonable detail the basis for and such Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent manifest error). In determining such amount, such Lender may use any reasonable averaging and attribution methods. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that no Borrower shall be required to compensate a Lender pursuant to this Section for any reductions in return incurred more than 180 days prior to the date that such Lender notifies such Borrower of such law, rule, regulation or guideline giving rise to such reductions and of such Lender's intention to claim compensation therefor; provided further that if such claim arises by reason of the adoption of or change in any law, rule, regulation or guideline that is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof. For purposes of this Section 2.13(a), (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof and (y) all requests, rules, guidelines, requirements or directives promulgated under Basel III, shall in each case described in clauses (x) and (y) above, be deemed to be a change in Applicable Law, regardless of the date enacted, adopted, issued or implemented.

(b) If any Lender, any Issuing Lender or any Underlying Issuer requests additional or increased costs pursuant to Sections 2.11(a)(vi), 2.11(b)(vi), 2.12(d)(i), 16 or amounts under Section 2.13(a) or declared its ability to make LIBOR Rate Loans impractical or unlawful pursuant to Section 2.12(d)(ii) (any such Person, an "Affected Lender"), then such Affected Lender shall use reasonable efforts to promptly designate a different one of its lending offices or to assign its rights and obligations hereunder to another of its offices or branches, if (i) in the reasonable judgment of such Affected Lender, such designation or assignment would eliminate or reduce amounts payable pursuant to Sections 2.11(a)(viii), 2.11(b)(viii), 2.12(d)(i), 2.12(d)(ii), 2.13(a) or 16, as applicable, or would eliminate the illegality or impracticality of funding or maintaining LIBOR Rate Loans, and (ii) in the reasonable judgment of such Affected Lender, such designation or assignment would not subject it to any material unreimbursed cost or expense and would not otherwise be materially disadvantageous to it. The applicable Borrower agrees to pay all reasonable and documented out-of-pocket costs and expenses incurred by such Affected Lender in connection with any such designation or assignment.

(c) This Section 2.13 shall not apply to taxes to the extent duplicative of Section 16.

2.14 **Certain Bankruptcy Matters**.

(a) Except to the extent expressly provided otherwise in an Order, the Loan Parties hereby agree that, subject only to the Carve Out and the DIP Intercreditor Agreement, the Obligations shall be deemed to (i) constitute DIP Superpriority Claims over all administrative expense claims and claims against each Borrower or the other Loan Parties now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (and subject to entry of the Final Order, the Debtors' rights to charge the DIP Collateral and all collateral securing the Pre-Petition Obligations under Section 506(c) shall be waived), 507(a), 507(b), 546(c), 546(d), 726, 1113, 1114 or any other provisions of the Bankruptcy Code or any equivalent provision of Canadian Bankruptcy and Insolvency Law and all superpriority administrative expense claims granted to any other Person the establishment of which super-priority shall have been approved and authorized by the Bankruptcy Court or the CCAA Court, (ii) pursuant to Bankruptcy Code Section 364(c)(2) and any applicable provisions of the CCAA, be secured by a perfected first-priority security interest in the DIP Collateral, and any proceeds and products thereof in whatever form received, provided, further that the DIP Collateral shall exclude the Debtors' and the CCAA Debtors' claims and causes of action under Chapter 5 of the Bankruptcy Code and any applicable provisions of the CCAA, or other Avoidance Actions, but subject only to, and effective upon, entry of the Final Order and the CCAA Orders, shall include any proceeds or property recovered, unencumbered or otherwise the subject of successful Avoidance Actions, whether by judgment, settlement or otherwise, in each case, to the extent that such DIP Collateral is not subject to valid, perfected and non-avoidable liens as of the commencement of the Cases and the CCAA Cases, (iii) pursuant to Bankruptcy Code Section 364(c)(3) and any applicable provisions of the CCAA, be secured by a perfected lien on all DIP Collateral, to the extent that such DIP Collateral is subject to valid, perfected and non-avoidable liens in favor of third parties in existence at the time of the commencement of the Cases and the CCAA Cases or to valid liens in existence at the time of such commencement that are perfected subsequent to such commencement as permitted by Section 546(b) of the Bankruptcy Code and any applicable provisions of the CCAA and (iv) pursuant to Bankruptcy Code Section 364(d) and any applicable provisions of the CCAA, be secured by a perfected priming first priority lien on all DIP Collateral, to the extent that such DIP Collateral is subject to valid, perfected and non-avoidable liens in favor of third parties as of the commencement of the Cases and the CCAA Cases that secure the obligations of the Loan Parties under or in connection with the Pre-Petition Credit Agreement.

(b) In the event of a conflict between, or inconsistency among, the Orders, on the one hand, and any Loan Document, on the other hand, the Orders, as applicable, shall control.

(c) Notwithstanding anything to the contrary contained herein or elsewhere (except as specifically described below):

(i) the parties hereto agree, and the Orders shall provide, that the Loan Parties shall not be required to prepare, file, register or publish any financing statements, mortgages, account control agreements, notices of Lien or similar instruments in any jurisdiction or filing or registration office, or to take possession of any Collateral or to take any other action in order to validate, render enforceable or opposable or perfect the Liens on the Collateral granted by or pursuant to this Agreement, the Orders, the CCAA Orders or any other Loan Document. Subject to the limitations set forth herein, if the Agent (in its sole discretion), from time to time elects to prepare, file, register or publish any such financing statements, hypothecs, mortgages, account control agreements, notices of Lien or similar instruments, take possession of any Collateral, or take any other action to validate, render enforceable or opposable or perfect all or any portion of the Agent's Liens on the Collateral, (A) all such documents and actions shall be deemed to have been filed, registered, published or recorded or taken at the time and on the date that each of the Interim Order and the CCAA Initial Order is entered, and (B) shall not negate or impair the validity or effectiveness of this Section 2.14 or of the perfection or opposability of any other Liens in favor of the Agent, for the benefit of the Lenders and the other Loan Parties, on the Collateral; and

(ii) except as otherwise agreed to by the Lenders (including, without limitation, in the DIP Intercreditor Agreement) or as otherwise permitted or contemplated by this Agreement, the Orders or the other Loan Documents, the Liens, Lien priorities, DIP Superpriority Claims and other rights and remedies granted to the Loan Parties pursuant to this Agreement, the Orders or the other Loan Documents (specifically including, but not limited to, the existence, perfection, opposability enforceability and priority of the Liens provided for herein and therein, and the DIP Superpriority Claims provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of indebtedness by any Borrower or any other Loan Party (pursuant to Section 364 of the Bankruptcy Code, the CCAA or otherwise), or by dismissal or conversion of the Cases or the CCAA Cases, or by any other act or omission whatsoever.

(d) Without limiting the generality of the foregoing, notwithstanding any such financing, extension, incurrence, dismissal, conversion, act or omission:

(i) subject only to the Carve Out and the Orders, no costs or expenses of administration which have been or may be incurred in the Cases or the CCAA Cases or any conversion of the same or in any other proceedings related thereto, and no priority claims, are or will be prior to or on a parity with any claim of any Lender or the Agent against the Borrowers in respect of any Obligations;

(ii) other than as provided in the Orders or the Loan Documents, the Agent's Liens on the Collateral shall constitute valid, enforceable, opposable and perfected Liens, and, except with respect to the Carve Out (and as otherwise set forth in the DIP Intercreditor Agreement and in the Orders), shall be prior to all other Liens now existing or hereafter arising, in favor of any other creditor or other Person; and

(iii) the parties hereto agree, and the Orders shall provide, that the Agent's Liens on the Collateral shall continue to be valid, enforceable, opposable and perfected without the need for the Agent or any Lender to prepare, file, register or publish any financing statements, mortgages, hypothecs, account control agreements, notices of Lien or similar instruments or to otherwise perfect or render opposable the Agent's Liens under applicable non-bankruptcy law.

(e) In connection with any sale or Disposition of all or any portion of the Collateral, including in each case pursuant to Sections 9-610 or 9-620 of the Code, at any sale thereof conducted

under the provisions of the Bankruptcy Code or the CCAA, including Section 363 of the Bankruptcy Code and section 36 of the CCAA or as part of any plan subject to confirmation under Section 1129 of the Bankruptcy Code or any applicable provision of the CCAA, or at any sale or foreclosure conducted by the Agent, in accordance with applicable law and, with respect to any credit bid, Section 363(k) of the Bankruptcy Code or any applicable provision of the CCAA, each Borrower and each other Loan Party hereby gives the Agent (at the direction of the Required Lenders) the power and right, without assent by such Loan Party, to "credit bid" the full amount of all Obligations then outstanding, in order to purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral.

2.15 **Joint and Several Liability of Borrowers**.

(a) Each Borrower is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lender Group under this Agreement, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations until they are paid in full.

(b) Each Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrower, with respect to the payment and performance of all of the Obligations (including any Obligations arising under this Section 2.15), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Borrower without preferences or distinction among them.

(c) If and to the extent that any Borrower shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event the other Borrowers will make such payment with respect to, or perform, such Obligation.

(d) The Obligations of each Borrower under the provisions of this Section 2.15 constitute the absolute and unconditional, full recourse Obligations of each Borrower enforceable against each Borrower to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of the provisions of this Agreement (other than this Section 2.15(d)) or any other circumstances whatsoever until the Obligations are paid in full (subject to Section 17.16).

(e) Except as otherwise expressly provided in this Agreement and without waiver of any right that any Borrower has hereunder vis-à-vis any Secured Party with respect to the Advances and Letters of Credit that were made to such Borrower (and other interest, fees, expenses and other Obligations related thereto), each Borrower in connection with its agreement to be jointly and severally liable for the Obligations of the other Borrower only hereby waives notice of acceptance of its joint and several liability, notice of any Advances or Letters of Credit issued under or pursuant to this Agreement on behalf of the other Borrower, notice of the occurrence of any Default, Event of Default, or of any demand for any payment under this Agreement with respect to the other Borrower, notice of any action at any time taken or omitted by Agent or Lenders under or in respect of any of the Obligations of the other Borrower, any requirement of diligence or to mitigate damages by the Secured Parties to the other Borrower and, generally, to the extent permitted by applicable law and applicable to the enforcement of its agreement to be jointly and severally liable for the Obligations of the other Borrower, all demands, notices and other formalities of every kind in connection with this Agreement. Each Borrower in connection with its agreement to be jointly and severally liable for the Obligations of the other Borrower only hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations of the other Borrower, the acceptance of any payment of any of the Obligations of the other Borrower, the acceptance of any partial payment thereon, any waiver, consent or other action or

acquiescence by Agent or Lenders at any time or times in respect of any default by the other Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by Agent or Lenders in respect of any of the Obligations of the other Borrower, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations of the other Borrower or the addition, substitution or release, in whole or in part, of the other Borrower from its obligations hereunder. Without limiting the generality of the foregoing, each Borrower with respect to the Obligations of the other Borrower assents to any other action or delay in acting or failure to act on the part of Agent or Lender with respect to the failure by the other Borrower to comply with any of its Obligations, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.15 afford grounds for terminating, discharging or relieving the other Borrower, in whole or in part from its Obligations, it being the intention of each Borrower that until the Obligations are paid in full, the Obligations of each Borrower under this Section 2.15 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Borrower under this Section 2.15 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to the other Borrower or Agent or Lender. For avoidance of doubt, no provision in this Section 2.15 shall be interpreted as a waiver of rights hereunder by a Borrower with respect to Advances and Letters of Credit that were made to such Borrower (and other and other interest, fees, expenses and other Obligations related thereto) (it being understood that such rights shall continue to exist as if such Borrower were the only Borrower under this Agreement).

(f) Each Borrower represents and warrants to Agent and Lenders that such Borrower is currently informed of the financial condition of the other Borrower and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations of the other Borrower. Each Borrower further represents and warrants to Agent and Lenders that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Borrower hereby covenants that such Borrower will continue to keep informed of the other Borrower's financial condition, the financial condition of other guarantors, if any, and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations of the other Borrower.

(g) Except as otherwise expressly provided in this Agreement and without waiver of any right a Borrower has hereunder with respect to its Advances and Letters of Credit that were made to such Borrower (and other interest, fees, expenses and other Obligations related thereto), each Borrower waives all rights and defenses arising out of an election of remedies by Agent or any Lender, other than the defense that the Obligations have been paid in full, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Agent's or such Lender's rights of subrogation and reimbursement against such Borrower by the operation of Section 580(d) of the California Code of Civil Procedure or otherwise.

(h) Except as otherwise expressly provided in this Agreement and without waiver of any right a Borrower has hereunder with respect to its Advances and Letters of Credit that were made to such Borrower (and other interest, fees, expenses and other Obligations related thereto), each Borrower waives all rights and defenses that such Borrower may have because the Obligations are secured by Real Property, other than the defense that the Obligations have been paid in full. This means, among other things:

(1) Agent and Lenders may collect from such Borrower without first foreclosing on any Collateral pledged by any other Borrower.

(2) If Agent or any Lender forecloses on any Real Property Collateral pledged by Borrowers:

(A) The amount of the Obligations may be reduced only by the price for which that Collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(B) Agent and Lenders may collect from such Borrower even if Agent or Lenders, by foreclosing on the Real Property Collateral, has destroyed any right such Borrower may have to collect from the other Borrowers.

(i) This is an unconditional and irrevocable waiver of any rights and defenses such Borrower may have because the Obligations are secured by Real Property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure.

(j) The provisions of this Section 2.15 are made for the benefit of Agent, each member of the Lender Group, each Bank Product Provider, and their respective successors and assigns, and may be enforced by it or them from time to time against either Borrower as often as occasion therefor may arise and without requirement on the part of Agent, any member of the Lender Group, any Bank Product Provider, or any of their successors or assigns first to marshal any of its or their claims or to exercise any of its or their rights against any Borrower or to exhaust any remedies available to it or them against any Borrower or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.15 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied (subject to Section 17.16). If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by Agent or any Lender upon the insolvency, bankruptcy or reorganization of any Borrower, or otherwise, the provisions of this Section 2.15 will forthwith be reinstated in effect, as though such payment had not been made.

(k) Each Borrower hereby agrees that it will not enforce any of its rights of contribution or subrogation against the other Borrower with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to Agent or Lenders with respect to any of the Obligations of the other Borrower or any collateral security therefor until such time as all of the Obligations have been paid in full. Except as permitted hereunder, any claim which a Borrower may have against the other Borrower with respect to any payments to Agent or any member of the Lender Group hereunder or under any other Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full of the Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to a Borrower, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be paid in full before any payment or distribution of any character, whether in cash, securities or other property, shall be made to the other Borrower therefor. Notwithstanding anything to the contrary contained in this Section 2.15, no Borrower shall exercise any rights of subrogation, contribution, indemnity, reimbursement or other similar rights against, and shall not proceed or seek recourse against or with respect to any property or asset of, the other Borrower (the "Foreclosed Borrower"), including after payment in full of the Obligations, if all or any portion of the Obligations have been satisfied in connection with an exercise of remedies in respect of the Stock of such Foreclosed Borrower whether pursuant to the Security Agreement or otherwise.

(l) Each Borrower hereby agrees that, upon the occurrence and during the continuance of any Event of Default, the payment of any amounts due with respect to the indebtedness owing by any Borrower to any other Borrower is hereby subordinated to the prior payment in full of the Obligations. Each Borrower hereby agrees that upon the occurrence and during the continuance of any Event of Default, such Borrower will not demand, sue for or otherwise attempt to collect any indebtedness of any other Borrower owing to such Borrower until the Obligations shall have been paid in full. If, notwithstanding the foregoing sentence, such Borrower shall collect, enforce or receive any amounts in respect of such indebtedness, such amounts shall be collected, enforced and received by such Borrower as trustee for Agent, and such Borrower shall deliver any such amounts to the applicable Agent for application to the Obligations in accordance with Section 2.4(b); provided that upon the waiver of all existing Events of Default in accordance with this Agreement, the applicable Agent shall as soon as reasonably practicable repay to such Borrower any amount held by Agent that were not applied for application to the Obligations.

3. CONDITIONS; TERM OF AGREEMENT

3.1 **Conditions Precedent to the Initial Extension of Credit**. The obligation of each Lender to make its initial extension of credit provided for hereunder, is subject to the fulfillment of the conditions precedent set forth on Schedule 3.1.

3.2 **Conditions Precedent to all Extensions of Credit on and after the Closing Date**. The obligation of the Lender Group (or any member thereof) to make any Advances hereunder (or to extend any other credit hereunder) at any time on and after the Closing Date shall be subject to the following conditions precedent:

(a) the representations and warranties of Holdings and the other Loan Parties contained in this Agreement or in the other Loan Documents shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date of such extension of credit, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date), in which case such representations and warranties shall have been true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date;

(b) no Default or Event of Default shall have occurred and be continuing on the date of such extension of credit, nor shall either result from the making thereof;

(c) the Interim Order and, after entry of the Final Order, the Final Order shall be in full force and effect and shall not have been (i) vacated, enjoined, reserved or stayed, or (ii) amended or modified without the consent of the Agent and the CCAA Initial Order and, after entry of the CCAA A&R Initial Order, the CCAA A&R Initial Order shall be in full force and effect, shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the prior written consent of the Agent;

(d) (i) each Borrowing shall be made in accordance in all material respects with the Budget, including Permitted Variances thereto, and shall have been approved by the CCAA Order, the Interim Order or the Final Order (as then applicable), which Order shall be in full force and effect and which shall not have been (x) vacated, enjoined, reserved, or stayed, or (y) modified or amended without the consent of the Agent and (ii) after giving effect to such Borrowing, no portion of the Obligations shall constitute Excess ABL Obligations (under and as such term is defined in the DIP Intercreditor Agreement);

(e) (i) there shall not have been (x) any order granted by the Bankruptcy Court or the CCAA Court sustaining any objection by any Person, nor (y) any motion, complaint, objection or other pleading filed by any party challenging, in either case, the validity, priority, perfection, opposability or enforceability of the Loan Documents or any Lien granted pursuant to the Loan Documents and (ii) no Lien granted pursuant to the Loan Documents shall have been determined to be null and void, invalid or unenforceable by the Bankruptcy Court, CCAA Court or another court of competent jurisdiction in any action commenced or asserted by any other party in interest in the Cases or the CCAA Cases, including, without limitation, the Committee Professionals; and

(f) no Overadvance shall exist as a result of such Advance.

Notwithstanding the foregoing, the only condition to the obligation of the Lender Group (or any member thereof) to make any Advances hereunder in order to fund the Carve-Out Reserve shall be conditions precedent to such Borrowing set forth in Section 11(b) of the Orders, as applicable.

3.3 **Maturity**. This Agreement shall continue in full force and effect until the earlier of (i) the termination of this Agreement by the Borrowers in accordance with Section 3.5 or (ii) the Maturity Date. The foregoing notwithstanding, the Lender Group, upon the election of the Required Lenders, subject to the Lender Group's obligations in accordance with Section 11(b) of the Orders, as applicable, shall have the right to terminate its obligations under this Agreement immediately and without notice to either Borrower upon the occurrence and during the continuation of an Event of Default.

3.4 **Effect of Maturity**. On the Maturity Date, all Commitments of the applicable Lenders to provide additional credit hereunder shall automatically be terminated and all of the Obligations of such Lenders immediately shall become due and payable without notice or demand and Borrowers shall be required to repay such Obligations in full on such date. No termination of the obligations of the Lender Group (other than payment in full of the Obligations and termination of the Commitments) shall relieve or discharge any Loan Party of its duties, obligations, or covenants hereunder or under any other Loan Document and Agent's Liens in the Collateral shall continue to secure the Obligations and shall remain in effect until the Obligations have been paid in full and the Commitments have been terminated.

3.5 **Early Termination by Borrowers**. Borrowers have the option, at any time upon three (3) Business Day's prior written notice to the Agent, to terminate this Agreement and terminate the Commitments hereunder by paying to the Agent all of the Obligations in full. Any notice delivered by Borrowers pursuant to this Section 3.5 may be conditioned on the occurrence of a specified transaction or event and revoked if such transaction does not occur.

3.6 **Conditions Subsequent.** The obligation of the Lender Group (or any member thereof) to continue to make Advances (or otherwise extend credit hereunder) is subject to the fulfillment, on or before the date applicable thereto, of the conditions subsequent set forth on Schedule 3.6 (the failure by Holdings or Borrowers to so perform or cause to be performed such conditions subsequent as and when required by the terms thereof, shall constitute an Event of Default).

4. REPRESENTATIONS AND WARRANTIES

In order to induce the Lender Group to enter into this Agreement, each of Holdings and each Borrower makes the following representations and warranties to the Lender Group which shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the Closing Date, and shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are

qualified or modified by materiality in the text thereof), as of the date of the making of each Advance (or other extension of credit, other than a continuation or conversion of any LIBOR Rate Loan) made thereafter, as though made on and as of the date of such Advance (or other extension of credit) (except to the extent that such representations and warranties relate solely to an earlier date), in which case such representations and warranties shall have been true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date, and such representations and warranties shall survive the execution and delivery of this Agreement:

4.1 **Due Organization and Qualification; Subsidiaries**.

(a) Each Loan Party (i) is duly organized and validly existing and in good standing under the laws of the jurisdiction of its organization (to the extent the concept of "good standing" exists in such Loan Party's jurisdiction), (ii) is qualified or licensed to do business in any jurisdiction where it is required to be qualified or licensed, except where the failure to be so qualified or licensed could not reasonably be expected to result in a Material Adverse Effect, and (iii) subject to the entry of the CCAA Orders, the Interim Order or the Final Order, applicable has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby.

(b) Set forth on Schedule 4.1(b) is a complete and accurate description of the authorized capital Stock of Holdings, by class, and a description of the number of shares of each such class that are issued and outstanding, in each case, as of the Closing Date (after giving effect to the Transactions). As of the Closing Date (after giving effect to the Transactions), other than as described in Schedule 4.1(b), there are no subscriptions, options, warrants, or calls relating to any shares of Holdings' capital Stock, including any right of conversion or exchange under any outstanding security or other instrument. As of the Closing Date (after giving effect to the Transactions), Holdings is not subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its capital Stock or any security convertible into or exchangeable for any of its capital Stock.

(c) As of the Closing Date (after giving effect to the Transactions), Schedule 4.1(c) sets forth a complete and accurate list of Holdings' direct and indirect Subsidiaries, showing: (i) the number of shares of each class of common and Preferred Stock authorized for each of such Subsidiaries, and (ii) the number and the percentage of the outstanding shares of each such class owned directly or indirectly by Holdings. All of the outstanding capital Stock of each such Subsidiary (other than Subsidiaries that are (i) limited liability companies or limited partnerships organized or formed under the laws of a jurisdiction within the United States) has been validly issued and is fully paid and non-assessable (to the extent such concepts are relevant with respect to such capital Stock), subject only to the general assessability of shares of a Nova Scotia unlimited company.

(d) As of the Closing Date, except as set forth on Schedule 4.1(d), there are no subscriptions, options, warrants, or calls relating to any shares of any Loan Party's or any of its Subsidiaries' capital Stock, including any right of conversion or exchange under any outstanding security or other instrument. As of the Closing Date (after giving effect to the Transactions), no Subsidiary is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or redeem any shares of its Subsidiaries' capital Stock or any security convertible into or exchangeable for any such capital Stock, except as provided in Schedule 4.1(d).

4.2 **Due Authorization; No Conflict**.

(a) As to each Loan Party, subject to the entry of the CCAA Orders, the Interim Order or the Final Order, as applicable, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party have been duly authorized by all necessary action on the part of such Loan Party.

(b) As to each Loan Party, subject to the entry of the CCAA Orders, the Interim Order or the Final Order, as applicable, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party do not and will not (i) violate any material provision of Applicable Law applicable to any Loan Party or its Subsidiaries, the Governing Documents of any Loan Party or its Subsidiaries, or any material order, judgment, or decree of any court or other Governmental Authority binding on any Loan Party or its Subsidiaries, (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, or require consent of any Person under (other than consents that have been obtained and that are still in force and effect) any material contractual obligation of any Loan Party or its Subsidiaries except to the extent that any such conflict, breach, default, or the failure to obtain such consent could not individually or in the aggregate reasonably be expected to have a Material Adverse Effect, or (iii) result in or require the creation or imposition of any Lien of any nature whatsoever upon any assets of any Loan Party, other than Permitted Liens.

4.3 **Governmental Consents**. Subject to the entry of the CCAA Orders, the Interim Order or the Final Order, as applicable, the execution, delivery, and performance by each Loan Party of the Loan Documents to which such Loan Party is a party and the consummation of the transactions contemplated by the Loan Documents do not and will not require any registration with, consent, or approval of, or notice to, or other action with or by, any Governmental Authority, other than (i) consents or approvals that have been obtained and that are still in force and effect, (ii) filings and recordings with respect to the Collateral to be made, or otherwise delivered to the Agent for filing or recordation, and (iii) consents, approvals, notices or other action, the failure to obtain or make could not reasonably be expected to result in a Material Adverse Effect.

4.4 **Binding Obligations; Perfected Liens**.

(a) Each Loan Document has been duly executed and delivered by each Loan Party that is a party thereto and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, subject, solely with respect to any Canadian Guarantor, to the effects of bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium, or similar laws relating to or affecting creditors' rights generally and general principles of equity (whether considered in a proceeding of equity or law), including the entry of the CCAA Orders, the Interim Order or the Final Order, as applicable. Specifically but without limitation, Section 2.6(g) satisfies the requirements of Section 4 of the *Interest Act* (Canada) to the extent it applies to the expression or statement of any interest payable under any Loan Document, and each Loan Party is able to calculate the yearly rate or percentage of interest payable under any Loan Document based upon the methodology set out in such Section.

(b) The Loan Documents, taken together with the Orders and the CCAA Orders, create in favor of the Agent, for the benefit of the Agent and the other Secured Parties, legal, valid and enforceable Liens, security or mortgage interests or hypothecs in the Collateral (subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law). Except for the entry of the Orders, no filing or other action will be necessary to perfect, or render opposable, or protect such Liens, security or mortgage interests or hypothecs in Collateral owned by the Debtors or the CCAA Debtors. Agent's liens with respect to the Loan Parties which are not Debtors or CCAA Debtors are validly

created, perfected (other than (i) in respect of motor vehicles that are subject to a certificate of title, (ii) money, (iii) letter-of-credit rights (other than supporting obligations), (iv) commercial tort claims (other than those that, by the terms of the U.S. Security Agreement or Canadian Security Agreement, are required to be perfected), and (v) any Deposit Accounts and Securities Accounts not subject to a Control Agreement as permitted by the Loan Documents, and subject only to the filing of financing statements and the recordation of the Copyright Security Agreement, in each case, in the appropriate filing offices), and first priority liens, subject only to Permitted Liens which are non-consensual Permitted Liens, permitted purchase money Liens, or the interests of lessors under Capital Leases. Upon entry of and to the extent provided in the Orders, the Obligations of the Loan Parties that are Debtors under this Agreement will constitute allowed super-priority administrative expense claims in the Cases and the CCAA Cases and first priority liens under Section 364(c) of the Bankruptcy Code and any applicable provision of the CCAA as further described in Section 2.14, having priority over all administrative expense claims and unsecured claims against such Loan Parties that are Debtors or CCAA Debtors now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code or any equivalent sections of the CCAA and all super-priority administrative expense claims granted to any other Person (including, for the avoidance of doubt, Avoidance Actions and the proceeds of thereof), subject only to the Carve Out and the CCAA Orders. Notwithstanding anything to the contrary herein, the Carve Out shall be senior to all Liens and claims (including administrative and superpriority claims) securing the Obligations, Adequate Protection Liens, and all other Liens or claims (including administrative claims and DIP Superpriority Claims), including all other forms of adequate protection, Liens, or claims (including administrative claims and DIP Superpriority Claims) securing the Obligations granted or recognized as valid, including the Liens, security interests, hypothecs and claims (including administrative claims and DIP Superpriority Claims) granted to the Agent and the other Loan Parties.

4.5 **Title to Assets**. Each of the Loan Parties and its Subsidiaries has (i) good, sufficient and legal title to (in the case of fee interests in Real Property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (iii) good and marketable title to (in the case of all personal property other than Intellectual Property, and in the case of Intellectual Property, good title to), all of their respective material assets reflected in their most recent financial statements delivered pursuant to Section 5.1, in each case except for assets disposed of since the date of such financial statements to the extent permitted hereby, and except to the extent (for the purposes of clauses (i) – (iii)) that the failure to have such title or interest could not reasonably be expected to result in a Material Adverse Effect. All of such assets are free and clear of Liens except for Pre-Petition Liens and DIP Term Loan Liens.

4.6 **Budget.** A true and complete copy of the initial Budget is attached as Schedule 4.6 hereto, and presents the good faith estimate and assumptions of Holdings and its Subsidiaries as of such date.

4.7 **Litigation.** Except for the Cases and the CCAA Cases and as set forth in Schedule 4.7, there are no actions, suits, grievances or proceedings (including pursuant to any Environmental Law) pending or, to the best knowledge of Holdings or either Borrower, threatened in writing against a Loan Party or any of its Subsidiaries that, either individually or in the aggregate could reasonably be expected, if determined adversely, to result in a Material Adverse Effect.

4.8 **Compliance with Laws**. Subject to the entry of the CCAA Orders, the Interim Order or the Final Order, as applicable, no Loan Party nor any of its Subsidiaries (a) is in violation of any Applicable Law (including Environmental Laws and the Packers and Stockyards Act of 1921) that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, provincial, municipal or other governmental department, commission, board, bureau,

agency or instrumentality, domestic or foreign, that could reasonably be expected to have a Material Adverse Effect.

4.9 **No Material Adverse Effect**. Since the Petition Date, no event, circumstance, or change has occurred that has or could reasonably be expected to result in a Material Adverse Effect with respect to the Loan Parties and their Subsidiaries, taken as a whole.

4.10 **[Intentionally Omitted]**.

4.11 **Employee Benefits.**

(a) **U.S. Employee Benefits**

(i) No Loan Party nor any ERISA Affiliates maintains or contributes to, or has any obligation under, any Pension Plan or Multiemployer Plan as of the Closing Date, other than those identified on Schedule 4.11(a).

(ii) Each Loan Party and each ERISA Affiliate is in material compliance with all applicable provisions of ERISA, the IRC and the regulations and published interpretations thereunder with respect to all Employee Benefit Plans except for any required amendments for which the remedial amendment period as defined in Section 401(b) of the IRC has not yet expired and except where a failure to so comply could not reasonably be expected to result in a Material Adverse Effect. Each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the IRC has been determined by the Internal Revenue Service (the "IRS") to be so qualified, and each trust related to such plan has been determined to be exempt under Section 501(a) of the IRC. No liability has been incurred by any Loan Party or any ERISA Affiliate which remains unsatisfied for any taxes or penalties with respect to any Employee Benefit Plan or any Multiemployer Plan except to the extent that such liability (x) individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, and (y) could not reasonably be expected to result in the imposition of a Lien on any assets of any Loan Party or any of their respective Subsidiaries.

(iii) No Employee Benefit Plan (other than individual negotiated agreements) provides for post-employment welfare benefits, except as required by the Consolidated Omnibus Reconciliation Act and no Pension Plan has been terminated for which the liabilities have not been satisfied in full, nor has any Pension Plan failed to meet the minimum funding standards of the IRC, including Section 412 or 430 of the IRC (without regard to any waiver granted under Section 412 of the IRC) other than as set forth on Schedule 4.11(a) (which schedule sets forth the fair market value of the plan's assets and the present value of the plan's liabilities using the assumptions required by the Pension Protection Act), nor has any funding waiver from the Internal Revenue Service been received or requested with respect to any Pension Plan, nor has any Loan Party or any ERISA Affiliate failed to make any contributions or to pay any amounts due and owing as required by the IRC or ERISA (including Section 412 or 430 of the IRC, Section 302 of ERISA) or the terms of any Pension Plan prior to the due dates of such contributions under the IRC or ERISA (including Section 412 or 430 of the IRC or Section 302 of ERISA), or the terms of any Pension Plan, except to the extent that the failure to make such contributions or payment, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, nor has there been any event requiring any disclosure under Section 4041(c)(3)(C) or 4063(a) of ERISA with respect to any Pension Plan. No Canadian Pension Event has occurred or is reasonably expected to occur.

(iv) No Loan Party nor any ERISA Affiliate has: (A) engaged in a nonexempt prohibited transaction described in ERISA or the IRC (including Section 406 of ERISA or Section 4975 of the IRC), except for any transactions that, individually or in the aggregate, could not reasonably be expected

to result in a Material Adverse Effect, (B) permitted a Lien to exist in the PBGC's favor or incurred any material liability to the PBGC which remains outstanding other than the payment of premiums and there are no premium payments which are due and unpaid, (C) failed to make a required contribution or payment to a Multiemployer Plan, which such failure remains uncured for a period of at least 15 Business Days, or (D) failed to make a required installment or other required payment under the IRC (including under Section 412 or Section 430 of the IRC) of any material amounts or permitted any Liens to exist in favor of the IRC.

(v) No Termination Event has occurred or is reasonably expected to occur with respect to any Employee Benefit Plan of any Loan Party or any ERISA Affiliates, except for such Termination Event (other than one described in clause (f) of the definition of Termination Event or that could result in the imposition of a Lien on the assets of any Loan Party or any of their respective Subsidiaries) that could not reasonably be expected to result in a material liability to a Loan Party.

(vi) No proceeding, claim (other than a benefits claim in the ordinary course of business), lawsuit or investigation is existing or, to the best knowledge of any Loan Party after due inquiry, threatened concerning or involving any (A) employee welfare benefit plan (as defined in Section 3(1) of ERISA) currently maintained or contributed to by any Loan Party or any ERISA Affiliate, (B) Pension Plan or (C) Multiemployer Plan, except, in any such case, individually or in the aggregate, to the extent that such actions (x) could not reasonably be expected to result in a Material Adverse Effect, and (y) could not reasonably be expected to result in the imposition of a Lien on any assets of any Loan Party or any of their respective Subsidiaries.

(vii) Except as set forth on Schedule 4.11(a), there is (a) no unfair labor practice complaint pending or, to any Loan Party's best knowledge, threatened against any Loan Party or any Subsidiary before any Governmental Authority and no grievance or arbitration proceeding pending or threatened against any Loan Party or any Subsidiary which arises out of or under any collective bargaining agreement except to the extent such complaint, grievance, or arbitration could not reasonably be expected to result in a Material Adverse Effect, (b) no strike, labor dispute, slowdown, stoppage or similar action or grievance pending or, to the best knowledge of any Loan Party, threatened against any Loan Party or any Subsidiary except to the extent such strike, labor dispute, slowdown, stoppage or similar action or grievance pending could not reasonably be expected to result in a Material Adverse Effect, and (c) no union representation question existing with respect to the employees of any Loan Party or any Subsidiary and no union organizing activity taking place with respect to any of the employees of any of them except to the extent such union representation question or union organizing activity could not reasonably be expected to result in a Material Adverse Effect. Neither the Loan Parties, nor any Subsidiary, has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act ("WARN") or similar state or provincial law, except as could not reasonably be expected to result in a Material Adverse Effect, which remains unpaid or unsatisfied. The hours worked and payments made to employees of the Loan Parties and each Subsidiary are in material compliance with the Fair Labor Standards Act and any other applicable legal requirements, except as could not reasonably be expected to result in a Material Adverse Effect.

(b) **Canadian Employee Benefits**.

(i) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, any overtime pay, vacation pay, premiums for unemployment insurance, health and welfare insurance premiums, accrued wages, salaries and commissions, severance pay and employee benefit plan payments have been fully paid by each Canadian Loan Party or, in the case of accrued unpaid overtime pay or accrued unpaid vacation pay for Canadian Employees, has been accurately accounted for in the books and records of each Canadian Loan Party or has been reported pursuant to the collateral reporting obligation pursuant to Section 5.2.

(ii) Except as disclosed on Schedule 4.11(b), no Canadian Guarantor has, maintains, administers or contributes to any Canadian Defined Benefit Plan or has any liability in respect of any Canadian Defined Benefit Plan.

(iii) Schedule 4.11(b) lists all the Canadian Pension Plans applicable to the Canadian Employees of each Canadian Loan Party in respect of employment in Canada and which are currently maintained or sponsored by each Canadian Loan Party or to which each Canadian Loan Party contributes or has an obligation to contribute.

(iv) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, no improvements to any Canadian Pension Plan or any Canadian Employee Plan have been promised, except such improvements as are described in the collective bargaining agreements listed in Schedule 4.11(b), and no amendments or improvements to a Canadian Pension Plan or Canadian Employee Plan will be made or promised by any Canadian Loan Party unless made or promised in the ordinary course of business and consistent with past practices.

(v) Except as disclosed in Schedule 4.11(b), no Canadian Loan Party provides benefits to retired Canadian Employees or to beneficiaries or dependents of retired Canadian Employees.

(vi) All funding obligations regarding the Canadian Pension Plans and the Canadian Employee Plans (including current service contributions and special payments, as applicable) have been satisfied, there are no outstanding defaults or violations by any party to any Canadian Pension Plan and any Canadian Employee Plan and no taxes, penalties or fees are owing or exigible under any of the Canadian Employee Plans, except which could not reasonably be expected to result in a Material Adverse Effect. To the best knowledge of each Canadian Loan Party, no fact or circumstance exists that could adversely affect the tax-exempt status of a Canadian Pension Plan or, where applicable, a Canadian Employee Plan.

(vii) Except as disclosed in Schedule 4.11(b),

(1) No Canadian Loan Party is a party to any collective bargaining agreement, contract or legally binding commitment to any trade union or employee organization or group in respect of or affecting Canadian Employees;

(2) No Canadian Loan Party is a party to any application, complaint, grievance, arbitration, or other proceeding under any statute or under any collective agreement related to any Canadian Employee or the termination of any Canadian Employee and there is no complaint, inquiry or other investigation by any regulatory or other administrative authority or agency with regard to or in relation to any Canadian Employee or the termination of any Canadian Employee, except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect;

(3) To the best knowledge of each Canadian Loan Party, no Canadian Loan Party has engaged in any unfair labor practice, is aware of any pending or threatened complaint regarding any alleged unfair labor practices, except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect; and

(4) To the best knowledge of each Canadian Loan Party, there is no strike, labor dispute, work slowdown or stoppage pending or threatened against any Canadian Loan Party and no Canadian Loan Party is currently the subject of any union organization effort, except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(viii) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, all contributions, assessments, premiums, fees, taxes, penalties or fines in relation to the Canadian Employees have been duly paid or remitted and there is no outstanding liability of any kind in relation to the employment of the Canadian Employees or the termination of employment of any Canadian Employee.

(ix) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, each Canadian Loan Party is in compliance with all requirements of any Applicable Law in respect of the Canadian Pension Plans and health and safety, workers compensation, employment standards, labor relations, health insurance, employment insurance, protection of personal information, human rights laws and any Canadian federal, provincial or local counterparts or equivalents in each case, as applicable to the Canadian Employees and as amended from time to time.

4.12 **Environmental Condition**. Except as set forth on Schedule 4.12, (a) to each Borrower's knowledge, no Loan Party's or its Subsidiaries' properties or assets has ever been used by a Loan Party, its Subsidiaries, or by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such disposal, production, storage, handling, treatment, release or transport was in violation of any applicable Environmental Law, except to the extent that any such violation, considered individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, (b) to each Borrower's knowledge, no Loan Party's or its Subsidiaries' properties has ever been designated or identified by a Governmental Authority in any manner pursuant to any environmental protection statute as a Hazardous Materials disposal site, except to the extent that any such designation or identification, considered individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, (c) no Loan Party nor any of its Subsidiaries has received written notice that a Lien arising under any Environmental Law has attached to any revenues or to any Real Property owned or operated by a Loan Party or its Subsidiaries that has not been resolved, except to the extent that the foregoing, considered individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, and (d) no Loan Party nor any of its Subsidiaries nor any of their respective facilities or operations is subject to any outstanding written order, consent decree, or settlement agreement with any Person relating to any Environmental Law that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

4.13 **Intellectual Property**.

(a) No Person has infringed or misappropriated or is currently infringing or misappropriating any Intellectual Property rights owned by such Loan Party, in each case, that either individually or in the aggregate could reasonably be expected to result in a Material Adverse Effect.

(b) To each Loan Party's knowledge, (i) such Loan Party is not infringing or misappropriating in any material respects any material Intellectual Property rights of any Person, and (ii) no product manufactured, used, distributed, licensed, or sold by or service provided by such Loan Party is currently infringing or misappropriating in any material respects any material Intellectual Property rights of any Person.

(c) All registered Copyrights, registered Trademarks, and issued Patents that are owned by such Loan Party are valid, subsisting and enforceable and in compliance with all legal requirements, filings, and payments and other actions that are required to maintain such Intellectual Property in full force and effect, except, in each case, where such lack or failure thereof could not reasonably be expected to result in a Material Adverse Effect.

(d) Each Loan Party and its Subsidiaries own all right, title, and interest in and to, or hold licenses in, all Intellectual Property that is necessary or material to the conduct of its business as currently conducted; provided that with respect to third party Patents, the foregoing representation and warranty is made to the knowledge of such Loan Party and its Subsidiaries.

(e) Each Loan Party has taken reasonable steps to protect and/or enforce its rights in all trade secrets owned by such Loan Party, except where such failure to maintain, protect or enforce could not reasonably be expected to result in a Material Adverse Effect.

4.14 **[Intentionally Omitted]**.

4.15 **[Intentionally Omitted]**.

4.16 **Complete Disclosure**. The factual information regarding the Loan Parties (other than forward-looking information and projections and information of a general economic nature and general information about Borrowers' industry) (taken as a whole) furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent or any Lender (including all information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement, the other Loan Documents, or any transaction contemplated herein or therein does not contain any untrue statement of material fact or omit to state any material fact necessary to make the factual statements therein taken as a whole not materially misleading as of the time made or furnished in light of the circumstances under which such information was made or furnished after taking into account any modification or supplement to such information. On the Closing Date, the Budget represents, and as of the date on which any other Budgets are delivered to Agent, as of the date of such Budgets, such additional Budgets represent (as of the date of the initial Budget) Holdings' good faith estimate of the Loan Parties' and their Subsidiaries future performance for the periods covered thereby based upon assumptions believed by Holdings to be reasonable as of the date of such Budgets (it being understood that such projections and forecasts are as to future events and are not to be viewed as facts, are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties and their Subsidiaries and no assurances can be given that such projections or forecasts will be realized and that actual results during the period or periods covered by any such projections may differ from the projected results and such differences may be material). As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

4.17 **[Intentionally Omitted]**.

4.18 **Patriot Act**. To the extent applicable, each Loan Party and each of its Subsidiaries is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the "Patriot Act"). No part of the proceeds of Advances made hereunder will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

4.19 **[Intentionally Omitted]**.

4.20 **Payment of Taxes**. Except as otherwise permitted under Section 5.5 and except as set forth on Schedule 4.20, all material federal, state, provincial and local tax returns and reports of each Loan Party

and its Subsidiaries required to be filed by any of them have been timely filed, and all taxes shown on such tax returns to be due and payable and all other material federal, state, provincial and local taxes, assessments, fees and other governmental charges upon a Loan Party and its Subsidiaries and upon their respective assets, income, businesses and franchises that are due and payable have been paid when due and payable, except to the extent failure to do so is permitted by the Bankruptcy Code or the CCAA or pursuant to the Orders, as applicable. Each Loan Party and each of its Subsidiaries have made adequate provision in accordance with GAAP for all material taxes not yet due and payable. No Borrower knows of any material proposed tax assessment against a Loan Party or any of its Subsidiaries that is not being actively contested by such Loan Party or such Subsidiary diligently, in good faith, and by appropriate proceedings; provided such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor. As of the Closing Date, no Loan Party has engaged in any listed transactions within the meaning of the IRC.

4.21 **Margin Stock**. No Loan Party nor any of its Subsidiaries is engaged in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Advances made to any Borrower will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of said Board of Governors.

4.22 **Governmental Regulation**. No Loan Party nor any of its Subsidiaries is subject to regulation under the Investment Company Act of 1940, as amended. No Loan Party nor any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940, as amended.

4.23 **OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws**. No Loan Party or any of its Subsidiaries is in violation of any Sanctions. No Loan Party nor any of its Subsidiaries nor, to knowledge of such Loan Party, any director, officer, employee, agent or Controlled Affiliate of such Loan Party or such Subsidiary (a) is a Sanctioned Person or a Sanctioned Entity, (b) has any assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. Each of the Loan Parties and its Subsidiaries has implemented and maintains in effect policies and procedures designed to ensure compliance with all Sanctions, Anti-Corruption Laws, Anti-Money Laundering Laws, or Canadian Anti-Terrorism Laws. Each of the Loan Parties and its Subsidiaries, and to the knowledge of each such Loan Party, each director, officer, employee, agent and Controlled Affiliate of such Loan Party and each such Subsidiary, is in compliance with all Sanctions, Anti-Corruption Laws, Anti-Money Laundering Laws and Canadian Anti-Terrorism Laws. No proceeds of any Advances made or Letter of Credit issued hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity, or otherwise used in any manner that would result in a violation of any Sanction, Anti-Corruption Law, Anti-Money Laundering Law, or Canadian Anti-Terrorism Law by any Persons (including any Lender, Bank Product Provider, or other individual or entity participating in any transaction).

4.24 **[Intentionally Omitted]**.

4.25 **[Intentionally Omitted]**.

4.26 **[Intentionally Omitted]**.

4.27 **Eligible Accounts**. As to each Account that is identified by a Borrower as an Eligible Account in a Borrowing Base Certificate submitted to Agent, such Account is (a) a bona fide existing payment obligation of the applicable Account Debtor created by the sale and delivery of Inventory to such

Account Debtor in the ordinary course of such Borrower's business, (b) owed to such Borrower without any known defenses, disputes, offsets, counterclaims, or rights of return or cancellation, other than (i) as is consistent with the Loan Parties' historic return, refund, credit, cancellation or exchange policies, (ii) that in each case have been disclosed in writing to Agent, or (iii) for amounts not in excess of $100,000, and (c) not excluded as ineligible by virtue of one or more of the excluding criteria set forth in the definition of Eligible Accounts.

4.28 **Eligible Inventory**. As to each item of Inventory that is identified by a Borrower as Eligible Inventory in a Borrowing Base Certificate submitted to Agent, such Inventory is not excluded as ineligible by virtue of one or more of the excluding criteria set forth in the definition of Eligible Inventory.

4.29 **Orders**.

(a) The Debtors and the CCAA Debtors are in compliance with the terms and conditions of the Orders. Each of the Interim Order (to the extent necessary during the Interim Order Period) or the Final Order (from after the date of the entry of the Final Order) is in full force and effect and has not been vacated, reversed, stayed (whether statutory stay or otherwise) or rescinded or, without the prior written consent of the Agent, no change, amendment or modification or any application or motion for any change, amendment or modification to any of the Orders shall be made, in each case, that is adverse to the interests of the Lender Group or any member thereof. The CCAA Initial Order (with respect to the period on and after entry of the CCAA Initial Order and prior to entry of the CCAA A&R Initial Order) or the CCAA A&R Initial Order (with respect to the period on and after entry of the CCAA A&R Initial Order), as the case may be, is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), vacated, or, without the Agent's consent, modified or amended. The CCAA Debtors are in compliance in all material respects with the CCAA Initial Order (with respect to the period on and after entry of the CCAA Initial Order and prior to entry of the CCAA A&R Initial Order) or the CCAA A&R Initial Order (with respect to the period on and after entry of the CCAA A&R Initial Order).

(b) The Cases were commenced on the Petition Date in accordance with applicable Laws and proper notice thereof was given for (i) the motion seeking approval of the Loan Documents and the Interim Order and, when applicable, Final Order, (ii) the hearing for the entry of the Interim Order, and (iii) the hearing for the entry of the Final Order (provided that notice of the final hearing will be given as soon as reasonably practicable after such hearing has been scheduled). The Debtors and the CCAA Debtors shall give, on a timely basis as specified in the CCAA Orders, the Interim Order or the Final Order, as applicable, all notices required to be given to all parties specified in the CCAA Orders, the Interim Order or Final Order, as applicable. The CCAA Cases were commenced on the CCAA Filing Date in accordance with applicable Laws and proper notice thereof has or will be given for the CCAA Comeback Motion. The CCAA Debtors shall give, on a timely basis as specified in the CCAA Initial Order, all notices required to be given pursuant to the CCAA or as otherwise may be requested by the Agent.

(c) Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Interim Order or the Final Order, as the case may be, upon the Maturity Date (whether by acceleration or otherwise) of any of the Obligations, Agent and Lenders shall be entitled to immediate payment of such Obligations and, subject to the Orders and Section 9, to enforce the remedies provided for hereunder or under applicable Laws, without further notice, motion or application to, hearing before, or order from, the Bankruptcy Court. Subject to any applicable provisions of the CCAA Initial Order or the CCAA A&R Initial Order, as the case may be, upon the Maturity Date (whether by acceleration or otherwise) of any of the Obligations, the Agent and Lenders shall be entitled to immediate payment of such Obligations and, subject to

Section 9, to enforce the remedies provided for hereunder or under applicable Laws, without further notice, motion or application to, hearing before, or order from, the CCAA Court.

4.30 **Inventory Records**. Each Loan Party keeps records itemizing and describing the type, quality, and quantity of its and its Subsidiaries' Inventory and the book value thereof that are correct and accurate in all material respects.

4.31 **Withholdings and Remittances**. Each Loan Party has remitted all Canada Pension Plan contributions, provincial pension plan contributions, workers' compensation assessments, employment insurance premiums, employer health taxes, municipal real estate taxes and other taxes payable under applicable law by them, and, furthermore, have withheld from each payment made to any of its present or former employees, officers and directors, and to all persons who are non-residents of Canada for the purposes of the *Income Tax Act* (Canada) all amounts required by law to be withheld, including without limitation all payroll deductions required to be withheld and has remitted such amounts to the proper Governmental Authority within the time required under applicable law.

4.32 **[Intentionally Omitted]**.

4.33 **[Intentionally Omitted]**.

4.34 **Use of Proceeds**. In accordance with and subject to the Budget (including the Permitted Variance provisions) and the Orders, Borrowers will use the proceeds of (a) the Canadian Advances (i) to repay and refinance, in full, the outstanding principal, accrued interest, and accrued fees and expenses owing in respect of Canadian Pre-Petition Advances under or in connection with the Pre-Petition Credit Agreement and the Pre-Petition Loan Documents, and (ii) to pay transaction fees, liabilities and expenses (including all fees of professionals retained in connection with the Cases and the CCAA Cases) and other administration costs incurred in connection with the Cases and the CCAA Cases and the negotiation, syndication, documentation, execution and closing of this Agreement, (b) the U.S. Advances (i) to repay and refinance, in full, the outstanding principal, accrued interest, and accrued fees and expenses owing in respect of U.S. Pre-Petition Advances under or in connection with the Pre-Petition Credit Agreement and the Pre-Petition Loan Documents, and (ii) to pay transaction fees, liabilities and expenses (including all fees of professionals retained in connection with the Cases and the CCAA Cases) and other administration costs incurred in connection with the Cases and the CCAA Cases and the negotiation, syndication, documentation, execution and closing of this Agreement, (c) the Canadian Advances, Canadian Letters of Credit and Canadian Swing Loans on and after the Closing Date solely (except as set forth in clause (a) above) to fund (i) the payment of interest and fees in respect of the Canadian Advances and Canadian Letters of Credit, Letter of Credit Disbursements in respect of Canadian Letters of Credit, and Lender Group Expenses, and (ii) to provide working capital for the Canadian Loan Parties and for other general corporate purposes of the Guarantors (other than the U.S. Loan Parties), and (d) the U.S. Advances, U.S. Letters of Credit and U.S. Swing Loans on and after the Closing Date solely (except as set forth in clause (b) above) to provide working capital and for other general corporate purposes of U.S. Borrower and the U.S. Guarantors. Notwithstanding the foregoing, (i) the Loan Parties may only use the proceeds of the Advances to make DOJ Payments so long as (A) no Default or Event of Default has occurred and is continuing on the date of such Advance or would result from payment of such DOJ Payment; and (B) Borrowers would have Adjusted Excess Availability, immediately after giving Pro Forma Effect to payment of such DOJ Payment, and at all times during the 30 consecutive day period immediately prior to the making of such DOJ Payment would have had Adjusted Excess Availability, in each case, in an amount equal to or greater than $10,000,000, and (ii) the Loan Parties may not use the proceeds of the Advances to make payment of any Other Payment; provided that (x) no part of the proceeds of the Advances will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors, (y) no

part of the proceeds of any Loan or Letter of Credit will be used, directly or indirectly, to make any payments to a Sanctioned Entity or a Sanctioned Person, to fund any investments, loans or contributions in, or otherwise make such proceeds available to, a Sanctioned Entity or a Sanctioned Person, to fund any operations, activities or business of a Sanctioned Entity or a Sanctioned Person, in each case, in any manner that would result in a violation of Sanctions by any Person, and (z) that no part of the proceeds of any Loan or Letter of Credit will be used, directly or indirectly, in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws.

5. AFFIRMATIVE COVENANTS

Each of Holdings and each Borrower covenants and agrees that, until the Payoff Date, each of Holdings and each Borrower shall and shall cause each of their respective Subsidiaries to comply with each of the following:

5.1 **Financial Statements, Reports, Certificates**. Deliver to Agent each of the financial statements, reports, and other items set forth on Schedule 5.1 at the times specified therein. In addition, each Borrower agrees that no Subsidiary of a Loan Party will have a fiscal year different from that of Borrowers. In addition, Holdings agrees to maintain a system of accounting that enables Holdings to produce financial statements in accordance with GAAP.

5.2 **Collateral Reporting**. Provide Agent with each of the reports set forth on Schedule 5.2 at the times specified therein. In addition, each Borrower agrees to use commercially reasonable efforts in cooperation with Agent to facilitate and implement a system of electronic collateral reporting in order to provide electronic reporting of each of the items set forth above.

5.3 **Existence**. Except as otherwise permitted (x) under Section 6.3, 6.4 and 6.11:

(a) cause each Loan Party to, and cause each of its Subsidiaries to, at all times maintain, preserve and keep in full force and effect its existence in good standing in its jurisdiction of organization, and

(b) cause each Loan Party to, and cause each of its Subsidiaries to, at all times preserve and keep in full force and effect all existence (other than in respect of good standing in its jurisdiction of organization) and all rights and franchises, licenses and permits, except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

5.4 **Maintenance of Properties**. Maintain and preserve all of its material assets that are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear, tear, and casualty excepted and Permitted Dispositions excepted, and except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

5.5 **Taxes**. In accordance with the Bankruptcy Code and the CCAA and except as set forth on this Section 5.5 and subject to any required approval by the Bankruptcy Court or the CCAA Court (it being understood that no Debtor or CCAA Debtor shall be obligated to make any payments hereunder that may, in its reasonable judgment, result in a violation of any applicable law, including the Bankruptcy Code and the CCAA, without an order of the Bankruptcy Court or the CCAA Court authorizing such payments), timely cause all material assessments and taxes imposed, levied, or assessed against any Loan Party or its Subsidiaries, or any of their respective assets or in respect of any of its income, businesses, or franchises to be paid in full, before delinquency or before the expiration of any extension period (taking into account all applicable provisions of the Bankruptcy Code and the CCAA), except to the extent that the validity of such

assessment or tax shall be the subject of a Permitted Protest and so long as, in the case of an assessment or tax that has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such assessment or tax. Each Borrower will and will cause each Loan Party and each of their respective Subsidiaries to make timely payment or deposit of all material withholding taxes required of it and them by applicable laws, including those laws concerning F.I.C.A., F.U.T.A., state disability, Canada Pension Plan and provincial pension plans, employer health tax, Canadian employment insurance, and local, state, provincial, and federal income taxes and excise taxes, and will, upon reasonable request, furnish Agent with proof reasonably satisfactory to Agent indicating that each Loan Party and its Subsidiaries have made such payments or deposits. Each Borrower will and will cause each Loan Party and its Subsidiaries to timely file all material federal, state, provincial and local tax returns and reports required to be filed by it.

5.6 **Insurance**.

(a) At Borrowers' expense, maintain insurance respecting each of the Loan Parties' and their Subsidiaries' assets wherever located, covering loss or damage by fire, theft, flood, explosion, and all other hazards and risks as ordinarily are insured against by other Persons engaged in the same or similar businesses and which are similarly situated and located. Borrowers also shall maintain (with respect to each of the Loan Parties and their Subsidiaries) business interruption, public liability, and product liability insurance, as well as insurance against larceny. All such policies of insurance shall be with reputable insurance companies, in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located, and in any event in amount, adequacy and scope that is no less favorable to the Loan Parties than the insurance maintained by the Loan Parties on the Closing Date or such policies of insurance shall be acceptable to Agent in its Permitted Discretion. All property insurance policies covering the Collateral are to be made payable to Agent for the benefit of the Secured Parties, as their interests may appear, in case of loss, pursuant to a standard additional loss payable endorsement with a standard non contributory "lender" or "secured party" clause. All certificates of insurance are to be delivered to Agent, with the additional loss payable and additional insured endorsement in favor of Agent and the Borrowers shall use commercially reasonable effort to cause the insurance policies to provide for not less than 30 days (10 days in the case of non-payment) prior written notice to Agent of the exercise of any right of cancellation. If at any time any real property constitutes Collateral, the Loan Parties shall maintain flood insurance on all real property constituting Collateral, from such providers, in amounts and on terms in accordance with the Flood Laws or as otherwise satisfactory to all Lenders.

(b) If Borrowers fail to maintain such insurance due to a policy lapse, then, following their receipt of notice of Agent's intent to do so (which may be delivered prior to the lapse of such insurance), Agent may arrange for such insurance, but at Borrowers' expense and without any responsibility on Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims.

(c) Borrowers shall give Agent reasonably prompt notice of any loss exceeding $50,000 covered by its casualty or business interruption insurance. Upon the occurrence and during the continuance of an Event of Default, Agent shall have the sole right to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

5.7 **Inspection**.

(a) Permit representatives and independent contractors of the Agent and each Lender to visit and inspect any of its properties (to the extent it is within such Person's control to permit such inspection), to examine its corporate, financial, operating and other books and records, and make copies thereof or abstracts therefrom, and to discuss its affairs (including, subject to Section 5.13(l), all matters contemplated by or relating to the Bidding Procedures and the Sale Order, as provided therein), finances and accounts with its directors, officers, other employees and independent public accountants, all at the reasonable expense of Holdings and the Borrowers and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to Holdings and the Borrowers; provided that, excluding any such visits and inspections during the continuation of an Event of Default, only the Agent on behalf of the Lenders may exercise rights of Agent and the Lenders under this Section 5.7(a); and provided, further, that, when an Event of Default exists, the Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of Holdings and the Borrowers at any time during normal business hours and upon reasonable advance notice. The Agent and the Lenders shall give Holdings and the Borrowers the opportunity to participate in any discussions with Holdings' or the Borrowers' independent public accountants.

(b) Independently of, or in connection with, the visits and inspections provided for in Section 5.7(a), but, subject to the proviso at the end of this clause (b), not more than one time in any calendar year in respect of appraisals and not more than one time in any calendar year in respect of field examinations (provided that in each case, if an Inspection Notice Event has occurred during any calendar year, the Agent may cause additional appraisals or field examinations to be undertaken on one additional occasion (of each an appraisal and a field exam) within twelve months of the occurrence of such Inspection Notice Event), upon the request of the Agent after reasonable prior notice, the Borrowers will permit the Agent or its professionals (including investment bankers, consultants, accountants, lawyers and appraisers) retained by the Agent to conduct appraisals and commercial finance audits (including updates thereof), including, without limitation, (i) of the Borrowers' practices in the computation of the U.S. Borrowing Base and Canadian Borrowing Base and (ii) inspecting, verifying and auditing the ABL Priority Collateral. The Borrowers shall pay the fees and expenses of Agent or such professionals with respect to such audits and appraisals to the extent such evaluations and appraisals were conducted in compliance under the preceding sentence; provided, that during an Event of Default, the Agent shall have the right to require (at the Borrowers' sole expense) additional appraisals and field exams as frequently as determined by the Agent in it reasonable discretion in addition to the appraisals and field exams specified in the preceding sentence.

5.8 **Compliance with Laws**. Comply with the requirements of all Applicable Laws (including Environmental Laws and ERISA), and orders of any Governmental Authority, other than Applicable Laws, and orders the non-compliance with which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

5.9 **Environmental**.

(a) Comply with Environmental Laws, other than the non-compliance with which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, and provide to Agent documentation of such compliance which Agent reasonably requests,

(b) promptly notify Agent of any release of a Hazardous Material in any reportable quantity from or onto property owned or operated by any Loan Party or any of its Subsidiaries and take any Remedial Actions necessary or required to abate said release or otherwise to come into compliance with applicable Environmental Law, except to the extent that any such release, considered individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, and

(c) promptly notify Agent of any of the following: (i) written notice that a Lien arising under or related to Environmental Law or Environmental Action has been filed against any of the real or personal property, immovable or movable, of any Loan Party or any of its Subsidiaries, (ii) commencement of any Environmental Action or written notice that an Environmental Action will be filed against any Loan Party or any of its Subsidiaries, and (iii) notice of a violation, citation, or other administrative order, pursuant to any applicable Environmental Law, in each case of clauses (i), (ii) and (iii) above, which could reasonably be expected to result in a Material Adverse Effect.

5.10 **Change Name**.

(a) Provide Agent with prompt written notice of any change of any Loan Party's legal name, organizational identification number or organizational identity

(b) Provide Agent with at least 10 days prior written notice of any change of any Loan Party's jurisdiction of organization.

(c) Each Loan Party incorporated in Luxembourg will maintain its central administration (*administration centrale*), the place of its effective management (*siège de direction effective*) and the center of its main interests (*centre des interêts principaux*) in Luxembourg.

5.11 **Formation of Subsidiaries**. Subject to the limitations set forth in this Agreement (including Section 6.23) and the other Loan Documents, at the time that any Loan Party forms, acquires or creates any direct or indirect Subsidiary other than an Excluded Subsidiary after the Closing Date, such Loan Party shall (a) within 20 days of such formation or acquisition (or such later date as may be agreed by the Agent in its Permitted Discretion) cause any such new Subsidiary to provide to Agent (1) a joinder to the Guaranty and the U.S. Security Agreement (if such new Subsidiary is not a Canadian Subsidiary), and (2) a joinder to the Canadian Security Documents (if such new Subsidiary is a Canadian Subsidiary) and the Intercompany Subordination Agreement, together with such other security documents, as well as appropriate financing statements, all in form and substance reasonably satisfactory to Agent (including being sufficient to grant Agent a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary); provided that the joinder to Guaranty, the U.S. Security Agreement, the Canadian Security Documents and such other security documents shall not be required to be provided to Agent with respect to any such new Subsidiary of Holdings if Agent and the Borrowers reasonably determine that the cost of providing such documents is excessive in relation to the benefit to the Secured Parties afforded thereby, (b) within 20 days of such formation or acquisition (or such later date as may be agreed by Agent in its Permitted Discretion) provide to Agent, to the extent not covered by the U.S. Security Agreement, a pledge agreement and appropriate certificates and powers or financing statements, hypothecating the Stock of any new Subsidiary (other than Excluded Stock) reasonably satisfactory to Agent, and (c) within 10 days of such formation or acquisition (or such later date as permitted by Agent in its Permitted Discretion) provide to Agent all other documentation, including (except with respect to joinders to the Guaranty, the U.S. Security Agreement, the Intercompany Subordination Agreement, and the Canadian Security Documents), if reasonably requested by Agent, one or more opinions of counsel reasonably satisfactory to Agent, which in its reasonable opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above in clause (b) of this Section 5.11. Any document, agreement, or instrument executed or issued pursuant to this Section 5.11 shall be a Loan Document. Notwithstanding anything to the contrary contained herein (including this Section 5.11 and Section 5.12 hereof) or in any other Loan Document, Agent shall not accept delivery of any joinder to any Loan Document with respect to any Subsidiary of any Loan Party that is not a Loan Party, if such Subsidiary that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation unless such Subsidiary has delivered a Beneficial Ownership Certification in relation to such Subsidiary and Agent has

completed its Patriot Act searches, OFAC/PEP searches and customary individual background checks for such Subsidiary, the results of which shall be satisfactory to Agent.

5.12 **Further Assurances**.

(a) Subject to the limitations set forth in this Agreement and the other Loan Documents, including those set forth in the last sentence of this Section 5.12(a), at any time upon the reasonable request of Agent (or such later date as may be agreed to by Agent in its Permitted Discretion), execute or deliver to Agent any and all financing statements (or any other similar instrument including summaries or notices under Article 2949 of the Civil Code of Quebec), fixture filings, security agreements, deeds of hypothec, pledges, assignments, endorsements of certificates of title, opinions of counsel, and all other documents (collectively, the "Additional Documents") that Agent may reasonably request in form and substance reasonably satisfactory to Agent, to create, perfect, or render opposable, and continue perfected or to better perfect, or render opposable, Agent's Liens in all of the assets (other than assets constituting Excluded Assets) of the Loan Parties (other than Excluded Subsidiaries) (whether now owned or hereafter arising or acquired, tangible or intangible, corporeal or incorporeal, movable or immovable), and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents; provided that the foregoing shall not apply with respect to any Loan Party that Agent and Borrowers reasonably determine that the cost of providing such Additional Documents is excessive in relation to the benefit to the Secured Parties afforded thereby. In furtherance and not in limitation of the foregoing, each Loan Party shall take such actions as Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by substantially all of the assets of each Loan Party (other than Excluded Assets) and all of the outstanding Stock of the Subsidiaries of each Loan Party. Notwithstanding anything in this Agreement or in any other Loan Document to the contrary, (i) Holdings and its Subsidiaries shall not be required to take any action to create or perfect, or render opposable, any security interests or hypothecs in (A) any Real Property, (B) any vessel, other than vessels owned by a Canadian Loan Party on the Closing Date and other than any vessels acquired by a Loan Party after the Closing Date with a Fair Market Value (individually) in excess or $1,000,000 or (C) any Excluded Assets (as defined in the U.S. Security Agreement), and (ii) if Agent and the Borrowers reasonably determine in writing that the cost of creating, perfecting or rendering opposable any Lien on any property is excessive in relation to the benefits afforded to the Secured Parties thereby, then such property may be excluded from the Collateral for all purposes of the Loan Documents.

(b) On or prior to the date that is thirty (30) days after the Agent requests (which request shall, automatically and without further act, be deemed to have been given simultaneously with any such request by the DIP Term Loan Agent under the DIP Term Loan Credit Agreement) that such actions be taken (or such later date as may be determined by the Agent in its sole discretion), the Loan Parties owning Stock in any entity incorporated or organized in Indonesia shall (i) execute and deliver to the Agent, an Indonesian-law governed pledge over the Stock of PT Asindo Minesagara and PT Inspection Laboratory held by such Loan Parties (such Stock, the "**Pledged Indonesian Equity Interests**"), in form and substance reasonably satisfactory to the Agent, (ii) deliver to the Agent (or to the DIP Term Loan Agent as bailee for perfection in accordance with the DIP Intercreditor Agreement, with copies thereof being delivered to Agent) the original share certificates of the Pledged Indonesian Equity Interests, (iii) cause PT Asindo Minesagara and PT Inspection Laboratory to notate the pledge of the Pledged Indonesian Equity Interests in favor of the Agent, for the benefit of the Secured Parties, in the shareholders' register of PT Asindo Minesagara and PT Inspection Laboratory, as applicable, and (iv) take all such other actions, and execute and deliver all other documents, in each case, as reasonably requested by the Agent to perfect and ensure the enforceability of the pledge of the Pledged Indonesian Equity Interests under Indonesian or other applicable law.

5.13 **Additional Information and Bankruptcy-Related Obligations.**

(a) Each Borrower will deliver, as soon as practicable in advance of the filing with the Bankruptcy Court or the CCAA Court, but no later than two (2) Business Days prior to distribution, unless impracticable, in which case, as soon as reasonably practicable prior to filing, copies of all material documents, motions and pleadings related to the Orders and this Agreement, deliver to the Agent all such documents to be filed and provide the Agent with a reasonable opportunity to review and comment on all such documents, which documents shall be reasonably satisfactory to the Agent.

(b) Each Borrower will comply in all material respects with (i) each order entered by the Bankruptcy Court in connection with the Cases and (ii) each order issued by the CCAA Court and entered in connection with the CCAA Cases.

(c) Each Borrower will comply in a timely manner with their obligations and responsibilities as debtors-in-possession under the Bankruptcy Code, the Bankruptcy Rules, Canadian Bankruptcy and Insolvency Law, the Interim Order, the Final Order, the CCAA, the CCAA Initial Order and the CCAA A&R Initial Order, as applicable, and any other order of the Bankruptcy Court and the CCAA Court, as applicable.

(d) Without limiting the requirements set forth in Section 5.1 or elsewhere herein, each Borrower shall promptly, but no later than two (2) Business Days prior to distribution subject to Section 5.13(l), provide the Agent with copies of any informational packages provided to potential bidders, draft agency agreements, purchase agreements, status reports, and updated information related to the sale or any other transaction and copies of any such bids and any updates, modifications or supplements to such information and materials.

(e) Each Borrower will deliver to the Agent promptly after the same are available, copies of all reporting and information related to any proposed asset sales or other dispositions that could reasonably be expected to materially affect the U.S. Borrowing Base or the Canadian Borrowing Base.

(f) Each Borrower will allow the Agent access to, upon reasonable notice during normal business hours, all financial advisors and advisors engaged by the Loan Parties.

(g) Each Borrower will deliver to the legal counsel to the Agent, at least two Business Days in advance of filing with the Bankruptcy Court or the CCAA Court, unless impracticable, in which case, as soon as reasonably practicable prior to filing, copies of all proposed orders to be entered by the Bankruptcy Court or any other court having jurisdiction over the insolvency proceeding of any Loan Party pending outside of the Bankruptcy Court in respect of first day motions and applications ("First Day Orders") and second day motions and applications ("Second Day Orders"; together with the First Day Orders, the "Initial Orders") and motions seeking approval of the Initial Orders or the CCAA Orders, which shall be in form and substance reasonably satisfactory to the Agent.

(h) Each Borrower will provide the Agent and the Lenders with reasonable access to non-privileged information (including historical information) and relevant personnel regarding strategic planning, cash and liquidity management, operational and restructuring activities, in each case subject to customary confidentiality restrictions.

(i) Borrowers will deliver to counsel to the Agent (to the extent practicable) promptly as soon as available but no later than two (2) Business Days prior to distribution, unless impracticable, in which case, as soon as reasonably practicable prior to filing, copies of all proposed non-ministerial or administrative pleadings, motions, applications, orders, financial information and other documents distributed by or on behalf of the Loan Parties to any Committee or unofficial committee appointed or

appearing in the Cases or the CCAA Cases, the CCAA Monitor or any other party in interest, and shall consult in good faith with the Agent's advisors regarding the form and substance of any such document;

(j) If not otherwise provided through the Bankruptcy Court's or the CCAA Court's electronic docketing system, as soon as available, deliver to the Agent (for distribution to the Lenders) and to counsel to the Agent and Lenders promptly as soon as available, copies of all final pleadings, motions, applications, orders, financial information and other documents filed by or on behalf of the Loan Parties with the Bankruptcy Court in the Cases or the CCAA Court in the CCAA Cases, or distributed by or on behalf of the Loan Parties to any Committee or unofficial committee appointed or appearing in the Cases or the CCAA Cases or the CCAA Monitor; and

(k) Each Borrower will provide the Agent and Lenders no less than five (5) Business Days' (or such shorter notice acceptable to the Agent in its reasonable discretion) prior written notice prior to any (i) assumption or rejection of any Loan Party's or any other Subsidiary's material contracts or material non-residential real property leases pursuant to Section 365 of the Bankruptcy Code, or (ii) disclaimer or resiliation of any CCAA Debtor's material contracts or material non-residential real property leases pursuant to section 32 of the CCAA, and no such contract or lease shall be assumed or rejected, if such assumption or rejection adversely impacts the Term Loan Priority Collateral, any Liens thereon or any DIP Superpriority Claims payable therefrom (including, without limitation, any sale or other disposition of Term Loan Priority Collateral or the priority of any such Liens or DIP Superpriority Claims), if the Agent inform the Borrower in writing within three (3) Business Days of receipt of the notice from the Borrower referenced above that it objects to such assumption, disclaimer, resiliation or rejection, as applicable.

(l) Without limiting the requirements set forth in Section 5.1 or elsewhere herein, each Borrower shall provide the Agent with all information required under and pursuant to the Bidding Procedures and the Bidding Procedures Order in accordance with the terms thereof; provided that, notwithstanding anything in this Agreement (including Sections 5.7(a) and (c), 5.13(d) and 5.23) to the contrary or otherwise, Holdings and its Subsidiaries shall not be required to share any information related to the matters contemplated by or relating to the Bidding Procedures or the Bidding Procedures Order (i) that the Debtors reasonably determine must remain confidential to not advantage the Agent or any of the Lenders in connection with a bid by the Agent or any of the Lenders (if made) for any material portion of the assets of Holdings and its Subsidiaries over any other party or (ii) to the extent that the sharing of such information would be inconsistent with the Bidding Procedures or the Bidding Procedures Order.

5.14 **Performance Within Budget.**

(a) The Loan Parties will use the proceeds of the Loans solely to make disbursements and pay expenses in accordance with Section 4.34 and this Section 5.14. The Debtors and the CCAA Debtors shall not pay any expenses (other than *de minimis* amounts) or other disbursements (other than *de minimis* disbursements) other than the type of expenses and disbursements set forth in the Budget.

(b) For each Testing Period, the Borrowers shall not permit:

(i) the actual amount of total operating expenses (excluding professional fees and expenses, to the extent set forth in the schedules delivered pursuant to Schedule 5.1(i)) of the Loan Parties and their Subsidiaries during such Testing Period to exceed the projected total operating expenses of the Loan Parties and their Subsidiaries (on a cumulative basis for such Testing Period) in the Budget for such Testing Period by more than (A) in the case of any Testing Period with a duration of one or two weeks, 15%, or (B) in the case of any other Testing Period, 12.5% (the "Permitted Expenditures Variances"); or

(ii) the actual amount of total operating receipts of the Loan Parties and their Subsidiaries during any Testing Period to be less than (A) in the case of any Testing Period with a duration of one or two weeks, 85%, or (B) in the case of any other Testing Period, 87.5%, of the projected total operating receipts of the Loan Parties and their Subsidiaries (on a cumulative basis for such Testing Period) set forth in the Budget for such Testing Period (such variance, the "Permitted Receipts Variances" and, together with the Permitted Expenditures Variances, the **"**Permitted Variances").

5.15 **DOJ Settlement; Compliance Program; Company Compliance Program**. The Loan Parties shall (i) comply in all respects with the DOJ Settlement other than any non-compliance that the Agent determines are de minimis in nature and which do not result in the termination by the Department of Justice of the DOJ Settlement, (ii) adopt and keep in effect, to the extent required by the terms of the DOJ Settlement or otherwise required in connection with or related to the DOJ Settlement, the Compliance Program, and comply with such Compliance Program in all respects other than any non-compliance that the Agent determines are de minimis in nature and which do not result in the termination by the Department of Justice of the DOJ Settlement, and (iii) maintain at all times the Company Compliance Program, which Company Compliance Program shall at all times be at least as stringent (taken as a whole) as the Company Compliance Program as in effect on the Closing Date.

5.16 **Compliance with ERISA and the IRC.** In addition to and without limiting the generality of Section 5.8, (a) without the prior written consent of Agent, not take any action or fail to take action the result of which action or failure could result in the imposition of a Lien in favor of the PBGC or to a Multiemployer Plan or result in a Material Adverse Effect, (b) not participate in any prohibited transaction that could result in any civil penalty under ERISA or tax under the IRC that could reasonably be expected to result in a material liability, and (c) furnish to the Agent upon the Agent's request such additional information about any Employee Benefit Plan that is a Pension Plan or a health benefit plan as may be reasonably requested by the Agent. Each applicable Loan Party shall notify Agent (i) within 30 days of the establishment of any new Pension Plan or the commencement of contributions to any Multiemployer Plan to which a Loan Party was not previously contributing, and (ii) within 30 days of any increase in a Loan Party's or ERISA Affiliates' contribution obligations to a Pension Plan or Multiemployer Plan of more than $500,000 from such entity's prior fiscal year's contribution obligations.

5.17 **Canadian Pension and Benefit Plans.**

(a) With respect to each Canadian Pension Plan, the Canadian Borrower and Canadian Guarantors shall:

(i) cause to be delivered to the Agent, promptly upon the Agent's reasonable written request, copies of annual information returns, actuarial valuations and any other report or form filed with the applicable Governmental Authority or the funding agent;

(ii) ensure that each Canadian Pension Plan is administered in all material respects in accordance with its terms, any collective bargaining agreement and any Applicable Law; and

(iii) pay all contributions and payments (including current service cost and special payments) when due in accordance with its terms, any collective bargaining agreement and any Applicable Law.

(b) Each applicable Canadian Loan Party shall notify Agent (i) within 30 days of the establishment of any new Canadian Pension Plan, or the commencement of contributions to any such plan to which the Canadian Loan Party was not previously contributing; and (ii) within 30 days of any increases

or changes having a cost to such Canadian Loan Party in excess of C$500,000 in any fiscal year in respect of any Canadian Pension Plan or in the benefits of any Canadian Pension Plan.

5.18 **Use of Proceeds.** Borrowers will use the proceeds of the Advances and other extensions of credit hereunder solely as provided in Section 4.34.

5.19 **OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws; Canadian Anti-Terrorism Laws**. Each Loan Party will, and will cause each of its Subsidiaries to comply with all applicable Sanctions, Anti-Corruption Laws, Anti-Money Laundering Laws and Canadian Anti-Terrorism Laws. Each of the Loan Parties and its Subsidiaries shall implement and maintain in effect policies and procedures designed to ensure compliance by the Loan Parties and their Subsidiaries and their respective directors, officers, employees, agents and Controlled Affiliates with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws.

5.20 **Control Agreements; Controlled Accounts**.

(a) **Control Agreements**. Subject to the limitations set forth in the Security Documents, on or before the Closing Date, each Loan Party shall obtain an authenticated Control Agreement, from each bank maintaining a Deposit Account or a Securities Account for such Loan Party (other than any Excluded Accounts); provided that with respect to Deposit Accounts and Securities Accounts maintained by Holdings, Clover Leaf Seafood, or any other Loan Party organized outside of the United States or Canada with a bank located outside of the United States or Canada, any such Person shall only be required to use its commercially reasonable efforts to obtain Control Agreements with respect to such Deposit Accounts and Securities Accounts (and the use of such efforts shall not require such Person to incur costs that would otherwise be excessive in relation to the benefit to the Lenders of the control arrangements to be afforded thereby). Except as permitted by Section 5.20(b)(i), the Loan Parties shall not establish any Deposit Accounts or Securities Accounts after the Closing Date unless such Loan Party, concurrently with the establishment of any such Deposit Account or Securities Account (or such later date as may be agreed by the Agent in its Permitted Discretion) shall have obtained an authenticated Control Agreement from the bank maintaining such Deposit Account or the securities intermediary maintaining such Securities Account and to have complied in full with the provisions of this Section 5.20(a) with respect to such Deposit Accounts or Securities Accounts; provided further that, with respect to any Deposit Accounts and Securities Accounts of any Loan Party acquired after the Closing Date, such Deposit Accounts and Securities Accounts of any such Loan Party shall not be required to be subject to a Control Agreement (i) until 30 days (or such later date as may be agreed by Agent in its Permitted Discretion) after such entity becomes a Loan Party, or (ii) if the security interest or hypothec of Agent in any such Deposit Account is otherwise perfected or rendered opposable by "control" (as defined in the UCC) by reason of such Deposit Account being maintained at the Agent or otherwise (including another method under foreign or domestic Applicable Law). Each Canadian Guarantor with a Controlled Account subject to a Control Agreement will instruct the applicable Controlled Account Bank each day to wire all amounts in the applicable Controlled Account to Agent's Account.

(b) **Controlled Accounts**.

(i) On or before the Closing Date (or such later date as may be agreed to by Agent in its Permitted Discretion), each Loan Party shall (1) establish and maintain cash management systems on terms reasonably satisfactory to Agent at one or more financial institutions (each a "Controlled Account Bank") pursuant to which such Loan Parties shall take reasonable steps to ensure that the Loan Parties' Account Debtors forward payment of the amounts owed by them directly to such Controlled Account Bank, and (2) deposit or cause to be deposited promptly, and in any event no later than the third Business Day after the date of receipt thereof, all of their Collections (including those sent directly by their

Account Debtors to a Loan Party) into a bank account of such Loan Party (each, a "Controlled Account") at one of the Controlled Account Banks. Each such Controlled Account shall be subject to a Control Agreement, which shall provide (among other things) that (A) the Controlled Account Bank will comply with any instructions originated by Agent directing the disposition of the funds in such Controlled Account without further consent by the applicable Loan Party, (B) the Controlled Account Bank subordinates any of its rights of setoff or recoupment or any other claim against the applicable Controlled Account other than for payment of its service fees and other charges directly related to the administration of such Controlled Account and for returned checks or other items of payment; provided, however, that Borrowers shall only be required to use commercially reasonable efforts to obtain such subordination from the Controlled Account Bank, and (C) the Controlled Account Bank will forward by daily sweep all amounts in the applicable Controlled Account to Agent's Account. Any provision of this Section 5.20 to the contrary notwithstanding, the Loan Parties may maintain (A) Excluded Accounts, and (B) Deposit Accounts, so long as all the cash and Cash Equivalents contained therein consist of (1) proceeds from the issuance or incurrence of Indebtedness (including the Designated Accounts into which the Advances are deposited) or the issuance of Stock, (2) proceeds from the sale or other Disposition of assets (other than ABL Priority Collateral) or (3) proceeds of insurance and condemnation awards (and payments in lieu thereof) relating to any assets (other than ABL Priority Collateral) that are segregated from the cash management systems of the Loan Parties and which Deposit Accounts do not contain any proceeds of ABL Priority Collateral, and such Deposit Accounts shall not be required to be subject to a Control Agreement, other than the Designated Accounts, or be considered Controlled Accounts.

(c) Each Loan Party shall manage all cash in accordance with the provisions hereof and as provided in the Orders and/or Cash Management Order, in each case, as entered by the Bankruptcy Court or the CCAA Court, and the Borrower shall ensure that the Agent has control with respect to the Loan Parties' Deposit Accounts pursuant to the Cash Management Order or the Orders, as applicable.

(d) Each Borrower and the Loan Parties shall not directly or indirectly own or control the use of any Deposit Account (other than Excluded Accounts) or Securities Accounts (other than Excluded Accounts) without (i) the consent of the Agent and (ii) entry into an effective account control agreement with respect to such Deposit Account (the "Post-Petition Deposit Accounts") or Securities Accounts (the "Post-Petition Securities Accounts").

5.21 **Milestones**. Each Borrower shall comply with each of the requirements set forth on Schedule 5.21 hereto.

5.22 **Priority and Liens**. At all times during the term hereof, each Borrower shall ensure each of the following and in each case subject to the Carve Out and as otherwise provided in the Orders and the CCAA Orders:

(a) Upon the entry of each of the Orders, each Borrower's, each other Debtor's and each other CCAA Debtor's Obligations hereunder and under each of the other Loan Documents shall, at all times:

(i) constitute an allowed DIP Superpriority Claim on a joint and several basis in the Case of such Debtor and the CCAA Case of such CCAA Debtor;

(ii) pursuant to section 364(c)(2) of the Bankruptcy Code, be secured by first priority, valid, binding, continuing, enforceable and fully-perfected or opposable security interests in, and Liens upon, all DIP Collateral that, on or as of the Petition Date, is not subject to valid, perfected, or opposable, and non-avoidable liens (excluding any Avoidance Actions (but including, following the entry of the Final Order, the proceeds therefrom));

(iii) pursuant to section 364(c)(3) of the Bankruptcy Code, be secured by valid, binding, continuing, enforceable and fully-perfected, or opposable, security interests in, and Liens upon, the DIP Collateral, whether existing on the Petition Date or thereafter acquired, that is subject to Liens of parties other than the Pre-Petition Parties, Liens securing the Adequate Protection Liens of the Pre-Petition Parties, the Carve Out or any Permitted Lien (as defined in the Interim Order), which security interests and liens in favor of the Agent, are junior to such valid, perfected or opposable and non-avoidable Liens; and

(iv) pursuant to section 364(d) of the Bankruptcy Code, be secured by valid, binding, continuing, enforceable, fully perfected, or opposable, first priority senior priming security interests and Liens upon all DIP Collateral that is subject to valid, perfected, or opposable, and non-avoidable liens presently held for the benefit of the Pre-Petition Parties (such priming liens, the "Priming Liens" and such primed liens of the Pre-Petition Parties, the "Primed Liens"). The Priming Liens shall be senior in all respects to the Primed Liens and to the interests in property of the Pre-Petition Parties (including any and all forms of adequate protection granted to the foregoing). The Primed Liens shall be primed and made subject and subordinate to the Priming Liens, but the Priming Liens shall not prime liens, if any, to which the Primed Liens are subordinate as of the Petition Date.

(b) The Liens of the Agent described in Section 5.22(a) and the DIP Superpriority Claim shall have priority over any claims arising, upon entry of the Final Order, under sections 105 and 506(c) of the Bankruptcy Code, and shall be subject only to the Carve Out, and other Permitted Liens (as defined in the Interim Order) and as otherwise provided in the CCAA Orders. Except as set forth herein, no other claim having priority superior to or pari passu with that granted to the Secured Parties by the Order then in effect shall be granted or approved while any Obligations under this Agreement remain outstanding.

(c) Upon entry of the Final Order, except for the Carve Out and as otherwise provided in the CCAA Orders, no costs or expenses of administration shall be imposed against the Agent, the Lenders, or any other Secured Party or any of the Collateral or, subject to the entry of the Final Order, under sections 105 or 506(c) of the Bankruptcy Code, or otherwise, and each of the Debtors hereby waives for itself and on behalf of its estate and all rights under section 105 and, upon entry of the Final Order, section 506(c) of the Bankruptcy Code, or otherwise, to assert or impose or seek to assert or impose, any such costs or expenses of administration against the Agent, the Lenders, or any Secured Party.

(d) Except for the Carve Out and as otherwise provided in the CCAA Orders, the DIP Superpriority Claims of the Secured Parties and the Pre-Petition Parties shall at all times be senior to the rights of such Debtor, any chapter 11 trustee and, subject to section 726 of the Bankruptcy Code, any chapter 7 trustee, or any other creditor (including post-petition counterparties and other post-petition creditors) in the Cases or any subsequent proceedings under the Bankruptcy Code, including any chapter 7 cases (if any of such Debtor's cases are converted to cases under chapter 7 of the Bankruptcy Code).

(e) For the avoidance of doubt and notwithstanding anything to the contrary herein or elsewhere, the Carve Out shall be senior to all liens securing the Obligations as well as any Adequate Protection Liens and claims granted by any Order. Nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation of any professional retained by any Debtor or a Committee. Notwithstanding anything herein to the contrary, prior to an Event of Default, the Debtors shall, in accordance with the Budget and subject to the terms of the Orders and any other relevant orders of the Bankruptcy Court, be permitted to pay compensation and reimbursement of expenses to professionals allowed and payable under sections 330 and 331 of the Bankruptcy Code and such orders of the Bankruptcy Court authorizing the payment of compensation and reimbursement of expenses that have been incurred prior to the occurrence of such Event of Default, and such amounts paid will not reduce the Post-Carve-Out Trigger Notice Cap.

(f) The Borrower and each CCAA Debtor hereby covenants that, upon entry of the CCAA Initial Order (and when applicable, the CCAA A&R Initial Order), and in all cases subject to the terms of the CCAA Initial Order and the CCAA A&R Initial Order, as the case may be:

(i) the Obligations of the CCAA Debtors under the Credit Documents shall at all times be secured by the CCAA DIP Charge in favor of the Agent on behalf of and for the benefit of the Secured Parties on the Collateral of the CCAA Debtors with the priority and other terms as set forth in the CCAA Orders; and

(ii) pursuant to the CCAA Initial Order (and, when entered, the CCAA A&R Initial Order), the Liens in favor of the Agent on behalf of and for the benefit of the Secured Parties on the Collateral of the CCAA Debtors shall be created and perfected without the recordation or filing in any land records or filing offices of any Mortgage, security agreement, financing statement, assignment or similar instrument.

5.23 **Lender Meetings**. No less than twice per week unless otherwise agreed by Agent, and more frequently upon the reasonable request of the Agent, Holdings will participate in a meeting or conference call with Agent and the Lenders to discuss the financial condition and results of operations of Holdings and its consolidated Subsidiaries, budget variances and operations of Holdings and its Subsidiaries, and, subject to Section 5.13(l), the matters contemplated by or relating to the Bidding Procedures (as provided therein), including the sale process contemplated thereby, and such other matters as may be reasonably requested by the Agent. For the avoidance of doubt, so long as no Default or an Event of Default has occurred and is continuing, such meetings and conference calls may, at Borrowers' option, be attended by the lenders under the Term Loan Indebtedness, DIP Term Loan Indebtedness or any Refinancing Indebtedness in respect thereof.

5.24 **Challenges**. Notwithstanding anything herein to the contrary, except as expressly permitted by the Orders with respect to the Pre-Petition Credit Agreement, no portion or proceeds of the Agreement or the Collateral, and no disbursements set forth in the Budget, shall be used for the payment of professional fees, disbursements, costs or expenses incurred in connection with (a) objecting, contesting or raising any defense to the validity, perfection, priority or enforceability of, or any amount due under this Agreement, the Loan Documents, the Prepetition Credit Agreement or any security interests, liens or claims granted under the Orders, the Loan Documents or the "Loan Documents" (as defined in the Prepetition Credit Agreement) to secure such amounts; (b) asserting any challenges, claims, actions or causes of action against any of the Lenders, the Agent, the lenders under the Prepetition Credit Agreement or any of their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors; (c) preventing, hindering or otherwise delaying enforcement or realization on the Collateral; or (d) seeking to amend or modify any of the rights granted to the Agent, the Lenders, the "Secured Parties" (as defined in the Prepetition Credit Agreement) under this Agreement, the Loan Documents, the Orders or the "Loan Documents" (as defined in the Prepetition Credit Agreement), including seeking to use the cash collateral and/or Collateral on a contested basis.

6. NEGATIVE COVENANTS

Each of Holdings and each Borrower covenants and agrees that, until the Payoff Date, each of Holdings and each Borrower will not and will not permit any of their Subsidiaries to do any of the following:

6.1 **Indebtedness**. Create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any Indebtedness, except for Permitted Indebtedness.

6.2 **Liens**. Create, incur, assume or suffer to exist, directly or indirectly, any Lien on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for Permitted Liens.

6.3 **Restrictions on Fundamental Changes**. Except as permitted by Section 6.4 or 6.11 or in connection with the consummation of a 363 Sale:

(a) in any transaction or series of transactions, enter into any merger, amalgamation, division, or consolidation,

(b) liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution),

(c) in the case of Holdings and its Subsidiaries, taken as a whole, terminate a substantial portion of its business, or

(d) convey, sell, lease, assign or otherwise Dispose of all or substantially all of the business units, assets or properties.

6.4 **Disposal of Assets**. Other than Permitted Dispositions, Permitted Investments or transactions expressly permitted by Sections 6.3 and 6.11, convey, sell, lease, license, assign (other than in connection with the granting of Permitted Liens), transfer, or otherwise dispose of (any such action, a "Disposition") any of any Loan Party's or its Subsidiaries' assets (including by an allocation of assets among newly divided limited liability companies pursuant to a "plan of division").

6.5 **Use of Proceeds**. Use the proceeds of any Advance in a manner which would result in such use of proceeds to not be in accordance with the provisions of Section 4.34 hereof.

6.6 **[Intentionally Omitted]**.

6.7 **Prepayments and Amendments**.

(a) Optionally prepay, redeem, defease, purchase, or otherwise optionally acquire any of the principal amount of any Subject Debt (each, a "Restricted Debt Payment") (it being understood that payments of regularly scheduled interest shall be permitted), other than:

(i) payment of secured Indebtedness that becomes due as a result of the voluntary sale or Disposition of the property or assets securing such Indebtedness (other than ABL Priority Collateral) so long as such sale or Disposition is permitted by Section 6.4 and so long as such Indebtedness is paid with the proceeds of such sale or Disposition; and

(ii) payment due under the DIP Term Loan Credit Agreement (subject to the DIP Intercreditor Agreement), in accordance with the Orders and the Budget (subject to Permitted Variances).

Notwithstanding the foregoing and for the avoidance of doubt, nothing in this Section 6.7(a) shall prohibit the repayment, prepayment, redemption, defeasance, purchase or acquisition of intercompany Indebtedness for borrowed money owed among Holdings or the Subsidiaries, unless an Event of Default has occurred and is continuing and Holdings has received a notice from Agent instructing it not to make or permit the Subsidiaries to make any such repayment, prepayment redemption, defeasance or acquisition.

(b) Directly or indirectly, amend, modify, or change any of the terms or provisions of:

(i) (A) any agreement entered into in connection with the 363 Sale without the consent of the Agent, if such agreement, amendment, modification or change is adverse to the interests of the Agent or any Lender, or (B) any agreement, instrument, document, indenture, or other writing evidencing or concerning the DIP Term Loan Indebtedness without the consent of the Agent if such amendment, modification or change is prohibited pursuant to the terms of the DIP Intercreditor Agreement, or

(ii) the Governing Documents of any Loan Party or any of its Subsidiaries without the consent of the Agent.

6.8 **Chapter 11 Claims**. No Loan Party shall, until payment in full of the Obligations under this Agreement (other than (i) Obligations under Bank Product Obligations or (ii) Letters of Credit that have been cash collateralized or backstopped by a letter of credit in form and substance reasonably satisfactory to the Agent), except with respect to the Carve Out, and otherwise to the extent permitted under the Orders, directly or indirectly, incur, create, assume, suffer to exist or permit any administrative expense claim or Lien on its property which is *pari passu* with or senior to the claims or Liens, as the case may be, of the Agent and the Lenders under the Loan Documents or under the Orders.

6.9 **Restricted Junior Payments**. Make any Restricted Junior Payment; provided, however, that, so long as it is permitted by law and in each case consistent with the Budget and any applicable order of the Bankruptcy Court or the CCAA Court:

(a) [intentionally omitted];

(b) to the extent constituting Restricted Junior Payments, Holdings may make Investments permitted by Section 6.11 (other than Investments described in clause (u) of the definition of "Permitted Investments");

(c) [intentionally omitted];

(d) Holdings may make and pay Restricted Junior Payments to its direct or indirect parent companies:

(i) the proceeds of which will be used to allow any direct or indirect parent of Holdings to pay the tax liability to each relevant jurisdiction in respect of consolidated, combined, unitary or affiliated returns that include Holdings (or, if Holdings is a disregarded entity, the income of Holdings), but only to the extent of taxes that Holdings would have to pay if it had filed a tax return on a standalone basis for itself and its Subsidiaries; and

(ii) the proceeds of which shall be used by any direct or indirect parent of Holdings to pay its operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties), which are reasonable and customary and incurred in the ordinary course of business, in an aggregate amount not to exceed $100,000 in the aggregate;

(e) [intentionally omitted];

(f) Holdings may make payments described in Sections 6.12 (e), (h), (i), (j), and (n) (subject to the conditions set out therein);

(g) [intentionally omitted];

(h) [intentionally omitted];

(i) [intentionally omitted];

(j) [intentionally omitted];

(k) [intentionally omitted];

(l) [intentionally omitted].

6.10 **Accounting Methods**. Modify or change (a) each of its, and each of the Subsidiaries', fiscal years to end on a date other than December 31 of each year and (b) each of its, and each of the Subsidiaries', fiscal quarters to end on dates that are not consistent with such fiscal year-end; provided, however, that Holdings may, upon written notice to, and consent by, the Agent, change the financial reporting convention specified above to any other financial reporting convention reasonably acceptable to the Agent, in which case Holdings and the Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary in order to reflect such change in financial reporting.

6.11 **Investments**. Except for Permitted Investments, directly or indirectly, make or acquire any Investment or incur any liabilities (including contingent obligations) for or in connection with any Investment.

6.12 **Transactions with Affiliates**. Directly or indirectly enter into, make any payment to, or sell, lease, transfer or otherwise Dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of related transactions, contract, agreement, loan, advance or guarantee with, or for the benefit of, any Affiliate of any Loan Party or any of its Subsidiaries or permit to exist any transaction with any Affiliate of any Loan Party or any of its Subsidiaries, in each case, involving consideration in excess of $250,000, except for:

(a) such transactions in the ordinary course of business upon fair and reasonable terms fully disclosed to the Agent and on terms no less favorable to Holdings or such Subsidiary as would be obtainable by Holdings or such Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate,

(b) if such transaction is between or among Holdings or its Subsidiaries and permitted by the Budget (to the extent otherwise permitted hereunder),

(c) [intentionally omitted],

(d) [intentionally omitted],

(e) any transaction in accordance with the Orders,

(f) Stock issuances, repurchases, retirements or other acquisitions or retirements of Stock by Holdings (or a parent company thereof) permitted under Section 6.9,

(g) to the extent permitted by the Budget, loans and guarantees by Holdings (or any of its direct or indirect parent thereof) and the Subsidiaries to the extent permitted by Section 6.1,

(h) to the extent permitted by the Budget, employment and severance arrangements and health, disability and similar insurance or benefit plans between Holdings (or any of its direct or indirect parent thereof) and the Subsidiaries and their respective directors, officers, employees (including management and employee benefit plans or agreements, subscription agreements or similar agreements pertaining to the repurchase of Stock pursuant to put/call rights or similar rights with current or former employees, officers or directors and stock option or incentive plans and other compensation arrangements) in the ordinary course of business or as otherwise approved by the Board of Directors of Holdings (or any direct or indirect parent thereof),

(i) to the extent permitted by the Budget, the payment of customary fees and reasonable and documented out of pocket costs to, and indemnities provided on behalf of, directors, managers, consultants, officers and employees of Holdings (or any direct or indirect parent thereof) and the Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of Holdings and the Subsidiaries,

(j) transactions pursuant to permitted agreements in existence on the Closing Date and set forth on Schedule 6.12;

(k) Restricted Debt Payments permitted under Section 6.7, Restricted Junior Payments permitted pursuant to Section 6.9 and Permitted Investments permitted under Section 6.11,

(l) any issuance of Stock or other payments, awards or grants in cash, securities, Stock or otherwise pursuant to, or the funding of, employment arrangements, stock options and stock ownership plans approved by the Board of Directors of Holdings (or any of its direct or indirect parent thereof),

(m) any purchase by Holdings of the Stock of a Subsidiary thereof; provided that, to the extent required by Section 5.11 or Section 5.12, any Stock so purchased shall be pledged to Agent for the benefit of the Secured Parties pursuant to the applicable Security Agreement, and

(n) payments by Holdings (or any of its direct or indirect parent companies) and its Subsidiaries pursuant to tax sharing agreements among Holdings (or such parent) and its Subsidiaries on customary terms to the extent permitted by Section 6.9(d)(i).

Notwithstanding the foregoing, neither Holdings nor any of its Subsidiaries shall be permitted to pay any management, monitoring, consulting, transaction, advisory or similar fees to the Equity Sponsor or any of its Affiliates.

6.13 **Changes in Business**. Fundamentally and substantively alter the character of their business, taken as a whole, from the business conducted by Holdings and its Subsidiaries, taken as a whole, on the Closing Date and other business activities incidental, complementary or related to any of the foregoing.

6.14 **Holding Companies**. Permit Holdings, Canadian Holdco, BB Parent, BB Holdings, Clover Leaf Seafood, or any other Holding Company to conduct, transact or otherwise engage in any business or operations other than (i) after giving effect to the Transactions, the ownership or acquisition of the Stock of any Holding Company, Canadian Borrower, U.S. Borrower and any other Person the Stock of which constitute a Permitted Investment, (ii) the maintenance of its legal existence, including the ability to

incur fees, costs and expenses relating to such maintenance, (iii) participating in tax, accounting and other administrative matters as a member of the consolidated group of Holdings and its Subsidiaries, (iv) the performance of its obligations under and in connection with the Loan Documents, the DIP Term Loan Document and the other agreements contemplated hereby and thereby, (v) in the case of Holdings, any public offering of its common Stock or any other issuance or registration of its Stock for sale or resale not prohibited by Section 6, including the costs, fees and expenses related thereto, (vi) any transactions that any such Person is permitted to enter into or consummate pursuant to the terms and conditions of Section 6 of the Agreement, including making any Permitted Investment or Restricted Junior Payments permitted by Sections 6.9 or 6.11 or making other dividends or distributions or holding any cash or Cash Equivalents received in connection any such dividends or distributions, in each case, in accordance with the Budget, (vii) incurring fees, costs and expenses relating to overhead and general operating including professional fees for legal, tax and accounting issues and paying taxes, in each case, in accordance with the Budget, (viii) providing indemnification to employees, officers and directors and as otherwise permitted in Section 6, (ix) activities incidental to the consummation of the Transactions and (x) activities incidental to the businesses or activities described in clauses (i) to (ix) of this Section 6.14. It being understood that in no event shall Holdings, Canadian Holdco, BB Parent, BB Holdings, Clover Leaf Seafood, or any other Holding Company own and operate any operating assets.

6.15 **Compliance with Budget.**

(a) No Loan Party shall, except as otherwise provided herein or approved by the Agent, directly or indirectly (i) use any cash or the proceeds of any Advances in a manner or for a purpose other than those consistent with this Agreement, the Orders and the Budget, (ii) permit a disbursement causing any variance other than a Permitted Variance without the prior written consent of the Agent, or (iii) make any payment (as adequate protection or otherwise), or application for authority to pay, on account of any claim or Indebtedness arising prior to the Petition Date other than payments consistent with the Budget and authorized by the Bankruptcy Court or the CCAA Court.

(b) Prior to the occurrence of an Event of Default, the Borrowers shall be permitted to pay compensation and reimbursement of fees and expenses solely to the extent that such fees and expenses are consistent with the Budget or any Permitted Variance and authorized to be paid under Sections 330 and 331 of the Bankruptcy Code pursuant to an order of the Bankruptcy Court or under any applicable provisions of the CCAA pursuant to an order of the CCAA Court. Upon the occurrence of an Event of Default and delivery of a Carve-Out Trigger Notice, the right of the Borrowers to pay professional fees of Professional Persons in excess of the Carve Out shall terminate, and the Borrowers shall provide immediate notice to all Professional Persons informing them that the Borrowers' ability to pay such Professional Persons is subject to and limited by the Carve Out.

6.16 **Civil Antitrust Claims**. Enter into any settlement or similar agreement in connection with the Civil Antitrust Claims (or request the Bankruptcy Court or CCAA Court to approve) without the prior written consent of the Agent (such consent not to be unreasonably withheld).

6.17 **Use of Collateral**. Other than as expressly permitted by the Orders, no Loan Party shall use or permit the use of Collateral, proceeds of Advances, portion of the Carve Out or any other amounts directly or indirectly by any of the Loan Parties, the Committee Professionals, if any, or any trustee, interim receiver, receiver, receiver-manager or other estate representative appointed in the Cases or the CCAA Cases (or any Successor Case) or any other Person (or to pay any professional fees, disbursements, costs or expenses incurred in connection therewith) to:

(a) seek authorization to obtain Liens or security interests that are senior to, or on a parity with, the Liens granted under the Loan Documents or the DIP Superpriority Claims other than in

connection with any replacement debtor-in-possession financing that will discharge the Obligations in "full" in cash (other than (i) Obligations under Bank Product Obligations or (ii) Letters of Credit that have been cash collateralized or back-stopped by a letter of credit in form and substance reasonably satisfactory to the Agent); or

(b) except as expressly permitted by the Orders, investigate (including by way of examinations or discovery proceedings), prepare, assert, join, commence, support or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of, in any capacity, against the Agent, the Lenders, the other Loan Parties, and each of their respective officers, directors, controlling persons, employees, agents, attorneys, affiliates, assigns, or successors of each of the foregoing, with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, (i) any Avoidance Actions; (ii) any so-called "lender liability" claims and causes of action; (iii) any action with respect to the validity, enforceability, priority and extent of, or asserting any defense, counterclaim, or offset to, the Obligations, the DIP Superpriority Claims; the Liens granted under the Loan Documents, the Pre-Petition Loan Documents, the liabilities under the Pre-Petition Credit Agreement or the Liens under the Pre-Petition Credit Agreement; (iv) any action seeking to invalidate, modify, reduce, expunge, disallow, set aside, avoid or subordinate, in whole or in part, the Obligations; or (v) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to the Agent or the Lenders hereunder or under any of the other Loan Documents (including, without limitation, claims, proceedings or actions that might prevent, hinder or delay any of their assertions, enforcements, realizations or remedies on or against the Collateral in accordance with the Loan Documents and the Orders). Notwithstanding anything to the contrary herein, the Committee Professionals may use up to $50,000 in the aggregate amount of the Carve Out, any cash-collateral, or proceeds of the Avoidance Actions to investigate the Pre-Petition Parties (the "Committee Investigation Budget"); *provided* that the Debtors' and the CCAA Debtors' stipulations as to validity, priority and security of the liabilities under the Pre-Petition Credit Agreement shall be binding upon each other party in interest, including the Committee Professionals unless such party in interest commences a challenge by (x) with respect to the Committee Professionals, 60 days after the initial appointment of the Committee, and (y) with respect to any other party in interest, 75 days after the date of entry of the Interim Order or the CCAA Initial Order.

6.18 **Negative Pledge Clauses**. Enter into or permit to exist any contractual obligation (other than this Agreement or any other Loan Document, any DIP Term Loan Document or any documentation governing any Refinancing Indebtedness thereof, including the DIP Intercreditor Agreement), that limits the ability of (a) any Borrower or any Guarantor to create, incur, assume or suffer to exist Liens on property of such Person for the benefit of the Secured Parties with respect to the Obligations or under the Loan Documents, or (b) any Subsidiary of either Borrower that is not a Guarantor to make distributions or pay dividends to Borrowers; provided that the foregoing shall not apply to contractual obligations that (i)(x) exist on the Closing Date and (to the extent not otherwise permitted by this Section 6.18) are listed on Schedule 6.18 hereto and (y) to the extent contractual obligations permitted by clause (x) are set forth in an agreement evidencing Indebtedness or other obligations, are set forth in any agreement evidencing any Refinancing Indebtedness incurred to refinance such Indebtedness or obligation so long as such Refinancing Indebtedness is permitted and does not expand the scope of such contractual obligation in any material respect (as conclusively determined by Holdings and evidenced by a certificate of an Authorized Person of Holdings), (ii) are binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary of Holdings, so long as such contractual obligations were not entered into solely in contemplation of such Person becoming a Subsidiary of Holdings, (iii) represent Indebtedness of a Subsidiary of Holdings that is not a Borrower or a Guarantor to the extent such Indebtedness is permitted by Section 6.1, (iv) arise pursuant to agreements entered into with respect to any disposition permitted by Section 6.4 and applicable solely to assets under such disposition, (v) are customary provisions in joint venture agreements and other similar

agreements applicable to joint ventures permitted by Section 6.11 and applicable solely to such joint venture entered into in the ordinary course of business, (vi) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 6.2, but solely to the extent any negative pledge relates to the property financed by or the subject of such Indebtedness, (vii) are customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the assets subject thereto, (viii) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted pursuant to Section 6.1 to the extent that such restrictions apply only to the property or assets securing such Indebtedness, (ix) are customary provisions restricting subletting or assignment of any lease or license governing a leasehold interest or licensed interest of Holdings or any Subsidiary, (x) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business, (xi) are restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business, (xii) are imposed by Applicable Law, (xiii) exist under the DIP Term Loan Documents or any documentation governing any Refinancing Indebtedness incurred and permitted to refinance such Indebtedness, (xiv) are customary net worth provisions contained in real or immovable property leases entered into by Subsidiaries of Holdings, so long as Holdings has determined in good faith that such net worth provisions could not reasonably be expected to impair the ability of Holdings and its Subsidiaries to meet their ongoing obligation, (xv) are customary provisions contained in leases or licenses of Intellectual Property and other similar agreements entered into in the ordinary course of business, (xvi) are restrictions on a Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of all or substantially all the equity interests or assets of such Subsidiary pending the closing of such sale or disposition, (xvii) are restrictions imposed by any agreement relating to Indebtedness incurred in accordance with Section 6.1, to the extent such restrictions are not more restrictive than the restrictions contained in the DIP Term Loan Documents, (xviii) customary restrictions and conditions contained in the document relating to any Lien, so long as (x) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien and (y) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 6.18, or (xix) are any encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i) through (xviii) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of Holdings, not materially more restrictive, taken as a whole, with respect to such dividend and other payment restrictions than those contained in the dividend or other payment restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

6.19 **Establishment or Acquisition of Canadian Defined Benefit Plans**. Establish or commence contributing to any Canadian Defined Benefit Plan not in existence as of the Closing Date.

6.20 **Winding Up of a Canadian Pension Plan.** Terminate any Canadian Pension Plan in whole or in part, or take any action which could reasonably be expected to allow a Governmental Authority to order the termination or wind-up of any other Canadian Pension Plan in whole or in part, if such termination or wind-up could reasonably be expected to have a Material Adverse Effect.

6.21 **Bankruptcy Negative Covenants**. Seek, consent to, or permit to exist any of the following:

(a) any modification or amendment to the Orders to which the Agent has not consented in writing, or any appeal, stay, reversal, or vacatur of any of the Orders;

(b) (i) Except to the extent provided in the Orders or the DIP Intercreditor Agreement, a priority claim or administrative expense or unsecured claim against the Loan Parties (now existing or

hereafter arising or any kind or nature whatsoever, including, without limitation, any administrative expense of the kind specified in Sections 105, 326, 328, 330, 331, 364(c), 503(a), 503(b), 506(c) (subject to entry of the Final Order) (and all the Debtors' rights to surcharge the Collateral and all collateral securing the Pre-Petition Obligations under Section 506(c) shall be waived upon the entry of the Final Order), 507(a), 507(b), 546(c), 546(d), 726 or 1114 of the Bankruptcy Code) equal or superior to the priority claim of the Agent in respect of the Obligations or (ii) any Lien on any Collateral having a priority equal or superior to the Lien securing the Obligations, in each case except with respect to the Carve Out and otherwise to the extent permitted under the Orders;

(c) Except as provided for in the Budget, without the prior written consent of the Agent and pursuant to an order of the Bankruptcy Court or the CCAA Court (including any Order) after notice and a hearing, any claim or expense with respect to any Lien or Indebtedness incurred or arising prior to the Petition Date that is subject to an automatic stay provision of the Bankruptcy Code or the CCAA whether by way of "adequate protection" under the Bankruptcy Code, the CCAA or otherwise;

(d) Except as agreed to by the Agent, any order which authorizes the return of any of the Loan Parties' property pursuant to Section 546(h) of the Bankruptcy Code or any equivalent provision of the CCAA;

(e) File a plan of reorganization, including, without limitation, any plan that provides for treatment of the Obligations other than repayment in full in cash on the effective date thereof (other than (i) Obligations under Bank Product Obligations or (ii) Letters of Credit that have been cash collateralized or back-stopped by a letter of credit in form and substance reasonably satisfactory to the Agent);

(f) The Bankruptcy Court or the CCAA Court enters a final, non-appealable order granting a party relief with respect to reclamation claims with respect to Inventory in an aggregate amount in excess of $100,000;

(g) Any order which authorizes the payment of any Indebtedness (other than the Indebtedness reflected in the Budget, and other Indebtedness approved by the Agent) incurred prior to the Petition Date, and payment of any Indebtedness owed to the Affiliates of the CCAA Debtors or the Affiliates of the Debtors (but not the CCAA Debtors or the Debtors) or the grant of "adequate protection" (whether payment in cash or transfer of property) with respect to any such Indebtedness which is secured by a Lien (other than as expressly set forth in the Orders or the Budget); or

(h) Any order which authorizes a Loan Party to take any action that is prohibited by the terms of this Agreement or the other Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement or any of the other Loan Documents unless in connection therewith the Obligations will be paid in full in cash (other than (i) contingent indemnification obligations as to which no claim has been asserted, (ii) Obligations under Bank Product Obligations or (iii) Letters of Credit that have been cash collateralized or back-stopped by a letter of credit in form and substance reasonably satisfactory to the Agent).

6.22 **Formation of Subsidiaries.** Form, acquire, create or allow to form, acquire or create any direct or indirect Subsidiary without the prior written consent of Agent (which will be provided in Agent's sole discretion).

6.23 **Litigation Spend**. After the Petition Date, any fees, costs and expenses paid, reimbursed or owing, directly or indirectly, by Holdings or any of its Subsidiaries (including any such fees, costs and expenses that have accrued prior to the date hereof, but have not yet been paid as of the date hereof) to any

Person in connection with the Civil Antitrust Claim and/or any Department of Justice actions brought based on the same or similar conduct at issue in the Civil Antitrust Claim, including, without limitation, to (I) Paul, Weiss, Rifkind, Wharton & Garrison LLP, (II) Keker, Van Nest & Peters LLP and/or any other legal counsel representing Christopher Lischewski, (III) Compass Lexecon and/or any other experts in connection with the Civil Antitrust Claim and/or any Department of Justice actions brought based on the same or similar conduct at issue in the Civil Cases and/or (IV) any other legal counsel representing Walter Scott Cameron and/or Kenneth Worsham and/or any other individual and/or Holdings and/or any of its Subsidiaries in connection with the Civil Antitrust Claim and/or any Department of Justice actions brought based on the same or similar conduct at issue in the Civil Antitrust Claim shall not exceed an aggregate amount of $450,000.

7. [INTENTIONALLY OMITTED].

8. EVENTS OF DEFAULT

Any one or more of the following events shall constitute an event of default (each, an "Event of Default") under this Agreement:

8.1 If any Borrower fails to pay when due and payable, or when declared due and payable, (a) all or any portion of the Obligations consisting of interest, fees, or charges due the Lender Group, reimbursement of Lender Group Expenses, or other amounts (other than any portion thereof constituting principal) constituting Obligations owing hereunder or under the Loan Documents (including any portion thereof that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding) and such failure continues for a period of three (3) Business Days, or (b) all or any portion of the principal of the Obligations owing hereunder or under the Loan Documents; provided, however, that if any payment of any fee or interest would otherwise be due and payable on a date that is not a Business Day, such failure to pay on such date shall not constitute an Event of Default until the third Business Day after the date when such payment, reimbursement, or other amount is otherwise due;

8.2 If any Loan Party or any of its Subsidiaries:

(a) fails to perform or observe any covenant or other agreement contained in any of (i) Sections 3.6, 5.3 (with respect to Holdings or any Borrower), 5.6(b) (solely to the extent that such breach is related to the failure to maintain insurance that is in effect), 5.7, 5.l0(b), 5.13, 5.14, 5.15, 5.18, 5.20, 5.21, or 5.22 of this Agreement, or (ii) Sections 6.1 through 6.23 of this Agreement;

(b) fails to perform or observe any covenant or agreement contained in Section 5.2 of this Agreement, and such failure continues for a period of two (2) Business Days after the earlier of (i) the date on which such failure shall first become known to any officer of any Loan Party and (ii) the date on which written notice thereof is given to any Loan Party by Agent;

(c) fails to perform or observe any covenant or agreement contained in any of Sections 5.1, 5.11 or 5.12 of this Agreement, and such failure continues for a period of 10 days after the earlier of (i) the date on which such failure shall first become known to any officer of any Loan Party and (ii) the date on which written notice thereof is given to any Loan Party by Agent;

(d) fails to perform or observe any covenant or other agreement contained in this Agreement, or in any of the other Loan Documents, in each case, other than any such covenant or agreement that is the subject of another provision of this Section 8 (in which event such other provision of this Section 8 shall govern), and such failure continues for a period of 30 days after the earlier of (i) the

date on which such failure shall first become known to any officer of any Loan Party or (ii) the date on which written notice thereof is given to any Loan Party by Agent;

8.3 If one or more judgments, orders, or awards (or any settlement of any claim that, if breached, could result in a judgment, order, or award) for the payment of money is entered against a Loan Party or any of its Subsidiaries after the Petition Date, or with respect to any of their respective assets, or any Loan Party or any of its Subsidiaries shall agree to the settlement of any one or more pending or threatened claims, actions, suits, or proceedings, (x) relating to any litigation arising from any Civil Antitrust Claim, (y) relating to any pending criminal indictment or conviction in any way arising from or related to, directly or indirectly, the facts, circumstances, acts, or omissions involved in or related to the allegations underlying or related to the DOJ Settlement, including any judgment, order or award issued, granted, or entered on account of a breach or violation or other noncompliance with the DOJ Settlement, or any other criminal antitrust claim against any Loan Party, or (z) relating to any other matter (excluding matters described above in clauses (x) or (y) if the aggregate amount for such judgments, orders, awards, or settlements described in the foregoing clauses exceeds $1,000,000 (in each case in excess of any applicable insurance with respect to which the insurer has not denied liability)), and with respect to any such judgments, orders, award or settlements either (A) at any time after the entry of any such judgment, order, award or settlements during which a stay of enforcement thereof is not in effect, or (B) such judgment, order, award or settlement is paid;

8.4 Other than the Debtors and the CCAA Debtors or in respect of the Cases or the CCAA Cases, if an Insolvency Proceeding is commenced by Holdings, any Borrower, or any of their respective Subsidiaries;

8.5 Other than the Debtors and the CCAA Debtors or in respect of the Cases or the CCAA Cases, if an Insolvency Proceeding is commenced against Holdings, a Borrower, or any of their respective Subsidiaries and any of the following events (or analogous events under other applicable laws) occur: (a) Holdings, a Borrower, or any such Subsidiary consents to the institution of such Insolvency Proceeding against it without the consent of the Agent and the Required Lenders, (b) the petition, application or other originating process commencing the Insolvency Proceeding is not timely controverted, (c) the petition, application or other originating process commencing the Insolvency Proceeding is not dismissed within 60 calendar days of the date of the filing thereof, (d) an interim trustee, interim receiver or analogous official is appointed to take possession of all or any substantial portion of the properties or assets of, or to operate all or any substantial portion of the business of, such Loan Party or its material Subsidiary, or (e) an order for relief shall have been issued or entered therein;

8.6 (a) Any DOJ Payment, if after giving effect to the payment of such DOJ Payment, Borrowers' Adjusted Excess Availability is, immediately after giving Pro Forma Effect to the payment of such DOJ Payment, or at any time during the 30 consecutive day period immediately prior to the making of payment of such DOJ Payment would have been, in each case, less than $10,000,000 or (b) any Other Payment, except any Other Payment pursuant to any settlement agreements entered into prior to the Petition Date relating to the Civil Antitrust Claims to the extent such settlement agreements have been approved under the Pre-Petition Credit Agreement prior to the Petition Date.

8.7 Except as a result of commencement of the Cases and the CCAA Cases or unless the payment, acceleration and/or exercise of remedies with respect to any such Indebtedness is stayed by the Bankruptcy Court or the CCAA Court (a) if there is (i) default in any payment with respect to any Indebtedness (other than any Indebtedness described in Section 8.1) involving an aggregate amount in excess of $1,000,000, beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created or (ii) default in the observance or performance of any agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing,

securing or relating thereto, or any other event shall occur or condition exist (other than (A) with respect to Indebtedness consisting of any Hedge Agreements, termination events or equivalent events pursuant to the terms of such Hedge Agreements and (B) secured Indebtedness that becomes due as a result of a Disposition (including as a result of a Recovery Event) of the property or assets securing such Indebtedness permitted under this Agreement), the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, irrespective of whether exercised, any such Indebtedness to become due prior to its stated maturity; provided that, in the case of this clause (ii), any Event of Default pursuant to this Section 8.7(a)(ii) that results from an Event of Default (as defined in the DIP Term Loan Credit Agreement) shall be deemed to be waived concurrently with the waiver of all such Events of Default under the DIP Term Loan Documents or (b) without limiting the provisions of clause (a) above, any such Indebtedness shall be declared to be due and payable, or required to be prepaid other than by a regularly scheduled required prepayment or as a mandatory prepayment (and (A) with respect to Indebtedness consisting of any Hedge Agreements, other than due to a termination event or equivalent event pursuant to the terms of such Hedge Agreements and (B) secured Indebtedness that becomes due as a result of a disposition (including as a result of a Recovery Event) of the property or assets securing such Indebtedness permitted under this Agreement), prior to the stated maturity thereof;

8.8 If any warranty or representation made herein or in any other Loan Document or certificate (including any Borrowing Base Certificate or any Budget Variance Report) or delivered in writing to Agent or any Lender in connection with this Agreement or any other Loan Document proves to be untrue in any material respect as of the date of issuance or making or deemed making thereof;

8.9 The Guaranty or any material provision thereof shall cease to be in full force and effect or any Guarantor thereunder or any Loan Party shall deny or disaffirm in writing any Guarantor's obligations under the Guaranty;

8.10 If the U.S. Security Agreement, any Canadian Security Document, or any other Loan Document that purports to create a Lien or the Orders, shall, for any reason, fail or cease to create a valid and perfected, or opposable, and, except to the extent permitted by the terms hereof or thereof, first priority Lien on the Collateral covered thereby (subject to Permitted Liens), except (a) as a result of a Disposition of the applicable Collateral in a transaction permitted under this Agreement, or (b) with respect to Collateral the aggregate value of which, for all such Collateral, does not exceed at any time $500,000;

8.11 A Change of Control shall occur other than with respect to the 363 Sale;

8.12 Any material provision of any Loan Document shall at any time for any reason, other than as permitted hereunder or thereunder, or as a result of acts or omissions by the Agent, or the payment in full of the Obligations, be declared to be null and void, or the validity or enforceability thereof shall be contested by a Loan Party or its Subsidiaries, or a proceeding shall be commenced by a Loan Party or its Subsidiaries, or a Loan Party or its Subsidiaries shall deny that such Loan Party or its Subsidiaries has any liability or obligation purported to be created under any Loan Document (other than as a result of a payment in full of the Obligations);

8.13

(a) The occurrence of any of the following events with respect to any Loan Party or any of its ERISA Affiliates: (i) any Loan Party or any ERISA Affiliate fails to make full payment when due of all amounts which, under the provisions of any Pension Plan, Multiemployer Plan, or Section 412 or 430 of the IRC, any Loan Party or any ERISA Affiliate is required to pay as contributions thereto, and such failure (x) could reasonably be expected to result in a Material Adverse Effect, either individually or

in the aggregate, or (y) could reasonably be expected to result in the imposition of a Lien on any of the assets of any Loan Party or any of their respective Subsidiaries, (ii) a failure to satisfy "minimum funding standards" (as defined in Section 431 of the IRC) or a "funding shortfall" (as defined in Section 430 of the IRC) occurs or exists, whether or not waived, with respect to any Pension Plan, except, in any such case, individually or in the aggregate, to the extent that such failure or shortfall (x) could not reasonably be expected to result in a Material Adverse Effect, either individually or in the aggregate, and (y) could not reasonably be expected to result in the imposition of a Lien on any of the assets of any Loan Party or any of their respective Subsidiaries, (iii) a Termination Event which (x) could reasonably be expected to result in a Material Adverse Effect, either individually or in the aggregate, or (y) could reasonably be expected to result in the imposition of a Lien on any of the assets of any Loan Party or any of their respective Subsidiaries, or (iv) any Loan Party or any ERISA Affiliate as employers under one or more Multiemployer Plans makes a complete or partial withdrawal from any such Multiemployer Plan and incurs a withdrawal liability except to the extent that such liability (x) could not reasonably be expected to result in a Material Adverse Effect, either individually or in the aggregate, and (y) could not reasonably be expected to result in the imposition of a Lien on any of the assets of any Loan Party or any of their respective Subsidiaries; or

(b) The occurrence of any of the following events: (i) any Canadian Loan Party or any of its Subsidiaries fails to make full payment when due of all amounts which, under the provisions of any Canadian Pension Plan, any Canadian Loan Party or any of its Subsidiaries is required to pay as contributions thereto, and such failure (x) could reasonably be expected to result in a Material Adverse Effect, either individually or in the aggregate, or (y) could reasonably be expected to result in the imposition of a Lien (other than a Permitted Lien) on any of the assets of any Loan Party or any of their respective Subsidiaries; or (ii) a Canadian Pension Event.

8.14 If any director or senior officer of any Loan Party is (a) convicted of a felony, unless such director or senior officer resigns or is terminated from his or her position within 10 days following such conviction (or, in the case of any Other DOJ Individual on account of any Other DOJ Matter, placed on leave at all times thereafter (or terminated) and relieved of his/her position and responsibilities), or (b) is convicted by a Governmental Authority under any Applicable Law that, with respect to this clause (b), could reasonably be expected to lead to a forfeiture of any material portion of the Collateral;

8.15 If any director or senior officer of any Loan Party (a) is indicted of a felony (other than an indictment or other charge by a Governmental Authority of one or more of the Other DOJ Individuals (including Christopher Lischewski) solely with respect to the Other DOJ Matters), unless such director or senior officer resigns or is terminated from his or her position within 10 days following such indictment, or (b) is indicted or otherwise charged by a Governmental Authority under any Applicable Law that, with respect to this clause (b), could reasonably be expected to lead to forfeiture of any material portion of the Collateral;

8.16 If any Loan Party or any Subsidiary of any Loan Party is (a) criminally indicted or convicted of a felony, in each case other than as a result of the DOJ Settlement, or (b) charged by a Governmental Authority under any Applicable Law that would reasonably be expected to, in the case of this clause (b), lead to forfeiture of any material portion of the Collateral;

8.17 If (a) the Restructuring Support Agreement, dated as of July 10, 2019 (such Restructuring Support Agreement, together with the Term Sheet defined therein and attached thereto, collectively, the "RSA") entered into by and among, *inter alia*, the Borrowers, certain of the other Loan Parties, and the Consenting Term Loan Lenders (as defined therein), is terminated by any party thereto, or (b) any Loan Party repudiates or asserts a defense to any obligation or liability under the Credit Agreement, any other Loan Document or the RSA;

8.18 Except as otherwise permitted herein, the dissolution of any Loan Party;

8.19 The Loan Parties or any of their subsidiaries, or any person claiming by or through the Loan Parties or any of their subsidiaries, obtain court authorization to commence, or commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding against any of the Agent or the Lenders in each case relating to this Agreements; or

8.20 Any of the following shall occur in any Case or CCAA Case:

(a) the filing by any Loan Party of a reorganization plan that does not provide for payment in full in cash of all Obligations upon the effectiveness thereof, or if any Loan Party applies for, consent to, or acquiesces in such relief;

(b) (A) any Order or provision thereof or any order entered in connection with the Bidding Procedures Motion or the 363 Sale is reversed, vacated, stayed, or otherwise ceases to be in full force and effect, (B) entry of an order without the prior consent of the Agent or the Required Lenders amending, supplementing or otherwise modifying any Order or any order entered in connection with the Bidding Procedures Motion or the 363 Sale (other than immaterial modifications to correct grammatical or typographical errors) or (C) failure by the Loan Parties to perform under any Order in a material respect;

(c) The filing of a motion by any Loan Party seeking entry of, or the entry of any order without the prior consent of the Agent or the Required Lenders that authorizes any of the following:

(i) except as provided in the DIP Intercreditor Agreement, a priority claim or administrative expense or unsecured claim against the Loan Parties (now existing or hereafter arising or any kind or nature whatsoever, including, without limitation, any administrative expense of the kind specified in sections 105, 326, 328, 330, 331, 364(c), 503(a), 503(b), 506(c) (subject to entry of the Final Order) (and all rights to charge the Collateral and all collateral securing the Pre-Petition Obligations under Section 506(c) shall be waived), 507(a), 507(b), 546(c), 546(d), 726 or 1114 of the Bankruptcy Code) equal or superior to the priority claim of the Agent and the Lenders in respect of the Obligations, except with respect to the Carve Out or as otherwise provided by the CCAA Orders, the DIP Term Loan Indebtedness or as may be approved by the Bankruptcy Court or the CCAA Court for payments to critical vendors, such critical vendor order to be reasonably acceptable to the Agent;

(ii) except as provided in the DIP Intercreditor Agreement or pursuant to the Orders, any Lien on any Collateral having a priority equal or superior to the Lien securing the Obligations, except with respect to the Carve Out;

(iii) the consummation of any sale of all or substantially all the working capital assets of the Loan Parties pursuant to Section 363 of the Bankruptcy Code or section 36 of the CCAA, through a confirmed plan of reorganization in the Cases or the CCAA Cases or otherwise that does not result in payment in full of all of the Obligations in immediately available funds at the closing of such sale or initial payment of the purchase price or effectiveness of such plan, as applicable (other than (i) contingent indemnification obligations as to which no claim has been asserted, (ii) Bank Product Obligations or (iii) Letter of Credit Obligations that have been cash collateralized or back-stopped by a letter of credit in form and substance reasonably satisfactory to the Agent);

(iv) except as consented to by the Agent, the return of any of the Loan Parties' property pursuant to section 546(h) of the Bankruptcy Code;

(v) authorizing or directing payment of any claim or claims under Section 506(c) or 552(b) of the Bankruptcy Code or requiring the marshaling of assets or any other similar remedy against or with respect to any of the Collateral or from the Agent or any of Lenders, to the extent not dismissed or denied within 45 days after the filing of such motion;

(vi) granting of (I) relief from the automatic stay in the Cases or the CCAA Cases to permit foreclosure or enforcement on, or any right or remedy with respect to any material asset of any Borrower or (II) any relief that would impair the material rights and interests of the Agent, and the Lenders in their capacities as such (regardless of whether such relief was sought by the Debtors, the CCAA Debtors or a third party); and/or

(vii) payment of or granting adequate protection with respect to Pre-Petition Indebtedness, other than as expressly set forth in the Orders and the Budget.

(d) the payment of any Indebtedness or other payables or liabilities, including any prepayments of amounts under the DOJ Settlement except as otherwise provided in the Budget and as permitted by the Orders; and/or

(e) the dismissal of the Cases or conversion of the Cases to a case under Chapter 7 of the Bankruptcy Code, or the dismissal or otherwise termination of any of the CCAA Cases, or the filing of any motion to so dismiss or convert brought by any Loan Party;

(f) appointment of a Chapter 11 trustee or an examiner or any similar insolvency official or administrator, with expanded powers, or the filing of any motion to so appoint brought by any Loan Party;

(g) any of the Loan Parties shall fail to comply in any material respect with the CCAA Initial Order (prior to the CCAA A&R Initial Order Date) or the CCAA A&R Initial Order (on and after the CCAA A&R Initial Order Date);

(h) any of the Liens or the DIP Superpriority Claims granted under the Loan Documents cease to be valid, perfected and enforceable in any respect;

(i) the use of cash collateral by the Debtors or the CCAA Debtors is terminated and the Debtors or the CCAA Debtors, as applicable, fail to regain the use of cash collateral (consensually or non-consensually) pursuant to an order in form and substance acceptable to Agent;

(j) [intentionally omitted];

(k) [intentionally omitted];

(l) any Loan Party or any of its Subsidiaries, or any person claiming by or through any Loan Party or any of its Subsidiaries, with any Loan Party's or any Subsidiary's consent, shall obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding against (A) the Agent or any of the Lenders relating to the Agreement or (B) the administrative agent or any lender relating to the Prepetition Credit Agreement;

(m) any Loan Party, or any person on behalf of any Loan Party, shall file a motion or other pleading seeking, or otherwise consenting to, any of the matters set forth in clauses (e) through (k) above or the granting of any other relief that if granted would give rise to an Event of Default;

(n) (i) an order of the Bankruptcy Court shall be entered reversing, amending, supplementing, staying, vacating or otherwise amending, supplementing or modifying the Interim Order, the Bidding Procedures Order, the Final Order, or the Sale Order without the prior written consent of the Agent or (ii) an order of the CCAA Court shall be granted reversing, amending, supplementing, staying, vacating or otherwise amending, supplementing or modifying the CCAA Initial Order or the CCAA A&R Initial Order without the prior written consent of the Agent, or (iii) a Debtor or a CCAA Debtor shall apply for the authority to do any of the foregoing;

(o) any of (i) the Interim Order (prior to the Final Order Entry Date) or the Final Order (on and after the Final Order Entry Date) or (ii) the CCAA Initial Order (prior to the CCAA A&R Initial Order Date) or the CCAA A&R Initial Order (on and after the CCAA A&R Initial Order Date) shall cease to create a valid and perfected Lien on the Collateral of any Debtor or CCAA Debtor, as the case may be, or shall cease to be in full force and effect, or shall have been reversed, modified, amended, stayed, vacated, or subject to stay pending appeal, in the case of modification or amendment, without prior written consent of the Agent;

(p) an order shall have been entered by the Bankruptcy Court or the CCAA Court, as applicable, avoiding or requiring disgorgement by the Agent or any of the Lenders of any amounts received in respect of the Obligations or by any of the lenders under the Prepetition Credit Agreement of any amounts received in respect thereof;

(q) an order shall have been entered by the Bankruptcy Court terminating or modifying the exclusive right of any Loan Party to file a Chapter 11 plan pursuant to section 1121 of the Bankruptcy Code, without the prior written consent of the Agent;

(r) any of the Loan Parties shall fail to comply in any material respect with the Interim Order (prior to the Final Order Entry Date), the Final Order (on and after the Final Order Entry Date), the CCAA Initial Order (prior to the CCAA A&R Initial Order Date) or the CCAA A&R Initial Order (on and after the CCAA A&R Initial Order Date);

(s) an order shall have been entered by the Bankruptcy Court or the CCAA Court providing for a change in venue with respect to the Cases or the CCAA Cases, as applicable, without the approval of the Agent and such order shall not be reversed or vacated within 10 days;

(t) any order shall be entered which dismisses any of the Cases of the Debtors or any of the CCAA Cases of the CCAA Debtors and which order does not provide for payment in full in cash of the Obligations under the Loan Documents (other than contingent indemnification obligations not yet due and payable), or any of the Debtors, the CCAA Debtors and their Subsidiaries shall seek, support or fail to contest in good faith the entry of any such order;

(u) any Loan Party or any Subsidiary thereof shall take any action in support of any matter set forth in this Section 8.20 or any other Person shall do so and such application is not contested in good faith by the Loan Parties and the relief requested is granted in an order that is not stayed pending appeal;

(v) any Loan Party or any Subsidiary thereof shall obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding seeking, or otherwise consenting to (i) the invalidation, subordination or other challenging of the DIP Superpriority Claims, the priority of the CCAA DIP Charge or the Liens granted to secure the Obligations or any other rights granted to the Agent and the Lenders in the Orders or this

Agreement or (ii) any relief under section 506(c) of the Bankruptcy Code or analogous relief under the CCAA with respect to any Collateral of any Debtor or CCAA Debtor;

(w) any Loan Party shall challenge, support or encourage a challenge of any payments made to the Agent or any Lender with respect to the Obligations or any lender under the Prepetition Credit Agreement with respect to the obligations thereunder, other than to challenge the occurrence of a Default or Event of Default;

(x) without the consent of the Agent, the filing of any motion by the Debtors seeking approval of (or the entry of an order by the Bankruptcy Court approving) adequate protection to any pre-petition agent, trustee or lender that is inconsistent with the Interim Order (prior to the Final Order Entry Date) or the Final Order (on and after the Final Order Entry Date);

(y) without the Agent's consent, the entry of any order by the Bankruptcy Court or the CCAA Court granting, or the filing by any Loan Party or any of its Subsidiaries of any motion or other request with the Bankruptcy Court or the CCAA Court (in each case, other than the Orders and motions seeking entry thereof or permitted amendments or modifications thereto) seeking, authority to use any cash proceeds of any of the Collateral without the Agent's consent or to obtain any financing under section 364 of the Bankruptcy Code or the CCAA other than the facility hereunder unless such motion or order contemplates payment in full in cash of the Obligations immediately upon consummation of the transactions contemplated thereby;

(z) any Loan Party or any person on behalf of any Loan Party shall file any motion seeking authority to consummate a sale of assets of the Loan Parties or the Collateral having a value in excess of $500,000 outside the ordinary course of business and not otherwise permitted hereunder;

(aa) if any Loan Party or any of its Subsidiaries is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any part of the business affairs of the Loan Parties and their Subsidiaries, taken as a whole, which could reasonably be expected to have a Material Adverse Effect; provided, that the Loan Parties shall have five (5) Business Days after the entry of such an order to obtain a court order vacating, staying or otherwise obtaining relief from the Bankruptcy Court or the CCAA Court or another court to address any such court order;

(bb) any Loan Party shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any pre-petition Indebtedness or payables other than payments in respect of the repayment of the Indebtedness under the Prepetition Credit Agreement or as otherwise permitted under this Agreement, in each case, to the extent authorized by one or more "first day" or "second day" orders, the Interim Order, the Final Order or the CCAA Orders and consistent with the Budget;

(cc) without the Agent's consent, any Loan Party or any Subsidiary thereof shall file any motion or other request with the Bankruptcy Court or CCAA Court, as applicable, seeking (i) to grant or impose, under section 364 of the Bankruptcy Code, any applicable provision of the CCAA or otherwise, liens or security interests in any Collateral, whether senior, equal or subordinate to the Agent's liens and security interests; (ii) to use, or seek to use, Cash Collateral; or (iii) to modify or affect any of the rights of the Agent or the Lenders under the Orders or the Loan Documents, by any order entered in the Cases or the CCAA Cases; or

(dd) any order shall be entered which dismisses or otherwise terminates any of the Cases of the Debtors or the CCAA Cases of the CCAA Debtors and which order does not provide for termination of the Commitments and indefeasible payment in full in cash of the Obligations under the

Loan Documents and continuation of the Liens with respect thereto until the effectiveness thereof (other than contingent indemnity obligations not yet due), or any of the Debtors or the CCAA Debtors shall seek confirmation of any such plan or entry of any such order.

9. RIGHTS AND REMEDIES

9.1 **Rights and Remedies**. Notwithstanding anything in Section 362 of the Bankruptcy Code or any equivalent section of the CCAA but subject to the Orders and the Carve Out, upon the occurrence and during the continuation of an Event of Default, Agent may, and, at the instruction of the Required Lenders, shall (in each case under clauses (a) or (b) by written notice to Borrowers) and in addition to any other rights or remedies provided for hereunder or under any other Loan Document or by Applicable Law, do any one or more of the following:

(a) declare the Obligations (other than the Bank Product Obligations), whether evidenced by this Agreement or by any of the other Loan Documents, immediately due and payable, whereupon the same shall become and be immediately due and payable, and Borrowers shall be obligated to repay all of such Obligations in full, without presentment, demand, protest, or further notice or other requirements of any kind, all of which are hereby expressly waived by each Borrower;

(b) declare the Revolver Commitments terminated, whereupon the Revolver Commitments shall immediately be terminated together with (i) any obligation of any Lender hereunder to make Advances, (ii) the obligation of any Swing Lender to make any Swing Loans, and (iii) the obligation of each Issuing Lender to issue Letters of Credit; and

(c) exercise all other rights and remedies available to the Agent or the Lenders under the Loan Documents or Applicable Law.

The foregoing to the contrary notwithstanding, with respect to the enforcement of Liens or other remedies with respect to the Collateral of the Loan Parties under the preceding clause (c), the Agent shall provide the Borrower with five (5) Business Days' written notice prior to taking the action contemplated thereby.

The Loan Parties shall not have the right to contest the enforcement of remedies set forth in the Orders and the Loan Documents on any basis other than an assertion that an Event of Default has not occurred or has been cured within the cure periods expressly set forth in the applicable Loan Documents. The Loan Parties shall cooperate fully with the Agent and the Lenders in their exercise of rights and remedies, whether against the Collateral or otherwise. The Loan Parties hereby waive any right to seek relief under the Bankruptcy Code, including under Section 105 thereof, or under any applicable section of the CCAA, to the extent such relief would restrict or impair the rights and remedies of the Agent and the Lenders set forth in the Orders and in the Loan Documents.

9.2 **Remedies Cumulative**. The rights and remedies of the Lender Group under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. The Lender Group shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by the Lender Group of one right or remedy shall be deemed an election, and no waiver by the Lender Group of any Event of Default shall be deemed a continuing waiver. No delay by the Lender Group shall constitute a waiver, election, or acquiescence by it.

10. WAIVERS; INDEMNIFICATION

10.1 **Demand; Protest; etc**. Each Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise,

settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by the Lender Group on which such Borrower may in any way be liable.

10.2 **The Lender Group's Liability for Collateral**. Each Borrower hereby agrees that: (a) so long as Agent complies with its obligations, if any, under the Code or other applicable law, the Lender Group shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by Borrowers.

10.3 **Indemnification**. Each Borrower shall pay, indemnify, defend, and hold the Agent-Related Persons and the Lender-Related Persons, each Issuing Lender and each Underlying Issuer (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all losses, claims, damages or liabilities of any kind or nature and for any reasonable and documented or invoiced out of pocket fees and expenses to which any such Indemnified Person may become subject (including the reasonable fees, disbursements and other charges of (i) one firm of primary outside counsel for all Indemnified Persons, taken as a whole, and if necessary, one firm of local/foreign counsel in each applicable jurisdiction (which may include one firm of special counsel acting in multiple jurisdictions) for all Indemnified Persons, taken as a whole (and in the case of an actual or perceived conflict of interest of another firm of counsel for such affected Indemnified Person)) and (ii) consultants and experts for all Indemnified Persons, taken as a whole, to the extent arising out of or relating to any claim, litigation, investigation or other proceeding (regardless of whether such Indemnified Person is a party thereto and whether or not such proceedings are brought by such Indemnified Person, either Borrower, its equity holders, its Affiliates, creditors, or any third person), brought in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them, in connection with, or as a result of, or related to the execution and delivery (provided that neither Borrower shall not be liable for costs and expenses (including attorney's fees) of any Indemnified Person incurred in advising, structuring, drafting, reviewing, administering or syndicating the Loan Documents), enforcement, performance, or administration (including any restructuring or workout with respect hereto) of this Agreement, any of the other Loan Documents, or the transactions contemplated hereby or thereby, or the use of the proceeds of the credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto) (including the Advances made hereunder, the Reimbursement Undertakings and Letters of Credit issued hereunder and each other extension of credit made hereunder or under any Loan Document), or any act, omission, event, or circumstance in any manner related thereto, including any of the foregoing related to any presence or release of, or Remedial Actions concerning, Hazardous Materials related to any Loan Party or any of its Subsidiaries at, on, under, to or from any assets or properties owned, leased or operated by any Loan Party or any of its Subsidiaries or any Environmental Actions related in any way to any such assets or properties of any Loan Party or any of its Subsidiaries (each and all of the foregoing, the "Indemnified Liabilities"). The foregoing to the contrary notwithstanding, Borrowers (x) shall have no obligation to any Indemnified Person under this Section 10.3 with respect to any Indemnified Liability that a court of competent jurisdiction determines in a final and non-appealable decision to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnified Person or any of its Affiliates or any of the officers, directors, employees, advisors, controlling persons, agents or other representatives of such Indemnified Person or its Affiliates or any of their respective successors (any such person, a "Related Party"), (y) a breach of any Loan Document by any Indemnified Person or one of its Affiliates or (z) any dispute solely between and among Indemnified Persons not arising from any act or omission by Borrowers, the Guarantors or any of their Subsidiaries; provided that Agent, the co-lead arrangers or the joint bookrunners (and their respective related affiliates, officers, directors, employees, agents, controlling persons, advisors and other representatives), to the extent acting in their capacity as such, shall remain indemnified in respect of such

disputes to the extent otherwise entitled to be so indemnified. All amounts payable under this Section 10.3 shall be paid with 10 days after receipt by Holdings or the Borrowers of an invoice relating thereto setting forth such expense in reasonable detail. This provision shall survive the termination of this Agreement and the repayment of the Obligations. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Borrower was required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrower with respect thereto.

10.4 **Waiver of Consequential Damages, Etc.** To the fullest extent permitted by Applicable Law, no Loan Party nor any Indemnified Person shall assert, and each Loan Party hereby waives, any claim against any Indemnified Person, and no Indemnified Person shall asset, and each Indemnified Person hereby waives, any claim against any Loan Party, in each case, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Advance or Letter of Credit or the use of the proceeds thereof. No Indemnified Person shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby, except to the extent that such damages have resulted from the willful misconduct, bad faith or gross negligence of any Indemnified Person or any of its Related Parties (as determined by a court of competent jurisdiction in a final and non-appealable decision).

11. NOTICES

Unless otherwise provided in this Agreement, all notices or demands relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as a party may designate in accordance herewith), or telefacsimile. In the case of notices or demands to U.S. Borrower, Canadian Borrower, or Agent, as the case may be, they shall be sent to the respective address set forth below:

If to either Borrower:
BUMBLE BEE FOODS, LLC
280 10th Avenue
San Diego, CA 92101
Attn: Kent McNeil
Email: Kent.mcneil@bumblebee.com

with copies to:
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019
Attn: Kelley Cornish
Email: kcornish@paulweiss.com
Fax No.: 212-492-0493

If to Agent:
WELLS FARGO CAPITAL FINANCE, LLC
2450 Colorado Avenue, Suite 3000 West
Santa Monica, CA 90404
Attn: Business Finance Manager
Fax No.: (310) 453-7413

in each case with copies to:

PAUL HASTINGS LLP

515 S. Flower Street
Twenty-Fifth Floor
Los Angeles, California 90071
Attn: Peter Burke, Esq.
Fax No.: (213) 683-3338

PAUL HASTINGS LLP
200 Park Avenue
New York, NY 10081
Attn: Andrew Tenzer, Esq. and Michael Comerford, Esq.
Fax No.: (212) 230-7699

WOMBLE BOND DICKINSON
1313 North Market Street, Suite 1200
Wilmington, DE 19801
Attn: Matthew P. Ward, Esq.
Fax No.: (302) 661-7711

Any party hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 11, shall be deemed received on the earlier of the date of actual receipt or three (3) Business Days after the deposit thereof in the mail; provided, that (a) notices sent by overnight courier service shall be deemed to have been given when received, (b) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient) and (c) notices by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment).

12. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE PROVISION

(a) **THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND THE BANKRUPTCY CODE, AS APPLICABLE.**

(b) **THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE BANKRUPTCY COURT, AND TO THE EXTENT THE BANKRUPTCY COURT DECLINES OR IS OTHERWISE UNABLE TO EXERCISE JURISDICTION, THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK,**

STATE OF NEW YORK; PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. HOLDINGS, EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 11(b). NOTHING CONTAINED HEREIN SHALL BE DEEMED TO CONSTITUTE A LENDER'S CONSENT TO JURISDICTION OF THE BANKRUPTCY COURT FOR ANY PURPOSES OTHER THAN THE ENFORCEMENT OF THIS AGREEMENT AND THE ORDERS. NOTHING CONTAINED HEREIN SHALL BE DEEMED CONSENT TO JURISDICTION BEFORE ANY BANKRUPTCY COURT IN THE CASES.

(c) **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, HOLDINGS, EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. HOLDINGS, EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.**

(d) **THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK AND THE STATE OF NEW YORK, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT AGENT MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.**

(e) **IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CLAIM BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, AND THE WAIVER SET FORTH IN CLAUSE (c) ABOVE IS NOT ENFORCEABLE IN SUCH PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:**

(i) **WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBCLAUSE (ii) BELOW, ANY CLAIM SHALL BE DETERMINED BY A GENERAL**

REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE. VENUE FOR THE REFERENCE PROCEEDING SHALL BE IN THE COUNTY OF LOS ANGELES, CALIFORNIA.

(ii) **THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (A) NON-JUDICIAL FORECLOSURE OR ENFORCEMENT OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (B) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF OR RECOUPMENT), (C) APPOINTMENT OF A RECEIVER, INTERIM RECEIVER OR SIMILAR OFFICIAL, AND (D) TEMPORARY, PROVISIONAL, OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS, OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) - (D) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO PARTICIPATE IN A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT WITH RESPECT TO ANY OTHER MATTER.**

(iii) **UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN 10 DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY SHALL HAVE THE RIGHT TO REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). THE REFEREE SHALL BE APPOINTED TO SIT WITH ALL OF THE POWERS PROVIDED BY LAW. PENDING APPOINTMENT OF THE REFEREE, THE COURT SHALL HAVE THE POWER TO ISSUE TEMPORARY OR PROVISIONAL REMEDIES.**

(iv) **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE REFEREE SHALL DETERMINE THE MANNER IN WHICH THE REFERENCE PROCEEDING IS CONDUCTED INCLUDING THE TIME AND PLACE OF HEARINGS, THE ORDER OF PRESENTATION OF EVIDENCE, AND ALL OTHER QUESTIONS THAT ARISE WITH RESPECT TO THE COURSE OF THE REFERENCE PROCEEDING. ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS A COURT REPORTER AND A TRANSCRIPT IS ORDERED, A COURT REPORTER SHALL BE USED AND THE REFEREE SHALL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY THE COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.**

(v) **THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND SHALL ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA.**

(vi) **THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH CALIFORNIA SUBSTANTIVE AND PROCEDURAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS OR HER DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE REFEREE SHALL ISSUE A DECISION AND PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE, SECTION 644, THE REFEREE'S DECISION SHALL BE ENTERED BY THE COURT AS A JUDGMENT IN THE SAME MANNER AS IF THE ACTION HAD BEEN TRIED BY THE COURT. THE FINAL JUDGMENT OR ORDER FROM ANY APPEALABLE DECISION OR ORDER ENTERED BY THE REFEREE SHALL BE FULLY APPEALABLE AS IF IT HAS BEEN ENTERED BY THE COURT.**

(vii) **THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR OWN CHOICE, EACH PARTY HERETO KNOWINGLY AND VOLUNTARILY AND FOR THEIR MUTUAL BENEFIT AGREES THAT THIS SECTION 12(e) SHALL APPLY TO ANY DISPUTE BETWEEN THEM THAT ARISES OUT OF OR IS RELATED TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.**

13. ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS

13.1 **Assignments and Participations**.

(a) (1) With the prior written consent of (A) in the case of an assignment by a Canadian Lender, Canadian Borrower, or (B) in the case of an assignment by a U.S. Lender, U.S. Borrower, which consent of Canadian Borrower or U.S. Borrower, as applicable, shall not be unreasonably withheld, delayed or conditioned, and shall not be required if an Event of Default has occurred and is continuing, (2) with the prior written consent of the Swing Lender and the Issuing Lenders, which consent of the Swing Lender and the Issuing Lenders shall not be unreasonably withheld, delayed or conditioned, and shall not be required in connection with an assignment to a Person that is a Lender or an Affiliate (other than individuals) of a Lender, and (3) with the prior written consent of Agent, which consent of Agent shall not be unreasonably withheld, delayed or conditioned, and shall not be required in connection with an assignment to a Person that is a Lender or an Affiliate (other than individuals) of a Lender, any Lender may assign and delegate to one or more assignees (each an "Assignee"; provided, however, that no Loan Party, Affiliate of a Loan Party, Equity Sponsor, or Affiliate of Equity Sponsor shall be permitted to become an Assignee) all or any portion of the Obligations, the Commitments and the other rights and obligations of such Lender hereunder and under the other Loan Documents, in a minimum amount (unless waived by Agent and the applicable Borrower or in connection with an assignment of all of such Lender's Commitments and portion of the outstanding Advances) of $5,000,000 (except such minimum amount shall not apply to (x) an assignment or delegation by any Lender to any other Lender or an Affiliate of any Lender or (y) a group of new Lenders, each of which is an Affiliate of each other or a Related Fund of such new Lender to the extent that the aggregate amount to be assigned to all such new Lenders is at least $5,000,000); provided, however, that each Borrower and Agent may continue to deal solely and directly with such Lender in connection with the interest so assigned to an Assignee until (i) in the case of an assignment by a Canadian Lender, (A) written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, have been given to

Canadian Borrower and Agent by such Canadian Lender and the Assignee, (B) such Canadian Lender and its Assignee have delivered to Canadian Borrower and Agent an Assignment and Acceptance and Agent has notified the assigning Lender of its receipt thereof in accordance with Section 13.1(b), and (C) unless waived by Agent, the assigning Lender or Assignee has paid to Agent for Agent's separate account a processing fee in the amount of $3,500, or (ii) in the case of an assignment by a U.S. Lender, (A) written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, have been given to U.S. Borrower and Agent by such U.S. Lender and the Assignee, (B) such U.S. Lender and its Assignee have delivered to U.S. Borrower and Agent an Assignment and Acceptance and Agent has notified the assigning Lender of its receipt thereof in accordance with Section 13.1(b), and (C) unless waived by Agent, the assigning Lender or Assignee has paid to Agent for Agent's separate account a processing fee in the amount of $3,500. Notwithstanding the foregoing, no assignments or participations shall be made to any Disqualified Competitors or, prior to the occurrence of any Event of Default, any Disqualified Institutions.

(b) From and after the date that Agent notifies the assigning Lender (with a copy to the applicable Borrower) that it has received an executed Assignment and Acceptance and, if applicable, payment of the required processing fee, the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except with respect to Section 10.3 hereof) and be released from any future obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement and the other Loan Documents, such Lender shall cease to be a party hereto and thereto), and such assignment shall effect a novation among the applicable Borrower, the assigning Lender, and the Assignee; provided, however, that nothing contained herein shall release any assigning Lender from obligations that survive the termination of this Agreement, including such assigning Lender's obligations under Section 15 and Section 17.9(a) of this Agreement.

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto, (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Borrower or the performance or observance by any Borrower of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto, (iii) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such Assignee will, independently and without reliance upon Agent, such assigning Lender or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement, (v) such Assignee appoints and authorizes Agent to take such actions and to exercise such powers under this Agreement and the other Loan Documents as are delegated to Agent, by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, and (vi) such Assignee agrees that it will perform all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) Immediately upon the Agent's receipt of the required processing fee, if applicable, and delivery of notice to the assigning Lender pursuant to Section 13.1(b), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the

Assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each Assignee shall reduce such Commitments of the assigning Lender *pro tanto*.

(e) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other Persons (a "Participant"; provided, however, that no Loan Party, Affiliate of a Loan Party, Equity Sponsor, or Affiliate of Equity Sponsor shall be permitted to become a Participant) participating interests in all or any portion of its Obligations, its Commitment, and the other rights and interests of that Lender (the "Originating Lender") hereunder and under the other Loan Documents; provided, however, that (i) the Originating Lender shall remain a "Lender" for all purposes of this Agreement and the other Loan Documents and the Participant receiving the participating interest in the Obligations, the Commitments, and the other rights and interests of the Originating Lender hereunder shall not constitute a "Lender" hereunder or under the other Loan Documents and the Originating Lender's obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) Borrowers, Agent, and the Lenders shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has the right to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would require the consent of all Lenders or all Lenders directly affected thereby pursuant to Section 14.1, and (v) all amounts payable by any Borrower hereunder shall be determined as if such Lender had not sold such participation, except that, if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement. The rights of any Participant only shall be derivative through the Originating Lender with whom such Participant participates and no Participant shall have any rights under this Agreement or the other Loan Documents or any direct rights as to the other Lenders, Borrowers, Agent, the Collections of the Loan Parties and their respective Subsidiaries, the Collateral, or otherwise in respect of the Obligations. No Participant shall have the right to participate directly in the making of decisions by the Lenders among themselves or to receive any greater payment under this Agreement or the other Loan Documents than the Originating Lender would have been entitled to receive with respect to the participation sold to such Participant. In the case of assignment, transfer of novation by a Lender to an Assignee of all or any party of its rights and obligations under the Loan Documents, the Lender and the Assignee shall agree that, for the purposes of Article 1278 of the Luxembourg Civil Code (to the extent applicable), any Lien created under the Loan Documents securing the rights assigned, transferred or novated thereby, will be preserved for the benefit of the Assignee. Notwithstanding the foregoing, no assignments or participations shall be made to any Disqualified Competitors or, prior to the occurrence of any Event of Default, any Disqualified Institutions.

(f) In connection with any such assignment or participation or proposed assignment or participation or any grant of a security interest in, or pledge of, its rights under and interest in this Agreement, a Lender may, subject to the provisions of Section 17.9, disclose all documents and information which it now or hereafter may have relating to the Loan Parties and their respective Subsidiaries and their respective businesses.

(g) Any other provision in this Agreement notwithstanding, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement in favor of (i) any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Bank or U.S. Treasury Regulation 31 CFR §203.24, or (ii) any other central bank, and such

Federal Reserve Bank or such other central bank may enforce such pledge or security interest in any manner permitted under applicable law.

(h) Agent (as a non-fiduciary agent on behalf of U.S. Borrower) shall maintain, or cause to be maintained, a register (the "U.S. Register") on which it enters the name and address of each U.S. Lender as the registered owner of the U.S. Advances (and the principal amount thereof and stated interest thereon) held by such U.S. Lender (each, a "U.S. Registered Loan"). Other than in connection with an assignment by a U.S. Lender of all or any portion of its portion of the U.S. Advances to an Affiliate of such U.S. Lender or a Related Fund of such U.S. Lender (i) a U.S. Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the U.S. Register (and each registered note shall expressly so provide) and (ii) any assignment or sale of all or part of such U.S. Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the U.S. Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any U.S. Registered Loan (and the registered note, if any evidencing the same), U.S. Borrower shall treat the Person in whose name such U.S. Registered Loan (and the registered note, if any, evidencing the same) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary. In the case of any assignment by a U.S. Lender of all or any portion of the U.S. Advances to an Affiliate of such U.S. Lender or a Related Fund of such U.S. Lender, and which assignment is not recorded in the U.S. Register, the assigning U.S. Lender, on behalf of U.S. Borrower, shall maintain a register comparable to the U.S. Register.

(i) Agent (as a non-fiduciary agent on behalf of Canadian Borrower) shall maintain, or cause to be maintained, a register (the "Canadian Register") on which it enters the name and address of each Canadian Lender as the registered owner of the Canadian Advances (and the principal amount thereof and stated interest thereon) held by such Canadian Lender (each, a "Canadian Registered Loan"). Other than in connection with an assignment by a Canadian Lender of all or any portion of its portion of the Canadian Advances to an Affiliate of such Canadian Lender or a Related Fund of such Canadian Lender (i) a Canadian Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Canadian Register (and each registered note shall expressly so provide) and (ii) any assignment or sale of all or part of such Canadian Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Canadian Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Canadian Registered Loan (and the registered note, if any evidencing the same), Canadian Borrower shall treat the Person in whose name such Canadian Registered Loan (and the registered note, if any, evidencing the same) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary. In the case of any assignment by a Canadian Lender of all or any portion of the Canadian Advances to an Affiliate of such Canadian Lender or a Related Fund of such Canadian Lender, and which assignment is not recorded in the Canadian Register, the assigning Canadian Lender, on behalf of Canadian Borrower, shall maintain a register comparable to the Canadian Register.

(j) In the event that a U.S. Lender sells participations in the U.S. Registered Loan, such U.S. Lender, as a non-fiduciary agent on behalf of U.S. Borrower, shall maintain a register on which it enters the name of all participants in the U.S. Registered Loans held by it (the "U.S. Participant Register"). A U.S. Registered Loan (and the registered note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the U.S. Participant Register (and each registered note shall expressly so provide). Any participation of such U.S. Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the U.S. Participant Register.

(k) In the event that a Canadian Lender sells participations in the Canadian Registered Loan, such Canadian Lender, as a non-fiduciary agent on behalf of Canadian Borrower, shall maintain a register on which it enters the name of all participants in the Canadian Registered Loans held by it (the "Canadian Participant Register"). A Canadian Registered Loan (and the registered note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Canadian Participant Register (and each registered note shall expressly so provide). Any participation of such Canadian Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Canadian Participant Register.

(l) Agent shall make a copy of the U.S. Register available for review by U.S. Borrower or any Lender from time to time as U.S. Borrower or any U.S. Lender may reasonably request. Agent shall make a copy of the Canadian Register available for review by Canadian Borrower or any Canadian Lender from time to time as Canadian Borrower or any Canadian Lender may reasonably request.

13.2 **Successors**. This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that, except as set forth in Section 6.3, no Borrower may assign this Agreement or any rights or duties hereunder without the Lenders' prior written consent and any prohibited assignment shall be absolutely void *ab initio*. No consent to assignment by the Lenders shall release any Borrower from its Obligations. A Lender may assign this Agreement and the other Loan Documents and its rights and duties hereunder and thereunder pursuant to Section 13.1 hereof and, except as expressly required pursuant to Section 13.1, no consent or approval by any party is required in connection with any such assignment.

14. AMENDMENTS; WAIVERS

14.1 **Amendments and Waivers**.

(a) Except as expressly set forth in this Agreement, no amendment, waiver or other modification of any provision of this Agreement or any other Loan Document (other than the Fee Letter), and no consent with respect to any departure by Borrower therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by Agent at the written request of the Required Lenders) and Borrowers and then any such waiver or consent shall be effective, but only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, or consent shall, unless in writing and signed by each Lender directly and adversely affected thereby and Borrowers, do any of the following:

(i) increase the amount of or extend the expiration date of any Commitment of any Lender (it being understood that a waiver of any condition precedent or the waiver of any default, event of default or mandatory prepayment shall not constitute an extension or increase of any Commitment),

(ii) postpone or delay the Maturity Date applicable to any class of Obligations or any other date fixed by this Agreement or any other Loan Document for any payment of principal, interest or fees due hereunder or under any other Loan Document (it being understood that a waiver of any condition precedent or the waiver of any default, event of default or mandatory prepayment shall not constitute an extension of any such date),

(iii) reduce the principal of, or the rate of interest on, any loan or other extension of credit hereunder, or reduce any fees or other amounts payable hereunder or under any other Loan Document (except (x) that a waiver of any condition precedent or the waiver of any default, event of default or mandatory prepayment shall not constitute a reduction in principal, (y) in connection with the waiver of applicability of Section 2.6(e) (which waiver shall be effective with the written consent of the Required Lenders), and (z) that any amendment or modification of defined terms used in the financial covenants in this Agreement shall not constitute a reduction in the rate of interest or a reduction of fees for purposes of this clause (iii)),

(iv) amend, modify, or eliminate this Section or any other provision of this Agreement providing for the consent of all or all affected Lenders,

(v) except as permitted by Section 6.3, consent to the transfer or assignment by, or the release of, Holdings or any Borrower of any of its rights or obligations under any Loan Document to which it is a party,

(vi) amend, modify, or eliminate the definition of "Required Lenders", "Supermajority Lenders" or "Pro Rata Share" or amend, modify or eliminate the last sentence of Section 2.4(c) or any other provision of the Loan Documents with respect to any provision relating to the pro rata sharing of payments among the Lenders,

(vii) other than in connection with a transaction expressly permitted by the terms hereof or the other Loan Documents, release any Borrower or all or substantially all of the Guarantors from their obligations under the Guaranty or, subject to the DIP Intercreditor Agreement, release all or substantially all of the Collateral under the Security Documents,

(viii) amend, modify, or eliminate any of the provisions of Section 2.4(b)(i) or Section 2.4(b)(ii),

(ix) [intentionally omitted],

(x) modify any advance rate specified in the Loan Documents in a manner that is intended to increase Availability, or

(xi) amend, modify, or eliminate the definition of U.S. Maximum Revolver Amount or Canadian Maximum Revolver Amount, or amend, modify, or eliminate the definition of U.S. Borrowing Base or Canadian Borrowing Base or any of the defined terms (including the definitions of Eligible Accounts, Eligible Inventory, Eligible In-Transit Inventory and Eligible Landed Inventory) that are used in such definition in a manner that is intended to increase Availability (other than with respect to reserves implemented by Agent), or amend, modify, or eliminate Section 2.1(c) or Section 2.2(c), without the written consent of the Supermajority Lenders.

(b) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive (i) the definition of, or any of the terms or provisions of, the Fee Letter, without the written consent of Agent and each Borrower (and shall not require the written consent of any of the

Lenders) or (ii) any provision of Section 15 pertaining to Agent, or any other rights or duties of Agent under this Agreement or the other Loan Documents, without the written consent of Agent, Borrowers, and the Required Lenders.

(c) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Issuing Lender, or any other rights or duties of any Issuing Lender under this Agreement or the other Loan Documents, without the written consent of any Issuing Lender, Agent, either Borrower, and the Required Lenders.

(d) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Swing Lenders, any other rights or duties of Swing Lenders under this Agreement or the other Loan Documents, without the written consent of Swing Lender, Borrowers, Agent, and the Required Lenders.

(e) If at any time any real property constitutes Collateral, no amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents to add, increase, renew or extend any loan, commitment or credit line hereunder until the completion of flood due diligence, documentation and coverage as required by the Flood Laws or as otherwise satisfactory to all Lenders.

14.2 **Replacement of Holdout Lender**.

(a) If (i) any action to be taken by the Lender Group or Agent hereunder requires the unanimous consent, authorization, or agreement of all Lenders or all Lenders affected thereby or the Supermajority Lenders and if such action has received the consent, authorization, or agreement of the Required Lenders but not of all Lenders, all Lenders affected thereby or (in the case of Section 14.1(a)(x) above), the Supermajority Lenders, or (ii) any Lender makes a claim for compensation under Section 2.11(a)(viii), 2.11(b)(viii), 2.12(d)(i), 2.12(d)(ii), 2.13(a), or 16, then Borrowers, upon at least three (3) Business Days prior irrevocable notice, may permanently replace any Lender that failed to give its consent, authorization, or agreement (a "Holdout Lender") or any Lender that made a claim for compensation pursuant to Section 2.11(a)(viii), 2.11(b)(viii), 2.12(d)(i), 2.13(a), or 16 or has declared its ability to make LIBOR Rate Loans impractical or unlawful pursuant to Section 2.12(d)(ii) (an "Increased Cost Lender") with one or more replacement lenders (each, a "Replacement Lender"), and the Holdout Lender, an Increased Cost Lender or any Defaulting Lender, as applicable, shall have no right to refuse to be replaced hereunder. If any Lender is a Defaulting Lender, then either Borrower or Agent may replace such Defaulting Lender with one or more Replacement Lenders, and the Defaulting Lender shall have no right to refuse to be replaced hereunder. Such notice to replace the Holdout Lender, an Increased Cost Lender, or any Defaulting Lender, as applicable, shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given.

(b) Prior to the effective date of such replacement, the Holdout Lender or Increased Cost Lender, as applicable, and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Holdout Lender or Increased Cost Lender, as applicable being repaid in full its share of the outstanding Obligations without any premium or penalty of any kind whatsoever, but including (i) all interest, fees and other amounts that may be due and payable in respect thereof, and (ii) an assumption of its Pro Rata Share of the Letters of Credit. If the Holdout Lender or Increased Cost Lender, as applicable, shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, Agent may, but shall not be required to, execute and deliver such Assignment and Acceptance in the name of and on behalf of the Holdout Lender or Increased Cost Lender, as applicable, and irrespective of whether Agent execute and deliver such Assignment and

Acceptance, the Holdout Lender or Increased Cost Lender, as applicable, shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Holdout Lender or Increased Cost Lender, as applicable, shall be made in accordance with the terms of Section 13.1. Until such time as one or more Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Holdout Lender or Increased Cost Lender, as applicable, hereunder and under the other Loan Documents, the Holdout Lender or Increased Cost Lender, as applicable, shall remain obligated to make the Holdout Lender's or Increased Cost Lender's, as applicable Pro Rata Share of Advances and to purchase a participation in each Letter of Credit, in an amount equal to its Pro Rata Share of such Letters of Credit.

14.3 **No Waivers; Cumulative Remedies**. No failure by Agent or any Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Agent or any Lender in exercising the same, will operate as a waiver thereof. No waiver by Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Agent or any Lender on any occasion shall affect or diminish Agent's or any Lender's rights thereafter to require strict performance by Borrowers of any provision of this Agreement. Agent's and each Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Agent or any Lender may have.

15. AGENT; THE LENDER GROUP

15.1 **Appointment and Authorization of Agent**. Each Lender hereby designates and appoints WFCF as its Agent under this Agreement and the other Loan Documents, and, subject to the terms of Section 14.1, each Lender hereby irrevocably authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to designate, appoint, and authorize) Agent to execute and deliver each of the other Loan Documents on its behalf and to take such other action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Agent agrees to act as agent for and on behalf of the Lenders (and the Bank Product Providers) on the conditions contained in this Section 15. The provisions of this Section 15 (other than Sections 15.9, 15.11, 15.12(a), 15.16 and 15.18) are solely for the benefit of Agent and the Lenders, and the Loan Parties and their respective Subsidiaries shall have no rights as a third party beneficiary of any of the provisions contained herein. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, no Agent shall have any duties or responsibilities, except those expressly set forth herein or in the other Loan Documents, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender (or Bank Product Provider), and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement or the other Loan Documents with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only a representative relationship between independent contracting parties. Each Lender hereby further authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to act as the secured party under each of the Loan Documents that create a Lien on any item of Collateral. Except as expressly otherwise provided in this Agreement, Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that Agent expressly is entitled to take or assert under or pursuant to this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to Agent, Lenders agree that (a) Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (i) maintain, in accordance with its customary business

practices, ledgers and records reflecting the status of the Obligations, the Collateral, the Collections of Loan Parties and their respective Subsidiaries, and related matters, (ii) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, (iii) receive, apply, and distribute the Collections of Loan Parties and their respective Subsidiaries as provided in the Loan Documents, (iv) open and maintain such bank accounts and cash management arrangements as Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes with respect to the Collateral and the Collections of the Loan Parties and their respective Subsidiaries, (v) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to the Loan Parties or their respective Subsidiaries, the Obligations, the Collateral, the Collections of Loan Parties and their respective Subsidiaries, or otherwise related to any of same as provided in the Loan Documents, and (vi) incur and pay such Lender Group Expenses as Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents, (b) [intentionally omitted], and (c) Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (i) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, the Collections of Loan Parties and their respective Subsidiaries, and related matters, (ii) make Advances, for itself or on behalf of Lenders, as provided in the Loan Documents, (iii) exclusively receive, apply, and distribute the Collections of Loan Parties and their respective Subsidiaries as provided in the Loan Documents, (iv) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to the Loan Parties or their respective Subsidiaries, the Obligations, the Collateral, the Collections of Loan Parties and their respective Subsidiaries, or otherwise related to any of same as provided in the Loan Documents, and (v) incur and pay such Lender Group Expenses as Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

For greater certainty, for the purposes of holding any security granted under the laws of the Province of Quebec by any Loan Party, the Agent is hereby irrevocably authorized and appointed by each Borrower and each Lender, Issuing Lender, Swing Lender and Bank Product Provider hereto to act as hypothecary representative (within the meaning of Article 2692 of the Civil Code of Quebec) for all present and future Secured Parties (in such capacity, the "Hypothecary Representative") in order to hold any hypothec granted under the laws of the Province of Quebec and to exercise such rights and duties as are conferred upon the Hypothecary Representative under the relevant deed of hypothec, pledge or hypothec agreement, this Agreement or the Applicable Laws (with the power to delegate any such rights or duties). The execution prior to the date hereof by the Agent in its capacity as the Hypothecary Representative of any deed of hypothec, pledge or hypothec agreement, or other security documents made pursuant to the laws of the Province of Quebec, is hereby ratified and confirmed. Any Person who becomes a Secured Party, or a successor Agent shall be deemed to have consented to and ratified the foregoing appointment of the Agent as the Hypothecary Representative. The execution, prior to the date of this Agreement, by the Agent in its capacity as hypothecary representative of any deed of hypothec or any other security documents made pursuant to the laws of the Province of Quebec is hereby ratified and confirmed. For greater certainty, the Agent, acting as the Hypothecary Representative, shall have, in addition to the rights, power, immunities, indemnities and exclusion from liability provided for by applicable law or the security document to which it is a party, the same rights, powers, immunities, indemnities and exclusions from liability as are prescribed in favor of the Agent in this Agreement, which shall apply mutatis mutandis. In the event of the resignation or replacement of the Agent (which shall include its resignation or replacement as Hypothecary Representative) and appointment of a successor Agent, such successor Agent shall also act as Hypothecary Representative, as contemplated above. Without limitation, the provisions of Section 15.9 of this Agreement shall apply mutatis mutandis to the resignation, replacement, and appointment of a successor to the Agent, acting as Hypothecary Representative. Without prejudice to Section 12 hereof, the provisions of this paragraph shall be also governed by the laws of the Province of Quebec.

15.2 **Delegation of Duties**. Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Without limiting the generality of the foregoing, Agent shall have the right to appoint any other Agent, and any Lender as its sub-agent to execute all or any portion of its rights and duties under this Agreement, including without limitation all or any portion of its rights and duties in respect of the Collateral. No Agent shall be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence or willful misconduct.

15.3 **Liability of Agent**. None of the Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any of the Lenders (or Bank Product Providers) for any recital, statement, representation or warranty made by any Loan Party or any of its Subsidiaries or Affiliates, or any officer or director thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of any Loan Party or its Subsidiaries or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lenders (or Bank Product Providers) to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the books and records or properties of any Loan Party or its Subsidiaries.

15.4 **Reliance by Agent**. Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, telefacsimile or other electronic method of transmission, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Borrower or counsel to any Lender), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless Agent shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, Agent shall act, or refrain from acting, as it deems advisable. If Agent so requests, it shall first be indemnified to its reasonable satisfaction by the Lenders (and if it so elects, the Bank Product Providers) against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders (and the Bank Product Providers).

15.5 **Notice of Default or Event of Default**. No Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Agent for the account of the applicable Lenders and, except with respect to Defaults or Events of Default of which Agent has actual knowledge, unless Agent shall have received written notice from a Lender or a Borrower referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a "notice of default". Agent promptly will notify the Lenders of its receipt of any such notice or of any Event of Default of which Agent has actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and Agent of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 15.4, Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in

accordance with Section 8; provided, however, that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

15.6 **Credit Decision**. Each Lender (and Bank Product Provider) acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by Agent hereinafter taken, including any review of the affairs of the Loan Parties and their respective Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender (or Bank Product Provider). Each Lender represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such due diligence documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of any Borrower or any other Person party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the applicable Borrower. Each Lender also represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Borrowers or any other Person party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by Agent, Agent shall have no duty or responsibility to provide any Lender (or Bank Product Provider) with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Borrower or any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons. Each Lender acknowledges (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that Agent has no duty or responsibility, either initially or on a continuing basis (except to the extent, if any, that is expressly specified herein) to provide such Lender (or Bank Product Provider) with any credit or other information with respect to any Borrower, its Affiliates or any of their respective business, legal, financial or other affairs, and irrespective of whether such information came into Agent's or its Affiliates' or representatives' possession before or after the date on which such Lender became a party to this Agreement (or such Bank Product Provider entered into a Bank Product Agreement).

15.7 **Costs and Expenses; Indemnification**. Agent may incur and pay Lender Group Expenses to the extent Agent reasonably deems necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Loan Documents, including court costs, reasonable and documented attorney's fees (for one primary outside counsel, one local/foreign counsel in each applicable jurisdiction (which may include one special counsel acting in multiple jurisdictions), and any other counsel retained with Borrowers' consent (which consent shall not be unreasonably withheld, conditioned or delayed), but excluding allocated costs of internal counsel) and expenses, fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not any Borrower is obligated to reimburse Agent or Lenders for such expenses pursuant to this Agreement or otherwise. In the event Agent is not reimbursed for such costs and expenses by the Loan Parties and their respective Subsidiaries, each Lender hereby agrees that it is and shall be obligated to pay to Agent such Lender's ratable thereof. Whether or not the transactions contemplated hereby are consummated, each of the Lenders, on a ratable basis, shall indemnify and defend the Agent-Related Persons (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so), from and against any and all Indemnified Liabilities; provided, however,

that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct nor shall any Lender be liable for the obligations of any Defaulting Lender in failing to make an Advance or other extension of credit hereunder. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for such Lender's ratable share of any costs or out of pocket expenses (including attorneys, accountants, advisors, and consultants fees and expenses) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrowers. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent.

15.8 **Agent in Individual Capacity**. WFCF and its respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire equity interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with the Loan Parties and their respective Subsidiaries and Affiliates and any other Person party to any Loan Document as though WFCF were not Agent hereunder, and, in each case, without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, WFCF or its respective Affiliates may receive information regarding the Loan Parties, their respective Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of the Loan Parties or such other Person and that prohibit the disclosure of such information to the Lenders (or Bank Product Providers), and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver Agent will use its reasonable best efforts to obtain), Agent shall not be under any obligation to provide such information to them. The terms "Lender" and "Lenders" include WFCF in its individual capacity.

15.9 **Successor Agent**. Agent may resign as Agent upon 30 days prior written notice to the Lenders (unless such notice is waived by the Required Lenders) and Borrowers (unless such notice is waived by Borrowers) and without any notice to the Bank Product Providers. If Agent resigns under this Agreement, the Required Lenders shall be entitled, with (so long as no Event of Default has occurred and is continuing) the approval of Borrowers (such approval not to be unreasonably withheld, delayed, or conditioned), appoint (x) a successor Agent for the Lenders (and the Bank Product Providers), or (y) a successor Agent for the Secured Parties. If, at the time that Agent's resignation is effective, it is acting as an Issuing Lender or a Swing Lender, such resignation shall also operate to effectuate its resignation as such Issuing Lender or such Swing Lender, as applicable, and it shall automatically be relieved of any further obligation to issue Letters of Credit, to cause the Underlying Issuer to issue Letters of Credit, or to make Swing Loans. If no successor Agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Lenders and Borrowers, a successor Agent or Agent. If Agent has materially breached or failed to perform any material provision of this Agreement or of applicable law, the Required Lenders may agree in writing to remove and replace Agent with a successor Agent from among the Lenders with (so long as no Event of Default has occurred and is continuing) the consent of Borrowers (such consent not to be unreasonably withheld, delayed, or conditioned). In any such event, upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers, and duties of the retiring Agent and the term "Agent" shall mean such successor Agent and the retiring Agent's appointment, powers, and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 15 and Section 16 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this

Agreement. If no successor Agent has accepted appointment as Agent by the date which is 30 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Lenders appoint a successor Agent as provided for above. The parties hereto acknowledge and agree that for the purpose of the security documents governed by Dutch law, any resignation by Agent is not effective until its contractual relationship under the Parallel Debt, including all of its rights and obligations thereunder, is transferred to a successor Agent. Agent will reasonably cooperate in assigning its rights and obligations under the Parallel Debt to the successor Agent and will reasonably cooperate in transferring all rights under the security documents governed by Dutch law to the successor Agent. The Agent that is resigning, successor Agent, and each relevant Loan Party shall execute all documents necessary to ensure that the successor Agent obtains valid Dutch law security similar to the previously existing Dutch security.

15.10 **Lender in Individual Capacity; Joint Lead Arrangers and Bookrunners and Syndication Agent**.

(a) Any Lender and its respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with the Loan Parties and their respective Subsidiaries and Affiliates and any other Person party to any Loan Documents as though such Lender were not a Lender hereunder without notice to or consent of the other members of the Lender Group (or the Bank Product Providers). The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, such Lender and its respective Affiliates may receive information regarding any Borrower or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of any Borrower or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver such Lender will use its reasonable best efforts to obtain), such Lender shall not be under any obligation to provide such information to them.

(b) WFCF and BOA, in their respective capacities as "joint lead arrangers and bookrunners", and MUFG in its capacity as "syndication agent" shall not have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to them in their capacities as Lenders or (i) in the case of WFCF, in its capacities as Agent, Swing Lender, or an Issuing Lender, or (ii) in the case of any other Lender, in its capacity as an Issuing Lender to the extent appointed as an Issuing Lender pursuant to this Agreement. Without limiting the foregoing, WFCF and BOA, in their respective capacities as "joint lead arrangers and bookrunners" and MUFG in its capacity as "syndication agent" shall not have or be deemed to have any fiduciary relationship with any Borrower or with any Lender. Each Lender acknowledges that it has not relied upon, and will not rely upon, WFCF, BOA or MUFG in deciding to enter into this Agreement or in taking or not taking action hereunder.

15.11 **Collateral Matters**.

(a) The Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent, at its option and in its sole discretion, to release any Lien on any Collateral upon any of the events described in Section 17.16. The Loan Parties and the Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent, based upon the instruction of the Required Lenders, to (i) consent to, credit bid or purchase (either directly or through one or more

acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, the CCAA, the BIA or pursuant to an order of any court of competent jurisdiction supervising an Insolvency Proceeding, (ii) credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale or other disposition thereof conducted under the provisions of the Code, including pursuant to Sections 9-610 or 9-620 of the Code, or (iii) credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any other sale or foreclosure conducted by Agent (whether by judicial action or otherwise) in accordance with applicable law. In connection with any such credit bid or purchase, the Obligations owed to the Lenders and the Bank Product Providers shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not unduly delay the ability of Agent to credit bid or purchase at such sale or other disposition of the Collateral and, if such claims cannot be estimated without unduly delaying the ability of Agent to credit bid, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the asset or assets purchased by means of such credit bid) and the Lenders and the Bank Product Providers whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the asset or assets so purchased (or in the Stock of the acquisition vehicle or vehicles that are used to consummate such purchase). Except as provided above or in Section 17.16, Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of (y) if the release is of all or substantially all of the Collateral, all of the Lenders (without requiring the authorization of the Bank Product Providers), or (z) otherwise, the Required Lenders (without requiring the authorization of the Bank Product Providers). Upon request by Agent or any Borrower at any time, the Lenders will (and if so requested, the Bank Product Providers will) confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 15.11; provided, however, that (1) Agent shall not be required to execute any document necessary to evidence such release on terms that, in Agent's opinion, would expose Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of any Borrower in respect of) all interests retained by any Borrower, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral. The Lenders further hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent, at its option and in its sole discretion, to subordinate any Lien granted to or held by Agent under any Loan Document to the holder of any Permitted Lien on such property if such Permitted Lien secures Permitted Purchase Money Indebtedness.

(b) Agent shall have no obligation whatsoever to any of the Lenders (or the Bank Product Providers) to assure that the Collateral exists or is owned by the Loan Parties and their respective Subsidiaries or is cared for, protected, or insured or has been encumbered, or that Agent's Liens have been properly or sufficiently or lawfully created, perfected, rendered opposable, protected, or enforced or are entitled to any particular priority, that any particular items of Collateral meet the eligibility criteria applicable in respect thereof, or whether to impose, maintain, reduce, or eliminate any particular reserve hereunder or whether the amount of any such reserve is appropriate or not, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, Agent may act in any manner it may deem appropriate, in its sole discretion given Agent's own interest in the Collateral in its capacity as one of the Lenders and that Agent shall have no other duty or liability whatsoever to any Lender (or Bank Product Provider) as to any of the foregoing, except as otherwise provided herein.

(c) Notwithstanding anything contained in any of the Loan Documents to the contrary, the Loan Parties, the Agent and each Lender hereby agree that (1) no Lender shall have any right individually to realize upon any of the Collateral under any Security Document or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies under the Collateral Documents and the Guaranty may be exercised solely by the Agent acting as agent for and representative of Lenders in accordance with the terms thereof, and (2) in the event of a foreclosure by the Agent on any of the Collateral pursuant to a public or private sale or a sale under Section 363 of the Bankruptcy Code or section 36 of the CCAA, the Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and the Agent, as agent for and representative of Lenders (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled (at the direction of the Required Lenders), for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by the Agent at such sale.

(d) No real property shall be taken as Collateral unless Lenders receive forty-five (45) days' advance notice and each Lender confirms to the Agent that it has completed all flood due diligence, received copies of all flood insurance documentation and confirmed flood insurance compliance as required by the Flood Laws or as otherwise satisfactory to such Lender.

15.12 **Restrictions on Actions by Lenders; Sharing of Payments**.

(a) Each of the Lenders agrees that it shall not, without the express written consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of Agent, set off against the Obligations that are due and owing, upon the occurrence and during the continuance of an Event of Default, any amounts due and owing by such Lender to any Loan Party or any deposit accounts of any Loan Party now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings to enforce any Loan Document against any Borrower or any Guarantor or to foreclose any Lien on, or otherwise enforce any security interest or hypothec in, any of the Collateral. In no event shall any Secured Party be permitted to take any of the foregoing actions against the Borrower or any Loan Party, including the giving of any instruction to do so, unless an Event of Default has occurred and is continuing.

(b) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations, except for any such proceeds or payments received by such Lender from Agent pursuant to the terms of this Agreement, or (ii) payments from Agent in excess of such Lender's Pro Rata Share of all such distributions by Agent, such Lender promptly shall (A) turn the same over to Agent, in kind, and with such endorsements as may be required to negotiate the same to Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their Pro Rata Shares; provided, however, that to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment; provided, further, that the provisions of this paragraph shall not be construed to apply to (A) any payment made by Holdings, Borrowers or any other Loan Party pursuant to and in accordance with the express terms of this Agreement and the other Loan Documents, (B) any

payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Advances, Commitments or other Obligations to any assignee or participant or (C) any disproportionate payment obtained by a Lender of any class as a result of the extension by Lenders of the maturity date or expiration date of some but not all Advances or Commitments of that class or any increase in the interest rate in respect of Advances or Commitments of Lenders that have consented to any such extension.

15.13 **Agency for Perfection**. Agent hereby appoints each other Lender (and each Bank Product Provider) as its agent (and each Lender hereby accepts (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to accept) such appointment) for the purpose of perfecting or rendering opposable Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code can be perfected or rendered opposable by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver possession or control of such Collateral to Agent or in accordance with Agent's instructions.

15.14 **Payments by Agent to the Lenders**. All payments to be made by Agent to the Lenders (or the Bank Product Providers) shall be made by bank wire transfer of immediately available funds pursuant to such wire transfer instructions as each party may designate for itself by written notice to Agent. Concurrently with each such payment, Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

15.15 **Concerning the Collateral and Related Loan Documents**. Each member of the Lender Group authorizes and directs Agent to enter into this Agreement and the other Loan Documents. Each member of the Lender Group agrees (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to agree) that any action taken by Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders (and such Bank Product Provider).

15.16 **Audits and Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information.** By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report respecting the Loan Parties and their respective Subsidiaries (each a "Report" and collectively, "Reports") prepared by or at the request of Agent, and Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that Agent (i) does not make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent or other party performing any audit or examination will inspect only specific information regarding the Loan Parties and their respective Subsidiaries and will rely significantly upon the Loan Parties' and their respective Subsidiaries' books and records, as well as on representations of each Borrower's personnel,

(d) agrees to keep all Reports and other non-public information regarding the Loan Parties and their respective Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 17.9, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to any Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of any Borrower, and (ii) to pay and protect, and indemnify, defend and hold Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorney's fees and costs) incurred by Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

In addition to the foregoing: (x) any Lender may from time to time request of Agent in writing that Agent provide to such Lender a copy of any report or document provided by any Loan Party or any of its Subsidiaries to Agent that has not been contemporaneously provided by such Loan Party or such Subsidiary to such Lender, and, upon receipt of such request, Agent promptly shall provide a copy of same to such Lender, (y) to the extent that Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from the Loan Parties and their respective Subsidiaries, any Lender may, from time to time, reasonably request Agent to exercise such right as specified in such Lender's notice to Agent, whereupon Agent promptly shall request of Borrowers the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from Borrowers, Agent promptly shall provide a copy of same to such Lender, and (z) any time that Agent renders to any Borrower a statement regarding the Loan Account, Agent shall send a copy of such statement to each Lender.

15.17 **Several Obligations; No Liability**. Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of Agent (if any) to make any credit available hereunder shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any other Lender. Except as provided in Section 15.7, no member of the Lender Group shall have any liability for the acts of any other member of the Lender Group. No Lender shall be responsible to any Borrower or any other Person for any failure by any other Lender (or Bank Product Provider) to fulfill its obligations to make credit available hereunder, nor to advance for such Lender (or Bank Product Provider) or on its behalf, nor to take any other action on behalf of such Lender (or Bank Product Provider) hereunder or in connection with the financing contemplated herein.

15.18 **Parallel Debt.** For the purposes of creating security rights governed by Dutch law,

(a) Holdings irrevocably and unconditionally undertakes to pay to Agent an amount equal to the aggregate of the Principal Obligations. The payment undertaking of Holdings under this Section 15.18(a) is referred to as its "Parallel Debt" (the "Parallel Debt");

(b) the Parallel Debt of Holdings constitutes obligations and liabilities of Holdings to Agent which are separate and independent from, and without prejudice to, the Principal Obligations and the Parallel Debt represents Agent's own independent right to receive payment of the Parallel Debt from Holdings;

(c) the Parallel Debt of Holdings will be payable in the currency or currencies of the corresponding Principal Obligations and will become due and payable as and when and to the extent one or more of the Principal Obligations become due and payable;

(d) Agent hereby confirms and accepts that to the extent Agent receives any amount in payment of the Parallel Debt of Holdings, Agent shall distribute that amount among the parties that are the creditors of the relevant Principal Obligations in accordance with the provisions of this Agreement and the DIP Intercreditor Agreement as if received by it in payment of the relevant Principal Obligations. Upon receipt by Agent of any amount in payment of the Parallel Debt of Holdings (a "Received Amount"), the corresponding Principal Obligations shall be reduced by amounts totaling an amount (a "Deductible Amount") equal to the Received Amount in the manner and as if the Deductible Amount were received by Agent and distributed in accordance with this Agreement and the DIP Intercreditor Agreement to the relevant creditor as a payment of the relevant Principal Obligations owed to it or them on the date of receipt by Agent of the Received Amount; and

(e) the parties acknowledge and confirm that pursuant to the provisions contained in this Section 15.18 the amount which may become due and payable by Holdings as its Parallel Debt shall never exceed the total of the amounts which are payable in connection with the Principal Obligations.

15.19 **Credit Bidding**. The Secured Parties hereby irrevocably authorize the Agent, based upon the instruction of the Required Lenders, to credit bid all or any portion of the Obligations (including by accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, section 36 of the CCAA, or any similar laws in any other jurisdictions to which a Loan Party is subject, or (b) at any other sale, foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid by the Agent on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that shall vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) for the asset or assets so purchased (or for the equity interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase). In connection with any such bid (i) the Agent shall be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles, (ii) immediately prior to the consummation of the closing of the sale, each of the Secured Parties' ratable interests in the Obligations which were credit bid shall be deemed without any further action under this Agreement to be assigned to such vehicle or vehicles for the purpose of closing such sale, (iii) the Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Agent with respect to such acquisition vehicle or vehicles, prior to the distribution of such equity interests to the Lenders including any disposition of the assets or equity interests thereof, shall be governed, directly or indirectly, by, and the governing documents shall provide for, control by the vote of the Required Lenders or their permitted assignees under the terms of this Agreement or the governing documents of the applicable acquisition vehicle or vehicles, as the case may be, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 14.1 of this Agreement), (iv) the Agent on behalf of such acquisition vehicle or vehicles shall be authorized to issue to each of the Secured Parties, ratably on account of the relevant Obligations which were credit bid, interests, whether as equity, partnership, limited partnership interests or membership interests, in any such acquisition vehicle and/or debt instruments issued by such acquisition vehicle, all without the need for any Secured Party or acquisition vehicle to take any further action, and (v)

to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of Obligations credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Secured Parties pro rata and the equity interests and/or debt instruments issued by any acquisition vehicle on account of such Obligations shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action. Notwithstanding that the ratable portion of the Obligations of each Secured Party are deemed assigned to the acquisition vehicle or vehicles as set forth in clause (ii) above, each Secured Party shall execute such documents and provide such information regarding the Secured Party (and/or any designee of the Secured Party which will receive interests in or debt instruments issued by such acquisition vehicle) as the Agent may reasonably request in connection with the formation of any acquisition vehicle, the formulation or submission of any credit bid or the consummation of the transactions contemplated by such credit bid.

16. WITHHOLDING TAXES

(a) All payments made by any Loan Party hereunder or under any note or other Loan Document will be made without setoff, counterclaim, or other defense. In addition, all such payments will be made free and clear of, and without deduction or withholding for, any present or future Taxes, and in the event any deduction or withholding of Taxes is required, each Loan Party shall comply with the next sentence of this Section 16(a). If any Taxes are so levied or imposed, each Loan Party agrees to deduct and withhold and to timely pay and remit the full amount of such Taxes to the applicable Governmental Authority in accordance with applicable laws, and to pay such additional amounts to an applicable payee as may be necessary so that every payment of all amounts due under this Agreement, any note issued pursuant to this Agreement, or Loan Document, including any amount paid pursuant to this Section 16(a) after withholding or deduction for or on account of any Taxes, will not be less than the amount such payee would have received if such Taxes (including Taxes on any amount paid pursuant to this Section 16(a)) had not been deducted or withheld. Borrowers will furnish to Agent as promptly as possible after the date the payment of any Tax is due pursuant to applicable law, certified copies of tax receipts or other evidence of such payment reasonably acceptable to the Agent evidencing such payment by the applicable Borrower.

(b) Each Loan Party agrees to pay in accordance with applicable law any present or future stamp, value added or documentary taxes or any other excise or property taxes, charges, or similar levies (hereinafter, "Other Taxes") that arise from any payment made hereunder or under any of the Loan Documents, or from the execution, delivery, performance, recordation, or filing of, or otherwise with respect to this Agreement or any other Loan Document. Each Loan Party shall indemnify and hold harmless each Lender (including for purposes of this section any Participant) and Agent (and, in the case of any Lender or Agent that is a partnership or other "flow-through" entity for tax purposes, each beneficial owner thereof (each, a "Beneficial Owner")) for the full amount of Taxes and Other Taxes imposed on or paid by such Person and any liability (including penalties, interest, additions to and expenses) arising from or with respect to such Taxes, whether or not they were correctly or legally asserted. Payment under this indemnification shall be made within 30 days from the date Agent or the relevant Lender makes written demand for it. A certificate containing reasonable detail as to the amount of such Taxes or Other Taxes submitted to a Loan Party by Agent or the relevant Lender shall be conclusive evidence, absent manifest error, of the amount due from such Loan Party to Agent or such Lender (or their Beneficial Owners). The provisions of this Section 16 shall survive the termination of this Agreement and the repayment of all Obligations.

(c) If a Lender or Participant is entitled to claim an exemption or reduction from United States withholding tax (including backup withholding tax), such Lender or Participant agrees with and in favor of Agent, to deliver to Borrowers and Agent (or, in the case of a Participant, to the Lender

granting the participation only) one of the following before receiving its first payment under this Agreement:

(i) if such Lender or Participant is entitled to claim an exemption from United States withholding tax pursuant to its portfolio interest exception, (A) a statement of the Lender or Participant, signed under penalty of perjury, that it is not a (I) a "bank" as described in Section 881(c)(3)(A) of the IRC, (II) a 10% shareholder of Borrower (within the meaning of Section 871(h)(3)(B) of the IRC), or (III) a controlled foreign corporation related to Borrower within the meaning of Section 864(d)(4) of the IRC, and (B) a properly completed and executed IRS Form W-8BEN or Form W-8IMY (with proper attachments);

(ii) if such Lender or Participant is entitled to claim an exemption from, or a reduction of, withholding tax under a United States tax treaty, a properly completed and executed copy of IRS Form W-8BEN;

(iii) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because it is effectively connected with a United States trade or business of such Lender, a properly completed and executed copy of IRS Form W-8ECI;

(iv) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because such Lender or Participant serves as an intermediary, a properly completed and executed copy of IRS Form W-8IMY (with proper attachments); or

(v) a properly completed and executed copy of any other form or forms, including IRS Form W-9, as may be required under the IRC or other laws of the United States as a condition to exemption from, or reduction of, United States withholding or backup withholding tax.

Each Lender or Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and shall promptly notify the Borrowers and Agent (or, in the case of a Participant, the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(d) If a Lender or Participant claims an exemption from withholding tax in a jurisdiction other than the United States, such Lender or such Participant agrees with and in favor of Agent, to deliver to Borrowers and the Agent (or, in the case of a Participant, to the Lender granting the participation only) any such form or forms, as may be required under the laws of such jurisdiction as a condition to exemption from, or reduction of, foreign withholding or backup withholding tax before receiving its first payment under this Agreement, but only if such Lender or such Participant is legally able to deliver such forms, provided, however, that nothing in this Section 16(d) shall require a Lender or Participant to disclose any information that it deems to be confidential (including without limitation, its tax returns). Each Lender and each Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and shall promptly notify Borrowers and the Agent (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(e) If a Lender or Participant claims exemption from, or reduction of, withholding tax and such Lender or Participant sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrowers to such Lender or Participant, such Lender or Participant agrees to notify Borrowers and Agent (or, in the case of a sale of a participation interest, to the Lender granting the

participation only) of the percentage amount in which it is no longer the beneficial owner of Obligations of Borrowers to such Lender or Participant. To the extent of such percentage amount, Agent will treat such Lender's or such Participant's documentation provided pursuant to Section 16(c) or 16(d) as no longer valid. With respect to such percentage amount, such Participant or Assignee may provide new documentation, pursuant to Section 16(c) or 16(d), if applicable. Each Borrower agrees that each Participant shall be entitled to the benefits of this Section 16 with respect to its participation in any portion of the Commitments and the Obligations so long as such Participant complies with the obligations set forth in this Section 16 with respect thereto; provided, that, no Participant shall be entitled to receive greater amounts under this Section 16 then the Lender granting the Participant its participation would have been entitled to receive had such participation not been granted unless such participation was made with Borrowers' prior written consent.

(f) If a Lender or a Participant is entitled to a reduction in the applicable withholding tax, the applicable Borrower and Agent (or, in the case of a Participant, the Lender granting the participation) may withhold from any interest payment to such Lender or such Participant an amount equivalent to the applicable withholding tax after taking into account such reduction. If the forms or other documentation required by subsection (c) or (d) of this Section 16 are not delivered to the applicable Borrower and the Agent (or, in the case of a Participant, to the Lender granting the participation), then such Borrower or Agent (or, in the case of a Participant, to the Lender granting the participation) may withhold from any interest payment to such Lender or such Participant not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(g) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that a Borrower or Agent (or, in the case of a Participant, to the Lender granting the participation) did not properly withhold tax from amounts paid to or for the account of any Lender or any Participant due to a failure on the part of the Lender or any Participant (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify such Borrower or Agent (or such Participant failed to notify the Lender granting the participation) of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall indemnify and hold such Borrower or Agent harmless (or, in the case of a Participant, such Participant shall indemnify and hold the Lender granting the participation harmless) for all amounts paid, directly or indirectly, by such Borrower or Agent (or, in the case of a Participant, to the Lender granting the participation), as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to such Borrower or Agent (or, in the case of a Participant, to the Lender granting the participation only) under this Section 16, together with all costs and expenses (including attorney's fees and expenses). The obligation of the Lenders and the Participants under this subsection shall survive the payment of all Obligations and the resignation or replacement of Agent.

(h) If Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes as to which it has been indemnified by Borrowers or with respect to which any Borrower has paid additional amounts pursuant to this Section 16, so long as no Default or Event of Default has occurred and is continuing, it shall pay over the amount of such refund to the applicable Borrower (but only to the extent of payments made, or additional amounts paid, by such Borrower under this Section 16 with respect to Taxes giving rise to such a refund), net of all out-of-pocket expenses of Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such a refund); provided, that such Borrower, upon the request of Agent or such Lender, agrees to repay the amount paid over to such Borrower (plus any penalties, interest or other charges, imposed by the relevant Governmental Authority, other than such penalties, interest or other charges imposed as a result of the willful misconduct or gross negligence of Agent hereunder) to Agent or such Lender in the event Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything in this Agreement to the contrary, this Section 16 shall not be construed to require Agent or any

Lender to make available its tax returns (or any other information which it deems confidential) to any Borrower or any other Person or to arrange its affairs in whatever manner it thinks fit and, in particular, no Agent nor any Lender shall be under any obligation to claim relief for tax purposes or to claim such relief in priority to other claims, credits or deductions.

17. GENERAL PROVISIONS

17.1 **Effectiveness**. This Agreement shall be binding and deemed effective when executed by Holdings, each Borrower, Agent, and each Lender whose signature is provided for on the signature pages hereof.

17.2 **Section Headings**. Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

17.3 **Interpretation**. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against the Lender Group or any Borrower, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

17.4 **Severability of Provisions**. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

17.5 **Bank Product Providers**.

(a) U.S. Borrower and the Lender Group hereby acknowledge and agree that all Pre-Petition U.S. Bank Products and the related Bank Product Letter Agreements shall constitute U.S. Bank Products and Bank Product Letter Agreements, respectively, for purposes of this Agreement on and after the Closing Date with the same effect as if such Pre-Petition U.S. Bank Products and related Bank Product Letter Agreements were provided by a Bank Product Provider at the request of U.S. Borrower on the Closing Date. Canadian Borrower and the Lender Group hereby acknowledge and agree that all Pre-Petition Canadian Bank Products and the related Bank Product Letter Agreements shall constitute Canadian Bank Products and Bank Product Letter Agreements, respectively, for purposes of this Agreement on and after the Closing Date with the same effect as if such Pre-Petition Canadian Bank Products and Bank Product Letter Agreements were provided by a Bank Product Provider at the request of Canadian Borrower on the Closing Date.

(b) Each Bank Product Provider shall be deemed a third party beneficiary hereof and of the provisions of the other Loan Documents for purposes of any reference in a Loan Document to the parties for whom Agent is acting. Agent hereby agrees to act as agent for such Bank Product Providers and, by virtue of entering into a Bank Product Agreement, the applicable Bank Product Provider shall be automatically deemed to have appointed Agent as its agent and to have accepted the benefits of the Loan Documents; it being understood and agreed that the rights and benefits of each Bank Product Provider under the Loan Documents consist exclusively of such Bank Product Provider's being a beneficiary of the Liens and security interests (and, if applicable, guarantees) granted to Agent and the right to share in payments and collections out of the Collateral as more fully set forth herein. In addition, each Bank Product Provider, by virtue of entering into a Bank Product Agreement, shall be automatically deemed to have agreed that Agent shall have the right, but shall have no obligation, to establish, maintain, relax, or release reserves in respect of the Bank Product Obligations and that if reserves are established there is no

obligation on the part of Agent to determine or insure whether the amount of any such reserve is appropriate or not. In connection with any such distribution of payments or proceeds of Collateral, Agent shall be entitled to assume no amounts are due or owing to any Bank Product Provider unless such Bank Product Provider has provided a written certification (setting forth a reasonably detailed calculation) to Agent as to the amounts that are due and owing to it and such written certification is received by Agent a reasonable period of time prior to the making of such distribution. Agent shall have no obligation to calculate the amount due and payable with respect to any Bank Products, but may rely upon the written certification of the amount due and payable from the relevant Bank Product Provider. In the absence of an updated certification, Agent shall be entitled to assume that the amount due and payable to the relevant Bank Product Provider is the amount last certified to Agent by such Bank Product Provider as being due and payable (less any distributions made to such Bank Product Provider on account thereof). Any Borrower may obtain Bank Products from any Bank Product Provider, although no Borrower is required to do so. Borrower acknowledges and agrees that no Bank Product Provider has committed to provide any Bank Products and that the providing of Bank Products by any Bank Product Provider is in the sole and absolute discretion of such Bank Product Provider. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Bank Product shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or Guarantors.

17.6 **Debtor-Creditor Relationship.** The relationship between the Lenders and Agent, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor. No member of the Lender Group has (or shall be deemed to have) any fiduciary relationship or duty to any Loan Party arising out of or in connection with the Loan Documents or the transactions contemplated thereby, and there is no agency or joint venture relationship between the members of the Lender Group, on the one hand, and the Loan Parties, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

17.7 **Counterparts; Electronic Execution**. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

17.8 **Revival and Reinstatement of Obligations**. If the incurrence or payment of the Obligations by any Borrower or any Guarantor or the transfer to the Lender Group of any property should for any reason subsequently be asserted, or declared, to be void or voidable under applicable law relating to creditors' rights, including provisions of applicable law relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (each, a "Voidable Transfer"), and if the Lender Group is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that the Lender Group is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorney's fees of the Lender Group related thereto, the liability of such Borrower or such Guarantor automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

17.9 **Confidentiality**.

(a) Agent, Issuing Lenders and Lenders each individually (and not jointly or jointly and severally) agree that all non-public information regarding the Loan Parties and their respective Subsidiaries, their operations, assets, and existing and contemplated business plans ("Confidential Information") shall be treated by Agent, Issuing Lenders and the Lenders in a confidential manner, and shall not be disclosed by Agent, Issuing Lenders and the Lenders to Persons who are not parties to this Agreement, except: (i) on a confidential basis, to attorneys for and other advisors, accountants, auditors, and consultants to any member of the Lender Group and to employees, directors and officers of any member of the Lender Group (the Persons in this clause (i), "Lender Group Representatives") on a "need to know" basis in connection with this Agreement and the transactions contemplated hereby and who are informed of the confidential nature of such information and are or have been advised of their obligation to keep information of this type confidential, (ii) to Subsidiaries and Affiliates of any member of the Lender Group (including the Bank Product Providers) on a "need to know" basis in connection with this Agreement and the transactions contemplated hereby; provided that any such Subsidiary or Affiliate shall have agreed to receive such information hereunder subject to the terms of this Section 17.9 (it being acknowledged and agreed by the parties hereby that Borrowers shall be deemed to be third party beneficiaries of such agreements), (iii) upon the request or demand of any regulatory authority having jurisdiction over any member of the Lender Group or any of their respective Affiliates (in which case such member of the Lender Group agrees (except with respect to any audit or examination conducted by bank accountants or any governmental bank regulatory authority exercising examination or regulatory authority), to the extent practicable and not prohibited by applicable law, to inform Borrowers prior thereof prior to disclosure), (iv) as may be required by statute, decision, or judicial or administrative order, rule, or regulation; provided that (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide Borrowers with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to Borrowers pursuant to the terms of the applicable statute, decision, or judicial or administrative order, rule, or regulation and (y) any disclosure under this clause (iv) shall be limited to the portion of the Confidential Information as may be required by such statute, decision, or judicial or administrative order, rule, or regulation, (v) as may be agreed to in advance in writing by Borrowers, (vi) as requested or required by any Governmental Authority pursuant to any subpoena or other legal process, provided, that, (x) prior to any disclosure under this clause (vi) the disclosing party agrees to provide Borrowers with prior written notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior written notice to Borrowers pursuant to the terms of the subpoena or other legal process and (y) any disclosure under this clause (vi) shall be limited to the portion of the Confidential Information as may be required by such Governmental Authority pursuant to such subpoena or other legal process, (vii) as to any such information that is or becomes generally available to the public (other than as a result of prohibited disclosure by Agent, Issuing Lenders or the Lenders or the Lender Group Representatives), (viii) in connection with any assignment, participation or pledge (including any prospective assignment, participation or pledge) of any Lender's interest under this Agreement, provided that any such assignee, participant, or pledgee shall have agreed in writing to receive such Confidential Information hereunder subject to the terms of this Section and agrees only to use such information for evaluating its investment hereunder, and (ix) to the extent that Agent determines in good faith that it is necessary or advisable in connection with the exercise of any remedies hereunder or under any other Loan Document or the enforcement or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; provided, however, that in no event shall the provisions of this clause (ix) permit Agent or any Lender to divulge, reveal or otherwise disclose any Confidential Information that consists of proprietary technology, proprietary processes, proprietary Intellectual Property, or other related Confidential Information, including, any information relating to the technologies and processes of Borrowers and their Subsidiaries designed or intended to maximize yields in the canning, packing and cleaning process of Borrowers' and their Subsidiaries' business, in each case with respect to

the Loan Parties and their respective Subsidiaries and Affiliates; provided, further, that, prior to any disclosure to any Person (other than any Loan Party, Agent, any Lender, any of their respective Affiliates, or their respective counsel) under this clause (ix) with respect to litigation involving any Person (other than any Borrower, Agent, any Lender, any of their respective Affiliates, or their respective counsel), the disclosing party agrees to provide Borrowers with prior written notice thereof. Agent and each Lender agrees that, upon receipt of a request or identification of the requirement for disclosure pursuant to clause (iii) or clause (iv) hereof, it will make reasonable efforts to keep the Loan Parties informed of such request or identification; provided that each Loan Party acknowledges that Agent and each Lender may make disclosure as required or requested by any Governmental Authority or representative thereof and that Agent and each Lender may be subject to review by regulatory agencies and may be required to provide to, or otherwise make available for review by, the representatives of such parties or agencies any such non-public information.

(b) Anything in this Agreement to the contrary notwithstanding, any joint bookrunner may, in consultation with you, place customary advertisements in financial and other newspapers and periodicals or on a home page or similar place for dissemination of customary information on the Internet or worldwide web as it may choose, and circulate similar promotional materials, in each case, after the Closing Date, in the form of "tombstone" or otherwise describing the names of Borrowers and the amount, type and closing date of the Transactions, all at the expense of such joint bookrunner.

17.10 **Lender Group Expenses**. From and after the Closing Date, each Borrower agrees to pay any and all Lender Group Expenses no later than the 10th day after receipt of an invoice setting forth the amount and nature of the Lender Group Expenses for which reimbursement is demanded by Agent. Each Borrower agrees that its obligations contained in this Section 17.10 shall survive payment or satisfaction in full of all other Obligations; provided, however, that if an Event of Default has occurred and is continuing, the Lender Group Expenses shall be due and payable upon demand.

17.11 **USA PATRIOT Act**. Each Lender that is subject to the requirements of the Patriot Act hereby notifies Borrowers that pursuant to the requirements of the Patriot Act and certain Anti-Money Laundering Laws and Canadian Anti-Terrorism Laws, it is required to obtain, verify and record information that identifies Borrowers, which information includes the name and address of Borrowers and other information that will allow such Lender to identify Borrowers in accordance with the Patriot Act and certain Anti-Money Laundering Laws and Canadian Anti-Terrorism Laws. In addition, if Agent is required by law or regulation or internal policies to do so, it shall have the right to periodically conduct upon reasonable advance written notice, during normal business hours, (a) Patriot Act searches, OFAC searches, and customary individual background checks for the Loan Parties and (b) OFAC searches and customary individual background checks for the Loan Parties' senior management, key principals, directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Loan Parties, and Borrowers agree to cooperate in respect of the conduct of such searches and to promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or Agent or any prospective assign or participant of a Lender or Agent in order to comply with the Patriot Act, Anti-Money Laundering Laws or Canadian Anti-Terrorism Laws and further agrees that the reasonable costs and charges for such searches shall constitute Lender Group Expenses hereunder and be for the account of Borrowers.

17.12 **Applicable Currency**. Each payment in respect of any Obligation shall be made in Dollars with respect to such Obligation. The specification under this Agreement of Dollars is of the essence in each case. Each Loan Party's obligations hereunder and under the other Loan Documents to make payments in Dollars shall not be discharged or satisfied by any tender or recovery in any other currency (including any tender pursuant to any judgment expressed in or converted into any currency other than such applicable currency), except to the extent that such tender or recovery results in the effective receipt by the Agent and

Lenders of the full amount of Dollars expressed to be payable to the Agent and the Lenders under this Agreement or the other Loan Documents. If for any reason it is necessary to convert into or from any currency other than Dollars (such other currency being hereinafter referred to as the "Tendered Currency"), the rate of exchange used shall be the Exchange Rate on the Business Day preceding that on which such other currency is tendered to Agent. The obligation of each Loan Party in respect of any such sum due from it to Agent or any Lender hereunder shall, notwithstanding any tender or any judgment in such Tendered Currency, be discharged only to the extent that Agent, in accordance with its customary or other reasonable procedures, purchases Dollars with the Tendered Currency so received. If the amount of Dollars so purchased is less than the sum originally due to Agent or such Lender, as applicable, in Dollars, each Loan Party agrees, as a separate obligation and notwithstanding any judgment, to indemnify the Agent and the Lenders against such loss, and if the Dollars so purchased exceed the sum originally due to any Lender in Dollars, Agent or such Lender, as applicable, agrees to remit to such Loan Party such excess.

17.13 **Integration**. This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof. The foregoing to the contrary notwithstanding, all Bank Product Agreements, if any, are independent agreements governed by the written provisions of such Bank Product Agreements, which will remain in full force and effect, unaffected by any repayment, prepayments, acceleration, reduction, increase, or change in the terms of any credit extended hereunder, except as otherwise expressly provided in such Bank Product Agreement.

17.14 **[Intentionally Omitted]**

17.15 **Survival**. All representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Agent, the Issuing Lender, or any Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated.

17.16 **Release of Collateral and Guarantee Obligations**.

(a) The Lenders hereby irrevocably agree that the Liens granted to Agent by the Loan Parties on any Collateral shall be released (i) in full, as set forth in clause (b) below, (ii) upon the Disposition of such Collateral (including as part of or in connection with any other Disposition permitted hereunder) to any Person other than a Loan Party, to the extent such Disposition is made in compliance with the terms of this Agreement (and Agent may rely conclusively on a certificate to that effect provided to it by any Loan Party upon its reasonable request without further inquiry), (iii) to the extent such Collateral is comprised of property leased to a Loan Party, upon termination or expiration of such lease, (iv) if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders (or such other percentage of the Lenders whose consent may be required in accordance with Sections 14.1 and 15.11), (v) to the extent the property constituting such Collateral is owned by any Loan Party, upon the release of such Loan Party from its obligations hereunder and/or under the Guaranty (in accordance with the second succeeding sentence and Section 10 of the Guaranty), (vi) as required by Agent to effect any Disposition of Collateral in connection with any exercise of remedies pursuant to the Loan Documents, (vii) with respect to any Collateral that is Stock, upon the dissolution or liquidation of the issuer of such Stock that is not prohibited by the Loan Documents, and (viii) with respect to any Term Loan Priority

Collateral, upon release of any such Collateral from the DIP Term Loan Liens to the extent required by the provisions of the DIP Intercreditor Agreement. Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those being released) upon (or obligations (other than those being released) of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral except to the extent otherwise released in accordance with the provisions of the Loan Documents. The Lenders hereby authorize Agent, as applicable, to execute and deliver any instruments, documents, and agreements necessary or desirable to evidence and confirm the release of any Loan Party or Collateral pursuant to the foregoing provisions of this paragraph, all without the further consent or joinder of any Lender. Any representation, warranty or covenant contained in any Loan Document relating to any such Collateral or Loan Party shall no longer be deemed to be repeated.

(b) Notwithstanding anything to the contrary contained herein or any other Loan Document, when all Obligations have been paid in full and the Commitments have been terminated (such date, the "Payoff Date"), upon request of Borrowers, Agent shall (without notice to, or vote or consent of, any Secured Party) take such actions as shall be required to release its Liens in all Collateral, and to release all obligations under any Loan Document, whether or not on the date of such release there may be any (i) unasserted contingent indemnification Obligations, (ii) any Bank Product Obligations (other than Hedge Obligations) that by the terms of the applicable Bank Product Agreement are not required to be repaid or cash collateralized as a result of a repayment of other Obligations, and (iii) any Hedge Obligations that by the terms of the applicable Bank Product Agreement are not required to be repaid as a result of a repayment of other Obligations. Any such release of Obligations shall be deemed subject to the provision that such Obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon any Insolvency Proceeding of any Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, any Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

17.17 **Acknowledgement and Consent to Bail-In of EEA Financial Institutions**. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

17.18 **Acknowledgement Regarding Any Supported QFCs**. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States): In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

[Signature pages to follow.]

EXHIBIT A-1

FORM OF ASSIGNMENT AND ACCEPTANCE AGREEMENT

This **ASSIGNMENT AND ACCEPTANCE AGREEMENT** (this "Assignment Agreement") is entered into as _____ __, ____ between _____, a ____ _____ ("Assignor") and _____, a _____ _____ ("Assignee"). Reference is made to the credit agreement described in Annex I attached hereto (the "Credit Agreement"). All initially capitalized terms used herein (including the preamble hereof) without definition shall have the meanings ascribed thereto in the Credit Agreement (including Schedule 1.1 attached thereto).

1. In accordance with the terms and conditions of Section 13 of the Credit Agreement, Assignor hereby sells and assigns to Assignee, and Assignee hereby purchases and assumes from Assignor, that interest in and to Assignor's rights and obligations under the Loan Documents as of the date hereof with respect to the Obligations owing to Assignor, and Assignor's portion of the Commitments, all to the extent specified on Annex I.

2. Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim, and (ii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment Agreement and to consummate the transactions contemplated hereby; (b) makes no representation or warranty and assumes no responsibility with respect to (i) any statements, representations or warranties made in or in connection with the Loan Documents, or (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any other instrument or document furnished pursuant thereto; (c) makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Borrower or any Guarantor or the performance or observance by any Borrower or any Guarantor of any of their respective obligations under the Loan Documents or any other instrument or document furnished pursuant thereto; and (d) represents and warrants that the amount set forth as the Purchase Price on Annex I represents the amount owed by Borrowers to Assignor with respect to Assignor's share of the Advances assigned hereunder, as reflected on Assignor's books and records.

3. Assignee (a) confirms that it has received copies of the Credit Agreement and the other Loan Documents, together with copies of the financial statements referred to therein and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment Agreement; (b) agrees that it will, independently and without reliance upon Agent, Assignor, or any other Lender, based upon such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under the Loan Documents; (c) appoints and authorizes Agent to take such action as Agent on its behalf and to exercise such powers under the Loan Documents as are delegated to Agent by the terms thereof, together with such powers as are reasonably incidental thereto; [and] (d) agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender[; and (e) attaches the forms prescribed by the Internal Revenue Service of the United States certifying as to Assignee's status for purposes of determining exemption from United States withholding taxes with respect to all payments to be made to Assignee under the Credit Agreement or such other documents as are necessary to indicate that all such payments are subject to such rates at a rate reduced by an applicable tax treaty].

4. Following the execution of this Assignment Agreement by Assignor and Assignee, Assignor will deliver this Assignment Agreement to Agent for recording by the applicable

Agent. The effective date of this Assignment (the "Settlement Date") shall be the latest to occur of (a) the date of the execution and delivery hereof by Assignor and Assignee, (b) the receipt by the applicable Agent for its sole and separate account a processing fee in the amount of $3,500 (if required by the Credit Agreement), (c) the receipt of any required consent of Agent, the applicable Borrower, any Swing Lender, and any Issuing Bank, and (d) the date specified in Annex I.

5. As of the Settlement Date (a) Assignee shall be a party to the Credit Agreement and, to the extent of the interest assigned pursuant to this Assignment Agreement, have the rights and obligations of a Lender under the Credit Agreement and the other Loan Documents, and (b) Assignor shall, to the extent that rights and obligations under the Credit Agreement and under the other Loan Documents have been assigned by Assignor pursuant to this Assignment Agreement, relinquish its rights (except with respect to Section 10.3 of the Credit Agreement) and be released from any future obligations under the Credit Agreement and the other Loan Documents (and if Assignor is assigning all or the remaining portion of its rights and obligations under the Credit Agreement and the other Loan Documents, Assignor shall cease to be a party to the Credit Agreement and the other Loan Documents); provided, however, that nothing contained herein shall release Assignor from obligations that survive the termination of the Credit Agreement, including such assigning Lender's obligations under Section 15 and Section 17.9(a) of the Credit Agreement.

6. Upon the Settlement Date, Assignee shall pay to Assignor the Purchase Price (as set forth in Annex I). From and after the Settlement Date, Agent shall make all payments that are due and payable to the holder of the interest assigned hereunder (including payments of principal, interest, fees and other amounts) to Assignor for amounts which have accrued up to but excluding the Settlement Date and to Assignee for amounts which have accrued from and after the Settlement Date. On the Settlement Date, Assignor shall pay to Assignee an amount equal to the portion of any interest, fee, or any other charge that was paid to Assignor prior to the Settlement Date on account of the interest assigned hereunder and that are due and payable to Assignee with respect thereto, to the extent that such interest, fee or other charge relates to the period of time from and after the Settlement Date.

7. This Assignment Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same instrument. Delivery of an executed counterpart of this Assignment Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Assignment Agreement. Any party delivering an executed counterpart of this Assignment Agreement by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Assignment Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Assignment Agreement.

8. THE VALIDITY OF THIS ASSIGNMENT AGREEMENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, AND THE RIGHTS OF THE PARTIES HERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND THE BANKRUPTCY CODE, AS APPLICABLE.

9. THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS ASSIGNMENT AGREEMENT SHALL BE TRIED AND LITIGATED ONLY IN THE BANKRUPTCY COURT AND, TO THE EXTENT THE BANKRUPTCY COURT DECLINES OR IS OTHERWISE UNABLE TO EXERCISE JURISDICTION, IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE

COUNTY OF NEW YORK, STATE OF NEW YORK. EACH OF THE PARTIES HERETO WAIVES, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT SUCH PARTY MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 9. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO CONSTITUTE A LENDER'S CONSENT TO JURISDICTION OF THE BANKRUPTCY COURT FOR ANY PURPOSES OTHER THAN THE ENFORCEMENT OF THIS ASSIGNMENT AGREEMENT AND THE ORDERS. NOTHING CONTAINED HEREIN SHALL BE DEEMED CONSENT TO JURISDICTION BEFORE ANY BANKRUPTCY COURT IN THE CASES.

10. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS ASSIGNMENT AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH OF THE PARTIES HERETO REPRESENTS THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS ASSIGNMENT AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

11. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK AND THE STATE OF NEW YORK, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS ASSIGNMENT AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

12. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CLAIM BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, AND THE WAIVER SET FORTH IN CLAUSE (c) ABOVE IS NOT ENFORCEABLE IN SUCH PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBCLAUSE (ii) BELOW, ANY CLAIM SHALL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE. VENUE FOR THE REFERENCE PROCEEDING SHALL BE IN THE COUNTY OF LOS ANGELES, CALIFORNIA.

(ii) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (A) NON-JUDICIAL FORECLOSURE OR ENFORCEMENT OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (B) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF OR RECOUPMENT), (C) APPOINTMENT OF A RECEIVER, INTERIM RECEIVER OR SIMILAR OFFICIAL, AND (D) TEMPORARY, PROVISIONAL, OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS, OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) - (D) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO PARTICIPATE IN A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT WITH RESPECT TO ANY OTHER MATTER.

(iii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN 10 DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY SHALL HAVE THE RIGHT TO REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). THE REFEREE SHALL BE APPOINTED TO SIT WITH ALL OF THE POWERS PROVIDED BY LAW. PENDING APPOINTMENT OF THE REFEREE, THE COURT SHALL HAVE THE POWER TO ISSUE TEMPORARY OR PROVISIONAL REMEDIES.

(iv) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE REFEREE SHALL DETERMINE THE MANNER IN WHICH THE REFERENCE PROCEEDING IS CONDUCTED INCLUDING THE TIME AND PLACE OF HEARINGS, THE ORDER OF PRESENTATION OF EVIDENCE, AND ALL OTHER QUESTIONS THAT ARISE WITH RESPECT TO THE COURSE OF THE REFERENCE PROCEEDING. ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS A COURT REPORTER AND A TRANSCRIPT IS ORDERED, A COURT REPORTER SHALL BE USED AND THE REFEREE SHALL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY THE COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE

BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(v) THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND SHALL ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA.

(vi) THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH CALIFORNIA SUBSTANTIVE AND PROCEDURAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS OR HER DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE REFEREE SHALL ISSUE A DECISION AND PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE, SECTION 644, THE REFEREE'S DECISION SHALL BE ENTERED BY THE COURT AS A JUDGMENT IN THE SAME MANNER AS IF THE ACTION HAD BEEN TRIED BY THE COURT. THE FINAL JUDGMENT OR ORDER FROM ANY APPEALABLE DECISION OR ORDER ENTERED BY THE REFEREE SHALL BE FULLY APPEALABLE AS IF IT HAS BEEN ENTERED BY THE COURT.

THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR OWN CHOICE, EACH PARTY HERETO KNOWINGLY AND VOLUNTARILY AND FOR THEIR MUTUAL BENEFIT AGREES THAT THIS SECTION 12(e) SHALL APPLY TO ANY DISPUTE BETWEEN THEM THAT ARISES OUT OF OR IS RELATED TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.

[signature pages follow]

ANNEX FOR ASSIGNMENT AND ACCEPTANCE AGREEMENT

ANNEX I

1. Borrowers: **CONNORS BROS. CLOVER LEAF SEAFOODS COMPANY**, a Nova Scotia unlimited liability company, and

BUMBLE BEE FOODS, LLC, a Delaware limited liability company

2. Name and Date of Credit Agreement:

Senior Secured Super-Priority Debtor-in-Possession Credit Agreement, dated as of November 26, 2019, by and among, **BUMBLE BEE FOODS S.À R.L.**, a *Luxembourg société à responsabilité limitée*, incorporated and existing under the laws of the Grand-Duchy of Luxembourg, having its registered office at 8, rue Lou Hemmer, L-1748 Luxembourg Findel, registered with the Luxembourg Trade and Companies' Register (*Registre de Commerce et des Sociétés*) under number B 140.339 ("Holdings"), the Borrowers, the banks, financial institutions and other investors from time to time a party thereto (collectively, the "Lenders"), **WELLS FARGO CAPITAL FINANCE, LLC**, a Delaware limited liability company ("WFCF"), as administrative agent for the Lenders (in such capacity, together with its successors in such capacity, "Agent"), and as joint lead arranger and bookrunner, **BANK OF AMERICA, N.A.** ("BOA"), as joint lead arranger and bookrunner, and **MUFG UNION BANK, N.A.** ("MUFG"), as syndication agent.

3. Date of Assignment Agreement: _____ __, 2___

4. Assigned Amounts:

   a. Assigned Amount of U.S. Revolver Commitment $_____

   b. Assigned Amount of U.S. Advances $_____

   c. Assigned Amount of Canadian Revolver Commitment $_____

   d. Assigned Amount of Canadian Advances $_____

5. Settlement Date: _____ __, 2___

6. Purchase Price $_____

7. Notice and Payment Instructions, etc.

Assignee:	Assignor:
_____	_____
_____	_____
_____	_____

* * * * *

EXHIBIT L-1

FORM OF LIBOR NOTICE

Wells Fargo Capital Finance, LLC, as Agent
under the below referenced Credit Agreement
2450 Colorado Avenue
Suite 3000 West
Santa Monica, California 90404
Attention: Business Finance Manager

Ladies and Gentlemen:

Reference hereby is made to that certain Senior Secured Super-Priority Debtor-in-Possession Credit Agreement, dated as of November 26, 2019 (the "Credit Agreement"), by and among the banks, financial institutions and other investors from time to time party thereto (such banks, financial institutions and other investors, each individually as a "Lender" and collectively as the "Lenders"), **WELLS FARGO CAPITAL FINANCE, LLC**, a Delaware limited liability company ("WFCF"), as administrative agent for the Lenders (in such capacity, together with its successors in such capacity, "Agent"), and as joint lead arranger and bookrunner, **BANK OF AMERICA, N.A.** ("BOA"), as joint lead arranger and bookrunner, **MUFG UNION BANK, N.A.** ("MUFG"), as syndication agent, **BUMBLE BEE FOODS S.À R.L.**, a Luxembourg *société à responsabilité limitée*, incorporated and existing under the laws of the Grand-Duchy of Luxembourg, having its registered office at 8, rue Lou Hemmer, L-1748 Luxembourg Findel, registered with the Luxembourg Trade and Companies' Register (*Registre de Commerce et des Sociétés*) under number B 140.339 ("Holdings"), **CONNORS BROS. CLOVER LEAF SEAFOODS COMPANY**, a Nova Scotia unlimited liability company ("Canadian Borrower"), and **BUMBLE BEE FOODS, LLC**, a Delaware limited liability company ("U.S. Borrower"; together with Canadian Borrower, each, individually, a "Borrower", and, collectively, jointly and severally, as "Borrowers"). All initially capitalized terms used herein without definition shall have the meanings ascribed thereto in the Credit Agreement (including Schedule 1.1 attached thereto).

This LIBOR Notice represents [U.S.][Canadian] Borrower's request to elect the LIBOR Option with respect to outstanding [U.S.][Canadian] Advances in the amount of $_____ (the "LIBOR Rate Advance")[, and is a written confirmation of the telephonic notice of such election given to Agent].

The LIBOR Rate Advance will have an Interest Period of one month commencing on _____ __, 20___.

This LIBOR Notice further confirms [U.S.][Canadian] Borrower's acceptance, for purposes of determining the rate of interest based on the LIBOR Rate under the Credit Agreement, of the LIBOR Rate as determined pursuant to the Credit Agreement.

Schedule 1.1

Definitions

As used in the Agreement, the following terms shall have the following definitions:

"363 Sale" means the sale of substantially all of the assets of the Loan Parties to the Stalking Horse Bidder, or such other purchase as the Bankruptcy Court or the CCAA Court may approve pursuant to the Bidding Procedures Motion, pursuant to Section 363 of the Bankruptcy Code or section 36 of the CCAA.

"ABL Priority Collateral" has the meaning specified therefor in the DIP Intercreditor Agreement.

"Account" means an account (as that term is defined in the Code).

"Account Debtor" means any Person who is obligated on an Account, chattel paper, or a general intangible.

"Account Party" has the meaning specified therefor in Section 2.11 of this Agreement.

"Accounting Changes" means changes in accounting principles or in the application thereof required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (or successor thereto or any agency with similar functions) or, if applicable, the SEC.

"ACH Transactions" means any cash management or related services (including the Automated Clearing House processing of electronic fund transfers through the direct Federal Reserve Fedline system) provided by a Bank Product Provider for the account of Holdings or any of its Subsidiaries.

"Acquired Entity or Business" means any Person, property, business or asset acquired, including pursuant to the Transactions or pursuant to a transaction consummated prior to the Closing Date, and not subsequently so disposed.

"Actual Cash Receipts" means the sum of all cash collections received by the Loan Parties from operations (excluding any borrowings or other cash receipts not constituting trade receipts) during the relevant period of determination, as determined in a manner consistent with the Budget.

"Actual Disbursements" means the sum of all operating disbursements, expenses, and payments made by the Loan Parties (other than transaction-related payments of Lender Group Expenses) during the relevant period of determination, as determined in a manner consistent with the Budget.

"Additional Documents" has the meaning specified therefor in Section 5.12 of the Agreement.

"Adequate Protection Liens" means the "ABL Adequate Protection Liens" as defined in the Orders, as applicable.

"Adjusted Excess Availability" means, as of any date of determination, the result of (a) Borrowers' Excess Availability as of such date minus (b) (i) prior to payment in full of the maximum amount of the fines or other amounts required to be paid at any time (whether or not then due and payable)

under the terms of the DOJ Settlement, an amount equal to the result of (y) the maximum amount of the fines or other amounts required to be paid at any time (whether or not then due and payable) under the terms of the DOJ Settlement which remains unpaid at such time (excluding the $81,500,000 fine payable solely by Big Catch Cayman L.P. under the terms of the DOJ Settlement if certain conditions are met), minus (z) the amount of any DOJ Reserve then in effect, and (ii) at all times from and after the payment in full of the maximum amount of the fines or other amounts required to be paid at any time (whether or not then due and payable) under the terms of the DOJ Settlement from and after the date of entry of the DOJ Settlement, zero.

"Adjusted Total Revolver Commitment" means, at any time, the Total Revolver Commitment less the aggregate Revolver Commitments of all Defaulting Lenders.

"Advances" means U.S. Advances or Canadian Advances, as applicable.

"Affected Lender" has the meaning specified therefor in Section 2.13(b) of the Agreement.

"Affiliate" means, as applied to any Person, any other Person who controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and policies of a Person, whether through the ownership of Stock, by contract, or otherwise; provided, however, that, for purposes of the definition of Eligible Accounts and Section 6.12 of the Agreement: (a) any Person which owns directly or indirectly 25% or more of the total voting power of the Voting Stock of such other Person shall be deemed an Affiliate of such Person, (b) each director (or comparable manager) of a Person shall be deemed to be an Affiliate of such Person, and (c) each partnership or joint venture in which a Person is a general partner or joint venturer shall be deemed an Affiliate of such Person.

"Agent" has the meaning specified therefor in the preamble to the Agreement.

"Agent's Account" means the Deposit Account of Agent identified on Schedule U-1 to the Agreement.

"Agent's Liens" means the Liens granted by the Loan Parties to Agent under the Loan Documents.

"Agent-Related Persons" means Agent, together with its Affiliates, officers, directors, employees, attorneys, advisors, agents, controlling persons and other representatives and their respective successors.

"Aggregate Availability" means, at any time, an amount equal to the sum of (a) the lesser of (i) the U.S. Total Revolver Commitment in effect at such time and (ii) the U.S. Borrowing Base at such time, and (b) the lesser of (i) the Canadian Total Revolver Commitment in effect at such time and (ii) the U.S. Dollar Equivalent of the Canadian Borrowing Base at such time.

"Agreement" means the Credit Agreement to which this Schedule 1.1 is attached.

"Allowed Professional Fees" means all fees and expenses, to the extent allowed at any time, whether by interim order, procedural order or otherwise, incurred by the Debtor Professionals and the Committee Professionals.

"Anti-Corruption Laws" means the FCPA, the U.K. Bribery Act of 2010, the Corruption of Foreign Public Officials Act (Canada), as amended, and all other applicable laws and regulations or

ordinances concerning or relating to bribery, money laundering or corruption in any jurisdiction in which any Loan Party or any of its Subsidiaries or Controlled Affiliates is located or is doing business.

"Anti-Money Laundering Laws" means the applicable laws or regulations in any jurisdiction in which any Loan Party or any of its Subsidiaries or Controlled Affiliates is located or is doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

"Applicable Laws" means, as to any Person, any law (including common law), statute, regulation, ordinance, rule, guideline, order, decree, judgment, consent decree, writ, injunction, settlement agreement or governmental requirement enacted, promulgated or imposed or entered into or agreed by any Governmental Authority, in each case applicable to or binding on such Person or any of its property or assets or to which such Person or any of its property or assets is subject.

"Applicable Unused Line Fee Rate" means 0.25%.

"Application Event" means (a) the occurrence of a failure by Borrowers to repay the applicable Obligations on the Maturity Date, or (b) the occurrence and continuation of an Event of Default and, subject to the Orders, the election by Agent or the Required Lenders to require that payments and proceeds of Collateral be applied pursuant to Section 2.4(b)(ii) of the Agreement.

"Approved Jurisdiction" shall mean each of the United States (and any state thereof), Canada (and any province thereof) or Luxembourg.

"Asset Disposition Event" means any time when (a) an Event of Default has occurred and is continuing, or (b) Adjusted Excess Availability is less than 25% of the Aggregate Availability.

"Assignee" has the meaning specified therefor in Section 13.1(a) of the Agreement.

"Assignment and Acceptance" means an Assignment and Acceptance Agreement substantially in the form of Exhibit A-1.

"Auction" shall mean the auction to be held pursuant to the Bidding Procedures Order.

"Authorized Person" means (a) in the case of Canadian Borrower and each Canadian Subsidiary Guarantor, any one of the individuals identified on Schedule A-1 and such other officers of Canadian Borrower and each Canadian Subsidiary Guarantor designated from time to time upon advance written notice to the Agent, from and after the date that Agent has completed OFAC searches, and individual background checks for such other officers, the results of which shall be reasonably satisfactory to Agent, and (b) in the case of Holdings, the U.S. Borrower, and each other Guarantor (other than the Canadian Subsidiary Guarantors), any one of the individuals identified on Schedule A-2 and such other officers or authorized signatory of Holdings, the U.S. Borrower, and each other Guarantor (other than the Canadian Subsidiary Guarantors) designated from time to time upon advance written notice to Agent, from and after the date that Agent has completed OFAC searches, and individual background checks for such other officers, the results of which shall be reasonably satisfactory to Agent. Any document delivered hereunder that is signed by an Authorized Person shall be conclusively presumed to have been authorized by all necessary corporate, limited liability company, partnership or other action on the part of Holdings, the Borrowers or any other Loan Party and such Authorized Person shall be conclusively presumed to have acted on behalf of such Person.

"Availability" means the sum of Canadian Availability and U.S. Availability.

"Avoidance Action" means any cause of action under chapter 5 of the Bankruptcy Code.

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

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

"Bank Product" means any one or more of the following financial products or accommodations extended to any Loan Party or its Subsidiaries by a Bank Product Provider (other than pursuant to the Agreement) including: (a) credit cards, (b) credit card processing services, (c) debit cards, (d) stored value cards, (e) purchase cards (including so-called "procurement cards" or "P-cards"), (f) Cash Management Services, or (g) transactions under Hedge Agreements.

"Bank Product Agreements" means those agreements entered into from time to time by any Loan Party or its Subsidiaries with a Bank Product Provider in connection with the obtaining of any of the Bank Products.

"Bank Product Collateralization" means providing cash collateral (pursuant to documentation reasonably satisfactory to Agent) to be held by Agent for the benefit of the Bank Product Providers (other than the Hedge Providers) in an amount reasonably determined by Agent as sufficient to satisfy the reasonably estimated credit exposure with respect to the then existing Bank Products (other than Hedge Obligations).

"Bank Product Obligations" means U.S. Bank Product Obligations or Canadian Bank Product Obligations, as the context requires; provided that, for the avoidance of doubt, in no instance will "Bank Product Obligations" include any Indebtedness or other obligations owing in connection with any Bank Product Agreement (as such term is defined in the Term Loan Credit Agreement).

"Bank Product Provider" means Wells Fargo, Agent, any Lender, or any of their respective Affiliates; provided, however, that no such Person (other than Wells Fargo or its Affiliates) shall constitute a Bank Product Provider with respect to a Bank Product unless and until Agent shall have received a Bank Product Provider Letter Agreement from such Person and with respect to the applicable Bank Product.

"Bank Product Provider Letter Agreement" means a letter agreement in substantially the form attached to the Agreement as Exhibit B-1, in form and substance reasonably satisfactory to Agent, as applicable, duly executed by the applicable Bank Product Provider, the applicable Borrower, and Agent.

"Bank Product Reserve Amount" means the U.S. Bank Product Reserve Amount or the Canadian Bank Product Reserve Amount, as the context requires.

"Bankruptcy Code" means title 11 of the United States Code, as in effect from time to time.

"Bankruptcy Court" has the meaning specified in the recitals to the Agreement.

"Base LIBOR Rate" means, for any day, the rate per annum as published by ICE Benchmark Administration Limited (or any other commercially available source as the Agent may designate from time to time) as the LIBOR Rate as of 11:00 a.m., London time as the LIBOR Rate, two Business Days prior to the commencement of the requested Interest Period, for a term, and in an amount,

comparable to the Interest Period and the amount of the LIBOR Rate Loan requested (whether as an initial LIBOR Rate Loan or as a continuation of a LIBOR Rate Loan or as a conversion of a Base Rate Loan to a LIBOR Rate Loan) by any Borrower in accordance with this Agreement (and, if any such published rate is below zero, then the rate determined pursuant to this clause (b) shall be deemed to be zero). Each determination of the Base LIBOR Rate shall be made by Agent and shall be conclusive in the absence of manifest error.

"Base Rate" means for any day, the rate per annum equal to the greatest of (a) the Federal Funds Rate plus ½%, (b) the Base LIBOR Rate, plus 1.00 percentage point, and (c) the rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its "prime rate" for commercial loans, with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate and, if any such announced rate is below zero, then the rate determined pursuant to this clause (c) shall be deemed to be zero; provided that, for the avoidance of doubt, for purposes of calculating the Base LIBOR Rate pursuant to clause (b) above, the Base LIBOR Rate for any day shall be based on the rate per annum appearing as of 11:00 a.m. (London time) on such day as published by ICE Benchmark Administration Limited (or any other commercially available source as the Agent may designated from time to time), for a period equal to one-month. If Agent is unable to ascertain the Federal Funds Rate due to its inability to obtain sufficient quotations in accordance with the definition thereof, after notice is provided to the Borrowers, the Base Rate shall be determined without regard to clause (a) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Base Rate due to a change in the "prime rate", the Federal Funds Rate or the Base LIBOR Rate for an Interest Period of one month shall be effective as of the opening of business on the effective day of such change in the "prime rate", the Federal Funds Rate or such Base LIBOR Rate, respectively.

"Base Rate Loan" means the portion of the Advances that bears interest at a rate determined by reference to the Base Rate.

"Base Rate Margin" means 3.50%.

"Basel III" means, collectively, those certain agreements on capital requirements, leverage ratios and liquidity standards contained in "Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems," "Basel III: International Framework for Liquidity Risk Measurement, Standards and Monitoring," and "Guidance for National Authorities Operating the Countercyclical Capital Buffer," each as published by the Basel Committee on Banking Supervision in December 2010 (as revised from time to time), and as implemented by a Lender's primary U.S. federal banking regulatory authority or primary non-U.S. financial regulatory authority, as applicable.

"BB Holdings" means Bumble Bee Holdings, Inc., a Georgia corporation and direct parent of the U.S. Borrower.

"BB Parent" means Bumble Bee Parent, Inc., a Delaware corporation, and the direct parent of BB Holdings.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"BHC Act Affiliate" of a Person means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such Person.

"BIA" mean the *Bankruptcy and Insolvency Act* (Canada) in effect from time to time.

"Bidding Procedures" means the bidding procedures in substantially the form attached as Exhibits A-1 and A-2 to the Stalking Horse APA, as applicable, or otherwise in form and substance satisfactory to each of the Agent and the DIP Term Loan Agent.

"Bidding Procedures Motion" means the motions filed with the Bankruptcy Court and the CCAA Court seeking approval of the Bidding Procedures, which motions shall be in form and substance satisfactory to the Agent and the DIP Term Loan Agent (together with all exhibits thereto), (i) seeking approval of (A) the Stalking Horse Transaction and the Stalking Horse APA and (B) the Bidding Procedures and the scheduling of certain dates, deadlines and forms of notice in connection therewith, and (ii) granting other related relief.

"Bidding Procedures Order" means the orders of the Bankruptcy Court and the CCAA Court approving the Bidding Procedures and the Bidding Procedures Motion, in substantially the form attached as Exhibits A-1 and A-2 to the Stalking Horse APA, as applicable, or otherwise, which orders shall be in form and substance satisfactory to each of the Agent and the DIP Term Loan Agent.

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

"Board of Directors" means (a) in the case of a Person that is a limited partnership, the board of directors (or comparable managers) of the general partner of such Person, or (b) otherwise, the board of directors (or comparable managers) of a Person or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers).

"Borrower" or "Borrowers" means the Canadian Borrower or the U.S. Borrower, as the context requires.

"Borrowing" means a borrowing under the Agreement consisting of (a) one type of Advances on a given date by the applicable Lenders (or the Agent on behalf thereof) (or resulting from conversions of Advances on a given date) having, in the case of LIBOR Rate Loans, the same Interest Period (provided that Base Rate Loans incurred pursuant to Section 2.12(d)(ii) shall be considered part of any related Borrowing of LIBOR Rate Loans), (b) Swing Loans from the Swing Lender on a given date and (c) any Protective Advances from Agent on a given date.

"Borrowing Base Certificate" means a Canadian Borrowing Base Certificate or a U.S. Borrowing Base Certificate, as the context requires.

"Borrowing Base Participant" has the meaning set forth in Schedule 5.2.

"Budget" means the financial projections for the Loan Parties setting forth on a weekly basis for (a) the applicable 13 week period or (b) the period until the projected closing of the 363 Sale, whichever is shorter (but with the first period therein commencing on the Petition Date through November 30, 2019 and weekly thereafter), including among other things, the projected total operating receipts and total operating expenses of, and the projected professional fees to be paid by, the Loan Parties and their respective Subsidiaries during such period, substantially in the form of the initial Budget annexed to the Agreement as Schedule 4.6. Such Budget may be amended, modified or otherwise updated from time to

time by the Borrower, including pursuant to the requirements of Section 5.1, as approved by the Agent (with the consent of the Required Lenders) and DIP Term Loan Agent in their sole and absolute discretion. For the avoidance of doubt, no Budget shall be deemed effective until each of the Agent (with the consent of the Required Lenders) and the DIP Term Loan Agent have approved such Budget (which approval may be by e-mail).

"Budget Delivery Date" has the meaning specified therefor in Schedule 5.1 of the Agreement.

"Budget Variance Report" shall mean a variance report in form satisfactory to the Agent setting forth in each case for the Testing Period most recently ended prior to the delivery thereof (i) any variances (whether positive or negative) of actual total operating receipts or total operating expenses of the Loan Parties and their Subsidiaries from the Budget for such Testing Period and (ii) an explanation, in reasonable detail, for any variances (other than Permitted Variances) certified by an Authorized Person of Holdings.

"Budgeted Cash Receipts" means, for any period, the amount of cash collections projected in the Budget to be received by the Loan Parties from operations (excluding any borrowings or other cash receipts not constituting trade receipts) during such period.

"Budgeted Disbursements" means, for any period, the amount of operating disbursements, expenses, and payments (other than transaction-related payments of Lender Group Expenses and Allowed Professional Fees) projected in the Budget to be made by the Loan Parties during such period.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required by Applicable Law or other governmental actions to close (x) in the case of Canadian Advances, in Toronto, or (y) otherwise, in the state of New York, except that, if a determination of a Business Day shall relate to a LIBOR Rate Loan, the term "Business Day" also shall exclude any day on which banks are closed for dealings in Dollar deposits in the London interbank market.

"Canadian Advances" has the meaning specified therefor in Section 2.2(a) of the Agreement.

"Canadian Anti-Terrorism Laws" means the *Criminal Code* (Canada), the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), the *United Nations Suppression of Terrorism Regulations and the Anti-terrorism Act* (Canada) and all regulations and orders made thereunder.

"Canadian Availability" means, as of any date of determination, the amount that Canadian Borrower is entitled to borrow as Canadian Advances under Section 2.1 of the Agreement (after giving effect to all then outstanding Canadian Advances and the U.S. Dollar Equivalent of Canadian Letters of Credit Outstanding).

"Canadian Bank Product Obligations" means (a) all obligations, liabilities, reimbursement obligations, fees, or expenses owing by Canadian Borrower's or its Subsidiaries to any Bank Product Provider pursuant to or evidenced by a Bank Product Agreement and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and (b) all Canadian Hedge Obligations; provided that, for the avoidance of doubt, in no instance will "Canadian Bank Product Obligations" include any Indebtedness or other obligations owing in connection with any Bank Product Agreement (as such term is defined in the Term Loan Credit Agreement).

"Canadian Bank Product Reserve Amount" means, as of any date of determination, the Dollar amount of the reserves established by Agent in respect of Canadian Bank Products Obligations, which Dollar amount may be determined by Agent in its Permitted Discretion (but in no event shall any Canadian Bank Product Reserve Amount with respect to any Canadian Hedge Obligations exceed the mark-to-market value, to the extent applicable, of such Canadian Hedge Obligations).

"Canadian Bankruptcy and Insolvency Law" shall mean any federal or provincial Canadian law from time to time in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors, including the BIA, the CCAA, the *Winding up and Restructuring Act* (Canada), the *Canada Business Corporations Act*, the *Companies Act* (Nova Scotia), the *Business Corporations Act* (New Brunswick) and any other applicable corporations legislation.

"Canadian Borrower" has the meaning specified therefor in the preamble to the Agreement.

"Canadian Borrowing Base" means, as of any date of determination, an amount equal to the result of (without duplication):

(a) 85% of the book value of the Canadian Borrowing Base Participants' Eligible Accounts at such date, *less* the amount, if any, of the Canadian Dilution Reserve at such date established by Agent as calculated by Agent in its Permitted Discretion, *plus*

(b) the lower of

(i) the sum of (A) 75% of the value (calculated at the lower of cost and market value on a basis consistent with Canadian Borrower's historical accounting practices) of the Canadian Borrowing Base Participants' Eligible Landed Inventory at such date, *plus* (B) the lesser of (1) $2,500,000 minus the amount of the U.S. Revolver Usage that is based on U.S. Availability generated under clause (b)(i)(B) of the U.S. Borrowing Base, and (2) 50% of the value (calculated at the lower of cost and market value on a basis consistent with Canadian Borrower's historical accounting practices) of the Canadian Borrowing Base Participants' Eligible Blocked Landed Inventory at such date, *plus* (C) the lesser of (1) $30,000,000 *minus* the amount of the U.S. Revolver Usage that is based upon U.S. Availability generated under clause (b)(i)(C) of the U.S. Borrowing Base, and (2) 65% of the value (calculated at the lower of cost and market value on a basis consistent with Canadian Borrower's historical accounting practices) of the Canadian Borrowing Base Participants' Eligible In-Transit Inventory, and

(ii) 85% *times* the most recently determined Net Liquidation Percentage *times* the book value of the Canadian Borrowing Base Participants' Eligible Landed Inventory and Eligible In-Transit Inventory at such date, *minus*

(c) the sum at such date, without duplication, of (i) the Canadian Priority Payables Reserves established by Agent in its Permitted Discretion *plus* (ii) the aggregate amount of all Canadian Rent Reserves established by Agent in its Permitted Discretion, *plus* (iii) the Canadian Bank Product Reserve Amount, if any, established in connection with Canadian Bank Product Obligations, *plus* (iv) the aggregate amount of other reserves, if any, established by Agent under Section 2.2(c) of the Agreement in its Permitted Discretion, *plus* (v) the amount at such time that is included in the U.S. Borrowing Base pursuant to clause (c) of the definition thereof.

The Canadian Borrowing Base at any time shall be determined by reference to the most recent Canadian Borrowing Base Certificate theretofore delivered to Agent with such adjustments as Agent deems appropriate in its Permitted Discretion to assure that the Canadian Borrowing Base is calculated in accordance with the terms of the Agreement.

Any provision of this definition or any other provision of the Agreement (including this Schedule 1.1) to the contrary notwithstanding, in the event that any Canadian Subsidiary Guarantor is (or its assets are) acquired by a Loan Party after the Closing Date (a "Canadian Borrowing Base Event"), in no event shall any Accounts or Inventory of such Person or entity be included in the Canadian Borrowing Base prior to the time, after the occurrence of such Canadian Borrowing Base Event, when Agent has completed its field audits and appraisals with respect to such Canadian Subsidiary Guarantor.

"Canadian Borrowing Base Certificate" means a certificate, executed by an Authorized Person of Canadian Borrower, substantially in the form of (or in such other form as may be mutually agreed upon by Canadian Borrower and Agent), and containing the information prescribed by, Exhibit C-1, delivered to Agent and setting forth the calculation of the Canadian Borrowing Base in accordance with Section 5.2 of the Agreement.

"Canadian Borrowing Base Participants" has the meaning set forth in Schedule 5.2.

"Canadian Collections" means any Collections of any Canadian Loan Party.

"Canadian Defined Benefit Plan" means any Canadian Pension Plan which contains a "defined benefit provision", as defined in Section 147.1(1) of the Income Tax Act (Canada).

"Canadian Dilution" means, as of any date of determination, without duplication for any amounts deducted or not included in determining Eligible Accounts of the Canadian Loan Parties, a percentage, based upon the actual results of the immediately prior 360 consecutive days, that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to Canadian Borrower's and Canadian Subsidiary Guarantor's Accounts during such period, by (b) Canadian Borrower's and Canadian Subsidiary Guarantor's billings with respect to Accounts during such period.

"Canadian Dilution Reserve" means, as of any date of determination, an amount sufficient to reduce the advance rate against Canadian Borrower's and Canadian Subsidiary Guarantor's Eligible Accounts by 1 percentage point for each percentage point by which Canadian Dilution is in excess of 5%.

"Canadian Dollars" or "C$" means Canadian dollars.

"Canadian Employee" means any employee or former employee of a Canadian Loan Party.

"Canadian Employee Plan" means any employee benefit, health, welfare, supplemental unemployment benefit, bonus, pension, supplemental pension, profit sharing, retiring allowance, severance, deferred compensation, stock compensation, stock purchase, unit purchase, retirement, life, hospitalization insurance, medical, dental, disability or other employee group or similar benefit or employment plans or supplemental arrangements applicable to the Canadian Employees, but excluding any Canadian Pension Plan and any statutory benefit plans in which a Canadian Loan Party is required to participate or with which a Canadian Loan Party is required to comply.

"Canadian Guarantors" means any Guarantor that is organized under the laws of Canada or a province of Canada.

"Canadian Hedge Obligations" means any and all obligations or liabilities, whether absolute or contingent, due or to become due, now existing or hereafter arising, of Canadian Borrower's or its Subsidiaries arising under, owing pursuant to, or existing in respect of Hedge Agreements entered into with one or more of the Bank Product Providers.

"Canadian Holdco" means either (i) Clover Leaf Holdings Company, a Nova Scotia unlimited company and the direct parent company of Canadian Borrower or (ii) any other Holding Company that may be the direct parent company of Canadian Borrower from time to time.

"Canadian Issuing Lender" means The Toronto Dominion Bank or any other Lender that, at the request of Canadian Borrower and with the consent of Agent, agrees, in such Lender's sole discretion, to become a Canadian Issuing Lender in accordance with Section 2.11 of the Agreement for the purpose of issuing Canadian Letters of Credit or Canadian Reimbursement Undertakings pursuant to Section 2.11 of the Agreement. In the event that there is more than one Canadian Issuing Lender at any time, references in the Agreement and in the other Loan Documents to the Canadian Issuing Lender shall be deemed to refer to the Issuing Lender in respect of the applicable Canadian Letter of Credit or to all Canadian Issuing Lenders, as the context requires.

"Canadian L/C Sublimit" means $5,000,000.

"Canadian Lender" means a Lender with a Canadian Revolver Commitment or holding at such a time a Canadian Advance (or Canadian Letter of Credit Exposure) made to Canadian Borrower; sometimes being referred to collectively as "Canadian Lenders".

"Canadian Letter of Credit" means a letter of credit issued by a Canadian Issuing Lender or a letter of credit issued by a Canadian Underlying Issuer, as the context requires.

"Canadian Letter of Credit Exposure" means, with respect to any Canadian Lender, at any time, the sum of (without duplication) (a) such Canadian Lender's Pro Rata Share of the Canadian Letter of Credit Usage at such time plus (b) such Canadian Lender's Pro Rata Share of any Canadian Unpaid Drawings at such time.

"Canadian Letter of Credit Usage" means, as of any date of determination, the sum of (a) the aggregate undrawn amount of all outstanding Canadian Letters of Credit, plus (b) the aggregate amount of outstanding reimbursement obligations with respect to Canadian Letters of Credit which remain unreimbursed or which have not been paid through a Canadian Advance.

"Canadian Letters of Credit Outstanding" mean, at any time, the sum of, without duplication, (a) the aggregate undrawn amount of all outstanding Canadian Letters of Credit at such time and (b) the aggregate amount of all Canadian Unpaid Drawings in respect of all Canadian Letters of Credit at such time.

"Canadian Loan Account" has the meaning specified therefor in Section 2.9(a) of the Agreement.

"Canadian Loan Parties" include Canadian Borrower and each Canadian Guarantor; each sometimes being referred to individually as a "Canadian Loan Party".

"Canadian Overadvance Amount" has the meaning specified therefor in Section 2.4(e)(ii) of the Agreement.

"Canadian Participant Register" has the meaning specified therefor in Section 13.1(k) of the Agreement.

"Canadian Pension Event" shall mean any event which would entitle a Person (with or without the consent of the applicable Canadian Loan Party or any of its Subsidiaries) to trigger or order a

wind-up or termination, in full or in part, of such a Canadian Pension Plan, or the institution of any procedure or other steps by any Person to trigger the termination of or obtain an order to terminate or wind-up, in full or in part, any such plan, or the receipt by the applicable Canadian Loan Party or any of its Subsidiaries of an order from a Governmental Authority proposing to order a partial or full termination or wind-up of any such plan, in each case, that could reasonably be expected to result in a Material Adverse Effect, individually or in the aggregate.

"Canadian Pension Plan" means any pension plan required to be registered under the Income Tax Act (Canada) or any Canadian federal or provincial law and or contributed to by Canadian Borrower for its Canadian Employees or former Canadian Employees, including any pension benefit plan within the meaning of the *Pension Benefits Act* (New Brunswick) or the *Pension Benefits Act* (Ontario) but does not include the Canada Pension Plan maintained by the Government of Canada.

"Canadian Pre-Petition Advances" means the "Canadian Advances" as defined in the Pre-Petition Credit Agreement.

"Canadian Priority Payables Reserves" means reserves (determined from time to time by Agent in its Permitted Discretion) for: (a) the amount past due and owing by Canadian Borrower or any Canadian Subsidiary Guarantor, or the accrued amount for which such Canadian Loan Party has an obligation to remit, to a Governmental Authority or other Person pursuant to any Applicable Law, in respect of (i) goods and services taxes, sales taxes, employee income taxes, municipal taxes and other taxes payable or to be remitted or withheld; (ii) workers' compensation or unpaid pension plan contributions (including current service contributions and special payment, as applicable); (iii) vacation or holiday pay; (iv) amounts payable to a solvency administrator or in respect of government royalties, and (v) other like charges and demands, in the case of any of clauses (i) through (v), only to the extent that any Governmental Authority or other Person may claim a lien, security interest, hypothec, trust or other claim on the ABL Priority Collateral ranking or capable of ranking in priority to or pari passu with one or more of the Liens granted in the Loan Documents under the Applicable Laws of Canada and such lien, security interest, hypothec, trust or other claim has been or may be imposed; and (b) the aggregate amount of any other liabilities of Canadian Borrower or any Canadian Subsidiary Guarantor (i) in respect of which a trust has been or may be imposed on any ABL Priority Collateral to provide for payment, or (ii) which are secured by a lien, security interest, hypothec, pledge, charge, right or claim on any ABL Priority Collateral, or as to which the claimant has a right to repossess any ABL Priority Collateral; in each case, pursuant to any Applicable Law; in each case of clause (a) and (b), pursuant to any Applicable Law and which such lien, trust, security interest, hypothec, pledge, charge, right or claim ranks or, in the judgment of the Agent, is capable of ranking in priority to or pari passu with one or more of the Liens granted pursuant to the Security Documents under the Applicable Laws of Canada (such as liens, trusts, security interests, hypothecs, pledges, charges, rights or claims in favor of employees, customs brokers, carriers, mechanics, materialmen, labourers, or suppliers, or liens, trusts, security interests, hypothecs, pledges, charges, rights or claims for ad valorem, excise, sales, or other taxes where given priority under applicable law) and has been or may be imposed; in each case net of the aggregate amount of all restricted cash held or set aside for the payment of such obligations.

"Canadian Protective Advance" is a Protective Advance which has been deemed a "Canadian Protective Advance" by Agent.

"Canadian Register" has the meaning set forth in Section 13.1(i) of the Agreement.

"Canadian Registered Loan" has the meaning set forth in Section 13.1(i) of the Agreement.

"Canadian Reimbursement Undertaking" has the meaning specified therefor in Section 2.11(b)(i) of the Agreement.

"Canadian Rent Reserve" means, in the event the Canadian Loan Parties are unable to obtain a Collateral Access Agreement with respect to any location listed on Schedule E-1 or any other leased location in Canada where Canadian Borrower's or any Canadian Subsidiary's Inventory is located, a reserve against the Canadian Borrowing Base that Agent may, in its Permitted Discretion, impose in an amount of up to (in its Permitted Discretion) 3 months' rent at such location; provided, however, that so long as a Collateral Access Agreement is in effect for any location, such reserve shall no longer apply with respect to such location and no such reserve shall be imposed on any such location in respect of which such Eligible Inventory in the aggregate has a value of less than $500,000 or the Canadian Dollar Equivalent thereof.

"Canadian Revolver Commitment" means, with respect to each Canadian Lender, its Canadian Revolver Commitment, and, with respect to all Canadian Lenders, their Canadian Revolver Commitments, in each case as such Dollar amounts are set forth beside such Canadian Lender's name under the applicable heading on Schedule C-2 or in the Assignment and Acceptance pursuant to which such Canadian Lender became a Canadian Lender hereunder or in the case of any Lender that increases its Canadian Revolver Commitment or becomes a Post-Increase Canadian Revolver Lender, in each case pursuant to Section 2.15 of the Agreement, the amount specified in the applicable Increase Joinder, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of the Agreement.

"Canadian Revolver Usage" means, as of any date of determination, the sum of (a) the amount of outstanding Canadian Advances, plus (b) the U.S. Dollar Equivalent of the amount of the Canadian Letter of Credit Usage.

"Canadian Security Agreement" means the security agreement, dated as of the Closing Date, charging all assets and interests in assets and proceeds thereof now owned or hereafter acquired by the Canadian Loan Parties in favor of Agent, as further amended, restated, supplemented or otherwise modified from time to time.

"Canadian Security Documents" means (a) the Canadian Security Agreement, (b) one or more Trademark, Patent and Copyright security agreements including any joinders thereto with respect to all Intellectual Property and proceeds thereof now owned or hereafter acquired by the Canadian Loan Parties, (c) one or more hypothecs charging all movable property and proceeds thereof now owned or hereafter acquired by the Canadian Loan Parties, (d) one or more pledge agreements charging all investment property now owned or hereafter acquired by Canadian Holdco and each other applicable Canadian Loan Party, (e) the Quebec Security Documents, (f) [intentionally omitted], (g) the Canadian Ship Mortgages, and (h) a pledge agreement charging all investment property now owned or hereafter acquired by Clover Leaf Seafood pursuant to the provisions of clause (j) of Schedule 3.6 of the Agreement, in the Stock of Canadian Holdco, which in each case are governed by the laws of Canada and which are otherwise in form and substance reasonably satisfactory to Agent.

"Canadian Settlement" has the meaning specified therefor in Section 2.3(f)(i) of the Agreement.

"Canadian Settlement Date" has the meaning specified therefor in Section 2.3(f)(i) of the Agreement.

"Canadian Ship Mortgages" means mortgages of vessels (a) owned as of the Closing Date by any Canadian Loan Party and described on Schedule V-1, and (b) owned or acquired after the Closing Date by any Canadian Loan Party to the extent that the Fair Market Value of any such vessel exceeds $2,500,000.

"Canadian Subsidiary" means any Subsidiary that is organized under the laws of Canada or one of the provinces of Canada.

"Canadian Subsidiary Guarantor" means any Canadian Subsidiary that is a Guarantor.

"Canadian Swing Loan" has the meaning specified therefor in Section 2.3(b) of the Agreement.

"Canadian Swing Loan Exposure" means, with respect to any Canadian Lender, at any time, such Canadian Lender's Pro Rata Share of the Canadian Swing Loans outstanding at such time.

"Canadian Total Revolver Commitment" means the sum of the Canadian Revolver Commitments of all Canadian Lenders.

"Canadian Underlying Issuer" means a third Person which is the beneficiary of a Canadian Reimbursement Undertaking and which has issued a letter of credit at the request of the Canadian Issuing Lender for the benefit of Canadian Borrower or one of its Subsidiaries.

"Canadian Underlying Letter of Credit" means a letter of credit that has been issued by a Canadian Underlying Issuer.

"Canadian Unpaid Drawing" has the meaning specified therefor in Section 2.11(b)(iv) of the Agreement.

"Capital Lease" means, as applied to any Person, a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP (as in effect on the Closing Date (as defined in the Pre-Petition Credit Agreement), notwithstanding any modification or interpretative change thereto after the Closing Date (including without giving effect to any treatment of leases under Accounting Standards Codification 842 or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect)).

"Capital Lease Obligation" means, as applied to any Person, that portion of the obligations under a Capital Lease that is required to be capitalized in accordance with GAAP (as in effect on the Closing Date (as defined in the Pre-Petition Credit Agreement), notwithstanding any modification or interpretative change thereto after the Closing Date (including without giving effect to any treatment of leases under Accounting Standards Codification 842 or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect)).

"Carve Out" has the meaning assigned to such term in the Interim Order or the Final Order, as applicable.

"Carve Out Reserve" means, as of any date, a reserve established by the Agent in an amount equal to the sum of (i) Post-Carve Out Trigger Notice Cap (as such term is defined in the Interim Order and the Final Order) plus (ii) an amount equal to all fees and expenses of Professional Persons, and all fees payable (or projected to be payable) to the Clerk of the Bankruptcy Court and to the United States Trustee

under section 1930(a) of title 28 of the United States Code, in each case in this subclause (ii) for the two-week period commencing on such date as estimated by the Agent in good faith for such period.

"Carve-Out Trigger Notice" means a written notice delivered by the Agent to the Debtors and their lead restructuring counsel, the U.S. Trustee, the Pre-Petition Agent, and counsel to the Committee, which notice may be delivered following the occurrence and during the continuance of an Event of Default and acceleration of the Obligations under this Agreement stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

"Cases" has the meaning specified in the recitals to the Agreement.

"Cash Equivalents" means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or Canada or issued by any agency thereof and backed by the full faith and credit of the United States or Canada, in each case maturing within one year from the date of acquisition thereof, (b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state, or any province of Canada, or any public instrumentality thereof maturing within 1 year from the date of acquisition thereof and, at the time of acquisition, having an investment grade rating from either Standard & Poor's Rating Group ("S&P") or Moody's Investors Service, Inc. ("Moody's"), (c) commercial paper maturing no more than one year from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody's, (d) certificates of deposit, time deposits, overnight bank deposits or bankers' acceptances maturing within 1 year from the date of acquisition thereof issued by any bank organized under the laws of the United States or any state thereof or the District of Columbia or any United States branch of a foreign bank, or any bank listed on Schedule I of the *Bank Act* (Canada), having at the date of acquisition thereof combined capital and surplus of not less than $250,000,000, (e) Deposit Accounts maintained with (i) any bank that satisfies the criteria described in clause (d) above, or (ii) any other bank organized under the laws of the United States or any state thereof, or the federal laws of Canada, so long as the amount maintained with any such other bank is less than or equal to $250,000 and is insured by the Federal Deposit Insurance Corporation or the Canadian Deposit Insurance Corporation, as the case may be, (f) repurchase obligations of any commercial bank satisfying the requirements of clause (d) of this definition or recognized securities dealer having combined capital and surplus of not less than $250,000,000, having a term of not more than 30 days, with respect to securities satisfying the criteria in clauses (a) or (d) above, (g) debt securities with maturities of one year or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the criteria described in clause (d) above, and (h) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (g) above and (i) shares of investment companies that are registered under the Investment Company Act of 1940 and substantially all of the investments which are one or more of the types of assets described in clauses (a) through (g) above.

"Cash Management Order" means an order of the Bankruptcy Court or CCAA Court, in form and substance satisfactory to the Agent, among other things, (i) approving and authorizing the Debtors or the CCAA Debtors to use existing cash management systems, (ii) authorizing and directing banks and financial institutions to honor and process checks and transfers, (iii) authorizing continued use of intercompany transactions, (iv) waiving requirements of Section 345(b) of the Bankruptcy Code or any applicable section of the CCAA and (v) authorizing the Debtors or the CCAA Debtors to use existing bank accounts and existing business forms.

"Cash Management Services" means any cash management or related services including treasury, depository, return items, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, ACH Transactions and other cash management arrangements.

"CCAA" means the *Companies' Creditors Arrangement Act* (Canada), in effect from time to time.

"CCAA A&R Initial Order" shall mean the CCAA Initial Order as amended and restated by the CCAA Court at the hearing of the CCAA Comeback Motion to: (i) approve service and/or substitute service on all secured creditors of the CCAA Debtors likely to be affected by the CCAA DIP Charge; and (ii) provide for the full priming of the CCAA DIP Charge on all of the Collateral of the CCAA Debtors on the terms contemplated thereby.

"CCAA A&R Initial Order Entry Date" shall mean the date on which the CCAA A&R Initial Order is entered with the CCAA Court.

"CCAA Approval and Vesting Order" shall mean a final non-appealable order of the CCAA Court, in form and substance reasonably acceptable to each of the Agent and the DIP Term Loan Agent approving (i) the Stalking Horse Transaction on the terms set forth in the Stalking Horse APA or (ii) another sale pursuant to the Bidding Procedures Order of substantially all of the assets of the Debtors and the CCAA Debtors.

"CCAA Case" and "CCAA Cases" shall have the meaning provided in the recitals to this Agreement.

"CCAA Comeback Motion" shall mean the motion seeking the CCAA A&R Initial Order to be heard by the CCAA Court not later than ten (10) days following the entry of the CCAA Initial Order, which motion shall be served by the CCAA Debtors on the service list established in the CCAA Cases, all secured creditors of the CCAA Debtors and any other Person as may be requested by the Agent.

"CCAA Court" shall have the meaning provided in the recitals to this Agreement.

"CCAA Debtor" and "CCAA Debtors" shall have the meaning provided in the recitals to this Agreement.

"CCAA DIP Charge" shall mean a super-priority priming charge granted by the CCAA Court on all of the Collateral of the CCAA Debtors.

"CCAA Filing Date" shall have the meaning provided in the recitals to this Agreement.

"CCAA Initial Order" shall mean an order of the CCAA Court (as the same may be amended, supplemented, or modified from time to time after entry thereof in accordance with the terms thereof), in form and substance satisfactory to the Agent, which order shall, among other things, authorize the Loan Documents and the DIP Term Loan Credit Documents to which any CCAA Debtor is a party and the Transactions contemplated by this Agreement and grant the CCAA DIP Charge, with only such modifications as are satisfactory to the Agent, in its sole discretion.

"CCAA Initial Order Date" means the date on which the CCAA Initial Order is entered with the CCAA Court.

"CCAA Monitor" means the monitor appointed by the CCAA Court pursuant to the CCAA Initial Order.

"CCAA Orders" means the CCAA Initial Order and the CCAA A&R Initial Order, as applicable.

"Change of Control" means that (a) Permitted Holders fail to own and control, directly or indirectly, more than 50%, of the Stock of Holdings having the right to vote for the election of members of its Board of Directors, (b) Holdings ceases to own, directly or indirectly, 100% of the Stock of (i) U.S. Borrower and (ii) Canadian Borrower, or (c) a "Change of Control" (or any comparable term or provision) under or with respect to the DIP Term Loan Credit Agreement (or any Refinancing Indebtedness in respect thereof) has occurred. Notwithstanding the preceding or any provision of Rule 13d-3 of the Exchange Act (or any successor provision), a Person or group shall not be deemed to beneficially own securities subject to an equity or asset purchase agreement, merger agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the transactions contemplated by such agreement.

"Civil Antitrust Claim" means any and all cases or other claims that are currently pending or that may be brought in the future against any Loan Party or any of their respective Affiliates in any and all courts within the United States, or any other country, with respect to price-fixing or any other alleged violation of any antitrust laws, including any claim arising out of or related to, but not limited to, the allegations in the following complaints: In re Packaged Sea Food Antitrust Litigation, Case No. 3:15-md-02670 (JLS)(MDD); The Kroger Co., et al v. Bumble Bee Foods LLC, et al, Case No. 16-cv-0051 (JSS)(MDD); Wegmans Food Markets, Inc. v. Bumble Bee Foods LLC, et al, Case No. 3:16cv0264 (JLS)(MDD); Wal-Mart Stores, Inc. v. Bumble Bee Foods LLC, et al, Case No. 16-CV-2821 (JLS)(MDD); Affiliated Foods, Inc.; Affiliated Foods Midwest Cooperative, Inc.; Alex Lee, Inc.; Associated Food Stores, Inc.; Associated Grocers of New England, Inc.; Associated Grocers, Inc.; Big Y Foods, Inc.; Brookshire Brothers, Inc.; Brookshire Grocery Company; Certco, Inc.; Dollar Tree Distribution, Inc.; Greenbrier International, Inc.; Family Dollar Stores, Inc.; Family Dollar Services, LLC; Fareway Stores, Inc.; The Golub Corporation; Giant Eagle Inc.; Kmart Corporation; KVA-T Food Stores, Inc.; McLane Company, Inc.; Meadowbrook Meat Company, Inc.; Merchants Distributors, LLC; Schnuck Markets, Inc.; Unified Grocers, Inc.; URM Stores Inc.; Western Family Foods, Inc.; and Woodman's Food Market, Inc. v. Tri-Union Seafoods, LLC, d/b/a Chicken of the Sea International; Thai Union Group Public Company, LTD.; Bumble Bee Foods, LLC, f/k/a Bumble Bee Seafoods, LLC, Starkist Co.; Del Monte Corporation; and Dongwon Industries Co., Ltd., Case No. 15-cv-2670(JLS)(MDD); Target Corporation v. Bumble Bee Foods, LLC, Starkist Company, Dongwon Industries Co. LTD, Tri-Union Seafoods LLC d/b/a Chicken of the Sea International, Inc., and Thai Union Group PLC, Case No.17-cv-02024.

"Class", when used in reference to any Advance, shall refer to whether such Advances are U.S. Advances, Canadian Advances, or Swing Loans or Protective Advances and, when used in reference to any Commitment, refers to whether such Commitment is a U.S. Revolver Commitment, or Canadian Revolver Commitment.

"Closing Date" means the first date on which all of the conditions precedent in Section 3.1 are satisfied or waived in accordance with the terms herein, which date is November 26, 2019.

"Clover Leaf Seafood" means Clover Leaf Seafood S.à r.l., a *Luxembourg société à responsabilité limitée*, incorporated and existing under the laws of the Grand-Duchy of Luxembourg, having its registered office at 4, rue Lou Hemmer, L-1748 Luxembourg Findel, registered with the Luxembourg Trade and Companies' Register (*Registre de Commerce et des Sociétés*) under number B 159871.

"Code" means the New York Uniform Commercial Code, as in effect from time to time, provided that, where the context so requires, any term defined by reference to the "Code" shall also have any extended, alternative or analogous meaning given to such term in applicable Canadian personal property security and other laws (including, without limitation, the *Personal Property Security Act* of each applicable province of Canada, the *Civil Code of Quebec*, the *Bills of Exchange Act* (Canada) and the

Depository Bills and Notes Act (Canada)), in all cases for the extension, preservation or betterment of the security and rights of Agent and the Secured Parties.

"Collateral" means substantially all assets and interests in assets and proceeds thereof now owned or hereafter acquired by a Loan Party in or upon which a Lien is granted by such Person in favor of Agent for the benefit of the Secured Parties under any of the Security Documents, or the "DIP Collateral" referred to in any Orders and all "Property" (or equivalent term) as defined in the CCAA Initial Order (and, when entered, the CCAA A&R Initial Order), it being understood that "Collateral" shall include all such "DIP Collateral" irrespective of whether any such property was excluded pursuant to the Pre-Petition Loan Documents.

"Collateral Access Agreement" means a collateral access agreement, landlord waiver, bailee agreement, or acknowledgement agreement of any lessor, warehouseman, bailee, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in a Loan Party's books and records, Equipment, or Inventory, in each case, in form and substance reasonably satisfactory to Agent.

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

"Commitment" means, with respect to each Lender, its U.S. Revolver Commitment or its Canadian Revolver Commitment, and, with respect to all Lenders, their U.S. Revolver Commitments or their Canadian Revolver Commitments.

"Committee" means an official committee of unsecured creditors appointed in the Cases.

"Committee Professionals" means the persons or firms retained by the Committee pursuant to section 328 or 1103 of the Bankruptcy Code.

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

"Company Compliance Program" means the corporate and regulatory compliance program maintained by the U.S. Borrower as of the Closing Date.

"Compliance Program" means any compliance program required by the DOJ Settlement or the United States or any other Governmental Authority in connection with or related to the DOJ Settlement.

"Consolidated Total Assets" means, as of any date of determination, the total amount of all assets of Holdings and its Subsidiaries, determined on a consolidated basis in accordance with GAAP as of such date.

"Control Agreement" means a control agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by a Loan Party, Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account). For certainty, for any Canadian bank account, such term shall also refer to a "blocked account" agreement with respect to such bank account, notwithstanding that the execution and delivery of such agreement may not be a perfection requirement.

"Controlled Account" has the meaning specified therefor in Section 5.20(b)(i) of the Agreement.

"Controlled Account Bank" has the meaning specified therefor in Section 5.20(b)(i) of the Agreement.

"Controlled Affiliate" means any Affiliate that (i) is controlled by any Loan Party, or (ii) Controls any Loan Party. "Control" means the means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise; provided, that any Person which owns directly or indirectly 25% or more of the total voting power of the Voting Stock of such other Person shall be deemed a Controlled Affiliate of such Person. For the avoidance of doubt, none of FCF International Limited, FCF Fishery Co. Ltd. or any of their respective Affiliates shall be deemed to be a Controlled Affiliate of any Loan Party, so long as (x) in the aggregate, FCF International Limited, FCF Fishery Co. Ltd. and their respective Affiliates do not hold 25% or more of the total voting power of the Voting Stock of any Loan Party or any of its Controlled Affiliates, and (y) no more than one member of the Board of Directors of any Loan Party or any of their respective Controlled Affiliates was appointed at the direction of or request of FCF International Limited, FCF Fishery Co. Ltd. or any of their respective Affiliates.

"Copyright Security Agreement" has the meaning specified therefor in the U.S. Security Agreement.

"Copyrights" has the meaning specified therefor in the U.S. Security Agreement.

"Covered Party" has the meaning specified therefor in Section 17.18 of this Agreement.

"Currency" means Dollars or Canadian Dollars.

"Daily Balance" means, as of any date of determination and with respect to any Obligation, the amount of such Obligation owed at the end of such day.

"Debtor Professionals" means the persons or firms retained by the Debtors or the CCAA Debtors pursuant to section 327, 328 or 363 of the Bankruptcy Code or any applicable sections of the CCAA.

"Debtors" has the meaning specified in the recitals to the Agreement.

"Deductible Amount" has the meaning specified therefor in Section 15.18(d) of the Agreement.

"Default" means an event, condition, or default that, with the giving of notice, the passage of time, or both, would be an Event of Default.

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"Defaulting Lender" means any Lender that (a) has failed to fund any amounts required to be funded by it under the Agreement on the date that it is required to do so under the Agreement (including the failure to make available to Agent amounts required pursuant to a Settlement or to make a required payment in connection with a Letter of Credit Disbursement) and such failure continues for a period of two (2) Business Days, (b) notified the applicable Borrower, the Agent, or any Lender in writing that it does not

intend to comply with all or any portion of its funding obligations under the Agreement, (c) has made a public statement to the effect that it does not intend to comply with its funding obligations under the Agreement or under other agreements generally (as reasonably determined by Agent) under which it has committed to extend credit, (d) failed, within two (2) Business Days after written request by Agent, to confirm that it will comply with the terms of the Agreement relating to its obligations to fund any amounts required to be funded by it under the Agreement, (e) otherwise failed to pay over to the Agent or any other Lender any other amount required to be paid by it under the Agreement on the date that it is required to do so under the Agreement, or (f) (i) becomes or is insolvent or has a parent company that has become or is insolvent or (ii) becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, liquidator, conservator, trustee, or custodian or appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, liquidator, conservator, trustee, or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or (iii) becomes or has a direct or indirect parent company that becomes the subject of a Bail-In Action.

"Defaulting Lender Rate" means (a) for the first 2 days from and after the date the relevant payment is due, the Base Rate, and (b) thereafter, the interest rate then applicable to Advances that are Base Rate Loans (inclusive of the Base Rate Margin applicable thereto).

"Deposit Account" means any deposit account (as that term is defined in the Code).

"Designated Account" means the Designated Canadian Account or the Designated U.S. Account, as the context requires.

"Designated Account Bank" means the Designated U.S. Account Bank or the Designated Canadian Account Bank, as the context requires.

"Designated Canadian Account" means the Deposit Account of Canadian Borrower identified on Schedule D-1 or such other account as may be identified by Canadian Borrower to Agent from time to time.

"Designated Canadian Account Bank" has the meaning specified therefor in Schedule D-1 or such other bank as may be identified by Canadian Borrower to Agent from time to time.

"Designated U.S. Account" means the Deposit Account of U.S. Borrower identified on Schedule D-2 or such other account as may be identified by the U.S. Borrower to the Agent from time to time.

"DIP Collateral" means the "DIP Collateral" as defined in the Orders, as applicable.

"DIP Facilities" means the DIP Term Loan Documents and the Loan Documents.

"DIP Intercreditor Agreement" means that certain DIP Intercreditor Agreement dated as of November 26, 2019 by and among Agent, DIP Term Loan Agent, WFCF, as agent under the Prepetition Credit Agreement and Brookfield Principal Credit LLC, as administrative agent under the Term Loan Credit Agreement.

"DIP Superpriority Claim" means the allowed superpriority administrative expense claim granted to the Loan Parties in the Cases or the CCAA Cases and any Successor Cases pursuant to Section 364(c)(1) of the Bankruptcy Code or any applicable provision of the CCAA, as applicable, for all of the

Obligations with priority over any and all Cases, CCAA Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including administrative expenses of the kinds specified in or ordered pursuant to Sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b) (except as set forth in the Orders), 546(c), 546(d), 726, 1113, and 1114 of the Bankruptcy Code, any other provision of the Bankruptcy Code, and any applicable provisions of the CCAA, which shall at all times be senior to the rights of the Debtors and the CCAA Debtors and their estates, and any successor trustee or other estate representatives; provided that the DIP Superpriority Claim shall not have recourse to any Avoidance Actions or the proceeds thereof subject to entry of the Final Order and the CCAA Orders; provided further that the DIP Superpriority Claim shall be subject to the Carve Out and Liens created pursuant to the CCAA Orders.

"DIP Term Loan Agent" has the meaning specified therefor in the DIP Intercreditor Agreement.

"DIP Term Loan Credit Agreement" means that certain Superpriority Debtor-in-Possession Term Loan Agreement dated as of November 26, 2019 among the Borrower, the lenders party thereto, Brookfield Principal Credit LLC, as administrative agent and collateral agent, and the other parties thereto, as amended and in effect from time to time in accordance with the terms of the DIP Intercreditor Agreement or any Order and any refinancing or replacement thereof in whole or in part (in accordance with the terms of the DIP Intercreditor Agreement and the Orders).

"DIP Term Loan Documents" means the DIP Term Loan Credit Agreement and the agreements, documents and instruments executed in connection therewith as each such document may be amended, restated, supplemented or otherwise modified, replaced or refinanced from time to time in accordance with the requirements thereof.

"DIP Term Loan Indebtedness" means the Indebtedness incurred by the Loan Parties under the DIP Term Loan Documents.

"DIP Term Loan Liens" means Liens securing the DIP Term Loan Obligations (as defined in the DIP Intercreditor Agreement).

"Disposition" has the meaning specified therefor in Section 6.4 of the Agreement, the terms "Disposed" and "Dispose" shall have corresponding meanings.

"Disqualified Competitor" means any Person that is a competitor of Holdings or any of its Subsidiaries (or an Affiliate of such competitor) designated by Holdings as a "Disqualified Competitor" by written notice delivered to the Agent from time to time; provided that "Disqualified Competitor" shall exclude any Person that Holdings has designated as no longer being a "Disqualified Competitor" by written notice delivered to the Agent from time to time; provided, further that, no Affiliate of a competitor shall include any Affiliate of such competitor that is a bona fide debt fund, investment vehicle, regulated banking entity or non-regulated lending entity that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans or bonds and/or similar extensions of credit in the ordinary course of business. The list of Disqualified Competitors shall be made available to any Lender upon written request to the Agent. In no event shall a supplement to the list of Disqualified Competitor apply retroactively to disqualify any Persons that have previously acquired an assignment or participation interest in the Obligations that was otherwise permitted prior to such permitted supplementation.

"Disqualified Institution" shall means any Person designated by Holdings as a "Disqualified Institution" by written notice delivered to the Agent on or prior to the Closing Date and any of such Person's Affiliates that are readily identifiable as such by their name; provided that "Disqualified

Institutions" shall exclude any Person that Holdings has designated as no longer being a "Disqualified Institution" by written notice delivered to the Agent from time to time. The list of Disqualified Institutions shall be made available to any Lender upon written request to the Agent.

"DOJ Payment" means any payment by Holdings or any of its Subsidiaries (or that Holdings or any of its Subsidiaries is obligated to pay or reimburse to any other person whether by applicable law, contract, or otherwise) that is due or otherwise required to be made (whether or not then due and payable) under the DOJ Settlement.

"DOJ Reserve" means a reserve equal to 100% of the amount of the fine or other amounts evidenced by the DOJ Settlement which remains unpaid at such time.

"DOJ Settlement" means the Amended Plea Agreement between the United States and U.S. Borrower, signed by representatives of the United States Department of Justice on July 31, 2017, pursuant to which U.S. Borrower agreed to plead guilty to criminal charges that prior to the date thereof it has participated in a combination or conspiracy to suppress and eliminate competition in the pricing (or by fixing prices) of packaged seafood sold in the United States in violation of the Sherman Antitrust Act, 15 U.S. C. § 1, and to pay a criminal fine of up to $25,000,000, as amended or otherwise modified from time to time, of which $17,000,000 is outstanding on the Petition Date.

"Dollar Equivalent" or "U.S. Dollar Equivalent" means, on any date of determination, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Foreign Currency, the equivalent in Dollars of such amount, determined by the Agent using the applicable Exchange Rate.

"Dollars" or "$" or "U.S. Dollars" means United States dollars.

"Domestic Subsidiary" means, with respect to any Person, any Subsidiary of such Person that is organized under the laws of one of the United States, any state or territory thereof, or the District of Columbia.

"Drawing Document" means any Letter of Credit or other document presented for purposes of drawing under any Letter of Credit, including by electronic transmission such as SWIFT, electronic mail, facsimile or computer generated communication.

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

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

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

"Eligible Accounts" means those Accounts created by a Borrower or a Subsidiary Guarantor in the ordinary course of its business, that arise out of such Person's sale of goods, that comply

with each of the representations and warranties respecting Eligible Accounts made in the Loan Documents, and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, however, that such criteria may be revised from time to time by Agent in Agent's Permitted Discretion to address the results of any audit performed by Agent from time to time after the Closing Date. In determining the amount to be included, Eligible Accounts shall be calculated net of customer deposits and unapplied cash. Eligible Accounts shall not include the following:

(a) Accounts that the Account Debtor has failed to pay within 90 days of original invoice date or Accounts 60 days past due,

(b) Accounts owed by an Account Debtor and each of its Affiliates where 50% or more of the U.S. Dollar Equivalent of all Accounts owed by that Account Debtor or any of its Affiliates are deemed ineligible under clause (a) above,

(c) Unless otherwise agreed to by Agent, Accounts with respect to which the Account Debtor is an Affiliate or an employee of a Borrower or a Subsidiary Guarantor,

(d) Accounts arising in a transaction wherein goods are placed on consignment or are sold pursuant to a guaranteed sale, a sale or return, a sale on approval, a bill and hold, or any other terms by reason of which the payment by the Account Debtor may be conditional,

(e) Accounts that are not payable in Dollars or Canadian Dollars,

(f) Accounts with respect to which the Account Debtor either (i) does not either maintain its chief executive office or registered office, as applicable, in the United States, Puerto Rico, or Canada or have substantial assets and operations in the United States, Puerto Rico, or Canada, or (ii) is not organized under the laws of the United States, any state thereof, or the District of Columbia, under the laws of Puerto Rico, or under the laws of Canada or any province thereof, or (iii) is the government of any country or sovereign state other than the United States, or of any state, province, municipality, or other political subdivision thereof, or of any Governmental Authority thereof, unless (y) the Account is supported by an irrevocable letter of credit reasonably satisfactory to Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Agent and is directly drawable by Agent, or (z) the Account is covered by credit insurance (including foreign accounts receivable insurance issued by a Governmental Authority) in form, substance, and amount, and by an insurer, reasonably satisfactory to Agent,

(g) Accounts with respect to which the Account Debtor is either (i) the United States or Canada or any department, agency, or instrumentality of the United States or Canada (exclusive, however, of Accounts with respect to which Borrower or a Subsidiary Guarantor has complied, to the reasonable satisfaction of Agent, with the Assignment of Claims Act, 31 USC §3727), the *Financial Administration Act* (Canada) or with any applicable state, provincial, county or municipal law or similar purpose and effect, as applicable, or (ii) any state of the United States or any province of Canada,

(h) Accounts with respect to which the Account Debtor is a creditor of the applicable Borrower or Subsidiary Guarantor, has or has asserted a right of setoff, off-set or recoupment (irrespective of whether the liability alleged to be owing by the applicable Borrower or Subsidiary Guarantor to such Account Debtor is contingent or liquidated at such time), or has disputed its obligation to pay all or any portion of the Account, to the extent of such claim, right of setoff, off-set, recoupment, or dispute, as determined by Agent in its Permitted Discretion, unless (i) Agent, in its Permitted Discretion, has established an appropriate reserve, which may be adjusted by Agent from time to time in its Permitted Discretion, and determines to include such Account as an Eligible Account or (ii) such Account Debtor

has entered into an agreement reasonably acceptable to Agent to waive such rights of setoff, off-set and recoupment;

(i) Accounts with respect to an Account Debtor whose total obligations owing to the applicable Borrower or Subsidiary Guarantor exceed 10% of all Eligible Accounts, (but the portion of the Accounts owing by such Account Debtor not in excess of such percentage that otherwise satisfy the criteria herein will be deemed Eligible Accounts and it being understood that such percentage limitation shall apply to all Eligible Accounts of Borrowers and all Subsidiary Guarantors, collectively); provided, however, that, in each case, the amount of Eligible Accounts that are excluded because they exceed the foregoing percentage shall be determined by Agent based on all of the otherwise Eligible Accounts prior to giving effect to any eliminations based upon the foregoing concentration limit; provided further, however, that the foregoing percentage shall be increased (1) to 15% in respect of C&S Wholesale Grocers, Inc., (2) to 20% in respect of Costco Wholesale Corporation, (3) 30% in respect of Loblaws, (4) 25% in respect of Wal-Mart Canada, (5) 25% in respect of Wal-Mart Stores, Inc. and Sam's Club, and (6) 20% in respect of Metro CAD,

(j) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not paying its debts as they become due, has gone out of business, or as to which the applicable Borrower or Subsidiary Guarantor has received written notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor,

(k) from and after the delivery of written notice thereof by the Agent to the applicable Borrower, Accounts created after the date of such written notice, the collection of which, Agent, in its Permitted Discretion, believes to be doubtful by reason of the Account Debtor's financial condition,

(l) Accounts that are not subject to a valid and perfected or opposable first priority Agent's Lien,

(m) Accounts with respect to which (i) the goods giving rise to such Account have not been shipped and billed to the Account Debtor, or (ii) the services giving rise to such Account have not been performed and billed to the Account Debtor,

(n) Accounts with respect to which the Account Debtor is a Sanctioned Person or Sanctioned Entity, or

(o) Accounts that represent the right to receive progress payments or other advance billings that are due prior to the completion of performance by the applicable Borrower or Subsidiary Guarantor of the subject contract.

"Eligible Blocked Landed Inventory" means those items of Eligible Landed Inventory that do not qualify as Eligible Landed Inventory solely because they are held back from sale in the ordinary course of business due to issues not impacting their merchantability, but (without otherwise limiting the generality of the other eligibility criteria in the definition of Eligible Landed Inventory) as to which (a) such Inventory is expected to be sold by the applicable Borrower in the ordinary course of business, and (b) such Inventory consists of goods that are not spoiled or contaminated goods, defective goods, damaged goods, or goods that are not of good and merchantable quality.

"Eligible In-Transit Inventory" means those items of Inventory that do not qualify as Eligible Landed Inventory solely because they are not in a location set forth on Schedule E-1 or any other location where any Inventory is located and as to which location a Borrower has notified Agent under Section 5.2 of the Agreement or in transit among such locations and because it is the subject of a bill of

lading or other document of title, but as to which (a) such Inventory currently is in transit (whether by vessel, air, or land) to a location set forth on Schedule E-1 or any other location where any Inventory is located and as to which location a Borrower has notified Agent under Section 5.2 of the Agreement, (b) title to such Inventory has passed to a Borrower or a Subsidiary Guarantor, (c) such Inventory is insured against types of loss, damage, hazards, and risks, and in amounts, reasonably satisfactory to Agent in its Permitted Discretion, (d) such Inventory either (1) is the subject of a negotiable bill of lading (x) that is consigned to Agent or one of its agents (either directly or by means of endorsements), (y) that was issued by the carrier respecting the subject Inventory, and (z) that is in the possession of Agent or a customs broker that has executed in favor of Agent a customs broker agreement that is reasonably satisfactory to Agent (in each case in the State or province where the customs broker is located), or (2) is the subject of a negotiable cargo receipt and is not the subject of a bill of lading (other than a negotiable bill of lading consigned to, and in the possession of, a consolidator or Agent, or their respective agents) and such negotiable cargo receipt is (x) consigned to Agent or one of its agents (either directly or by means of endorsements), (y) that was issued by a consolidator respecting the subject Inventory, and (z) that is in the possession of Agent or a customs broker that has executed in favor of Agent a customs broker agreement that is reasonably satisfactory to Agent (in each case in the State or province where the customs broker is located), and (e) the applicable Borrower has provided a certificate to the Agent that certifies that, to the best knowledge of such Borrower, such Inventory meets all of such Borrower's representations and warranties contained in the Loan Documents concerning Eligible Landed Inventory, other than because such Inventory is not in a location set forth on Schedule E-1 or any other location where any Inventory is located and as to which location a Borrower has notified Agent under Section 5.2 of the Agreement or in transit among such locations and because it is the subject of a bill of lading or other document of title, that such Borrower knows of no reason why such Inventory would not be accepted by such Borrower when it arrives in the State or province where the customs broker is located, and that the shipment as evidenced by the documents conforms to the related order documents.

"Eligible Inventory" means Eligible Landed Inventory or Eligible In-Transit Inventory.

"Eligible Landed Inventory" means Inventory consisting of first quality finished goods, raw materials or work in progress held for sale in the ordinary course of business of a Borrower or a Subsidiary Guarantor and that complies with each of the representations and warranties respecting Eligible Inventory made in the Loan Documents, and that is not excluded as ineligible by virtue of the one or more of the excluding criteria set forth below; provided, however, that such criteria may be revised from time to time by the Agent in Agent's Permitted Discretion to address the results of any audit or appraisal performed by Agent from time to time after the Closing Date. In determining the amount to be so included, Inventory shall be valued at the lower of cost or market on a basis consistent with such Borrower's historical accounting practices. An item of Inventory shall not be included in Eligible Landed Inventory if:

(a) the applicable Borrower or Subsidiary Guarantor does not have good, valid, and marketable title thereto,

(b) the applicable Borrower or Subsidiary Guarantor does not have actual and exclusive possession thereof (either directly or through a bailee or agent of such Borrower or such Subsidiary Guarantor),

(c) it is not located at one of the locations set forth on Schedule E-1 or any other location where any Inventory is located and as to which location a Borrower has notified Agent under Section 5.2 of the Agreement (or in transit from one such location to another such location),

(d) it is in-transit to or from a location of a Borrower or a Subsidiary Guarantor (other than in-transit from one location set forth on Schedule E-1 or any other location where any Inventory is

located and as to which location a Borrower has notified Agent under Section 5.2 of the Agreement to another location set forth on Schedule E-1 or any other location where any Inventory is located and as to which location a Borrower has notified Agent under Section 5.2 of the Agreement),

(e) it is located on real or immovable property leased by a Borrower or a Subsidiary Guarantor or in a contract warehouse or other Real Property owned by a third Person, in each case, unless (i) it is either (A) subject to a Collateral Access Agreement executed by the lessor or warehouseman or bailee, as the case may be, or (B) a Rent Reserve is in place with respect to such location or (C) is located at a site where the aggregate book value of Inventory at such location is less than $100,000 or the Canadian Dollar Equivalent thereof; and (ii) it is segregated or otherwise separately identifiable from goods of others, if any, stored on the premises,

(f) it is not subject to a valid and perfected or opposable first priority Agent's Lien,

(g) it consists of goods that are obsolete or slow moving, spoiled or contaminated goods, or goods that constitute packaging and shipping materials, supplies used or consumed in the applicable Borrower's or the applicable Subsidiary Guarantor's business, bill and hold goods, defective goods, "seconds", that are not good and merchantable quality, or Inventory acquired on consignment or consigned to another Person,

(h) it is the subject of a bill of lading or other document of title,

(i) it consists of goods returned or rejected by customers of a Borrower or a Subsidiary Guarantor, or

(j) the sale of or Disposition of such Inventory by the applicable Borrower would result in an infringement of a third party's rights in respect of any Intellectual Property.

"Employee Benefit Plan" means any employee benefit plan within the meaning of Section 3(3) of ERISA (a) that is maintained for employees of any Loan Party or any ERISA Affiliate, (b) that has at any time within the preceding six (6) years been maintained for the employees of any Loan Party or any current or former ERISA Affiliate, (c) to which any Loan Party or any ERISA Affiliate makes contributions or is required to make contributions, (d) to which any Loan Party or any ERISA Affiliate has made or has been required to make contributions at any time within the preceding six (6) years or (e) to which any Loan Party to any ERISA Affiliate has, or has had at any time within the preceding six (6) years, any liability, contingent or otherwise.

"Environmental Action" means any written complaint, summons, citation, notice, directive, order, claim, litigation, suit, lien, investigation, judicial, regulatory or administrative proceeding, judgment, letter, or other written communication from or to any Governmental Authority, or any third party involving violations of Environmental Laws or releases of Hazardous Materials from or onto (a) any assets, properties, or businesses of any Loan Party, any Subsidiary of a Loan Party, or any of their predecessors in interest, (b) adjoining properties or businesses, or (c) any facilities which received Hazardous Materials generated by any Loan Party, any Subsidiary of a Loan Party, or any of their predecessors in interest.

"Environmental Law" means any applicable federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy, or rule of common law now or hereafter in effect and in each case as amended, or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, in each case, to the extent binding on any Loan Party or any of its Subsidiaries, relating to the

protection of the environment or the protection of employee health to the extent related to exposure to Hazardous Materials.

"Equipment" means equipment (as that term is defined in the Code).

"Equity Sponsor" means Lion Capital LLP and any funds, partnerships or other investment vehicles managed or directly or indirectly controlled by it, but not including, however, any portfolio companies of any of the forgoing.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto.

"ERISA Affiliate" means (a) any Person whose employees are treated as employed by the same employer as the employees of a Loan Party or its Subsidiaries under IRC Section 414(b), (b) any trade or business whose employees are treated as employed by the same employer as the employees of a Loan Party or its Subsidiaries under IRC Section 414(c), (c) solely for purposes of Section 302 of ERISA and Sections 412 or 430 of the IRC, any organization that is a member of an affiliated service group of which a Loan Party or any of its Subsidiaries is a member under IRC Section 414(m), or (d) solely for purposes of Section 302 of ERISA and Sections 412 and 430 of the IRC, any Person that is a party to an arrangement with a Loan Party or any of its Subsidiaries and whose employees are aggregated with the employees of a Loan Party or its Subsidiaries under IRC Section 414(o).

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Event of Default" has the meaning specified therefor in Section 8 of the Agreement.

"Excess Availability" means, as of any date of determination, the amount equal to the Borrowers' Availability on such date.

"Exchange Act" means the Securities Exchange Act of 1934, as amended and as in effect from time to time and the rules and regulations promulgated thereunder.

"Exchange Rate" means, on any day with respect to any currency, the rate at which such currency may be exchanged into any other currency (including Dollars), as published in *The Wall Street Journal (Eastern Edition)* on such day for such currency. In the event that such rate does not appear on *The Wall Street Journal (Eastern Edition)*, the Exchange Rate shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed by the Agent and the Borrowers, or, in the absence of such agreement, such Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of Wells Fargo in the market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about 11:00 a.m., local time, on such date for the purchase of the relevant currency for delivery two (2) Business Days later.

"Excluded Accounts" means (a) any Deposit Account or Securities Account that is used exclusively for trust, fiduciary or escrow payments, tax payments, payroll, payroll taxes or other employee wage and benefit payments to or for the employees of the Loan Parties, (b) zero balance accounts, or (c) accounts with a balance not to exceed $25,000 at any one time.

"Excluded Assets" has the meaning specified therefor in the U.S. Security Agreement.

"Excluded Stock" means (a) Stock to the extent the pledge thereof would be prohibited or limited by any Applicable Law existing on the Closing Date, the date such Stock is acquired by a Borrower or any Guarantor, or the date the issuer of such Stock is created, and (b) Stock of a Person (other than a wholly-owned Subsidiary) the pledge of which would violate a contractual obligation to the owners of the other Stock of such Person (other than any such owners that are Affiliates of Holdings) that is binding on or relating to such Stock.

"Excluded Subsidiary" means

(a) any Subsidiary that is not a wholly owned Subsidiary on any date such Subsidiary would otherwise be required to become a Guarantor pursuant to the requirements of Section 5.11 (for so long as such Subsidiary remains a non-wholly owned Subsidiary) other than a Subsidiary that is a non-wholly owned Subsidiary if such non-wholly owned Subsidiary guarantees or issues other capital markets debt securities of any Borrower or any Guarantor,

(b) any Subsidiary of Holdings that is prohibited by any applicable law, rule or regulation or contractual obligation existing at the time such Subsidiary becomes a Subsidiary of Holdings from guaranteeing the Obligations (and for so long as such restrictions are in effect) or which would require governmental (including regulatory) consent, approval, license or authorization to provide a Guaranty unless such consent, approval, license or authorization has been received (or is received after commercially reasonable efforts to obtain such consent, approval, license or authorization, which efforts may be requested by the Agent), and

(c) the Subsidiaries listed on Schedule E-3.

"Excluded Swap Obligation" means, with respect to any Guarantor, (a) any Swap Obligation if, and to the extent that, all or a portion of the guaranty of such Guarantor of, or the grant by such Guarantor of a Lien to secure, as applicable, such Swap Obligation (or any guaranty thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty of (or the grant of such security interest by, as applicable) such Guarantor becomes or would otherwise have become effective with respect to such Swap Obligation but for such Guarantor's failure to constitute an "eligible contract participant" at such time, or (b) any other Swap Obligation designated as an "Excluded Swap Obligation" of such Guarantor as specified in any agreement between the relevant Loan Parties and Hedge Provider applicable to such Swap Obligations. If a Swap Obligation arises under a master agreement governing more than one Swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swaps for which such guaranty or security interest is or becomes excluded in accordance with the first sentence of this definition.

"Fair Market Value" means with respect to any asset or group of assets on any date of determination, the value of the consideration obtainable in a sale of such asset at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm's length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset.

"FCPA" means the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions

with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Agent from three Federal funds brokers of recognized standing selected by it (and, if any such rate is below zero, then the rate determined pursuant to this definition shall be deemed to be zero).

"Fee Letter" means that certain fee letter, dated as of November 26, 2019, between Borrowers and Agent.

"Final Order" means an order or judgment as entered on the docket of the Bankruptcy Court with respect to the Cases substantially in the form of the Interim Order, with only such modifications as are satisfactory in form and substance to the Agent, which order shall have been entered on such prior notice to such parties as may be satisfactory to the Agent, which order shall not have been (i) vacated, reversed, enjoined or stayed or (ii) modified or amended without the consent of the Agent in its sole discretion.

"Final Order Entry Date" means the date on which the Final Order is entered by the Bankruptcy Court.

"First Day Orders" has the meaning specified in Section 5.13(g).

"Flood Laws" means the National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973, and related laws, rules and regulations, including any amendments or successor provisions.

"Foreclosed Borrower" has the meaning specified therefor in Section 2.15(k) of the Agreement.

"Foreign Currency" means any currency other than the Dollar.

"Foreign Subsidiary" means each Subsidiary of Holdings that is not a Domestic Subsidiary.

"Funding Date" means the date on which a Borrowing occurs.

"Funding Losses" has the meaning specified therefor in Section 2.12(b)(ii) of the Agreement.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States, consistently applied.

"Governing Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation, and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction), (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement, (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and (d) with respect to an unlimited company, the memorandum of association and articles of association, and, if applicable, any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Governmental Authority" means any federal, state, provincial, local, or other governmental or administrative body, instrumentality, board, department, or agency or any court (including the Bankruptcy Court and the CCAA Court), tribunal, administrative hearing body, arbitration panel, commission, or other similar dispute-resolving panel or body.

"Guarantors" means (a) Holdings, (b) BB Parent, (c) BB Holdings, (d) Canadian Holdco, (e) Clover Leaf Seafood, (f) each other Subsidiary of Holdings (other than the Borrower and Excluded Subsidiaries) on the Closing Date, and (g) each other Person that becomes a guarantor after the Closing Date pursuant to Section 5.11 of the Agreement, and "Guarantor" means any one of them.

"Guaranty" means the General Continuing Guaranty, dated as of the date hereof, executed and delivered by each Guarantor in favor of Agent, for the benefit of the Secured Parties, as amended, restated, supplemented, or otherwise modified from time to time.

"Hazardous Materials" means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations relating to the protection of the environment as "hazardous substances", "hazardous materials", "hazardous wastes", "toxic substances", or words of similar import, (b) oil, petroleum, or petroleum derived substances, (c) any flammable substances or explosives or any radioactive materials and (d) asbestos and polychlorinated biphenyls.

"Hedge Agreement" means a "swap agreement" as the term is defined in Section 101(53B)(A) of the Bankruptcy Code.

"Hedge Obligations" means U.S. Hedge Obligations or Canadian Hedge Obligations, as the context requires.

"Hedge Provider" means Wells Fargo, any Lender, or any of their respective Affiliates; provided, however, that no such Person (other than Wells Fargo or its Affiliates) shall constitute a Hedge Provider unless and until Agent shall have received a Bank Product Provider Letter Agreement from such Person and with respect to the applicable Hedge Agreement.

"Historical Financial Statement" means (a) the audited consolidated balance sheets and statements of operations, partnership (or unitholders) equity and cash flows, in each case, including notes thereto, of Holdings and its Subsidiaries (including Borrowers), for the fiscal year ending December 31, 2018, and (b) the unaudited consolidated balance sheets and statements of operations, partnership (or unitholders) equity and cash flows, in each case, including notes thereto, of Holdings and its Subsidiaries (including Borrowers), for the fiscal quarter ending June 29, 2019.

"Holding Company" means Holdings, Canadian Holdco, BB Parent, BB Holdings, Clover Leaf Seafood, and each other Subsidiary of Holdings that is a holding company and which (i) does not own or operate any operating assets and (ii) is a parent of Canadian Borrower or the U.S. Borrower.

"Holdings" has the meaning specified therefor in the preamble to the Agreement.

"Holdout Lender" has the meaning specified therefor in Section 14.2(a) of the Agreement.

"Hypothecary Representative" has the meaning specified therefor in Section 15.1 of the Agreement.

"Increased Cost Lender" has the meaning specified therefor in Section 14.2(a) of the Agreement.

"Indebtedness" as to any Person means (a) all obligations of such Person for borrowed money, (b) all obligations evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, or other similar financial products issued or created by or for the account of such Person, (c) all Capital Lease Obligations of such Person, (d) all obligations or liabilities of others secured by a Lien on any asset of a Person or its Subsidiaries, irrespective of whether such obligation or liability is assumed, (e) all obligations of such Person to pay the deferred purchase price of assets (other than trade payables incurred in the ordinary course of business but including any earn-out obligation upon such obligation becoming a liability on the balance sheet of such Person in accordance with GAAP), (f) all obligations of such Person owing under Hedge Agreements (which amount shall be calculated based on the amount that would be payable by such Person if the Hedge Agreement were terminated on the date of determination), (g) Prohibited Preferred Stock issued by any Loan Party to a Person that is not a Loan Party, and (h) any obligation of such Person guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (g) above. For purposes of this definition, (i) the amount of any Indebtedness represented by a guaranty or other similar instrument shall be the lesser of the principal amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Indebtedness, and (ii) the amount of any Indebtedness described in clause (d) above shall be the lower of the amount of the obligation still outstanding and the Fair Market Value of the assets securing such obligation; provided that Indebtedness shall not include (i) customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or Disposition of assets permitted under the Agreement, (ii) prepaid or deferred revenue arising in the ordinary course of business, (iii) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase price of an asset to satisfy warrants or other unperformed obligations of the seller of such asset (iv) all intercompany Indebtedness of Holdings and its Subsidiaries having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business consistent with past practice and (v) liabilities in respect of operating leases under Accounting Standard Codification 842.

"Indemnified Liabilities" has the meaning specified therefor in Section 10.3 of the Agreement.

"Indemnified Person" has the meaning specified therefor in Section 10.3 of the Agreement.

"Initial Orders" has the meaning specified in Section 5.13(g).

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code, the BIA, the CCAA, the Winding-Up and Restructuring Act (Canada), or under any other state, provincial or federal bankruptcy or insolvency law, each as now and hereafter in effect, any successors to such statutes, and any similar laws in any jurisdiction including, without limitation, any laws relating to bankruptcy (*faillite*), insolvency, liquidation, assignments for the benefit of creditors, formal or informal moratoria, reprieve from payment (*sursis de paiement*), controlled management (*gestation contrôlée*), compositions, extensions generally with creditors, receivership proceedings (whether court or privately appointed), interim receivership proceedings, or proceedings seeking reorganization, liquidation, winding-up, arrangement or other similar relief, including any proceeding for the compromise or arrangement of creditor claims pursuant to the arrangement or reorganization provisions of any corporate statutes, and any law permitting a debtor to obtain a stay or a compromise of the claims of its creditors or affecting the rights of creditors generally.

"Inspection Notice Event" means at any time when Adjusted Excess Availability is less than 20% of the Aggregate Availability.

"Intellectual Property" means (a) Intellectual Property and Intellectual Property Licenses, as each such term is defined in the U.S. Security Agreement, and (b) Intellectual Property and Intellectual Property Licenses, as each such term is defined in the Canadian Security Agreement.

"Intercompany Subordination Agreement" means the Intercompany Subordination Agreement, dated as of the Closing Date.

"Interest Period" means, with respect to each LIBOR Rate Loan, a period commencing on the date of the making of such LIBOR Rate Loan (or the continuation of a LIBOR Rate Loan or the conversion of a Base Rate Loan to a LIBOR Rate Loan) and ending 30 days thereafter; provided, however, that (a) if any Interest Period would end on a day that is not a Business Day, such Interest Period shall be extended (subject to clauses (c)-(e) below) to the next succeeding Business Day, (b) interest shall accrue at the applicable rate based upon the LIBOR Rate from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (c) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another month, in which case such Interest Period shall end on the next preceding Business Day, (d) with respect to an Interest Period that begins on the last Business Day of a month (or on a day for which there is no numerically corresponding day in the month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the month that is 30 days after the date on which the Interest Period began, as applicable, and (e) Borrower may not elect an Interest Period which will end after the Maturity Date.

"Interim Order" means the order or judgment of the Bankruptcy Court as entered on the docket of the Bankruptcy Court with respect to the Cases substantially in the form of Exhibit I-2 and otherwise acceptable to the Agent approving, inter alia, this Agreement and the other Loan Documents and (a) authorizing the incurrence by the Borrowers of interim secured indebtedness in accordance with this Agreement, (b) providing for the lifting of the automatic stay (to the extent applicable) arising under section 362 of the Bankruptcy Code to enable the Agent or any Lender to effectuate, among other things, their respective rights and remedies under Section 9 and the other Loan Documents, and (c) subject to the terms thereof, approving the payment by the Borrowers of the fees and other amounts contemplated by this Agreement, which order shall not have been (i) vacated, reversed, enjoined or stayed or (ii) modified or amended without the consent of the Agent in its sole discretion.

"Interim Order Period" means the period from the time at which the Bankruptcy Court enters the Interim Order until the time at which the Bankruptcy Court enters the Final Order.

"International Export Business" means the assets held with respect to the international sales division of Canadian Borrower doing business as Bumble Bee Seafoods International.

"Inventory" means inventory (as that term is defined in the Code).

"Investment" means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances, capital contributions (excluding (a) commission, travel, and similar advances to officers and employees of such Person made in the ordinary course of business, and (b) *bona fide* Accounts arising in the ordinary course of business consistent with past practice), or acquisitions of Indebtedness, Stock, or assets of such other Person (or of any division or business line of such other Person), and for purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investments.

"IRC" means the Internal Revenue Code of 1986, as amended and as in effect from time to time.

"ISP" means, with respect to any Letter of Credit, the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any version or revision thereof accepted by the applicable Issuing Lender for use.

"Issuer Document" means, with respect to any Letter of Credit, a letter of credit application, a letter of credit agreement, or any other document, agreement or instrument entered into (or to be entered into) by Borrower in favor of Issuing Lender or Underlying Issuer and relating to such Letter of Credit.

"Issuing Lender" means the U.S. Issuing Lender or the Canadian Issuing Lender.

"Lender" and "Lenders" have the respective meanings set forth in the preamble to the Agreement, and shall include any other Person made a party to the Agreement in accordance with the provisions of Section 13.1 of the Agreement.

"Lender Group" means, individually and collectively, each of the Lenders (including each Issuing Lender and each Swing Lender) and each of the Agent.

"Lender Group Expenses" means (a) the Agent's reasonable and documented or invoiced out of pocket (except as described in clause (6) below) costs and expenses (including (i) the expenses with respect to due diligence investigation, (ii) consultants' fees (including the fees of financial advisors to the Agent), (iii) syndication expenses, (iv) travel expenses, (v) reasonable and documented out of pocket expenses (except as described in clause (6) below) related to commercial finance field audit examinations and inventory appraisals of the Collateral (limited to the extent set forth in Section 5.7 and as described in clause (6) below) and (vi) reasonable fees, disbursements and other charges of one single firm of outside counsel to all Agent and of single firm of local counsel to all Agent in each applicable jurisdiction (which may include one special counsel acting in multiple jurisdictions), and any other counsel retained with Borrowers' consent (which consent shall not be unreasonably withheld, conditioned or delayed)) incurred in connection with the preparation, negotiation, execution, delivery, administration, amendment, modification, waiver. and enforcement of the Loan Documents and any security arrangements in connection therewith and subsequent amendments, modifications or waivers thereto, and (b) the Lenders (including any Issuing Lender's) reasonable and documented or invoiced out of pocket costs and expenses (including the reasonable fees, disbursements and other charges of a single firm of outside counsel for all Lenders and a single firm of local counsel for all Lenders in each applicable jurisdiction (which may include one special counsel acting in multiple jurisdictions), and any other counsel retained with Borrowers' consent (which consent shall not be unreasonably withheld, conditioned or delayed)) incurred in connection with the enforcement of the Loan Documents and any security arrangements in connection therewith. Out of pocket costs and expenses may include reasonable and documented out of pocket (1) fees or charges for photocopying, notarization, couriers and messengers, public record searches (including tax lien, litigation, and UCC searches and including searches with the United States Patent and Trademark Office or the United States Copyright Office, and all similar searches and inquiries conducted in Canada), filing, recording, publication, real estate surveys, real estate title policies and endorsements and environmental audits, (2) after the occurrence and during the continuance of an Event of Default, costs or expenses in respect of taxes, and insurance premiums required to be paid by a Loan Party or its Subsidiaries under any of the Loan Documents that are paid, advanced, or incurred by the Agent, (3) costs and expenses incurred by Agent in the disbursement of funds to Borrowers or other members of the Lender Group (by wire transfer or otherwise), (4) charges paid or incurred by Agent resulting from the dishonor of checks payable by or to any Loan Party, (5) costs and expenses paid or incurred by the Agent to correct any Default or Event of Default or enforce any provision of the Loan Documents after any Event of Default, or during the

continuance of an Event of Default, in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated and (6) a fee of $1,000 per day, per auditor, for each financial audit of Borrowers performed by personnel employed by the Agent.

"Lender Group Representatives" has the meaning specified therefor in Section 17.9 of the Agreement.

"Lender-Related Person" means, with respect to any Lender, such Lender, together with such Lender's Affiliates, officers, directors, employees, advisors, agents, controlling persons and other representatives and their respective successors.

"Letter of Credit" means a U.S. Letter of Credit or a Canadian Letter of Credit, as applicable.

"Letter of Credit Collateralization" means (a) with respect to U.S. Letters of Credit, either (i) providing cash collateral (pursuant to documentation reasonably satisfactory to Agent, including provisions that specify that the U.S. Letter of Credit fee set forth in the Agreement will continue to accrue while the U.S. Letters of Credit are outstanding) to be held by Agent for the benefit of those Lenders with a U.S. Revolver Commitment in an amount equal to 103% of the then existing U.S. Letter of Credit Usage, (ii) causing the U.S. Underlying Letters of Credit to be returned to the U.S. Issuing Lender, or (iii) providing Agent with a standby letter of credit, in form and substance reasonably satisfactory to Agent, from a commercial bank reasonably acceptable to Agent (in its sole discretion) in an equal to 103% of the then existing U.S. Letter of Credit Usage (it being understood that the U.S. Letter of Credit fee set forth in the Agreement will continue to accrue while the U.S. Letters of Credit are outstanding and that any such fee that accrues must be an amount that can be drawn under any such standby letter of credit), and (b) with respect to Canadian Letters of Credit, either (i) providing cash collateral (pursuant to documentation reasonably satisfactory to Agent, including provisions that specify that the Canadian Letter of Credit fee set forth in the Agreement will continue to accrue while the Canadian Letters of Credit are outstanding) to be held by Agent for the benefit of those Lenders with a Canadian Revolver Commitment in an amount equal to 103% of the then existing Canadian Letter of Credit Usage, (ii) causing the Canadian Underlying Letters of Credit to be returned to the Canadian Issuing Lender, or (iii) providing Agent with a standby letter of credit, in form and substance reasonably satisfactory to Agent, from a commercial bank reasonably acceptable to the Agent (in its sole discretion) in an equal to 103% of the then existing Canadian Letter of Credit Usage (it being understood that the Canadian Letter of Credit fee set forth in the Agreement will continue to accrue while the Canadian Letters of Credit are outstanding and that any such fee that accrues must be an amount that can be drawn under any such standby letter of credit).

"Letter of Credit Disbursement" means a payment made by an Issuing Lender pursuant to a Letter of Credit.

"Letter of Credit Exposure" means, with respect to any Lender, at any time, the sum of (without duplication) (a) such Lender's Pro Rata Share of the U.S. Letter of Credit Exposure or the Canadian Letter of Credit Exposure, as the context requires.

"Letter of Credit Indemnified Costs" has the meaning specified therefor in Section 2.11 of this Agreement.

"Letter of Credit" means a U.S. Letter of Credit or a Canadian Letter of Credit, as the context requires.

"Letter of Credit Related Person" has the meaning specified therefor in Section 2.11(j) of this Agreement.

"Letter of Credit Usage" means the sum of (a) U.S. Letter of Credit Usage plus (b) Canadian Letter of Credit Usage.

"Letters of Credit Outstanding" means the sum of the U.S. Letters of Credit Outstanding and the Canadian Letters of Credit Outstanding.

"LIBOR Deadline" has the meaning specified therefor in Section 2.12(b)(i) of the Agreement.

"LIBOR Notice" means a written notice substantially in the form of Exhibit L-1 or such other form as shall be reasonably acceptable to the Agent.

"LIBOR Option" has the meaning specified therefor in Section 2.12(a) of the Agreement.

"LIBOR Rate" means, for each Interest Period for each LIBOR Rate Loan, the rate per annum determined by Agent by *dividing* (a) the Base LIBOR Rate for such Interest Period, by (b) 100% *minus* the Reserve Percentage (if any).

"LIBOR Rate Loan" means each portion of an Advance that bears interest at a rate determined by reference to the LIBOR Rate.

"LIBOR Rate Margin" means 4.50%.

"Lien" means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, hypothec, assignment (which is intended as security), deposit arrangement (which is intended as security), charge, security interest, preference, priority, encumbrance or right of setoff, off-set or recoupment of any kind in respect of such asset, whether or not filed, recorded, registered, published or otherwise perfected or rendered opposable under Applicable Law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest or hypothec and any filing of or agreement to give any financing statement under the Code; provided that in no event shall an operating lease be deemed to constitute a Lien.

"Loan Account" means the Canadian Loan Account or the U.S. Loan Account, as the context requires.

"Loan Documents" means the Agreement, any Borrowing Base Certificate, the Canadian Security Documents, the Control Agreements, the Copyright Security Agreement, the Fee Letter, the Guaranty, the Intercompany Subordination Agreement, the DIP Intercreditor Agreement, the Letters of Credit, the Patent Security Agreement, the U.S. Security Agreement, the Trademark Security Agreement, the Luxembourg Security Documents, any other Security Document, any other pledge agreements executed in connection with the Agreement, any note or notes executed by a Borrower in connection with the Agreement and payable to any member of the Lender Group, any letter of credit application entered into by any Borrower in connection with the Agreement, and any other agreement entered into, now or in the future, by a Loan Party and any member of the Lender Group in connection with the Agreement, to the extent that such agreement provides that it shall constitute a Loan Document under the Agreement.

"Loan Parties" means Canadian Borrower, U.S. Borrower and each Guarantor, and "Loan Party" means any one of them.

"Luxembourg Security Documents" means such pledge agreements and other security documents, including but not limited to *hypothèque*, *nantissement*, *gage*, *privilège*, *sûreté réelle*, *droit de rétention* and any type of real security (*sûreté réelle*) or agreement or arrangement having a similar effect and any transfer of title by way of security, required to be delivered pursuant to the Agreement, which in each case are governed by the laws of Luxembourg and which are otherwise in form and substance reasonably satisfactory to Agent.

"Margin Stock" as defined in Regulation U of the Board as in effect from time to time.

"Material Adverse Effect" means (a) a material adverse effect in the business, operations, results of operations, assets, liabilities or condition (financial or otherwise) of the Loan Parties and their Subsidiaries, taken as a whole, in each case, except as a result of the entrance of the DOJ Settlement (but, for the avoidance of doubt, not any civil claims that may be associated therewith) or the commencement of the Cases or the CCAA Cases, or (b) a material impairment of the ability of the Loan Parties, taken as a whole, to perform the payment obligations under the Loan Documents to which they are parties or of the Lender Group's ability to enforce the Obligations or realize upon the Collateral.

"Maturity Date" means, with respect to the Revolver Commitments, the earliest of (a) May 26, 2020; (b) the date of termination of Revolver Commitments during the continuance of an Event of Default, (c) the closing date of a sale pursuant to Section 363 or 1129 of the Bankruptcy Code or section 36 of the CCAA of all or substantially all of the Loan Parties' ABL Priority Collateral, (d) the effective date of a confirmed Chapter 11 plan for the Loan Parties or any plan of compromise or arrangement of any CCAA Debtor under the CCAA or any other Canadian Bankruptcy and Insolvency Law, (e) the date that is thirty-five (35) days after the Petition Date (or such later date as may be agreed by the Required Lenders), unless both the Final Order Entry Date and the CCAA A&R Initial Order Date has occurred on or prior to such date and (f) the date on which all obligations outstanding under this Agreement are paid in full (including, without limitation, cash collateralization of Letters of Credit but excluding contingent obligations not due and owing) and the commitments under this Agreement have terminated.

"Maximum Canadian Revolver Amount" means $40,000,000 decreased by the amount of reductions in the Canadian Total Revolver Commitment made in accordance with Section 2.4(c) of this Agreement.

"Maximum U.S. Revolver Amount" means $160,000,000, decreased by the amount of reductions in the U.S. Total Revolver Commitment made in accordance with Section 2.4(c) of this Agreement.

"Minority Investment" means any Person (other than a Subsidiary) in which Holdings or any Subsidiary owns Stock.

"Moody's" has the meaning specified therefor in the definition of Cash Equivalents.

"Multiemployer Plan" means a "multiemployer plan" as defined in Section 3(37) or 4001(a)(3) of ERISA to which any Loan Party or any ERISA Affiliate is making, or is accruing an obligation to make, or has made, or has accrued an obligation to make, contributions within the preceding six (6) years or has any liability, contingent or otherwise.

"Net Cash Proceeds" means, with respect to any sale, transfer or other Disposition of assets, any Recovery Event, any incurrence or issuance of Indebtedness or any issuance of Stock (each, a "Proceeds Event"), (a) the gross cash proceeds (including payments from time to time in respect of installment

obligations, if applicable) received by or on behalf of a Loan Party or any of its Subsidiaries in respect of such Proceeds Event, less (b) the sum of:

(i) the amount, if any, of all taxes paid or estimated to be payable by Holdings, or any of the Subsidiaries in connection with such Proceeds Event (including withholding taxes imposed on the repatriation of any such proceeds),

(ii) the amount of any reasonable reserve established in accordance with GAAP against any liabilities (other than any taxes deducted pursuant to clause (i) above) (x) associated with the assets that are the subject of such Proceeds Event and (y) retained by Holdings or any of the Subsidiaries including any pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction; provided that the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Cash Proceeds of such Proceeds Event occurring on the date of such reduction,

(iii) in the case of any Proceeds Event constituting a sale, transfer or Disposition of assets or a Recovery Event by any non-wholly owned Subsidiary, the pro rata portion of the net cash proceeds thereof (calculated without regard to this clause (iii)) attributable to minority interests and not available for distribution to or for the account of Holdings or a wholly owned Subsidiary as a result thereof,

(iv) the amount of any Indebtedness secured by any Permitted Lien on such asset (other than (A) Indebtedness owing to Agent or any Lender under the Agreement or the other Loan Documents, (B) Indebtedness assumed by the purchaser of such asset and (C) DIP Term Loan Indebtedness and Term Loan Indebtedness) which is required to be, and is, repaid in connection with such Proceeds Event, and

(v) reasonable and customary fees, commissions, expenses (including attorney's fees, investment banking fees, survey costs, title insurance premiums and recording charges, transfer taxes, deed or mortgage recording taxes and other customary expenses and brokerage, consultant and other customary fees, in each case, to the extent paid in cash), issuance costs, discounts and other costs paid by Holdings or any of the Subsidiaries, as applicable, in connection with such Proceeds Event (other than those payable to Holdings or any Subsidiary), in each case only to the extent not already deducted in arriving at the amount referred to in clause (a) above.

"Net Income" means, with respect to any Person, the net income (loss) attributable to such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

"Net Liquidation Percentage" means the percentage of the book value of a Borrower's Eligible Inventory that is estimated to be recoverable in an orderly liquidation of such Inventory net of all associated costs and expenses of such liquidation, such percentage to be as determined from time to time by an appraisal company selected by Agent.

"Non-Defaulting Lender" means each Lender that is not a Defaulting Lender.

"Non-Ordinary Course Asset Disposition" mean any sale, transfer or other Disposition outside the ordinary course of business by one or more Loan Parties of ABL Priority Collateral (including, without limitation, the 363 Sale).

"Obligations" means (a) all loans, Advances (inclusive of Protective Advances and Swing Loans), debts, principal, interest (including any interest that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), reimbursement or indemnification obligations with respect to Reimbursement Undertakings or with respect to Letters of Credit (irrespective of whether contingent), premiums, liabilities (including all amounts charged to a Loan Account to the extent permitted pursuant to the Agreement), obligations (including indemnification obligations), fees (including the fees provided for in the Fee Letter), Lender Group Expenses (including any fees or expenses that accrue after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), guaranties, covenants, and duties of any kind and description owing by any Loan Party pursuant to or evidenced by the Agreement or any other Loan Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all interest not paid when due and all other expenses or other amounts that any Borrower is required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents, (b) all debts, liabilities, or obligations (including reimbursement obligations, irrespective of whether contingent) owing by any Borrower or any other Loan Party to an Underlying Issuer now or hereafter arising from or in respect of any Underlying Letters of Credit, and (c) all Bank Product Obligations. Any reference in the Agreement or in the Loan Documents to the Obligations shall include all or any portion thereof and any extensions, increases, modifications, renewals, or alterations thereof, both prior and subsequent to any Insolvency Proceeding. Notwithstanding the foregoing, (i) the obligations of a Loan Party or any Subsidiary thereof under any Bank Product Agreement shall be secured and guaranteed pursuant to the Security Documents and the Guaranty only to the extent that, and for so long as, the other Obligations are so secured and guaranteed and (ii) any release of Collateral or Guarantors effected in the manner permitted by the Agreement and the other Loan Documents shall not require the consent of the holders of the Bank Product Obligations.

"OFAC" means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

"Orders" means, collectively, the CCAA Orders, the Interim Order and the Final Order.

"Originating Lender" has the meaning specified therefor in Section 13.1(e) of the Agreement.

"Other Asset Sale" means any Asset Sale (as such term is defined in the DIP Term Loan Credit Agreement as in effect on the Closing Date).

"Other DOJ Individuals" means those individual directors, officers, or employees of U.S. Borrower identified in a letter from U.S. Borrower to Agent dated March 7, 2017.

"Other DOJ Matter" means any criminal charge against any of the Other DOJ Individuals alleging that prior to the DOJ Settlement Date such Other DOJ Individual participated in a combination or conspiracy to suppress and eliminate competition in the pricing of packaged seafood sold in the United States in violation of the Sherman Antitrust Act, 15 U.S. C. § 1.

"Other Payment" means payments that are due or otherwise required to be made (whether or not then due and payable) by Holdings or any of its Subsidiaries (or that Holdings or any of its Subsidiaries is obligated to pay or reimburse any other person for whether by applicable law, contract, or otherwise) under any other judgment, settlement, or order (other than the DOJ Settlement) in each case, in any way arising from or related to, directly or indirectly, the facts, circumstances, acts, or omissions involved in or related to the allegations underlying or related to the Civil Antitrust Claims.

"Other Recovery Event" means any Recovery Event (as such term is defined in the DIP Term Loan Credit Agreement in effect on the Closing Date).

"Overadvance" means any Advance if, after giving effect to such Advance, the aggregate Revolver Usage is greater than the limitations set forth in Section 2.1, Section 2.2 or Section 2.11, as applicable.

"Overadvance Amount" means the U.S. Overadvance Amount or the Canadian Overadvance amount, as the context requires.

"Parallel Debt" has the meaning specified therefor in Section 15.18(a) of the Agreement.

"Participant" has the meaning specified therefor in Section 13.1(e) of the Agreement.

"Patent Security Agreement" has the meaning specified therefor in the U.S. Security Agreement.

"Patents" has the meaning specified therefor in the U.S. Security Agreement.

"Patriot Act" has the meaning specified therefor in Section 4.18 of the Agreement.

"Payoff Date" has the meaning specified therefor in Section 17.16(b) of the Agreement.

"PBGC" means the Pension Benefit Guaranty Corporation or any successor agency.

"Pension Plan" means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to the provisions of Title IV of ERISA or Section 412 or 430 of the Code (a) that is maintained for employees of any Loan Party or any ERISA Affiliate, (b) that has at any time within the preceding six (6) years been maintained for the employees of any Loan Party or any current or former ERISA Affiliate, (c) to which any Loan Party or any ERISA Affiliate makes contributions or is required to make contributions, (d) to which any Loan Party or any ERISA Affiliate has made or has been required to make contributions at any time within the preceding six (6) years or (e) to which any Loan Party to any ERISA Affiliate has, or has had at any time within the preceding six (6) years, any liability, contingent or otherwise.

"Perfection Certificate" means a certificate of the Borrowers and Guarantors in the form reasonably acceptable to the Agent.

"Permitted Discretion" means a determination made by the Agent in the exercise of reasonable (from the perspective of an asset-based lender) business judgment in good faith in accordance with customary business practices for asset-based lending transactions.

"Permitted Dispositions" means:

(a) sales, abandonment, or other dispositions of assets that are obsolete, worn, damaged, used or surplus in the ordinary course of business,

(b) sales of Inventory and other Dispositions of immaterial assets (including abandoning any registrations or applications of any Intellectual Property), in either case in the ordinary course of business,

(c) the use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of the Agreement or the other Loan Documents,

(d) non-exclusive licenses, sublicenses or cross-licenses to Intellectual Property, or exclusive, territorial, sublicenses or cross-licenses to Intellectual Property, in each case, granted in the ordinary course of business or that are not material to the business,

(e) the granting of Permitted Liens,

(f) the sale or discount, in each case without recourse, of Accounts arising in the ordinary course of business, but only in connection with the compromise or collection thereof; provided, however, that this clause (f) shall not permit the factoring or securitization of Accounts,

(g) any involuntary loss, damage or destruction of property, including any Recovery Event,

(h) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property, including any Recovery Event,

(i) the leasing, subleasing, licensing or sublicensing of assets (other than Intellectual Property) of a Loan Party or its Subsidiaries in the ordinary course of business,

(j) [intentionally omitted],

(k) Dispositions to a Loan Party or to a Subsidiary thereof; provided that if the transferor of such property is a Loan Party (i) the transferee thereof must either be a Loan Party or (ii) such transaction is permitted under Section 6.11 of the Agreement,

(l) a 363 Sale,

(m) so long as (i) no Default or Event of Default has occurred and is continuing or would result therefrom, (ii) the aggregate consideration therefor does not exceed $500,000 in the aggregate, Dispositions of assets not otherwise permitted by this definition for the Fair Market Value thereof and 100% cash consideration,

(n) Transactions permitted by Sections 6.3, 6.7 or 6.9 of the Agreement,

(o) [intentionally omitted],

(p) the unwinding of any Hedge Agreement,

(q) Dispositions of any asset between or among the Loan Parties or its Subsidiaries as a substantially concurrent interim Disposition in connection with a Disposition otherwise permitted pursuant to clauses (a) through (p) above.

"Permitted Expenditures Variances" has the meaning set forth in Section 5.14(b)(i).

"Permitted Holders" means the Equity Sponsor and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which the foregoing is a member; provided, that, in the case of such group and without giving effect to the existence of such group or any other group, such Equity Sponsor has beneficial ownership of more than 50% of the total voting power of the Voting Stock of Holdings or any direct or indirect parent thereof.

"Permitted Indebtedness" means, without duplication:

(a) Indebtedness evidenced by the Agreement and the other Loan Documents, or the Pre-Petition Credit Agreement or other Loan Document (as defined in the Pre-Petition Credit Agreement), together with Indebtedness owed to Underlying Issuers with respect to Underlying Letters of Credit as well as the Indebtedness owed to Bank Product Providers in respect of Bank Products,

(b) Indebtedness incurred prior to the Petition Date as set forth on Schedule P-5,

(c) Permitted Purchase Money Indebtedness and any Refinancing Indebtedness in respect of such Indebtedness,

(d) endorsement of instruments or other payment items for deposit,

(e) Indebtedness consisting of (i) guarantees incurred in the ordinary course of business with respect to surety and appeal bonds, performance bonds, bid bonds, performance and completion guarantees and similar obligations; (ii) guarantees arising with respect to customary indemnification obligations to purchasers in connection with Permitted Dispositions; (iii) guarantees with respect to Indebtedness of a Loan Party or one of its Subsidiaries, to the extent that the Person that is obligated under such guaranty could have incurred such underlying Indebtedness; (iv) guarantees incurred in the ordinary course of business in respect of obligations to suppliers, customers, franchisees, lessors and licensees and (v) bankers' acceptances, bank guarantees, letter of credit, warehouse receipt or similar facilities entered into in the ordinary course of business (including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance),

(f) Indebtedness incurred in accordance with the Orders,

(g) DIP Term Loan Indebtedness and Term Loan Indebtedness in an aggregate outstanding principal amount not exceeding the amount permitted under the DIP Intercreditor Agreement,

(h) Indebtedness incurred in the ordinary course of business under surety and performance bonds, bid bonds, appeal bonds, performance and completion guarantees and similar obligations and not in connection with the borrowing of money,

(i) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to a Loan Party or any of its Subsidiaries, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such year,

(j) to the extent incurred prior to the Petition Date and outstanding as of the Closing Date or thereafter, the incurrence by a Loan Party or its Subsidiaries of Indebtedness under Hedge Agreements that are incurred for the bona fide purpose of hedging the interest rate, commodity or foreign currency risk associated with a Loan Party's or its Subsidiaries' operations and not for speculative purposes,

(k) Indebtedness incurred in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards"), or Cash Management Services, in each case, incurred in the ordinary course of business,

(l) Indebtedness incurred in respect of netting services, overdraft protection, and other like services, in each case, incurred in the ordinary course of business,

(m) to the extent incurred prior to the Petition Date and outstanding as of the Closing Date or thereafter, Indebtedness of a Loan Party owing to current or former employees, officers, managers or directors (or any spouses, ex-spouses, successors, executors, administrators, heirs, legatees, distributees or estates of any of the foregoing) incurred in connection with the purchase or repurchase by a Loan Party of the Stock of such Loan Party (or any direct or indirect parent thereof) that has been issued to such Persons,

(n) Indebtedness of (i) a Loan Party owing to a Loan Party or any Subsidiary; provided that (x) no such Indebtedness owing by Borrower or a U.S. Guarantor to any other Loan Party shall constitute Permitted Indebtedness pursuant to this clause (n), and (y) any such Indebtedness shall be subject to the Intercompany Subordination Agreement, (ii) any Subsidiary that is not a Loan Party owing to any other Subsidiary that is not a Loan Party and (iii) to the extent permitted by Section 6.11 of the Agreement, any Subsidiary that is not a Loan Party owing to a Loan Party,

(o) Indebtedness composing Permitted Investments,

(p) (i) Indebtedness in respect of obligations of the Loan Parties or any Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms in the ordinary course of business and not in connection with the borrowing of money and (ii) unsecured Indebtedness in respect of intercompany obligations of the Loan Parties or any Subsidiary in respect of accounts payable incurred in connection with goods sold or services rendered in the ordinary course of business and not in connection with the borrowing of money,

(q) to the extent incurred prior to the Petition Date and outstanding as of the Closing Date, (i) unsecured Indebtedness representing deferred compensation to employees, consultants or independent contractors of Holdings (or any direct or indirect parent thereof) and the Subsidiaries incurred in the ordinary course of business and (ii) Indebtedness consisting of obligations of Holdings (or any direct or indirect parent thereof), or the Subsidiaries under deferred compensation to their employees, consultants or independent contractors or other similar arrangements incurred by such Persons in connection with the Transactions,

(r) Indebtedness arising from agreements of Holdings or any Subsidiary providing for indemnification, adjustment of purchase price, or similar obligations, in each case entered into in connection with the Disposition of any business, assets or Stock permitted hereunder; provided that (i) such Indebtedness is not reflected on the balance sheet of Holdings or any Subsidiary (contingent obligations referred to in a footnote to financial statements and not otherwise reflected on the balance sheet will not be deemed to be reflected on such balance sheet for purposes of this clause (i)) and (ii) the maximum assumable liability in respect of all such Indebtedness shall at no time exceed the gross proceeds, including non-cash proceeds (the fair market value of such non-cash proceeds being measured at the time received and without giving effect to any subsequent changes in value) actually received by Holdings and the Subsidiaries in connection with such disposition

(s) [intentionally omitted],

(t) [intentionally omitted],

(u) [intentionally omitted],

(v) Indebtedness not otherwise permitted in clauses (a) through (u) above that is incurred by Holdings or any of its Subsidiaries in an aggregate principal amount not to exceed $500,000; provided, however, that such Indebtedness is not secured by a Lien that encumbers all or any portion of the ABL Priority Collateral, and

(w) all customary premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in each of the clauses (a) through (v).

"Permitted Investments" means, without duplication, in each case, to the extent permitted by the Budget:

(a) extensions of trade credit, asset purchases (including purchases of inventory, supplies and materials), the lease of any asset and the licensing or contribution of Intellectual Property pursuant to joint marketing arrangements with other Persons, in each case in the ordinary course of business,

(b) to the extent provided for in the Budget, loans and advances to officers, managers, directors and employees of any Loan Party (or any direct or indirect parent thereof) or any of its Subsidiaries (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes (including employee payroll advances), (ii) in connection with such Person's purchase of Stock of Holdings (or any direct or indirect parent thereof) to the extent that the amount of such loans and advances are contributed to any Loan Party in cash and (iii) for purposes not described in the foregoing clauses (i) and (ii); provided that the aggregate principal amount outstanding under clauses (i), (ii) and (iii) shall not exceed $250,000 at any time,

(c) Investments in any Loan Party by another Loan Party; provided that (i) no such Investments by a Canadian Guarantor to Borrower or a U.S. Guarantor shall constitute a Permitted Investment pursuant to this clause (c) and (ii) Investments made pursuant to this clause (c) shall only be made between Loan Parties organized in Approved Jurisdictions,

(d) to the extent permitted by Section 6.9 and provided for in the Budget, distributions constituting loans and advances to any direct or indirect parent of any Loan Party; provided, however, that all such amounts shall constitute distributions under Section 6.9,

(e) [intentionally omitted],

(f) guarantee obligations of any Loan Party or Subsidiary of leases or of other obligations, in each case entered into in the ordinary course of business, so long as the underlying Indebtedness is permitted under the Agreement,

(g) Investments in cash and constituting Cash Equivalents at the time such Investments are made,

(h) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business,

(i) advances made in connection with purchases of goods or services in the ordinary course of business,

(j) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the ordinary course of business or owing to any Loan Party or any of its Subsidiaries as a result of Insolvency Proceedings involving an Account Debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries,

(k) Investments owned or committed to be made by any Loan Party or any of its Subsidiaries on the Closing Date and set forth on Schedule P-2,

(l) guarantees permitted under the definition of Permitted Indebtedness,

(m) [intentionally omitted],

(n) to the extent provided for in the Budget, advances of payroll payments to employees, consultants or independent contractors or other advances of salaries or compensation to employees, consultants or independent contractors, in each case in the ordinary course of business,

(o) [intentionally omitted],

(p) [intentionally omitted],

(q) Stock or other securities acquired in connection with the satisfaction or enforcement of Indebtedness or claims due or owing to a Loan Party or its Subsidiaries (in bankruptcy of customers or suppliers or otherwise outside the ordinary course of business) or as security for any such Indebtedness or claims,

(r) deposits of cash made in the ordinary course of business to secure performance of operating leases,

(s) Investments constituting non-cash proceeds of Permitted Dispositions,

(t) Investments in Subsidiaries that are not Guarantors in an aggregate amount not to exceed $250,000; provided, that each such Investment in the form of an intercompany loan shall be subject to the subordination provisions contained in the Intercompany Subordination Agreement,

(u) any additional Investments, as valued at the Fair Market Value of such Investment at the time each such Investment is made, that do not exceed $500,000 in the aggregate; provided further than on the date of any such Investment and after giving effect thereto, no Default or Event of Default shall exist or shall have occurred and be continuing,

(v) Investments consisting of Permitted Indebtedness, fundamental changes permitted by Section 6.3 of the Agreement, Permitted Dispositions and Restricted Junior Payments permitted under Section 6.9 of the Agreement,

(w) Investments of a Loan Party to form a wholly owned Subsidiary so long as (i) such new Subsidiary becomes a Loan Party and a wholly owned, direct Subsidiary of a Loan Party, and (ii) the applicable Loan Party shall have complied with Section 5.11 and Section 5.12 of the Agreement, in each case after giving effect to such Investment, and (iii) such new Subsidiary does not make any other Investments that do not otherwise constitute Permitted Investments,

(x) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments

received in satisfaction or partial satisfaction thereof from financially troubled Account Debtors and other credits to suppliers in the ordinary course of business, and

(y) Investments in Hedge Agreements permitted by Section 6.1 of the Agreement.

"Permitted Liens" means the following:

(a) Liens granted to, or for the benefit of, Agent to secure the Obligations and the other Indebtedness described in clause (a) of the definition of Permitted Indebtedness, whether pursuant to the Loan Documents or the Orders,

(b) [intentionally omitted],

(c) Liens on the Collateral (or any other assets with respect to which the Agent has declined to be granted a Lien by the Loan Parties) held by DIP Term Loan Agent to secure the DIP Term Loan Indebtedness or the Term Loan Indebtedness, so long as such Liens on the Collateral are subject to the DIP Intercreditor Agreement,

(d) Liens for unpaid taxes, assessments, or other governmental charges or levies that either (i) are not yet delinquent, or (ii) as to which the underlying taxes, assessments, or charges or levies are the subject of Permitted Protests,

(e) judgment Liens arising solely as a result of the existence of judgments, orders, or awards that do not constitute an Event of Default under Section 8.3 of the Agreement,

(f) Liens on property and assets listed in any title insurance policy obtained in respect of any Real Property Collateral (as such term is defined in the DIP Term Loan Credit Agreement) or existing with respect to any Real Property on the Closing Date (including those listed on Schedule P-3); provided that (i) such Lien does not extend to any other property or asset of Holdings or any Subsidiary, other than after acquired property that is (A) affixed or incorporated into the property covered by such Lien or financed by Permitted Indebtedness and (B) proceeds and products thereof and (ii) to the extent applicable, such Lien shall secure only those obligations that it secures on the date of such title insurance report or the Closing Date and any Refinancing Indebtedness in respect thereof,

(g) leases, subleases, licenses or sublicenses (other than those in respect of Intellectual Property) which do not materially interfere with the ordinary conduct of the business of Holdings or any of the Subsidiaries and do not secure any Indebtedness,

(h) in respect of any interest as lessee, sublessee, licensee or sublicensee, any interest or title of a lessor, sublessor, licensor or sublicensor or secured by, or otherwise encumbering, a lessor's, sublessor's, licensor's or sublicensor's interest relating to any lease, sublease, license or sublicense (including any subordination of the interest of the lessee, sublessee or licensee under such lease, sublease, license or sublicense to any Liens in respect of the interest of the lessor, sublessor, licensor or sublicensor),

(i) Liens arising from precautionary Uniform Commercial Code (or equivalent statute, including the Personal Property Security Act) financing statement or similar filings made in respect of operating leases entered into by any Loan Party or any of its Subsidiaries,

(j) purchase money Liens or the interests of lessors under Capital Leases to the extent that such Liens or interests secure Permitted Purchase Money Indebtedness (including Capital Lease Obligations) and so long as (i) such Lien attaches only to the asset acquired, repaired, replaced,

constructed, expanded, improved or leased, accessions to such property and the proceeds thereof, and (ii) such Lien only secures the Indebtedness that was incurred to acquire, repair, replace, construct, expand, improve or lease such assets or any Refinancing Indebtedness in respect thereof; provided, however, that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by the same lender,

(k) Liens imposed by Applicable Law (i) in favor of landlords', carriers', warehousemen's and mechanics', materialmen's and repairmen's, contractors', supplier of materials, architects', in each case for sums not yet overdue for a period of more than 30 days or that are the subject of a Permitted Protest or (ii) with respect to Canadian Pension Plans, so long as the aggregate amount of the obligations secured thereby does not exceed $500,000,

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

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

(n) survey exceptions, encumbrances, ground leases, easements or reservations of, rights of others, licenses, rights-of-way, servitudes, including in respect of drains, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning, building code or other restrictions (including defects and irregularities in title and similar encumbrances) as to the use of real or immovable properties or Liens which were not incurred in connection with Indebtedness and which do not in the aggregate materially impair their use in the operation of the business of the Loan Parties taken as a whole,

(o) any agreements with any Governmental Authority, utility or third party that do not, in the aggregate, adversely effect in any material respect the use of any Real Property in the operation of the business of the Loan Parties taken as a whole,

(p) Liens on vehicles and equipment of Holdings or any Subsidiary granted in the ordinary course of business,

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

(r) non-exclusive licenses, sublicenses or cross-licenses to Intellectual Property, or exclusive, territorial, sublicenses or cross-licenses to Intellectual Property, in each case, granted in the ordinary course of business or that are not material to the business,

(s) [intentionally omitted],

(t) rights of setoff or bankers' liens upon deposits of cash in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of such deposit accounts in the ordinary course of business,

(u) Liens (i) of a collection bank arising under Section 4-210 of the Code on items in the course of collection (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business and (iii) in favor of a banking institution arising as a matter of law encumbering deposits (including the right to set off) and which are within the general parameters customary in the banking industry,

(v) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness,

(w) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods,

(x) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes,

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

(z) [intentionally omitted],

(aa) [intentionally omitted],

(bb) additional Liens of any Subsidiary of Holdings arising after the Closing Date and not otherwise permitted by this definition that do not secure obligations in excess of $500,000 in the aggregate for all such Liens at any time,

(cc) Liens on specific items of Inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or trade letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods,

(dd) any encumbrance or restriction (including put and call arrangements) with respect to Stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement,

(ee) Liens on the Collateral granted pursuant to the Interim Order or the CCAA Initial Order (and when entered, the Final Order or the CCAA A&R Order),

(ff) Liens arising out of conditional sale, title retention, consignment or similar arrangements with vendors for the sale or purchase of goods entered into by Holdings or any Subsidiary in the ordinary course of business,

(gg) ground leases or subleases, licenses or sublicenses in respect of real or immovable property on which facilities owned or leased by Holdings or any of its Subsidiaries are located,

(hh) the reservations, limitations, provisos and conditions expressed in any original grants of real or immovable property which does not materially impair the use of the affected land for the purpose used by the Loan Parties,

(ii) all rights of expropriation, access or use or other similar rights conferred by or reserved by any Governmental Authority,

(jj) any zoning or similar law or right reserved to, or vested in, any Governmental Authority to control or regulate the use of any real or immovable property that does not materially interfere with the ordinary course of conduct of the business of Holdings and its Subsidiaries as currently conducted, taken as a whole,

(kk) all rights reserved to or vested in any Governmental Authority by the terms of any lease, license, franchise, grant or permit held by the applicable Loan Party or a Subsidiary of a Loan Party or affecting the relevant Real Property and that does not materially interfere with the ordinary course of conduct of the Loan Parties and their Subsidiaries (taken as a whole) or by any statutory provision to terminate any such lease, license, franchise, grant or permit or to require annual or periodic payments as a condition of the continuance thereof or to distrain against or to obtain a Lien on any property or assets of the applicable Loan Party or Subsidiary of a Loan Party in the event of failure to make such annual or other periodic payments, so long as in each event such annual or other periodic payments are being made,

(ll) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business,

(mm) Liens consisting of an agreement to sell, transfer, lease or otherwise Dispose of any property in Permitted Disposition solely to the extent such sale, Disposition, transfer or lease, as the case may be, would have been permitted on the date of the creation of such Lien, and

(nn) Liens constituting Permitted Dispositions.

"Permitted Protest" means the right of a Loan Party or any of its Subsidiaries to protest any Lien or any obligations secured thereby (other than any Lien that secures the Obligations) or any other liabilities (including taxes), provided that (a) a reserve with respect to such obligation or liability is established on such Loan Party's or its Subsidiaries' books and records in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by a Loan Party or its Subsidiary, as applicable, in good faith, and (c) to the extent that any Lien is imposed as a result of any such obligation or liability, unless bonded in accordance with Applicable Law, such Liens subject to such protest would have a priority that is junior to Agent's Lien on the Collateral while such protest is pending.

"Permitted Purchase Money Indebtedness" means, as of any date of determination, Purchase Money Indebtedness in an aggregate principal amount outstanding at any one time not in excess of $500,000.

"Permitted Receipts Variances" has the meaning set forth in Section 5.14(b)(ii).

"Permitted Variances" has the meaning set forth in Section 5.14(b)(ii).

"Person" means natural persons, corporations, limited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, trusts, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, Governmental Authorities and political subdivisions thereof.

"Petition Date" has the meaning specified in the recitals to the Agreement.

"Post-Carve-Out Trigger Notice Cap" means Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed $3,000,000 incurred after the first Business Day following delivery by the Agent of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order or otherwise.

"Post-Petition Deposit Account" has the meaning specified in Section 5.20(d).

"Post-Petition Securities Account" has the meaning specified in Section 5.20(d).

"Pre-Petition" means the time period ending immediately prior to the filing of the Cases and the CCAA Cases.

"Pre-Petition Canadian Bank Products" means each Bank Product (as such term is defined in the Pre-Petition Credit Agreement) that is evidenced by a Bank Product Agreement (as such term is defined in the Pre-Petition Credit Agreement) to which Canadian Borrower or its Subsidiaries is party as of the Petition Date (before giving effect to the filing of any petition for relief); provided that, for the avoidance of doubt, in no instance will "Pre-Petition Canadian Bank Products" include any Indebtedness or other obligations owing in connection with any Bank Product Agreement (as such term is defined in the Term Loan Credit Agreement).

"Pre-Petition Canadian Letter of Credit" means those letters of credit so identified on Schedule E-2 to the Agreement.

"Pre-Petition Credit Agreement" has the meaning specified in the recitals to the Agreement.

"Pre-Petition Lender Group" means the "Lender Group" as defined in the Pre-Petition Credit Agreement.

"Pre-Petition Letter of Credit" means any Pre-Petition Canadian Letter of Credit or Pre-Petition U.S. Letter of Credit.

"Pre-Petition Loan Documents" means the "Loan Documents" as set forth in the Pre-Petition Credit Agreement.

"Pre-Petition Obligations" means all of the "Obligations" as set forth in the Pre-Petition Credit Agreement.

"Pre-Petition Parties" means the Loan Parties (as defined under the Pre-Petition Loan Documents) and the agent, lenders and other secured parties under the Pre-Petition Credit Agreement and related credit documentation.

"Pre-Petition U.S. Bank Products" means each Bank Product (as such term is defined in the Pre-Petition Credit Agreement) that is evidenced by a Bank Product Agreement (as such term is defined in the Pre-Petition Credit Agreement) to which BB Holdings, U.S. Borrower or its Subsidiaries is party as of the Petition Date (before giving effect to the filing of any petition for relief); provided that, for the avoidance of doubt, in no instance will "Pre-Petition U.S. Bank Products" include any Indebtedness or other obligations owing in connection with any Bank Product Agreement (as such term is defined in the Term Loan Credit Agreement).

"Pre-Petition U.S. Letter of Credit" means those letters of credit identified on Schedule E-2 to the Agreement.

"Preferred Stock" means, as applied to the Stock of any Person, the Stock of any class or classes (however designated) that is preferred with respect to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Stock of any other class of such Person.

"Principal Obligations" means the Obligations other than the Parallel Debt.

"Pro Forma Basis" and "Pro Forma Effect" means, with respect to compliance with any test hereunder, that the applicable transaction shall be deemed to have occurred as of the first day of the applicable period of measurement in such test.

"Pro Rata Share" means, as of any date of determination:

(a) with respect to a Lender's obligation to make Advances and right to receive payments of principal, interest, fees, costs, and expenses with respect thereto, (i) prior to the Revolver Commitments being terminated or reduced to zero, the percentage obtained by dividing (y) such Lender's Revolver Commitment, by (z) the aggregate Revolver Commitments of all Lenders, and (ii) from and after the time that the Revolver Commitments have been terminated or reduced to zero, the percentage obtained by dividing (y) the outstanding principal amount of such Lender's Advances by (z) the outstanding principal amount of all Advances,

(b) with respect to a Lender's obligation to participate in any Letter of Credit and Reimbursement Undertakings, to reimburse the Issuing Lender, and right to receive payments of fees with respect thereto, (i) prior to the Revolver Commitments being terminated or reduced to zero, the percentage obtained by dividing (y) such Lender's Revolver Commitment, by (z) the aggregate Revolver Commitments of all Lenders, and (ii) from and after the time that the Revolver Commitments have been terminated or reduced to zero, the percentage obtained by dividing (y) the outstanding principal amount of such Lender's Advances by (z) the outstanding principal amount of all Advances; provided, however, that if all of the Advances have been repaid in full and Letters of Credit remain outstanding, Pro Rata Share under this clause shall be determined based upon subclause (i) of this clause as if the Revolver Commitments had not been terminated or reduced to zero and based upon the Revolver Commitments as they existed immediately prior to their termination or reduction to zero,

(c) with respect to all other matters as to a particular Lender (including indemnification obligations arising under Section 15.7 of the Agreement), (i) prior to the Revolver Commitments being terminated or reduced to zero, the percentage obtained by dividing (y) such Lender's Revolver Commitment, by (z) the aggregate amount of Revolver Commitments of all Lenders, and (ii) from and after the time that the Revolver Commitments have been terminated or reduced to zero, the percentage obtained by dividing (y) the outstanding principal amount of such Lender's Advances, by (z) the outstanding principal amount of all Advances; provided, however, that if all of the Advances have been

repaid in full and Letters of Credit remain outstanding, Pro Rata Share under this clause shall be determined based upon subclause (i) of this clause as if the Revolver Commitments had not been terminated or reduced to zero and based upon the Revolver Commitments as they existed immediately prior to their termination or reduction to zero.

"Professional Persons" means the Debtor Professionals and the Committee Professionals.

"Prohibited Preferred Stock" means that, by its terms (or by the terms of any security or other Stock into which it is convertible or for which it is putable or exchangeable) or upon the happening of any event or condition, (a) matures or is mandatorily redeemable (other than solely for Stock that is not otherwise Prohibited Preferred Stock) pursuant to a sinking fund obligation or otherwise, other than as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Advances and all other Obligations (other than Bank Product Obligations) or (b) is redeemable or exchangeable at the option of the holder thereof (other than solely for Stock that is not otherwise Prohibited Preferred Stock), other than as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Advances and all other Obligations (other than Bank Product Obligations), in whole or in part or (c) provides for the scheduled payment of dividends in cash, in each case prior to the date that is one year after the Maturity Date (determined at the time of the issuance of such Stock); provided that if such Stock is issued pursuant to any plan for the benefit of employees of Holdings (or any direct or indirect parent thereof) or any of its Subsidiaries or by any such plan to such employees, such Stock shall not constitute Prohibited Preferred Stock solely because it may be required to be repurchased by Holdings (or any direct or indirect parent company thereof) or any of its respective Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

"Protective Advances" has the meaning specified therefor in Section 2.3(d)(i) of the Agreement.

"Purchase Money Indebtedness" means Indebtedness (other than the Obligations, but including Capital Lease Obligations), incurred at the time of, or within 120 days after, the acquisition, construction, repair, replacement, expansion or improvement of any capital asset or fixed asset for the purpose of financing all or any part of the cost thereof.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. § 5390(c)(8)(D).

"QFC Credit Support" has the meaning specified therefor in Section 17.18 of this Agreement.

"Quebec Security Documents" means a Deed of Hypothec governed by the laws of the Province of Quebec dated on or about the date hereof, granted by Canadian Borrower in favor of Agent, as Hypothecary Representative for the Lenders and any other secured creditor under Article 2692 of the *Civil Code of Quebec*, executed before a notary of the Province of Quebec Agent.

"Real Property" means any fee simple or leasehold estates or interests in real or immovable property now owned or hereafter acquired by a Loan Party or its Subsidiaries and the improvements thereto.

"Received Amount" has the meaning specified therefor in Section 15.18(d) of the Agreement.

"Record" means information that is inscribed on a tangible or corporeal medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Recovery Event" means (a) any damage to, destruction of or other casualty or loss involving any property or asset or (b) any seizure, condemnation, confiscation or taking under the power of eminent domain of, or any requisition of title or use of or relating to, or any similar event in respect of, any property or asset.

"Refinancing Indebtedness" means exchanges, refinancings, renewals, modifications, replacements, refundings or extensions of Indebtedness (other than DIP Term Loan Indebtedness and Term Loan Indebtedness) so long as:

(a) such exchanges, refinancings, renewals, modifications, replacements, refundings or extensions do not result in an increase in the principal amount of the Indebtedness so exchanged, refinanced, renewed, modified, replaced, refunded, or extended except by an amount equal to the unpaid accrued interest and premium thereon (including interest paid in kind) plus all other reasonable amounts paid and fees and expenses incurred in connection with such exchange, refinancing, renewal, modification, replacement, refund or extension plus an amount equal to any existing unutilized commitment and letters of credit undrawn thereunder,

(b) such exchanges, refinancings, renewals, modifications, replacements, refundings or extensions do not result in a maturity date that is earlier than the maturity date of the Indebtedness so exchanged, refinanced, renewed, modified, replaced, refunded or extended,

(c) if the Indebtedness that is exchanged, refinanced, renewed, modified, replaced, refunded or extended was subordinated in right of payment to the Obligations (or any portion thereof), then the terms and conditions of the exchanged, refinancing, renewal, modifications, replacements, refundings or extension must include subordination terms and conditions that are at least as favorable, taken as a whole, to the Lender Group as those that were applicable to the refinanced, renewed, modified, replaced, refunded or extended Indebtedness,

(d) if the Indebtedness that is exchanged, refinanced, renewed, modified, replaced, refunded or extended is Indebtedness permitted under clause (a), (b), (g), (t), or (u) (except in the case of clause (u) only to the extent that no Loan Party is obligated in respect of such Indebtedness) of the definition of Permitted Indebtedness, the direct or contingent obligors with respect to such Indebtedness are not changed, and

(e) if the Indebtedness being exchanged, refinanced, renewed, modified, replaced, refunded or extended is Indebtedness permitted by clauses (a), (b), (g), (t), or (u) (except in the case of clause (u) only to the extent that no Loan Party is obligated in respect of such Indebtedness) of the definition of Permitted Indebtedness, the terms and conditions of any such exchange, refinancing, renewal, modification, replacement, refunding or extension, taken as a whole, are not materially less favorable to the Lenders than the terms and conditions of the Indebtedness being exchanged, refinanced, renewed, modified, replaced, refunded or extended (including, if applicable, as to collateral priority and subordination, but excluding as to interest rates, fees, funding discounts and redemption or prepayment premiums, which shall be determined by Holdings in good faith to be market rates, fees, discounts and premiums at the time of incurrence); provided that a certificate of an Authorized Person of Holdings delivered to the Agent at least five (5) Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that Holdings has determined in good faith that such terms and conditions satisfy the foregoing requirement shall be conclusive evidence that such terms and

conditions satisfy the foregoing requirement unless the Agent notify Holdings within such 5 Business Day period that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees).

"Registered Loan" has the meaning set forth in Section 13.1(h) of the Agreement.

"Regulation D" means Regulation D of the Board as from time to time in effect and any successor to all or a portion thereof establishing margin requirements.

"Regulation H" means Regulation H of the Board as from time to time in effect and any successor to all or a portion thereof establishing margin requirements.

"Regulation T" means Regulation T of the Board as from time to time in effect and any successor to all or a portion thereof establishing margin requirements.

"Regulation U" means Regulation U of the Board as from time to time in effect and any successor to all or a portion thereof establishing margin requirements.

"Regulation X" means Regulation X of the Board as from time to time in effect and any successor to all or a portion thereof establishing margin requirements.

"Reimbursement Undertaking" means a U.S. Reimbursement Undertaking or a Canadian Reimbursement Undertaking, as the context requires.

"Related Fund" means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"Remedial Action" means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, or in any way address any release of Hazardous Materials into the indoor or outdoor environment and (b) restore or reclaim natural resources or the environment.

"Rent Reserve" means a Canadian Rent Reserve or a U.S. Rent Reserve, as applicable.

"Replacement Lender" has the meaning specified therefor in Section 14.2(a) of the Agreement.

"Report" has the meaning specified therefor in Section 15.16(a) of the Agreement.

"Reporting Date" has the meaning specified therefor in Schedule 5.1 of the Agreement.

"Required Lenders" means, at any date, Non-Defaulting Lenders having or holding the majority of the Adjusted Total Revolver Commitment at such time or, if the Total Revolver Commitment has been terminated at such time, the majority of the outstanding principal amount of the Advances and Letter of Credit Exposure (excluding the Letter of Credit Exposure of Defaulting Lenders) at such date; provided, however, that at any time there are 2 or more Lenders, "Required Lenders" must include at least 2 Lenders.

"Reserve Percentage" means, on any day, for any Lender, the maximum percentage prescribed by the Board of Governors of the Federal Reserve System (or any successor Governmental Authority) for determining the reserve requirements (including any basic, supplemental, marginal, or

emergency reserves) that are in effect on such date with respect to eurocurrency funding (currently referred to as "eurocurrency liabilities") of such Lender, but so long as such Lender is not required or directed under applicable regulations to maintain such reserves, the Reserve Percentage shall be zero.

"Restricted Debt Payments" has the meaning specified therefor in Section 6.7(a) of the Agreement.

"Restricted Junior Payment" means (a) any payment of dividends (other than dividends payable solely in the Stock of Holdings) or return of any capital to Holdings' equity holders or any other distribution, payment or delivery of property or cash to Holdings' equity holders as such, or any redemption, retirement, purchase or other acquisition, directly or indirectly, for consideration, of any shares of any class of Holdings' Stock (or the Stock of any direct or indirect parent thereof) now or hereafter outstanding, or any setting aside of any funds for any of the foregoing purposes, (b) any purchase or other acquisition for consideration (other than in connection with a Permitted Investment) by Holdings or any Subsidiary of any shares of any class of the Stock of Holdings (or any direct or indirect parent thereof), now or hereafter outstanding or (c) any distribution by a Borrower to a parent thereof of any Accounts or Inventory.

"Revolver Commitments" means the Canadian Revolver Commitments or the U.S. Revolver Commitments, as the context requires.

"Revolver Usage" means the Canadian Revolver Usage or the U.S. Revolver Usage or the sum of the Canadian Revolver Usage and U.S. Revolver Usage, as the context requires.

"RSA" has the meaning specified therefor in Section 8.17(a) of the Agreement.

"Sale Order" means a final non-appealable order in form and substance acceptable to each of the Agent and the DIP Term Loan Agent approving (i) the Stalking Horse Transaction on the terms set forth in the Stalking Horse APA or (ii) another sale pursuant to the Bidding Procedures Order of substantially all the assets of the Debtors and the CCAA Debtors.

"Sanctioned Entity" means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, or (d) a Person resident in or determined to be resident in a country, in each case of clauses (a) through (d), that is a target of Sanctions, including a target of any country sanctions program administered and enforced by OFAC.

"Sanctioned Person" means, at any time (a) any Person named on the list of Specially Designated Nationals and Blocked Persons maintained by OFAC, OFAC's consolidated Non SDN list or any other Sanctions related list maintained by any Governmental Authority, (b) a Person or legal entity that is a target of Sanctions, (c) any Person operating, organized or resident in a Sanctioned Entity, or (d) any Person directly or indirectly owned or controlled (individually or in the aggregate) by or acting on behalf of any such Person or Persons described in clauses (a) through (c) above.

"Sanctions" means individually and collectively, respectively, any and all economic sanctions, trade sanctions, financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes, anti-terrorism laws and other sanctions laws, regulations or embargoes, including those imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by OFAC, the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future executive order, (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) Her Majesty's Treasury of the United Kingdom, or (e) any other

Governmental Authority with jurisdiction over any member of Lender Group or any Loan Party or any of their respective Subsidiaries or Controlled Affiliates.

"SEC" means the United States Securities and Exchange Commission and any successor thereto.

"Second Day Orders" has the meaning specified therefor in Section 5.13(g) of the Agreement.

"Secured Parties" mean (a) the Lenders, (b) the Issuing Lenders, (c) the Swing Lenders, (d) the Agent, (e) each Bank Product Provider, (f) the beneficiaries of each indemnification obligation undertaken by any Loan Party under the Loan Documents and (g) any successors, endorsees, transferees and assigns of each of the foregoing.

"Securities Account" means a securities account (as that term is defined in the Code).

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

"Security Agreements" means each of the Canadian Security Agreement, the Luxembourg Security Agreement and the U.S. Security Agreement.

"Security Documents" means, collectively, the Security Agreements, the Canadian Security Documents, the DIP Intercreditor Agreement and any Control Agreement, Copyright Security Agreement, Patent Security Agreement, Trademark Security Agreement and each other security agreement or other instrument or document executed and delivered pursuant to Section 5.11 or 5.12 or pursuant to any of the Security Documents to secure or perfect, or render opposable, the Liens securing any or all of the Obligations, including the Orders.

"Settlement Date" means a Canadian Settlement Date or a U.S. Settlement Date, as applicable.

"S&P" has the meaning specified therefor in the definition of Cash Equivalents.

"Stalking Horse APA" means that certain Asset Purchase Agreement, dated as of the Petition Date, among the Stalking Horse Bidder, as buyer, and the Debtors and the CCAA Debtors, as sellers.

"Stalking Horse Bidder" means, collectively, Tonos US LLC, a Delaware limited liability company, Tonos 1 Operating Corp., a British Columbia corporation, and Melissi 4 Inc., a Cayman Islands corporation.

"Stalking Horse Transaction" means the sale of substantially all of the assets of the Debtors and the CCAA Debtors pursuant to the Stalking Horse APA.

"Standard Letter of Credit Practice" means, for Issuing Lender or an Underlying Issuer, any domestic or foreign law or letter of credit practices applicable in the city in which Issuing Lender or an Underlying Issuer issued the applicable Letter of Credit or, for its branch or correspondent, such laws and practices applicable in the city in which it has advised, confirmed or negotiated such Letter of Credit, as the case may be, in each case, (a) which letter of credit practices are of banks that regularly issue letters of

credit in the particular city, and (b) which laws or letter of credit practices are required or permitted under ISP or UCP, as chosen in the applicable Letter of Credit.

"Stock" means all shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in a Person, whether voting or nonvoting, including common stock, preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

"Subject Debt" means the DIP Term Loan Indebtedness and any Refinancing Indebtedness in respect thereof, any Subordinated Indebtedness and any unsecured Indebtedness for borrowed money.

"Subordinated Indebtedness" means any Indebtedness for borrowed money of any Loan Party or any Subsidiary of any Loan Party that is subordinated to the Obligations as to right and time of payment and as to other rights and remedies thereunder.

"Subsidiary" of a Person means a corporation, partnership, limited liability company, or other entity in which that Person directly or indirectly owns or controls an aggregate of more than 50% of the voting power of the Voting Stock of such corporation, partnership, limited liability company, or other entity. Unless otherwise expressly provided, all references herein to a "Subsidiary" means a Subsidiary of Holdings.

"Subsidiary Guarantor" means each U.S. Guarantor or Canadian Guarantor that is a Subsidiary of a Borrower.

"Successor Cases" means any case under Chapter 7 of the Bankruptcy Code commenced upon the conversion of any Cases.

"Supermajority Lenders" means, at any time, Non-Defaulting Lenders having in excess of 66 2/3% of the Adjusted Total Revolver Commitment at such time or, if the Total Revolver Commitment has been terminated at such time, a majority of the outstanding principal amount of the Advances and Letter of Credit Exposure (excluding the Letter of Credit Exposure of Defaulting Lenders) at such date.

"Supported QFC" has the meaning specified therefor in Section 17.18 of this Agreement.

"Swap" means, any agreement, contract, or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Swap Obligation" means, with respect to any Person, any obligation to pay or perform under any Swap.

"Swing Lender" means WFCF or any other Lender that, at the request of Borrower and with the consent of Agent agrees, in such Lender's sole discretion, to become the Swing Lender under Section 2.3(b) of the Agreement.

"Swing Line Exposure" means U.S. Swing Line Exposure or Canadian Swing Line Exposure, as the context requires.

"Swing Loan" has the meaning specified therefor in Section 2.3(b) of the Agreement.

"Taxes" means, any taxes, levies, imposts, duties, fees, assessments, withholdings or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or

taxing authority thereof or therein with respect to any payment made pursuant to the Loan Documents and all interest, penalties, additions to or similar liabilities with respect thereto; provided that Taxes shall exclude (i) any tax imposed on the net income or net profits of Agent, any Lender or any Participant (including any branch profits taxes), in each case imposed (A) by the jurisdiction (or by any political subdivision or taxing authority thereof) in which Agent, such Lender or such Participant is resident, (B) the jurisdiction (or by any political subdivision or taxing authority thereof) in which Agent such Lender, or such Participant is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or (C) the jurisdiction (or by any political subdivision or taxing authority thereof) as a result of a present or former connection between Agent, such Lender or such Participant and the jurisdiction or taxing authority imposing the tax (other than any such connection arising solely from Agent, such Lender or such Participant having executed, delivered or performed its obligations or received payment under, or enforced its rights or remedies under the Agreement or any other Loan Document); (ii) any taxes resulting from (A) a Lender's or a Participant's failure to comply with the requirements of Section 16(c) or (d) of the Agreement, or (B) any non-foreign Lender's failure to provide a fully completed W-9 establishing an exemption from backup withholding, (iii) any United States withholding taxes, in respect of U.S. Borrower, or any Canadian withholding taxes, in respect of Canadian Borrower, that would be imposed on amounts payable to a Lender based upon the applicable withholding rate in effect at the time such Lender becomes a party to the Agreement (or designates a new lending office), except that Taxes shall include (A) any amount that such Lender (or its assignor, if any) was previously entitled to receive pursuant to Section 16(a) of the Agreement, if any, with respect to such withholding tax at the time such Lender becomes a party to the Agreement (or designates a new lending office), and (B) additional United States withholding taxes, in respect of U.S. Borrower, or additional Canadian withholding taxes, in respect of Canadian Borrower, that may be imposed after the time such Lender becomes a party to the Agreement (or designates a new lending office), as a result of a change in law, rule, regulation, order or other decision with respect to any of the foregoing by any Governmental Authority, or (iv) with respect to any U.S. Borrower, any US federal withholding tax unpaid pursuant to Sections 1471-1474 of the IRC as amended or any successor statute that is substantively comparable and any regulated or official interpretation thereof.

"Tendered Currency" has the meaning specified therefor in Section 17.12 of the Agreement.

"Term Loan Credit Agreement" means the Term Loan Agreement, dated as of August 15, 2017, by and among Holdings, Canadian Borrower, Bumble Bee Holdings, Inc., the lenders from time to time a party thereto, and Brookfield Principal Credit LLC, as administrative agent for such lenders, as such agreement may be amended, restated, supplemented or otherwise modified, replaced or refinanced from time to time in accordance with the requirements thereof.

"Term Loan Documents" means the Term Loan Credit Agreement and the agreements, documents and instruments executed in connection therewith as each such document may be amended, restated, supplemented or otherwise modified, replaced or refinanced from time to time in accordance with the requirements thereof.

"Term Loan Indebtedness" means the Indebtedness incurred by the Loan Parties under the Term Loan Documents.

"Term Loan Priority Collateral" has the meaning specified therefor in the DIP Intercreditor Agreement.

"Termination Event" means (a) a "Reportable Event" described in Section 4043 of ERISA for which the notice requirement has not been waived by the PBGC, (b) the withdrawal of any Loan Party

or any ERISA Affiliate from a Pension Plan during a plan year in which it was a "substantial employer" as defined in Section 4001(a)(2) of ERISA, (c) the termination of a Pension Plan, the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination, under Section 4041 of ERISA, if the plan assets are not sufficient to pay all plan liabilities, (d) the institution of proceedings to terminate, or the appointment of a trustee with respect to, any Pension Plan by the PBGC, (e) any other event or condition which would constitute grounds under Section 4042(a) of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, (f) the imposition of a Lien pursuant to the IRC (including Section 412 or 430 of the IRC) or ERISA (including Section 302 or 4068 of ERISA), (g) the partial or complete withdrawal of any Loan Party or any ERISA Affiliate from a Multiemployer Plan (other than any complete withdrawal that would not constitute an Event of Default under Section 8.12), (h) any event or condition which results in the reorganization or insolvency of a Multiemployer Plan under Sections 4241 or 4245 of ERISA, (i) any event or condition which results in the termination of a Multiemployer Plan under Section 4041A of ERISA or the institution by the PBGC of proceedings to terminate or to appoint a trustee to administer a Multiemployer Plan (including under Section 4042 of ERISA), (j) any Pension Plan being in "at risk status" within the meaning of IRC Section 430(i), (k) any Multiemployer Plan being in "endangered status" or "critical status" within the meaning of IRC Section 432(b), (l) with respect to any Pension Plan, any Loan Party or any ERISA Affiliate incurring a substantial cessation of operations within the meaning of ERISA Section 4062(e); or (m) any event that causes any Loan Party or any of their ERISA Affiliates to incur liability under Section 409, 502(i), 502(l), 515, 4062, 4063, 4064, 4069, 4201, 4204 or 4212 of ERISA or Section 4971 or 4975 of the IRC.

"Testing Period" shall mean, for any Reporting Date, the cumulative period commencing on the Sunday immediately following the Budget Delivery Date for the then-effective Budget through the Saturday immediately preceding such Reporting Date.

"Total Revolver Commitment" means the sum of the Revolver Commitment of all Lenders.

"Trademark Security Agreement" has the meaning specified therefor in the U.S. Security Agreement.

"Trademarks" has the meaning specified therefor in the U.S. Security Agreement.

"Transaction Expenses" means any fees or expenses incurred or paid by Equity Sponsor, Holdings, Borrowers, any of their respective Subsidiaries (including Clover Leaf Seafood and its Subsidiaries) or any of their respective Affiliates in connection with the Transactions and the transactions contemplated hereby and thereby.

"Transactions" means, collectively, (a) the funding of the Advances on the Closing Date, (b) the consummation of any other transactions in connection with the foregoing, including the funding of DIP Term Loan Indebtedness under the DIP Term Loan Credit Agreement and the prepayment of any Pre-Petition Obligations outstanding under the Pre-Petition Credit Agreement, and, (c) the payment of Transaction Expenses.

"UCP" means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 and any version or revision thereof accepted by Issuing Lender or an Underlying Issuer for use.

"Underlying Issuer" means any U.S. Underlying Issuer or any Canadian Underlying Issuer, as the context requires.

"Underlying Letter of Credit" means a U.S. Underlying Letter of Credit or a Canadian Underlying Letter of Credit, as the context requires.

"United States" or "U.S." means the United States of America.

"Unpaid Drawings" has the meaning specified therefor in Section 2.11(a)(iv).

"U.S. Advances" has the meaning specified therefor in Section 2.1(a) of the Agreement.

"U.S. Availability" means, as of any date of determination, the amount that U.S. Borrower is entitled to borrow as U.S. Advances under Section 2.1 of the Agreement (after giving effect to all then outstanding U.S. Advances and U.S. Letters of Credit Outstanding).

"U.S. Bank Product Obligations" means (a) all obligations, liabilities, reimbursement obligations, fees, or expenses owing by BB Holdings, U.S. Borrower or its Subsidiaries to any Bank Product Provider pursuant to or evidenced by a Bank Product Agreement and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and (b) all U.S. Hedge Obligations; provided that, for the avoidance of doubt, in no instance will "U.S. Bank Product Obligations" include any Indebtedness or other obligations owing in connection with any Bank Product Agreement (as such term is defined in the Term Loan Credit Agreement).

"U.S. Bank Product Reserve Amount" means, as of any date of determination, the Dollar amount of the reserves established by Agent in respect of U.S. Bank Products Obligations, which Dollar amount may be determined by Agent in its Permitted Discretion (but in no event shall any U.S. Bank Product Reserve Amount with respect to any U.S. Hedge Obligations exceed the mark-to-market value, to the extent applicable, of such U.S. Hedge Obligations).

"U.S. Borrower" has the meaning specified therefor in the preamble to the Agreement.

"U.S. Borrowing Base" means, as of any date of determination, an amount equal to the result of (without duplication):

(a) 85% of the book value of the U.S. Borrowing Base Participants' Eligible Accounts at such date, *less* the amount, if any, of the U.S. Dilution Reserve at such date established by Agent in its Permitted Discretion, *plus*

(b) the lower of

(i) the sum of (A) 75% of the value (calculated at the lower of cost and market value on a basis consistent with U.S. Borrower's historical accounting practices) of the U.S. Borrowing Base Participants' Eligible Landed Inventory at such date, *plus* (B) the lesser of (1) $2,500,000 minus the amount of the Canadian Revolver Usage that is based on Canadian Availability generated under clause (b)(i)(B) of the Canadian Borrowing Base, and (2) 50% of the value (calculated at the lower of cost and market value on a basis consistent with U.S. Borrower's historical accounting practices) of the U.S. Borrowing Base Participants' Eligible Blocked Landed Inventory at such date, *plus* (C) the lesser of (1) $30,000,000 *minus* the amount of the Canadian Revolver Usage that is based upon Canadian Availability generated under clause (b)(i)(C) of the Canadian Borrowing Base, and (2) 65% of the value (calculated at the lower of cost and market value on a basis consistent with U.S. Borrower's historical accounting practices) of the U.S. Borrowing Base Participants' Eligible In-Transit Inventory, and

(ii) 85% *times* the most recently determined Net Liquidation Percentage *times* the book value of the U.S. Borrowing Base Participants' Eligible Landed Inventory and Eligible In-Transit Inventory at such date, *plus*

(c) at the option of U.S. Borrower, an amount not to exceed the lesser of (i) the excess of the Canadian Borrowing Base at such date (exclusive of any portion of the Canadian Borrowing Base thereof (if any) which is not subject to a first priority perfected security interest to secure all of the Obligations of U.S. Borrowers) over the Canadian Revolver Usage, and (ii) $40,000,000, *minus*

(d) the sum at such date, without duplication, of (i) the aggregate amount of all U.S. Rent Reserves, if any, established by Agent in its Permitted Discretion, *plus* (ii) the Carve Out Reserve, (iii) the aggregate amount of the DOJ Reserve, if any, established by Agent (it being understood that the amount of such DOJ Reserves may, in Agent's Permitted Discretion, be less than, but shall in no event be greater than, the amount set forth in the definition of "DOJ Reserve"), *plus* (iv) the U.S. Bank Product Reserve Amount, if any, established in connection with U.S. Bank Product Obligations, *plus* (v) the aggregate amount of other reserves, if any, established by Agent under Section 2.1(c) of the Agreement against the U.S. Borrowing Base in its Permitted Discretion.

The U.S. Borrowing Base at any time shall be determined by reference to the most recent U.S. Borrowing Base Certificate theretofore delivered to Agent with such adjustments as Agent deems appropriate in its Permitted Discretion to assure that the U.S. Borrowing Base is calculated in accordance with the terms of the Agreement.

Any provision of this definition or any other provision of the Agreement (including this Schedule 1.1) to the contrary notwithstanding, in the event that any U.S. Subsidiary Guarantor is (or its assets are) acquired by a Loan Party after the Closing Date (each, a "U.S. Borrowing Base Event"), in no event shall any Accounts or Inventory of such Person or entity be included in the U.S. Borrowing Base prior to the time, after the occurrence of such U.S. Borrowing Base Event, when Agent has completed its field audits and appraisals with respect to such U.S. Subsidiary Guarantor.

"U.S. Borrowing Base Certificate" means a certificate in the form, executed by an Authorized Person of the U.S. Borrower, substantially in the form of (or in such other form as may be mutually agreed upon by the U.S. Borrower and the Agent), and containing the information prescribed by, Exhibit C-1, delivered to the Agent and setting forth the calculation of the U.S. Borrowing Base in accordance with Section 5.2 of the Agreement.

"U.S. Borrowing Base Participants" has the meaning set forth in Schedule 5.2.

"U.S. Dilution" means, as of any date of determination, a percentage, based upon the actual results of the immediately prior 360 consecutive days, that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to U.S. Borrower's and U.S. Subsidiary Guarantors' Accounts during such period, by (b) U.S. Borrower's and U.S. Subsidiary Guarantors' billings with respect to Accounts during such period.

"U.S. Dilution Reserve" means, as of any date of determination, an amount sufficient to reduce the advance rate against U.S. Borrower's Eligible Accounts by 1 percentage point for each percentage point by which U.S. Dilution is in excess of 5%.

"U.S. Dollar Equivalent" means, at any time, (a) as to any amount denominated in Dollars, the amount thereof at such time, and (b) as to any amount denominated in any other currency, the equivalent amount in Dollars based on the Exchange Rate in effect on the Business Day of determination.

"U.S. Guarantors" means any Guarantor that is organized under the laws of any state of the United States or the District of Columbia.

"U.S. Hedge Obligations" means any and all obligations or liabilities, whether absolute or contingent, due or to become due, now existing or hereafter arising, of BB Holdings, U.S. Borrower or its Subsidiaries arising under, owing pursuant to, or existing in respect of Hedge Agreements entered into with one or more of the Bank Product Providers.

"U.S. Issuing Lender" means Wells Fargo or any other Lender that, at the request of U.S. Borrower and with the consent of Agent, agrees, in such Lender's sole discretion, to become a U.S. Issuing Lender in accordance with Section 2.11 of the Agreement for the purpose of issuing U.S. Letters of Credit or U.S. Reimbursement Undertakings pursuant to Section 2.11 of the Agreement. In the event that there is more than one Issuing Lender at any time, references in the Agreement and in the other Loan Documents to the Issuing Lender shall be deemed to refer to the Issuing Lender in respect of the applicable Letter of Credit or to all Issuing Lenders, as the context requires.

"U.S. L/C Sublimit" means $10,000,000.

"U.S. Lender" means a Lender with a U.S. Revolver Commitment or holding at such a time a U.S. Advance (or U.S. Letter of Credit Exposure) made to U.S. Borrower; sometimes being referred to collectively as "U.S. Lenders".

"U.S. Letter of Credit" means a letter of credit issued by a U.S. Issuing Lender or a letter of credit issued by a U.S. Underlying Issuer, as the context requires, for the benefit of a Loan Party.

"U.S. Letter of Credit Exposure" means, with respect to any U.S. Lender, at any time, the sum of (without duplication) (a) such U.S. Lender's Pro Rata Share of the U.S. Letter of Credit Usage at such time plus (b) such U.S. Lender's Pro Rata Share of any U.S. Unpaid Drawings at such time.

"U.S. Letter of Credit Usage" means, as of any date of determination, the sum of (a) the aggregate undrawn amount of all outstanding U.S. Letters of Credit, plus (b) the aggregate amount of outstanding reimbursement obligations with respect to U.S. Letters of Credit which remain unreimbursed or which have not been paid through an U.S. Advance.

"U.S. Letters of Credit Outstanding" mean, at any time, the sum of, without duplication, (a) the aggregate undrawn amount of all outstanding U.S. Letters of Credit at such time and (b) the aggregate amount of all U.S. Unpaid Drawings in respect of all U.S. Letters of Credit at such time.

"U.S. Loan Account" has the meaning specified therefor in Section 2.9(b) of the Agreement.

"U.S. Loan Parties" include the U.S. Borrower and each U.S. Guarantor; each sometimes being returned to individuals as a "U.S. Loan Party."

"U.S. Overadvance Amount" has the meaning specified therefor in Section 2.4(e)(ii) of the Agreement.

"U.S. Participant Register" has the meaning specified therefor in Section 13.1(j) of the Agreement.

"U.S. Pre-Petition Advances" means "U.S. Advances" as defined in the Pre-Petition Credit Agreement.

"U.S. Protective Advance" means a Protective Advance which has been deemed a "U.S. Protective Advance" by Agent.

"U.S. Register" has the meaning set forth in Section 13.1(h) of the Agreement.

"U.S. Registered Loan" has the meaning set forth in Section 13.1(h) of the Agreement.

"U.S. Reimbursement Undertaking" has the meaning specified therefor in Section 2.11(a)(i) of the Agreement.

"U.S. Rent Reserve" means, in the event the U.S. Loan Parties are unable to obtain a Collateral Access Agreement with respect to any location listed on Schedule E-1 or any other leased location in the United States where U.S. Borrower's and U.S. Subsidiary Guarantors' Inventory is located, a reserve against the U.S. Borrowing Base that Agent may, in its Permitted Discretion, impose in an amount that is of up to (in its Permitted Discretion) 3 months' rent at such location; provided, however, that so long as a Collateral Access Agreement is in effect for any location, such reserve shall no longer apply with respect to such location and no such reserve shall be imposed on any such location in respect on which Eligible Inventory in the aggregate has a value of less than $500,000.

"U.S. Revolver Commitment" means, with respect to each U.S. Lender, its U.S. Revolver Commitment, and, with respect to all U.S. Lenders, their U.S. Revolver Commitments, in each case as such Dollar amounts are set forth beside such U.S. Lender's name under the applicable heading on Schedule C-2 or in the Assignment and Acceptance pursuant to which such U.S. Lender became a U.S. Lender hereunder or in the case of any Lender that increases its U.S. Revolver Commitment

"U.S. Revolver Usage" means, as of any date of determination, the sum of (a) the amount of outstanding U.S. Advances, plus (b) the amount of the U.S. Letter of Credit Usage.

"U.S. Security Agreement" means the U.S. Security Agreement, dated as of the Closing Date, entered into by Holdings, U.S. Borrower, the other U.S. Loan Parties and Agent for the benefit of the Secured Parties, as amended, restated, supplemented, or otherwise modified from time to time.

"U.S. Settlement" has the meaning specified therefor in Section 2.3(e)(i) of the Agreement.

"U.S. Settlement Date" has the meaning specified therefor in Section 2.3(e)(i) of the Agreement.

"U.S. Special Resolution Regimes" has the meaning specified therefor in Section 17.18 of this Agreement.

"U.S. Subsidiary" means a Subsidiary of U.S. Borrower or a U.S. Guarantor that is a Domestic Subsidiary and which is a U.S. Loan Party.

"U.S. Subsidiary Guarantor" means any U.S. Guarantor that is a Subsidiary of U.S. Borrower.

"U.S. Swing Loan" has the meaning specified therefor in Section 2.3(b) of the Agreement.

"U.S. Swing Loan Exposure" means, with respect to any U.S. Lender, at any time, such U.S. Lender's Pro Rata Share of the U.S. Swing Loans outstanding at such time.

"U.S. Total Revolver Commitment" means the sum of the U.S. Revolver Commitment of all U.S. Lenders.

"U.S. Trustee" means the United States Trustee applicable in the Cases.

"U.S. Underlying Issuer" means a third Person which is the beneficiary of a U.S. Reimbursement Undertaking and which has issued a letter of credit at the request of the U.S. Issuing Lender for the benefit of U.S. Borrower or one of the U.S. Subsidiaries.

"U.S. Underlying Letter of Credit" means a letter of credit that has been issued by a U.S. Underlying Issuer.

"U.S. Unpaid Drawings" has the meaning specified therefor in Section 2.11(a)(iv).

"Variance Report" has the meaning set forth on Schedule 5.1.

"Voidable Transfer" has the meaning specified therefor in Section 17.8 of the Agreement.

"Voting Stock" of any Person as of any date means the Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"Wells Fargo" means Wells Fargo Bank, National Association, a national banking association.

"WFCF" means Wells Fargo Capital Finance, LLC, a Delaware limited liability company.

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

Exhibit B

Term Loan DIP Agreement

EXECUTION VERSION

SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION
TERM LOAN AGREEMENT

among

BUMBLE BEE FOODS S.À R.L.,

as Holdings

BUMBLE BEE FOODS, LLC,

as the Borrower

VARIOUS LENDERS,

and

BROOKFIELD PRINCIPAL CREDIT LLC,

as Administrative Agent

DATED AS OF NOVEMBER 26, 2019

EXECUTION VERSION

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SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION TERM LOAN AGREEMENT, dated as of November 26, 2019 among BUMBLE BEE FOODS S.À R.L., a Luxembourg private limited liability company (*société à responsabilité limitée*) ("**Holdings**"), BUMBLE BEE FOODS, LLC, a Delaware limited liability company (the "**Borrower**"), the Lenders party hereto from time to time, and BROOKFIELD PRINCIPAL CREDIT LLC, as administrative agent and the collateral agent for the Lenders (in such capacities and together with its successors and assigns, the "**Administrative Agent**". All capitalized terms used herein and defined in Section 1.01 are used herein as therein defined.

W I T N E S S E T H:

WHEREAS, on November 21, 2019 (the "**Petition Date**"), the Domestic Credit Parties (in such capacity, each a "**Debtor**" and collectively the "**Debtors**") filed voluntary petitions with the Bankruptcy Court initiating cases pending under Chapter 11 of the Bankruptcy Code (collectively, the "**Cases**" and each a "**Case**") and have continued in the possession of their assets and in the management of their businesses pursuant to Sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, on November 22, 2019 (the "**CCAA Filing Date**"), the Canadian Credit Parties (in such capacity, each a "**CCAA Debtor**" and collectively the "**CCAA Debtors**") filed an application with the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**") pursuant to the CCAA (collectively, the "**CCAA Cases**" and each a "**CCAA Case**") seeking the CCAA Initial Order and have continued in the possession of their assets and in the management of their businesses pursuant to the CCAA Initial Order;

WHEREAS, the Borrower has requested that (x) the Lenders provide a debtor-in-possession term loan facility in an aggregate principal amount of $80,000,000 pursuant to this Agreement (the "**DIP Term Facility**") and (y) certain other lenders provide a debtor-in-possession asset-based revolving credit facility in an aggregate principal amount of $200,000,000 (the "**DIP ABL Credit Facility**" and, together with the DIP Term Facility, the "**DIP Facilities**") pursuant to the DIP ABL Credit Agreement (as defined below), with all of the Borrower's obligations under the DIP Facilities to be guaranteed by each applicable Guarantor;

WHEREAS, the priority of the DIP Term Facility with respect to the Collateral granted to secure the Obligations shall be as set forth in the Interim Order, the Final Order, the CCAA Initial Order and the CCAA A&R Initial Order, as applicable, in each case upon entry thereof by the Bankruptcy Court or the CCAA Court, as applicable, and in the Intercreditor Agreement;

WHEREAS, the Borrower, each other Guarantor and their respective Subsidiaries are engaged in related businesses, and each of them will derive substantial direct and indirect benefit from the making of the extensions of credit under this Agreement; and

WHEREAS, subject to and upon the terms and conditions set forth herein, the Lenders are willing to extend such credit to the Borrower on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, IT IS AGREED:

Section 1 Definitions; Accounting Terms; Construction.

1.01. Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"**ABL Priority Collateral**" shall have the meaning provided in the Intercreditor Agreement.

"**Accounting Change**" shall have the meaning provided in Section 1.02(a).

"**Additional Documents**" shall have the meaning provided in Section 7.12(a).

"**Adequate Protection Payments**" shall have the meaning provided in Section 7.21.

"**Administrative Agent**" shall have the meaning provided in the preamble to this Agreement.

"**Affiliate**" shall mean, with respect to any Person, any other Person directly or indirectly controlling (including all directors and officers of such Person), controlled by, or under direct or indirect common control with, such Person. A Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power (a) to vote 25% or more of the securities having ordinary voting power for the election of directors (or equivalent governing body) of such Person or (b) to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; provided, however, that none of the Administrative Agent, any Lender or any of their respective Affiliates shall be considered an Affiliate of Holdings or any Subsidiary thereof.

"**Agreement**" shall mean this Superpriority Secured Debtor-in-Possession Term Loan Agreement, as modified, supplemented, amended, restated (including any amendment and restatement hereof), extended or renewed from time to time.

"**Anti-Money Laundering Laws**" shall mean any and all laws, judgments, orders, executive orders, decrees, ordinances, rules, regulations, statutes, case law or treaties applicable to a Credit Party and its Subsidiaries, related to terrorism financing or money laundering, including any applicable Canadian Anti-Money Laundering & Anti-Terrorism Legislation or any provision of Title III of the PATRIOT ACT and The Currency and Foreign Transactions Reporting Act (also known as the "**Bank Secrecy Act**", 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959).

"**Applicable Margin**" shall mean, as of any date of determination (i) in the case of Base Rate Loans, a percentage per annum equal to 9.50%, and (ii) in the case of Eurodollar Rate Loans, a percentage per annum equal to 10.50%.

"**Approval Date**" shall have the meaning provided in Section 9.11.

"**Approved Budget**" means (x) the Initial DIP Budget or (y) the then most current DIP Budget prepared by Holdings and consented to by the Administrative Agent pursuant to Section 7.01(f)(i), as applicable.

"**Approved Jurisdiction**" shall mean each of the United States (and any state thereof), Canada (and any province thereof) or Luxembourg.

"**Asset Sale**" shall mean any sale, transfer or other disposition by Holdings or any of its Subsidiaries to any Person (including by way of redemption by such Person or by way of a Sale and Lease-Back Transaction) of any assets pursuant to Section 8.02(c) (other than pursuant to Section 8.02(c)(i), (ii), (iv), (v), (vi), (xii), (xiii) or (xiv)).

"**Assignment and Assumption Agreement**" shall mean an Assignment and Assumption Agreement substantially in the form of Exhibit I or such other form as may be reasonably acceptable to the Administrative Agent.

"**Attributable Indebtedness**" shall mean, on any date of determination, in respect of any Sale and Lease-Back Transaction, the present value of the total obligations of the lessee for net rental payments during the remaining term of the lease included in such Sale and Lease-Back Transaction, including any period for which such lease has been extended or may, at the option of the lessor, be extended.

"**Auction**" shall mean the auction to be held pursuant to the Bidding Procedures Order.

"**Authorized Officer**" shall mean, with respect to (a) delivering Notices of Borrowing and similar notices, any person or persons that has or have been authorized by the Board of Directors (or comparable managers) of Holdings or the Borrower to deliver such notices pursuant to this Agreement and that has or have appropriate signature cards on file with the Administrative Agent, (b) delivering financial information and officer's certificates pursuant to this Agreement, any person or persons that has or have been authorized by the board of managers of Holdings or the chief financial officer (or other officer with equivalent duties), the treasurer or the principal accounting officer of Holdings or the Borrower, and (c) any other matter in connection with this Agreement or any other Credit Document, any person or persons that has or have been authorized by the Board of Directors of Holdings or any officer (or a person or persons so designated by any two officers) of Holdings or the applicable Credit Party. Any document delivered hereunder that is signed by an Authorized Officer shall be conclusively presumed to have been authorized by all necessary corporate, limited liability company, partnership or other applicable action on the part of Holdings or such Credit Party and such Authorized Officer shall be conclusively presumed to have acted on behalf of such Person.

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

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

"**Bankruptcy Code**" shall have the meaning provided in Section 9.05.

"**Bankruptcy Court**" means the United States Bankruptcy Court for the District of Delaware or any appellate court having jurisdiction over the Cases from time to time.

"**Base Rate**" shall mean, for any day, a rate per annum equal to the highest of (a) the rate last quoted by The Wall Street Journal as the "**Prime Rate**" in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "**bank prime loan**" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent in good faith) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent in good faith), (b) the sum of 0.50% per annum and the Federal Funds Rate, and (c) the sum of (x) to the extent the Eurodollar Rate is ascertainable, the Eurodollar Rate calculated for each such day based on an Interest Period of one month (but, for the avoidance of doubt, not less than 1.00% per annum), plus (y) 1.00%, in each instance, as of such day; provided, that the Base Rate with respect to Base Rate Loans that bear interest at a rate based on this definition will be deemed not to be less than 2.00% per annum. Any change in the Base Rate due to a change in any of the foregoing shall be effective on the effective date of such change in the "**bank prime loan**" rate, the Federal Funds Rate or the Eurodollar Rate for an Interest Period of one month.

"**Base Rate Loan**" shall mean a Term Loan that bears interest based on the Base Rate.

"**Beneficial Ownership Certification**" shall mean a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

"**Beneficial Ownership Regulation**" shall mean 31 C.F.R. § 1010.230.

"**Benefit Plan**" shall mean any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"**BIA**" shall mean the *Bankruptcy and Insolvency Act* (Canada), as amended.

"**Bidding Procedures**" shall mean the bidding procedures in substantially the form attached as Exhibit A-1 to the Stalking Horse APA or otherwise in form and substance satisfactory to each of the Administrative Agent and the DIP ABL Agent.

"**Bidding Procedures Order**" shall mean the orders of the Bankruptcy Court and the CCAA Court approving the Bidding Procedures and the Bidding Procedures Motion, in substantially the form attached as Exhibit A-1 to the Stalking Horse APA or otherwise in form and substance satisfactory to each of the Administrative Agent and the DIP ABL Agent.

"**Bidding Procedures Motion**" shall mean the motions filed with the Bankruptcy Court and the CCAA Court seeking approval of the Bidding Procedures, which motions shall be in form and substance satisfactory to the Administrative Agent and the DIP ABL Agent (together with all

exhibits thereto), (i) seeking approval of (A) the Stalking Horse Transaction and the Stalking Horse APA and (B) the Bidding Procedures and the scheduling of certain dates, deadlines and forms of notice in connection therewith, and (ii) granting other related relief.

"**Board of Directors**" shall mean (a) in the case of a Person that is a limited partnership, the board of directors (or comparable managers) of the general partner of such Person, or (b) otherwise, the board of directors (or comparable managers) of a Person or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers).

"**Borrower**" shall have the meaning provided in the preamble of this Agreement.

"**Borrowing**" shall mean the borrowing of one type of Term Loans from all the Lenders having Commitments in respect of such Term Loans on a given date (or resulting from a conversion or conversions on such date) having, in the case of Eurodollar Rate Loans, the same Interest Period, provided that Base Rate Loans incurred pursuant to Section 2.09(b) shall be considered part of the related Borrowing of Eurodollar Rate Loans.

"**Brookfield**" shall mean Brookfield Principal Credit LLC, a Delaware limited liability company.

"**Budget Delivery Date**" shall have the meaning provided in Section 7.01(f)(i).

"**Budget Variance Report**" shall mean a variance report in form reasonably satisfactory to the Administrative Agent setting forth in each case for the Testing Period most recently ended prior to the delivery thereof (i) any variances (whether positive or negative) of actual total operating receipts or total operating expenses of the Credit Parties and their Subsidiaries from the Approved Budget for such Testing Period and (ii) an explanation, in reasonable detail, for any variances (other than Permitted Variances) certified by an Authorized Officer of Holdings.

"**Business Day**" shall mean (a) for all purposes other than as covered by clause (b) below, any day except Saturday, Sunday and any day which shall be in New York, New York a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close and (b) with respect to all notices and determinations in connection with, and payments of principal and interest on, Term Loans, any day which is a Business Day described in clause (a) above and which is also a day for trading by and between banks in U.S. dollar deposits in the interbank Eurodollar market.

"**Canadian Anti-Money Laundering & Anti-Terrorism Legislation**" shall mean the Criminal Code, R.S.C. 1985, c. C-46, The Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17 and the United Nations Act, R.S.C. 1985, c. U-2 or any similar Canadian legislation applicable to a Credit Party and its Subsidiaries, together with all rules, regulations and interpretations thereunder or related thereto including the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism and the United Nations Al-Qaida and Taliban Regulations promulgated under the United Nations Act.

"**Canadian Bankruptcy and Insolvency Law**" shall mean any federal or provincial Canadian law from time to time in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors, including the

BIA, the CCAA, the *Winding up and Restructuring Act* (Canada), the *Canada Business Corporations Act*, the *Companies Act* (Nova Scotia) and any other applicable corporations legislation.

"**Canadian Credit Parties**" shall mean, collectively, each Canadian Guarantor; each sometimes being referred to individually as a "**Canadian Credit Party**".

"**Canadian Defined Benefit Pension Plan**" shall mean any Canadian Pension Plan which contains a "**defined benefit provision**", as defined in subsection 147.1(1) of the Income Tax Act (Canada).

"**Canadian Employee**" shall mean any employee or former employee of a Canadian Credit Party.

"**Canadian Employee Benefits Legislation**" shall mean, in respect of any Canadian Employee Plan or any Canadian Pension Plan, all applicable Laws applicable to or binding on such Canadian Employee Plan or Canadian Pension Plan, as applicable, or any of its property or assets or to which such Canadian Employee Plan or Canadian Pension Plan, as applicable, or any of its property or assets is subject, including for greater certainty, the Income Tax Act (Canada), the Pension Benefits Act (New Brunswick), and the Pension Benefits Act (Ontario), in each case, as applicable and as amended from time to time.

"**Canadian Employee Plan**" shall mean any employee benefit, health, welfare, supplemental unemployment benefit, bonus, pension, supplemental pension, profit sharing, retiring allowance, severance, deferred compensation, stock compensation, stock purchase, unit purchase, retirement, life, hospitalization insurance, medical, dental, disability or other employee group or similar benefit or employment plans or supplemental arrangements applicable to the Canadian Employees, but excluding any Canadian Pension Plan and any statutory benefit plans in which a Canadian Credit Party is required to participate or with which a Canadian Credit Party is required to comply.

"**Canadian Guarantors**" shall mean, collectively, each Guarantor that is organized under the laws of Canada or a province of Canada; each sometimes being referred to individually as a "**Canadian Guarantor**".

"**Canadian Pension Event**" shall mean the occurrence of any one or more of the following events:

(a) failure to satisfy any funding obligations to the pension fund of any Canadian Pension Plan from a Canadian Credit Party;

(b) prohibited withdrawal or application of the assets of the Canadian Pension Plans by any Canadian Credit Party;

(c) the occurrence of any event which could reasonably be expected to give rise to a partial or full termination of any Canadian Defined Benefit Pension Plan;

(d) the occurrence of any event which triggers immediate or accelerated funding in respect of any Canadian Defined Benefit Pension Plan;

(e) the Board of Directors of any Credit Party passes a resolution to terminate or windup in whole or in part any Canadian Defined Benefit Pension Plan or any Credit Party otherwise initiates any action or filing to voluntarily terminate or wind-up in whole or in part any Canadian Defined Benefit Pension Plan;

(f) the institution of proceedings by any Governmental Authority to terminate in whole or in part any Canadian Defined Benefit Pension Plan, including notice being given by the Ontario Superintendent of Financial Services, the New Brunswick Superintendent of Pensions or another Governmental Authority that it intends to proceed to wind-up in whole or in part a Canadian Defined Benefit Pension Plan;

(g) the receipt by any Credit Party or correspondence from any Governmental Authority related to the likely wind-up or termination (in whole or in part) of any Canadian Defined Benefit Pension Plan;

(h) the wind-up or partial wind-up of a Canadian Defined Benefit Pension Plan; or

(i) a Lien arises in connection with a Canadian Pension Plan (other than for contribution amounts not yet due).

"**Canadian Pension Plan**" shall mean any pension plan required to be registered under the *Income Tax Act* (Canada) or any Canadian federal or provincial law and or contributed to by a Canadian Credit Party for its Canadian Employees or former Canadian Employees, including any pension benefit plan within the meaning of the *Pension Benefits Act* (New Brunswick) or the *Pension Benefits Act* (Ontario) but does not include the Canada Pension Plan maintained by the Government of Canada.

"**Canadian Security Agreement**" shall have the meaning provided in Section 5.01(g).

"**Canadian Subsidiary**" shall mean any Subsidiary organized under the federal laws of Canada (or any province or territory thereof) and any Subsidiary thereof.

"**Capitalized Lease Obligations**" shall mean, with respect to any Person, all rental obligations of such Person which, under GAAP, are or will be required to be capitalized on the books of such Person, in each case taken at the amount thereof accounted for as indebtedness in accordance with such principles. Notwithstanding the foregoing, as provided in Section 1.02(b) for purposes of this Agreement the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP (as in effect on the Prepetition Closing Date).

"**Cash Collateral**" shall have the meaning provided in the Interim Order or the Final Order, as applicable.

"**Cash Equivalents**" shall mean (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or Canada or issued by any agency thereof and

backed by the full faith and credit of the United States or Canada, in each case maturing within one year from the date of acquisition thereof, (b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state, or any province of Canada, or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having an investment grade rating from either S&P or Moody's, (c) commercial paper maturing no more than one year from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody's, (d) certificates of deposit, time deposits, overnight bank deposits or bankers' acceptances maturing within one year from the date of acquisition thereof issued by any bank organized under the laws of the United States or any state thereof or the District of Columbia or any United States branch of a foreign bank, or any bank listed on Schedule I of the Bank Act (Canada), having at the date of acquisition thereof combined capital and surplus of not less than $250,000,000, (e) Deposit Accounts maintained with (i) any bank that satisfies the criteria described in clause (d) above, or (ii) any other bank organized under the laws of the United States or any state thereof, or the federal laws of Canada, so long as the amount maintained with any such other bank is less than or equal to $250,000 and is insured by the Federal Deposit Insurance Corporation or the Canadian Deposit Insurance Corporation, as the case may be, (f) repurchase obligations of any commercial bank satisfying the requirements of clause (d) of this definition or recognized securities dealer having combined capital and surplus of not less than $250,000,000, having a term of not more than 30 days, with respect to securities satisfying the criteria in clauses (a) or (d) above, (g) debt securities with maturities of one year or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the criteria described in clause (d) above, and (h) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (g) above and (i) shares of investment companies that are registered under the Investment Company Act of 1940 and substantially all of the investments which are one or more of the types of assets described in clauses (a) through (g) above.

"**Carve-Out**" shall have the meaning provided in the Interim Order or the Final Order, as applicable.

"**Case"** and "**Cases**" shall have the meaning provided in the recitals to this Agreement.

"**CCAA**" shall mean the *Companies' Creditors Arrangement Act* (Canada), R.S.C 1985, c. C-36.

"**CCAA A&R Initial Order**" shall mean the CCAA Initial Order as amended and restated by the CCAA Court at the hearing of the CCAA Comeback Motion to: (i) approve service and/or substitute service on all secured creditors of the CCAA Debtors likely to be affected by the CCAA DIP Charge; and (ii) provide for the full priming of the CCAA DIP Charge on all of the Collateral of the CCAA Debtors on the terms contemplated thereby.

"**CCAA A&R Initial Order Entry Date**" shall mean the date on which the CCAA A&R Initial Order is entered with the CCAA Court.

"**CCAA Approval and Vesting Order**" shall mean a final non-appealable order of the CCAA Court, in form and substance reasonably acceptable to each of the Administrative Agent

and the DIP ABL Agent approving (i) the Stalking Horse Transaction on the terms set forth in the Stalking Horse APA or (ii) another sale pursuant to the Bidding Procedures Order of substantially all of the assets of the Debtors and the CCAA Debtors.

"**CCAA Case**" and "**CCAA Cases**" shall have the meaning provided in the recitals to this Agreement.

"**CCAA Court**" shall have the meaning provided in the recitals to this Agreement.

"**CCAA Debtor**" and "**CCAA Debtors**" shall have the meaning provided in the recitals to this Agreement.

"**CCAA DIP Charge**" shall mean a super-priority priming charge granted by the CCAA Court on all of the Collateral of the CCAA Debtors.

"**CCAA Filing Date**" shall have the meaning provided in the recitals to this Agreement.

"**CCAA Comeback Motion**" shall mean the motion seeking the CCAA A&R Initial Order to be heard by the CCAA Court not later than ten (10) days following the entry of the CCAA Initial Order, which motion shall be served by the CCAA Debtors on the service list established in the CCAA Cases, all secured creditors of the CCAA Debtors and any other Person as may be requested by the Administrative Agent.

"**CCAA Initial Order**" shall mean an order of the CCAA Court (as the same may be amended, supplemented, or modified from time to time after entry thereof in accordance with the terms thereof), in form and substance satisfactory to the Administrative Agent, which order shall, among other things, authorize the Credit Documents and the DIP ABL Credit Documents to which any CCAA Debtor is a party and the Transactions contemplated by this Agreement and grant the CCAA DIP Charge, with only such modifications as are satisfactory to the Administrative Agent, in its sole discretion.

"**CCAA Initial Order Date**" means the date on which the CCAA Initial Order is entered with the CCAA Court.

"**CCAA Orders**" means the CCAA Initial Order and the CCAA A&R Initial Order, as applicable.

"**CCAA Monitor**" means the monitor appointed by the CCAA Court pursuant to the CCAA Initial Order.

"**Change in Law**" shall have the meaning given to it in Section 9.06.

"**Change of Control**" shall mean that (a) at any time, Permitted Holders fail to own and control, directly or indirectly, more than 50%, on a fully diluted basis, of the Equity Interests of Holdings having the right to vote for the election of members of its Board of Directors, (b) Holdings ceases to own, directly or indirectly, 100% of the Equity Interests of the Borrower or (c) a "Change of Control" (or any comparable term or provision) under or with respect to the DIP

ABL Credit Agreement, the Prepetition Term Loan Agreement, any Restricted Debt Document or any Preferred Equity that is not Qualified Preferred Equity shall have occurred.

"**CIP Regulations**" shall have the meaning given to it in Section 10.13(a).

"**Civil Cases**" shall mean any and all cases that are currently pending and/or that will be brought in the future against Bumble Bee Foods, LLC and/or its Affiliates in any and all courts within the United States, or any other country, with respect to price-fixing or otherwise arising out of or related, but not limited, to the allegations in the following complaints: In re Packaged Sea Food Antitrust Litigation, Case No. 3:15-md-02670 (JLS)(MDD); The Kroger Co., et al v. Bumble Bee Foods, LLC, et al, Case No. 16-cv-0051 (JSS)(MDD); Wegmans Food Markets, Inc. v. Bumble Bee Foods, LLC, et al, Case No. 3:16cv0264 (JLS)(MDD); Wal-Mart Stores, Inc. v. Bumble Bee Foods, LLC, et al, Case No. 16-CV-2821 (JLS)(MDD); Affiliated Foods, Inc.; Affiliated Foods Midwest Cooperative, Inc.; Alex Lee, Inc.; Associated Food Stores, Inc.; Associated Grocers of New England, Inc.; Associated Grocers, Inc.; Big Y Foods, Inc.; Brookshire Brothers, Inc.; Brookshire Grocery Company; Certco, Inc.; Dollar Tree Distribution, Inc.; Greenbrier International, Inc.; Family Dollar Stores, Inc.; Family Dollar Services, LLC; Fareway Stores, Inc.; The Golub Corporation; Giant Eagle Inc.; Kmart Corporation; KVA-T Food Stores, Inc.; McLane Company, Inc.; Meadowbrook Meat Company, Inc.; Merchants Distributors, LLC; Schnuck Markets, Inc.; Unified Grocers, Inc.; URM Stores Inc.; Western Family Foods, Inc.; and Woodman's Food Market, Inc. v. Tri-Union Seafoods, LLC, d/b/a Chicken of the Sea International; Thai Union Group Public Company, LTD.; Bumble Bee Foods, LLC, f/k/a Bumble Bee Seafoods, LLC, Starkist Co.; Del Monte Corporation; and Dongwon Industries Co., Ltd., Case No. 15-cv-2670(JLS)(MDD); Target Corporation v. Bumble Bee Foods, LLC, Starkist Company, Dongwon Industries Co. LTD, Tri-Union Seafoods LLC d/b/a Chicken of the Sea International, Inc., and Thai Union Group PLC, Case No.17-cv-02024; CVS Pharmacy, Inc. v. Bumble Bee Foods LLC, et al., 3:17-cv-02145 (JLS)(MDD); Associated Wholesale Grocers, Inc. v. Bumble Bee Foods LLC, et al., 3:18-cv-01014 (JLS)(MDD); Bashas' Inc., et al. v. Tri-Union Seafoods, LLC, et al., 3:17-cv-02487; Dollar General Corporation, et al. v. Bumble Bee Foods LLC et al., 3:17-cv-1744 (JLS)(MDD); Krasdale Foods, Inc. v. Bumble Bee Foods LLC, et al., Case No. 3:17-cv-1748 (JLS)(MDD); Meijer, Inc. and Meijer Distribution, Inc. v. Bumble Bee Foods, et al., 13:6-cv-0398(JLS)(MDD); Moran Foods, LLC v. Bumble Bee Foods LLC, et al., Case 3:17-cv-1745-(JLS)(MDD); Publix Super Markets, Inc. et al. v. Bumble Bee Foods LLC, et al., 3:16-cv-00247 (JLS)(MDD); Super Store Industries v. Bumble Bee Foods LLC et al., 3:17-cv-0950 (JLS)(MDD); SuperValu Inc., et al. v. Bumble Bee Foods LLC, et al., 3:17-cv-0951 (JLS)(MDD); W. Lee Flowers & Co., Inc. v. Bumble Bee Foods, LLC; et al, 3:16-cv-01226 (JLS); Winn-Dixie Stores, Inc. v. Bumble Bee Foods LLC, et al., 3:16-cv-00017(JLS)(MDD); and Vanessa Lilleyman v. Bumble Bee Foods, LLC et al (Ontario, Canada), Case No. CV-17-58510800CP.

"**Closing Date**" shall mean the date (which shall be a Business Day) on which each of the conditions in Section 5.01 is satisfied (or waived in accordance with Section 11.11) and the initial Borrowing occurs.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended from time to time. Section references to the Code are to the Code, as in effect at the date of this Agreement and any subsequent provisions of the Code, amendatory thereof, supplemental thereto or substituted therefor.

"**Collateral**" shall mean all "DIP Collateral" (or equivalent term) as defined in the Interim Order (and, when entered, the Final Order), all "Property" (or equivalent term) as defined in the CCAA Initial Order (and, when entered, the CCAA A&R Initial Order) and all "Collateral" (or equivalent term) as defined in any Security Document and shall include the DIP Term Funding Account and any and all amounts held in such account and all proceeds thereof; provided that Collateral shall not include Excluded Assets.

"**Commitment**" shall mean, individually or collectively, as the context may require, the Initial Commitment or the Delayed Draw Commitment. The aggregate amount of the Commitments as of the Closing Date is $80,000,000, as set forth on Schedule 1.01.

"**Committee**" means an official committee of unsecured creditors appointed in any of the Cases by the U.S. Trustee.

"**Commodity Exchange Act**" shall mean the Commodity Exchange Act (7 U.S.C. § 1et seq.), as amended from time to time, and any successor statute.

"**Company**" shall mean any company, corporation, limited liability company, partnership or other business entity (or the adjectival form thereof, where appropriate).

"**Company Compliance Program**" shall mean the corporate and regulatory compliance program maintained by Bumble Bee Foods, LLC as of the Closing Date.

"**Company Product**" shall have the meaning given to it in Section 6.25(a).

"**Compliance Program**" shall mean any compliance program required by the Plea Agreement or the United States or any other Governmental Authority in connection with or related to the Plea Agreement.

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

"**Contingent Obligation**" shall mean, as to any Person, any obligation of such Person as a result of such Person being a general partner of any other Person, unless the underlying obligation is expressly made non-recourse as to such general partner, and any obligation of such Person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations ("**primary obligations**") of any other Person (the "**primary obligor**") in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (d) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any

Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

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

"**Controlled Investment Affiliate**" shall mean, as to any Person, any other Person which (i) directly or indirectly is in Control of, is Controlled by, or is under common Control with, such Person and is organized by such Person (or any Person Controlling such Person) primarily for making equity or debt investments in Holdings or other portfolio companies or (ii) is obligated pursuant to a commitment agreement to invest its capital as directed by such Person.

"**Court**" shall mean the U.S. District Court for the Northern District of California.

"**Credit Documents**" shall mean this Agreement, the Orders, the Term Notes, if any, the Security Documents, the Intercreditor Agreement, and all other documents, certificates, instruments or agreements executed and delivered by or on behalf of a Credit Party for the benefit of the Administrative Agent or any Lender in connection herewith on or after the date hereof, including all letters for the payments of fees, guaranties and collateral documents.

"**Credit Event**" shall mean the making of the Term Loans or any other extensions of credit hereunder.

"**Credit Party**" shall mean each of Holdings, the Borrower and each other Guarantor.

"**Currency Due**" shall have the meaning provided for in Section 11.07.

"**Debtor**" and "**Debtors**" shall have the meaning provided in the recitals to this Agreement.

"**Default**" shall mean any event, act or condition which with notice or lapse of time, or both, would constitute an Event of Default.

"**Delayed Draw Borrowing Date**" shall mean the date on which the Delayed Draw Term Loan is made, which shall be no earlier than the later of (i) the Final Order Entry Date and (ii) the CCAA A&R Initial Order Date.

"**Delayed Draw Commitment**" means, with respect to each Lender, the commitment of such Lender to make the Delayed Draw Term Loan to the Borrower in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name on Schedule 1.01, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate amount of the Lenders' Delayed Draw Commitments on the Closing Date is $40,000,000.

"**Delayed Draw Term Loan**" shall have the meaning provided for in Section 2.01.

"**Deposit Account**" shall mean any deposit account (as that term is defined in the UCC).

"**DIP ABL Agent**" shall mean Wells Fargo Capital Finance, LLC or any successor thereto under the DIP ABL Credit Agreement.

"**DIP ABL Credit Agreement**" shall mean that certain debtor-in-possession credit agreement, dated as of the date hereof (as amended, supplemented or otherwise modified from time to time), by and among Bumble Bee Foods, LLC, as the borrower, the DIP ABL Agent, the lenders and other parties from time to time party thereto.

"**DIP ABL Credit Documents**" shall mean Loan Documents (as defined in the DIP ABL Credit Agreement).

"**DIP ABL Credit Facility**" shall have the meaning provided in the recitals of this Agreement.

"**DIP Budget**" means a budget delivered on or prior to the Closing Date and updated from time to time as set forth in Section 7.01(f), setting forth on a weekly basis for (x) the applicable 13-week period or (y) the period until the projected closing of the 363 Sale, whichever is shorter, among other things, the projected total operating receipts and total operating expenses of, and the projected professional fees to be paid by, the Credit Parties and their Subsidiaries during such period.

"**DIP Facilities**" shall have the meaning provided in the recitals of this Agreement.

"**DIP Superpriority Claim**" shall have the meaning assigned to such term in the Interim Order (or the Final Order, when applicable).

"**DIP Term Facility**" shall have the meaning provided in the recitals of this Agreement.

"**DIP Term Funding Account**" shall mean the segregated Deposit Account to be established in the name of the Borrower at a financial institution satisfactory to the Administrative Agent and subject to an account control agreement providing for "day 1" control in favor of the Administrative Agent in form and substance reasonably satisfactory to the Administrative Agent into which the proceeds of the Delayed Draw Term Loans are to be deposited; it being acknowledged and agreed that the funds in such account shall only be made available to the Borrower in accordance with the terms and conditions set forth in Section 2.13.

"**DIP Term Funding Withdrawal Notice**" shall have the meaning provided in Section 2.13.

"**Disclosure Statement**" shall have the meaning provided in Section 7.18(g).

"**Disqualified Lender**" shall mean any Person that is a competitor of Holdings or any of its Subsidiaries (or an Affiliate of such competitor) designated by Holdings as a "Disqualified Lender" by written notice delivered to the Administrative Agent prior to the date hereof; provided that "Disqualified Lender" shall exclude any Person that Holdings has designated as no longer being a "Disqualified Lender" by written notice delivered to the Administrative Agent from time

to time; provided, further that, no Affiliate of a competitor shall include any Affiliate of such competitor that is a bona fide debt fund, investment vehicle, regulated banking entity or non-regulated lending entity that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans or bonds and/or similar extensions of credit in the ordinary course of business. The list of Disqualified Lenders shall be made available to any Lender upon written request to the Administrative Agent. In no event shall a supplement to the list of Disqualified Lenders apply retroactively to disqualify any Persons that have previously acquired an assignment or participation interest in the Term Loans that was otherwise permitted prior to such permitted supplementation.

"**Dividend**" shall mean, with respect to any Person, the payment of a dividend, distribution or return on any equity capital to its stockholders, shareholders, partners or members or the making of any other distribution, payment or delivery of property (other than common Equity Interests of such Person) or cash to its stockholders, partners or members in their capacity as such, or the redemption, retirement, purchase or other acquisition, directly or indirectly, for consideration (other than common Equity Interests of such Person) of any shares of any class of its capital stock or any other Equity Interests outstanding on or after the Closing Date (or any options or warrants issued by such Person with respect to its capital stock or other Equity Interests of such Person) or the purchase or other acquisition for consideration (other than common Equity Interests of such Person) of any shares of any class of the capital stock or any other Equity Interests of such Person outstanding on or after the Closing Date (or any options or warrants issued by such Person with respect to its capital stock or other Equity Interests). Without limiting the foregoing, "**Dividends**" with respect to any Person shall also include all payments made or required to be made by such Person with respect to any stock appreciation rights, plans, equity incentive or achievement plans or any similar plans or setting aside of any funds for the foregoing purposes.

"**Dollars**" and the sign "**$**" shall each mean freely transferable lawful money of the United States.

"**Domestic Credit Party**" shall mean any Credit Party incorporated or organized in the United States or any State or territory thereof or the District of Columbia.

"**Domestic Subsidiary**" of any Person shall mean any Subsidiary of such Person incorporated or organized in the United States or any State or territory thereof or the District of Columbia.

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

"**EEA Member Country**" shall mean any of the member states of the European Union, Iceland, Liechtenstein and Norway.

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

"**Eligible Transferee**" shall mean and include a commercial bank, pension fund, an insurance company, a finance company, a financial institution, any fund that invests in loans or any other "accredited investor" (as defined in Regulation D of the Securities Act), but in any event excluding (a) Holdings and its Subsidiaries and any of their respective Affiliates, and (b) any Disqualified Lenders.

"**Embargoed Person**" shall mean (a) any country or territory that is the target of a comprehensive sanctions program administered by the U.S. Government, including the Treasury Department's Office of Foreign Assets Control ("**OFAC**"); the United Nations Security Council; the European Union, including any Member State of the European Union; Her Majesty's Treasury; or the Government of Canada (collectively, "**Sanctions Authorities**") (for the avoidance of doubt, such countries or territories as of the date of this Agreement include Cuba, Iran, North Korea, Syria, Sudan, and the Crimea Region of Ukraine) or (b) any Person that (i) is publicly identified on the most current list of "Specially Designated Nationals and Blocked Persons" published by OFAC or is otherwise currently the target of any sanctions maintained by any Sanctions Authority or (ii) resides, is organized or chartered in a country or territory that is the target of a comprehensive sanctions program administered by any Sanctions Authority.

"**Environmental Claims**" shall mean any and all administrative, regulatory or judicial actions, suits, demands, demand letters, directives, claims, liens, written notices of non-compliance or violation, investigations or proceedings relating in any way to any Environmental Law or any Environmental Permit issued, or any approval given, under any such Environmental Law, including (a) any and all claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (b) any and all claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief in connection with alleged injury or threat of injury to health, safety or the environment due to the presence of Hazardous Materials.

"**Environmental Law**" shall mean, to the extent applicable to Holdings or any Subsidiary, any laws, common law, statutes, judgments, decrees, rules, constitutions, treaties, conventions, regulations, codes, ordinances, orders and enforceable policies, guidelines or similar requirements of all Governmental Authorities, now or hereafter in effect, and any legally binding judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment and relating to the protection of the environment, natural resources, sustainability or human health and safety as it relates to exposure to Hazardous Materials or hazardous environmental conditions but excluding for the avoidance of doubt any Food Safety Laws.

"**Environmental Permit**" shall mean any approval, authorization, consent, license, permit or certificate of a Governmental Authority required under Environmental Law.

"**Equity Interests**" of any Person shall mean any and all shares, interests, rights to purchase, warrants, options, participation or other equivalents of or interest in (however

designated) equity of such Person, including any common stock, preferred stock, any limited or general partnership interest and any limited liability company membership interest.

"**ERISA**" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder. Section references to ERISA are to ERISA, as in effect at the date of this Agreement and any subsequent provisions of ERISA, amendatory thereof, supplemental thereto or substituted therefor.

"**ERISA Affiliate**" shall mean each member of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control and all other entities which, together with Holdings, or a Subsidiary of Holdings, would be deemed to be a "single employer" within the meaning of Section 414 of the Code.

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

"**Eurodollar Rate**" shall mean, for any Interest Period with respect to a Term Loan, the London interbank offered rate as administered by the ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for a period equal to such Interest Period commencing on the first day of such Interest Period as published by Bloomberg (or, in the event such rate is not published by Bloomberg, from another commercially available source providing quotations of LIBOR as designated by the Administrative Agent from time to time), in each case, the "**Screen Rate**") as of 11:00 A.M., London, England time, two (2) Business Days prior to the first day of such Interest Period; provided, that if the Screen Rate shall not be available for such Interest Period (an "**Impacted Interest Period**"), then the Eurodollar Rate shall be the Interpolated Rate at such time; provided, further, that if the Screen Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement; provided, further, that the Eurodollar Rate with respect to Eurodollar Rate Loans that bear interest at a rate based on this definition will not be deemed to be less than 1.00% per annum. "**Interpolated Rate**" shall mean, at any time, the rate per annum determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the Screen Rate for the longest period (for which that Screen Rate is available in Dollars) that is shorter than the Impacted Interest Period and (b) the Screen Rate for the shortest period (for which that Screen Rate is available in Dollars) that exceeds the Impacted Interest Period, in each case, at such time; provided that if the Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement. Additionally, the Eurodollar Rate shall be subject to any reserve percentage prescribed by any Governmental Authority.

"**Eurodollar Rate Loan**" shall mean a Term Loan that bears interest based on the Eurodollar Rate.

"**Event of Default**" shall have the meaning provided in Section 9.

"**Exchange Rate**" shall mean, on any day with respect to any currency, the rate at which such currency may be exchanged into any other currency (including Dollars), as published in *The*

Wall Street Journal (Eastern Edition) on such day for such currency. In the event that such rate does not appear on *The Wall Street Journal (Eastern Edition)*, the Exchange Rate shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed by the Administrative Agent and the Borrower, or, in the absence of such agreement, such Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about 11:00 a.m., local time, on such date for the purchase of the relevant currency for delivery two (2) Business Days later.

"**Excluded Accounts**" shall mean (a) any Deposit Account or Securities Account that is used exclusively for trust, fiduciary or escrow payments, tax payments, payroll, payroll taxes or other employee wage and benefit payments to or for the employees of the Credit Parties, (b) zero balance accounts, or (c) accounts with a balance not to exceed $25,000 at any one time.

"**Excluded Assets**" shall have the meaning specified therefor in the Security Agreements, as applicable.

"**Excluded Stock**" shall mean (a) Equity Interests to the extent the pledge thereof would be prohibited or limited by any applicable Law existing on the Closing Date, the date such Equity Interests are acquired by the Borrower or any other Guarantor, or the date the issuer of such Equity Interests is created (excluding any prohibition or limitation that is ineffective under the UCC) and (b) Equity Interests of a Person (other than a Wholly-Owned Subsidiary) the pledge of which would violate a contractual obligation to the owners of the other Equity Interests of such Person (other than any such owners that are Affiliates of Holdings) that is binding on or relating to such Equity Interests. For the avoidance of doubt, the Equity Interests of the Borrower shall not be considered as "**Excluded Stock**".

"**Excluded Subsidiary**" shall mean:

(a) any Subsidiary that is not a Wholly-Owned Subsidiary on any date such Subsidiary would otherwise be required to become a Guarantor pursuant to the requirements of Section 8.14 (for so long as such Subsidiary remains a Non-Wholly Owned Subsidiary) other than a Subsidiary that is a Non-Wholly Owned Subsidiary if such Non-Wholly Owned Subsidiary guarantees or issues other capital markets debt securities of the Borrower or any other Guarantor;

(b) any Subsidiary of Holdings that is prohibited by any applicable law, rule or regulation or contractual obligation existing at the time such Subsidiary becomes a Subsidiary of Holdings from guaranteeing the Obligations (and for so long as such restrictions are in effect) or which would require governmental (including regulatory) consent, approval, license or authorization to provide a Guaranty unless such consent, approval, license or authorization has been received (or is received after commercially reasonable efforts to obtain such consent, approval, license or authorization, which efforts may be requested by the Administrative Agent); and

(c) the Subsidiaries set forth on Schedule 1.01B.

"**Excluded Taxes**" shall mean any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed

on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes or any Canadian withholding taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Term Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Term Loan or Commitment or in this Agreement or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 4.04, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 4.04(c) and (d) any U.S. federal withholding Taxes imposed under FATCA.

"**Exit Fee**" shall have the meaning provided in Section 3.01(b).

"**Fair Market Value**" shall mean, with respect to any asset (including any Equity Interests of any Person), the price at which a willing buyer, not an Affiliate of the seller, and a willing seller, would agree to purchase and sell such asset, having regard to the nature and characteristics of such asset, as determined in good faith by the board of directors or other governing body or, pursuant to a specific delegation of authority by such board of directors or governing body, a designated senior executive officer of Holdings, or the Subsidiary of Holdings that owns such asset.

"**FATCA**" shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, any intergovernmental agreement between a non-U.S. jurisdiction and the United States with respect to the foregoing and any law or regulation adopted pursuant to or implementing any such intergovernmental agreement.

"**FCF Supply Agreement**" shall mean that certain Tuna Supply Agreement, dated as of June 17, 2003 (as amended, restated, amended and restated, supplemented, extended, replaced, or otherwise modified from time to time), by and between FCF Fishery Co. Ltd., a Taiwanese company, and Bumble Bee Foods, LLC, a Delaware limited liability company (f.k.a. Bumble Bee Seafoods, LLC).

"**FCPA**" shall mean the U.S. Foreign Corrupt Practices Act of 1977, 15 U.S.C. § 78dd-1, et seq.

"**Federal Funds Rate**" shall mean, for any period, a fluctuating interest rate equal for each day during such period to the weighted average of the rates on overnight Federal Funds transactions with members of the Federal Reserve System (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time), as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the

Administrative Agent from three Federal Funds brokers of recognized standing selected by the Administrative Agent; provided, that the Federal Funds Rate, if negative, shall be deemed to be 0.00%.

"**Federal Reserve Board**" shall mean the Board of Governors of the Federal Reserve System, or any entity succeeding to any of its principal functions.

"**Fee Letter**" shall mean that certain Fee Letter, dated as of November 26, 2019, by and between the Borrower and the Administrative Agent.

"**Final Order**" shall mean an order of the Bankruptcy Court authorizing and approving on a final basis, among other things, the Credit Documents, the DIP ABL Credit Documents to which any Debtor is a party and the Transactions contemplated by this Agreement in the form of the Interim Order (with only such modifications thereto as are necessary to convert the Interim Order to a final order and such other modifications as are reasonably satisfactory to the Administrative Agent) (as the same may be amended, supplemented, or modified from time to time after entry thereof with the consent of the Administrative Agent, in its sole discretion) as to which no stay has been entered.

"**Final Order Entry Date**" means the date on which the Final Order is entered by the Bankruptcy Court.

"**Flood Laws**" shall mean all applicable laws and regulations relating to policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and other applicable laws related thereto.

"**Food Safety Laws**" shall mean, collectively, to the extent applicable to Holdings or any Subsidiary, (i) the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. §301 et seq., (ii) Laws, regulations and guidances promulgated and enforced by the U.S. Food and Drug Administration, the U.S. Department of Agriculture; the Canadian Food Inspection Agency, the Minister of Health (Canada) and the Minister of Agriculture and Agri-Food (Canada), (iii) the United States Tuna Foundation/National Marine Fisheries Service Test Lot Protocol; (iv) the United States Department of Commerce Seafood Inspection Program applicable procedures for canned/pouch tuna inspection and certification; (v) the Fish Inspection Act (Canada), (vi) all other federal, national, state, provincial, territorial and foreign Laws governing the growing, harvesting, manufacturing, testing, processing, storing, shipping, packaging, labeling, marketing, selling, holding and/or distribution of food products.

"**Foreign Credit Party**" shall mean any Credit Party that is not a Domestic Credit Party.

"**Foreign Subsidiary**" of any Person shall mean any Subsidiary of such Person that is not a Domestic Subsidiary.

"**GAAP**" shall mean generally accepted accounting principles in the United States as in effect from time to time; provided that determinations in accordance with GAAP for purposes hereof, including defined terms as used herein, are subject (to the extent provided therein) to Section 1.02.

"**Government Official**" shall mean any officer or employee of a Governmental Authority or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such Governmental Authority or department, agency, or instrumentality, or for or on behalf of any such public international organization, or any political party, party official, or candidate thereof.

"**Governmental Authority**" shall mean the government of the United States of America, Canada, Luxembourg, or any other nation or any political subdivision of any of the foregoing, whether state, provincial, territorial or local, and any agency, authority, instrumentality, regulatory body, court (including the Bankruptcy Court and the CCAA Court), central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"**Guarantor**" shall mean Holdings, each Subsidiary Guarantor (other than, for the avoidance of doubt, any Excluded Subsidiary) and, other than with respect to its own obligations, the Borrower.

"**Guaranty**" shall have the meaning provided in Section 5.01(f).

"**Hazardous Materials**" shall mean (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, dielectric fluid containing levels of polychlorinated biphenyls, and radon gas; (b) any chemicals, materials, wastes or substances defined or characterized as or included in the definition of "hazardous substances," "hazardous waste," "hazardous materials," "extremely hazardous substances," "restricted hazardous waste," "toxic substances," "toxic pollutants," "contaminants," or "pollutants," or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, the exposure to, or Release of which is prohibited, limited or regulated by any Governmental Authority having jurisdiction over Holdings, any Subsidiary or any of their respective assets or operations.

"**Hedge Agreement**" shall mean a "**swap agreement**" as the term is defined in Section 101(53B)(A) of the Bankruptcy Code between the Borrower and its Subsidiaries and any other Person.

"**Holdings**" shall have the meaning provided in the preamble of this Agreement.

"**Holdings Equity Interests**" shall have the meaning provided in Section 6.13.

"**Impacted Interest Period**" shall have the meaning provided in the definition of "**Eurodollar Rate**".

"**Indebtedness**" shall mean, as to any Person, without duplication, (a) all indebtedness of such Person for borrowed money, (b) the maximum amount available to be drawn or paid (to the extent not cash collateralized) under all letters of credit, bankers' acceptances, bank guaranties, surety and appeal bonds and similar obligations issued for the account of such Person and all unpaid drawings and unreimbursed payments in respect of such letters of credit, bankers' acceptances, bank guaranties, surety and appeal bonds and similar obligations, (c) all indebtedness of the types described in clauses (a), (b), (d), (e), (f), (g), (h) and (i) of this definition secured by

any Lien on any property owned by such Person, whether or not such indebtedness has been assumed by such Person (provided that, if the Person has not assumed or otherwise become liable in respect of such indebtedness, such indebtedness shall be deemed to be in an amount equal to the lesser of the aggregate amount of the obligations so secured and the Fair Market Value of the property to which such Lien relates), (d) all Capitalized Lease Obligations of such Person, (e) all obligations of such Person to pay a specified purchase price for goods, services, or assets, whether or not delivered, accepted or consummated (i.e., take-or-pay and similar obligations), (f) all Contingent Obligations of such Person, (g) all obligations under any Hedge Agreement or under any similar type of agreement (which amount shall be calculated based on the amount that would be payable by such Person if such agreement were terminated on the date of determination), (h) contingent cash purchase price, earn-out and other similar obligations of such Person to the extent any such amounts are required to be classified as a liability in accordance with GAAP, and (i) all Attributable Indebtedness of such Person. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is directly liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. Notwithstanding the foregoing, Indebtedness shall not include (i) trade payables, accrued expenses and deferred tax and other credits incurred by any Person made in the ordinary course of business of such Person, (ii) [reserved], (iii) prepaid or deferred revenue arising in the ordinary course of business, (iv) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase price of an asset to satisfy warrants or other unperformed obligations of the seller of such asset and (v) lease liabilities in respect of operating leases under Accounting Standard Codification 842. In addition, for purposes of this definition the amount of any Indebtedness represented by a guaranty or other similar instrument shall be the lesser of the principal amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing person may be liable pursuant to the terms of the instrument embodying such Indebtedness.

"**Indemnified Person**" shall have the meaning provided in Section 11.01(a).

"**Indemnified Taxes**" shall mean (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of a Credit Party under any Credit Document and (b) to the extent not otherwise described in (a), Other Taxes.

"**Initial Commitment**" means, with respect to each Lender, the commitment of such Lender to make the Initial Term Loan to the Borrower in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name on Schedule 1.01. The aggregate amount of the Lenders' Initial Commitments on the Closing Date is $40,000,000.

"**Initial DIP Budget**" shall mean the DIP Budget delivered on or prior to the Closing Date.

"**Initial Term Loan**" shall have the meaning provided in Section 2.01.

"**Insolvency Regulation**" shall mean Regulation (EU) No 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), as amended.

"**Intellectual Property**" shall have the meaning provided in Section 6.20.

"**Intercompany Debt**" shall mean any Indebtedness, payables or other obligations, whether now existing or hereafter incurred, owed by Holdings or any Subsidiary of Holdings to Holdings or any other Subsidiary of Holdings.

"**Intercompany Loans**" shall have the meaning provided in Section 8.05(h).

"**Intercompany Subordination Agreement**" shall mean the intercompany subordination agreement substantially in the form of Exhibit J (or such other form as shall be reasonably satisfactory to the Administrative Agent).

"**Intercreditor Agreement**" shall mean that certain Intercreditor Agreement, dated as of November 26, 2019, among the Administrative Agent, the DIP ABL Agent, the Prepetition Term Agent, the Prepetition ABL Agent and the Credit Parties, as may be amended, restated, modified or replaced in accordance with its terms.

"**Interest Determination Date**" shall mean the second Business Day prior to the commencement of any Interest Period.

"**Interest Payment Date**" shall have the meaning provided in Section 2.07(c).

"**Interest Period**" shall have the meaning provided in Section 2.08.

"**Interim Order**" means an order of the Bankruptcy Court (as the same may be amended, supplemented, or modified from time to time after entry thereof in accordance with the terms thereof), in the form set forth in Exhibit L, authorizing on an interim basis, among other things, the Credit Documents and the DIP ABL Credit Documents to which any Debtor is a party and the Transactions contemplated by this Agreement, with only such modifications as are satisfactory to the Administrative Agent, in its sole discretion.

"**Interim Order Entry Date**" means the date on which the Interim Order is entered by the Bankruptcy Court.

"**Interpolated Rate**" shall have the meaning provided in the definition of "**Eurodollar Rate**".

"**Investment**" shall mean, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances, capital contributions (excluding (a) commission, travel, and similar advances to officers and employees of such Person made in the ordinary course of business, and (b) *bona fide* accounts receivables arising in the ordinary course of business consistent with past practice), or acquisitions of Indebtedness, Equity Interests, or assets of such other Person (or of any division or business line of such other Person). For purposes of covenant compliance, the amount of any Investment shall be equal to the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investments, minus any subsequent Dividend, distribution, interest payment, return of capital, repayment or other amount received in respect of such Investment by the Person making such Investment.

"**Judgment Currency**" shall have the meaning provided in Section 11.07.

"**KEIP/KERP Amount**" shall mean, as of any date of determination, the total amount set forth under the line item for "KEIP/KERP/MIP/SIP" in the then-applicable Approved Budget.

"**Law**" shall mean laws (including the Bankruptcy Code and any rules, regulations or orders relating thereto), common law, statutes, judgments, decrees, rules, constitutions, treaties, conventions, regulations, codes, ordinances, orders, rulings, decisions and enforceable policies, guidelines or similar requirements of all Governmental Authorities.

"**Leaseholds**" of any Person shall mean all the right, title and interest of such Person as lessee or licensee in, to and under leases or licenses of land, improvements and/or fixtures.

"**Lender**" shall mean each institution listed on the Register maintained by the Administrative Agent pursuant to Section 11.14 as well as any Person that becomes a "Lender" hereunder pursuant to Section 11.04(b), as evidenced in such Register.

"**Lien**" shall mean any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), preference, priority or other security agreement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any financing or similar statement or notice filed under the UCC, the PPSA, or any other similar recording or notice statute and any lease having substantially the same effect as any of the foregoing.

"**Litigation Spend**" shall have the meaning provided in Section 8.19.

"**Loan**" shall mean any Term Loan.

"**Luxembourg**" shall mean the Grand Duchy of Luxembourg.

"**Luxembourg Share Pledge**" shall have the meaning given to it in Section 5.01(e).

"**Margin Stock**" shall have the meaning provided in Regulation U.

"**Market Disruption Event**" shall have the meaning given to it in Section 2.09(a)(iii).

"**Material Adverse Effect**" shall mean (a) a material adverse effect on the business, operations, assets, liabilities or condition (financial or otherwise) of the Borrower, Holdings and its Subsidiaries (taken as a whole), in each case except as a result of the commencement of the Cases or the CCAA Cases, or (b) a material adverse effect on (i) the legality, validity or enforceability of the Credit Documents, (ii) the ability of the Credit Parties (taken as a whole) to perform their payment obligations under the Credit Documents or (iii) the rights and remedies (taken as a whole) of the Administrative Agent and Lenders under the applicable Credit Documents.

"**Material Agreement**" shall mean (i) the FCF Supply Agreement and any other agreement or series of related agreements with a supplier under which, either individually or in the aggregate, in excess of 5.0% of the expenditures of Holdings and its Subsidiaries on a consolidated basis, as of the most recently ended consecutive four fiscal quarter period for which financial statements

have been delivered pursuant to Section 7.01(b) or (c), are procured and (ii) the Stalking Horse APA.

"**Material Indebtedness**" shall mean (x) any Indebtedness under the DIP ABL Credit Agreement or (y) any other Indebtedness, in the case of this clause (y), having an aggregate principal amount in excess of $1,000,000.

"**Material Real Property**" shall mean any fee-owned Real Property (including any combination of tracts of land comprising the same operating facilities) with a fair market value in excess of $1,000,000 and the other Real Property designated by the Administrative Agent on the date hereof and identified on Schedule 6.12(b).

"**Maturity Date**" shall mean the earliest of (a) the date that is six months after the Closing Date (or, if such date is not a Business Day, the immediately preceding Business Day), (b) the effective date of any plan for the reorganization of the Borrower or any other Debtor under Chapter 11 of the Bankruptcy Code, or any plan of compromise or arrangement of any CCAA Debtor under the CCAA or any other Canadian Bankruptcy and Insolvency Law, (c) the consummation of a sale or other disposition of all or substantially all of the assets of the Debtors under section 363 of the Bankruptcy Code, or of all or substantially all of the assets of the CCAA Debtors pursuant to section 36 of the CCAA, (d) the date of acceleration of the Loans and the termination of any unused Commitments with respect to the DIP Term Facility in accordance with the terms of this Agreement upon and during the continuance of an Event of Default and (e) the date that is thirty-five (35) days after the Petition Date (or such later date as may be agreed by the Required Lenders), unless both the Final Order Entry Date and the CCAA A&R Initial Order Date has occurred on or prior to such date.

"**Maximum Rate**" shall have the meaning provided in Section 11.19.

"**Milestones**" shall have the meaning provided in Section 7.18.

"**Moody's**" shall mean Moody's Investors Service, Inc.

"**Mortgage**" shall mean a mortgage, leasehold mortgage, deed of trust, leasehold deed of trust, deed to secure debt, leasehold deed to secure debt or similar security instrument.

"**Mortgage Policy**" shall mean a Lender's title insurance policy (Form 2006) or the equivalent title policy in any other applicable jurisdiction.

"**Mortgage Related Documents**" shall mean (a) Mortgage Policies in amounts reasonably satisfactory to the Administrative Agent assuring the Administrative Agent that the Mortgages on such Real Property Collateral are valid and enforceable first priority mortgage Liens on such Real Property Collateral free and clear of all defects and encumbrances except Permitted Liens, and the Mortgage Policies otherwise shall be in form and substance reasonably satisfactory to the Administrative Agent, together with endorsements (but excluding any creditor's rights endorsement or any other endorsement not available at commercially reasonable rates), coinsurance and reinsurance as the Administrative Agent may reasonably request to the extent available in the applicable jurisdiction, (b) if any Real Property Collateral is located in an area determined by the Federal Emergency Management Agency to have special flood hazards,

evidence of such flood insurance as may be required under Applicable Law, including Regulation H, (c) land surveys, legal opinions of local counsel in the jurisdiction where such Real Property Collateral is located, and other documents that the Administrative Agent may reasonably request with respect to the Mortgages, in each case which are in form and substance reasonably satisfactory to the Administrative Agent; provided, that surveys shall not be required when title insurance provides survey coverage and legal opinions shall not be required in respect of title, and (d) as to all Material Real Property, flood determinations as required by Flood Laws, executed as required by Flood Laws.

"**Multiemployer Plan**" shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"**NAIC**" shall mean the National Association of Insurance Commissioners.

"**Narrative Report**" shall mean, collectively, in respect of any fiscal month, fiscal quarter or fiscal year of Holdings, (i) a narrative report of the material operational and financial developments as determined in good faith by management of the Borrower during such fiscal quarter or fiscal year, (ii) to the extent not prohibited by any contract with the provider of such data, IRI market share and pricing data, (iii) albacore and skipjack cost trends data, (iv) "EBITDA bridges" and (v) a working capital summary, including variance from the prior period, in each case, for such fiscal month, fiscal quarter or fiscal year.

"**Necessary Authorizations**" shall mean all material authorizations, consents, permits, approvals, waivers, licenses, and exemptions from, and all filings and registrations with, and all reports to, any Governmental Authority having jurisdiction over Holdings, any Subsidiary or any of their respective assets or operations, whether federal, provincial, territorial, state, local, and all agencies thereof, which are required for the transactions contemplated by the Credit Documents and necessary to the conduct of the businesses and the ownership (or lease) of the properties and assets of the Credit Parties.

"**Net Cash Proceeds**" shall mean for any event requiring a repayment of Term Loans pursuant to Section 4.02 (other than Section 4.02(c) or (d)), as the case may be, the gross cash proceeds and Cash Equivalents (including any cash and Cash Equivalents received by way of deferred payment pursuant to a promissory note, receivable or otherwise, but only as and when received) received by a Person from such event, net of (i) reasonable transaction costs (including any underwriting, brokerage or other customary commissions and reasonable legal, advisory and other fees and expenses associated therewith) payable to third parties pursuant to such event, (ii) any portion of such proceeds deposited in an escrow account pursuant to the documentation relating to such event (provided that such amounts shall be treated as Net Cash Proceeds upon their release from such escrow account to the applicable Credit Party), (iii) taxes paid or reasonably estimated by Holdings and its Subsidiaries to be payable as a result thereof (after taking into account any available tax credits or deductions and any withholding taxes imposed on the repatriation of such proceeds) and (iv) in the case of a Recovery Event, amounts required to be applied to the repayment of any Indebtedness (including with respect to any Recovery Event in respect of any ABL Priority Collateral, only those cash proceeds required to be used to repay borrowings under the DIP ABL Credit Agreement) secured by a Lien that has priority over the Lien of the Administrative Agent on the asset subject to such Recovery Event (other than (A)

Indebtedness owing to the Administrative Agent or any Lender under this Agreement or any other Credit Document and (B) Indebtedness assumed by the purchase of such asset).

"**Net Sale Proceeds**" shall mean for any sale, transfer or other disposition of assets, the gross cash proceeds and Cash Equivalents (including any cash and Cash Equivalents received by way of deferred payment pursuant to a promissory note, receivable or otherwise, but only as and when received) received by a Person from such sale, transfer or other disposition of assets, net of (a) reasonable transaction costs (including any underwriting, brokerage or other customary selling commissions, reasonable legal, advisory and other fees and expenses (including title and recording expenses), associated therewith and payable to third parties and sales, VAT and transfer taxes arising therefrom), (b) the amount of such gross cash proceeds required to be used to repay any Indebtedness including with respect to any Asset Sale of any ABL Priority Collateral, or any Asset Sale of the Equity Interests of any Credit Party that owns any ABL Priority Collateral, those cash proceeds required to be used to repay the borrowings under Section 2.4(e)(i) of the DIP ABL Credit Agreement, but excluding Indebtedness of the Administrative Agent and the Lenders pursuant to this Agreement) which is secured by a Lien that has priority over the Lien of the Administrative Agent on the respective assets which were sold or otherwise disposed of and (c) taxes paid or reasonably estimated by Holdings and its Subsidiaries to be payable as a result thereof (after taking into account any available tax credits or deductions) and any withholding taxes imposed on the repatriation of such proceeds; provided, however, that such gross proceeds shall not include any portion of such gross cash proceeds that are held in escrow and reserved for customary post-closing adjustments, but only to the extent Holdings determines in good faith that any such amounts held in escrow are not reasonably likely to be released to Holdings or any Subsidiary within 90 days of the date of determination (to the extent Holdings delivers to the Lenders a certificate signed by an Authorized Officer as to such determination), it being understood and agreed that on the day that all such post-closing adjustments have been determined (which shall not be later than six months following the date of the respective asset sale) the amount of Net Sale Proceeds shall be adjusted (if required) to reflect the actual amount (if any) by which the reserved amount in respect of such sale or disposition exceeds the actual post-closing adjustments payable by Holdings or any of its Subsidiaries.

"**Non-Wholly Owned Subsidiary**" shall mean, as to any Person, each Subsidiary of such Person which is not a Wholly-Owned Subsidiary of such Person.

"**Notice of Borrowing**" shall have the meaning provided in Section 2.02(a).

"**Notice of Conversion/Continuation**" shall have the meaning provided in Section 2.06.

"**Notice Office**" shall mean the office of the Administrative Agent located at 250 Vesey Street, 15th Floor, New York, NY 10281, Attention: Andrew Schmidt or such other office or person as the Administrative Agent may hereafter designate in writing as such to the other parties hereto.

"**Obligations**" shall mean advances to, and debts, liabilities, obligations, covenants and duties of, any Credit Party arising under any Credit Document or otherwise with respect to any Term Loans, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees,

expenses and premiums (including any Exit Fee) that accrue after the commencement by or against any Credit Party of any proceeding under the Bankruptcy Code, Canadian Bankruptcy and Insolvency Law or any similar laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees and expenses are allowed claims in such proceeding.

"**OFAC**" shall have meaning set forth in the definition of "**Embargoed Person.**"

"**Orders**" means the Interim Order and the Final Order, as applicable, in each case upon entry thereof by the Bankruptcy Court.

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

"**Other Taxes**" shall mean all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to any Credit Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"**Parent**" shall mean Bumble Bee Holdco S.C.A.

"**Participant Register**" shall have the meaning assigned to such term in Section 11.04(e).

"**PATRIOT Act**" shall have the meaning provided in Section 5.01(m).

"**Payment Office**" shall mean the office of the Administrative Agent located at 250 Vesey Street, 15th Floor, New York, NY 10281 or such other office as the Administrative Agent may hereafter designate in writing as such to the other parties hereto.

"**PBGC**" shall mean the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

"**Perfection Certificate**" shall have the meaning assigned to such term in the U.S. Security Agreement.

"**Permitted Encumbrance**" shall mean, with respect to any Material Real Property, such exceptions to title as are set forth in the Mortgage Policy delivered with respect thereto all of which must be acceptable to the Administrative Agent in its reasonable discretion.

"**Permitted Expenditures Variances**" shall have the meaning provided in Section 7.20(b)(i).

"**Permitted Holders**" shall mean (a) the Sponsor, and (b) all Controlled Investment Affiliates of the Sponsor.

"**Permitted Liens**" shall have the meaning provided in Section 8.01.

"**Permitted Receipts Variances**" shall have the meaning provided in Section 7.20(b)(ii).

"**Permitted Variances**" shall have the meaning provided in Section 7.20(b).

"**Person**" shall mean any individual, partnership, joint venture, firm, corporation, association, limited liability company, trust or other enterprise or any Governmental Authority.

"**Petition Date**" shall have the meaning provided in the recitals of this Agreement.

"**Plan**" shall mean any pension plan (other than a Multiemployer Plan) as defined in Section 3(2) of ERISA, which is maintained or contributed to by (or to which there is an obligation to contribute of) Holdings, a Subsidiary of Holdings or an ERISA Affiliate.

"**Plea Agreement**" shall mean that certain Amended Plea Agreement, dated as of and in effect on August 2, 2017, between Bumble Bee Foods, LLC and the United States Department of Justice, together with any other amendments thereto, in each case, in form and substance satisfactory to the Administrative Agent.

"**PPSA**" shall mean the *Personal Property Security Act* (Ontario) or the *Personal Property Security Act* of any province to which relevant property is subject, or any other applicable federal or provincial statute (including the Civil Code of Quebec) pertaining to the granting, perfecting, priority or ranking of security interests, liens, hypothecs or personal property, and any successor statutes, together with any regulations thereunder, in each case as in effect from time to time. References to sections of the PPSA shall be construed to also refer to any successor sections.

"**Preferred Equity**", as applied to the Equity Interests of any Person, shall mean Equity Interests of such Person (other than common Equity Interests of such Person) of any class or classes (however designed) that ranks prior, as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of such Person, to shares of Equity Interests of any other class of such Person, and shall include any Qualified Preferred Equity.

"**Prepetition ABL Agent**" shall mean Wells Fargo Capital Finance, LLC or any successor thereto under that certain credit agreement, dated as of August 18, 2017 (as amended, supplemented or otherwise modified from time to time, the "**Prepetition ABL Credit Agreement**"), by and among the Borrower, the other borrowers party thereto, Wells Fargo Capital Finance, LLC, as administrative agent, the lenders and other parties from time to time party thereto.

"**Prepetition Term Agent**" shall mean Brookfield Principal Credit LLC, in its capacity as administrative agent or any successor thereto under the Prepetition Term Loan Agreement.

"**Prepetition Term Loan Agreement**" shall mean that certain Term Loan Agreement, dated as of August 15, 2017 (as amended by that certain Amendment No. 1 and Limited Waiver Agreement, dated as of April 26, 2019, that certain Amendment No. 2 and Limited Waiver Agreement, dated as of July 10, 2019, that certain Limited Waiver and Waiver and Extension Agreement, dated as of August 21, 2019, and as may be further amended, restated, amended and

restated, supplemented or otherwise modified from time to time) by and among, *inter alios*, the Bumble Bee Holdings, Inc., Holdings, the Prepetition Term Agent and the lenders from time to time party thereto.

"**Prepetition Closing Date"** shall mean August 15, 2017.

"**primary obligations**" shall have the meaning provided in the definition of "**Contingent Obligations**".

"**primary obligor**" shall have the meaning provided in the definition of "**Contingent Obligations**".

"**Prime Rate**" shall have the meaning provided in the definition of "**Base Rate**".

"**Proceeding**" shall have the meaning given to it in Section 11.01(a).

"**Professional Fees Amount**" shall mean, as of any date of determination, (i) the total amount set forth under the line item for "Restructuring Professional Fee" in the then-applicable Approved Budget, as adjusted from time to time (but no less frequently than once a month, concurrently with the delivery of the DIP Budget pursuant to Section 7.01(f)) based on the applicable professionals' good faith estimates, subject to the cap on the professional fees incurred by the unsecured creditors' committee in the Interim Order or the Final Order, as applicable, *less* (ii) the aggregate amount of such fees that have already been paid or otherwise discharged; provided that, at any time the aggregate principal amount of outstanding (1) Advances (under and as defined in the DIP ABL Credit Agreement and the Prepetition ABL Credit Agreement), (2) Letter of Credit Disbursements (under and as defined in the DIP ABL Credit Agreement) not yet reimbursed, including outstanding Advances (under and as defined in the DIP ABL Credit Agreement) made with respect to such Letter of Credit Disbursements, and (3) undrawn Letters of Credit (under and as defined in the DIP ABL Credit Agreement) to the extent not covered under clause (II) of Section 8.04(n), exceeds (x) at any time on or prior to January 31, 2020, $170,000,000 and (y) at any time on or after February 1, 2020, $175,000,000, then the aggregate amount of professional fees paid by the incurrence of Advances under the DIP ABL Credit Agreement shall not reduce the Professional Fees Amount pursuant to this clause (ii), unless a corresponding amount is withdrawn from the DIP Term Funding Account in accordance with Section 2.13 and applied to repay the outstanding amounts under the DIP ABL Credit Agreement, *less* (iii) the aggregate amount deposited into the Carve-Out Reserve (as defined in the Interim Order or the Final Order, as applicable).

"**Projected Available Liquidity**" means, on any date, the amount of projected (a) Excess Availability (as defined in the DIP ABL Credit Agreement), subject to the limitations set forth in Section 8.04(n), and (b) unrestricted cash and Cash Equivalents of the Credit Parties and their Subsidiaries with respect to the applicable period as of such date, as set forth in the liquidity forecast delivered pursuant to Section 2.13.

"**PTE**" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"**Qualified Preferred Equity**" shall mean any Preferred Equity of Holdings so long as the terms of any such Preferred Equity (a) do not contain any mandatory put, redemption, repayment, sinking fund or other similar provision (other than in exchange for Qualified Preferred Equity and except as a result of a change of control or asset sale so long as any rights of holders thereof upon the occurrence of a change of control or asset sale shall be subject to the prior repayment in full of the Obligations) prior to the date that is six months following the Maturity Date, (b) do not require the cash payment of dividends or distributions that would otherwise be prohibited by the terms of this Agreement or any other Credit Document, (c) do not contain any covenants that are materially more restrictive than the terms of this Agreement, (d) do not grant the holders thereof any voting rights except for (i) voting rights required to be granted to such holders under applicable law and (ii) limited customary voting rights on fundamental matters such as mergers, amalgamations, arrangements, consolidations, sales of all or substantially all of the assets of Holdings, or liquidations involving Holdings, and (e) are otherwise reasonably satisfactory to the Administrative Agent.

"**Qualified Sale**" shall have the meaning provided in Section 2.13(g).

"**Quarterly Payment Date**" shall mean the last Business Day of each March, June, September and December occurring after the Closing Date.

"**RCS Law**" shall have the meaning provided in Section 5.01(c).

"**Real Property**" of any Person shall mean all the right, title and interest of such Person in and to land, improvements and fixtures, including Leaseholds.

"**Real Property Collateral**" shall mean the Material Real Property identified on Schedule 6.12(b) and any Material Real Property hereafter acquired by a Credit Party and required to be made subject to a Mortgage pursuant to the requirements of Section 7.12 or 8.14.

"**Recipient**" shall mean the Administrative Agent, any Lender or any other recipient of any payment by any Credit Party to be made by or on account of any obligation of any Credit Party hereunder.

"**Recovery Event**" shall mean the receipt by Holdings or any of its Subsidiaries of any cash insurance proceeds or condemnation awards payable (a) by reason of theft, loss, physical destruction, damage, taking or any other similar event with respect to any property or assets of Holdings or any of its Subsidiaries and (b) under any policy of insurance required to be maintained under Section 7.03.

"**Register**" shall have the meaning provided in Section 11.14.

"**Regulation D**" shall mean Regulation D of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof establishing reserve requirements.

"**Regulation T**" shall mean Regulation T of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"**Regulation U**" shall mean Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"**Release**" shall mean actively or passively disposing, discharging, injecting, spilling, pumping, leaking, leaching, dumping, emitting, escaping, emptying, pouring, seeping, migrating or the like, into or upon any land or water or air, or otherwise entering into the environment.

"**Remedies Notice Period**" shall have the meaning provided in Section 9.

"**Reportable Event**" shall mean an event described in Section 4043(c) of ERISA with respect to a Plan that is subject to Title IV of ERISA other than those events as to which the 30 day notice period is waived under subsection .22, .23, .25, .27 or .28 of PBGC Regulation Section 4043.

"**Reporting Date**" shall have the meaning provided in Section 7.01(f).

"**Required Lenders**" shall mean, at any time, the Lenders the sum of whose outstanding Term Loans at such time represents at least a majority of the sum of all outstanding Term Loans of Lenders; provided that at any time there is more than one Lender (other than any Affiliate of such Lender), Required Lenders shall include at least two Lenders that are not Affiliates of each other.

"**Restricted Debt**" shall mean (i) any unsecured Indebtedness for borrowed money of Holdings and any of its Subsidiaries and (ii) any other Indebtedness for borrowed money of Holdings and any of its Subsidiaries incurred from time to time that is subordinated in right of payment to the Obligations.

"**Restricted Debt Documents**" shall mean all documents, agreements or instruments executed and delivered with respect to any Restricted Debt.

"**Restricted Payments**" shall have the meaning given to it in Section 8.03.

"**Restructuring Support Agreement**" means that certain Restructuring Support Agreement dated as of July 10, 2019, executed and delivered by certain Credit Parties and the other parties thereto, as such agreement may be amended, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"**Returns**" shall have the meaning provided in Section 6.09.

"**RSA Termination Event**" shall have the meaning provided in Section 5.01(r).

"**S&P**" shall mean S&P Global Ratings.

"**Sale Order**" means a final non-appealable order, in form and substance acceptable to each of the Administrative Agent and the DIP ABL Agent approving (i) the Stalking Horse Transaction on the terms set forth in the Stalking Horse APA or (ii) another sale pursuant to the Bidding Procedures Order of substantially all of the assets of the Debtors and the CCAA Debtors.

"**Sale and Lease-Back Transaction**" shall mean any arrangement providing for the leasing by Holdings or any of its Subsidiaries of any real or tangible personal property, which property has been or is to be sold or transferred for value by such Person to a third party who is not an Affiliate of the Borrower in contemplation of such leasing.

"**Sanctions Authorities**" shall have the meaning provided in the definition of "**Embargoed Person**".

"**Screen Rate**" shall have the meaning provided in the definition of "**Eurodollar Rate**".

"**SEC**" shall have the meaning provided in Section 7.01(i).

"**Secured Creditors**" shall have the meaning provided in the respective Security Documents.

"**Securities Account**" shall mean a securities account (as that term is defined in the UCC).

"**Securities Act**" shall mean the Securities Act of 1933.

"**Security Agreement Collateral**" shall mean all "**Collateral**" as defined in the relevant Security Agreements.

"**Security Agreements**" shall have the meaning provided in Section 5.01(g).

"**Security Document**" shall mean all instruments, documents and agreements delivered by or on behalf of any Credit Party pursuant to any Order, CCAA Order, this Agreement or any of the other Credit Documents in order to grant to, or perfect in favor of, the Administrative Agent, for the benefit of Secured Creditors, a Lien on any real, personal or mixed property of that Credit Party as security for the Obligations, including the Orders, the CCAA Orders, each of the Security Agreements, the Luxembourg Share Pledge, each Mortgage, each Vessel Mortgage and, after the execution and delivery thereof, each Additional Document.

"**Sponsor**" shall mean Lion Capital LLP and any fund that is an Affiliate of Lion Capital LLP.

"**Subordinated Provisions**" shall have the meaning provided in Section 9.10(a).

"**Stalking Horse APA**" shall mean that certain Asset Purchase Agreement, dated as of the Petition Date, among the Stalking Horse Purchaser, as Buyer, and the Debtors and the CCAA Debtors, as Sellers.

"**Stalking Horse Purchaser**" shall mean FCF Co., LTD.

"**Stalking Horse Transaction**" shall mean the sale of substantially all of the assets of the Debtors and the CCAA Debtors pursuant to the Stalking Horse APA.

"**Subsidiary**" shall mean, as to any Person, (a) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority

of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person and/or one or more Subsidiaries of such Person and (b) any partnership, limited liability company, association, joint venture or other entity in which such Person and/or one or more Subsidiaries of such Person has more than a 50% equity interest at the time. Unless otherwise qualified, all references to a "**Subsidiary**" or to "**Subsidiaries**" in this Agreement shall refer to a Subsidiary or Subsidiaries of Holdings and any predecessors of such Subsidiary or Subsidiaries.

"**Subsidiary Guarantor**" shall mean each Subsidiary of Holdings (other than the Borrower and any Excluded Subsidiary) (in each case, whether existing on the Closing Date or established, created or acquired after the Closing Date), unless and until such time as such respective Person is released from all of its obligations under the Guaranty in accordance with the terms and provisions thereof.

"**Tax Form Certificate**" shall have the meaning provided in Section 4.04(c)(ii)(2).

"**Taxes**" (or "**Tax**" as the context may require) shall mean any taxes, charges, fees, levies, penalties or other assessments imposed by any Taxing Authority, including, income, premium, excise, property, sales, use, value added, goods and services, transfer, franchise, payroll, withholding, social security or other similar taxes, including any interest, penalties or additions to tax attributable thereto.

"**Taxing Authority**" shall mean any Governmental Authority with the authority to impose Tax.

"**Term Loan**" shall mean (i) an Initial Term Loan made by a Lender to the Borrower pursuant to Section 2.01(a) and (ii) a Delayed Draw Term Loan made by a Lender to the Borrower pursuant to Section 2.01(a).

"**Term Loan Priority Collateral**" shall mean all Collateral that does not constitute ABL Priority Collateral.

"**Term Note**" shall have the meaning provided in Section 2.04(a).

"**Testing Period**" shall mean, for any Reporting Date, the cumulative period commencing on the Sunday immediately following the Budget Delivery Date for the then-effective Approved Budget through the Saturday immediately preceding such Reporting Date.

"**Transactions**" means the (i) execution, delivery and performance by the Credit Parties of this Agreement and the other Credit Documents, the borrowing of the Loans hereunder, (ii) execution, delivery and performance by the Credit Parties of DIP ABL Credit Documents, the borrowings and other extensions of credit under the DIP ABL Credit Facility and (iii) the use of the proceeds of the foregoing and the payment of fees, premiums and expenses related to the foregoing.

"**Type**" shall mean the type of Term Loan determined with regard to the interest option applicable thereto, i.e., whether a Base Rate Loan or a Eurodollar Rate Loan.

"**UCC**" shall mean the Uniform Commercial Code as from time to time in effect in the relevant jurisdiction.

"**Unfunded Current Liability**" of any Plan shall mean the amount, if any, by which the value of the accumulated benefit obligations under each Plan (based on the assumptions used for purposes of FASB Accounting Standard Codification Topic 715) exceeds the Fair Market Value of all plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions).

"**United States**" and "**U.S.**" shall each mean the United States of America.

"**U.S. Security Agreement**" shall have the meaning provided in Section 5.01(e).

"**U.S. Trustee"** means the United States Trustee for Region 3.

"**Vessel Mortgage**" shall mean each vessel mortgage entered into by any Credit Party, in form and substance reasonably satisfactory to the Administrative Agent.

"**Wholly-Owned Subsidiary**" shall mean, as to any Person, (a) any corporation 100% of whose capital stock is at the time owned by such Person and/or one or more Wholly-Owned Subsidiaries of such Person and (b) any partnership, limited liability company, association, joint venture or other entity in which such Person and/or one or more Wholly-Owned Subsidiaries of such Person has a 100% equity interest at such time (other than, in the case of a Foreign Subsidiary of Holdings with respect to the preceding clauses (a) and (b), director's qualifying shares and/or other nominal amount of shares required to be held by Persons other than Holdings and its Subsidiaries under applicable law).

"**Wind-Down Amount**" shall mean, as of any date of determination, the total amount set forth in the line item for "Wind-Down Budget" in the then-applicable Approved Budget.

"**Withdrawal Date**" shall have the meaning provided in Section 2.13(b).

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

1.02. Accounting Terms. (a) Accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP subject to the following sentence; provided, in the event of any change in GAAP (any such change, for the purpose of this Section 1.02, an "**Accounting Change**") that occurs after the date of this Agreement, then, in each case, the Credit Parties and the Administrative Agent, on behalf of the Lenders, agree to enter into good faith negotiations in order to amend such provisions of this Agreement so as to equitably reflect any such Accounting Change with the desired result that the criteria for evaluating the financial condition of Holdings and its Subsidiaries shall be the same after such Accounting Change, as applicable, as if such Accounting Change, as applicable, had not been made, and until such time as such an amendment shall have been executed

and delivered by the Credit Parties and Required Lenders, (i) all financial covenants, standards and terms in this Agreement shall be calculated and/or construed as if such Accounting Change had not been made, and (ii) Holdings shall prepare footnotes to each certificate and supplements to the financial statements, or schedules and footnotes to the financial statements, in each case, required to be delivered pursuant to Sections 7.01(a), (b) and (c) hereunder that show the differences between the financial statements delivered (which reflect such Accounting Change) and the basis for calculating financial covenant compliance (without reflecting such Accounting Change).

(b) In the event of an Accounting Change requiring all leases to be capitalized, any lease that would be characterized as an operating lease in accordance with GAAP on the Prepetition Closing Date (whether or not such operating lease was in effect on such date) shall continue to be accounted for as an operating lease (and not as a capital lease) for purposes of this Agreement, regardless of any change in GAAP following the Prepetition Closing Date that would otherwise require such lease to be re-characterized (on a prospective or retroactive basis or otherwise) as a capitalized lease, and all calculations and deliverables under this Agreement or any other Credit Document shall be made in accordance therewith (provided that, along with all financial statements delivered to the Administrative Agent in accordance with the terms of this Agreement after the date of such accounting change, the Borrower shall deliver a schedule showing the adjustments necessary to reconcile such financial statements with GAAP as in effect immediately prior to such accounting change).

(c) The financial statements to be furnished to the Lenders pursuant hereto shall be made and prepared in accordance with GAAP consistently applied throughout the periods involved; provided that, notwithstanding anything to the contrary contained herein, all such financial statements shall be prepared, and all financial covenants contained herein or in any other Credit Document shall be calculated, in each case, without giving effect to any election under Accounting Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards 159) (or any similar accounting principle) permitting a Person to value its financial liabilities at the fair value thereof.

(d) All computations of interest and other fees hereunder shall be made on the basis of a year of 360 days for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or fees are payable, except that interest computed by reference to the Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year).

1.03. Construction. Unless the context of this Agreement or any other Credit Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms "includes" and "including" are not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement or any other Credit Document refer to this Agreement or such other Credit Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Credit Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. The term "documents" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings,

however evidenced, whether in physical or electronic form. Any reference in this Agreement or in any other Credit Document to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders and supplements set forth herein). The words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties. Unless otherwise expressly provided herein, references to any law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such law and any rules and regulations promulgated in connection therewith. Each reference to any Governmental Authority shall include any successor or supplementary agency that performs a similar or complementary role.

1.04. Time References. Unless the context of this Agreement or any other Credit Document clearly requires otherwise, all references to time of day refer to Eastern standard time or Eastern daylight saving time, as in effect in New York, New York on such day. For purposes of the computation of a period of time from a specified date to a later specified date, except as otherwise expressly provided herein, the word "from" means "from and including" and the words "to" and "until" each means "to and including"; provided that, with respect to a computation of fees or interest payable to the Administrative Agent, or any Lender, such period shall in any event consist of at least one full day.

1.05. Schedules and Exhibits. All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

1.06. Quebec Interpretation Clause. For purposes of any assets, liabilities or entities located in the Province of Québec and for all other purposes pursuant to which the interpretation or construction of this Agreement may be subject to the laws of the Province of Québec or a court or tribunal exercising jurisdiction in the Province of Québec, (i) "personal property" shall be deemed to include "movable property", (ii) "real property" shall be deemed to include "immovable property", (iii) "tangible property" shall be deemed to include "corporeal property", (iv) "intangible property" shall be deemed to include "incorporeal property", (v) "security interest", "mortgage" and "lien" shall be deemed to include a "hypothec", "prior claim", "reservation of ownership" and a "resolutory clause", (vi) all references to filing, registering or recording under the UCC or PPSA shall be deemed to include publication under the Civil Code of Québec, (vii) all references to "perfection" of or "perfected" liens or security interest shall be deemed to include a reference to an "opposable" or "set up" hypothec as against third parties, (viii) any "right of offset", "right of setoff" or similar expression shall be deemed to include a "right of compensation", (ix) "goods" shall be deemed to include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (x) an "agent" shall be deemed to include a "mandatary", (xi) "construction liens" shall be deemed to include "legal hypothecs in favour of persons having taken part in the construction or renovation of an immovable"; (xii) "joint and several" shall be deemed to include "solidary"; (xiii) "gross negligence or willful misconduct" shall be deemed to be "intentional or gross fault"; (xiv) "beneficial ownership" shall be deemed to include "ownership"; (xv) "legal title" shall be deemed to include "holding title on behalf of an owner as mandatary or prête-nom"; (xvi) "easement" shall be deemed to include "servitude"; (xvii) "priority" shall be deemed to include "rank" or "prior claim", as applicable; (xviii) "survey" shall

be deemed to include "certificate of location and plan"; (xix) "state" shall be deemed to include "province"; (xx) "fee simple title" shall be deemed to include "ownership" (including ownership under a right of superficies); (xxi) "ground lease" shall be deemed to include "emphyteusis" or a "lease with a right of superficies", as applicable; (xii) "leasehold interest" shall be deemed to include "a valid lease"; and (xiii) "lease" shall be deemed to include a "contract of leasing (crédit-bail)".

1.07. Luxembourg terms. Words in the English language used in this Agreement to describe Luxembourg law concepts only intend to describe such concepts and the consequences of the use of those words in New York law or any other foreign law are to be disregarded. In each Credit Document, where it relates to a person incorporated or having its Centre of Main Interests in Luxembourg, a reference to:

(a) "**entity**" means any company (societé), partnership (limited or general), joint venture, trust, association, economic interest group (*groupement d'intérêt économique*) or other organization, enterprise or entity (whether or not vested with all the attributes of a legal entity (*personalité morale*));

(b) a "**winding up**", "**administration**" or "**dissolution**" includes, without limitation, any procedure or proceeding in relation to an entity becoming bankrupt (*faillite*), insolvency, voluntary or judicial liquidation, composition with creditors (*concordat préventif de la faillite*), moratorium or reprieve from payment (*sursis de paiement*), controlled management (*gestion contrôlée*), court ordered liquidation or reorganization or the appointment of a temporary administrator (*administrateur provisoire*), general settlement with creditors, reorganisation or any other similar proceedings affecting the rights of creditors generally under Luxembourg law, and shall be construed so as to include any equivalent or analogous liquidation or reorganisation proceedings;

(c) a "**director**" "**officer**" or "**manager**" includes a *gérant or an administrateur* and a "**board of directors**" or "**board of managers**" includes a *conseil d'administration* or *conseil de gérance*;

(d) an "**agent**" includes, without limitation, a "*mandataire*";

(e) a "**receiver**", "**administrative receiver**", "**administrator**" or the like includes, without limitation, *a juge délégué, commissaire, juge-commissaire, liquidateur* or *curateur* or any other person performing the same function of each of the foregoing;

(f) a "**matured obligation**" includes, without limitation, any *exigible*, *certaine* and *liquide* obligation;

(g) "**constitutional documents**" includes its up-to-date (restated) articles of association (*statuts coordonnés*);

(h) "**Security**" or a "**security interest**" includes, without limitation, any hypothèque, nantissement, gage, privilège, accord de transfert de propriété à titre de garantie, gage sur fonds de commerce, droit de rétention or sûreté réelle whatsoever whether granted or arising by operation of law; and

(i) a person being "**unable to pay its debts**" includes, without limitation, that person being in a state of cessation of payments (*cessation de paiements*).

1.08. Divisions. For all purposes under the Credit Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

Section 2 Amount and Terms of Credit.

2.01. The Commitments. Subject to the terms and conditions hereof and in the Orders and the CCAA Orders, each Lender agrees to (i) following the Interim Order Entry Date and the CCAA Initial Order Date and the satisfaction of the conditions to Borrowing set forth in Section 5.01, to make a term loan to the Borrower in a single Borrowing on the Closing Date in an aggregate principal amount not to exceed such Lender's Initial Commitment (the "**Initial Term Loan**") and (ii) following the Final Order Entry Date and the CCAA A&R Initial Order Entry Date and the satisfaction of the conditions to Borrowing set forth in Section 5.02, to make an additional delayed draw term loan to the Borrower in a single Borrowing on the Delayed Draw Borrowing Date (the "**Delayed Draw Term Loan**") in an aggregate principal amount not to exceed such Lender's Delayed Draw Commitment. Once funded, each Initial Term Loan and each Delayed Draw Term Loan shall be a "Loan" and a "Term Loan" for all purposes under this Agreement and the other Credit Documents. Once repaid, Term Loans incurred hereunder may not be reborrowed.

2.02. Notice of Borrowing. (a) The Borrower shall give the Administrative Agent at the Notice Office (x) at least one Business Day's prior notice of any Base Rate Loan to be incurred hereunder and (y) at least three (3) Business Days' prior notice of any Eurodollar Rate Loan to be incurred hereunder, provided that (in each case) any such notice shall be deemed to have been given on a certain day only if given before 1:00 P.M. (New York City time) on such day. Such notice (the "**Notice of Borrowing**"), except as otherwise expressly provided in Section 2.09, shall be irrevocable and shall be in writing, or by telephone promptly confirmed in writing, substantially in the form of Exhibit A, and specifying: (i) the aggregate principal amount of the Term Loans to be incurred pursuant to the Borrowing, (ii) the date of the Borrowing (which shall be a Business Day) and (iii) whether the Term Loans being incurred pursuant to such Borrowing are to be initially maintained as Base Rate Loans or, to the extent permitted hereunder, Eurodollar Rate Loans, and if Eurodollar Rate Loans, the initial Interest Period to be applicable thereto. The Administrative Agent shall promptly give each Lender notice of the applicable Borrowing, of such Lender's proportionate share thereof and of the other matters required by the immediately preceding sentence to be specified in the Notice of Borrowing.

(b) At no time shall there be outstanding more than four Borrowings of Eurodollar Rate Loans in the aggregate.

(c) Without in any way limiting the obligation of the Borrower to confirm in writing any telephonic notice of any Borrowing or prepayment of Term Loans, the Administrative

Agent may act without liability upon the basis of telephonic notice of such Borrowing or prepayment, as the case may be, believed by the Administrative Agent in good faith to be from an Authorized Officer of the Borrower, prior to receipt of written confirmation. In each such case, the Borrower hereby waives the right to dispute the Administrative Agent's record of the terms of such telephonic notice of such Borrowing or prepayment of Term Loans, as the case may be, absent manifest error.

2.03. Disbursement of Funds. No later than 12:00 noon (New York City time) on the date specified in the Notice of Borrowing, each Lender will make available its pro rata portion (determined in accordance with Section 2.05) of the Borrowing requested to be made on such date. All such amounts will be made available in Dollars and in immediately available funds at the Payment Office, and the Administrative Agent will make available to the Borrower the aggregate of the amounts so made available by the Lenders; provided that, the Delayed Draw Term Loans funded on the Delayed Draw Borrowing Date shall be made available to the Borrower by depositing the proceeds thereof into the DIP Term Funding Account. Unless the Administrative Agent shall have been notified by any Lender prior to the date of Borrowing that such Lender does not intend to make available to the Administrative Agent such Lender's portion of the Borrowing to be made on such date, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date of the Borrowing and the Administrative Agent may (but shall not be obligated to), in reliance upon such assumption, make available to the Borrower (including by remitting such amount to the DIP Term Funding Account) a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower and the Borrower shall immediately pay such corresponding amount to the Administrative Agent. The Administrative Agent also shall be entitled to recover on demand from such Lender or the Borrower, as the case may be, interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to the Borrower until the date such corresponding amount is recovered by the Administrative Agent, at a rate per annum equal to (i) if recovered from such Lender, the overnight Federal Funds Rate for the first three (3) days and at the interest rate otherwise applicable to such Term Loans for each day thereafter and (ii) if recovered from the Borrower, the rate of interest applicable to the respective Borrowing, as determined pursuant to Section 2.07. Nothing in this Section 2.03 shall be deemed to relieve any Lender from its obligation to make Term Loans hereunder or to prejudice any rights which the Borrower may have against any Lender as a result of any failure by such Lender to make Term Loans hereunder.

2.04. Notes. (a) The Borrower's obligation to pay the principal of, and interest on, the applicable Term Loans made by each applicable Lender shall be evidenced in the Register maintained by the Administrative Agent pursuant to Section 11.14 and shall, if requested by such Lender, also be evidenced by a promissory note duly executed and delivered by the Borrower substantially in the form of Exhibit C (each, a "**Term Note**" and, collectively, the "**Term Notes**").

(b) Each Lender will note on its internal records the amount of the Term Loans made by it and each payment in respect thereof and prior to any transfer of any of its Term Notes will endorse on the reverse side thereof the outstanding principal amount of the Term Loans

evidenced thereby. Failure to make any such notation or any error in such notation shall not affect the Borrower's obligations in respect of such Term Loans.

(c) Notwithstanding anything to the contrary contained above in this Section 2.04 or elsewhere in this Agreement, Term Notes shall only be delivered to Lenders that at any time specifically request the delivery of such Term Notes. No failure of any Lender to request or obtain a Term Note evidencing its Term Loans to the Borrower shall affect or in any manner impair the obligations of the Borrower to pay such Term Loans (and all related Obligations) incurred by the Borrower which would otherwise be evidenced thereby in accordance with the requirements of this Agreement, and shall not in any way affect the security or guaranties therefor provided pursuant to the various Credit Documents. Any Lender which does not have a Term Note evidencing its outstanding Term Loans shall in no event be required to make the notations otherwise described in preceding clause (b). At any time when any Lender requests the delivery of a Term Note to evidence any of its Term Notes, the Borrower shall promptly execute and deliver to the respective Lenders the requested Term Note in the appropriate amount or amounts to evidence such Term Loans.

2.05. Pro Rata Borrowings. All Borrowings of the applicable Term Loans under this Agreement shall be incurred from the Lenders pro rata on the basis of their respective Initial Commitments or their respective Delayed Draw Commitments, as the case may be. It is understood that no Lender shall be responsible for any default by any other Lender of its obligation to make a Term Loan hereunder and that each Lender shall be obligated to make the Term Loan provided to be made by it hereunder, regardless of the failure of any other Lender to make its Term Loan hereunder.

2.06. Conversions and Continuations. The Borrower shall have the option to (i) convert, on any Business Day, all or a portion of the outstanding principal amount of Term Loans made pursuant to one or more Borrowings of one or more Types of Term Loans into a Borrowing of another Type of Term Loan and (ii) continue, on any Business Day, the outstanding principal amount of any Eurodollar Rate Loans as Eurodollar Rate Loans for an additional interest period, provided that, (A) except as otherwise provided in Section 2.09(b), Eurodollar Rate Loans may be converted into Base Rate Loans only on the last day of an Interest Period applicable to the Term Loans being converted, (B) unless the Required Lenders otherwise agree, Base Rate Loans may only be converted into Eurodollar Rate Loans if no Event of Default is in existence on the date of the conversion, (C) unless the Required Lenders otherwise agree, Eurodollar Rate Loans may only be continued as Eurodollar Rate Loans for an additional Interest Period if no Event of Default is in existence on the date of the proposed continuation and (D) no conversion pursuant to this Section 2.06 shall result in a greater number of Borrowings of Eurodollar Rate Loans than is permitted under Section 2.02(b). Each such continuation or conversion shall be effected by the Borrower by giving the Administrative Agent at the Notice Office prior to 1:00 P.M. (New York City time) at least (x) in the case of conversions of Base Rate Loans into Eurodollar Rate Loans or continuation of Eurodollar Rate Loans, three (3) Business Days' prior notice and (y) in the case of conversions of Eurodollar Rate Loans into Base Rate Loans, one Business Day's prior notice (which may be telephonic if promptly followed by written confirmation) (each, a "**Notice of Conversion/Continuation**"), in each case substantially in the form of Exhibit B, specifying the Term Loans to be so converted or continued, the Borrowing or Borrowings pursuant to which such Term Loans were incurred and, if to be continued as or converted into Eurodollar Rate Loans, the

Interest Period to be initially applicable thereto (if no Interest Period is selected, the relevant Borrower shall be deemed to have selected an Interest Period of one month's duration). The Administrative Agent shall give each Lender prompt notice of any such proposed conversion affecting any of its Term Loans.

2.07. Interest. (a) The Borrower agrees to pay interest in respect of the unpaid principal amount of (i) each applicable Eurodollar Rate Loan from the date of Borrowing thereof until the earlier of (A) the payment in full of such principal amount (whether by acceleration or otherwise) and (B) the conversion of such Eurodollar Rate Loan to a Base Rate Loan pursuant to Section 2.06, 2.08 or 2.09, as applicable, at a rate per annum which shall, during each Interest Period applicable thereto, be equal to the sum of Eurodollar Rate for the Interest Period in effect for such Borrowing plus the relevant Applicable Margin and (ii) each applicable Base Rate Loan from the date of Borrowing thereof until the earlier of (A) the payment in full of such principal amount (whether by acceleration or otherwise) and (B) the conversion of such Base Rate Loan to a Eurodollar Rate Loan pursuant to Section 2.06, 2.08 or 2.09, as applicable, at a rate per annum which shall be equal to the sum of the Base Rate plus the relevant Applicable Margin.

(b) Upon the occurrence and during the continuance of any Event of Default, (i) the principal and, to the extent permitted by law, overdue interest in respect of each Term Loan shall, in each case, bear interest at a rate per annum equal to the rate which is 2.00% in excess of the rate otherwise applicable to the Term Loans from time to time and (ii) any other amounts not otherwise paid when due hereunder and under any other Credit Document shall bear interest at a rate per annum equal to the rate which is 2.00% in excess of the rate then applicable to the Term Loans that are maintained as Base Rate Loans from time to time. Payment or acceptance of the increased rates of interest provided for in this Section 2.07(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent or any Lender. Interest that accrues under this Section 2.07(b) shall be payable on demand.

(c) Accrued (and theretofore unpaid) interest shall be payable in arrears, (A)(x) in respect of a Eurodollar Rate Loan, (i) on the last Business Day of each Interest Period and (ii) in the event of any conversion of a Eurodollar Rate Loan prior to the end of the Interest Period then applicable thereto, on the effective date of such conversion, (y) in respect of a Base Rate Loan, (i) on the applicable Quarterly Payment Date (it being understood and agreed that such amount shall be calculated through the end of such calendar quarter even if such Quarterly Payment Date is prior to the end of such calendar quarter) and (ii) in the event of any conversion of a Base Rate Loan prior to any Quarterly Payment Date, on the effective date of such conversion (each such date specified in clauses (x) and (y), an "**Interest Payment Date**"), and (B) on the date of any repayment or prepayment (on the amount repaid or prepaid), at maturity (whether by acceleration or otherwise) and, after such maturity, on demand.

(d) Upon each Interest Determination Date, the Administrative Agent shall determine the Eurodollar Rate for each Interest Period applicable to the respective Term Loans and shall promptly notify the Borrower and the Lenders thereof. Each such determination shall, absent manifest error, be final and conclusive and binding on all parties hereto.

(e) [Reserved].

(f) The parties acknowledge and agree that all calculations of interest under this Agreement are to be made on the basis of the nominal interest rate described herein and not on the basis of effective yearly rates or on any other basis which gives effect to the principle of deemed reinvestment of interest. The parties acknowledge that there is a material difference between the stated nominal interest rates and the effective yearly rates of interest and that they are capable of making the calculations required to determine such effective yearly rates of interest.

2.08. Interest Periods. The interest period (each, an "**Interest Period**") applicable to any Eurodollar Rate Loan shall be the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one month thereafter; provided that, if any Interest Period begins on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period, such Interest Period shall end on the last Business Day of such calendar month; provided, further, that:

(a) at no time shall there be more than four Eurodollar Rate Loans with different Interest Periods outstanding under this Agreement;

(b) the initial Interest Period for each Eurodollar Rate Loan shall commence on the date of such Eurodollar Rate Loan (including the date of any conversion thereto from a Base Rate Loan) and each Interest Period occurring thereafter in respect of such Eurodollar Rate Loan shall commence on the day on which the next preceding Interest Period applicable thereto expires;

(c) for the purposes of this Agreement, whenever interest is calculated on the basis of a period which is less than the actual number of days in a calendar year, each rate of interest determined pursuant to such calculation is, for the purposes of the *Interest Act* (Canada), equivalent to such rate multiplied by the actual number of days in the calendar year in which such rate is to be ascertained and divided by the number of days used as the basis of such calculation;

(d) if any Interest Period for a Eurodollar Rate Loan would otherwise expire on a day which is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided, however, that if any Interest Period for a Eurodollar Rate Loan would otherwise expire on a day which is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the next preceding Business Day;

(e) no Interest Period in respect of any Borrowing of any Eurodollar Rate Loan shall be selected which extends beyond the Maturity Date;

(f) unless the Required Lenders otherwise agree, no Interest Period may be selected at any time when an Event of Default is then in existence; and

(g) in no event shall "interest" (as such term is defined in Section 347 of the *Criminal Code* of Canada) on the "credit advanced" (as defined therein) hereunder be payable by any Canadian Subsidiary in excess of sixty percent (60%) per annum and if any of such parties does pay an amount of interest in excess of sixty percent (60%) in any particular year, the amount of such excess shall be repaid by the Administrative Agent or the applicable Lender to such party.

If the Borrower is not permitted to elect a new Interest Period due to the existence of an Event of Default or otherwise, it shall be deemed to have elected to convert such Eurodollar Rate Loan into Base Rate Loans effective as of the expiration date of the then-current Interest Period.

2.09. Increased Costs, Illegality, etc. (a) In the event that any Lender shall have determined (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto but, with respect to clause (i) below, may be made only by the Administrative Agent):

(i) on any Interest Determination Date that, by reason of any changes arising after the date of this Agreement affecting the interbank Eurodollar market, adequate and fair means do not exist for ascertaining the applicable interest rate on the basis provided for in the definition of "Eurodollar Rate";

(ii) at any time, that such Lender shall incur increased costs or reductions in the amounts received or receivable hereunder with respect to any Term Loan because of (x) any change since the Closing Date in any applicable law or governmental rule, regulation, order, guideline or request (whether or not having the force of law) or in the interpretation or administration thereof and including the introduction of any new law or governmental rule, regulation, order, guideline or request, such as, but not limited to: (A) a change in law which subjects any Lender to any Taxes (other than (1) Indemnified Taxes, (2) Taxes described in clauses (b) through (d) of the definition of "Excluded Taxes" and (3) Connection Income Taxes) in respect of payments of the principal of or interest on the Term Loans or the Term Notes or any other amounts payable hereunder or (B) a change in official reserve requirements, but, in all events, excluding reserves required under Regulation D to the extent included in the computation of the Eurodollar Rate and/or (y) other circumstances arising since the Closing Date affecting such Lender, the interbank Eurodollar market or the position of such Lender in such market (including that the Eurodollar Rate with respect to such Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lender of funding such Eurodollar Rate Loan); or

(iii) at any time, that the making or continuance of any Eurodollar Rate Loan or the purchase or sale or taking of any deposit in Dollars has been made (x) unlawful by any law or governmental rule, regulation or order, (y) impossible by compliance by any Lender in good faith with any governmental request (whether or not having force of law) or (z) impracticable as a result of a contingency occurring after the Closing Date which materially and adversely affects the interbank Eurodollar market (each of clauses (i), (ii) and (iii), a "**Market Disruption Event**");

then, and in any such event, such Lender (or the Administrative Agent, in the case of clause (i) above) shall promptly give notice (by telephone promptly confirmed in writing) to the Borrower and, except in the case of clause (i) above, to the Administrative Agent of such determination (which notice the Administrative Agent shall promptly transmit to each of the other Lenders). Thereafter (x) in the case of clause (i) above, all Eurodollar Rate Loans shall automatically convert

into Eurodollar Rate Loans that accrue interest at the Base Rate plus the relevant Applicable Margin and Eurodollar Rate Loans shall no longer be available until such time as the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice by the Administrative Agent no longer exist, and any Notice of Borrowing or Notice of Conversion/Continuation given by the Borrower with respect to Eurodollar Rate Loans which have not yet been incurred (including by way of conversion) shall be deemed rescinded by the Borrower, (y) in the case of clause (ii) above, the Borrower agrees to pay to such Lender, upon such Lender's written request therefor, such additional amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender in its sole discretion shall determine) as shall be required to compensate such Lender for such increased costs or reductions in amounts received or receivable hereunder (a written notice as to the additional amounts owed to such Lender, showing in reasonable detail the basis for the calculation thereof, submitted to the Borrower by such Lender shall, absent manifest error, be final and conclusive and binding on all the parties hereto) and (z) in the case of clause (iii) above, the Borrower shall take one of the actions specified in Section 2.09(b) as promptly as possible and, in any event, within the time period required by law. During any period in which a Market Disruption Event is in effect, the Borrower may request that the Administrative Agent or a Lender, as applicable, confirm that the circumstances giving rise to the Market Disruption Event continue to be in effect; provided that (A) the Borrower shall not be permitted to submit any such request more than once in any 30-day period and (B) nothing contained in this Section 2.09 or the failure to provide confirmation of the continued effectiveness of such Market Disruption Event shall in any way affect the Administrative Agent's or such Lender's right to provide any additional notices of a Market Disruption Event as provided in this Section 2.09. Such Lender or the Administrative Agent, as applicable, shall promptly notify the Borrower upon the end of such Market Disruption Event.

(b) At any time that any Eurodollar Rate Loan is affected by the circumstances described in Section 2.09(a)(ii), the Borrower may, and in the case of a Eurodollar Rate Loan affected by the circumstances described in Section 2.09(a)(iii), the Borrower shall, either (x) if the affected Eurodollar Rate Loan is then being made initially or pursuant to a conversion, cancel such Borrowing by giving the Administrative Agent telephonic notice (confirmed in writing) on the same date that the Borrower was notified by the affected Lender or the Administrative Agent pursuant to Section 2.09(a)(ii) or (iii) or (y) if the affected Eurodollar Rate Loan is then outstanding, upon at least three (3) Business Days' written notice to the Administrative Agent, require the affected Lender to convert such Eurodollar Rate Loan into a Base Rate Loan, provided that, if more than one Lender is affected at any time, then all affected Lenders must be treated the same pursuant to this Section 2.09(b).

(c) If any Lender determines that after the Closing Date the introduction of or any change in any applicable law or governmental rule, regulation, order, guideline, directive or request (whether or not having the force of law) concerning capital adequacy, or any change in interpretation or administration thereof by the NAIC or any Governmental Authority, central bank or comparable agency, will have the effect of increasing the amount of capital required or expected to be maintained by such Lender or any corporation controlling such Lender based on the existence of such Lender's Commitments hereunder or its obligations hereunder, then the Borrower agrees to pay to such Lender, upon its written demand therefor, such additional amounts as shall be required to compensate such Lender or such other corporation for the increased cost to such Lender or such other corporation or the reduction in the rate of return to such Lender or such other

corporation as a result of such increase of capital. In determining such additional amounts, each Lender will act reasonably and in good faith and will use averaging and attribution methods which are reasonable, provided, that such Lender's determination of compensation owing under this Section 2.09(c) shall, absent manifest error, be final and conclusive and binding on all the parties hereto. Each Lender, upon determining that any additional amounts will be payable pursuant to this Section 2.09(c), will give prompt written notice thereof to the Borrower, which notice shall show in reasonable detail the basis for calculation of such additional amounts, although the failure to give any such notice shall not release or diminish the Borrower's obligation to pay additional amounts pursuant to this Section 2.09(c) upon the subsequent receipt of such notice.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.09 shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender for any increased costs incurred or reductions suffered more than 180 days prior to the date that such Lender notifies the Borrower of the circumstances giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the change in applicable law or governmental rule, regulation, order, guideline or request giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

2.10. Compensation. The Borrower agrees to compensate each Lender, upon its written request (which request shall set forth in reasonable detail the basis for requesting such compensation), for all losses, expenses and liabilities (including any loss, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by such Lender to fund its Eurodollar Rate Loans but excluding loss of anticipated profits) which such Lender may sustain: (a) if for any reason (other than a default by such Lender or the Administrative Agent) the Borrowing of, or a conversion from or into, Eurodollar Rate Loans, does not occur on the date specified therefor in the Notice of Borrowing or a Notice of Conversion/Continuation (whether or not withdrawn by the Borrower or deemed withdrawn pursuant to Section 2.09(a)); (b) if any prepayment or repayment (including any prepayment or repayment made pursuant to Section 4.01, Section 4.02 or as a result of an acceleration of such Term Loans pursuant to Section 9) or conversion of any of its Eurodollar Rate Loans occurs on a date which is not the last day of an Interest Period with respect thereto; (c) if any prepayment of any of its Eurodollar Rate Loans is not made on any date specified in a notice of prepayment given by the Borrower; or (d) as a consequence of (i) any other default by the Borrower to repay such Eurodollar Rate Loans when required by the terms of this Agreement or (ii) any election made pursuant to Section 2.09(b).

2.11. Change of Lending Office. Each Lender agrees that on the occurrence of any event giving rise to the operation of Section 2.09(a)(ii) or (iii), Section 2.09(c) or Section 4.04 with respect to such Lender, it will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Term Loans affected by such event, provided, that such designation is made on such terms that such Lender and its lending office suffer no economic, legal or regulatory disadvantage, with the object of avoiding the consequence of the event giving rise to the operation of such Section. Nothing in this Section 2.11 shall affect or postpone any of the obligations of the Borrower or the rights of any Lender provided in Sections 2.09 and 4.04.

2.12. [Reserved].

2.13. Withdrawal of Funds from the DIP Term Funding Account. (a) The Borrower shall have the right to withdraw the funds on deposit in the DIP Term Funding Account from time to time at any time on or after the Delayed Draw Borrowing Date (but not more frequently than one time in any two-week period) by delivering a written notice to the Administrative Agent and the Lenders in the form attached as Exhibit M hereto (each such notice, a "**DIP Term Funding Withdrawal Notice**"); provided that (i) the Borrower shall concurrently provide a liquidity forecast, in a form substantially consistent with the Approved Budget, certified by the chief financial officer of the Borrower, demonstrating, to the satisfaction of the Administrative Agent, that the lowest Projected Available Liquidity of the Credit Parties and their Subsidiaries on any day during the two-week period after such withdrawal (and after giving effect thereto) will not exceed $20,000,000, (ii) at the time of and immediately after giving effect to such withdrawal, no Event of Default shall have occurred and be continuing or would result therefrom and (iii) the remaining funds on deposit in the DIP Term Funding Account after giving effect to such withdrawal shall not be less than the sum of the Professional Fees Amount (for the avoidance of doubt, if the intended use of proceeds of such withdrawal as set forth pursuant to clause (a)(iii) below is to repay the ABL Facility in respect of professional fees in the circumstances described in the proviso in clause (ii) of the definition of "Professional Fees Amount", the Professional Fees Amount after giving effect to such withdrawal shall be decreased by the amount of such withdrawal used to so repay the ABL Facility in respect of professional fees), the Wind-Down Amount and the KEIP/KERP Amount at such time; provided further that the requirements in the preceding proviso and the requirement that withdrawals not occur more frequently than one time in any two-week period shall not apply to withdrawals described in clauses (f), (g) or (h) of this Section 2.13. Each DIP Term Funding Withdrawal Notice shall specify the following information:

(i) the amount of such withdrawal;

(ii) the date of such proposed withdrawal (which shall be on the second Business Day following the delivery of a DIP Term Funding Withdrawal Notice) (the "**Withdrawal Date**");

(iii) the intended use of proceeds of such withdrawal in reasonable detail, which shall be in accordance with the then-applicable Approved Budget;

(iv) that as of the date of such withdrawal, the conditions set forth in this Section 2.13 are satisfied; and

(v) the wiring instructions of the account of the Borrower to which the proceeds of such withdrawal are to be disbursed.

(b) On the Withdrawal Date specified in the DIP Term Funding Withdrawal Notice, subject to the satisfaction of all conditions precedent to a withdrawal and disbursement from the DIP Term Funding Account set forth in this Section 2.13, the Administrative Agent shall direct the applicable depository bank to disburse funds from the DIP Term Funding Account in an aggregate principal amount equal to the amount specified in such DIP Term Funding Withdrawal

Notice to the account of the Borrower or, if applicable, the specified escrow account, specified in such DIP Term Funding Withdrawal Notice.

(c) [Reserved].

(d) With respect to any disbursement, withdrawal, transfer, or application of funds from the DIP Term Funding Account hereunder, the Administrative Agent shall be entitled to conclusively rely upon, and shall be fully protected in relying upon, any DIP Term Funding Withdrawal Notice submitted by the Borrower as evidence that all conditions precedent to a withdrawal and disbursement from the DIP Term Funding Account to the Borrower have been satisfied. Notwithstanding anything herein to the contrary, the Administrative Agent shall have no obligation to direct the applicable depository bank to disburse any amount from the DIP Term Funding Account in excess of the amounts then held in the DIP Term Funding Account. The Administrative Agent shall have no duty to inquire or investigate whether any condition precedent to a withdrawal from the DIP Term Funding Account has been satisfied, and shall not be deemed to have any knowledge that a condition is not satisfied unless it has received notice thereof from the Borrower or the Required Lenders.

(e) For the avoidance of doubt, all amounts held in the DIP Term Funding Account shall constitute proceeds of funded Term Loans for all purposes hereunder and, notwithstanding that the proceeds of such Term Loans are held in the DIP Term Funding Account, shall bear interest in accordance with this Agreement and shall be subject to all other terms and provisions of this Agreement and the other Credit Documents to the same extent as all other Term Loans.

(f) Notwithstanding the foregoing or anything to the contrary herein, immediately prior to the occurrence of the Maturity Date (other than due to the consummation of a sale or other disposition of all or substantially all of the assets of the Debtors and the CCAA Debtors under section 363 of the Bankruptcy Code or section 36 of the CCAA, as applicable), the Borrower shall have the right, after submitting a DIP Term Funding Withdrawal Notice, to withdraw amounts from the DIP Term Funding Account or direct the transfer of an amount to one or more escrow accounts established by the Borrower or any other Credit Party not to exceed the lesser of (x) any and all remaining amounts in the DIP Term Funding Account and (y) an amount equal to the sum of (i) all accrued and unpaid professional fees and (ii) other than in the case of the occurrence of the Maturity Date due to an event described in clause (d) or (e) of the definition thereof, the Wind-Down Amount, with such amounts to be used for the administration of the Cases and the CCAA Cases, the payment of professional fees and the wind-down of the Debtors and the CCAA Debtors.

(g) Notwithstanding the foregoing or anything to the contrary herein, immediately prior to the consummation of a sale or other disposition of all or substantially all of the assets of the Debtors and the CCAA Debtors under section 363 of the Bankruptcy Code or section 36 of the CCAA, as applicable (and not, for the avoidance of doubt, upon the occurrence of the Maturity Date due to any other event), so long as the proceeds of such sale or disposition shall satisfy in full in cash the Obligations and the obligations under the Prepetition Term Loan Agreement (or the Obligations and the obligations under the Prepetition Term Loan Agreement are otherwise satisfied and discharged or reduced pursuant to an arrangement satisfactory to the

Administrative Agent in its sole discretion; it being understood and agreed that the satisfaction and discharge or reduction of the Obligations and the obligations under the Prepetition Term Loan Agreement in connection with (1) a sale pursuant to and in accordance with the Stalking Horse APA, as in effect on the date hereof, without giving effect to any amendment, waiver, consent or other modification thereto that is adverse to the interests of the Lenders and not otherwise approved by the Required Lenders, and (2) any sale pursuant to the Sale Order and the CCAA Approval and Vesting Order pursuant to any offer that is deemed higher or better by the Bankruptcy Court and the CCAA Court shall be satisfactory to the Administrative Agent) (such sale, a "**Qualified Sale**"), the Borrower shall utilize and direct the transfer of an amount equal to the Permitted Funding Amount (as defined in the Orders) to one or more escrow accounts established by the Borrower or any other Credit Party; provided that, in order to fund the Permitted Funding Amount, the Borrower shall have the right, if at the time of and immediately after giving effect to such withdrawal, no Event of Default shall have occurred and be continuing, after submitting a DIP Term Funding Withdrawal Notice, to withdraw from the DIP Term Funding Account an amount up to the lesser of (x) any amounts remaining in the DIP Term Funding Account and (y) the Permitted Funding Amount *less* any amounts drawn under the ABL DIP Agreement to fund the Permitted Funding Amount; provided, further, that any amounts remaining in the DIP Term Funding Account after the withdrawal described in this clause (g) shall be applied to repay the Term Loans upon the Maturity Date.

(h) Moreover, notwithstanding the foregoing or anything to the contrary herein, including with respect to a Default or Event of Default that has occurred or is continuing or the occurrence of the Maturity Date, after delivery of the Carve Out Trigger Notice (as defined in the Orders), if the amount of the loans available under the DIP ABL Credit Facility is insufficient to fund the full amount of the Carve Out Reserves (as defined in the Orders), then, the Borrower shall have the right, after submitting a DIP Term Funding Withdrawal Notice, to withdraw amounts from the DIP Term Funding Account in an amount not to exceed the lesser of (i) the amount necessary to fund any unfunded portion of the Carve Out Reserves and (ii) the amount remaining in the DIP Term Funding Account. Furthermore, the Administrative Agent shall not withdraw, sweep, transfer, foreclose, or otherwise affect any amounts in the DIP Term Funding Account after the occurrence of the Maturity Date or any Event of Default until the Carve Out Reserves are fully funded; provided, it is understood and agreed that if any withdrawal is made pursuant to this clause (h), no amounts may be withdrawn pursuant to clauses (f) and (g) above.

Section 3 Fees; Reductions of Commitment.

3.01. Fees.

(a) The Borrower agrees to pay the fees set forth in the Fee Letter, in the amounts and at the times specified therein or as so otherwise agreed upon by the Borrower and the Administrative Agent in writing.

(b) The Borrower agrees to pay to the Administrative Agent for the account of each Lender, an exit fee (the "**Exit Fee**") in an aggregate amount equal to (1) with respect to any Term Loan outstanding under this Agreement on the Maturity Date, 2.00% of the aggregate principal amount of such outstanding Term Loans, which Exit Fee shall be payable in cash on the Maturity Date and (2) with respect to any Term Loans that are paid, repaid or prepaid prior to the

Maturity Date pursuant to Section 4.01 or 4.02, 2.00% of the aggregate principal amount of Term Loans so paid, repaid or prepaid, which Exit Fee shall be payable in cash on the date of such prepayment. The Exit Fee shall be fully earned and paid on the dates due, in immediately available funds, to the Administrative Agent, and shall not be refundable under any circumstances.

3.02. [Reserved.]

3.03. Mandatory Termination of Commitments. The Initial Commitments shall terminate in their entirety on the Closing Date (after giving effect to the making of the Initial Term Loans on such date). The Delayed Draw Commitments shall terminate in their entirety on the Delayed Draw Borrowing Date (after giving effect to the making of the Delayed Draw Term Loans on such date). To the extent not terminated earlier, each Lender's Delayed Draw Commitment shall terminate immediately and without further action on the date that is five (5) Business Days following the Final Order Entry Date.

Section 4 Prepayments; Payments; Taxes.

4.01. Voluntary Prepayments. The Borrower shall have the right to prepay the Term Loans, subject to the Exit Fee set forth in Section 3.01(b)(2), in whole or in part at any time and from time to time on the following terms and conditions: (i) the Borrower shall give the Administrative Agent prior to 1:00 P.M. (New York City time) at the Notice Office at least three (3) Business Days' prior written notice (or telephonic notice promptly confirmed in writing) of its intent to prepay Base Rate Loans or Eurodollar Rate Loans, which notice (in each case) may be conditioned on the occurrence of a specified transaction or event and revoked if such transaction does not occur and shall specify whether Base Rate Loans or Eurodollar Rate Loans shall be repaid, the amount of such prepayment, and in the case of Eurodollar Rate Loans, the specific Borrowing or Borrowings pursuant to which such Eurodollar Rate Loans were made, and which notice the Administrative Agent shall promptly transmit to each of the Lenders; (ii) each partial prepayment of the Term Loans pursuant to this Section 4.01 shall be in an aggregate principal amount of at least $2,500,000 (or (A) if less, the entire remaining principal amount of the Term Loans or (B) such lesser amount as is acceptable to the Administrative Agent in any given case); and (iii) each prepayment pursuant to this Section 4.01 shall be applied, pro rata among the Term Loans.

4.02. Mandatory Repayments. (a) [Reserved].

(b) Within one (1) Business Day of each date on or after the Closing Date upon which Holdings or any of its Subsidiaries receives any cash proceeds from any issuance or incurrence by Holdings or any of its Subsidiaries of Indebtedness (other than Indebtedness permitted to be incurred pursuant to Section 8.04), an amount equal to 100% of the Net Cash Proceeds of such issuance or incurrence of Indebtedness shall be applied on such date as a mandatory repayment in accordance with the requirements of Sections 4.02(h) and (i).

(c) Within one (1) Business Day of each date on or after the Closing Date upon which Holdings or any of its Subsidiaries receives any cash proceeds from any Asset Sale, an amount equal to 100% of the Net Sale Proceeds therefrom shall be applied on such date as a mandatory repayment in accordance with the requirements of Sections 4.02(h) and (i); provided,

that no mandatory repayment pursuant to this Section 4.02(c) shall be required until the aggregate amount of Net Sale Proceeds received by Holdings and its Subsidiaries shall exceed $50,000.

(d) [Reserved]

(e) [Reserved].

(f) Within one Business Day after each date on or after the Closing Date upon which Holdings or any of its Subsidiaries receives any cash proceeds from any Recovery Event, an amount equal to 100% of the Net Cash Proceeds from such Recovery Event shall be applied on such date as a mandatory repayment in accordance with the requirements of Sections 4.02(h) and (i); provided, that (i) no mandatory repayment pursuant to this Section 4.02(f) shall be required until the aggregate amount of Net Cash Proceeds with respect to Recovery Events received by Holdings and its Subsidiaries shall exceed $50,000 in the aggregate and (ii) up to $100,000 of such Net Cash Proceeds for all Recovery Events shall not be required to be so applied on such date so long as no Default or Event of Default then exists and such Net Cash Proceeds shall be used to replace or restore any properties or assets in respect of which such Net Cash Proceeds were paid within 90 days following the date of the receipt of such Net Cash Proceeds, and provided, further, that if all or any portion of such Net Cash Proceeds not required to be so applied pursuant to the preceding proviso are not so used within such 90-day period after the date of the receipt of such Net Cash Proceeds (or such earlier date, if any, as Holdings or the relevant Subsidiary determines (in its sole discretion) not to reinvest the Net Cash Proceeds relating to such Recovery Event as set forth above), such remaining portion shall be applied on the last day of such period (or such earlier date, as the case may be) as provided above in this Section 4.02(f) without regard to the immediately preceding proviso.

(g) [Reserved].

(h) Each amount required to be applied to the Term Loans pursuant to Sections 4.02(b), (c) and (f) shall be applied (x) *first* to repay the outstanding principal amount of the Term Loans on a pro rata basis and (y) *second* to the outstanding Obligations (as defined in the Prepetition Term Loan Agreement) under the Prepetition Term Loan Agreement, to repay such Obligations in full in cash in the manner set forth in the Prepetition Term Loan Agreement, until such time as all such Obligations (as defined in the Prepetition Term Loan Agreement) have been repaid in full in cash. With respect to any prepayment of Term Loans pursuant to Section 4.02(b) or Section 4.02(c), the principal amount of Term Loans to be prepaid from Net Cash Proceeds or Net Sale Proceeds, as the case may be, shall be calculated so that the sum of (x) the principal amount of Term Loans to be prepaid, (y) any accrued and unpaid interest and fees due thereon and (z) the applicable Exit Fee calculated in accordance with Section 3.01(b)(2) shall not exceed the total amount of Net Cash Proceeds or Net Sale Proceeds, as applicable. Notwithstanding the foregoing or anything herein to the contrary or otherwise, upon the consummation of a sale or other disposition of all or substantially all of the assets of the Debtors under section 363 of the Bankruptcy Code and the Canadian Debtors under section 36 of the CCAA, subject to Section 2.13 and the Orders, an amount equal to 100% of the Net Sale Proceeds therefrom shall be applied in accordance with the Bidding Procedures or the Sale Order, whichever document controls at the applicable time.

(i) Any repayments of Term Loans pursuant to this Section 4.02 that are repaid on a date that is not the last day of the applicable Interest Period shall be subject to any additional amounts required to be paid pursuant to Section 2.10.

(j) All then outstanding Term Loans shall be repaid in full on the Maturity Date.

(k) Notwithstanding the foregoing, the Net Sale Proceeds or Net Cash Proceeds referred to in Sections 4.02(c) or (f) of, or in respect of, any Foreign Subsidiary (or a Subsidiary of such Foreign Subsidiary) may be retained by the applicable Subsidiary to the extent the making of any such mandatory prepayment from the Net Sale Proceeds or Net Cash Proceeds of such Subsidiary would be prohibited under applicable local law (as reasonably determined by the Borrower, upon written advice of counsel); provided, that such amounts may be retained by the applicable Subsidiary so long, but only so long, as the applicable local law will not permit repatriation to the United States (the Borrower hereby agrees to cause the applicable Subsidiary to use commercially reasonable efforts to take such actions required by the applicable local law to permit such repatriation), and once such repatriation is permitted under the applicable local law, such repatriation shall be promptly effected. Mandatory prepayments arising from such amounts shall be subject to additional time periods to allow for the repatriation of such cash to the extent required hereunder.

4.03. Method and Place of Payment. Except as otherwise specifically provided herein, all payments under this Agreement shall be made to the Administrative Agent for the account of the Lender or Lenders entitled thereto not later than 1:00 P.M. (New York City time) on the date when due and shall be made in Dollars in immediately available funds at the Payment Office. Any payments received by the Administrative Agent after such time shall be deemed to have been received on the next Business Day. Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day (other than as contemplated by the proviso in Section 2.08(d)) and, with respect to payments of principal, interest shall be payable at the applicable rate during such extension.

4.04. Net Payments. For purposes of this Section 4.04, the term "**applicable law**" includes FATCA.

(a) All payments made by any Credit Party hereunder will be made without setoff, counterclaim or other defense. Except as required by applicable law, all such payments will be made free and clear of, and without deduction or withholding for, any Taxes now or hereafter imposed by any Taxing Authority with respect to such payments. If any applicable law requires the deduction or withholding of any Tax from any such payment by such Credit Party or the Administrative Agent, then the Credit Party or the Administrative Agent, as applicable, shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and to the extent such Tax is an Indemnified Tax, each Credit Party agrees to pay such additional amounts as may be necessary so that after the withholding or deduction for or on account of any Indemnified Taxes, the applicable Recipient will receive an amount equal to the amount provided for herein or in such Term Note had no such withholding or deduction been made. The applicable Credit Party

will furnish to the Administrative Agent as promptly as possible after the date the payment of any Indemnified Taxes is due pursuant to applicable law certified copies of tax receipts, or other evidence reasonably acceptable to the Administrative Agent evidencing such payment by such Credit Party. Each Credit Party agrees to indemnify and hold harmless each Lender within 30 days after its written request, for the full amount of any Indemnified Taxes so levied or imposed and paid by such Lender (including Indemnified Taxes imposed on additional amounts or indemnities payable under this Section 4.04), whether or not correctly or legally asserted, and any out-of-pocket expense (including penalties, additions to tax, interest and expenses) arising therefrom or with respect thereto. A certificate setting forth in reasonable detail the basis and calculation of the amount of such payment or liability delivered to the Credit Party by a Lender or the Administrative Agent (as applicable) on its own behalf or on behalf of a Lender shall be conclusive absent manifest error and shall constitute a required notice for purposes of this Section 4.04 hereof.

(b) The Credit Parties shall timely pay to the relevant Taxing Authority in accordance with applicable law, or at the option of the Administrative Agent, timely reimburse it for the payment of, any Other Taxes.

(c) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document shall deliver to the applicable Credit Party and the Administrative Agent, at the time or times reasonably requested by such Credit Party or the Administrative Agent, such properly completed and executed documentation reasonably requested by such Credit Party or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the applicable Credit Party or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by such Credit Party or the Administrative Agent as will enable such Credit Party or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 4.04(c)(ii) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing:

(1) Any Lender that is a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. Federal income tax purposes (and the Administrative Agent, to the extent that it is not otherwise a Lender that is required to deliver an Internal Revenue Service W-9) shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender or Administrative Agent becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Recipient is a "United States person" and is exempt from U.S. federal backup withholding tax;

(2) Each Lender that is not a United States person (as such term is defined in Section 7701(a)(30) of the Code) for U.S. Federal income tax purposes agrees to deliver to the Borrower and the Administrative Agent on or prior to the Closing Date or, in the case of a Lender that is an assignee or transferee of an interest under this Agreement pursuant to Section 11.04(b) (unless the respective Lender was already a Lender hereunder immediately prior to such assignment or transfer), on the date of such assignment or transfer to such Lender, (i) two accurate and complete original signed copies of Internal Revenue Service Form W-8ECI, Form W-8BEN or Form W-8BEN-E (in the case of Form W-8BEN or W-8BEN-E with respect to a complete exemption under an income tax treaty) (or successor forms) certifying to such Lender's entitlement as of such date to a complete exemption from United States withholding tax with respect to payments to be made under this Agreement or (ii) if the Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code and cannot deliver either Internal Revenue Service Form W-8ECI, Form W-8BEN or W-8BEN-E (in the case of Form W-8BEN or W-8BEN-E with respect to a complete exemption under an income tax treaty) (or any successor forms) pursuant to clause (i) above, (x) a certificate substantially in the form of Exhibit D (any such certificate, a "**Tax Form Certificate**") and (y) two accurate and complete original signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (with respect to the portfolio interest exemption) (or successor form) certifying to such Lender's entitlement as of such date to a complete exemption from United States withholding tax with respect to payments of interest to be made under this Agreement.

(3) To the extent any Lender that is not a United States person (as such term is defined in Section 7701(a)(30) of the Code) for U.S. Federal income tax purposes is not the beneficial owner, executed copies of Internal Revenue Service Form W-8IMY, accompanied by Internal Revenue Service Form W-8ECI, Form W-8BEN or Form W-8BEN-E (in the case of Form W-8BEN or W-8BEN-E with respect to a complete exemption under an income tax treaty) (or successor forms), a Tax Form Certificate, Internal Revenue Service Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Lender is a partnership and one or more direct or indirect partners of such Lender are claiming the portfolio interest exemption, such Lender may provide a Tax Form Certificate on behalf of each such direct and indirect partner.

(4) In addition, each Lender agrees that from time to time after the Closing Date, when a lapse in time or change in circumstances renders the previous certification obsolete or inaccurate in any material respect, such Lender will deliver to the Borrower and the Administrative Agent two new accurate and complete original signed copies of Internal Revenue Service Form W-8ECI, W-8BEN, W-8BEN-E or W-8IMY (in the case of Form W-8BEN or W-8BEN-E, with respect to the benefits of any income tax treaty), or Form W-8BEN or W-8BEN-E (with respect to the portfolio

interest exemption) and a Tax Form Certificate, as the case may be, and such other forms as may be required in order to confirm or establish the entitlement of such Lender to a continued exemption from or reduction in United States withholding tax with respect to payments under this Agreement, or such Lender shall immediately notify the Borrower and the Administrative Agent of its legal inability to deliver any such Form or Certificate, in which case such Lender shall not be required to deliver any such Form or Certificate pursuant to this Section 4.04(c) that it is legally unable to deliver.

(5) If a payment made to a Lender under any Credit Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (5), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(d) Each Lender shall severally indemnify the Administrative Agent, within 30 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.04(e) relating to the maintenance of the Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Credit Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to (at its option) set off and apply any and all amounts at any time owing to such Lender under any Credit Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this clause (d). Failure or delay on the part of the Administrative Agent to demand compensation pursuant to this Section 4.04(d) shall not constitute a waiver of the Administrative Agent's right to demand such compensation.

(e) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section

4.04 (including by the payment of additional amounts pursuant to this Section 4.04), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 4.04 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this clause (e) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this clause (e), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this clause (e) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to (i) apply for any refund of Taxes or (ii) make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(f) Each party's obligations under this Section 4.04 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all Obligations under any Credit Document.

Section 5 Conditions Precedent.

5.01. Closing Date. This Agreement and the obligation of each Lender to make any Term Loan shall not become effective until the date on which each of the following conditions shall be satisfied (or waived in accordance with Section 11.11) (it being understood and agreed that any Credit Document and each other document required to be received by the Lenders shall be deemed so received when it is delivered to the Administrative Agent or the Collateral Agent, as applicable):

(a) Credit Documents. On or prior to the Closing Date, the Administrative Agent shall have received (x) signed counterparts of (i) this Agreement and the other Credit Documents (which shall be in form and substance satisfactory to the Administrative Agent) from Holdings, the Borrower, each of the Lenders and any other party party hereto or thereto, as applicable, and (ii) the Intercreditor Agreement from the Administrative Agent, the Prepetition Term Agent, the Prepetition ABL Agent, the DIP ABL Agent and each of the Credit Parties, and (y) the exhibits, annexes and schedules to be attached to this Agreement, the other Credit Documents and the Intercreditor Agreement, as applicable, in each case, in form and substance satisfactory to the Administrative Agent.

(b) Financial Statements. On or prior to the Closing Date, the Administrative Agent and each Lender shall have received true and correct copies of the historical financial statements referred to in Section 6.05(a).

(c) Officer's Certificate. On the Closing Date, the Administrative Agent shall have received a certificate, dated the Closing Date and signed on behalf of the Borrower by an Authorized Officer of such Borrower, certifying on behalf of such Borrower that (i) there shall exist no Default or Event of Default, and (ii) all representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects with the same effect as though such representations and warranties had been made on the date of such Credit Event (it being understood and agreed that (x) any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date and (y) any representation or warranty that is qualified as to "**materiality,**" "**Material Adverse Effect**" or similar language shall be true and correct in all respects on such date).

(d) Opinions of Counsel. On the Closing Date, the Administrative Agent shall have received a legal opinion from each of (i) Loyens & Loeff Luxembourg S.à r.l., Luxembourg counsel to the Lenders, (ii) Arendt & Medernach, Luxembourg counsel to the applicable Credit Parties, (iii) Reeder & Simpson P.C., Marshall Islands counsel to the Lenders and (iv) Paul Weiss Rifkind Wharton & Garrison LLP, New York counsel to the applicable Credit Parties, in each case, addressed to the Administrative Agent and each of the Lenders and dated the Closing Date covering the matters incident to the transactions contemplated herein as the Administrative Agent may reasonably request.

(e) Company Documents. On the Closing Date, the Administrative Agent shall have received (a) a certificate from each Credit Party, dated the Closing Date, signed by an Authorized Officer of such Credit Party and attested to by a second Authorized Officer of such Credit Party, attaching copies of the certificate or articles of incorporation and the consolidated articles (if any) or other equivalent formation documents, as applicable, of such Credit Party, the by-laws (or other equivalent organizational documents), as applicable, of such Credit Party and the resolutions of such Credit Party authorizing the Credit Documents, and each of the foregoing shall be in form and substance reasonably acceptable to the Administrative Agent, (b) a good standing certificate (or equivalent or other similar certificate reasonably acceptable to the Administrative Agent) from the secretary of state or other applicable Governmental Authority of the jurisdiction of formation or organization of such Credit Party and (c) for Holdings and each of its Subsidiaries incorporated or established in Luxembourg (i) an excerpt of the Luxembourg Trade and Companies Register (*Register de Commerce et des Sociétés*) dated no earlier than three (3) Business Days prior to the date of this Agreement or, if the mentioned excerpt is not available, a notary certificate confirming the corporate details of the relevant entity dated no earlier than three (3) Business Days prior to the date of this Agreement; and (ii) a certificate from the Luxembourg Trade and Companies Register dated no earlier than three (3) Business Days prior to the date of this Agreement stating that no judicial decision has been registered by application of article 13, items 2 to 12 and 13 and article 14 of the Luxembourg law dated 19 December 2002 relating to the register of commerce and companies as well as the accounting and the annual accounts of companies, as amended (the "**RCS Law**"), according to which the relevant entity would be subject to one of the judicial proceedings referred to in these provisions of the RCS Law including in particular, bankruptcy (*faillite*), controlled management (*gestion contrôlée*), suspension of payments (*sursis de paiement*), arrangement with creditors (*concordat préventif de la faillite*) and judicial liquidation (*liquidation judiciaire*) proceedings.

(f) Guaranty. On the Closing Date, each Guarantor shall have duly authorized, executed and delivered the Guaranty in substantially the form of Exhibit E (as amended, modified and/or supplemented from time to time, the "**Guaranty**").

(g) Security Documents. On the Closing Date, each Credit Party shall have duly authorized, executed and delivered (i) a Luxembourg-law governed amended and restated first ranking pledge over the Equity Interests of Clover Leaf Seafoods S.à r.l. held by Holdings (the "**Luxembourg Share Pledge**"), (ii) the security agreement substantially in the form of Exhibit F-1 (as amended, modified, restated and/or supplemented from time to time, the "**U.S. Security Agreement**") and a Ontario law governed security agreement in the form of Exhibit F-2 (as amended, modified, restated and/or supplemented from time to time, the "**Canadian Security Agreement**", and together with the U.S. Security Agreement, the "**Security Agreements**") covering all of such Credit Party's Security Agreement Collateral and (iii) the Perfection Certificate, together with the following, each in form and substance reasonably satisfactory to the Administrative Agent:

(i) financing statements (Form UCC-1, PPSA or the equivalent) in proper form for filing under the UCC, the PPSA or the equivalent filing offices of the jurisdiction of organization of each Credit Party as may be necessary or, in the reasonable opinion of the Administrative Agent, desirable, to perfect the security interest purported to be created by the applicable Security Agreement to the extent they can be perfected by such filings;

(ii) results of searches, certified copies of requests for information or other evidence or copies (Form UCC-1, verification statements, or the equivalent), or equivalent reports as of a recent date, listing all effective financing statements that name Holdings or any of its Subsidiaries as debtor and that are filed in the jurisdictions referred to in clause (i) above and in such other jurisdictions in which Collateral is located on the Closing Date, together with copies of such other financing statements that name Holdings or any of its Subsidiaries as debtor (none of which shall cover any of the Collateral except (x) to the extent evidencing Permitted Liens or (y) those in respect of which the Administrative Agent shall have received termination statements (Form UCC-3 or the equivalent) or such other termination statements as shall be required by local law fully executed for filing);

(iii) evidence of the completion of all other recordings and filings of, or with respect to, the relevant Security Agreements, including any Intellectual Property Security Agreement (as defined in the U.S. Security Agreement) in the United States Patent and Trademark Office or in the United States Copyright Office, or in the Canadian Intellectual Property Office, as the case may be, as may be necessary or, in the reasonable opinion of the Administrative Agent, desirable, to perfect the security interests purported to be created by the Security Agreements; and

(iv) (x) all certificates representing the Equity Interests required to be pledged pursuant to the Security Agreements together with undated endorsements for transfer executed in blank and (y) promissory notes required to be pledged

pursuant to the Security Agreements together with undated endorsements for transfer executed in blank, in each case, in form and substance reasonably satisfactory to the Administrative Agent, along with evidence that all other actions necessary or, in the reasonable opinion of the Administrative Agent, desirable, to perfect the security interests purported to be created by the Security Agreements have been taken, and the Security Agreements shall be in full force and effect, including a copy of the shareholders register (*registre des associés*) of Clover Leaf Seafoods S.à r.l. evidencing all registrations to be made pursuant to the Luxembourg Share Pledge.

(h) [Reserved].

(i) [Reserved].

(j) Intercompany Subordination Agreement. On the Closing Date, each Credit Party and each other Subsidiary of Holdings which is an obligee or obligor with respect to any Intercompany Debt shall have duly authorized, executed and delivered the Intercompany Subordination Agreement.

(k) Term Notes. On or prior to the Closing Date, there shall have been delivered to the Administrative Agent, for each of the Lenders that has requested a Term Note, a Term Note executed by the Borrower, in each case in the amount, maturity and as otherwise provided herein.

(l) Notice of Borrowing. The Administrative Agent shall have received a Notice of Borrowing in accordance with (including the applicable notice periods set forth in) Section 2.02(a).

(m) Fees and Expenses. The Borrower shall have paid all fees and expenses required to be paid pursuant to this Agreement (including (x) fees and expenses of Weil, Gotshal & Manges LLP and other local counsel (including, but not limited to, counsel in Delaware, Canada, Nova Scotia/New Brunswick and Luxembourg) to the Administrative Agent and the Lenders and (y) the fees set forth in Section 3.01 herein that are due and payable on or prior to the Closing Date), and the other Credit Documents and all other expenses payable to the Administrative Agent as have been separately agreed and in each case invoiced at least three (3) Business Days prior to the Closing Date (or such lesser period as may be otherwise reasonably agreed by the Borrower), shall have been paid in full in cash (which amounts may be offset against the proceeds of the Initial Term Loans). The Administrative Agent shall have received a fully executed copy of the Fee Letter.

(n) DIP ABL Credit Facility. The DIP ABL Credit Agreement, in form and substance satisfactory to the Administrative Agent, shall, subject to the entry of the Interim Order, become effective substantially concurrently with DIP Term Facility.

(o) PATRIOT ACT; Beneficial Ownership Certificate. At least three (3) Business Days prior to the Closing Date, the Administrative Agent shall have received all information with respect to the Credit Parties reasonably requested by it in writing at least 10 Business Days prior to the Closing Date under applicable "know-your-customer" and anti-money

laundering rules and regulations, including, the USA PATRIOT ACT (Title 111 of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**PATRIOT Act**") and, to the extent the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, a Beneficial Ownership Certification in relation to the Borrower.

(p) Initial DIP Budget. The Administrative Agent shall have received (i) the Initial DIP Budget, in form and substance satisfactory to the Administrative Agent, and (ii) projected monthly balance sheets, income statements, statements of cash flows and availability under the DIP ABL Credit Facility of the Credit Parties for the period through to the end of the term of the DIP Term Facility, in each case as to the projections, with the results and assumptions set forth in all of such projections in form and substance reasonably satisfactory to the Administrative Agent, and an opening pro forma balance sheet for the Credit Parties in form and substance satisfactory to the Administrative Agent.

(q) No Default; Representations and Warranties. On the Closing Date (i) there shall exist no Default or Event of Default and no Default or Event of Default would result from such Credit Event or from the application of the proceeds thereof and (ii) all representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects (it being understood and agreed that (x) any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date and (y) any representation or warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct in all respects on such date).

(r) No Material Adverse Effect. No change in the business, assets, management, operations, financial condition or prospects of the Borrower and its Subsidiaries, other than the filing of the Cases and the CCAA Cases, shall have occurred since December 31, 2018, which change has had or would reasonably be expected to have a Material Adverse Effect.

(s) Restructuring Support Agreement. The Restructuring Support Agreement shall be effective and binding in accordance with its terms, and no event shall have occurred and be continuing that would, or that with the passage of time or the delivery of notice would, allow the Consenting Term Loan Lenders (as defined in the Restructuring Support Agreement) or the Borrower (or any of its Affiliates) to terminate the Restructuring Support Agreement (any such event, an "**RSA Termination Event**").

(t) Bankruptcy Related Items.

(i) (1) The Cases of any of the Debtors shall have not been dismissed or converted to cases under Chapter 7 of the Bankruptcy Code, (2) the CCAA Cases of any of the CCAA Debtors shall not have been dismissed or otherwise terminated and (3) no proceeding under or pursuant to the BIA shall have been commenced in respect of any of the Credit Parties.

(ii) (1) A motion, in form and substance reasonably satisfactory to the Administrative Agent, seeking approval of the DIP Term Facility, shall have been filed in each of the Cases within one (1) day after the Petition Date and (2) the

CCAA Debtors shall have filed an application under the CCAA on the CCAA Filing Date, in form and substance reasonably satisfactory to the Administrative Agent, seeking approval of the CCAA Initial Order, including approval of the DIP Term Facility and the granting of the CCAA DIP Charge.

(iii) (1) All "first day" orders and all related pleadings intended to be entered on or prior to the Interim Order Entry Date shall have been entered by the Bankruptcy Court and shall be in form and substance reasonably acceptable to the Administrative Agent and (2) the CCAA Initial Order shall have been granted and entered by the CCAA Court and shall be in form and substance reasonably acceptable to the Administrative Agent.

(iv) The Credit Parties shall have made no payments after the Petition Date on account of any Indebtedness arising prior to the Petition Date unless such payment is made pursuant to "first day" orders reasonably acceptable to the Administrative Agent in its sole discretion. The CCAA Debtors shall have made no payments after the CCAA Filing Date on account of any Indebtedness arising prior to the CCAA Filing Date unless such payment is made pursuant to the CCAA Initial Order.

(v) No trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or examiner with expanded powers shall have been appointed in any of the Cases. No (1) receiver, receiver and manager, trustee or restructuring officer or (2) monitor with enhanced powers shall have been appointed in respect of any of the CCAA Debtors or their respective assets.

(u) No Action. There shall exist no unstayed action, suit, investigation, litigation or proceeding pending or (to the knowledge of the Credit Parties) threatened in any court or before any arbitrator or governmental instrumentality (other than the Cases and the CCAA Cases) that would reasonably be expected to have a Material Adverse Effect.

(v) Interim Order and CCAA Initial Order. The Interim Order Entry Date shall have occurred not later than three (3) Business Days following the Petition Date, and the Interim Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the prior written consent of the Administrative Agent, and the Administrative Agent shall have received a certified copy of the Interim Order entered by the Bankruptcy Court. The CCAA Initial Order Entry Date shall have occurred not later than one (1) Business Day following the CCAA Filing Date, and the CCAA Initial Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the prior written consent of the Administrative Agent, and the Administrative Agent shall have received a certified copy of the CCAA Initial Order as entered with the CCAA Court.

(w) Petition Date and CCAA Filing Date. The Petition Date shall have occurred, and the Borrower and each Domestic Credit Party shall be a debtor and debtor-in-

possession in the Cases. The CCAA Filing Date shall have occurred and each Canadian Credit Party shall be a debtor and debtor-in-possession in the CCAA Cases.

(x) Governmental Approvals. All Necessary Authorizations and third party consents and approvals necessary in connection with the DIP Term Facility and the transactions contemplated hereby shall have been obtained.

In determining the satisfaction of the conditions specified in this Section 5.01, to the extent any Lender funds its Initial Commitment hereunder, such Lender thereby certifies that the conditions specified in this Section 5.01 have been satisfied and that such Lender thereby waives the conditions specified in this Section 5.01 that have not been completed as of such date. Upon the Administrative Agent's good faith determination that the conditions specified in this Section 5.01 have been met, then the Closing Date shall have been deemed to have occurred, regardless of any subsequent determination that one or more of the conditions thereto had not been met; provided that the foregoing shall not be deemed to constitute a waiver of any representation or warranty made, or deemed to have been made, by any Credit Party, or as a waiver of any covenant obligation of any Credit Party or any of their Subsidiaries.

5.02. Delayed Draw Borrowing. The obligation of each Lender to make Delayed Draw Term Loans hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 11.11):

(a) Closing Date. The Closing Date shall have occurred.

(b) Notice of Borrowing. The Administrative Agent shall have received a Notice of Borrowing in accordance with (including the applicable notice periods set forth in) Section 2.02(a).

(c) Final Order Entry Date and CCAA A&R Initial Order Entry Date. The Final Order Entry Date shall have occurred concurrently with or prior thereto, and the Final Order shall be in full force and effect, shall not have been vacated or reversed, shall not be subject to a stay, shall not have been modified or amended in any respect without the prior written consent of the Administrative Agent, and the Administrative Agent shall have received a signed copy of the Final Order entered by the Bankruptcy Court. The CCAA A&R Initial Order Date shall have occurred concurrently with or prior thereto, and the CCAA A&R Initial Order shall be in full force and effect, shall not have been vacated or reversed, shall not be subject to a stay, shall not have been modified or amended in any respect without the prior written consent of the Administrative Agent, and the Administrative Agent shall have received a signed copy of the issued and entered CCAA A&R Initial Order.

(d) Interim Order and CCAA Initial Order. At all times prior to the Final Order Entry Date, the Interim Order shall be in full force and effect, shall not have been vacated or reversed and shall not have been modified or amended, shall not be subject to a stay and shall not have been modified or amended in any respect without the prior written consent of the Administrative Agent. At all times prior to the CCAA A&R Initial Order Date, the CCAA Initial Order shall be in full force and effect, shall not have been vacated or reversed and shall not have

been modified or amended, shall not be subject to a stay and shall not have been modified or amended in any respect without the prior written consent of the Administrative Agent.

(e) No Default; Representations and Warranties. On the Delayed Draw Borrowing Date (i) there shall exist no Default or Event of Default and no Default or Event of Default would result from such Credit Event or from the application of the proceeds thereof and (ii) all representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects (it being understood and agreed that (x) any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date and (y) any representation or warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct in all respects on such date).

(f) Fees and Expenses. The Borrower shall have paid all fees and expenses required to be paid pursuant to this Agreement including (x) fees and expenses of Weil, Gotshal & Manges LLP and other local counsel (including, but not limited to, counsel in Delaware, Canada, Nova Scotia/New Brunswick and Luxembourg) to the Administrative Agent and the Lenders and (y) the fees set forth in Section 3.01 herein that are due and payable on or prior to the Delayed Draw Borrowing Date), and the other Credit Documents and all other expenses payable to the Administrative Agent as have been separately agreed and in each case invoiced at least three (3) Business Days prior to the Delayed Draw Borrowing Date (or such lesser period as may be otherwise reasonably agreed by the Borrower), shall have been paid in full in cash (which amounts may be offset against the proceeds of the Delayed Draw Term Loans).

(g) No Material Adverse Effect. No change in the business, assets, management, operations, financial condition or prospects of the Borrower and its Subsidiaries, other than the filing of the Cases and the CCAA Cases, shall have occurred since December 31, 2018, which change has had or would reasonably be expected to have a Material Adverse Effect.

(h) Restructuring Support Agreement. The Restructuring Support Agreement shall be effective and binding in accordance with its terms and no RSA Termination Event shall have occurred and be continuing.

(i) [Reserved].

(j) DIP Term Funding Account. (x) The DIP Term Funding Account shall have been opened and (y) the Administrative Agent shall have received a fully-executed account control agreement (to be in form and substance reasonably satisfactory to the Administrative Agent) covering the DIP Term Funding Account.

In determining the satisfaction of the conditions specified in this Section 5.02, to the extent any Lender funds its Delayed Draw Commitment hereunder, such Lender thereby certifies that the conditions specified in this Section 5.02 have been satisfied and that such Lender thereby waives the conditions specified in this Section 5.02 that have not been completed as of such date.

Section 6 Representations, Warranties and Agreements.

On the Closing Date and any other date specified herein or in any other Credit Document, in order to induce the Lenders to enter into this Agreement and to make the Term Loans, each of Holdings and the Borrower makes the following representations and warranties (in each case after giving effect to the Transactions), which are true and correct in all material respects on and as of the Closing Date, the Delayed Draw Borrowing Date and such other date (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date).

6.01. Company Status. Each Credit Party and each of its Subsidiaries (i) is a duly organized and validly existing Company in good standing (or, in the case of any Foreign Subsidiary of Holdings, the applicable equivalent of "good standing" to the extent that such concept exists in such Foreign Subsidiary's jurisdiction of organization) under the laws of the jurisdiction of its organization, (ii) has the Company power and authority to own its property and assets and to transact the business in which it is engaged and presently proposes to engage and (iii) is duly qualified and is authorized to do business and is in good standing in each jurisdiction where the ownership, leasing or operation of its property or the conduct of its business requires such qualifications except for failures to be so qualified or authorized which, either individually or in the aggregate, in the case of this clause (iii), would not reasonably be expected to have a Material Adverse Effect. No certifications by any Governmental Authority having jurisdiction over Holdings, any Subsidiary or any of their respective assets or operations are required for operation of the business of Holdings and its Subsidiaries that are not in place, except for such certifications or agreements, the absence of which would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

6.02. Power and Authority. Each Credit Party has the Company power and authority to execute, deliver and perform the terms and provisions of each of the Credit Documents to which it is party and has taken all necessary Company action to authorize the execution, delivery and performance by it of each of such Credit Documents, subject, solely in the case of the Debtors and the CCAA Debtors, to the entry of the Orders and the CCAA Orders, respectively, and the terms thereof. Each Credit Party (subject, solely in the case of the Debtors and the CCAA Debtors, to the entry of the Orders and the CCAA Orders, respectively, and the terms thereof) has duly executed and delivered each of the Credit Documents to which it is party, and each of such Credit Documents constitutes its legal, valid and binding obligation enforceable in accordance with its terms, except, other than with respect to the Debtors and the CCAA Debtors, to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

6.03. No Violation. Neither the execution, delivery or performance by any Credit Party of the Credit Documents to which it is a party, nor compliance by it with the terms and provisions hereof and thereof, (a) contravenes any provision of any law, statute, rule or regulation or any order, writ, injunction or decree of any court or Governmental Authority which is applicable to such Credit Party, (b) will conflict with or result in any breach of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien (except a Permitted Lien) upon any of the property or assets of any such Credit Party or any of its

Subsidiaries pursuant to the terms of any material contractual obligation of any Credit Party or any of its Subsidiaries (including the DIP ABL Credit Agreement and any other "Loan Document" (as defined therein) and any agreement governing any Restricted Debt), or (c) will violate any provision of the certificate or articles of incorporation, certificate of formation, limited liability company agreement or by-laws (or equivalent organizational documents), as applicable, of such Credit Party or any of its Subsidiaries, in each case, under clauses (a) and (b), except as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.04. Approvals. No order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except for (a) those that have been obtained or made on or prior to the Closing Date and which remain in full force and effect on the Closing Date, (b) filings which are necessary to perfect the security interests on the Collateral of the Credit Parties that are not Debtors created or intended to be created under the Security Documents and (c) solely in the case of the Debtors and the CCAA Debtors, the entry of the Orders and the CCAA Orders, respectively), or exemption by, any Governmental Authority is required to be obtained or made by, or on behalf of, any Credit Party or any Subsidiary to authorize, or is required to be obtained or made by, or on behalf of, any Credit Party or any Subsidiary in connection with (i) the execution, delivery and performance of any Credit Document or (ii) the legality, validity, binding effect or enforceability of any such Credit Document, in each case, subject, solely in the case of the Debtors and the CCAA Debtors, to the entry of the Orders and the CCAA Orders, respectively, and the terms thereof.

6.05. Financial Statements; Financial Condition; Undisclosed Liabilities; DIP Budget. (a) (i) The audited consolidated balance sheet of Parent and its Subsidiaries at December 31, 2018 and the related consolidated statements of operations, comprehensive income, cash flows and shareholders' equity of Parent and its Subsidiaries for the fiscal year of each such Person, respectively, ended on December 31, 2018, in each case furnished to the Lenders prior to the Closing Date, present fairly in all material respects the consolidated financial position of Parent and its Subsidiaries at the date of such financial statements and the results for the respective periods covered thereby and (ii) the unaudited consolidated balance sheet of Parent and its Subsidiaries at March 30, 2019 and June 29, 2019, respectively, and the related consolidated statements of income and cash flow and changes in shareholders' equity of Parent and its Subsidiaries for the three and/or six month period, as applicable, then ended furnished to the Lenders prior to the Closing Date, present fairly in all material respects the consolidated financial condition of Parent and its Subsidiaries at the date of such financial statements and the results for the period covered thereby, subject to normal year-end adjustments. All such financial statements have been prepared in accordance with GAAP consistently applied except to the extent provided in the notes to such financial statements and subject, in the case of the unaudited financial statements, to normal year-end adjustments and the absence of footnotes.

(b) [Reserved].

(c) [Reserved].

(d) (i) On and as of the Closing Date, the Initial DIP Budget, copies of which have heretofore been furnished to Administrative Agent and the Lenders and (ii) following the

Closing Date, each DIP Budget delivered pursuant to Section 7.01(f), in each case, present a good faith estimate and assumptions of Holdings and its Subsidiaries as of such date.

(e) After giving effect to the Transactions, since December 31, 2018, nothing has occurred and is continuing that has had, or would reasonably be expected to have, a Material Adverse Effect.

6.06. Litigation. Except for the Cases, the CCAA Cases or as set forth on Schedule 6.06, there are no actions, suits, proceedings, subpoenas or inquiries pending or, to the knowledge of Holdings and the Borrower, threatened, against Holdings or any of its Subsidiaries (including with respect to the Transactions or any Credit Document) that, in each case, has had, or would, if determined adversely, reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

6.07. True and Complete Disclosure. The written factual information (taken as a whole) furnished by or on behalf of Holdings or the Borrower to the Administrative Agent or any Lender (including all information contained in the Credit Documents but excluding forward-looking information, projections and information of a general economic nature and general information about the Borrower's industry) for purposes of or in connection with this Agreement, the other Credit Documents or any transaction contemplated herein or therein does not contain any untrue statement of material fact or omit to state any material fact necessary to make the factual statements therein taken as a whole not materially misleading as of the time made or furnished in light of the circumstances under which such information was made or furnished after taking into account any modification or supplement to such information. The information included in the Beneficial Ownership Certificate is true and correct in all material respects.

6.08. Use of Proceeds; Margin Regulations.

(a) The proceeds of the Term Loans will be used by the Credit Parties in accordance with the Approved Budget (subject to any Permitted Variances) and the Orders entered in connection with the Cases exclusively for one or more of the following purposes (subject to any additional restrictions on the use of such proceeds and any such cash collateral set forth in the Interim Order) to (i) pay certain costs, premiums, fees and expenses (including professional fees) related to the Cases and the CCAA Cases, (ii) to fund the working capital needs of the Debtors and their Subsidiaries, including repayments of borrowings under the DIP ABL Credit Facility to the extent not accompanied by a corresponding reduction in commitments under the DIP ABL Credit Facility, and (iii) to fund general corporate needs, including interest payments on the Term Loans and Adequate Protection Payments.

(b) No part of any Term Loans (or the proceeds thereof) will be used to purchase or carry any Margin Stock or to extend credit for the purpose of purchasing or carrying any Margin Stock. Neither the making of any Term Loan nor the use of the proceeds thereof nor the occurrence of any other Credit Event will violate or be inconsistent with the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

6.09. Tax Returns and Payments. Except as set forth on Schedule 6.09 or pursuant to an order of the Bankruptcy Court or pursuant to the Bankruptcy Code, (i) each of Holdings and each

of its Subsidiaries has timely filed or caused to be timely filed with the appropriate taxing authority all income and other material returns, statements, forms and reports for taxes (the "**Returns**") required to be filed by them, (ii) each of Holdings and each of its Subsidiaries has paid all material taxes and assessments payable by it which have become due, other than those that are being contested in good faith and adequately disclosed and except for Taxes that need not be paid pursuant to an order of the Bankruptcy Court or pursuant to the Bankruptcy Code, (iii) except as set forth on Schedule 6.09, to the knowledge of Holdings and the Borrower, there is no material action, suit, proceeding, investigation, audit or claim now pending by any Taxing Authority regarding any taxes relating to Holdings or any of its Subsidiaries. Neither Holdings nor any of its Subsidiaries has entered into an agreement or waiver or been requested to enter into an agreement or waiver extending any statute of limitations relating to the payment or collection of taxes of Holdings or any of its Subsidiaries, or is aware of any circumstance that would cause-the-taxable your or other taxable periods of Holdings or any of its Subsidiaries not to be subject (to the normally applicable statute of limitations.

6.10. Employee Matter Compliance. (a) Except (with respect to any matter specified, either individually or in the aggregate) such as would not reasonably be expected to have a Material Adverse Effect, each Plan is in compliance with its terms and with the applicable provisions of ERISA and the Code; each Plan (and each related trust, if any) which is intended to be qualified under Section 401(a) of the Code has received a determination letter from the Internal Revenue Service to the effect that it meets the requirements of Sections 401(a) and 501(a) of the Code or has adopted a prototype or volume submitter plan document and is entitled to reliance on the sponsor's opinion letter from the Internal Revenue Service; no Reportable Event has occurred for which any liability remains outstanding; no Multi-employer Plan is insolvent or in reorganization; no Plan has an Unfunded Current Liability that is not reflected on the financial statements of Holdings or its applicable ERISA Affiliate; no Plan which is subject to Section 412 of the Code or Section 302 of ERISA has an accumulated funding deficiency and each Plan satisfies the minimum funding standards, within the meaning of such sections of the Code or ERISA, or has applied for or received a waiver of the minimum funding standards or an accumulated funding deficiency or an extension of any amortization period, within the meaning of Section 412 of the Code or Section 303 or 304 of ERISA; all contributions required to be made with respect to a Plan have been timely made; neither Holdings, nor any Subsidiary of Holdings nor any ERISA Affiliate has incurred any liability (including any indirect, contingent or secondary liability) to or on account of a Plan or Multiemployer Plan, as applicable, pursuant to Section 409, 502(i), 502(l), 515, 4062, 4063, 4064, 4069, 4201. 4212 of ERISA or Section 401(a)(29), 4971 or 4975 of the Code or expects to incur any such liability under any of the foregoing sections with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; no proceedings have been instituted to terminate or appoint a trustee to administer any Plan which is subject to Title IV of ERISA; no action, suit, proceeding, hearing, audit or investigation with respect to the administration, operation or the investment of assets of any Plan (other than routine claims for benefits) is pending, or to the knowledge of Holdings and the Borrower or threatened; no lien imposed under the Code or ERISA on the assets of Holdings or any ERISA Affiliate exists or is likely to arise on account of any Plan.

(b) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, any overtime pay, vacation pay, premiums for unemployment insurance, health and welfare insurance premiums, accrued wages, salaries and commissions, severance pay and employee benefit plan payments have been timely paid by each

Canadian Credit Party or, in the case of accrued unpaid overtime pay or accrued unpaid vacation pay for Canadian Employees, has been properly accounted for in the books and records of each Canadian Credit Party.

(c) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, no improvements to any Canadian Pension Plan or any Canadian Employee Plan have been promised, except improvements pursuant to any collective bargaining agreement.

(d) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect:

(i) Each Canadian Pension Plan is in compliance in form and operation with its terms and with Canadian Employee Benefits Legislation and other applicable Laws;

(ii) All funding obligations regarding the Canadian Pension Plans and the Canadian Employee Plans (including current service contributions and special payments, as applicable) have been satisfied, there are no outstanding defaults or violations by any party to any Canadian Pension Plan and any Canadian Employee Plan;

(iii) There are no pending or, to the knowledge of each Canadian Credit Party, threatened claims (other than claims for benefits in the ordinary course), sanctions, actions, suits or proceedings asserted or instituted by any Person against any Canadian Pension Plan or any Person as fiduciary or sponsor of any Canadian Pension Plan;

(iv) No taxes, penalties or fees are past due under any of the Canadian Employee Plans or Canadian Pension Plans; and

(v) To the best knowledge of each Canadian Credit Party, no fact or circumstance exists that could adversely affect the tax-exempt status of a Canadian Pension Plan or, where applicable, a Canadian Employee Plan.

(e) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, all contributions, assessments, premiums, fees, taxes, penalties or fines in relation to the Canadian Employees have been duly paid or remitted and there is no outstanding liability of any kind in relation to the employment of the Canadian Employees or the termination of employment of any Canadian Employee.

(f) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, each Canadian Credit Party is in compliance with all requirements of any applicable Law in respect of the Canadian Pension Plans and health and safety, workers compensation, employment standards, labor relations, health insurance, employment insurance, protection of personal information, human rights laws and any Canadian federal, provincial or local counterparts or equivalents in each case, as applicable to the Canadian Employees and as amended from time to time.

6.11. Security.

(a) Subject to the entry of the Orders, the Administrative Agent (for the benefit of the Secured Creditors) will have upon entry of the Interim Order, a valid Lien on all of the Debtors' right, title and interest in and to the Collateral described therein and the Security Agreement Collateral and the proceeds thereof, and subject to the entry of the Orders, the Administrative Agent (for the benefit of the Secured Creditors) will have, upon entry of the Interim Order, a perfected Lien on, and security interest in, all right, title and interest of the Debtors in such Collateral and, to the extent applicable, subject to Section 9-315 of the Uniform Commercial Code, the proceeds thereof, in each case prior and superior in right to any other person, subject to the Permitted Liens having priority under applicable Law, the Orders and/or the Intercreditor Agreement.

(b) The Administrative Agent (for the benefit of the Secured Creditors) will, upon execution and delivery of the applicable Security Documents by the parties thereto, have a valid Lien on all of the Canadian Credit Parties' right, title and interest in and to the Security Agreement Collateral and the proceeds thereof, and subject to the entry of the CCAA Orders, the Administrative Agent (for the benefit of the Secured Creditors) will have, upon entry of the CCAA Initial Order, a valid and perfected Lien on, and security interest in, all right, title and interest of the CCAA Debtors in the Collateral and the Security Agreement Collateral and the proceeds thereof, in each case prior and superior in right to any other Person, subject to the Permitted Liens having priority under applicable Law, the CCAA Orders and/or the Intercreditor Agreement.

(c) The provisions of the Security Agreements are effective to create in favor of the Administrative Agent for the benefit of the Secured Creditors a legal, valid and enforceable security interest in all right, title and interest of each Credit Party that is not a Debtor or CCAA Debtor in the Security Agreement Collateral described therein, and the Administrative Agent, for the benefit of the Secured Creditors, has (or upon (i) recordation of the Patent Security Agreement and the Trademark Security Agreement in the Canadian Intellectual Property Office, (ii) the recordation of the Copyright Security Agreement in the Canadian Intellectual Property Office and (iii) the recordation of the filings under the PPSA made pursuant to the relevant Security Agreement) a fully perfected security interest in all right, title and interest in all of the Security Agreement Collateral described therein to the extent a security interest in such Security Agreement Collateral can be perfected by such recordations, subject to no other Liens other than Permitted Liens.

(d) Notwithstanding anything herein to the contrary, no perfection actions shall by required with respect to any Material Real Property owned by the Debtors.

6.12. Properties.

(a) Each Mortgage (if any) creates as security for the obligations purported to be secured thereby, a legal valid and enforceable security interest in and mortgage lien on the respective Material Real Property in favor of the Administrative Agent (or such other trustee as may be required or desired under local law) for the benefit of the Secured Creditors, subject, solely in the case of Material Real Property owned by the Debtors and the CCAA Debtors, to the entry of the Orders and the CCAA Orders, respectively, in each case, superior and prior to the rights of

all third Persons (except that the security interest and mortgage lien created on such Material Real Property may be subject to Permitted Encumbrances related thereto) and subject to no other Liens (other than Permitted Encumbrances related thereto or Liens permitted pursuant to Sections 8.01(a) (provided, with respect to any proceedings contesting any Tax, such proceedings stay the right to foreclose the Liens on such Taxes), (b) (provided, the proceedings referred thereto have the effect of staying or preventing the forfeiture or sale of the property or assets subject to any Liens), (c), (d), (e)(x), (h), (j), (n), (cc), (ff), (gg), (hh) and (kk) related thereto).

(b) All Real Property owned or leased by Holdings or any of its Subsidiaries and the nature of the interest therein, is set forth in Schedule 6.12(b). Each of Holdings and each of its Subsidiaries has good and marketable title to all Material Real Property (and to all buildings, fixtures and improvements located thereon) owned by it, including all Material Real Property reflected in the most recent historical balance sheets referred to in Section 6.05(a) (except as sold or otherwise disposed of since the date of such balance sheet in the ordinary course of business or as permitted by the terms of this Agreement), free and clear of all Liens, other than as provided in Section 6.12(a) above.

(c) All vessels owned by any Canadian Credit Party are listed on Schedule 6.12(c).

6.13. Capitalization of Holdings. Schedule 6.13 sets forth the Equity Interests in Holdings (such Equity Interests, together with any subsequently authorized Equity Interests, the "**Holdings Equity Interests**"), all of which are issued and outstanding. All such outstanding Equity Interests have been duly and validly issued and have been issued free of preemptive rights. Except as set forth on Schedule 6.13 hereto, Holdings does not have outstanding any Equity Interests or other securities convertible into or exchangeable for its Equity Interests or any rights to subscribe for or to purchase, or any options for the purchase of, or any agreement providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any character relating to, its Equity Interests or any Equity Interests appreciation or similar rights.

6.14. Subsidiaries. Holdings has no Subsidiaries other than those Subsidiaries listed on Schedule 6.14. Schedule 6.14 sets forth the percentage ownership (direct and indirect) of Holdings in each class of capital stock or other Equity Interests of each of its Subsidiaries and also identifies the direct owner thereof. All outstanding shares of Equity Interests of each Subsidiary of Holdings have been duly and validly issued, are fully paid and, excepting any Nova Scotia unlimited company, non-assessable and have been issued free of preemptive rights. No Subsidiary of Holdings has outstanding any securities convertible into or exchangeable for its Equity Interests or outstanding any right to subscribe for or to purchase, or any options or warrants for the purchase of, or any agreement providing for the issuance (contingent or otherwise) of or any calls, commitments or claims of any character relating to, its Equity Interests or any stock appreciation or similar rights.

6.15. Compliance with Laws, etc. Each of Holdings and each of its Subsidiaries is in compliance with all applicable Laws in respect of the conduct of its business and the ownership of its property (including the FCPA, but excluding Environmental Laws, which are the subject of Section 6.18), except such non-compliances as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.16. Investment Company Act. Neither Holdings nor any of its Subsidiaries is an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

6.17. Insurance. Schedule 6.17 sets forth a listing of all property, casualty and liability insurance maintained by Holdings and its Subsidiaries, with the amounts insured (and any deductibles) set forth therein.

6.18. Environmental Matters. (a) Except as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (i) each of Holdings and each of its Subsidiaries is in compliance with all applicable Environmental Laws and holds and is in compliance with all Environmental Permits required to operate its business; (ii) no action or proceeding is pending or, to the knowledge of Holdings and the Borrower, threatened to revoke, adversely modify or terminate any such Environmental Permit; (iii) there are no pending or, to the knowledge of Holdings and the Borrower, threatened Environmental Claims against Holdings or any of its Subsidiaries or any Real Property owned, leased or operated by Holdings or any of its Subsidiaries (including any such claim arising out of the ownership, lease or operation by Holdings or any of its Subsidiaries of any Real Property formerly owned, leased or operated by Holdings or any of its Subsidiaries but no longer owned, leased or operated by Holdings or any of its Subsidiaries); and (iv) there are no facts, circumstances, conditions or occurrences with respect to the business or operations of Holdings or any of its Subsidiaries, or any Real Property owned, leased or operated by Holdings or any of its Subsidiaries (including any Real Property formerly owned, leased or operated by Holdings or any of its Subsidiaries but no longer owned, leased or operated by Holdings or any of its Subsidiaries) or, to the knowledge of Holdings and the Borrower, any property adjoining or adjacent to any such Real Property that could be reasonably expected (x) to result in an Environmental Claim against Holdings or any of its Subsidiaries or any Real Property owned, leased or operated by Holdings or any of its Subsidiaries or (y) to cause any Real Property owned, leased or operated by Holdings or any of its Subsidiaries or Holdings or any of its Subsidiaries to be in violation of or subject to liability under any applicable Environmental Law.

(b) Except as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, Holdings or any of its Subsidiaries have not at any time generated, used, treated, stored or Released any Hazardous Materials in violation of Environmental Laws or in a manner that could be reasonably expected to violate any applicable Environmental Law or result in an Environmental Claim against Holdings or any of its Subsidiaries.

6.19. Employment and Labor Relations. Neither Holdings nor any of its Subsidiaries is engaged in any unfair labor practice that would reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect. There is (i) no unfair labor practice complaint pending against Holdings or any of its Subsidiaries or, to the knowledge of Holdings and the Borrower, threatened against any of them, before the National Labor Relations Board, and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement is so pending against Holdings or any of its Subsidiaries or, to the knowledge of Holdings and the Borrower, threatened against any of them, (ii) no strike, labor dispute, slowdown or stoppage pending against Holdings or any of its Subsidiaries or, to the knowledge of Holdings and the

Borrower, threatened against Holdings or any of its Subsidiaries, (iii) no union representation question exists with respect to the employees of Holdings or any of its Subsidiaries, (iv) no equal employment opportunity charges or other claims of employment discrimination are pending or, to the knowledge of Holdings and the Borrower, threatened against Holdings or any of its Subsidiaries and (v) no wage and hour department investigation has been made of Holdings or any of its Subsidiaries, except (with respect to any matter specified in clauses (i) through (v) above, either individually or in the aggregate) such as would not reasonably be expected to have a Material Adverse Effect.

6.20. Intellectual Property. Each of Holdings and each of its Subsidiaries (a) owns or has the valid and continuing right to use pursuant to a written agreement and free and clear of any Liens (other than Permitted Liens) all the patents, trademarks, domain names, any source or business identifiers, service marks, trade names, brand names, services names, corporate names, company names, business names, fictitious business names, trade styles, trade dress rights, logos, copyrights, inventions, trade secrets, proprietary information and know-how of any type, and general intangibles of a like nature, whether or not written (including, but not limited to, formulas, rights in technology, software, computer programs, designs and databases), all goodwill associated with any of the foregoing, any and all applications for any of the foregoing (including all continuations, divisionals, continuations-in-part, reissues, reexaminations, extensions, registrations, renewals and reversions, as applicable) and any similar intellectual property rights with respect to any of the foregoing used in the business of such Person, whether protected, created or arising under the Laws of the United States, Canada or any other jurisdiction (collectively, "**Intellectual Property**"), and (b) to the knowledge of Holdings and the Borrower, has not and does not infringe, misappropriate or otherwise violate Intellectual Property rights held by others, except in the case of each of the foregoing clauses (a) and (b) as would reasonably be expected, either individually or in the aggregate, not to have a Material Adverse Effect. No other Person has contested any right, title or interest of Holdings or any of its Subsidiaries in, or the validity of, any Intellectual Property owned by Holdings or any of its Subsidiaries and to the knowledge of Holdings and the Borrower, no Person has infringed, misappropriated or otherwise violated or is infringing, misappropriating or otherwise violating any Intellectual Property owned by Holdings or any of its Subsidiaries, in each case of the foregoing, which has had or would reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect. Except as has not or would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, each of Holdings and its Subsidiaries is not in breach or default under any Intellectual Property license to which it is subject or otherwise a party. Each of Holdings and its Subsidiaries has complied with all applicable Laws and internal policies relating to privacy and data protection, except such non-compliances as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.21. Material Agreements. The Borrower has delivered true, correct and complete copies of the Material Agreements, such Material Agreements remain in full force and effect and neither Holdings nor any of its Subsidiaries (a) has received a written notice of termination, intent to terminate or material breach or default from any counterparties to such Material Agreements or (b) to the knowledge of the Borrower or any Subsidiary after reasonable inquiry, is in material breach of or default under any such Material Agreements, other than breaches or defaults arising as a result of the commencement of the Cases or the CCAA Cases.

6.22. Necessary Authorizations. Subject to the entry of the Orders and the CCAA Orders, each Credit Party and each Subsidiary of a Credit Party has obtained all Necessary Authorizations, and all such Necessary Authorizations are in full force and effect. None of such Necessary Authorizations is the subject of any pending or, to the best of each Credit Party's knowledge, threatened attack, application, objection, or enforcement action or any other petition with a Governmental Authority for revocation, termination, suspension, denial or material modification of a Necessary Authorization, by the grantor of the Necessary Authorization. The actions of any applicable Governmental Authority granting all Necessary Authorizations have not been reversed, stayed, enjoined, annulled or suspended.

6.23. Anti-Money Laundering and Economic Sanctions Laws. (a) No Credit Party, none of its Subsidiaries, none of its controlled Affiliates and, to the knowledge of each Credit Party, none of the respective officers, directors, brokers or agents of such Credit Party, such Subsidiary or controlled Affiliates has in the past five (5) years violated or is in violation of any applicable sanctions or Anti-Money Laundering Law.

(b) No Credit Party, none of its Subsidiaries and none of the respective officers, directors, nor to any Credit Party's knowledge, brokers or agents of such Credit Party or such Subsidiary that is acting or benefiting in any capacity in connection with the Term Loans (i) is an Embargoed Person or (ii) will use any proceeds of the Term Loans, or lend, contribute or otherwise make available such proceeds to any Person for the purpose of financing the activities of or with any Person or in any country or territory that, at the time of funding or facilitation, is an Embargoed Person.

6.24. Anti-Corruption Laws.

(a) Neither Holdings, any of its Subsidiaries nor any of their respective officers or directors, nor, to any Credit Party's knowledge, any agent or representative of Holdings or any of its Subsidiaries, has taken any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any Government Official for the purpose of influencing official action, securing an improper advantage, obtaining or retaining business for or with, or directing business to, any person, in each case in violation of any provision of the FCPA, the UK Bribery Act of 2010, Anti-Money Laundering Laws, or any other applicable anti-corruption or anti-bribery law.

(b) Holdings and the Borrower will maintain in effect corporate policies designed to ensure compliance by Holdings, the Borrower, their respective Subsidiaries and their respective employees with the FCPA and any other applicable anti-corruption laws.

6.25. Food Safety.

(a) Except as would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, (i) each of Holdings and each of its Subsidiaries is in compliance with all applicable Food Safety Laws applicable to it or its business or properties and (ii) each product grown, harvested, manufactured, processed, tested, stored, shipped, packaged, labeled, marketed, distributed, held or sold by or on behalf of Holdings and its

Subsidiaries (each such product, a "**Company Product**"), is and has been grown, harvested, manufactured, processed, tested, stored, shipped, packaged, labeled, marketed, distributed, held, and sold in compliance with all applicable requirements of Food Safety Laws.

(b) Except as would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, no Company Product has been recalled, withdrawn or suspended for any reason, nor has any Company Product been discontinued (whether voluntarily or otherwise) due to concerns over potential harm to human health or safety. No proceedings initiated by any Governmental Authority having jurisdiction over Holdings, any Subsidiary or any of their respective assets or operations charged with enforcing the Food Safety Laws seeking the recall, withdrawal, suspension, or seizure of any Company Product are pending or, to the knowledge of Holdings, threatened against Holdings or any of its Subsidiaries, except for proceedings that would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(c) Except as would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, neither Holdings nor any of its Subsidiaries has received any written notice from any Governmental Authority having jurisdiction over Holdings, any Subsidiary or any of their respective assets or operations or any other Person of any alleged violation of or noncompliance with any Food Safety Laws.

(d) Except as would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, all sources of tuna are and have been in compliance with the Marine Mammal Protection Act and the "Dolphin Safe" labeling standard of the Dolphin Protection Consumer Information Act as stated in the Magnuson Fishery Conservation Management Act (16 USC 1822, as amended). Except as would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, Holdings and its Subsidiaries possess scientifically reliable information and/or third party certifications or registrations to substantiate any claims they have made regarding conformance of their facilities, processes, and Company Products to applicable standards including, without limitation, Kosher, Pareve, Heschsher, Halal, Certified Organic, "organic," "gluten free," "low fat," "reduced fat," "high protein," "low calorie," "zero trans fats," "all natural," "low sodium," "nitrate-free," "antibiotic-free," "100 percent," and similar claims.

6.26. Centre of Main Interests and Central Administration. With respect to Holdings and each of its Subsidiaries incorporated or established in Luxembourg, its Centre of Main Interests (as such term is defined in the Insolvency Regulation) for the purposes of the Insolvency Regulation is located in Luxembourg. It has no branch or "*establishment*" (as that term is defined in the Insolvency Regulation) in any other jurisdiction. The central administration (*administration centrale*) (within the meaning of the Luxembourg law of 10 August 1915 on commercial companies as amended) of Holdings and each of its Subsidiaries incorporated or established in Luxembourg is located in Luxembourg.

6.27. Domiciliation. Holdings and each of its Subsidiaries incorporated or established in Luxembourg are in compliance with the Luxembourg law dated 31 May 1999 on domiciliation of companies, as amended.

6.28. No Defaults. Subject to the entry of the Orders and the CCAA Orders and subject to the terms thereof, no Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Credit Document.

6.29. Cases and CCAA Cases; Orders and CCAA Orders.

(a) The Cases were commenced on the Petition Date in accordance with applicable Laws and proper notice thereof was given for (i) the motion seeking approval of the Credit Documents and the Interim Order and, when applicable, Final Order, (ii) the hearing for the entry of the Interim Order, and (iii) the hearing for the entry of the Final Order (provided that notice of the final hearing will be given as soon as reasonably practicable after such hearing has been scheduled). The Debtors shall give, on a timely basis as specified in the Interim Order or the Final Order, as applicable, all notices required to be given to all parties specified in the Interim Order or Final Order, as applicable. The CCAA Cases were commenced on the CCAA Filing Date in accordance with applicable Laws and proper notice thereof has or will be given for the CCAA Comeback Motion. The CCAA Debtors shall give, on a timely basis as specified in the CCAA Initial Order, all notices required to be given pursuant to the CCAA or as otherwise may be requested by the Administrative Agent.

(b) After the entry of the Interim Order, and pursuant to and to the extent permitted in the Interim Order and the Final Order, the Obligations will constitute DIP Superpriority Claims, subject to (i) the Carve-Out and (ii) the priorities set forth in the Interim Order or Final Order, as applicable. After the issuance and entry of the CCAA Initial Order, and pursuant to and to the extent permitted in the CCAA Initial Order and the CCAA A&R Initial Order, as applicable the Obligations of the CCAA Debtors will be secured by the CCAA DIP Charge, subject to the priorities set forth in the CCAA Initial Order or the CCAA A&R Initial Order, as applicable.

(c) After the entry of the Interim Order and pursuant to and to the extent provided in the Interim Order and the Final Order, the Obligations will be secured by a valid and perfected Lien on all of the Collateral of the Debtors subject, as to priority, to the Carve-Out, all to the extent set forth in the Interim Order or the Final Order. After the issuance and entry of the CCAA Initial Order and pursuant to and to the extent provided in the CCAA Initial Order and the CCAA A&R Initial Order, as applicable, the Obligations of the CCAA Debtors will be secured by a valid and perfected Lien on all of the Collateral of the CCAA Debtors, all to the extent set forth in the CCAA Initial Order or the CCAA A&R Initial Order, as applicable.

(d) The Interim Order (with respect to the period on and after entry of the Interim Order and prior to entry of the Final Order) or the Final Order (with respect to the period on and after entry of the Final Order), as the case may be, is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), vacated, or, without the Administrative Agent's consent, modified or amended. The Debtors are in compliance in all material respects with the Interim Order (with respect to the period on and after entry of the Interim Order and prior to entry of the Final Order) or the Final Order (with respect to the period on and after entry of the Final Order). The CCAA Initial Order (with respect to the period on and after entry of the CCAA Initial Order and prior to entry of the CCAA A&R

Initial Order) or the CCAA A&R Initial Order (with respect to the period on and after entry of the CCAA A&R Initial Order), as the case may be, is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), vacated, or, without the Administrative Agent's consent, modified or amended. The CCAA Debtors are in compliance in all material respects with the CCAA Initial Order (with respect to the period on and after entry of the CCAA Initial Order and prior to entry of the CCAA A&R Initial Order) or the CCAA A&R Initial Order (with respect to the period on and after entry of the CCAA A&R Initial Order).

(e) Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Interim Order or the Final Order, as the case may be, including the Carve Out (as defined in the Interim Order), upon the Maturity Date (whether by acceleration or otherwise) of any of the Obligations, the Administrative Agent and Lenders shall be entitled to immediate payment of such Obligations and, subject to Section 9, to enforce the remedies provided for hereunder or under applicable Laws, without further notice, motion or application to, hearing before, or order from, the Bankruptcy Court. Subject to the applicable provisions of the CCAA Initial Order or the CCAA A&R Initial Order, as the case may be, upon the Maturity Date (whether by acceleration or otherwise) of any of the Obligations, the Administrative Agent and Lenders shall be entitled to immediate payment of such Obligations and, subject to Section 9, to enforce the remedies provided for hereunder or under applicable Laws, without further notice, motion or application to, hearing before, or order from, the CCAA Court.

Section 7 Affirmative Covenants.

Each of the Credit Parties hereby covenants and agrees that on and after the Closing Date and until the Commitments have been terminated and the Term Loans (together with interest thereon), fees and all other Obligations (other than contingent indemnification obligations for which no underlying claim has been asserted) incurred hereunder, are indefeasibly paid, performed or discharged in full in cash:

7.01. Information Covenants. The Credit Parties will furnish to the Administrative Agent for distribution to each Lender:

(a) Monthly Reports. Within 30 days after the end of each fiscal month of Holdings, (i) the consolidated balance sheet of Holdings and its Subsidiaries as at the end of such fiscal month and the related consolidated statements of operations and statement of cash flows for such fiscal month and for the elapsed portion of the fiscal year ended with the last day of such fiscal month, in each case setting forth comparative figures for the corresponding fiscal month in the prior fiscal year, which shall fairly present in all material respects in accordance with GAAP the financial condition of Holdings and its Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to normal year-end adjustments and the absence of footnotes; and (ii) a Narrative Report.

(b) Quarterly Financial Statements. Within 45 days after the close of each of the first three quarterly accounting periods in each fiscal year of Holdings, (i) the consolidated balance sheet of Holdings and its Subsidiaries as at the end of such quarterly accounting period

and the related consolidated statements of operations and statement of cash flows for such quarterly accounting period and for the elapsed portion of the fiscal year ended with the last day of such quarterly accounting period, in each case setting forth comparative figures for the corresponding quarterly accounting period in the prior fiscal year, which shall fairly present in all material respects in accordance with GAAP the financial condition of Holdings and its Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to normal year-end adjustments and the absence of footnotes; and (ii) a Narrative Report.

(c) Annual Financial Statements. Within 90 days after the close of each fiscal year of Holdings, (i) the consolidated balance sheet of Holdings and its Subsidiaries as at the end of such fiscal year and the related consolidated statements of operations and statement of cash flows for such fiscal year setting forth comparative figures for the preceding fiscal year and together with a report without qualification as to scope of audit by independent certified public accountants of recognized national standing or such other certified public accountants as are reasonably acceptable to the Administrative Agent; and (ii) a Narrative Report.

(d) [Reserved].

(e) Management Letters. Promptly after Holdings' or any of its Subsidiaries' receipt thereof, a copy of any "management letter" received from its certified public accountants and management's response thereto.

(f) Updated DIP Budget and Budget Variance Reports.

(i) No later than by 11:59 p.m. (Pacific time) on the second Wednesday following the end of each fiscal month of Holdings (commencing with the second Wednesday of the fiscal month of Holdings during which Closing Date occurs) or, to the extent such day is not a Business Day, the next Business Day thereafter (each such date, a "**Budget Delivery Date**"), a DIP Budget covering the period beginning on Sunday of the following week and ending 13 weeks thereafter. Each DIP Budget shall be subject to the written consent of the Administrative Agent (which may be delivered by e-mail);

(ii) No later than by 11:59 p.m. (Pacific time) on each Wednesday of every week (commencing with the week after the first full calendar week following the Closing Date) or, to the extent such day is not a Business Day, the next Business Day thereafter (each such date, a "**Reporting Date**"), a Budget Variance Report. Each such report shall be certified by the chief financial officer of Holdings as being prepared in good faith and fairly presenting in all material respects the information set forth therein;

(g) Officer's Certificates. At the time of the delivery of the financial statements provided for in Sections 7.01(a), (b) and (c), a compliance certificate from the chief financial officer (or other officer with equivalent duties) of Holdings substantially in the form of Exhibit H, which certificate shall (i) certify on behalf of Holdings that, to such officer's knowledge after due inquiry, no Default or Event of Default has occurred and is continuing or, if any Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof, (ii) [reserved],

(iii) [reserved] and (iv) certify that there have been no changes to Schedules 1 through 7, in each case, of the Security Agreements or to the Perfection Certificate, respectively, in each case since the Closing Date or, if later, since the date of the most recent certificate delivered pursuant to this Section 7.01(g), or if there have been any such changes, a list in reasonable detail of such changes (but, in each case with respect to this clause (iv), only to the extent that such changes are required to be reported to the Administrative Agent pursuant to the terms of such Security Documents) and whether Holdings and the other Credit Parties have otherwise taken all actions required to be taken by them pursuant to such Security Documents in connection with any such changes.

(h) Notice of Default, Litigation and Material Adverse Effect. Promptly, and in any event within three (3) Business Days after any officer of Holdings or any of its Subsidiaries obtains knowledge thereof, notice of (A) the occurrence of any event which constitutes a Default or an Event of Default, (B) any litigation or governmental investigation or proceeding or Environmental Claim pending against Holdings or any of its Subsidiaries (x) which, either individually or in the aggregate, has had, or would reasonably be expected to have, a Material Adverse Effect, (y) involving an alleged liability (regardless of whether insured) of Holdings or its Subsidiaries equal to or greater than $500,000 or any adverse determination involving a potential liability over $500,000 or (z) with respect to any Credit Document, (C) any other event, change or circumstance that has had, or would reasonably be expected to have, a Material Adverse Effect, or (D) any final non-appealable judgment, decree, settlement agreement or other similar agreement entered into, by or against Holdings or any of its Subsidiaries, in each case in connection with the Civil Cases.

(i) SEC Reports and Filings. Promptly after the filing, delivery or receipt thereof, copies of all financial information, proxy materials, reports, notices and other communications, if any, which Holdings or any of its Subsidiaries shall publicly file with the Securities and Exchange Commission or any successor thereto (the "**SEC**").

(j) Environmental Matters. Promptly after any officer of Holdings or the Borrower obtains knowledge thereof, notice of one or more of the following environmental matters to the extent that such environmental matters would reasonably be expected to individually result in a liability against, or remediation or other expenses of Holdings and its Subsidiaries in excess of $500,000, or in the aggregate have a Material Adverse Effect:

(i) any non-compliance by Holdings or any of its Subsidiaries with Environmental Law or Environmental Permit or pending or threatened action or proceeding to revoke, terminate or adversely modify in any material way any such Environmental Permit;

(ii) any pending or threatened Environmental Claim against Holdings or any of its Subsidiaries including with respect to any third party claims regarding any Material Real Property owned, leased or operated by Holdings or any of its Subsidiaries;

(iii) any condition or occurrence on or arising from any Release of Hazardous Materials that (a) results in non-compliance by Holdings or any of its Subsidiaries with any applicable Environmental Law or (b) could reasonably be

expected to result in an Environmental Claim against Holdings or any of its Subsidiaries;

(iv) any condition or occurrence on any Material Real Property owned, leased or operated by Holdings or any of its Subsidiaries that could reasonably be expected to cause such Material Real Property or Holdings or any of its Subsidiaries to be in violation of or incur liability under any Environmental Law; and

(v) the taking of any removal or remedial action in response to the actual or alleged presence, or Release of any Hazardous Material on any Material Real Property owned, leased or operated by Holdings or any of its Subsidiaries as required by any Environmental Law or any governmental or other administrative agency; provided, that in any event Holdings shall deliver to each Lender all material notices received by Holdings or any of its Subsidiaries from any Governmental Authority having jurisdiction over Holdings, any Subsidiary or any of their respective assets or operations under, or pursuant to, Environmental Laws which identify Holdings or any of its Subsidiaries as potentially responsible parties for material remediation costs or which otherwise notify Holdings or any of its Subsidiaries of potential material liability under Environmental Laws.

All such notices shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence or removal or remedial action and Holdings' or such Subsidiary's response thereto.

(k) Insurance. Prior to the end of each fiscal year of Holdings, Holdings shall deliver current copies of all property, casualty and liability insurance policies of Holdings and its Subsidiaries maintained in accordance with Section 7.03 hereof.

(l) Food Safety. Promptly after any officer of Holdings or any of its Subsidiaries obtains knowledge thereof, notice of one or more of the following food safety matters to the extent that such matters would reasonably be expected to individually result in a liability against, or other expenses of Holdings and its Subsidiaries in excess of $500,000, or in the aggregate have a Material Adverse Effect:

(i) Any non-compliance with any Food Safety Law applicable to it or its business or properties.

(ii) Any pending or threatened recall, withdrawal, seizure or suspension of any Company Product or discontinuation (whether voluntary or otherwise) of any Company Product due to concerns over potential harm to human health or safety.

(m) Other Information. From time to time, such other information or documents (financial or otherwise) with respect to Holdings or any of its Subsidiaries as the Administrative Agent or any Lender (through the Administrative Agent) may reasonably request.

(n) Notices of Dispositions. Prior to the consummation of any sale, transfer or other disposition by Holdings or any of its Subsidiaries to any Person (other than Holdings or any of its Subsidiaries) of any assets with a Fair Market Value greater than $500,000, Holdings shall

provide written notice to the Administrative Agent of such sale in reasonable detail, including the amount of consideration received or to be received and a description of such asset sold or to be sold.

(o) Bankruptcy Court and CCAA Court Filings. All proceedings, motions and other documents filed with the Bankruptcy Court on behalf of the Debtors in the Cases and all such material proceedings, motions and other documents shall include counsel for the Administrative Agent on any "Special Notice List" or other similar list of parties to be served with papers in the Cases. Counsel for the Administrative Agent shall be included on the service list established in the CCAA Cases and all proceedings, motions and other documents to be filed with the CCAA Court on behalf of the CCAA Debtors in the CCAA Cases shall be served on counsel for the Administrative Agent.

(p) ABL Documents and Notices. Borrower agrees to (i) deliver to Administrative Agent and Lenders each report, notice, statement or certificate received from or required to be delivered to any of the lenders or agents under the DIP ABL Credit Agreement and any related loan documents, including, without limitation, each Borrowing Base Certificate (as defined in the DIP ABL Credit Agreement) delivered to the DIP ABL Agent and (ii) notify the Administrative Agent and the Lenders of any imposition of any new reserves and any changes in the eligibility criteria set forth in the Borrowing Base (as defined in the DIP ABL Credit Agreement) or any components thereof.

(q) Professional Fees. No later than 11:59 p.m. on each Reporting Date, a schedule in form satisfactory to the Administrative Agent of professional fees actually paid by the Debtors during the applicable Testing Period.

7.02. Books, Records and Inspections; Weekly Lender Calls. (a) Holdings will, and will cause each of its Subsidiaries to, keep proper books of record and accounts, in which full, true and correct entries in conformity in all material respects with GAAP (or applicable local standards (it being understood and agreed that Foreign Subsidiaries may maintain individual books and records in conformity with generally accepted accounting principles that are applicable in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder)) and all material requirements of law shall be made of all dealings and transactions in relation to its business and activities.

(b) Holdings will, and will cause each of its Subsidiaries to permit officers and designated representatives of the Administrative Agent to (x) visit and inspect, under guidance of officers of Holdings or such Subsidiary, any of the properties of Holdings or such Subsidiary, and (y) examine and make copies of the books of account of Holdings or such Subsidiary and discuss the affairs (including, subject to clause (d) below, all matters contemplated by or relating to the Bidding Procedures and the Sale Order, as provided therein), finances and accounts of Holdings or such Subsidiary with, and be advised as to the same by, its and their officers, independent accountants and other advisors (including any consultants, turnaround management, broker or financial advisory firms retained by Holdings or any of its Subsidiaries) as often as may reasonably be requested by the Administrative Agent and, in each case, at the expense of the Borrower and upon reasonable prior notice and at such reasonable times and during normal business hours.

(c) No less than twice a week, and more frequently upon the reasonable request of the Administrative Agent, Holdings will hold a meeting or conference call with all of the Lenders during which meeting or conference call the financial results, financial position, cash flows, budget variances and operations of Holdings and its Subsidiaries, and, subject to clause (d) below, the matters contemplated by or relating to the Bidding Procedures (as provided therein), including the sale process contemplated thereby, and such other matters as may be reasonably requested by the Administrative Agent will be reviewed.

(d) Holdings and its Subsidiaries shall provide to the Administrative Agent all information required under and pursuant to the Bidding Procedures and the Bidding Procedures Order in accordance with the terms thereof; provided that, notwithstanding anything in this Agreement (including clause (b) above, clause (c) above or Section 7.19(d)) to the contrary, Holdings and its Subsidiaries shall not be required to share any information related to the matters contemplated by or relating to the Bidding Procedures or the Bidding Procedures Order (i) that the Debtors reasonably determine must remain confidential to not advantage the Administrative Agent or any of the Lenders in connection with a bid for any material portion of the assets of Holdings and its Subsidiaries over any other party or (ii) to the extent that the sharing of such information would be inconsistent with the Bidding Procedures or the Bidding Procedures Order.

7.03. Maintenance of Property; Insurance. (a) Holdings will, and will cause each of its Subsidiaries to, (i) keep all property necessary to the business of Holdings and its Subsidiaries in good working order and condition, ordinary wear and tear excepted and subject to the occurrence of casualty events, natural catastrophe and other covered occurrences or events that may cause damage to, or partial or complete loss of, the property, (ii) maintain with insurance companies that Holdings believes (in the good faith judgment of the management of Holdings) are financially sound and reputable at the time the relevant coverage is placed or renewed (or customary self-insurance), policies of business interruption, property and casualty insurance, lawfully issued and enforceable, on all such property in such amounts (after giving effect to any self-insurance that Holdings believes (in the good faith judgment of the management of Holdings) is reasonable and prudent in light of the size and nature of the business of Holdings and its Subsidiaries) and against such other risks that Holdings believes (in the good faith judgment of the management of Holdings) are reasonable and prudent in light of the size and nature of the business of Holdings and its Subsidiaries, on such terms and subject to such conditions that Holdings believes (in the good faith judgment of the management of Holdings) are reasonable and prudent in light of the size and nature of the business of Holdings and its Subsidiaries in similar geographical locations, and (iii) furnish to the Administrative Agent, upon its reasonable request therefor, full information as to the insurance carried in accordance with this Section 7.03. In addition to the foregoing, the Credit Parties acknowledge and agree that the Administrative Agent and the Administrative Agent have the right, on an annual basis, to review the insurance then being maintained by Holdings and its Subsidiaries to confirm compliance with this Section 7.03. All material insurance policies shall at all times be valid and enforceable in accordance with their terms and shall be in full force and effect (assuming no default by any such insurer), all premiums thereon should be paid when due and Holdings and the Borrower shall be otherwise in compliance in all material respects with the terms and provisions of such policies. The Borrower shall promptly deliver written notice to the Administrative Agent of any written notice of cancellation, termination or revocation or other written notice that any such policy is no longer in full force or effect or that the issuer of any policy is not willing or able to perform its obligations thereunder that is, in each case, received by any

Credit Party. The Credit Parties shall take all actions reasonably requested by the Administrative Agent to assist in ensuring that each Lender is in compliance with the Flood Laws applicable to the Collateral, including providing such agent with the address and/or GPS coordinates of each structure located upon any Material Real Property and, to the extent required by Flood Laws, obtaining flood insurance for such property, structures and contents prior to such property, structures and contents becoming Collateral.

(b) Holdings shall, and shall cause each Credit Party to at all times keep its property insured in the manner and to the extent required by Section 7.03(a), and all policies or certificates (or certified copies thereof) with respect to any such liability or property insurance (i) shall be endorsed to the Administrative Agent's reasonable satisfaction for the benefit of the Administrative Agent (including by naming the Administrative Agent as lender's loss payee and/or additional insured), (ii) shall state (unless otherwise agreed by the Administrative Agent in its reasonable discretion) that such insurance policies shall not be canceled or materially revised without at least 30 days' prior written notice thereof by the respective insurer to the Administrative Agent; provided, however, that if the relevant insurer is unable to state that the Administrative Agent will receive notice of any material revisions, the Credit Parties shall be responsible for providing such advance notice to the Administrative Agent, (iii) the Credit Parties shall use commercially reasonable efforts to cause such insurance to provide that the respective insurers irrevocably waive any and all rights of subrogation with respect to the Administrative Agent and the other Secured Creditors, and (iv) shall be delivered to the Administrative Agent.

(c) If Holdings or any of its Subsidiaries shall fail to maintain insurance in accordance with this Section 7.03, or if Holdings or any of its Subsidiaries shall fail to so endorse and deliver policies or certificates with respect thereto to the Administrative Agent in accordance with this Section 7.03, the Administrative Agent shall have the right (but shall be under no obligation) to procure such insurance and the Credit Parties jointly and severally agree to reimburse the Administrative Agent for all costs and expenses of procuring such insurance.

7.04. Existence; Franchises. Holdings will, and will cause each of its Subsidiaries to, do or cause to be done, all things necessary to (x) preserve and keep in full force and effect its existence and the full force, effect and validity of its material Intellectual Property (including the "Bumble Bee" brand) and (y) maintain all Necessary Authorizations; provided, however, that nothing in this Section 7.04 shall prevent (i) sales of assets and other transactions by Holdings or any of its Subsidiaries in accordance with Section 8.02 or (ii) the failure of any Subsidiary (other than the Borrower) to maintain its existence or the withdrawal by Holdings or any of its Subsidiaries of its qualification as a foreign Company in any jurisdiction if any such failure or withdrawal, as the case may be, would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

7.05. Compliance with Laws, etc. Holdings will, and will cause each of its Subsidiaries to, comply with all applicable Laws in respect of the conduct of its business and the ownership of its property, except such non-compliances as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Holdings will, and will cause each of its Subsidiaries to, comply in all respects with Food Safety Laws, Anti-Money Laundering Laws, the FCPA, regulations and orders promulgated by any Sanctions Authority, and other applicable

sanctions and anti-corruption laws and regulations, and maintain policies and procedures designed to promote and achieve compliance with such laws and regulations.

7.06. Compliance with Environmental Laws. (a) Other than as would not reasonably be expected to have a Material Adverse Effect, Holdings will (i) comply, and will cause each of its Subsidiaries to comply, with all Environmental Laws and Environmental Permits required to conduct its business or required by the ownership, lease or use of its Real Property now or hereafter owned, leased or operated by Holdings or any of its Subsidiaries, except such non-compliances as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (ii) promptly pay or cause to be paid all costs and expenses incurred in connection with such compliance, and (iii) keep or cause to be kept all Material Real Property free and clear of any Liens (other than Permitted Liens and Liens that are being contested in good faith and by appropriate proceedings) imposed pursuant to such Environmental Laws. Neither Holdings nor any of its Subsidiaries will generate, use, treat, store, Release or dispose of, or permit the generation, use, treatment, storage, Release or disposal of Hazardous Materials, or transport or permit the transportation of Hazardous Materials, except for Hazardous Materials generated, used, treated, stored, Released or disposed in compliance in all material respects with all applicable Environmental Laws and as required in connection with the normal operation, use and maintenance of the business or operations of Holdings or any of its Subsidiaries.

(b) (i) After the receipt by the Administrative Agent or any Lender of any notice of the type described in Sections 7.01(h)(i)(A) or (B) at any time that Holdings or any of its Subsidiaries are not in compliance with Section 7.06(a), Holdings and the Borrower will (in each case) provide, at the sole expense of Holdings and the Borrower and at the request of the Administrative Agent, an environmental assessment report concerning the matter or any Material Real Property owned, leased or operated by Holdings or any of its Subsidiaries which is impacted by the matter, prepared by an environmental consulting firm reasonably approved by the Administrative Agent, indicating the presence or absence of Hazardous Materials and the potential cost of any required removal or remedial action in connection with such Hazardous Materials on such Material Real Property. If Holdings or the Borrower fails to commission such report within 30 days after such request was made, the Administrative Agent may instead commission such report, the cost of which shall be borne by Holdings and the Borrower, and Holdings and the Borrower shall grant and hereby grant to the Administrative Agent and the Lenders and their respective agents access to such Material Real Property and specifically grant the Administrative Agent and the Lenders an irrevocable non-exclusive license, subject to the rights of tenants, to undertake such an assessment at any reasonable time upon reasonable notice to Holdings or the Borrower, all at the sole expense of Holdings and the Borrower.

7.07. ERISA. (a) Holdings will deliver to each of the Lenders written notice of the following, upon any officer of Holdings or any Subsidiary becoming aware of such event (together with any notices required to be filed with or given to the PBGC or any other Governmental Authority or a Plan participant) if such event would, alone or together with any other event described in this paragraph that has or is reasonably expected to occur, or would reasonably be expected to result in a Material Adverse Effect: the occurrence of any Reportable Event; that an accumulated funding deficiency or otherwise a failure to meet the applicable minimum funding standards, within the meaning of Section 412 of the Code or Section 302 of ERISA, has been incurred or an application has been made for a waiver or modification of the minimum funding

standard; that any contribution required to be made with respect to a Plan or Canadian Pension Plan has not been timely made; that a Plan has been terminated, reorganized or declared insolvent under Title IV of ERISA; that proceedings may be or have been instituted to terminate or appoint a trustee to administer a Plan which is subject to Title IV of ERISA; that Holdings or any ERISA Affiliate has incurred any liability on account of the termination of or withdrawal from a Plan under Section 4062, 4063, 4064, 4069, 4201, 4204 or 4212 of ERISA or that Holdings or any Subsidiary of Holdings may incur any material liability pursuant to any employee welfare benefit plan (as defined in Section 3(1) of ERISA) that provides benefits to retired employees or other former employees (other than as required by Section 601 of ERISA) or any Plan, other than such liabilities incurred in the ordinary course of business. If requested by Lenders in writing, Holdings will also deliver, within 30 days following such written request, to each of the Lenders a complete copy of the annual report (on Internal Revenue Service Form 5500-series) of each Plan subject to Section 412 of the Code (including, to the extent required, the related financial and actuarial statements and opinions and other supporting statements, certifications, schedules and information) required to be filed with the Internal Revenue Service. If requested by Lenders in writing, in addition to any certificates or notices delivered to the Lenders pursuant to the first sentence hereof, Holdings will also deliver, within 30 days following such written request, copies of annual reports and any records, documents or other information required to be furnished to the PBGC or any other Governmental Authority, and any material notices from the PBGC or any other Governmental Authority received by Holdings, any Subsidiary of Holdings or any ERISA Affiliate subject to Section 412 of the Code or that is a Multiemployer Plan with respect to any Plan.

(b) With respect to each Canadian Pension Plan, each applicable Canadian Credit Party shall cause to be delivered to the Administrative Agent, promptly notice of the occurrence of any Canadian Pension Event and within 30 days after the Administrative Agent's reasonable written request, copies of annual information returns, actuarial valuations and any other report or form filed with the applicable Governmental Authority or the funding agent.

(c) Each applicable Canadian Credit Party shall notify Administrative Agent (i) within 30 days of the establishment of any new Canadian Pension Plan, or the commencement of contributions to any such plan to which the Canadian Credit Party was not previously contributing and (ii) within 30 days of any increases or changes having a cost to such Canadian Credit Party in excess of $1,000,000 in any fiscal year in respect of any Canadian Pension Plan.

7.08. End of Fiscal Years; Fiscal Quarters. Other than with the consent of the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned), Holdings will cause (i) its and each of its Subsidiaries' fiscal years to end on December 31 of each calendar year and (ii) its and each of its Subsidiaries' fiscal quarters to be based on a fiscal calendar year such that the second and third quarters of the fiscal year are 13 weeks in duration, and the first and fourth quarters of the fiscal year are approximately 13 weeks in duration.

7.09. [Reserved].

7.10. Payment of Taxes. In accordance with the Bankruptcy Code and except as set forth on Schedule 7.10 and subject to any required approval by the Bankruptcy Court (it being understood that no Debtor shall be obligated to make any payments hereunder that may, in its reasonable judgment, result in a violation of any applicable law, including the Bankruptcy Code,

without an order of the Bankruptcy Court authorizing such payments), Holdings will pay and discharge, and will cause each of its Subsidiaries to pay and discharge, all U.S. federal income Taxes, material state and local income or franchise Taxes and any other material Taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or upon any properties belonging to it, including all ad valorem Taxes assessed on any of the Collateral, prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid, might become a Lien or charge upon any properties of Holdings or any of its Subsidiaries not otherwise permitted under Section 8.01(a); provided, that neither Holdings nor any of its Subsidiaries shall be required to pay any such Tax, assessment, charge, levy or claim which is being contested in good faith and by proper proceedings if it has maintained adequate reserves with respect thereto in accordance with GAAP.

7.11. Use of Proceeds. The Borrower will use the proceeds of the Term Loans only as provided in Section 6.08.

7.12. Additional Security; Further Assurances; etc. (a) Subject to the limitations set forth in this Agreement and the other Credit Documents, at any time upon the reasonable request of Administrative Agent (or such later date as may be agreed to by Administrative Agent in its reasonable discretion), Holdings shall, and shall cause each other Credit Party to, execute or deliver to the Administrative Agent any and all financing statements, fixture filings, security agreements, pledges, assignments, transfer powers, registration confirmations, lien searches, endorsements of certificates of title, mortgages, deeds of trust, opinions of counsel (other than with respect to Debtors), deposit account control agreements and all other documents, including all such documents executed or delivered in favor of DIP ABL Agent or in respect of the DIP ABL Credit Facility (collectively, the "**Additional Documents**"), that the Administrative Agent may reasonably request in form and substance reasonably satisfactory to Administrative Agent, to create, perfect, and continue perfected or to better perfect the Administrative Agent's Liens in all of the assets (other than Excluded Assets) of the Credit Parties (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal), including any Additional Documents to create and perfect Liens in favor of the Administrative Agent in any owned Material Real Property acquired by any Credit Party after the Closing Date (other than any Material Real Property owned by a Debtor), and in order to fully consummate all of the transactions contemplated hereby and under the other Credit Documents. In furtherance and not in limitation of the foregoing, each Credit Party shall take such actions as the Administrative Agent may reasonably request from time to time to ensure that all of the Obligations are guaranteed by the Guarantors and are secured by all or substantially all of the assets of each Credit Party (other than Excluded Assets) and all of the outstanding Equity Interests (other than Excluded Stock) of the Subsidiaries of each Credit Party. In connection with any Mortgage of owned Material Real Property (other than any Material Real Property owned by a Debtor), Holdings shall deliver or shall cause to be delivered customary opinions of counsel, Mortgage Policies, zoning reports and ALTA land surveys of owned Material Real Property as may be required to obtain customary zoning and survey coverage endorsements to the Mortgage Policies, and other related documents as may be reasonably requested by the Administrative Agent and/or the issuers and underwriters of the Mortgage Policies. After the Closing Date, in the case of the accession of a Subsidiary of Holdings to the Guaranty or an acquisition by any Credit Party, where the jurisdiction of organization of such acceding Subsidiary or the location of such acquired assets or business is not the United States, Canada or Luxembourg, the Administrative Agent shall be entitled to require such Subsidiary or Credit Party to take action

in any such jurisdiction for the purpose of effecting the security purported to be granted by the Credit Parties pursuant to the Security Documents.

(b) If the Administrative Agent, or the Required Lenders reasonably determine that they are required by law or regulation to have appraisals prepared in respect of any Material Real Property of Holdings and the other Credit Parties constituting Collateral, the Credit Parties will, at their own expense, provide to the Administrative Agent appraisals which satisfy the applicable requirements of the Real Estate Appraisal Reform Amendments of the Financial Institution Reform, Recovery and Enforcement Act of 1989, as amended, and which shall otherwise be in form and substance reasonably satisfactory to the Administrative Agent.

(c) Notwithstanding anything contained in Section 7.12(a) to the contrary, unless the Administrative Agent so requests (in which case, such actions shall be taken within 30 days after the date of such request (or such later date as may be determined by the Administrative Agent in its sole discretion)), no Credit Party or any Affiliate thereof shall be required to take any action in any non- U.S. jurisdiction (other than Canada or Luxembourg) or be required by the laws of any non-U.S. jurisdiction (other than Canada or Luxembourg) to perfect any security interest in any non-U.S. jurisdiction (other than Canada or Luxembourg) (it being understood that unless requested in the manner provided in this clause (c), there shall be no security agreements or pledge agreements governed under the laws of any non-U.S. Jurisdiction (other than Canada or Luxembourg)) .

(d) The Credit Parties agree that they shall execute, deliver and cause to have filed in accordance with the *Canada Shipping Act, 2001* or U.S.C. Title 46, as applicable, a Vessel Mortgage in respect of each vessel acquired after the Closing Date with a Fair Market Value in excess of $2,500,000 and each of the other vessels designated by the Administrative Agent on the date hereof and identified on Schedule 6.12(c).

(e) The Credit Parties agree that each action required by clauses (a) through (d) of this Section 7.12 shall be completed as soon as possible, but in no event later than 30 days after such action is requested in writing to be taken by the Administrative Agent or the Required Lenders; provided that, in no event will Holdings or any of its Subsidiaries be required to take any action, other than using its commercially reasonable efforts, to obtain consents from third parties with respect to its compliance with this Section 7.12.

(f) On or prior to the date that is 30 days after the date the Administrative Agent requests that such actions be taken (or such later date as may be determined by the Administrative Agent in its sole discretion), the Credit Parties owning Equity Interests in any entity incorporated or organized in Indonesia shall (i) execute and deliver to the Administrative Agent, an Indonesian-law governed pledge over the Equity Interests of PT Asindo Minesagara and PT Inspection Laboratory held by such Credit Parties (such Equity Interests, the "**Pledged Indonesian Equity Interests**"), in form and substance reasonably satisfactory to the Administrative Agent, (ii) deliver to the Administrative Agent the original share certificates of the Pledged Indonesian Equity Interests, (iii) cause PT Asindo Minesagara and PT Inspection Laboratory to notate the pledge of the Pledged Indonesian Equity Interests in favor of the Administrative Agent, for the benefit of the Secured Creditors, in the shareholders' register of PT Asindo Minesagara and PT Inspection Laboratory, as applicable, and (iv) take all such other actions, and execute and deliver all other

documents, in each case, as reasonably requested by the Administrative Agent to perfect and ensure the enforceability of the pledge of the Pledged Indonesian Equity Interests under Indonesian or other applicable law.

7.13. Plea Agreement; Compliance Program; Company Compliance Program. The Credit Parties shall (a) comply in all respects with the Plea Agreement other than any non-compliance that the Administrative Agent determines are *de minimis* in nature and which do not result in the termination by the Department of Justice of the Plea Agreement, (b) adopt and keep in effect, to the extent required by the terms of the Plea Agreement or otherwise required in connection with or related to the Plea Agreement, the Compliance Program, and comply with such Compliance Program in all respects other than any non-compliance that the Administrative Agent determines are *de minimis* in nature and which do not result in the termination by the Department of Justice of the Plea Agreement, and (c) maintain at all times the Company Compliance Program, which Company Compliance Program shall at all times be at least as stringent (taken as a whole) as the Company Compliance Program as in effect on the Closing Date.

7.14. [Reserved].

7.15. [Reserved].

7.16. [Reserved].

7.17. Priority of Liens.

(a) Each Debtor hereby covenants, represents and warrants that, upon entry of the Interim Order (and when applicable, the Final Order), and in all cases subject to the Carve Out (as defined in the Interim Order):

(i) its Obligations hereunder and under the other Credit Documents shall at all times constitute an allowed DIP Superpriority Claim against each of the Debtors on a joint and several basis and shall be secured by Liens in favor of the Administrative Agent on behalf of and for the benefit of the Secured Creditors on the Collateral of the Debtors with the priority and other terms as set forth in the Orders; and

(ii) pursuant to the Interim Order (and, when entered, the Final Order), the Liens in favor of the Administrative Agent on behalf of and for the benefit of the Secured Creditors on the Collateral of the Debtors shall be created and perfected without the recordation or filing in any land records or filing offices of any Mortgage, security agreement, financing statement, assignment or similar instrument.

(b) The Borrower and each CCAA Debtor hereby covenants, represents and warrants that, upon entry of the CCAA Initial Order (and when applicable, the CCAA A&R Initial Order), and in all cases subject to the terms of the CCAA Initial Order and the CCAA A&R Initial Order, as the case may be:

(i) the Obligations of the CCAA Debtors under the Credit Documents shall at all times be secured by the CCAA DIP Charge in favor of the Administrative Agent on behalf of and for the benefit of the Secured Creditors on the Collateral of the CCAA Debtors with the priority and other terms as set forth in the CCAA Orders; and

(ii) pursuant to the CCAA Initial Order (and, when entered, the CCAA A&R Initial Order), the Liens in favor of the Administrative Agent on behalf of and for the benefit of the Secured Creditors on the Collateral of the CCAA Debtors shall be created and perfected without the recordation or filing in any land records or filing offices of any Mortgage, security agreement, financing statement, assignment or similar instrument.

7.18. Milestones. The Credit Parties shall achieve the following milestones (the "**Milestones**") by the dates set forth below (or such later date as may be agreed to by the Administrative Agent):

(a) On the Petition Date:

(i) the Debtors shall file a motion with the Bankruptcy Court seeking approval of each of the DIP Term Facility and the DIP ABL Credit Facility; and

(ii) the Debtors shall have entered into the Stalking Horse APA.

(b) On the CCAA Filing Date, the CCAA Cases shall have been initiated in the CCAA Court, and on or before the Business Day immediately following the CCAA Filing Date, the CCAA Court shall have issued and entered the CCAA Initial Order.

(c) On or before the Business Day immediately following the date on which the Bankruptcy Court holds the hearing regarding the Interim Order, the Bankruptcy Court shall have entered the Interim Order.

(i) On or before the date that is one (1) day after the Petition Date, the Debtors shall have filed the Bidding Procedures Motion in the Bankruptcy Court.

(d) On or before the date that is six (6) days after the CCAA Filing Date, the CCAA Debtors shall have filed the CCAA Comeback Motion.

(e) On or before the date that is fifteen (15) days after the CCAA Filing Date, the CCAA Court shall have issued and entered the CCAA A&R Initial Order.

(f) On or before the date that is twenty-nine (29) days after the Petition Date, each of the Bankruptcy Court and the CCAA Court shall have entered the Bidding Procedures Order.

(g) On or before the date that is twenty-nine (29) days after the Petition Date, the Bankruptcy Court shall have entered the Final Order.

(h) On or before the date that is forty-eight (48) days after the Petition Date, the Bid Deadline (as defined in the Bidding Procedures Order) shall have occurred.

(i) On or before the date that is fifty (50) days after the Petition Date, the Debtors and the CCAA Debtors shall have commenced the Auction, if necessary.

(j) On or before the date that is fifty-seven (57) days after the Petition Date:

(i) the hearing in the Bankruptcy Court to consider approval of the Stalking Horse APA and the Stalking Horse Transaction, or another alternative transaction pursuant to the Bidding Procedures, shall have occurred; and

(ii) the hearing in the CCAA Court to consider approval of the CCAA Approval and Vesting Order shall have occurred.

(k) On or before the date that is sixty-two (62) days after the Petition Date:

(i) the Bankruptcy Court shall have entered the Sale Order; and

(ii) the CCAA Court shall have issued and entered the CCAA Approval & Vesting Order.

(l) On or before March 31, 2020, the sale transaction approved in the Sale Order and CCAA Approval and Vesting Order shall be consummated and closed.

7.19. Bankruptcy Related Matters. Holdings and the Borrower will and will cause each of the Debtors and the CCAA Debtors, as applicable, and, with respect to clauses (b) and (e) hereof, each of its other Subsidiaries, to:

(a) cause all proposed (i) "first day" pleadings, (ii) "second day" pleadings, (iii) pleadings related to or affecting the Obligations, the Credit Documents and the obligations under the Prepetition Term Loan Agreement, any other financing or use of cash collateral, any sale or other disposition of Collateral outside the ordinary course, cash management, adequate protection, any plan of reorganization and/or any disclosure statement related thereto, (iv) pleadings concerning the financial condition of Holdings, the Borrower or any of its Subsidiaries or other Indebtedness of the Credit Parties or seeking relief under section 363, 365, 1113 or 1114 of the Bankruptcy Code or section 9019 of the Federal Rules of Bankruptcy Procedure, (v) pleadings authorizing additional payments to critical vendors and (vi) pleadings establishing procedures for administration of the Cases or approving significant transactions submitted to the Bankruptcy Court, (vii) the application for the CCAA for the CCAA Initial Order, the CCAA Comeback Motion and any other motion or request for relief in the CCAA Cases, in each case, proposed by the Debtors or the CCAA Debtors, as the case may be, to be (x) in accordance with and permitted by the terms of this Agreement and (y) reasonably acceptable to the Administrative Agent in all respects, it being understood and agreed that (1) drafts of all such orders, pleadings, motions and other filings shall be delivered to the Administrative Agent at least two (2) Business Days prior to filing in the Cases or service in the CCAA Cases (unless impracticable, in which case, as soon as reasonably practicable prior to filing or service, as the case may be) for the Administrative Agent to make the determination pursuant to clause (y) above and (2) the forms of orders approved by

the Administrative Agent prior to the Petition Date are in accordance with and permitted by the terms of this Agreement and are reasonably acceptable in all respects;

(b) comply in all material respects with (i) each order entered by the Bankruptcy Court in connection with the Cases and (ii) each order issued by the CCAA Court and entered in connection with the CCAA Cases;

(c) comply in a timely manner with their obligations and responsibilities as debtors-in-possession under the Bankruptcy Code, the Bankruptcy Rules, the Interim Order, the Final Order, the Bidding Procedures Order, the Bidding Procedures, the Stalking Horse APA, the Sale Order, the CCAA, the CCAA Initial Order and the CCAA A&R Initial Order, as applicable, and any other order of the Bankruptcy Court and the CCAA Court, as applicable;

(d) promptly, but no later than two (2) Business Days prior to distribution, subject to Section 7.02(d), provide the Administrative Agent with copies of any informational packages provided to potential bidder, draft agency agreements, purchase agreements, status reports and updated information related to the sale or any other transaction and copies of any such bids and updates, modifications or supplements to such information and materials;

(e) provide the Administrative Agent and the Lenders with reasonable access to non-privileged information (including historical information) and relevant personnel regarding strategic planning, cash and liquidity management, operational and restructuring activities, in each case subject to customary confidentiality restrictions;

(f) deliver to counsel to the Administrative Agent (to the extent practicable) promptly as soon as available but no later than two (2) Business Days prior to distribution, copies of all proposed non-ministerial or administrative pleadings, motions, applications, orders, financial information and other documents distributed by or on behalf of the Credit Parties to any Committee or unofficial committee appointed or appearing in the Cases or the CCAA Cases, the CCAA Monitor or any other party in interest, and shall consult in good faith with the Administrative Agent's advisors regarding the form and substance of any such document;

(g) if not otherwise provided through the Bankruptcy Court's electronic docketing system or otherwise made available to the Administrative Agent or its counsel, as soon as available, deliver to the Administrative Agent (for distribution to the Lenders) and to counsel to the Administrative Agent and Lenders promptly as soon as available, copies of all final pleadings, motions, applications, orders, financial information and other documents filed by or on behalf of the Credit Parties with the Bankruptcy Court in the Cases or the CCAA Court in the CCAA Cases, or distributed by or on behalf of the Credit Parties to any Committee or unofficial committee appointed or appearing in the Cases or the CCAA Cases or the CCAA Monitor; and

(h) provide the Administrative Agent and Lenders no less than five (5) Business Days' (or such shorter notice acceptable to the Administrative Agent in its reasonable discretion) prior written notice prior to any (i) assumption or rejection of any Credit Party's or any other Subsidiary's material contracts or material non-residential real property leases pursuant to Section 365 of the Bankruptcy Code, or (ii) disclaimer or resiliation of any CCAA Debtor's material contracts or material non-residential real property leases pursuant to section 32 of the CCAA, and

no such contract or lease shall be assumed, rejected, disclaimed or resiliated if such assumption or rejection adversely impacts the Term Loan Priority Collateral, any Liens thereon or any DIP Superpriority Claims payable therefrom (including, without limitation, any sale or other disposition of Term Loan Priority Collateral or the priority of any such Liens or DIP Superpriority Claims), if the Administrative Agent informs the Borrower in writing within three (3) Business Days of receipt of the notice from the Borrower referenced above that it objects to such assumption, rejection, disclaimer or resiliation, as applicable.

7.20. Budget Compliance and Variances.

(a) The Credit Parties will use the proceeds of the Loans solely to make disbursements and pay expenses in accordance with Section 6.08 and this Section 7.20. The Debtors shall not pay any expenses (other than *de minimis* amounts) or other disbursements (other than *de minimis* disbursements) other than the type of expenses and disbursements set forth in the Approved Budget.

(b) For each Testing Period, the Borrower shall not permit:

(i) the actual amount of total operating expenses (excluding professional fees and expenses, to the extent set forth in the schedules delivered pursuant to Section 7.01(q)) of the Credit Parties and their Subsidiaries during such Testing Period to exceed the projected total operating expenses of the Credit Parties and their Subsidiaries (on a cumulative basis) in the Approved Budget for such Testing Period by more than (x) in the case of any Testing Period with a duration of one or two weeks 15.0% or (y) in the case of any other Testing Period, 12.5% (the "**Permitted Expenditures Variances**"); or

(ii) the actual amount of total operating receipts of the Credit Parties and their Subsidiaries during any Testing Period to be less than (x) in the case of any Testing Period with a duration of one or two weeks), 85% or (y) in the case of any other Testing Period, 87.5% of the projected total operating receipts of the Credit Parties and their Subsidiaries (on a cumulative basis) set forth in the Approved Budget for such Testing Period (such variance, the "**Permitted Receipts Variances**" and, together with the Permitted Expenditures Variances, the **"Permitted Variances**")

7.21. Adequate Protection Payments. Credit Parties will make adequate protection payments payable in cash on the dates and to the extent required by the Orders (such interest and payments, collectively, the "**Adequate Protection Payments**").

7.22. DIP ABL Credit Facility. Keep and maintain the DIP ABL Credit Facility in full force and effect and use the proceeds of advances thereunder solely for purposes and in amounts (subject to Permitted Variances) set forth in the Approved Budget or permitted by the DIP ABL Credit Agreement, the Orders or the CCAA Orders.

7.23. Challenges. Notwithstanding anything herein to the contrary, no portion or proceeds of the DIP Term Facility or the Collateral, and no disbursements set forth in the Approved Budget, shall be used for the payment of professional fees, disbursements, costs or expenses

incurred in connection with (a) objecting, contesting or raising any defense to the validity, perfection, priority or enforceability of, or any amount due under this Agreement, the Credit Documents, the Prepetition Term Loan Agreement or any security interests, liens or claims granted under the Orders, the CCAA Orders, the Credit Documents or the "Credit Documents" (as defined in the Prepetition Term Loan Agreement) to secure such amounts; (b) asserting any challenges, claims, actions or causes of action against any of the Lenders, the Administrative Agent, the lenders under the Prepetition Term Loan Agreement or any of their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors; (c) preventing, hindering or otherwise delaying enforcement or realization on the Collateral; or (d) seeking to amend or modify any of the rights granted to the Administrative Agent, the Lenders, the "Secured Creditors" (as defined in the Prepetition Term Loan Agreement) under this Agreement, the Credit Documents, the Orders, the CCAA Orders or the "Credit Documents" (as defined in the Prepetition Term Loan Agreement), including seeking to use the cash collateral and/or Collateral on a contested basis.

7.24. Post-Closing Matters.

(a) Mortgages and Vessel Mortgages. On or prior to the date that is 45 days after the Closing Date (or such later date as may be determined by the Administrative Agent in its sole discretion), the Administrative Agent shall have received evidence of filings in proper form for the filing offices of the jurisdiction necessary or, in the reasonable opinion of the Administrative Agent, desirable, to perfect the security interest purported to be created by the applicable Mortgage Related Documents and Vessel Mortgages. For the avoidance of doubt, no Mortgages shall be required with respect to any Real Property owned by a Debtor.

(b) Insurance Endorsements. On or prior to the date that is 30 days after the Closing Date (or such later date as may be determined by the Administrative Agent in its sole discretion), the Borrower and its Subsidiaries shall deliver to the Administrative Agent, with respect to each liability or property insurance policy required to be maintained by the Credit Parties pursuant to Section 7.03, a lender's loss payable endorsement and such other endorsements as the Administrative Agent shall reasonably require, in each case complying with the requirements of Section 7.03 and in form and substance reasonably satisfactory to the Administrative Agent.

(c) Insurance Certificates. The Borrower and its Subsidiaries shall use commercially reasonable efforts to deliver to the Administrative Agent, with respect to each liability or property insurance policy required to be maintained by the Credit Parties pursuant to Section 7.03, all such certificates of liability and property insurance as the Administrative Agent shall reasonably require, in each case, in form and substance reasonably satisfactory to the Administrative Agent.

Section 8 Negative Covenants.

Each Credit Party hereby covenants and agrees that on and after the Closing Date and until the Total Commitments have terminated and the Term Loans (together with interest thereon), fees and all other Obligations (other than contingent indemnification obligations for which no underlying claim has been asserted) incurred hereunder have been indefeasibly paid, performed or discharged in full in cash:

8.01. Liens. Holdings will not, and will not permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Lien upon or with respect to any property or assets (real or personal, tangible or intangible) of Holdings or any of its Subsidiaries, whether now owned or hereafter acquired, or any income or profits thereon; provided that the provisions of this Section 8.01 shall not prevent the creation, incurrence, assumption or existence of the following (the Liens described below are herein referred to as "**Permitted Liens**"):

(a) Liens for Taxes, assessments or governmental charges or levies not yet delinquent or Liens for Taxes, assessments or governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves have been established in accordance with GAAP;

(b) Liens in respect of property or assets of Holdings or any of its Subsidiaries imposed by law (other than Liens for taxes, assessments or governmental charges or levies that are the subject of Section 8.01(a)), such as carriers', warehousemen's, materialmen's and mechanics' liens and other similar Liens arising in the ordinary course of business, and (x) which do not in the aggregate materially detract from the value of Holdings' or such Subsidiary's property or assets or materially impair the use thereof and (y) which are not overdue or being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP;

(c) Liens in existence on the Closing Date which are listed, and the property subject thereto described, in Schedule 8.01;

(d) Liens created by or pursuant to this Agreement, the Orders, the CCAA Orders and other Credit Documents;

(e) (x) licenses, sublicenses, leases or subleases granted by Holdings or any of its Subsidiaries (except with respect to Intellectual Property) to other Persons not materially interfering with the conduct of the business of Holdings or any of its Subsidiaries and (y) any interest or title of a lessor, sublessor, licensor or sublicensor under any lease or license agreement entered into in the ordinary course of business;

(f) Liens upon assets of any Subsidiary of Holdings subject to Capitalized Lease Obligations to the extent such Capitalized Lease Obligations are permitted by Section 8.04(d), provided that (x) such Liens only serve to secure the payment of Indebtedness arising under such Capitalized Lease Obligation and (y) the Lien encumbering the asset giving rise to the Capitalized Lease Obligation attaches only to the asset acquired, repaired, replaced, constructed, expanded, improved or leased, accessions to such property and the proceeds thereof;

(g) Liens placed upon equipment or machinery used in the ordinary course of business of any Subsidiary of Holdings and placed at the time of the acquisition thereof by such Subsidiary to secure Indebtedness incurred to pay all or a portion of the purchase price thereof or to secure Indebtedness incurred solely for the purpose of financing the acquisition of any such equipment or machinery or extensions, renewals or replacements of any of the foregoing for the same or a lesser amount, provided that (x) the Indebtedness secured by such Liens is permitted by Section 8.04(d) and (y) in all events, the Lien encumbering the equipment or machinery so

acquired does not encumber any asset of Holdings or any other asset of the Borrower or such Subsidiary;

(h) survey exceptions, easements, rights-of-way, restrictions, encroachments and other similar charges or encumbrances, and zoning, building code or other restrictions (including defects and irregularities in title and similar encumbrances) as to the use of Real Properties, in each case not securing Indebtedness and which do not in the aggregate materially interfere with the conduct of the business of Holdings or any of its Subsidiaries taken as a whole;

(i) Liens arising from precautionary UCC financing statement filings (or, in a jurisdiction outside the United States, any analogous filing in compliance with local law) regarding operating leases entered into in the ordinary course of business;

(j) Liens arising out of the existence of judgments, orders or awards (other than any judgments, orders or awards arising out of, related to or in connection with the Plea Agreement) that do not constitute an Event of Default under Section 9.09;

(k) statutory and common law landlords' liens under and cash deposits in favor of landlords that constitute security deposits, in each case, with regard to leases to which any Subsidiary of Holdings is a party;

(l) pledges, deposits or security by Holdings or any of its Subsidiaries under workmen's compensation laws, unemployment insurance, employers' health tax, and other social security laws or similar legislation or other insurance related obligations (including, but not limited to, in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which Holdings or any of its Subsidiaries are a party, or deposits to secure public or statutory obligations of Holdings or any of its Subsidiaries or deposits of cash or U.S. government bonds to secure surety, stay, customs or appeal bonds to which Holdings or any of its Subsidiaries are a party, or deposits as security for contested taxes or import duties or for the payment of rent, performance and return-of-money bonds and other similar obligations (including letters of credit issued in lieu of any such bonds or to support the issuance thereof and including those to secure health, safety and environmental obligations), in each case incurred in the ordinary course of business;

(m) Permitted Encumbrances;

(n) Liens securing Indebtedness permitted by Section 8.04(b) and Section 8.04(n);

(o) Liens arising out of any conditional sale, title retention, consignment or other similar arrangements for the sale of goods entered into by Holdings or any Subsidiary in the ordinary course of business to the extent such Liens do not attach to any assets other than the goods subject to such arrangements;

(p) Liens (x) incurred in the ordinary course of business in connection with the purchase or shipping of goods or assets (or the related assets and proceeds thereof), which Liens are in favor of the seller or shipper of such goods or assets and only attach to such goods or assets, and (y) in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(q) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by Holdings or any Subsidiary, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank or banks with respect to cash management and operating account arrangements;

(r) Liens (including Liens on cash deposits) in favor of the issuers of performance, surety, bid, indemnity, warranty, release, appeal or similar bonds or with respect to other regulatory requirements or letters of credit or bankers' acceptances and completion guarantees, in each case issued pursuant to the request of and for the account of Holdings or any of its Subsidiaries in the ordinary course of its business;

(s) in respect of any interest as lessee, sublessee, licensee or sublicensee, any interest or title of a lessor, sublessor, licensor or sublicensor or secured by, or otherwise encumbering, a lessor's, sublessor's, licensor's or sublicensor's interest relating to any lease, sublease, license or sublicense (including any subordination of the interest of the lessee, sublessee or licensee under such lease, sublease, license or sublicense to any Liens in respect of the interest of the lessor, sublessor, licensor or sublicensor);

(t) Liens in favor of insurers (or other Persons financing the payment of insurance premiums) for the premiums payable in respect of insurance policies maintained by any Credit Party issued by such insurers securing Indebtedness permitted under Section 8.04; provided that such Liens attach solely to returned premiums in respect of such insurance policies and the proceeds of such policies;

(u) [reserved];

(v) non-exclusive licenses, sublicenses or other rights (including covenants not to sue) under Intellectual Property (i) granted in the ordinary course of business and (ii) that are not material to the business of Holdings and its Subsidiaries (taken as a whole);

(w) customary assignments of insurance or condemnation proceeds provided to landlords (or their mortgagees) pursuant to the terms of any lease;

(x) Liens (i) of a collection bank arising under Section 4-210 of the UCC on items in the course of collection and (ii) in favor of a banking institution arising as a matter of law encumbering deposits (including the right to set off) and which are within the general parameters customary in the banking industry;

(y) Liens that are customary contractual rights of set-off or bankers' liens (i) relating to the establishment of depository relations with banks or other financial institutions in the ordinary course of business, (ii) relating to pooled deposit or sweep accounts of any Subsidiary of

Holdings to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of any Subsidiary of Holdings or (iii) relating to purchase orders and other agreements entered into with customers of any Subsidiary of Holdings in the ordinary course of business;

(z) Liens encumbering the Collateral created by or pursuant to the DIP ABL Credit Agreement or any other "Loan Document" as defined therein, so long as such Liens are subject to the Intercreditor Agreement;

(aa) Liens securing obligations arising out of, related to or in connection with the Plea Agreement in an aggregate amount not to exceed $17,000,000 (provided, that such amount shall be reduced by the aggregate amount of any payments made in satisfaction of the amounts owing under the Plea Agreement), which may be senior in priority to the Liens securing the Term Loans;

(bb) additional Liens (other than Liens securing the obligations arising out of, related to or in connection with Plea Agreement) of any Subsidiary of Holdings arising after the Closing Date and not otherwise permitted by this Section 8.01 (excluding Section 8.01(aa)) that do not secure obligations in excess of $500,000 in the aggregate for all such Liens at any time;

(cc) any agreements with any Governmental Authority or utility that do not, in the aggregate, adversely effect in any material respect the use of any Real Property in the operation of the business of the Holdings and its Subsidiaries, taken as a whole;

(dd) Liens on specific items of inventory or other goods and proceeds of Holdings or any of its Subsidiaries securing such Person's obligations in respect of bankers' acceptances or trade letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business;

(ee) any encumbrance or restriction (including put and call arrangements) with respect to Equity Interests of any joint venture or similar arrangement pursuant to any joint venture agreement or similar agreement;

(ff) all rights of expropriation, access or use or other similar rights conferred by or reserved by any Governmental Authority;

(gg) all rights reserved to or vested in any Governmental Authority by the terms of any lease, license, franchise, grant or permit held by Holdings or any of its Subsidiaries or affecting the relevant Real Property and that does not materially interfere with the ordinary course of conduct of Holdings and its Subsidiaries (taken as a whole) or by any statutory provision to terminate any such lease, license, franchise, grant or permit or to require annual or periodic payments as a condition of the continuance thereof or to distrain against or to obtain a Lien on any property or assets of Holdings or any of its Subsidiaries in the event of failure to make such annual or other periodic payments, so long as in each event such annual or other periodic payments are being made;

(hh) Liens consisting of an agreement to sell, transfer, lease or otherwise dispose of any property in a manner permitted by Section 8.02, solely to the extent such sale, disposition,

transfer or lease, as the case may be, would have been permitted on the date of the creation of such Lien;

(ii) Liens constituting dispositions permitted by Section 8.02;

(jj) [reserved];

(kk) the reservations, limitations, provisos and conditions expressed in any original grants of real or immovable property which does not materially impair the use of the affected land for the purpose used by Holdings or any of its Subsidiaries;

(ll) Liens securing obligations permitted to be incurred pursuant to Sections 8.04(c) and (u);

(mm) ground leases or subleases, licenses or sublicenses in respect of real property on which facilities owned or leased by Holdings or any of its Subsidiaries are located which do not in the aggregate materially interfere with the conduct of the business of Holdings or any of its Subsidiaries taken as a whole; and

(nn) Liens on the Collateral granted to provide adequate protection pursuant to the Interim Order (and when entered, the Final Order).

8.02. Consolidation, Merger, Amalgamation, Arrangement, Purchase or Sale of Assets, etc. Holdings will not, and will not permit any of its Subsidiaries to:

(a) wind up, liquidate or dissolve its affairs;

(b) enter into any merger, amalgamation, arrangement, division or consolidation; or

(c) convey, sell, lease, assign, transfer, license, sublicense, covenant not to sue or assert, abandon, allow to lapse, pledge, surrender, waive rights to or otherwise dispose of all or any part of its property or assets (including Intellectual Property) or enter into any Sale and Lease-Back Transactions, except that, in each case, to the extent permitted by the Approved Budget:

(i) any Subsidiary of Holdings may liquidate or otherwise dispose of used, surplus, damaged, obsolete or worn-out property in the ordinary course of business;

(ii) Liens may be incurred to the extent permitted by Section 8.01, mergers, amalgamations, arrangements, divisions and consolidations may be made to the extent permitted by Section 8.02(b), Restricted Payments may be made to the extent permitted by Section 8.03, and Investments may be made to the extent permitted by Section 8.05;

(iii) any Subsidiary of Holdings may sell assets (other than the "Bumble Bee" brand) for Fair Market Value and 100% cash consideration, including by way of a Sale and Lease-Back Transaction, so long as no Default or Event of Default

has occurred and is continuing or would result therefrom, and the aggregate consideration for all such sales is not in excess of $500,000; provided that the Net Sale Proceeds therefrom are applied and/or reinvested as (and to the extent) required by Section 4.02(c);

(iv) any Subsidiary of Holdings may sell or discount, in each case without recourse and in the ordinary course of business, accounts receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof and not as part of any financing transaction or the settlement of delinquent accounts or in connection with the bankruptcy or reorganization of customers or suppliers;

(v) Holdings or any Subsidiary of Holdings may grant non-exclusive licenses, sublicenses or other rights (including covenants not to sue) under Intellectual Property (i) in the ordinary course of business and (ii) that are not material to the business of Holdings and its Subsidiaries (taken as a whole);

(vi) asset sales, transfers or dispositions to Holdings or to a Subsidiary thereof shall be permitted; provided, that such transaction is permitted under Section 8.05 and Section 8.13(b) of this Agreement;

(vii) the lapse or abandonment of Intellectual Property (not including trademark registrations or trademark applications covering the "Bumble Bee" brand in the United States, Canada or Luxembourg) that is not material to the conduct of the business of the Credit Parties or any of their Subsidiaries, taken as a whole, and does not meet the statutory requirements for maintenance of such Intellectual Property shall be permitted;

(viii) dispositions resulting from any Recovery Events shall be permitted, provided the proceeds thereof are applied in accordance with Section 4.02(f);

(ix) [reserved];

(x) any Subsidiary of Holdings may liquidate or otherwise dispose of Cash Equivalents in the ordinary course of business for cash at Fair Market Value and in a transaction not otherwise prohibited by the other terms of this Agreement;

(xi) [reserved];

(xii) [reserved];

(xiii) any Subsidiary of Holdings may sell inventory in the ordinary course of business;

(xiv) any Subsidiary of Holdings may lease, sublease, license or sublicense its assets (other than Intellectual Property) in the ordinary course of business, so long as such lease, sublease, license or sublicense does not interfere in

any material respect with the business or operations of Holdings and its Subsidiaries (taken as a whole); and

(xv) any Subsidiary may sell, transfer or otherwise dispose of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements.

To the extent the Required Lenders waive the provisions of this Section 8.02 with respect to the sale of any Collateral, or any Collateral is sold as permitted by this Section 8.02 (other than to Holdings or a Subsidiary thereof), such Collateral shall be sold free and clear of the Liens created by the Security Documents (provided that such Liens shall continue as to any proceeds of such sale to the extent such assets constituted Collateral), and the Administrative Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing.

8.03. Restricted Payments. Holdings will not, and will not permit any of its Subsidiaries to (x) authorize, declare or pay any Dividends with respect to Holdings or any of its Subsidiaries or (y) make any payment or prepayment of principal of, premium, if any, or interest on, or redeem, purchase, retire, defease (including in substance or legal defeasance) or make a sinking fund or similar payment with respect to, any Restricted Debt or any Indebtedness incurred prior to the Petition Date (other than Indebtedness under the Prepetition Term Loan Agreement or the Pre-Petition Credit Agreement (as defined in the DIP ABL Credit Agreement)) (collectively, "**Restricted Payments**") except that, in each case, to the extent permitted by the Approved Budget:

(a) any Subsidiary of Holdings may make Restricted Payments to Holdings, the Borrower or to any Wholly-Owned Subsidiary of Holdings (provided that if the paying Subsidiary is a Credit Party, then the recipient Subsidiary shall also be a Credit Party) or to any Person who owns Equity Interests in such Subsidiary to the extent made on a pro rata basis to all holders of such Equity Interests;

(b) [reserved];

(c) [reserved];

(d) [reserved];

(e) [reserved];

(f) [reserved];

(g) [reserved];

(h) [reserved]; and

(i) Holdings may make and pay Restricted Payments to its direct or indirect parent companies:

(i) the proceeds of which will be used to allow any direct or indirect parent of Holdings to pay the tax liability to each relevant jurisdiction in respect of consolidated, combined, unitary or affiliated returns that include Holdings (or, if Holdings is a disregarded entity, the income of Holdings), but only to the extent of taxes that Holdings would have to pay if it had filed a tax return on a standalone basis for itself and its Subsidiaries; and

(ii) the proceeds of which shall be used by any direct or indirect parent of Holdings to pay its operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties), which are reasonable and customary and incurred in the ordinary course of business, in an aggregate amount not to exceed $100,000 in any fiscal year.

8.04. Indebtedness. Holdings will not, and will not permit any of its Subsidiaries to, contract, create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness incurred pursuant to this Agreement and the other Credit Documents;

(b) Indebtedness incurred under the Prepetition Term Loan Agreement;

(c) Indebtedness of the Borrower under any Hedge Agreements existing on the date hereof;

(d) Indebtedness of any Subsidiary of Holdings evidenced by Capitalized Lease Obligations described in Section 8.01(f), and purchase money Indebtedness described in Section 8.01(g) and, in each case, extensions and renewals thereof, provided that in no event shall the sum of the aggregate principal amount of all Capitalized Lease Obligations and purchase money Indebtedness permitted by this clause (d) exceed $500,000 at any time outstanding;

(e) Indebtedness constituting Intercompany Loans to the extent permitted by Section 8.05(h);

(f) Indebtedness consisting of guaranties by Subsidiary Guarantors of each other's Indebtedness and lease and other contractual obligations permitted under this Agreement;

(g) [reserved];

(h) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, so long as such Indebtedness is extinguished within five (5) Business Days of its incurrence and customary cash management services, netting arrangements, overdraft protection and automated clearing house transfers;

(i) Indebtedness consisting of (i) obligations incurred in the ordinary course of business under surety and appeal bonds, performance bonds, bid bonds, performance and completion guarantees and similar obligations and not in connection with the borrowing of money;

(ii) guarantees with respect to Indebtedness of Holdings or one of its Subsidiaries, to the extent that the Person that is obligated under such guaranty could have incurred such underlying Indebtedness; provided that the Investment in such Subsidiary is permitted under Section 8.05(h); (iii) guarantees incurred in the ordinary course of business in respect of obligations to suppliers, customers, franchisees, lessors and licensees and (iv) bankers' acceptances, bank guarantees, letter of credit, warehouse receipt or similar facilities entered into in the ordinary course of business (including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance);

(j) Indebtedness described on Schedule 8.04 as of the Closing Date;

(k) the endorsement of negotiable instruments for deposit or collection in the ordinary course of business;

(l) Indebtedness representing deferred compensation to directors, officers, employees or contractors of any Credit Party or any Subsidiary of a Credit Party incurred in the ordinary course of business;

(m) so long as no Default or Event of Default then exists or would result therefrom, additional Indebtedness incurred by any Subsidiary of Holdings in an aggregate principal amount not to exceed $500,000 at any one time outstanding, which Indebtedness shall be unsecured unless otherwise permitted under Section 8.01(bb);

(n) Indebtedness under the DIP ABL Credit Agreement (I) in an aggregate principal amount of outstanding (1) Advances (under and as defined in the DIP ABL Credit Agreement), (2) Letter of Credit Disbursements (under and as defined in the DIP ABL Credit Agreement) not yet reimbursed, including outstanding Advances (under and as defined in the DIP ABL Credit Agreement) made with respect to such Letter of Credit Disbursements, and (3) undrawn Letters of Credit (under and as defined in the DIP ABL Credit Agreement) to the extent not covered under clause (II) hereof, of (x) at any time on or prior to January 31, 2020, $170,000,000 and (y) at any time on or after February 1, 2020, $175,000,000, (II) with respect to the undrawn Letters of Credit (under and as defined in the DIP ABL Credit Agreement) outstanding on the Closing Date and any replacement Letters of Credit with respect thereto, which replacement Letters of Credit shall be in an aggregate undrawn face amount no greater than that of the Letters of Credit being replaced and (III) described in clauses (b), (d) and (f) of the definition of the "ABL Cap" in the Intercreditor Agreement; provided that Indebtedness under the DIP ABL Credit Agreement incurred as a result of funding the Carve Out Reserves (as defined in the Orders) pursuant to the Orders and in accordance with Section 2.13(h) shall be permitted;

(o) Indebtedness arising from agreements of Holdings or any Subsidiary providing for indemnification, adjustment of purchase price, or similar obligations, in each case entered into in connection with the sale, transfer or disposition of any business, assets or Equity Interests permitted hereunder; provided that (i) such Indebtedness is not reflected on the balance sheet of Holdings or any Subsidiary (contingent obligations referred to in a footnote to financial statements and not otherwise reflected on the balance sheet will not be deemed to be reflected on

such balance sheet for purposes of this clause (i)) and (ii) the maximum assumable liability in respect of all such Indebtedness shall at no time exceed the gross proceeds, including non-cash proceeds (the fair market value of such non-cash proceeds being measured at the time received and without giving effect to any subsequent changes in value) actually received by Holdings and the Subsidiaries in connection with such disposition;

(p) (i) Indebtedness in respect of obligations of Holdings or any Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms in the ordinary course of business and not in connection with the borrowing of money and (ii) unsecured Indebtedness in respect of intercompany obligations of Holdings or any Subsidiary in respect of accounts payable incurred in connection with goods sold or services rendered in the ordinary course of business and not in connection with the borrowing of money;

(q) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to Holdings or any of its Subsidiaries, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such year;

(r) [reserved];

(s) [reserved];

(t) to the extent constituting Indebtedness, Investments permitted by Section 8.05 and Restricted Payments permitted by Section 8.03; and

(u) Indebtedness constituting Bank Product Obligations (as defined in the DIP ABL Credit Agreement) provided by any Bank Product Provider (as defined in the DIP ABL Credit Agreement).

8.05. Advances, Investments and Loans. Holdings will not, and will not permit any of its Subsidiaries to, directly or indirectly, make or acquire any Investment, except that the following shall be permitted, in each case, to the extent permitted by the Approved Budget:

(a) extensions of trade credit, asset purchases (including purchases of inventory, supplies and materials), the lease of any asset, in each case in the ordinary course of business;

(b) Holdings and its Subsidiaries may acquire and hold cash and Cash Equivalents;

(c) any Subsidiary of Holdings may hold the Investments held by them on the Closing Date or committed to be made by them as of the Closing Date, and in each case described on Schedule 8.05;

(d) any Subsidiary of Holdings may acquire and own investments (including debt obligations) received in connection with the bankruptcy or reorganization of suppliers and customers and in good faith settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(e) (i) any Subsidiary of Holdings may make loans and advances to their officers and employees for moving, relocation and travel expenses and other similar expenditures, in each case in the ordinary course of business in an aggregate amount not to exceed $500,000 for all such loans and advances at any time (determined without regard to any write-downs or write-offs of such loans and advances) and (ii) advances of payroll payments and expenses in the ordinary course of business;

(f) [reserved];

(g) the Borrower may enter into Hedge Agreements to the extent permitted by Section 8.04(c);

(h) (a) Investments (i) by any Credit Party in any other Credit Party, (ii) by any Subsidiary that is not a Credit Party in any Credit Party, (iii) by any Credit Party in any Subsidiary that is not a Credit Party in the ordinary course of business in an aggregate amount not to exceed $250,000, and (iv) by any Subsidiary that is not a Credit Party in any other Subsidiary that is not a Credit Party; provided, that (A) Investments made pursuant to the preceding clause (i) shall only be made between Credit Parties organized in Approved Jurisdictions, (B) [reserved], (C) each Investment in the form of an intercompany loan (collectively, "**Intercompany Loans**") made by any Subsidiary that is not a Credit Party to a Credit Party shall be subject to the subordination provisions contained in the Intercompany Subordination Agreement and (D) any Investment made in any Subsidiary Guarantor pursuant to this clause (h) shall cease to be permitted by this clause (h) if such Subsidiary Guarantor ceases to constitute a Subsidiary Guarantor;

(i) Holdings and its Subsidiaries may own the Equity Interests of their respective Subsidiaries created or acquired in accordance with the terms of this Agreement (so long as all amounts invested in such Subsidiaries are permitted under another provision of this Section 8.05);

(j) Contingent Obligations permitted by Section 8.04, and Liens permitted by Section 8.01, in each case, to the extent constituting Investments;

(k) [reserved];

(l) any Subsidiary of Holdings may receive and hold promissory notes and other non-cash consideration received in connection with any asset sale permitted by Section 8.02(c);

(m) any Subsidiary of Holdings may make deposits, prepayments and other credits to vendors, suppliers and trade creditors consistent with their past practices, and incurred in the ordinary course of business;

(n) bank deposits in the ordinary course of business;

(o) [reserved];

(p) [reserved];

(q) Investments in prepaid expenses, utilities and workers' compensation, performance and other similar deposits, each as entered into in the ordinary course of business;

(r) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business;

(s) cash Investments to fund any capital expenditures (defined in accordance with GAAP) to the extent permitted by and not to exceed the amount set forth in the Approved Budget (subject to the Permitted Variances) for the applicable Testing Period;

(t) [reserved];

(u) in addition to Investments permitted by clauses (a) through (t) of this Section 8.05, any Subsidiary of Holdings may make additional loans, advances and other Investments to or in a Person in an aggregate amount for all loans, advances and other Investments made pursuant to this clause (u) (determined without regard to any write-downs or write-offs thereof), net of cash repayments of principal in the case of loans, sale proceeds in the case of Investments in the form of debt instruments and cash equity returns (whether as a distribution, dividend, redemption or sale) in the case of equity investments, not to exceed $500,000; provided further that on the date of any such Investment and after giving effect thereto, no Default or Event of Default shall exist or shall have occurred and be continuing.

(v) non-exclusive licenses, sublicenses or other rights (including covenants not to sue) under Intellectual Property that are granted in the ordinary course of business and that are not material to the business of Holdings or any of its Subsidiaries;

(w) [reserved]; and

(x) to the extent constituting an Investment, any Restricted Payments permitted by Section 8.03.

8.06. Transactions with Affiliates. Holdings will not, and will not permit any of its Subsidiaries to, enter into any transaction or series of related transactions with any Affiliate of Holdings or any of its Subsidiaries with an aggregate consideration in excess of $100,000, whether or not in the ordinary course of business, other than on terms and conditions substantially as favorable to Holdings or such Subsidiary as would reasonably be obtained by Holdings or such Subsidiary at that time in a comparable arm's-length transaction with a Person other than an Affiliate, except that the following in any event shall be permitted:

(a) Restricted Payments may be paid to the extent provided in Section 8.03;

(b) to the extent permitted by the Approved Budget, loans may be made and other transactions may be entered into by Holdings and its Subsidiaries to the extent permitted by Sections 8.02, 8.04 and 8.05;

(c) to the extent permitted by the Approved Budget, customary fees, indemnities and reimbursements may be paid to (i) non-officer directors and (ii) officers and other advisors of Holdings and its Subsidiaries;

(d) [reserved];

(e) to the extent permitted by the Approved Budget, employment and severance arrangements and health, disability and similar insurance or benefit plans between Holdings (or any of its direct or indirect parent thereof) and the Subsidiaries and their respective directors, officers, employees (including management and employee benefit plans or agreements, subscription agreements or similar agreements pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with current or former employees, officers or directors and stock option or incentive plans and other compensation arrangements) in the ordinary course of business or as otherwise approved by the Board of Directors of Holdings (or any of its direct or indirect parent thereof);

(f) transactions pursuant to permitted agreements in existence on the Closing Date and set forth on Schedule 8.06 hereto;

(g) transactions among Credit Parties, to the extent such transactions are not otherwise prohibited by this Agreement;

(h) [reserved]; and

(i) to the extent permitted by the Approved Budget, the payment of customary fees and reasonable and documented out-of-pocket costs to, and indemnities provided on behalf of, directors, managers, consultants, officers and employees of Holdings (or any direct or indirect parent thereof) and the Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of Holdings and the Subsidiaries.

Notwithstanding the foregoing, neither Holdings nor any of its Subsidiaries shall be permitted to pay any management, monitoring, consulting, transaction, advisory or similar fees to the Sponsor or any of its Affiliates.

8.07. [Reserved].

8.08. [Reserved].

8.09. [Reserved].

8.10. Sale and Lease-Back Transactions. Holdings will not, nor will it permit any Subsidiary to, enter into any Sale and Lease-Back Transaction; provided, that Holdings or any Subsidiary may enter into a Sale and Lease-Back Transaction if (a) Holdings or such Subsidiary, as applicable, could have (i) incurred Indebtedness in an amount equal to the Attributable Indebtedness relating to such Sale and Lease Back Transaction under Section 8.04, (ii) incurred a Lien to secure such Indebtedness without equally and ratably securing the Obligations pursuant to Section 8.01 and (b) the transfer of assets in such Sale and Lease-Back Transaction is permitted

by Section 8.02(c)(iii) and Holdings or such Subsidiary applies the proceeds of such transaction in compliance with Section 4.02(c).

8.11. Modifications of Certificate of Incorporation, By-Laws and Certain Other Agreements. Holdings will not, and will not permit any of its Subsidiaries to:

(a) amend, modify or change its certificate or articles of incorporation (including by the filing or modification of any certificate or articles of designation), certificate of formation, limited liability company agreement or by-laws (or the equivalent organizational documents), as applicable, or any agreement entered into by it with respect to its capital stock or other Equity Interests (including any shareholders agreement and any Qualified Preferred Equity), or enter into any new agreement with respect to its capital stock or other Equity Interests;

(b) on and after the execution and delivery thereof, amend, modify or waive, or permit the amendment, modification or waiver of any provision of any Restricted Debt in violation of any applicable subordination provisions or the Intercompany Subordination Agreement;

(c) terminate or otherwise amend, modify, supplement or change any provision of any Material Agreement unless such termination, amendment, modification or change could not reasonably be expected to be materially adverse to the interests of the Lenders; or

(d) make (or give any notice in respect of) any principal or interest payment on, or any redemption or acquisition for value of, or any other payment with respect to any Restricted Debt in violation of this Agreement or any applicable subordination provisions.

8.12. Limitation on Certain Restrictions on Subsidiaries. Holdings will not, and will not permit any of its Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any such Subsidiary to (a) pay dividends or make any other distributions on its capital stock or any other Equity Interest or participation in its profits owned by Holdings or any of its Subsidiaries, or pay any Indebtedness owed to Holdings or any of its Subsidiaries, (b) make loans or advances to Holdings or any of its Subsidiaries or (c) transfer any of its properties or assets to Holdings or any of its Subsidiaries, except for such encumbrances or restrictions existing under or by reason of (i) applicable law, (ii) this Agreement and the other Credit Documents, the DIP ABL Credit Agreement and any "Loan Documents" as defined therein, the Prepetition Term Loan Agreement and any "Credit Documents" as defined therein, (iii) customary provisions restricting subletting or assignment of any lease or license governing any leasehold or license interest of Holdings or any of its Subsidiaries, (iv) customary provisions restricting assignment of any licensing agreement (in which Holdings or any of its Subsidiaries is the licensee) or other contract entered into by Holdings or any of its Subsidiaries in the ordinary course of business, (v) restrictions on the transfer of any asset pending the close of the sale of such asset, (vi) restrictions on the transfer of any asset subject to a Lien permitted by Section 8.01(c) or (i), (vii) [reserved], (ix) agreements in effect at the time a Person becomes a Subsidiary of Holdings, so long as such agreement was not entered into in connection with or in contemplation of such person becoming a Subsidiary of Holdings, (ix) other agreements in effect on the Closing Date as scheduled on Schedule 8.12, (x) customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate solely to the assets subject thereto, (xi) customary net worth provisions contained

in real property leases entered into by Subsidiaries of Holdings, so long as Holdings has determined in good faith that such net worth provisions could not reasonably be expected to impair the ability of Holdings and its Subsidiaries to meet their ongoing obligation and (xii) any restrictions imposed by any agreement relating to Indebtedness incurred pursuant to Section 8.04(m), to the extent such restrictions are not materially more restrictive, taken as a whole, than the restrictions contained herein.

8.13. Business; etc. (a) Holdings will not, and will not permit any of its Subsidiaries to, engage directly or indirectly in any business other than the businesses engaged in by Holdings and its Subsidiaries on the Closing Date and any businesses that are reasonably similar, incidental, complementary, ancillary or related to, the businesses engaged in by Holdings and its Subsidiaries on the Closing Date.

(b) Notwithstanding the foregoing or anything else in this Agreement to the contrary, Holdings will not engage in any business or own any significant assets or have any material Indebtedness other than (i) (x) its ownership of the Equity Interests in its Subsidiaries and (y) holding of cash and Cash Equivalents in the aggregate at any time (together with any investment income thereon), (ii) those liabilities which it is responsible for under this Agreement and the other Credit Documents to which it is a party, the DIP ABL Credit Agreement and related documents or the Prepetition Term Loan Agreement and related documents, (iii) customary liabilities, expenses and indemnity obligations for directors, officers and employees and expenses in the ordinary course of business, (iv) [reserved], (v) any transactions that any such Person is permitted to enter into or consummate pursuant to the terms and conditions of this Section 8 of this Agreement, including making any Restricted Payments permitted by Section 8.03 or making other dividends or distributions or holding any cash or Cash Equivalents received in connection any such dividends or distributions, in each case, in accordance with the Approved Budget, (vi) incurring fees, costs and expenses relating to overhead and general operating including professional fees for legal, tax and accounting issues and paying taxes, in each case, in accordance with the Approved Budget, (vii) [reserved], (viii) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted by Section 8.05 and applicable solely to such joint venture entered into in the ordinary course of business and prior to the Closing Date and (ix) activities incidental to the businesses or activities described in clauses (i) to (viii) of this Section 8.13(b); provided that Holdings may engage in those activities that are incidental to (x) the maintenance of its existence in compliance with applicable law and (y) legal, tax and accounting matters in connection with any of the foregoing activities.

8.14. Limitation on Creation of Subsidiaries.

(a) Subject to the limitations set forth in this Agreement and the other Credit Documents, at the time that any Credit Party forms any direct or indirect, Wholly-Owned Subsidiary (other than an Excluded Subsidiary), acquires any direct or indirect, Wholly-Owned Subsidiary (other than an Excluded Subsidiary) after the Closing Date, such Credit Party shall:

(i) within 15 Business Days of such formation or acquisition (or such later date as may be agreed by the Administrative Agent in its reasonable discretion) cause any such new Subsidiary to provide to the Administrative Agent a joinder to the Guaranty, the Security Agreements and the Intercompany Subordination

Agreement, in each case together with such other security documents (other than Mortgages, the timing of delivery of which shall be governed by clause (b) below), as well as appropriate financing statements, all in form and substance reasonably satisfactory to the Administrative Agent (including being sufficient to grant the Administrative Agent a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary in accordance with the Credit Documents);

(ii) within 15 Business Days of such formation or acquisition (or such later date as may be agreed by the Administrative Agent in its reasonable discretion) provide to the Administrative Agent to the extent not covered by the Security Agreements, a pledge agreement and appropriate certificates and powers or financing statements, hypothecating the Equity Interests of any new Subsidiary (other than Excluded Stock) reasonably satisfactory to the Administrative Agent; and

(iii) within 15 Business Days of such formation or acquisition (or such later date as may be agreed by the Administrative Agent in its reasonable discretion) provide to the Administrative Agent all other documentation, including, if reasonably requested by the Administrative Agent, one or more opinions of counsel reasonably satisfactory to the Administrative Agent.

(b) Mortgages shall, with respect to any Real Property Collateral, be required to be delivered within 30 days after the acquisition of such Real Property Collateral (or such later date as may be agreed by the Administrative Agent in its reasonable discretion) and shall be accompanied by the Mortgage Related Documents with respect to the Real Property Collateral to be subject to such Mortgage and a local opinion of counsel to the relevant Credit Party with respect to the enforceability of the applicable Mortgages and any related fixture filings (or in the event a Subsidiary of the Borrower is the mortgagor, to such Subsidiary) in form and substance reasonably satisfactory to the Administrative Agent.

(c) [Reserved]

(d) Any document, agreement, or instrument executed or issued pursuant to this Section 8.14 shall be a Credit Document.

8.15. Certain Deposit Accounts. Commencing on the Closing Date, none of the Credit Parties will maintain a Deposit Account that is not an Excluded Account, unless such Deposit Account is (a) subject to a "control agreement" referred to in Section 6(c) of the Security Agreements or is subject to a perfected Lien in favor of the Administrative Agent pursuant to the Orders or (b) otherwise under the "control" (within the meaning of Section 9-104 of the New York UCC) of the Administrative Agent, or in the case of deposit accounts located in Canada, subject to a blocked account agreement in favor of the Administrative Agent.

8.16. Anti-Terrorism and Anti-Corruption Laws. Holdings will not, and will not permit any of its Subsidiaries to, use the proceeds of any Term Loan, or other extension of credit hereunder, directly or indirectly, to fund any activities of or business with any Embargoed Person,

or for any payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage in violation of anti-corruption laws.

8.17. Civil Cases. Holdings will not, and will not permit any of its Subsidiaries to, enter into (or request the Bankruptcy Court or CCAA Court to approve) any settlement or similar agreement in connection with the Civil Cases without the prior written consent of the Administrative Agent (at the direction of the Required Lenders).

8.18. Canadian Pension Plans. No Canadian Credit Party in existence on the Closing Date, nor any Subsidiary created after the Closing Date as permitted under Section 8.14 that becomes a Canadian Credit Party, shall, without the prior written consent of the Administrative Agent, commence to participate in a Canadian Defined Benefit Pension Plan not in existence as of the Closing Date, other than to the extent required to do so by applicable local Law.

8.19. Litigation Spend. After the Petition Date, any fees, costs and expenses paid, reimbursed or owing, directly or indirectly, by Holdings or any of its Subsidiaries (including any such fees, costs and expenses that have accrued prior to the date hereof, but have not yet been paid as of the date hereof) to any Person in connection with the Civil Cases and/or any Department of Justice actions brought based on the same or similar conduct at issue in the Civil Cases, including, without limitation, to (I) Paul, Weiss, Rifkind, Wharton & Garrison LLP, (II) Keker, Van Nest & Peters LLP and/or any other legal counsel representing Christopher Lischewski, (III) Compass Lexecon and/or any other experts in connection with the Civil Cases and/or any Department of Justice actions brought based on the same or similar conduct at issue in the Civil Cases and/or (IV) any other legal counsel representing Walter Scott Cameron and/or Kenneth Worsham and/or any other individual and/or Holdings and/or any of its Subsidiaries in connection with the Civil Cases and/or any Department of Justice actions brought based on the same or similar conduct at issue in the Civil Cases shall not exceed an aggregate amount of $450,000.

Section 9 Events of Default.

Upon the occurrence of any of the following specified events (each, an "**Event of Default**"):

9.01. Payments. The Borrower shall (a) default in the payment when due of any principal of any Term Loan or any Term Note or (b) default, and such default shall continue unremedied for three (3) or more Business Days, in the payment when due of any interest on any Term Loan or Term Note or any fees or any other amounts owing hereunder or under any other Credit Document; or

9.02. Representations, etc. Any representation, warranty or statement made or deemed made by any Credit Party herein or in any other Credit Document or in any certificate (including any Budget Variance Report) delivered to the Administrative Agent, or any Lender pursuant hereto or thereto shall prove to be untrue in any material respect on the date as of which made or deemed made; or

9.03. Covenants. Holdings or any of its Subsidiaries shall (a) default in the due performance or observance by it of any term, covenant or agreement contained in Sections 2.13,

7.01(f), 7.01(h), 7.04, 7.05, 7.11, 7.18, 7.19, 7.20, 7.21, 7.23, 7.24 or Section 8 of this Agreement, (b) default in the due performance or observance by it of any terms, covenant, or agreement contained in Sections 7.01(a), (b), (c), (e), (g), (i), (l), (n), (o), (p) or (q) and, in the case of this clause (b), such default shall continue unremedied for a period of two (2) Business Days after the occurrence of such default after the earlier of (x) written notice from the Administrative Agent of such default and (y) actual knowledge of an Authorized Officer of any Credit Party of the occurrence thereof, or (c) default in the due performance or observance by it of any term, covenant or agreement contained in this Agreement (other than those set forth in Section 9.01, Section 9.02 or clause (a) or (b) of this Section 9.03) or any other Credit Document and, in the case of this clause (c), such default shall continue unremedied for a period of 30 days after the earlier of (x) written notice from the Administrative Agent of such default and (y) actual knowledge of an Authorized Officer of any Credit Party of the occurrence thereof; or

9.04. Default Under Other Agreements. (a) Holdings or any of its Subsidiaries shall (i) default in any payment of any Material Indebtedness (other than (x) the Obligations and (y) in the case of any Debtor or CCAA Debtor, any other Material Indebtedness incurred by such Debtor or CCAA Debtor prior to the Petition Date or the CCAA Filing Date, respectively, to the extent the holders thereof are stayed from exercising remedies in connection therewith as a result of the Cases or the CCAA Orders) beyond the period of grace, if any, provided in an instrument or agreement under which such Material Indebtedness was created or (ii) default in the observance or performance of any agreement or condition relating to any Material Indebtedness (other than (x) the Obligations and (y) in the case of any Debtor or CCAA Debtor, any other Material Indebtedness incurred by such Debtor or CCAA Debtor prior to the Petition Date or the CCAA Filing Date, respectively, to the extent the holders thereof are stayed from exercising remedies in connection therewith as a result of the Cases or the CCAA Orders) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Material Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause (determined after all grace periods have run), any such Material Indebtedness to become due prior to its stated maturity; or (b) any Material Indebtedness (other than (x) the Obligations and (y) in the case of any Debtor or CCAA Debtor, any other Material Indebtedness incurred by such Debtor or CCAA Debtor prior to the Petition Date or the CCAA Filing Date, respectively, to the extent the holders thereof are stayed from exercising remedies in connection therewith as a result of the Cases or the CCAA Orders) of Holdings or any of its Subsidiaries shall be declared to be (or shall become) due and payable, or required to be prepaid (other than by (i) a regularly scheduled required prepayment or (ii) a mandatory prepayment (unless such required prepayment or mandatory prepayment results from a default thereunder or an event of the type that constitutes an Event of Default)), prior to the stated maturity thereof; or

9.05. Bankruptcy, etc. Any Credit Party or any of its Subsidiaries, in each case, that is not a Debtor or a CCAA Debtor, shall commence a voluntary case concerning itself under Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect, or any successor thereto (the "**Bankruptcy Code**"); or an involuntary case is commenced against any Credit Party or any of its Subsidiaries, in each case, that is not a Debtor or CCAA Debtor, and the petition is not dismissed within 60 days after the filing thereof, provided, however, that during the pendency of such period, each Lender shall be relieved of its obligation to extend credit hereunder; or a custodian (as defined in the Bankruptcy Code) or a receiver, receiver and manager, trustee,

restructuring officer or similar official is appointed for, or takes charge of, all or substantially all of the property of any Credit Party or any of its Subsidiaries, in each case, that is not a Debtor or CCAA Debtor, to operate all or any substantial portion of the business of such Person, or any Credit Party or any of its Subsidiaries, in each case, that is not a Debtor or CCAA Debtor, commences any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency, receivership or liquidation or similar law of any jurisdiction, including Canadian Bankruptcy and Insolvency Law, whether now or hereafter in effect relating to any Credit Party or any Subsidiary, in each case, that is not a Debtor or CCAA Debtor, or there is commenced against or with respect to any Credit Party or any of its Subsidiaries, in each case, that is not a Debtor or CCAA Debtor, any such proceeding which remains undismissed for a period of 60 days after the filing thereof, or any Credit Party or any of its Subsidiaries, in each case, that is not a Debtor or CCAA Debtor, is adjudicated insolvent or bankrupt; or any order of relief or other order approving any such case or proceeding is entered; or any Credit Party or any of its Subsidiaries, in each case, that is not a Debtor or CCAA Debtor, makes a general assignment for the benefit of creditors; or any Company action is taken by any Credit Party or any of its Subsidiaries, in each case, that is not a Debtor or CCAA Debtor, for the purpose of effecting any of the foregoing; or any Credit Party existing under Luxembourg law (i) becomes subject to a judgement or decision in respect of bankruptcy (*faillite*), composition with the creditors (*concordat préventif de la faillite*), suspension of payments (*sursis de paiements*), controlled management (*gestion contrôlée*), judicial liquidation (*liquidation judiciaire*), dissolution, the appointment of a temporary administrator (*administrateur provisoire*) or any other similar proceedings under Luxembourg law, or (ii) is in a state of cessation of payments (*cessation des paiements*); provided, that any of the foregoing actions undertaken by Holdings, or any of its Subsidiaries that are not Debtors or CCAA Debtors, with the consent of the Administrative Agent shall not constitute an Event of Default; or

9.06. ERISA. (a) Any Plan shall fail to satisfy the minimum funding standard required for any plan year or part thereof under Section 412 of the Code or Section 302 of ERISA or a waiver of such standard or extension of any amortization period is sought or granted under Section 412 of the Code or Section 303 or 304 of ERISA, a Reportable Event shall have occurred, a contributing sponsor (as defined in Section 4001(a)(13) of ERISA) of a Plan subject to Title IV of ERISA shall be subject to the advance reporting requirement of PBGC Regulation Section 4043.61 (without regard to subparagraph (b)(1) thereof) and an event described in subsection .62, .63, .64, .65, .66, .67 or .68 of PBGC Regulation Section 4043 shall be reasonably expected to occur with respect to such Plan within the following 30 days, any determination that any Plan is considered at-risk or in endangered or critical status as defined in Sections 303, 304 and 305 of ERISA or Sections 430, 431, and 432 of the Code, any Plan which is subject to Title IV of ERISA shall have had or is likely to have a trustee appointed to administer such Plan, any Plan which is subject to Title IV of ERISA is, shall have been or is likely to be terminated or to be the subject of termination proceedings under ERISA, any Plan shall have an Unfunded Current Liability, a contribution required to be made with respect to a Plan has not been timely made, Holdings or any Subsidiary or any ERISA Affiliate has incurred or is likely to incur any liability to or on account of a Plan under Section 409, 502(i), 502(l), 515, 4062, 4063, 4064, 4069, 4071, 4201, 4204 or 4212 of ERISA or Section 401(a)(29), 4971 or 4975 of the Code or a withdrawal liability from any multiemployer plan (as defined in Section 4001(a)(3) of ERISA), or Holdings or any Subsidiary of Holdings has incurred or is likely to incur liabilities pursuant to one or more employee welfare benefit plans (as defined in Section 3(1) of ERISA) that provide benefits to

retired employees or other former employees (other than as required by Section 601 of ERISA) or Plans, a "default," within the meaning of Section 4219(c)(5) of ERISA, shall occur with respect to any Plan; any applicable law, rule or regulation is adopted, changed or interpreted, or the interpretation or administration thereof is changed, in each case after the Closing Date, by any Governmental Authority (a "**Change in Law**"), or, as a result of a Change in Law, an event occurs following a Change in Law, with respect to or otherwise affecting any Plan; (b) there shall result from any such event or events described in clause (a) above the imposition of a lien, the granting of a security interest, or a liability or a material risk of incurring a liability; provided any such event or events described in clause (a) above and any such lien, security interest or liability, described in this clause (b) individually, and/or in the aggregate, has had a Material Adverse Effect; or (c) a Canadian Pension Event shall have occurred and such event individually and/or in the aggregate has had, or could reasonably be expected to have, a Material Adverse Effect; or

9.07. Credit Documents. (i) Any material provision of the Credit Documents, taken as a whole, shall fail or cease to be in full force and effect (except as a result of a release of Collateral in accordance with the terms thereof) or shall be declared null and void, (ii) the applicable Order or CCAA Order or any Security Document shall fail or cease to give the Administrative Agent for the benefit of the Secured Creditors the Liens, rights, powers and privileges purported to be created thereby (including a perfected (subject to Section 11.16) security interest in, and Lien on, all of the Collateral, in favor of the Administrative Agent, taken as a whole, subject to Permitted Liens) or (iii) any Credit Party or any of their respective Affiliates shall contest the validity or enforceability of any Credit Document or disaffirm any Credit Party's obligations under any Credit Document; or

9.08. Guaranties. Any material provision of any Guaranty or any provision thereof shall cease to be in full force or effect as to any Guarantor (except as a result of a release of any Subsidiary Guarantor in accordance with the terms thereof), or any Guarantor or any Person acting for or on behalf of such Guarantor shall deny or disaffirm such Guarantor's obligations under the Guaranty to which it is a party or any Guarantor shall default in the due performance or observance of any term, covenant or agreement on its part to be performed or observed pursuant to the Guaranty to which it is a party; or

9.09. Judgments. One or more judgments, orders, awards or decrees (other than in connection with the Plea Agreement, which is the subject of Section 9.11) arising following the Petition Date shall be entered against Holdings or any Subsidiary involving in the aggregate for Holdings and its Subsidiaries a liability (to the extent not paid (or to the extent such order, award or decree is subject to an approved payment plan, to the extent such order, award or decree has not been paid in accordance with the terms of such plan) or to the extent not covered by indemnity or a reputable and solvent insurance company) and such judgments, orders, awards and decrees either shall be final and non-appealable or shall not be vacated, discharged or stayed or bonded pending appeal for any period of 30 consecutive days, and the aggregate amount of all such judgments equals or exceeds $1,000,000; or

9.10. Subordination. (a) The subordination provisions of the documents evidencing or governing any subordinated Indebtedness (the "**Subordinated Provisions**") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of applicable subordinated Indebtedness; or (b) the Borrower or any other Credit Party

shall, directly or indirectly, disavow or contest in any manner (i) the effectiveness, validity or enforceability of any of the Subordinated Provisions, (ii) that the Subordinated Provisions exist for the benefit of the Administrative Agent and the Lenders or (iii) that all payments of principal of or premium and interest on the applicable subordinated Indebtedness, or realized from the liquidation of any property of any Credit Party, shall be subject to any of the Subordinated Provisions;

9.11. Plea Agreement. Holdings, its Subsidiaries or any of their respective Affiliates shall pay, cause to be paid, or agree to pay, any fine, penalty or other amount under the Plea Agreement in excess of (a) $25,000,000 in the aggregate or (b) (i) $4,000,000 after the second anniversary of August 2, 2017 (such date, the "**Approval Date**") and on or prior to the third anniversary of the Approval Date, (ii) $6,000,000 after the third anniversary of the Approval Date and on or prior to the fourth anniversary of the Approval Date and (iii) $7,000,000 after the fourth anniversary of the Approval Date;

9.12. [Reserved]; or

9.13. The Cases and CCAA Cases; Bankruptcy Matters.

(a) an order of the Bankruptcy Court shall be entered denying or terminating use of cash collateral by the Debtors and the Debtors shall have not obtained use of cash collateral pursuant to an order consented to by, and in form and substance reasonably acceptable to, the Administrative Agent;

(b) (i) any of the Cases of the Credit Parties shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code, (ii) any of the CCAA Cases shall be dismissed or otherwise terminated or (iii) any proceeding under or pursuant to the BIA shall have been commenced in respect of any of the Credit Parties;

(c) (A) a trustee, responsible officer or an examiner having expanded powers (beyond those set forth under sections 1106(a)(3) and (4) of the Bankruptcy Code) (other than a fee examiner), (B) a receiver, receiver and manager, trustee or restructuring officer or (C) a monitor with enhanced powers is appointed or elected in any of the Cases or the CCAA Cases (or otherwise in respect of any of the CCAA Debtors or their respective assets), or any Credit Party applies for, consents to, supports, acquiesces in or fails to promptly oppose, any such appointment, or the Bankruptcy Court, the CCAA Court or any other applicable court shall have entered an order providing for such appointment;

(d) an RSA Termination Event shall have occurred and be continuing or the Restructuring Support Agreement is terminated (other than by agreement among the parties thereto);

(e) any Credit Party or any of its Subsidiaries, or any person claiming by or through any Credit Party or any of its Subsidiaries, with any Credit Party's or any Subsidiary's consent, shall obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding against (A) the Administrative Agent or any of the Lenders relating to the DIP Term Facility or (B) the administrative agent or any lender relating to the Prepetition Term Loan Agreement;

(f) any Credit Party, or any person on behalf of any Credit Party, shall file a motion or other pleading seeking, or otherwise consenting to, any of the matters set forth in clauses (a) through (e) above or the granting of any other relief that if granted would give rise to an Event of Default;

(g) the existence of any claims or charges, or the entry of any order of the Bankruptcy Court or the CCAA Court authorizing (i) any claims or charges, other than in respect of the DIP Term Facility, the DIP ABL Credit Facility and the Carve-Out or as otherwise permitted under the applicable Credit Documents, the Orders or the CCAA Orders, entitled to superpriority administrative expense claim status in any Case pursuant to Section 364(c)(1) of the Bankruptcy Code or superpriority pursuant to the CCAA, as applicable, that are *pari passu* with or senior to the claims or Liens of the Administrative Agent and the Lenders under the DIP Term Facility, or there shall arise or be granted by the Bankruptcy Court any claim having priority over any or all administrative expenses of the kind specified in clause (b) of Section 503 or clause (b) of Section 507 of the Bankruptcy Code (other than the Carve-Out), or (ii) any Lien on the Collateral having a priority senior to or *pari passu* with the Liens and security interests provided for herein securing the Obligations hereunder, except, in each case, as expressly provided in the Credit Documents or in the Order or the CCAA Order, as applicable, then in effect (but only in the event specifically consented to by the Administrative Agent), whichever is in effect;

(h) the Bankruptcy Court or the CCAA Court shall enter an order or orders granting relief from any stay of proceeding (including, the automatic stay applicable under Section 362 of the Bankruptcy Code to the holder or holders of any security interest) or a CCAA Debtor and/or the CCAA Monitor shall consent to a lifting of the CCAA stay of proceedings to (i) permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets that constitute Collateral of any of the Debtors or the CCAA Debtors which have a value in excess of $250,000 in the aggregate or (ii) permit other actions that would have a Material Adverse Effect on the Debtors or their estates (taken as a whole) or the CCAA Debtors (taken as a whole);

(i) (i) an order of the Bankruptcy Court shall be entered reversing, amending, supplementing, staying, vacating or otherwise amending, supplementing or modifying the Interim Order, the Bidding Procedures Order, the Final Order, or the Sale Order without the prior written consent of the Administrative Agent or (ii) an order of the CCAA Court shall be granted reversing, amending, supplementing, staying, vacating or otherwise amending, supplementing or modifying the CCAA Initial Order or the CCAA A&R Initial Order without the prior written consent of the Administrative Agent, or (iii) a Debtor or a CCAA Debtor shall apply for the authority to do any of the foregoing;

(j) any of the Credit Parties shall (i) fail to comply with the Stalking Horse APA in any material respect or (ii) amend the Stalking Horse APA in a manner that is adverse to the interests of the Lenders without the prior written consent of the Administrative Agent;

(k) any of (i) the Interim Order (prior to the Final Order Entry Date) or the Final Order (on and after the Final Order Entry Date) or (ii) the CCAA Initial Order (prior to the CCAA A&R Initial Order Date) or the CCAA A&R Initial Order (on and after the CCAA A&R Initial Order Date) shall cease to create a valid and perfected Lien on the Collateral of any Debtor or CCAA Debtor, as the case may be, or to be in full force and effect, or shall have been reversed,

modified, amended, stayed, vacated, or subject to stay pending appeal, in the case of modification or amendment, without prior written consent of the Administrative Agent;

(l) an order shall have been entered by the Bankruptcy Court or the CCAA Court, as applicable, avoiding or requiring disgorgement by the Administrative Agent or any of the Lenders of any amounts received in respect of the Obligations or by any of the lenders under the Prepetition Term Loan Agreement of any amounts received in respect thereof;

(m) an order shall have been entered by the Bankruptcy Court terminating or modifying the exclusive right of any Credit Party to file a Chapter 11 plan pursuant to section 1121 of the Bankruptcy Code, without the prior written consent of the Administrative Agent;

(n) any of the Credit Parties shall fail to comply in any material respect with the Interim Order (prior to the Final Order Entry Date), the Final Order (on and after the Final Order Entry Date), the CCAA Initial Order (prior to the CCAA A&R Initial Order Date) or the CCAA A&R Initial Order (on and after the CCAA A&R Initial Order Date), the Bidding Procedures Order, or the Sale Order;

(o) an order shall have been entered by the Bankruptcy Court or the CCAA Court providing for a change in venue with respect to the Cases or the CCAA Cases, as applicable, without the approval of the Administrative Agent and such order shall not be reversed or vacated within 10 days;

(p) an order in the Cases shall be entered charging any of the Collateral of any Debtor or any of the "Collateral" (as defined in the Prepetition Term Loan Agreement) under Section 506(c) of the Bankruptcy Code against the Lenders or the lenders under the Prepetition Term Loan Agreement or the commencement of other actions by the Debtors that are materially adverse to Administrative Agent or the Lenders or the lenders under the Prepetition Term Loan Agreement or their respective rights and remedies under the DIP Term Facility or under the Prepetition Term Loan Agreement in any of the Cases or inconsistent with any of the Credit Documents or the "Credit Documents" (as defined in the Prepetition Term Loan Agreement);

(q) any order shall be entered which dismisses any of the Cases of the Debtors or any of the CCAA Cases of the CCAA Debtors, which order does not provide for payment in full in cash of the Obligations under the Credit Documents (other than contingent indemnification obligations not yet due and payable), or any of the Debtors, the CCAA Debtors and their Subsidiaries shall seek, support or fail to contest in good faith the entry of any such order;

(r) any Credit Party or any Subsidiary thereof shall take any action in support of any matter set forth in this Section 9.13 or any other Person shall do so and such application is not contested in good faith by the Credit Parties and the relief requested is granted in an order that is not stayed pending appeal;

(s) any Credit Party or any Subsidiary thereof shall obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding seeking, or otherwise consenting to (i) the invalidation, subordination or other challenging of the DIP Superpriority Claims, the priority of the CCAA DIP Charge or the Liens granted to secure the Obligations or any other rights granted to the Administrative Agent

and the Lenders in the Orders, the CCAA Orders or this Agreement or (ii) any relief under section 506(c) of the Bankruptcy Code or analogous relief under the CCAA with respect to any Collateral of any Debtor;

(t) any Credit Party shall challenge, support or encourage a challenge of any payments made to the Administrative Agent or any Lender with respect to the Obligations or any lender under the Prepetition Term Loan Agreement with respect to the obligations thereunder, other than to challenge the occurrence of a Default or Event of Default;

(u) without the consent of the Administrative Agent, the filing of any motion by the Debtors seeking approval of (or the entry of an order by the Bankruptcy Court approving) adequate protection to any pre-petition agent, trustee or lender that is inconsistent with the Interim Order (prior to the Final Order Entry Date) or the Final Order (on and after the Final Order Entry Date);

(v) without the Administrative Agent's consent, the entry of any order by the Bankruptcy Court or the CCAA Court granting, or the filing by any Credit Party or any of its Subsidiaries of any motion or other request with the Bankruptcy Court or the CCAA Court (in each case, other than the Orders, the CCAA Orders and motions seeking entry thereof or permitted amendments or modifications thereto) seeking, authority to use any cash proceeds of any of the Collateral without the Administrative Agent's consent or to obtain any financing under section 364 of the Bankruptcy Code or the CCAA other than the facility hereunder unless such motion or order contemplates payment in full in cash of the Obligations immediately upon consummation of the transactions contemplated thereby;

(w) any Credit Party or any person on behalf of any Credit Party shall file any motion seeking authority to consummate a sale of assets of the Credit Parties or the Collateral having a value in excess of $500,000 outside the ordinary course of business and not otherwise permitted hereunder;

(x) if any Credit Party or any of its Subsidiaries is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any part of the business affairs of the Credit Parties and their Subsidiaries, taken as a whole, which could reasonably be expected to have a Material Adverse Effect; provided, that the Credit Parties shall have five (5) Business Days after the entry of such an order to obtain a court order vacating, staying or otherwise obtaining relief from the Bankruptcy Court or the CCAA Court or another court to address any such court order;

(y) any Debtor or CCAA Debtor shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any pre-petition Indebtedness or payables other than payments in respect of the repayment of the Indebtedness under the Prepetition Term Loan Agreement or the Pre-Petition Credit Agreement (as defined in the DIP ABL Credit Agreement) or as otherwise permitted under this Agreement, in each case, to the extent authorized by one or more "first day" or "second day" orders, the Interim Order, the Final Order, or the CCAA Orders and consistent with the Approved Budget;

(z) without the Administrative Agent's consent, any Credit Party or any Subsidiary thereof shall file any motion or other request with the Bankruptcy Court or the CCAA Court seeking (i) to grant or impose, under section 364 of the Bankruptcy Code, the CCAA or otherwise, liens or security interests in any Collateral, whether senior, equal or subordinate to the Collateral Agent's liens and security interests; (ii) to use, or seek to use, Cash Collateral; or (iii) to modify or affect any of the rights of the Administrative Agent or the Lenders under the Orders, the CCAA Orders or the Credit Documents, by any order entered in the Cases or the CCAA Cases; or

(aa) any order shall be entered which dismisses or otherwise terminates any of the Cases of the Debtors or the CCAA Cases of the CCAA Debtors and which order does not provide for termination of the Commitments and indefeasible payment in full in cash of the Obligations under the Credit Documents and continuation of the Liens with respect thereto until the effectiveness thereof (other than contingent indemnity obligations not yet due), or any of the Debtors or CCAA Debtors shall seek confirmation of any such plan or entry of any such order.

9.14. Change of Control. A Change of Control shall occur; Then, and in any such event, and at any time thereafter, if any Event of Default shall then be continuing, the Administrative Agent may, or, upon the written request of the Required Lenders, shall by written notice to the Borrower, take any or all of the following actions, without prejudice to the rights of the Administrative Agent or any Lender to enforce its claims against any Credit Party (provided that, if an Event of Default specified in Section 9.04 shall occur, the result which would occur upon the giving of written notice by the Administrative Agent as specified in clauses (a) and (b) below shall occur automatically without the giving of any such notice): (a) declare the Total Commitments terminated and whereupon all Commitments of each Lender shall forthwith terminate immediately; (b) declare the principal of and any accrued interest in respect of all Term Loans and the Term Notes and all Obligations owing hereunder and thereunder to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Credit Party; (c) enforce, as Administrative Agent, all of the Liens and security interests created pursuant to the Security Documents; (d) enforce each Guaranty; and (e) apply any cash collateral held by the Administrative Agent pursuant to Section 4.02 to the repayment of the Obligations. Notwithstanding anything to the contrary herein, subject to the provisions of the Interim Order (and, when entered, the Final Order) and the CCAA Initial Order (and, when issued and entered, the CCAA A&R Initial Order), as applicable, (x) the enforcement of certain Liens or remedies with respect to the Collateral of the Debtors and the CCAA Debtors shall be subject to five (5) Business Days prior written notice (the "**Remedies Notice Period**") to the Debtors and the CCAA Debtors, as applicable, and (y) after expiration of the Remedies Notice Period, the Administrative Agent, on behalf of the Secured Creditors, shall be entitled to exercise all rights and remedies provided for in this Agreement, the Orders, the CCAA Orders and the other Credit Documents, and under applicable law. During the Remedies Notice Period, the Debtors and the CCAA Debtors shall be entitled to seek an emergency hearing with the Bankruptcy Court and/or the CCAA Court, for the sole purpose of contesting whether an Event of Default has occurred and is continuing.

The rights and remedies of the Administrative Agent under this Agreement, the other Credit Documents, and all other agreements shall be cumulative. The Administrative Agent shall have all other rights and remedies not inconsistent herewith as provided under the UCC, the PPSA, by law, or in equity. No exercise by the Administrative Agent of one right or remedy shall be

deemed an election, and no waiver by the Administrative Agent, or the Lenders of any Event of Default shall be deemed a continuing waiver. No delay by the Administrative Agent shall constitute a waiver, election, or acquiescence by it. No failure to exercise, nor any delay in exercising, on the part of the Administrative Agent, any right or remedy under the Credit Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy.

Section 10 The Administrative Agent.

10.01. Appointment. The Lenders hereby irrevocably designate and appoint Brookfield as Administrative Agent to act as specified herein and in the other Credit Documents. Each Lender hereby irrevocably authorizes the Administrative Agent to take such action on its behalf under the provisions of this Agreement, the other Credit Documents and any other instruments and agreements referred to herein or therein and to exercise such powers and to perform such duties hereunder and thereunder as are specifically delegated to or required of the Administrative Agent by the terms hereof and thereof and such other powers as are reasonably incidental thereto. The Administrative Agent may perform any of its respective duties hereunder by or through its officers, directors, agents, employees or affiliates.

10.02. Nature of Duties. The Administrative Agent shall not have any duties or responsibilities except those expressly set forth in this Agreement and in the other Credit Documents. Neither the Administrative Agent nor any of its officers, directors, agents, employees or Affiliates shall be liable for any action taken or omitted by it or them hereunder or under any other Credit Document or in connection herewith or therewith, unless caused by its or their bad faith, gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). The duties of the Administrative Agent shall be mechanical and administrative in nature; the Administrative Agent shall not have by reason of this Agreement or any other Credit Document a fiduciary relationship in respect of any Lender; and nothing in this Agreement or in any other Credit Document, expressed or implied, is intended to or shall be so construed as to impose upon the Administrative Agent any obligations in respect of this Agreement or any other Credit Document except as expressly set forth herein or therein.

10.03. Lack of Reliance on the Administrative Agent. (a) Each Lender from time to time party to this Agreement (i) confirms that it has received a copy of this Agreement and the other Credit Documents, together with copies of the financial statements referred to therein, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to become a Lender under this Agreement, (ii) agrees that it has made and will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Credit Documents and, except as expressly provided in this Agreement, the Administrative Agent shall not have any duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Term Loans or at any time or times thereafter; provided that, upon the reasonable request of a Lender, the Administrative Agent shall provide to such Lender any documents or reports delivered to such Administrative Agent by the Credit Parties pursuant to the terms of this Agreement or any other Credit Document unless the Administrative Agent is restricted from doing

so due to the confidentiality requirements of Section 11.15, (iii) acknowledges and agrees that no fiduciary or advisory relationship between the Administrative Agent and any Lender is intended to be or has been created in respect of any of the transactions contemplated by this Agreement, (iv) acknowledges and agrees that the Administrative Agent, on the one hand, and each Lender on the other hand, have an arms-length business relationship that does not directly or indirectly give rise to, and no Lender relies on, any fiduciary duty on the Administrative Agent's part, (v) acknowledges and agrees that each Lender is capable of evaluating and understanding, and each such Lender understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement, (vi) acknowledges and agrees that the Administrative Agent or any of its Affiliates may have received fees or other compensation from any Credit Party or any Affiliate of any Credit Party in connection with this Agreement which may or may not be publicly disclosed and such fees or compensation do not affect any Lender's independent credit decision to enter into the transactions contemplated by this Agreement, (vii) acknowledges and agrees that notwithstanding that no fiduciary or similar relationship exists between the Administrative Agent and any Lender, each such Lender hereby waives, to the fullest extent permitted by law, any claims it may have against the Administrative Agent or its Affiliates for breach of fiduciary duty or alleged breach of fiduciary duty and agrees that the Administrative Agent and its Affiliates shall have no liability (whether direct or indirect) to any Lender in respect of such a fiduciary duty claim or to any Person asserting a fiduciary duty claim on behalf of or in right of any Lender, including any such Lender's Affiliates, members, partners, subsidiaries, officers, employees, agents, attorneys, principals, directors and shareholders and their respective heirs, legal representatives, successors and assigns and creditors, and (viii) agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement and the other Credit Documents are required to be performed by it as a Lender. The Administrative Agent shall not be responsible to any Lender for any recitals, statements, information, representations or warranties herein or in any document, certificate or other writing delivered in connection herewith or for the execution, effectiveness, genuineness, validity, enforceability, perfection, collectability, priority or sufficiency of this Agreement or any other Credit Document or the financial condition of Holdings or any of its Subsidiaries or be required to make any inquiry concerning the performance or observance of any of the terms, provisions or conditions of this Agreement or any other Credit Document, the financial condition of Holdings or any of its Subsidiaries or the existence or possible existence of any Default or Event of Default.

(b) To the full extent permitted by applicable law, each party hereto and each Indemnified Person shall not assert, and hereby waives, any claim against any other party hereto or any other Indemnified Person, on any theory of liability, for special, indirect, consequential or incidental damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Credit Document, any other agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby or any Term Loan or the use of the proceeds thereof; provided, however, that the foregoing provisions shall not relieve the Borrower of its indemnification obligations as provided in Section 11.01(a) to the extent any Indemnified Person is found liable for any such damages. No party hereto and no Indemnified Person shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby, except to the extent the liability of such Person results from such Person's gross negligence, willful misconduct or bad faith (as

determined by a court of competent jurisdiction in a final and non-appealable decision); provided, however, that the foregoing provisions shall not relieve the Borrower of its indemnification obligations as provided in Section 11.01(a) to the extent any Indemnified Person is found liable for any such damages.

10.04. Certain Rights of the Administrative Agent. If the Administrative Agent requests instructions from the Required Lenders with respect to any act or action (including failure to act) in connection with this Agreement or any other Credit Document, the Administrative Agent shall be entitled to refrain from such act or taking such action unless and until the Administrative Agent shall have received instructions from the Required Lenders and the Administrative Agent shall not incur liability to any Lender by reason of so refraining. Without limiting the foregoing, the Administrative Agent shall be entitled to refrain from any act or action, and no Lender shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent refraining from such act or action, unless or until the Administrative Agent shall first be indemnified to its satisfaction by Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Credit Document in accordance with a request or consent of the Required Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders. Notwithstanding the foregoing, the Administrative Agent shall not be required to take, or to omit to take, any action that is, in the opinion of the Administrative Agent or its counsel, contrary to any Credit Document or applicable law.

10.05. Reliance. (a) The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon (i) any note, writing, resolution, notice, statement, certificate, telex, teletype or telecopier message, fax, email, cablegram, radiogram, order or other document or telephone message signed, sent or made by any Person that the Administrative Agent believed to be the proper Person and (ii) with respect to all legal matters pertaining to this Agreement and any other Credit Document and its duties hereunder and thereunder, upon advice of counsel selected by the Administrative Agent.

(b) For purposes of determining compliance with the conditions specified in Section 5, each Lender that has signed this Agreement (or an Assignment and Assumption Agreement and/or addendum or joinder to this Agreement) shall be deemed to have consented to, approved or accepted or to be satisfied with the Intercreditor Agreement and each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the Closing Date, as applicable, specifying its objection thereto.

10.06. Indemnification. To the extent the Administrative Agent (or any Affiliate thereof) is not reimbursed and indemnified by the Borrower, the Lenders will reimburse and indemnify the Administrative Agent (and any Affiliate thereof) in proportion to their respective "percentage" as used in determining the Required Lenders for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature (including any customary indemnifications provided to a deposit account bank pursuant to a "control agreement" or "blocked account agreement" referred to in the Security Agreements) which may be imposed on, asserted against or incurred by the Administrative Agent

(or any Affiliate thereof) in performing its duties hereunder or under any other Credit Document or in any way relating to or arising out of this Agreement or any other Credit Document; provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's (or such Affiliate's) bad faith, gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). No Lender shall be liable hereunder for another Lender's failure to satisfy its obligations under this paragraph.

10.07. The Administrative Agent in its Individual Capacity. With respect to its obligation to make Term Loans under this Agreement, the Administrative Agent shall have the rights and powers specified herein for a "Lender" and may exercise the same rights and powers as though it were not performing the duties specified herein; and the term "Lender," "Required Lenders," or any similar terms shall, unless the context clearly indicates otherwise, include the Administrative Agent in its respective individual capacities. The Administrative Agent and its Affiliates may accept deposits from, lend money to and generally engage in any kind of banking, investment banking, trust or other business with, or provide debt financing, equity capital or other services (including financial advisory services) to any Credit Party or any Affiliate of any Credit Party (or any Person engaged in a similar business with any Credit Party or any Affiliate thereof) as if they were not performing the duties specified herein, and may accept fees and other consideration from any Credit Party or any Affiliate of any Credit Party for services in connection with this Agreement, which may or may not be publicly disclosed and otherwise without having to account for the same to the Lenders.

10.08. Holders. The Administrative Agent may deem and treat the Lender specified in the Register with respect to any amount owing hereunder as the owner thereof for all purposes hereof unless and until a written notice of the assignment, transfer or endorsement thereof, as the case may be, shall have been filed with the Administrative Agent.

10.09. Resignation by the Administrative Agent. (a) The Administrative Agent may resign from the performance of all its respective functions and duties hereunder and/or under the other Credit Documents at any time by giving 30 days' prior written notice to the Lenders and, unless an Event of Default exists, the Borrower. Such resignation shall take effect upon the appointment of a successor Administrative Agent pursuant to clauses (b) and (c) below or as otherwise provided below.

(b) Upon any such notice of resignation by the Administrative Agent, the Required Lenders, with the prior consent of the Borrower, which shall not be unreasonably withheld or delayed, shall appoint a successor Agent hereunder or thereunder to fulfil the same role as the resigning Administrative Agent (provided that the Borrower's consent shall not be required if an Event of Default then exists) and in no event shall any such successor Administrative Agent be a Disqualified Lender.

(c) If no successor Administrative Agent has been appointed pursuant to clause (b) above by the 30th day after the date such notice of resignation was given by the Administrative Agent, the Administrative Agent's resignation shall become effective and the Required Lenders shall thereafter perform all the duties of the Administrative Agent hereunder and/or under any

other Credit Document until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided above.

(d) Upon a resignation of the Administrative Agent pursuant to this Section 10.09, the Administrative Agent shall (i) subject to its rights under Section 10.04, take such action as may be reasonably necessary to assign to the successor Administrative Agent tis rights as Administrative Agent under the Credit Documents and (ii) remain indemnified to the extent provided in this Agreement and the other Credit Documents and the provisions of this Section 10 (and the analogous provisions of the other Credit Documents), in each case in accordance with this Agreement as in effect on the date of such resignation, shall continue in effect for the benefit of the Administrative Agent for all of its actions and inactions while serving as the Administrative Agent.

10.10. Collateral Matters. (a) Each Lender authorizes and directs the Administrative Agent to enter into the Security Documents for the benefit of the Lenders and the other Secured Creditors. Each Lender hereby agrees that, except as otherwise set forth herein, any action taken by the Required Lenders in accordance with the provisions of this Agreement or the Security Documents, and the exercise by the Required Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. The Administrative Agent is hereby authorized on behalf of all of the Lenders, without the necessity of any notice to or further consent from any Lender, from time to time prior to an Event of Default, to take any action with respect to any Collateral or Security Documents which may be necessary to perfect and maintain perfected the security interest in and liens upon the Collateral granted pursuant to the Security Documents.

(b) The Lenders hereby authorize the Administrative Agent, at its option and in its discretion, to release any Lien granted to or held by the Administrative Agent upon any Collateral and release any Guarantor from its obligations under the Guaranty, in each case, in accordance with Section 11.21. Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Administrative Agent's authority to release particular types or items of Collateral or a Subsidiary Guarantor from its obligations under the Guaranty pursuant to this Section 10.10 and Section 11.21.

(c) The Administrative Agent shall have no obligation whatsoever to the Lenders or to any other Person to assure that the Collateral exists or is owned by any Credit Party or is cared for, protected or insured or that the Liens granted to the Administrative Agent herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Administrative Agent in this Section 10.10 or in any of the Security Documents, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Administrative Agent may act in any manner it may deem appropriate, in its sole discretion, given the Administrative Agent's own interest in the Collateral as one of the Lenders and that the Administrative Agent shall have no duty or liability whatsoever to the Lenders, except for its bad faith, gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).

10.11. Delivery of Information. The Administrative Agent shall not be required to deliver to any Lender originals or copies of any documents, instruments, notices, communications or other information received by the Administrative Agent from any Credit Party, any Subsidiary, the Required Lenders, any Lender or any other Person under or in connection with this Agreement or any other Credit Document except (a) as specifically provided in this Agreement or any other Credit Document and (b) as specifically requested from time to time in writing by any Lender with respect to a specific document, instrument, notice or other written communication received by and in the possession of the Administrative Agent at the time of receipt of such request and then only in accordance with such specific request.

10.12. Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub-agents appointed by the Administrative Agent (including Brookfield or any of its Affiliates) or appointed by any Lenders pursuant to any agreement among the Lenders to which the Administrative Agent is a party. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective officers, directors, employees, representatives, agents, sub-agents or advisors thereof. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with bad faith, gross negligence or willful misconduct in the selection of such sub-agents.

10.13. No Reliance on the Administrative Agent's Customer Identification Program; Certifications From Banks and Participants; the PATRIOT Act.

(a) Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on the Administrative Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other requirements imposed by the PATRIOT Act or the regulations issued thereunder, including the regulations set forth in 31 CFR § 103.121, as hereafter amended or replaced ("**CIP Regulations**"), or any other Laws relating to the prevention of money laundering or the equivalent in any applicable jurisdiction, including any programs involving any of the following items relating to or in connection with any of the Credit Parties, their Affiliates or their agents, the Credit Documents or the transactions hereunder or contemplated hereby: (1) any identity verification procedures, (2) any recordkeeping, (3) comparisons with government lists, (4) customer notices or (5) other procedures required under the CIP Regulations or other regulations issued under the PATRIOT Act. Each Lender, Affiliate, participant or assignee subject to Section 326 of the PATRIOT Act will perform the measures necessary to satisfy its own responsibilities under the CIP Regulations or any equivalent provisions in any applicable jurisdiction.

(b) Each Lender or assignee or participant of a Lender that is not incorporated under the laws of the United States or a state thereof (and is not excepted from the certification requirement contained in Section 313 of the PATRIOT Act and the applicable regulations because it is both (i) an Affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country, and (ii) subject to supervision by a banking authority regulating such affiliated depository institution or foreign bank) shall deliver to the Administrative Agent the certification, or, if applicable, recertification, certifying that such Lender

is not a "shell" and certifying to other matters as required by Section 313 of the PATRIOT Act and the applicable regulations: (1) within ten days after the Closing Date, and (2) as such other times as are required under the PATRIOT Act.

(c) The PATRIOT Act requires all financial institutions to obtain, verify and record certain information that identifies individuals or business entities which open an "**account**" with such financial institution. Consequently, the Administrative Agent or Lender may from time to time request, and each Credit Party shall provide to the Administrative Agent or Lender, the Borrower's name, address, tax identification number and/or such other identifying information as shall be reasonably necessary for Lender to comply with the PATRIOT Act and any other sanctions.

10.14. Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's

entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, or

(iv) (iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Credit Document or any documents related hereto or thereto).

Section 11 Miscellaneous.

11.01. Payment of Expenses, etc. (a) The Borrower hereby agrees to: (i) (A) whether or not the transactions herein contemplated are consummated, pay all reasonable and documented out-of-pocket costs and expenses of the Administrative Agent and its Affiliates, including the fees and expenses of the Administrative Agent's legal counsel and consultants (including Rothschild & Co. in its capacity as financial advisor to the Lenders) (but limited, in the case of legal fees and expenses, to the fees and expenses of (x) a single outside counsel to the Administrative Agent and the Lenders taken as a whole (which counsel shall be Weil, Gotshal & Manges LLP) and (y) if necessary, one local counsel to the Administrative Agent and the Lenders, taken as a whole, in each relevant jurisdiction (including Delaware, Canada, Nova Scotia/New Brunswick and Luxembourg) (which may include one firm of local counsel acting in multiple jurisdictions)), in connection with (1) the preparation, execution, delivery and administration of this Agreement and the other Credit Documents and the documents and instruments referred to herein and therein and any amendment, waiver or consent relating hereto or thereto, (2) [reserved] and (3) any due diligence review of Holdings, the Borrower, the other Guarantors and their respective Subsidiaries, (B) pay all reasonable and documented out-of-pocket costs and expenses of each of the Administrative Agent and Secured Creditors in connection with (1) the enforcement of this Agreement and the other Credit Documents and the documents and instruments referred to herein and therein and (2) any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or pursuant to any insolvency or bankruptcy proceedings (including, in each case, the fees and expenses of (X) a single outside counsel to the Administrative Agent and Secured Creditors (taken as a whole), (Y) in the case of an actual or potential conflict of interest, one additional counsel to all affected Persons (and, if necessary, one additional local counsel to all affected Persons in each relevant jurisdiction (including Delaware, Canada, Nova Scotia/New Brunswick and Luxembourg) (which may include one firm of local counsel acting in multiple jurisdictions)) and (Z) if necessary, one local counsel to the Administrative Agent and

Secured Creditors (taken as a whole) in each relevant jurisdiction (including Delaware, Canada, Nova Scotia/New Brunswick and Luxembourg) (which may include one firm of local counsel acting in multiple jurisdictions)), and (C) pay the reasonable, documented and invoiced out-of-pocket costs of obtaining a quality of earnings report on terms and in scope acceptable to the Borrower and the Administrative Agent, which shall be prepared by a nationally recognized accounting firm and other financial advisory services provider that is reasonably acceptable to the Borrower and the Administrative Agent and shall be made available to the Lenders (subject to the Borrower's approval of an estimate for such report, such approval not to be unreasonably withheld); (ii) without duplication of amounts payable pursuant to Section 4.04, pay and hold the Administrative Agent and each of the Lenders harmless from and against any and all present and future stamp, excise and other similar documentary taxes with respect to the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Credit Document, except any such taxes that are Other Connection Taxes imposed with respect to an assignment; and (iii) indemnify the Administrative Agent and each Lender, and each of their respective officers, directors, employees, partners, representatives, agents, Affiliates, trustees and advisors and the respective successors and permitted assigns of the foregoing (each, an "**Indemnified Person**") from and hold each of them harmless against any and all liabilities, obligations (including removal or remedial actions), losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements (including reasonable and documented attorneys' and consultants' fees and disbursements) incurred by, imposed on or assessed against any of them as a result of, or arising out of, or in any way related to, or by reason of entering into and/or performance of this Agreement or any other Credit Document or the use of the proceeds of any Term Loans hereunder or the consummation of the Transactions or any other transactions contemplated herein or in any other Credit Document or the exercise of any of their rights or remedies provided herein or in the other Credit Documents or any claim, litigation, investigation or proceeding relating to any of the foregoing (each, a "**Proceeding**"), regardless of whether any Indemnified Person is a party thereto or whether such Proceeding is brought by any Credit Party, any of their Affiliates or any third party, including, without limitation, (A) the reasonable and documented fees and expenses of (x) a single outside counsel to the Indemnified Persons, (y) in the case of an actual or potential conflict of interest, one additional counsel to all affected Indemnified Persons (and, if necessary, one additional local counsel to all affected Indemnified Persons in each relevant jurisdiction (which may include one firm of local counsel acting in multiple jurisdictions) and (z) if necessary, one local counsel to the Indemnified Persons in each relevant jurisdiction (including Delaware, Canada, Nova Scotia/New Brunswick and Luxembourg) (which may include one firm of local counsel acting in multiple jurisdictions)), or (B) the actual or alleged presence of Hazardous Materials in the air, surface water or groundwater or on the surface or subsurface of any Real Property at any time owned, leased or operated by Holdings or any of its Subsidiaries, the generation, storage, transportation, handling or disposal of Hazardous Materials by Holdings or any of its Subsidiaries at any location, whether or not owned, leased or operated by Holdings or any of its Subsidiaries, the non-compliance by Holdings or any of its Subsidiaries with any Environmental Law (including applicable permits thereunder) applicable to any Real Property, or any Environmental Claim asserted against Holdings, any of its Subsidiaries or any Real Property at any time owned, leased or operated by Holdings or any of its Subsidiaries, including, in each case, the reasonable and documented fees and disbursements of counsel and other consultants incurred in connection with any such investigation, litigation or other proceeding (but excluding any losses, liabilities, claims,

damages or expenses to the extent incurred by reason of (x) the bad faith, gross negligence or willful misconduct of any Indemnified Person (as determined by a court of competent jurisdiction in a final and non-appealable decision), (y) a material breach of any obligations under any Credit Document by any Indemnified Person (as determined by a court of competent jurisdiction in a final and non-appealable decision) or (z) any dispute solely among Indemnified Persons other than any claims against an Indemnified Person in its capacity or in fulfilling its role as an administrative agent or arranger or any similar role under the Credit Documents and other than any claims arising out of any act or omission of the Borrower or any of its Affiliates (as determined by a court of competent jurisdiction in a final and non-appealable decision)). To the extent that the undertaking to indemnify, pay or hold harmless the Administrative Agent, any Lender or any other Indemnified Person set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, the Borrower shall make the maximum contribution to the payment and satisfaction of each of the indemnified liabilities that is permissible under applicable law. Except as set forth in clause (ii) in the first sentence of this Section 11.01(a), this Section 11.01(a) shall not apply with respect to Excluded Taxes or Indemnified Taxes other than any Taxes that represent losses, claims or damages arising from any non-Tax claim.

(b) To the full extent permitted by applicable law, each of Holdings and the Borrower shall not assert, and hereby waives, any claim against any Indemnified Person, on any theory of liability, for special, indirect, consequential or incidental damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Term Loan or the use of the proceeds thereof. No Indemnified Person shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby, except to the extent the liability of such Indemnified Person results from such Indemnified Person's bad faith, gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).

11.02. Right of Setoff. In addition to any rights now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, upon the occurrence and during the continuance of an Event of Default, the Administrative Agent and each Lender is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to any Credit Party or to any other Person, any such notice being hereby expressly waived to the extent permitted by applicable law, to set off and to appropriate and apply any and all deposits (general or special but other than Excluded Accounts) and any other Indebtedness at any time held or owing by the Administrative Agent, or such Lender or any Affiliate, branch or agency thereof (including by branches and agencies of the Administrative Agent, or such Lender or Affiliate wherever located) to or for the credit or the account of Holdings or any of its Subsidiaries against and on account of the Obligations and liabilities of the Credit Parties to the Administrative Agent or such Lender under this Agreement or under any of the other Credit Documents, including all interests in Obligations purchased by such Lender pursuant to Section 11.04(b), and all other claims of any nature or description arising out of or connected with this Agreement or any other Credit Document, irrespective of whether or not the Administrative Agent, or such Lender shall have made any demand hereunder and although said Obligations, liabilities or claims, or any of them, shall be contingent or unmatured. Each Lender agrees to

notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

11.03. Notices. Except as otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing (including via email, fax or other electronic communication) and mailed, emailed, faxed or otherwise delivered: if to any Credit Party, at the address specified opposite its signature below or in the other relevant Credit Documents; if to any Lender, at its address specified to the Administrative Agent; and if to the Administrative Agent, at the Notice Office; or, as to any Credit Party or the Administrative Agent, at such other address as shall be designated by such party in a written notice to the other parties hereto and, as to each Lender, at such other address as shall be designated by such Lender in a written notice to the Borrower and the Administrative Agent. All such notices and communications shall, when mailed or sent by overnight courier, be effective when (x) deposited in the mails or delivered to the overnight courier, as the case may be or (y) upon return receipt when delivered by fax or e-mail. Notwithstanding the foregoing, notices and communications to the Administrative Agent and any Credit Party shall not be effective until received by the Administrative Agent, the Borrower or any Credit Party, as the case may be.

11.04. Benefit of Agreement; Assignments; Participations. (a) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; no Credit Party may assign or transfer any of its rights, obligations or interests hereunder unless expressly permitted by the terms of this Agreement or with the prior written consent of the Lenders. Any Lender may, without the consent of the Borrower, the Administrative Agent, or any other Lender, sell participations to any Person (other than to any Disqualified Lender, any Credit Party or any of its respective Affiliates, or any natural Person) in all or any portion of such Lender's rights and obligations under this Agreement (including all or any portion of its commitments and the Loans owing to it). Although any Lender may transfer, assign or grant participations in its rights hereunder, such Lender shall remain a "Lender" for all purposes hereunder (and may not transfer or assign all or any portion of its Commitments or Obligations hereunder except as provided in Section 11.04(b)) and the transferee, assignee or participant, as the case may be, shall not constitute a "Lender" hereunder and, provided, that no Lender shall transfer or grant any participation under which the participant shall have rights to approve any amendment to or waiver of this Agreement or any other Credit Document except to the extent such amendment or waiver would (i) extend the final scheduled maturity of any Term Loan or Term Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof (it being understood that any amendment or modification to the financial definitions in this Agreement or to Section 1.02(c) shall not constitute a reduction in the rate of interest or fees payable hereunder), or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Total Commitments shall not constitute a change in the terms of such participation, and that an increase in any Commitment (or the available portion thereof) or Term Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (ii) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under this Agreement (but solely to the extent the consent of the Lenders is required

to effect such assignment or transfer) or (iii) release all or substantially all of the Collateral under all of the Security Documents (except as expressly provided in the Credit Documents) supporting the Term Loans hereunder in which such participant is participating. In the case of any such participation, the participant shall not have any rights under this Agreement or any of the other Credit Documents (the participant's rights against such Lender in respect of such participation to be those set forth in the agreement executed by such Lender in favor of the participant relating thereto) and all amounts payable by the Borrower hereunder shall be determined as if such Lender had not sold such participation. Notwithstanding the foregoing, no assignments or participations shall be made to any Disqualified Lenders;

(b) Notwithstanding the foregoing, any Lender (or any Lender together with one or more other Lenders) may:

(i) assign all or a portion of its Commitments and related outstanding Obligations (or, if the Commitments have terminated, outstanding Obligations) hereunder to (A) any Affiliate of such Lender, (B) one or more other Lenders or any Affiliate of any such other Lender (provided that any fund that invests in loans and is managed or advised by the same investment advisor of another fund which is a Lender (or by an Affiliate of such investment advisor) shall be treated as an Affiliate of such other Lender for the purposes of this sub-clause (b)(i)(B)), (C) any commercial bank, (D) any pension fund, insurance fund and/or similar type of institutional investors that are limited partners and/or prospective limited partners of the Administrative Agent or any of its Affiliates or (E) in the case of any Lender that is a fund that invests in loans, any other fund that invests in loans and is managed or advised by the same investment advisor of any Lender or by an Affiliate of such investment advisor; or

(ii) assign all, or if less than all, a portion equal to at least $1,000,000 in the aggregate for the assigning Lender or assigning Lenders, of such Commitments and related outstanding Obligations (or, if the Commitments have terminated, outstanding Obligations) hereunder to one or more Eligible Transferees (treating any fund that invests in loans and any other fund that invests in loans and is managed or advised by the same investment advisor of such fund or by an Affiliate of such investment advisor as a single Eligible Transferee), each of which assignees shall become a party to this Agreement as a Lender by execution of an Assignment and Assumption Agreement, provided that (A) at such time, Schedule 1.01 shall be deemed modified to reflect the Commitments and/or outstanding Term Loans, as the case may be, of such new Lender and of the existing Lenders after giving effect to such assignment, (B) upon the surrender of the relevant Term Notes, if any, by the assigning Lender (or, upon such assigning Lender's indemnifying the Borrower for any lost Term Note pursuant to a customary indemnification agreement) new Term Notes will be issued, at the Borrower's expense, to such new Lender and to the assigning Lender upon the request of such new Lender or assigning Lender, such new Term Notes to be in conformity with the requirements of Section 2.04 (with appropriate modifications) to the extent needed to reflect the revised Commitments and/or outstanding Term Loans after giving effect to such assignment, as the case may be, (C) the consent of the Administrative Agent and

the Borrower shall be required in connection with any such assignment pursuant to this clause (ii) (such consent, in the case of the Administrative Agent or the Borrower, not to be unreasonably withheld, delayed or conditioned), provided that (i) the Borrower shall be deemed to have consented to any such assignment unless they shall object thereto by written notice to the Administrative Agent within five Business Days after having received notice thereof and (ii) the consent of the Borrower shall not be required if an Event of Default has occurred and is continuing, (D) the Administrative Agent shall receive at the time of each such assignment, from the assigning or assignee Lender, the payment of a non-refundable assignment fee of $3,500 and (E) no such transfer or assignment will be effective until recorded by the Administrative Agent on the Register pursuant to Section 11.14 (and the Administrative Agent agrees to promptly record any assignment made in accordance with this paragraph).

To the extent of any assignment pursuant to this Section 11.04(b), the assigning Lender shall be relieved of its obligations hereunder with respect to its assigned Commitments and outstanding Term Loans. At the time of each assignment pursuant to this Section 11.04(b) to a Person which is not already a Lender hereunder, the respective assignee Lender shall, to the extent legally entitled to do so, provide to the Borrower the appropriate Internal Revenue Service Forms (and, if applicable, a Tax Form Certificate) described in Section 4.04(c). To the extent that an assignment of all or any portion of a Lender's Commitments and related outstanding Obligations pursuant to this Section 11.04(b) would, at the time of such assignment, result in increased costs under Section 2.09 or 4.04 from those being charged by the respective assigning Lender prior to such assignment, then the Borrower shall not be obligated to pay such increased costs, Indemnified Taxes or additional amounts (although the applicable Credit Party, in accordance with and pursuant to the other provisions of this Agreement, shall be obligated to pay any other increased costs, Indemnified Taxes or additional amount of the type described above resulting from changes after the date of the respective assignment, subject to the limitations and exceptions in this Agreement). Notwithstanding the foregoing, no assignments or participations shall be made to any Disqualified Lenders.

(c) Notwithstanding anything to the contrary herein, any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (other than to any Disqualified Lender or natural person) (without the consent of, or notice to or any other action by, any other party hereto) to secure obligations of such Lender or any of its Affiliates to any Person, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank having jurisdiction over such Lender, and, for the avoidance of doubt, this Section 11.04 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest pursuant to this clause (c) shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(d) Any Lender that assigns all of its Commitments and/or Term Loans hereunder in accordance with Section 11.04(b) shall cease to constitute a "Lender" hereunder, except with respect to indemnification provisions under this Agreement (including Sections 2.09, 2.10, 4.04, 10.06, 11.01 and 11.07), which shall survive as to such assigning Lender.

(e) The Borrower also agrees that each participant shall be entitled to the benefits of Sections 2.09 and 4.04 as if it were a Lender (provided, that such participant (A) agrees to be subject to the provisions of Section 2.11 and (B) complies with the requirements of Section 4.04(c) as if it were a Lender); provided, further, that no participant shall receive any greater compensation pursuant to Sections 2.09 or 4.04 than would have been paid to the participating Lender if no participation had been sold, except to the extent such entitlement to receive a greater payment results from a change in law that occurs after the participant acquired the applicable participation. Each Lender that sells a participant agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.11 with respect to any participant. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Holdings and Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Term Loans or other obligations under the Credit Documents (the "**Participant Register**"); provided, that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent shall have no responsibility for maintaining a Participant Register.

(f) In the event of a transfer, assignment, novation or amendment of the rights and/or the obligations under this Agreement and any other Credit Documents, all security interests, guarantees and privileges created under or in connection with the Credit Documents shall automatically and without any formality be preserved for the benefit of the Administrative Agent, the Eligible Transferee and the other Lenders for the purpose of the provisions of articles 1278 to 1281 of the Luxembourg Civil Code or any other purposes.

11.05. No Waiver; Remedies Cumulative. No failure or delay on the part of the Administrative Agent or any Lender in exercising any right, power or privilege hereunder or under any other Credit Document and no course of dealing between the Borrower or any other Credit Party and the Administrative Agent or any Lender shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights, powers and remedies herein or in any other Credit Document expressly provided are cumulative and not exclusive of any rights, powers or remedies which the Administrative Agent or any Lender would otherwise have. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Administrative Agent or any Lender to any other or further action in any circumstances without notice or demand.

11.06. Payments Pro Rata. (a) Except as otherwise provided in this Agreement, the Administrative Agent agrees that promptly after its receipt of each payment from or on behalf of

the Borrower in respect of any Obligations hereunder, the Administrative Agent shall distribute such payment to the Lenders entitled thereto (other than (i) if any Lender that has consented in writing to waive its pro rata share of any such payment, in which case such amounts shall be reallocated on a pro rata basis among the other Lenders or (ii) if all Lenders shall have consented in writing to waive their pro rata share of such payment, such payment shall be returned to the Borrower) pro rata based upon their respective shares, if any, of the Obligations with respect to which such payment was received.

(b) Except as otherwise provided herein, each of the Lenders agrees that, if it should receive any amount hereunder (whether by voluntary payment, by realization upon security, by the exercise of the right of setoff or banker's lien, by counterclaim or cross action, by the enforcement of any right under the Credit Documents, or otherwise) by or on behalf of a Credit Party, which is applicable to the payment of the principal of, or interest on, the Term Loans, of a sum which with respect to the related sum or sums received by other Lenders is in a greater proportion than the total of such Obligation then owed and due to such Lender bears to the total of such Obligation then owed and due to all of the Lenders immediately prior to such receipt, then such Lender receiving such excess payment shall purchase for cash without recourse or warranty from the other Lenders an interest in the Obligations of the respective Credit Party to such Lenders in such amount as shall result in a proportional participation by all the Lenders in such amount; provided that if all or any portion of such excess amount is thereafter recovered from such Lenders, such purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest.

11.07. Currency Indemnity. If, for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Agreement or any of the other Credit Documents, it becomes necessary to convert into the currency of such jurisdiction (the "**Judgment Currency**") any amount due under this Agreement or any of the other Credit Documents in any currency other than the Judgment Currency (the "**Currency Due**"), then conversion shall be made at the Exchange Rate prevailing on the Business Day before the day on which judgment is given. In the event that there is a change in the Exchange Rate prevailing between the Business Day before the day on which the judgment is given and the date of receipt by the Administrative Agent of the amount due, the Borrower will, on the date of receipt by the Administrative Agent, pay such additional amounts, if any, or be entitled to receive reimbursement of such amount, if any, as may be necessary to ensure that the amount received by the Administrative Agent on such date is the amount in the Judgment Currency which when converted at the Exchange Rate prevailing on the date of receipt by the Administrative Agent is the amount then due under this Agreement or any of the other Credit Documents in the Currency Due. If the amount of the Currency Due which the Administrative Agent is able to purchase is less than the amount of the Currency Due originally due to it, the Borrower shall indemnify and save the Administrative Agent harmless from and against loss or damage arising as a result of such deficiency. The indemnity contained herein shall constitute an obligation separate and independent from the other obligations contained in this Agreement and any of the other Credit Documents, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Administrative Agent from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum in respect of an amount due under this Agreement, any of the other Credit Documents or under any judgment or order.

11.08. GOVERNING LAW; SUBMISSION TO JURISDICTION; VENUE; WAIVER OF JURY TRIAL. (a) THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL, EXCEPT AS OTHERWISE PROVIDED IN ANY MORTGAGE OR ANY SECURITY DOCUMENT, BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION) AND TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE. EACH PARTY HERETO HEREBY IRREVOCABLY SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS TO WHICH IT IS A PARTY, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO THE EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT, AND IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK LOCATED IN THE BOROUGH OF MANHATTAN, THE COURTS OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, AND APPELLATE COURTS FROM ANY THEREOF (OR IN THE CASE OF ANY SECURITY DOCUMENT, PROCEEDINGS MAY ALSO BE BROUGHT BY THE ADMINISTRATIVE AGENT IN THE STATE OR OTHER JURISDICTION IN WHICH THE RESPECTIVE COLLATERAL IS LOCATED OR ANY OTHER RELEVANT JURISDICTION). EACH PARTY HERETO HEREBY FURTHER IRREVOCABLY WAIVES ANY CLAIM THAT ANY SUCH COURTS LACK PERSONAL JURISDICTION OVER SUCH PARTY, AND AGREES NOT TO PLEAD OR CLAIM, IN ANY LEGAL ACTION PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT BROUGHT IN ANY OF THE AFORE-MENTIONED COURTS, THAT SUCH COURTS LACK PERSONAL JURISDICTION OVER SUCH PARTY. EACH PARTY HERETO FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO SUCH PARTY AT ITS ADDRESS SET FORTH OPPOSITE ITS SIGNATURE BELOW, SUCH SERVICE TO BECOME EFFECTIVE 30 DAYS AFTER SUCH MAILING. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY OBJECTION TO SUCH SERVICE OF PROCESS AND FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY ACTION OR PROCEEDING COMMENCED HEREUNDER OR UNDER ANY OTHER CREDIT DOCUMENT THAT SERVICE OF PROCESS WAS IN ANY WAY INVALID OR INEFFECTIVE. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE ADMINISTRATIVE AGENT, ANY LENDER OR THE HOLDER OF ANY TERM NOTE TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST HOLDINGS OR THE BORROWER IN ANY OTHER JURISDICTION.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT BROUGHT IN THE COURTS REFERRED TO IN CLAUSE (a) ABOVE AND HEREBY

FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER CREDIT DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

11.09. Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Delivery of an executed counterpart hereof by facsimile or electronic transmission shall be as effective as delivery of any original executed counterpart hereof.

11.10. Headings Descriptive. The headings of the several sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

11.11. Amendment or Waiver; etc. (a) Neither this Agreement nor any other Credit Document, nor any terms hereof or thereof may be amended, modified, changed, waived, discharged or terminated unless such amendment, modification, change, waiver, discharge or termination is in writing signed by the respective Credit Parties party hereto or thereto and the Required Lenders (although additional parties may be added to (and annexes may be modified to reflect such additions), and Subsidiaries of Holdings may be released from, the Guaranty and the Security Documents in accordance with the provisions hereof and thereof without the consent of the other Credit Parties party thereto or the Required Lenders), provided that no such change, waiver, discharge or termination shall, without the written consent of each Lender directly and adversely affected thereby, (i) extend the final scheduled maturity of any Term Loan, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with the waiver of applicability of any post-default increase in interest rates), or reduce (or forgive) the principal amount thereof, any Exit Fee or other amount payable hereunder, or change Section 4.03 (it being understood that amendments to, or waivers or modifications of any conditions precedent, representations, warranties, covenants, Defaults or Events of Default shall not constitute an extension of the maturity, any scheduled installment, or the scheduled date of payment of the Term Loans, interest or fees of any Lender), (ii) release or subordinate all, substantially all or a material portion of the Collateral, or release all, substantially all or a material portion of the value of the guarantees of the Guarantors under any Guaranty (in each case, except as expressly provided in the Credit Documents), (iii) amend, modify or waive any provision of this Section 11.11(a), (iv) reduce the voting threshold specified in the definition of "Required Lenders", (v) change Section 11.06 hereof, Section 17(d) of either Security Agreement or any other analogous section in any other Security Document, in a manner that would alter the sharing or application of payments required thereby without the written consent of each Lender directly affected thereby, (vi) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under this Agreement except as expressly provided for herein or (vii) except as provided by operation of law and otherwise permitted hereunder, amend or modify (x) the DIP Superpriority Claims status of

the Obligations under the Orders or under any Credit Document or (y) the priority of the Obligations granted by the CCAA DIP Charge; provided, further, that no such amendment, modification, change, waiver, discharge or termination shall (1) increase the Commitments of any Lender over the amount thereof then in effect without the written consent of such Lender (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the Total Commitments shall not constitute an increase of the Commitment of any Lender, and that an increase in the available portion of any Commitment of any Lender shall not constitute an increase of the Commitment of such Lender), (2) without the written consent of the Administrative Agent, amend, modify or waive any provision of Section 10 or any other provision of this Agreement or any other Credit Document as same relates to the rights or obligations of the Administrative Agent or (3) without the written consent of Administrative Agent, amend, modify or waive any provision relating to the rights or obligations of the Administrative Agent.

(b) Notwithstanding the foregoing, technical and conforming modifications to the Credit Documents may be made solely with the written consent of the Borrower and the Administrative Agent to the extent necessary to cure any ambiguity, omission, defect or inconsistency that is not materially adverse to the interests of the Lenders. The Lenders acknowledge and agree that the Administrative Agent's discretion shall be conclusive and binding.

11.12. Survival. All indemnities set forth herein including in Sections 2.09, 2.10, 4.04, 10.06 and 11.01 shall survive the execution, delivery and termination of this Agreement and the making and repayment of the Obligations.

11.13. Domicile of Term Loans. Each Lender may transfer and carry its Term Loans at, to or for the account of any office, Subsidiary or Affiliate of such Lender. Notwithstanding anything to the contrary contained herein, to the extent that a transfer of Term Loans pursuant to this Section 11.13 would, at the time of such transfer, result in increased costs under Section 2.09, 2.10 or 4.04 from those being charged by the respective Lender prior to such transfer, then the Borrower shall not be obligated to pay such increased costs (although the Borrower shall be obligated to pay any other increased costs of the type described above resulting from changes occurring after the date of the respective transfer).

11.14. Register. The Borrower and Holdings hereby designate the Administrative Agent to serve as their non-fiduciary agent, solely for purposes of this Section 11.14, to maintain a register (the "**Register**") at one of its offices in the United States on which it will record the Commitments from time to time of each of the Lenders, the Term Loans made by each of the Lenders, the stated interest thereon and each repayment in respect of the principal (and stated interest) amount of the Term Loans of each Lender. Failure to make any such recordation, or any error in such recordation, shall not affect the Borrower's obligations in respect of such Term Loans. With respect to any Lender, the transfer of the Commitments of such Lender and the rights to the principal of, and interest on, any Term Loan made pursuant to such Commitments shall not be effective until such transfer is recorded on the Register maintained by the Administrative Agent with respect to ownership of such Commitments and Term Loans and prior to such recordation all amounts owing to the transferor with respect to such Commitments and Term Loans shall remain owing to the transferor. The registration of assignment or transfer of all or part of any Commitments and Term Loans shall be recorded by the Administrative Agent on the Register only

upon the acceptance by the Administrative Agent of a properly executed and delivered Assignment and Assumption Agreement pursuant to Section 11.04(b). Coincident with the delivery of such an Assignment and Assumption Agreement to the Administrative Agent for acceptance and registration of assignment or transfer of all or part of a Term Loan, or as soon thereafter as practicable, the assigning or transferor Lender shall surrender the Term Note (if any) evidencing such Term Loan, and thereupon one or more new Term Notes in the same aggregate principal amount shall be issued to the assigning or transferor Lender and/or the new Lender at the request of any such Lender. The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. Each Lender shall be entitled to review the Register solely relating to such information that pertains specifically to such Lender and shall have no right to view any information that pertains to any other Lender. The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement.

11.15. Confidentiality. (a) Subject to the provisions of clause (b) of this Section 11.15, each Lender agrees that it will not disclose without the prior consent of the Borrower (other than to its employees, accountants, auditors, advisors, subsidiaries, Affiliates, consultants or counsel to the Administrative Agent, and any Lender if the Administrative Agent, or any such Lender or such Lender's holding or parent company in its sole discretion determines that any such party should have access to such information; provided such Persons shall be subject to the provisions of this Section 11.15 to the same extent as such Lender) any information with respect to Holdings or any of its Subsidiaries which is now or in the future will be furnished pursuant to this Agreement or any other Credit Document, provided that any Lender may disclose any such information (i) as has become generally available to the public other than by virtue of a breach of this Section 11.15(a) by the Administrative Agent, any Lender or any other party referred to in this Section 11.15(a), (ii) as may be required or reasonably appropriate by Law or in any report, statement or testimony submitted to any municipal, state, provincial, territorial or Federal regulatory body having or claiming to have jurisdiction over such Lender or to the Federal Reserve Board or the Federal Deposit Insurance Corporation or similar organizations (whether in the United States or elsewhere) or their successors, (iii) as may be required or reasonably appropriate in respect to any summons or subpoena or in connection with any litigation, (iv) in order to comply with any law, order, regulation or ruling applicable to such Lender, (v) to the Administrative Agent, (vi) to any direct or indirect contractual counterparty in any swap, hedge or similar agreement (or to any such contractual counterparty's professional advisor), so long as such contractual counterparty (or such professional advisor) agrees in writing to be bound by the provisions of this Section 11.15, (vii) to any prospective or actual transferee or participant in connection with any contemplated transfer or participation of any of the Term Loans or Commitments or any interest therein by such Lender, provided that such prospective transferee agrees in writing to be bound by the confidentiality provisions contained in this Section 11.15, (viii) to (A) any bank or financial institution and (B) S&P, Moody's, Fitch Ratings and/or other ratings agencies, in each case, as such Lender deems necessary or appropriate in connection with such Lender's obtaining financing; provided, however, that such financial institution or ratings agency shall be informed of the confidentiality of such information, (ix) to its investors or potential investors as such Lender reasonably deems necessary or appropriate; provided, however, that such investors or potential investors shall be informed of

the confidentiality of such information or (x) in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder; provided, that no disclosures of such information shall be made to any Disqualified Lenders; provided further, that unless specifically prohibited by applicable Law, each Lender and the Administrative Agent shall endeavor to notify Holdings of any request made to such Lender or the Administrative Agent, as applicable, for disclosure of any such non-public information prior to disclosure of such information and shall limit such disclosure to the extent necessary to comply with such request or demand.

(b) Each of Credit Party hereby acknowledges and agrees that each Lender may share with any of its Affiliates, and such Affiliates may share with such Lender, any information related to Holdings or any of its Subsidiaries (including any non-public customer information regarding the creditworthiness of Holdings and its Subsidiaries), provided such Persons shall be subject to the provisions of this Section 11.15 to the same extent as such Lender.

(c) Notwithstanding anything to the contrary contained in this Section 11.15, each Credit Party hereby agrees that the Administrative Agent and its Affiliates may publicize its services in connection with this Agreement and the other Credit Documents and the transactions contemplated herein and therein. In addition, each Credit Party hereby authorizes the Administrative Agent to place a customary "tombstone" advertisement regarding this Agreement and the transactions contemplated herein related hereto in publications of its choice at the Administrative Agent's expense.

11.16. Special Provisions Regarding Pledges of Equity Interests in, and Promissory Notes Owed by, Persons Not Organized in the United States or Canada or Pledges over Assets Not Located in the United States or Canada. The parties hereto acknowledge and agree that the provisions of the various Security Documents executed and delivered by the Credit Parties may require that, among other things, all promissory notes executed by, and capital stock and other Equity Interests in, various Persons owned by the respective Credit Party that constitute Collateral be pledged, and delivered for pledge. The parties hereto further acknowledge and agree that, to the extent required and in the manner contemplated by the Credit Documents, each Credit Party shall be required to take all actions under the laws of the jurisdiction in which such Credit Party is organized or where the respective assets are located to create and perfect the security interests granted pursuant to the various Security Documents and to take all actions under the laws of the United States (and any State thereof), Canada (and any province and territory thereof) and Luxembourg to perfect the security interests in the assets, capital stock and other Equity Interests of, and promissory notes issued by, any Person organized under the laws of such jurisdictions (in each case, to the extent such capital stock, other Equity Interests or promissory notes are owned by any Credit Party and constitute Collateral). Unless as otherwise required under Section 7.12 or requested on 30 days' prior notice by the Administrative Agent in accordance with Section 7.12(c), except as provided in the immediately preceding sentence, to the extent any Security Document requires or provides for the pledge of assets or promissory notes issued by, or capital stock or other Equity Interests in, any Person organized under the laws of a jurisdiction other than those specified in the immediately preceding sentence, no actions shall be required to be taken to perfect, under local law of the jurisdiction where the respective assets are located or of the Person who issued the respective promissory notes or whose capital stock or other Equity Interests are pledged, under the

Security Documents. All conditions and representations contained in this Agreement and the other Credit Documents shall be interpreted to give effect to the foregoing and so that they are not violated by reason of the failure to take actions under local law (but only with respect to capital stock of, other Equity Interests in, and promissory notes issued by, Persons organized under laws of jurisdictions other than the United States (and any State thereof) or Canada (and any Province thereof) or assets located in jurisdictions other than the United States (and any State thereof) or Canada (and any province thereof) not required to be taken in accordance with the provisions of this Section 11.16, provided that to the extent any representation or warranty would not be true because the foregoing actions were not taken, the respective representation or warranty shall be required to be true and correct in all material respects at such time as the respective action is required to be taken in accordance with the foregoing provisions of Section 7.12 and this Section 11.16.

11.17. PATRIOT Act and Canadian Anti-Money Laundering & Anti-Terrorism Compliance. (a) Each Lender subject to the PATRIOT Act hereby notifies each Credit Party that pursuant to the requirements of the PATRIOT Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies the Credit Parties and other information that will allow such Lender to identify the Credit Parties in accordance with the PATRIOT Act Beneficial Ownership Regulation. Each of Holdings and the Borrower agree to take promptly such actions and to promptly provide, upon request, such information, access to information and certifications regarding Holdings and the Subsidiaries that are required to enable the Administrative Agent and the Lenders to comply with all applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation the PATRIOT Act and the Beneficial Ownership Regulation.

(b) The Administrative Agent and its successors and assigns may be subject to Canadian Anti-Money Laundering & Anti-Terrorism Legislation and "know your customer" rules and regulations, and they hereby notify Holdings and each of its Subsidiaries that in order to comply with such legislation, rules and regulations, they may be, among other things, required to obtain, verify and record information pertaining to Holdings and the Subsidiaries, which information may relate to, among other things, the names, addresses, corporate directors, corporate registration numbers, corporate tax numbers, corporate shareholders and banking transactions of Holdings and the Subsidiaries. Each of Holdings and the Borrower agree to take promptly such actions and to promptly provide, upon request, such information, access to information and certifications regarding Holdings and the Subsidiaries that are required to enable the Administrative Agent and its successors and assigns to comply with such Canadian Anti-Money Laundering & Anti-Terrorism Legislation and "**know your customer**" rules and regulations. In addition, and to the extent they are required at law to do so, each of Holdings and the Borrower agrees to promptly comply with its obligations under Canadian Anti-Money Laundering & Anti-Terrorism Legislation.

11.18. [Reserved].

11.19. Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Credit Document, the interest paid or agreed to be paid under the Credit Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "**Maximum Rate**"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds

the Maximum Rate, the excess interest shall be applied to the principal of the Term Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

11.20. Entire Agreement. THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES WITH RESPECT TO THE MATTERS SET FORTH HEREIN AND THEREIN AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

11.21. Release. The Administrative Agent shall (and is authorized by each of the Secured Creditors under the Security Documents) to (1) release any Lien granted to or held by the Administrative Agent upon any Collateral (i) upon termination of the Commitments and payment and satisfaction of all of the Obligations (other than contingent, indemnification or reimbursement obligations not then due) at any time arising under or in respect of this Agreement or any of the other Credit Documents or the transactions contemplated hereby or thereby, (ii) constituting property being sold or otherwise disposed of (to Persons other than Holdings and its Subsidiaries) upon the sale or other disposition thereof in compliance with Section 8.02, (iii) if approved, authorized or ratified in writing by the Required Lenders (or all of the Lenders hereunder, to the extent required by Section 11.11) or (iv) as otherwise may be expressly provided herein or in the relevant Security Documents, and (2) release any Guarantor from its obligations under the Guaranty (i) if such Person ceases to be a Subsidiary Guarantor as a result of a transaction expressly permitted under the Credit Documents, (ii) if approved, authorized or ratified in writing by the Required Lenders (or all of the Lenders hereunder, to the extent required by Section 11.11) or (iii) is, in each case, otherwise expressly permitted to be released from the Guaranty pursuant to the Credit Documents and release any applicable Liens on the assets or Equity Interests of such Guarantor.

11.22. [Reserved].

11.23. Limitations Act (Ontario). Notwithstanding the provisions of the Limitations Act, 2002 (Ontario), a claim may be brought on this Agreement at any time within 6 years from the date on which payment of the relevant Obligations is due pursuant hereto or, in the case of Obligations that are demand obligations, demand for payment of the relevant Obligations is made to the Borrower in accordance with the terms of this Agreement.

11.24. Quebec Security. For the purposes of the grant of security under the laws of the Province of Quebec which may now or in the future be required to be provided by any Credit Party governed by the laws of the Province of Quebec or which has its registered office, domicile, a place of business or assets situated in the Province of Quebec, the Administrative Agent is hereby irrevocably authorized and appointed to act as the hypothecary representative (within the meaning

of Article 2692 of the Civil Code of Québec) on behalf of all Secured Creditors in order to hold any hypothec granted under the laws of the Province of Quebec pursuant to any Canadian deed of hypothec as security for the Obligations and to exercise such rights and duties as are conferred upon a hypothecary representative under the relevant Canadian deed of hypothec and applicable laws (with the power to delegate any such rights or duties). Any person who becomes a Credit Party shall be deemed to have consented to and ratified the foregoing appointment of the Administrative Agent as hypothecary representative on behalf of all Secured Creditors. For greater certainty, the Administrative Agent, acting as hypothecary representative, shall have the same rights, powers, immunities, indemnities and exclusions from liability as are prescribed in favour of the Administrative Agent, which shall apply *mutatis mutandis*. Each successor Administrative Agent shall automatically (and without any further action) become the successor hypothecary representative for the purposes of such Canadian deeds of hypothec. If requested by the Administrative Agent, the applicable Credit Parties shall prepare and register notices of replacement in each applicable register in which each hypothec created pursuant to such Canadian deeds of hypothec is registered (as contemplated by Article 2692 of the *Civil Code of Québec*).

11.25. Termination Prior to Closing Date. Notwithstanding anything else contained herein, Holdings or the Administrative Agent may terminate this Agreement prior to the Closing Date upon written notice to the other.

Section 12 [Reserved].

Section 13 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.

Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Credit Document may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

Section 14 Intercreditor Agreement.

REFERENCE IS MADE TO THE INTERCREDITOR AGREEMENT. EACH LENDER HEREUNDER AGREES THAT IT WILL BE BOUND BY AND WILL TAKE NO ACTION CONTRARY TO THE PROVISIONS OF THE INTERCREDITOR AGREEMENT AND AUTHORIZES AND INSTRUCTS THE ADMINISTRATIVE AGENT TO ENTER INTO THE INTERCREDITOR AGREEMENT AS THE "TERM LOAN AGENT" (OR EQUIVALENT) AND ON BEHALF OF SUCH LENDER. THE PROVISIONS OF THIS SECTION 14 ARE NOT INTENDED TO SUMMARIZE ALL RELEVANT PROVISIONS OF THE INTERCREDITOR AGREEMENT. REFERENCE MUST BE MADE TO THE INTERCREDITOR AGREEMENT ITSELF TO UNDERSTAND ALL TERMS AND CONDITIONS THEREOF. EACH LENDER IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS AND REVIEW OF THE INTERCREDITOR AGREEMENT AND THE TERMS AND PROVISIONS THEREOF, AND NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS AFFILIATES MAKES ANY REPRESENTATION TO ANY LENDER AS TO THE SUFFICIENCY OR ADVISABILITY OF THE PROVISIONS CONTAINED IN SUCH INTERCREDITOR AGREEMENT. THE FOREGOING PROVISIONS ARE INTENDED AS AN INDUCEMENT TO THE LENDERS UNDER THE DIP ABL CREDIT AGREEMENT TO EXTEND CREDIT THEREUNDER AND SUCH LENDERS ARE INTENDED THIRD-PARTY BENEFICIARIES OF SUCH PROVISIONS AND THE PROVISIONS OF THE INTERCREDITOR AGREEMENT.

Notwithstanding anything herein to the contrary, each of (i) the Obligations of the Credit Parties under this Agreement or any other Credit Document, (ii) the Liens and security interests granted to the Administrative Agent for the benefit of the Secured Creditors pursuant to this Agreement or any other Credit Document (including priority thereof), (iii) the release of Collateral from the Lien granted and created hereby or thereby and (iv) the exercise of any right or remedy by the Administrative Agent hereunder or thereunder are, in each case, subject to the provisions of the Intercreditor Agreement. In the event of any conflict or inconsistency between the provisions of the Intercreditor Agreement and this Agreement, the provisions of the Intercreditor Agreement shall control. In furtherance of the foregoing, notwithstanding anything to the contrary set forth herein, until payment and performance, in full, of the Obligations (other than contingent, indemnification or reimbursement obligations not then due) has occurred, to the extent that any Credit Party is required to give physical possession or control (within the meaning of the UCC or the PPSA, as applicable) over any Collateral (as defined in the DIP ABL Credit Agreement) to the Administrative Agent or a Lender under this Agreement or any of the other Credit Documents, such requirement to give possession or control (within the meaning of the UCC or the PPSA, as applicable) shall be satisfied if such Collateral (as defined in the DIP ABL Credit Agreement) is delivered to and held by the DIP ABL Agent, in accordance with the Intercreditor Agreement and such action shall be deemed satisfied to the extent undertaken with respect to the DIP ABL Agent, as the case may be.

Exhibit C

Priority Waterfall

DIP Facilities Lien Priority[1]

		US		Canada	
		Interim Order	**Final Order**	**Initial Application**	**Comeback Hearing**
1.	**DIP ABL Priority Collateral**	1. Carve Out 2. Permitted Prior Liens 3. DIP ABL Liens 4. ABL Adequate Protection Liens 5. Prepetition ABL Credit Agreement Liens 6. DIP Term Loan Liens 7. Term Loan Adequate Protection Liens 8. Prepetition Term Loan Credit Agreement Liens	Same	1. Administration Charge 2. Directors' Charge 3. KERP Charge 4. DIP ABL Lenders' Charge 5. Prepetition ABL Credit Agreement Liens 6. DIP Term Lenders' Charge 7. Prepetition Term Loan Credit Agreement Liens 8. Intercompany Charge	1. Administration Charge 2. Directors' Charge 3. KERP Charge 4. DIP ABL Lenders' Charge 5. Prepetition ABL Credit Agreement Liens 6. DIP Term Lenders' Charge 7. Prepetition Term Loan Credit Agreement Liens 8. Intercompany Charge
2.	**DIP Term Loan Priority Collateral**	1. Carve Out 2. Permitted Prior Liens 3. DIP Term Loan Liens 4. Term Loan Adequate Protection Liens 5. Prepetition Term Loan Credit Agreement Liens 6. DIP ABL Liens 7. ABL Adequate Protection Liens 8. Prepetition ABL Credit Agreement Liens	Same	1. Administration Charge 2. Directors' Charge 3. KEIP Charge 4. DIP Term Lenders' Charge 5. Prepetition Term Loan Credit Agreement Liens 6. DIP ABL Lenders' Charge 7. Prepetition ABL Credit Agreement Liens 8. Intercompany Charge	1. Administration Charge 2. Directors' Charge 3. KEIP Charge 4. DIP Term Lenders' Charge 5. Prepetition Term Loan Credit Agreement Liens 6. DIP ABL Lenders' Charge 7. Prepetition ABL Credit Agreement Liens 8. Intercompany Charge
3.	**Proceeds of Avoidance Actions**	N/A	1. Carve Out 2. DIP ABL Liens / Term Loan DIP Liens (*pari passu*) 3. Term Loan Adequate Protection Liens / ABL Adequate Protection Liens (*pari passu*) 4. Prepetition Term Loan Credit Agreement Liens / Prepetition ABL Credit Agreement Liens (*pari passu*)	N/A	N/A

[1] Capitalized terms used herein have the meanings used in the Interim Order or the CCAA Initial Order, as applicable.

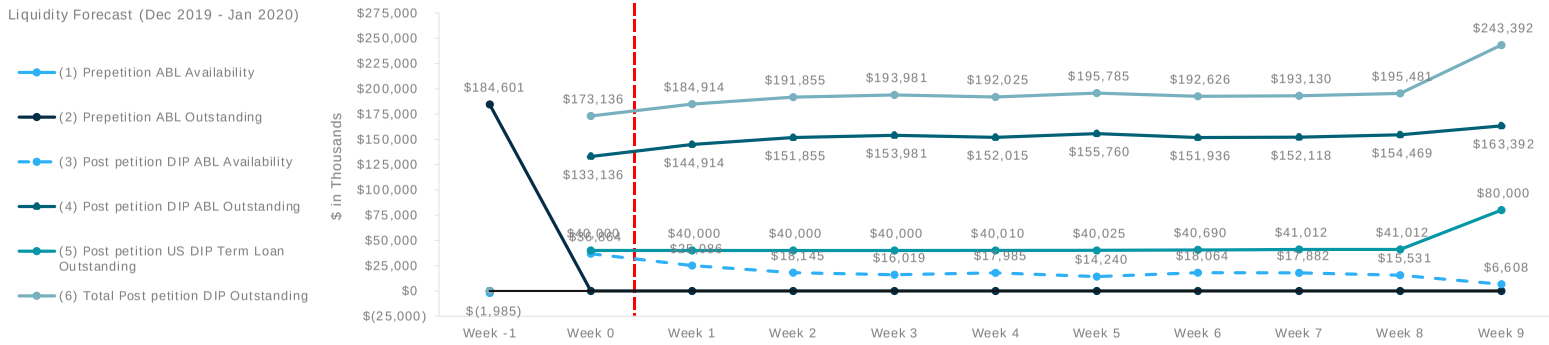
Exhibit D

Budget

Weekly Cash Flow and Liquidity Forecast - Consolidated

($ in Thousands) Filing Date: November 21

Restructuring Period	Actuals		Forecast									Total Forecast	Grand Total
	Week -1	Week 0	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9		
Week End	*11/23/19*	*11/30/19*	*12/7/19*	*12/14/19*	*12/21/19*	*12/28/19*	*1/4/20*	*1/11/20*	*1/18/20*	*1/25/20*	*2/1/20*	*2/1/20*	*2/1/20*
CASH RECEIPTS													
Total Cash Receipts	$ 19,087	$ 17,048	$ 16,175	$ 18,972	$ 18,764	$ 20,166	$ 17,930	$ 19,225	$ 16,063	$ 16,460	$ 19,613	$ 163,368	$ 199,503
DISBURSEMENTS													
Raw Purchases	405	956	112	902	727	727	869	780	809	962	809	6,698	8,058
FCF Disbursements[(1)]	1,493	830	598	7,030	4,705	4,324	4,324	4,129	5,554	5,066	5,066	40,795	43,117
Total FG Purchases	4,755	1,847	6,446	9,439	8,968	4,435	4,414	4,785	5,408	7,177	6,556	57,629	64,231
Total Freight/Warehousing	704	98	513	1,731	1,731	863	858	858	858	858	858	9,127	9,929
Total Plant Spend	2,075	(55)	2,382	3,198	2,712	1,717	1,883	2,375	2,099	2,434	2,113	20,913	22,933
Total Cost of Goods	$ 9,432	$ 3,675	$ 10,050	$ 22,301	$ 18,843	$ 12,065	$ 12,348	$ 12,927	$ 14,728	$ 16,496	$ 15,402	$ 135,161	$ 148,268
Total Payroll / Benefits	931	59	732	898	232	898	732	898	232	898	732	6,252	7,243
Total All Other SG&A	631	709	1,483	1,251	1,190	851	1,181	1,144	852	540	1,294	9,786	11,125
Total SG&A	$ 1,562	$ 768	$ 2,215	$ 2,149	$ 1,422	$ 1,749	$ 1,913	$ 2,042	$ 1,084	$ 1,438	$ 2,026	$ 16,038	$ 18,367
FX, Commodity, & IR Hedge Settlements	(26)	2	478	–	–	–	(15)	–	–	–	–	464	439
Capital Expenditures	–	25	38	38	38	41	157	157	157	157	157	941	966
Trade Promotion Checks / Deductions	–	88	55	100	100	85	85	85	85	85	85	765	853
Other	$ (26)	$ 116	$ 571	$ 137	$ 137	$ 126	$ 228	$ 242	$ 242	$ 242	$ 242	$ 2,170	$ 2,259
Total Operating Disbursements	$ 10,967	$ 4,558	$ 12,837	$ 24,588	$ 20,403	$ 13,940	$ 14,489	$ 15,211	$ 16,054	$ 18,177	$ 17,671	$ 153,369	$ 168,894
Operating Cash Flow	$ 8,119	$ 12,490	$ 3,338	$ (5,616)	$ (1,639)	$ 6,226	$ 3,441	$ 4,014	$ 10	$ (1,717)	$ 1,942	$ 9,999	$ 30,608
US / CAN DIP ABL Interest	–	425	183	191	194	191	196	191	191	194	205	1,736	2,162
US DIP Term Loan Interest	–	–	–	–	–	420	–	–	–	441	661	1,521	1,521
US Term Loan B-1	–	–	11,557	–	–	–	5,447	–	–	–	5,454	22,458	22,458
CAN Term Loan B-2	–	–	3,274	–	–	–	1,543	–	–	–	1,545	6,363	6,363
Restructuring Professional Fee	777	–	434	958	294	3,658	15	665	322	–	26,380	32,726	33,503
KEIP / KERP / MIP / SIP	–	–	–	–	–	–	–	–	–	–	9,608	9,608	9,608
US DIP Term Loan and ABL Fees	–	4,560	–	–	–	–	–	–	–	–	1,600	1,600	6,160
Wind-Down Budget	–	–	–	–	–	–	–	–	–	–	3,000	3,000	3,000
Utility Deposit / Other APA Schedule Items	–	–	–	175	–	–	–	–	–	–	1,400	1,575	1,575
Net Cash Flow	$ 7,301	$ 7,505	$ (12,110)	$ (6,941)	$ (2,126)	$ 1,956	$ (3,760)	$ 3,158	$ (504)	$ (2,351)	$ (47,911)	$ (70,588)	$ (55,783)
Total Available Collateral	188,218	189,696	188,530	188,296	188,305	184,187	184,780	184,755	185,100	186,971	185,266	185,266	185,266
Outstanding LCs	(5,603)	(5,603)	(5,603)	(5,603)	(5,603)	(5,603)	(5,603)	(5,603)	(5,603)	(5,603)	(5,603)	(5,603)	(5,603)
Available Collateral (less LCs)	182,615	184,094	182,928	182,694	182,702	178,584	179,178	179,153	179,497	181,369	179,663	179,663	179,663
Revolver Line Cap	194,397	170,000	170,000	170,000	170,000	170,000	170,000	170,000	170,000	170,000	170,000	170,000	170,000
Revolver Availability	182,615	170,000	170,000	170,000	170,000	170,000	170,000	170,000	170,000	170,000	170,000	170,000	170,000
ABL Outstanding	184,601	–	–	–	–	–	–	–	–	–	–	–	–
DIP ABL Outstanding	–	133,136	144,914	151,855	153,981	152,015	155,760	151,936	152,118	154,469	163,392	163,392	163,392
Consolidated ABL Outstanding	184,601	133,136	144,914	151,855	153,981	152,015	155,760	151,936	152,118	154,469	163,392	163,392	163,392
Cash Balance	$ 4,292	$ 333	$ –	$ –	$ –	$ –	$ –	$ –	$ –	$ –	$ –	$ –	$ –
(1) Prepetition ABL Availability	$ (1,985)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
(2) Prepetition ABL Outstanding	$ 184,601	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
(3) Post petition DIP ABL Availability	$ –	$ 36,864	$ 25,086	$ 18,145	$ 16,019	$ 17,985	$ 14,240	$ 18,064	$ 17,882	$ 15,531	$ 6,608	$ 6,608	$ 6,608
(4) Post petition DIP ABL Outstanding	$ –	$ 133,136	$ 144,914	$ 151,855	$ 153,981	$ 152,015	$ 155,760	$ 151,936	$ 152,118	$ 154,469	$ 163,392	$ 163,392	$ 163,392
(5) Post petition US DIP Term Loan Outstanding	$ –	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,010	$ 40,025	$ 40,690	$ 41,012	$ 41,012	$ 80,000	$ 80,000	$ 80,000
(6) Total Post petition DIP Outstanding	$ –	$ 173,136	$ 184,914	$ 191,855	$ 193,981	$ 192,025	$ 195,785	$ 192,626	$ 193,130	$ 195,481	$ 243,392	$ 243,392	$ 243,392

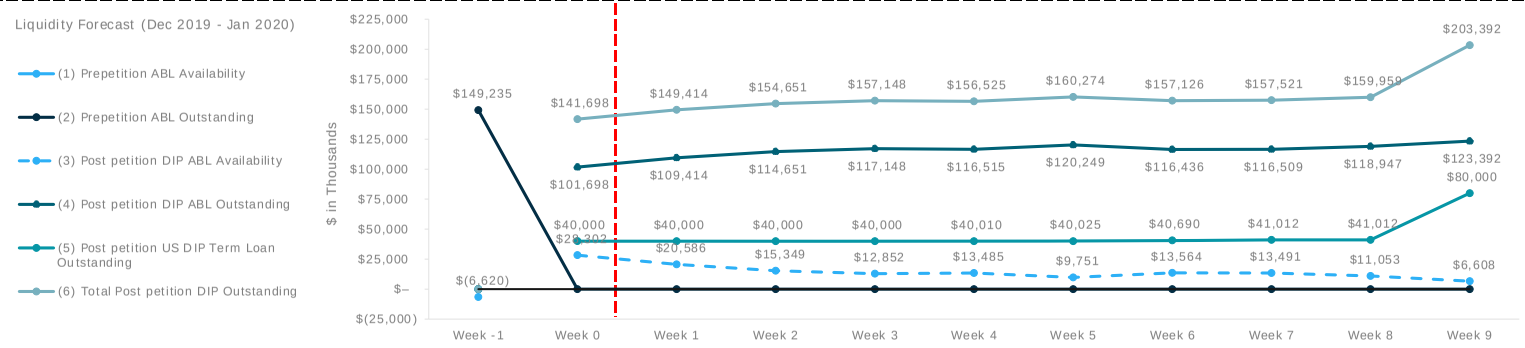


(1) Actual disbursements for FCF during the Week End of 11/23/19 and 11/30/19 were $1,492,965 and $829,904, respectively. Forecasted FCF disbursements for Week End 12/7/19 through 2/1/20 is expected to be $40,794,583. (Aggregate amount: $43,117,451)

Weekly Cash Flow and Liquidity Forecast - US

($ in Thousands) Filing Date: November 21

Restructuring Period	Actuals		Forecast									Total Forecast	Grand Total
	Week -1	Week 0	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9		
Week End	*11/23/19*	*11/30/19*	*12/7/19*	*12/14/19*	*12/21/19*	*12/28/19*	*1/4/20*	*1/11/20*	*1/18/20*	*1/25/20*	*2/1/20*	*2/1/20*	*2/1/20*
CASH RECEIPTS													
Total Cash Receipts	$ 15,657	$ 12,209	$ 12,732	$ 16,097	$ 15,463	$ 15,898	$ 14,549	$ 14,100	$ 12,200	$ 12,403	$ 15,455	$ 128,897	$ 156,763
DISBURSEMENTS													
Raw Purchases	405	956	90	894	719	719	711	711	711	864	711	6,130	7,491
FCF Disbursements[1]	1,493	830	598	7,030	4,705	4,324	4,324	4,129	5,554	5,066	5,066	40,795	43,117
Total FG Purchases	3,485	826	5,486	6,234	7,061	3,224	3,456	3,450	2,658	4,112	4,121	39,802	44,112
Total Freight/Warehousing	434	–	383	1,601	1,601	732	730	730	730	730	730	7,966	8,401
Total Plant Spend	1,864	(135)	2,181	3,098	2,521	1,596	1,674	2,256	1,495	1,921	1,534	18,278	20,007
Total Cost of Goods	$ 7,680	$ 2,476	$ 8,737	$ 18,858	$ 16,606	$ 10,595	$ 10,896	$ 11,277	$ 11,148	$ 12,692	$ 12,163	$ 112,972	$ 123,128
Total Payroll / Benefits	757	59	509	898	9	898	509	898	9	898	509	5,137	5,953
Total All Other SG&A	503	639	1,277	1,158	1,097	758	1,103	1,028	774	462	1,103	8,760	9,902
Total SG&A	$ 1,260	$ 699	$ 1,786	$ 2,056	$ 1,106	$ 1,656	$ 1,612	$ 1,926	$ 783	$ 1,360	$ 1,612	$ 13,897	$ 15,855
FX, Commodity, & IR Hedge Settlements	(112)	–	478	–	–	–	(15)	–	–	–	–	464	352
Capital Expenditures	–	–	–	–	–	4	112	112	112	112	112	565	565
Trade Promotion Checks / Deductions	–	88	55	100	100	85	85	85	85	85	85	765	853
Other	$ (112)	$ 88	$ 534	$ 100	$ 100	$ 89	$ 183	$ 197	$ 197	$ 197	$ 197	$ 1,794	$ 1,771
Total Operating Disbursements	$ 8,828	$ 3,263	$ 11,057	$ 21,014	$ 17,812	$ 12,339	$ 12,691	$ 13,400	$ 12,128	$ 14,250	$ 13,972	$ 128,663	$ 140,754
Operating Cash Flow	$ 6,829	$ 8,946	$ 1,676	$ (4,917)	$ (2,349)	$ 3,559	$ 1,859	$ 700	$ 72	$ (1,847)	$ 1,482	$ 234	$ 16,009
US DIP ABL Interest	–	362	139	145	148	147	151	147	147	150	155	1,328	1,690
US DIP Term Loan Interest	–	–	–	–	–	420	–	–	–	441	661	1,521	1,521
ABL Interest	43	–	–	–	–	–	–	–	–	–	–	–	43
US Term Loan B-1	–	–	11,557	–	–	–	5,447	–	–	–	5,454	22,458	22,458
Restructuring Professional Fee	464	–	60	–	–	3,218	10	–	320	–	25,920	29,528	29,992
KEIP / KERP / MIP / SIP	–	–	–	–	–	–	–	–	–	–	7,870	7,870	7,870
US DIP Term Loan and ABL Fees	–	4,560	–	–	–	–	–	–	–	–	1,600	1,600	6,160
Wind-Down Budget	–	–	–	–	–	–	–	–	–	–	3,000	3,000	3,000
Utility Deposit / Other APA Schedule Items	–	–	–	175	–	–	–	–	–	–	1,300	1,475	1,475
Net Cash Flow	$ 6,323	$ 4,024	$ (10,080)	$ (5,237)	$ (2,497)	$ (227)	$ (3,749)	$ 553	$ (395)	$ (2,438)	$ (44,477)	$ (68,547)	$ (58,200)
Canadian paydown on US Revolver	–	–	2,406	–	–	850	–	2,595	–	–	1,044	6,894	6,894
Net Cash Flow (after intercompany transactions)	$ 6,323	$ 4,024	$ (7,675)	$ (5,237)	$ (2,497)	$ 623	$ (3,749)	$ 3,148	$ (395)	$ (2,438)	$ (43,433)	$ (61,653)	$ (51,306)
US Available Collateral	$ 130,035	$ 132,584	$ 132,021	$ 131,852	$ 131,859	$ 128,896	$ 129,322	$ 129,305	$ 129,552	$ 130,899	$ 129,672	$ 129,672	$ 129,672
Reallocation of Canadian Collateral	18,183	17,112	16,509	16,444	16,446	15,291	15,458	15,451	15,547	16,072	15,594	15,594	15,594
Total US Available Collateral	148,218	149,696	148,530	148,296	148,305	144,187	144,780	144,755	145,100	146,971	145,266	145,266	145,266
Outstanding LCs	(5,603)	(5,603)	(5,603)	(5,603)	(5,603)	(5,603)	(5,603)	(5,603)	(5,603)	(5,603)	(5,603)	(5,603)	(5,603)
Available Collateral (less LCs)	142,615	144,094	142,928	142,694	142,702	138,584	139,178	139,153	139,497	141,369	139,663	139,663	139,663
Revolver Line Cap	154,397	130,000	130,000	130,000	130,000	130,000	130,000	130,000	130,000	130,000	130,000	130,000	130,000
Revolver Availability	142,615	130,000	130,000	130,000	130,000	130,000	130,000	130,000	130,000	130,000	130,000	130,000	130,000
ABL Outstanding	149,235	–	–	–	–	–	–	–	–	–	–	–	–
DIP ABL Outstanding	–	101,698	109,414	114,651	117,148	116,515	120,249	116,436	116,509	118,947	123,392	123,392	123,392
Consolidated ABL Outstanding	149,235	101,698	109,414	114,651	117,148	116,515	120,249	116,436	116,509	118,947	123,392	123,392	123,392
Cash Balance	$ 3,472	$ (41)	$ –	$ –	$ –	$ –	$ –	$ –	$ –	$ –	$ –	$ –	$ –
(1) Prepetition ABL Availability	$ (6,620)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
(2) Prepetition ABL Outstanding	$ 149,235	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
(3) Post petition DIP ABL Availability	$ –	$ 28,302	$ 20,586	$ 15,349	$ 12,852	$ 13,485	$ 9,751	$ 13,564	$ 13,491	$ 11,053	$ 6,608	$ 6,608	$ 6,608
(4) Post petition DIP ABL Outstanding	$ –	$ 101,698	$ 109,414	$ 114,651	$ 117,148	$ 116,515	$ 120,249	$ 116,436	$ 116,509	$ 118,947	$ 123,392	$ 123,392	$ 123,392
(5) Post petition US DIP Term Loan Outstanding	$ –	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,010	$ 40,025	$ 40,690	$ 41,012	$ 41,012	$ 80,000	$ 80,000	$ 80,000
(6) Total Post petition DIP Outstanding	$ –	$ 141,698	$ 149,414	$ 154,651	$ 157,148	$ 156,525	$ 160,274	$ 157,126	$ 157,521	$ 159,959	$ 203,392	$ 203,392	$ 203,392



(1) Actual disbursements for FCF during the Week End of 11/23/19 and 11/30/19 were $1,492,965 and $829,904, respectively. Forecasted FCF disbursements for Week End 12/7/19 through 2/1/20 is expected to be $40,794,583. (Aggregate amount: $43,117,451)

Date Last Updated: 12/18/2019

DIP Budget

Weekly Cash Flow and Liquidity Forecast - Canada

($ in Thousands) Filing Date: November 21

Restructuring Period	Actuals		Forecast									Total Forecast	Grand Total
	Week -1	Week 0	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9		
Week End	*11/23/19*	*11/30/19*	*12/7/19*	*12/14/19*	*12/21/19*	*12/28/19*	*1/4/20*	*1/11/20*	*1/18/20*	*1/25/20*	*2/1/20*	*2/1/20*	*2/1/20*
CASH RECEIPTS													
Total Cash Receipts	3,430	4,839	3,443	2,875	3,301	4,267	3,381	5,125	3,864	4,057	4,158	34,471	42,740
DISBURSEMENTS													
Raw Purchases	–	–	23	8	8	8	158	69	98	98	98	568	568
Total FG Purchases	1,271	1,021	960	3,205	1,908	1,211	958	1,335	2,751	3,065	2,435	17,827	20,119
Total Freight/Warehousing	270	98	131	131	131	131	128	128	128	128	128	1,161	1,528
Total Plant Spend	211	80	201	100	191	121	209	119	603	513	579	2,634	2,925
Total Cost of Goods	1,752	1,199	1,314	3,443	2,237	1,470	1,452	1,650	3,580	3,803	3,240	22,190	25,140
Total Payroll / Benefits	174	–	223	–	223	–	223	–	223	–	223	1,115	1,290
Total All Other SG&A	128	69	206	93	93	93	78	116	78	78	191	1,026	1,223
Total SG&A	302	69	429	93	316	93	301	116	301	78	414	2,141	2,512
FX, Commodity, & IR Hedge Settlements	85	2	–	–	–	–	–	–	–	–	–	–	87
Capital Expenditures	–	25	38	38	38	38	45	45	45	45	45	375	401
Other	85	27	38	38	38	38	45	45	45	45	45	375	488
Total Operating Disbursements	2,139	1,295	1,780	3,574	2,591	1,601	1,799	1,811	3,926	3,927	3,699	24,706	28,140
Operating Cash Flow	1,290	3,544	1,663	(699)	711	2,666	1,582	3,314	(62)	130	460	9,765	14,600
CAN DIP ABL Interest	–	64	44	46	46	44	44	44	44	44	50	408	472
CAN Term Loan B-2	–	–	3,274	–	–	–	1,543	–	–	–	1,545	6,363	6,363
Restructuring Professional Fee	313	–	374	958	294	439	5	665	2	–	460	3,198	3,511
KEIP / KERP / MIP / SIP	–	–	–	–	–	–	–	–	–	–	1,738	1,738	1,738
Utility Deposit / Other APA Schedule Items	–	–	–	–	–	–	–	–	–	–	100	100	100
Net Cash Flow	978	3,480	(2,030)	(1,704)	371	2,183	(11)	2,605	(109)	86	(3,434)		2,417
Canadian paydown on US Revolver	–	–	(2,406)	–	–	(850)	–	(2,595)	–	–	(1,044)	(6,894)	(6,894)
Net Cash Flow (after intercompany transactions)	978	3,480	(4,436)	(1,704)	371	1,333	(11)	11	(109)	86	(4,477)		
Canadian Available Collateral	58,183	57,112	56,509	56,444	56,446	55,291	55,458	55,451	55,547	56,072	55,594	55,594	55,594
Reallocation of Canadian Collateral	(18,183)	(17,112)	(16,509)	(16,444)	(16,446)	(15,291)	(15,458)	(15,451)	(15,547)	(16,072)	(15,594)	(15,594)	(15,594)
Total Canadian Collateral	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000
Outstanding LCs	–	–	–	–	–	–	–	–	–	–	–	–	–
Available Collateral (less LCs)	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000
Revolver Line Cap	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000
Revolver Availability	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000
ABL Outstanding	35,365	–	–	–	–	–	–	–	–	–	–	–	–
DIP ABL Outstanding	–	31,438	35,500	37,204	36,833	35,500	35,511	35,500	35,609	35,523	40,000	40,000	40,000
Consolidated ABL Outstanding	35,365	31,438	35,500	37,204	36,833	35,500	35,511	35,500	35,609	35,523	40,000	40,000	40,000
Cash Balance	820	374	–	–	–	–	–	–	–	–	–	–	–
(1) Prepetition ABL Availability	4,635	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
(2) Prepetition ABL Outstanding	35,365	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
(3) Post petition DIP ABL Availability	-	8,562	4,500	2,796	3,167	4,500	4,489	4,500	4,391	4,477	-	-	-
(6) Total Post petition DIP Outstanding	-	31,438	35,500	37,204	36,833	35,500	35,511	35,500	35,609	35,523	40,000	40,000	40,000

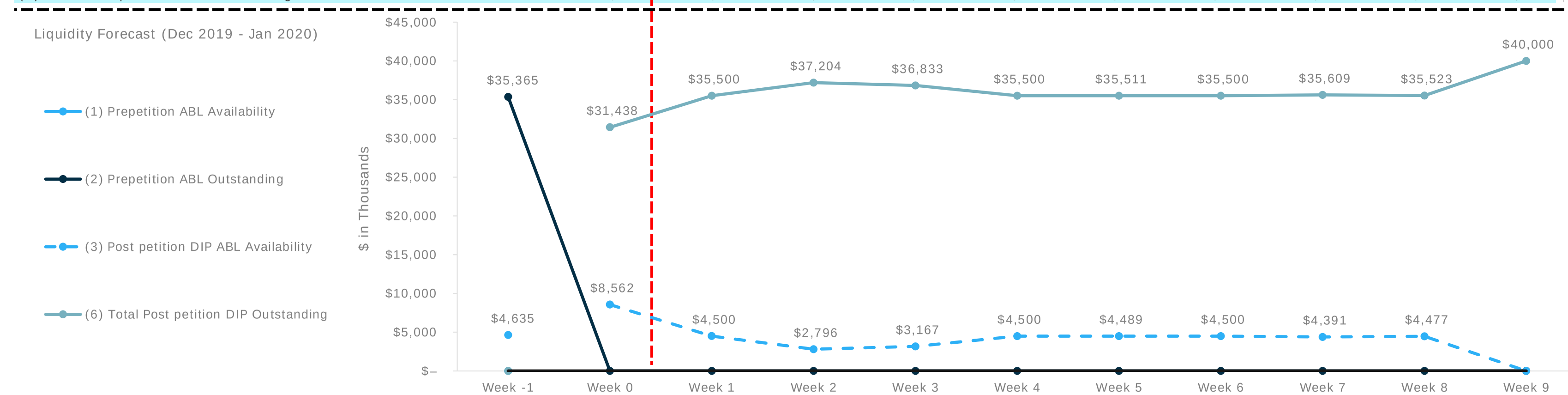


Exhibit E

DIP Intercreditor Agreement

Execution Version

ABL/TL DEBTOR-IN-POSSESSION
INTERCREDITOR AGREEMENT

by and between,

WELLS FARGO CAPITAL FINANCE, LLC,

as DIP ABL Agent for the DIP ABL Claimholders, and

as Pre-Petition ABL Agent for the Pre-Petition ABL Claimholders,

and

BROOKFIELD PRINCIPAL CREDIT LLC

as DIP Term Loan Agent for the DIP Term Loan Claimholders, and

as Pre-Petition Term Loan Agent for the Pre-Petition Term Loan Claimholders,

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Dated as of November 26, 2019

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ABL/TL DEBTOR-IN-POSSESSION
INTERCREDITOR AGREEMENT

This **ABL/TL DEBTOR-IN-POSSESSION INTERCREDITOR AGREEMENT** (this "Agreement") is dated as of November 26, 2019, and entered into by and between, on the one hand, **WELLS FARGO CAPITAL FINANCE, LLC**, a Delaware limited liability company, in its capacity as administrative agent for the DIP ABL Claimholders (defined below) under the DIP ABL Documents (defined below), including its successors in such capacity from time to time (in such capacity together with its successors and assigns in such capacity, "**DIP ABL Agent**"), and as collateral agent for the Pre-Petition ABL Claimholders (defined below) under the Pre-Petition ABL Documents (defined below), including its successors in such capacity from time to time (in such capacity together with its successors and assigns in such capacity, "**Pre-Petition ABL Agent**"; collectively, with the DIP ABL Agent, the "**ABL Agents**" and, individually, each an "**ABL Agent**"), and, on the other hand, **BROOKFIELD PRINCIPAL CREDIT LLC**, in its capacity as administrative agent and collateral agent for the DIP Term Loan Claimholders (defined below) under the DIP Term Loan Documents (defined below), including its successors in such capacity from time to time (in such capacity together with its successors and assigns in such capacity, "**DIP Term Loan Agent**"), and as administrative agent and collateral agent for the Pre-Petition Term Loan Claimholders (defined below) under the Pre-Petition Term Loan Documents (defined below), including its successors in such capacity from time to time (in such capacity together with its successors and assigns in such capacity, "**Pre-Petition Term Loan Agent**"; collectively, with the DIP Term Loan Agent, the "**Term Loan Agents**" and, individually, each a "**Term Loan Agent**").

RECITALS

BUMBLE BEE FOODS S.À R.L., a Luxembourg *société à responsabilité limitée*, incorporated and existing under the laws of the Grand Duchy of Luxembourg, having its registered office at 8, rue Lou Hemmer, L-1748 Luxembourg-Findel (Senningerberg), registered with the Luxembourg Trade and Companies' Register (*Registre de Commerce et des Sociétés*) under number B 140.339 ("**Holdings**"), **CONNORS BROS. CLOVER LEAF SEAFOODS COMPANY**, a Nova Scotia unlimited company, and **BUMBLE BEE FOODS, LLC**, a Delaware limited liability company, and the other Loan Parties (as defined therein) from time to time party thereto, the banks, financial institutions and other investors from time to time party thereto (such banks, financial institutions and other investors, each individually as a "**Pre-Petition ABL Lender**" and collectively as the "**Pre-Petition ABL Lenders**"), **WELLS FARGO CAPITAL FINANCE CORPORATION CANADA**, an Ontario corporation, as Canadian administrative agent for the Canadian Pre-Petition ABL Lenders, **WELLS FARGO CAPITAL FINANCE, LLC**, a Delaware limited liability company, as United States administrative agent for the Pre-Petition ABL Lenders, and in its capacity as Pre-Petition ABL Agent, entered into that certain Amended and Restated Credit Agreement, dated as of August 18, 2017 (as amended, supplemented, or otherwise modified prior to the date hereof, the "**Pre-Petition ABL Credit Agreement**"), providing for a revolving credit facility;

Holdings, **BUMBLE BEE HOLDINGS, INC.**, a Georgia corporation, **CONNORS BROS. CLOVER LEAF SEAFOODS COMPANY**, a Nova Scotia unlimited company, and the other Credit Parties (as defined therein) from time to time party thereto, and **BROOKFIELD PRINCIPAL CREDIT LLC**, in its capacity under the Pre-Petition Term Loan Documents (defined below) as Pre-Petition Term Loan Agent, and certain lenders from time to time party thereto (such lenders, each individually a "**Pre-Petition Term Loan Lender**" and collectively as the "**Pre-Petition Term Loan Lenders**"), entered into that certain Term Loan Agreement, dated as of August 15, 2017 (as amended, supplemented, or otherwise modified prior to the date hereof, the "**Pre-Petition Term Loan Agreement**"), providing for a term loan facility;

Pre-Petition ABL Agent and Pre-Petition Term Loan Agent, *inter alios*, entered into that certain Intercreditor Agreement, dated as of August 15, 2017 (as amended, supplemented, or otherwise modified prior to the date hereof, the "**Pre-Petition Intercreditor Agreement**"), in order to provide, among other things, for the orderly sharing among them, in accordance with the priorities set forth therein, of the proceeds of certain "Collateral" (as defined therein) of Holdings, DIP Borrowers (as defined below), and certain other subsidiaries of Holdings, *inter alios*, upon foreclosure thereupon or other disposition thereof in respect of certain Pre-Petition ABL Obligations (defined below) and Pre-Petition Term Loan Obligations (defined below);

On November 21, 2019 (the "**Petition Date**"), the Debtors (defined below) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (such court, together with any other court having competent jurisdiction over the Cases from time to time, the "**Bankruptcy Court**") and commenced cases numbered 19-12502, 19-12503, 19-12504, 19-12505 and 19-12506 respectively (each, a "**Case**," and, collectively, the "**Cases**"), and have continued in the possession and operation of their assets and in the management of their businesses pursuant to Sections 1107 and 1108 of the Bankruptcy Code;

On November 22, 2019, the CCAA Debtors (as defined below) filed an application with the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**") pursuant to the CCAA (each a "**CCAA Case**" and, collectively, the "**CCAA Cases**") seeking the CCAA Initial Order and have continued in the possession of their assets and in the management of their businesses pursuant to the CCAA Initial Order;

Holdings, **CONNORS BROS. CLOVER LEAF SEAFOODS COMPANY**, a Nova Scotia unlimited company ("**Canadian DIP Borrower**") and **BUMBLE BEE FOODS, LLC**, a Delaware limited liability company ("**U.S. DIP Borrower**"; each individually as a "**DIP Borrower**" and collectively as the "**DIP Borrowers**"), the banks, financial institutions and other investors from time to time party thereto (such banks, financial institutions and other investors, each individually as a "**DIP ABL Lender**" and collectively as the "**DIP ABL Lenders**") and DIP ABL Agent, are entering into that certain Senior Secured Super-Priority Debtor-In-Possession Credit Agreement, to be dated as of November 26, 2019 (as amended, restated, amended and restated, supplemented, Refinanced or otherwise modified in accordance with Section 5.3(a), the "**DIP ABL Credit Agreement**"), providing for a revolving credit facility, which facility includes a "roll-up" of all the existing outstanding Pre-Petition ABL Obligations (defined below);

Holdings, U.S. DIP Borrower, DIP Term Loan Agent, and certain lenders from time to time party thereto (such banks, financial institutions and other investors, each individually as a "**DIP Term Loan Lender**" and collectively as the "**DIP Term Loan Lenders**"), have entered into that certain Super-Priority Secured Debtor-In-Possession Term Loan Agreement, dated as of November 26, 2019 (as amended, restated, amended and restated, supplemented, Refinanced or otherwise modified in accordance with Section 5.3(b), the "**DIP Term Loan Agreement**"), providing for a term loan facility;

Pursuant to (i) that certain General Continuing Guaranty, dated as of November 26, 2019, Holdings and certain of Holdings' Subsidiaries, including the DIP Borrowers (other than with respect to their own obligations) (Holdings, the DIP Borrowers and such Subsidiaries, each, an "**ABL DIP Guarantor**" and collectively, jointly and severally, the "**ABL DIP Guarantors**") have guaranteed the DIP ABL Obligations (defined below) (as amended, restated, amended and restated, supplemented, Refinanced or otherwise modified in accordance with Section 5.3(a), the "**DIP ABL Guaranty**"); and (ii) that certain General Continuing Guaranty, dated as of November 26, 2019 (as amended, restated, amended and restated, supplemented, Refinanced or otherwise modified in accordance with Section 5.3(b), the "**DIP Term Loan Guaranty**"), Holdings and certain of Holdings' Subsidiaries, including the U.S. DIP Borrower (other than with respect to its own obligations) (Holdings, the U.S. DIP Borrower and such Subsidiaries, each, a "**Term DIP Guarantor**" and collectively, jointly and severally, the "**Term DIP Guarantors**"; together with the

ABL DIP Guarantors, each a "**DIP Guarantor**" and collectively, jointly and severally, the "**DIP Guarantors**");

The obligations of (i) the DIP Borrowers under the DIP ABL Credit Agreement and DIP Guarantors under the DIP ABL Guaranty are to be secured, and (ii) the Loan Parties (as defined under the Pre-Petition ABL Credit Agreement) under the Pre-Petition ABL Credit Agreement and the Pre-Petition ABL Documents are secured (x) on a first priority basis by liens on the ABL Priority Collateral and (y) on a second priority basis by Liens on the Term Loan Priority Collateral;

The obligations of (i) U.S. DIP Borrower under the DIP Term Loan Agreement and DIP Guarantors under the DIP Term Loan Guaranty are to be secured, and (ii) the Credit Parties (as defined under the Pre-Petition Term Loan Credit Agreement) under the Pre-Petition Term Loan Credit Agreement and the Pre-Petition Term Loan Documents are secured (x) on a first priority basis by liens on the Term Loan Priority Collateral and (y) on a second priority basis by Liens on the ABL Priority Collateral;

The DIP ABL Documents and the DIP Term Loan Documents and the Orders provide, among other things, that the parties thereto shall set forth in this Agreement their respective relative rights, priorities and remedies with respect to their respective Liens in the Collateral and certain other matters; and

DIP ABL Agent as authorized and directed by the DIP ABL Lenders and the DIP ABL Documents, Pre-Petition ABL Agent as authorized and directed by the Pre-Petition ABL Lenders and the Pre-Petition ABL Documents, DIP Term Loan Agent, as authorized and directed by the DIP Term Loan Lenders and the DIP Term Loan Documents, and Pre-Petition Term Loan Agent, as authorized and directed by the Pre-Petition Term Loan Lenders and the Pre-Petition Term Loan Documents have agreed to the intercreditor and other provisions set forth in this Agreement in order to provide for the orderly sharing among them, in accordance with such priorities, of the proceeds of Collateral upon foreclosure thereupon or other disposition thereof.

AGREEMENT

In consideration of the foregoing, the mutual covenants and obligations herein set forth and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

SECTION 1. Definitions; Rules of Construction.

1.1 UCC Terms. The following terms have the meanings given to them in the UCC and terms used herein without definition that are defined in the UCC have the meanings given to them in the UCC; provided, that to the extent that the UCC is used to define any term used herein and if such term is defined differently in different Articles of the UCC, the definition of such term contained in Article 9 of the UCC shall govern (such meanings to be equally applicable to both the singular and plural forms, and to the capitalized and non-capitalized forms, of the terms defined): "account", "account debtor", "chattel paper", "commercial tort claim", "deposit account", "equipment", "fixture", "general intangible", "goods", "instruments", "inventory", "letter-of-credit right", "proceeds", "record", "securities account", "security" and "supporting obligation".

1.2 Defined Terms. As used in the Agreement, the following terms shall have the following meanings:

"**ABL Agent**" and "**ABL Agents**" have the respective meanings set forth in the preamble.

"**ABL Bank Product Obligations**" means, collectively, all of the DIP ABL Bank Product Obligations and the Pre-Petition ABL Bank Product Obligations.

"**ABL Cap**" means, as of any date of determination, the result of:

(a) $175,000,000 *plus*

(b) the sum of (i) solely when the principal amount of the outstanding Advances (under and as defined in the DIP ABL Credit Agreement), outstanding Advances (under and as defined in the Pre-Petition ABL Credit Agreement) and Letter of Credit Disbursements (under and as defined in the DIP ABL Credit Agreement) not yet reimbursed by the Borrowers, including outstanding Advances (under and as defined in the DIP ABL Credit Agreement) made with respect to such Letter of Credit Disbursements, is equal to or greater than $175,000,000, the amount that has been added to the principal amount of such Advances and Letter of Credit Disbursements of all interest, fees, costs, expenses, indemnities (contingent or otherwise), premiums, penalties, and other amounts accrued or charged with respect to any of the ABL Obligations (other than Excess ABL Obligations) as and when the same accrues or becomes due and payable (or is required to be cash collateralized), including the same as would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable, in whole or in part, in any such Insolvency Proceeding, plus (ii) to the extent the following amounts have not been added to the principal balance of the outstanding Advances (under and as defined in the DIP ABL Credit Agreement), outstanding Advances (under and as defined in the Pre-Petition ABL Credit Agreement) and Letter of Credit Disbursements (under and as defined in the DIP ABL Credit Agreement) not yet reimbursed by the Borrowers, including outstanding Advances (under and as defined in the DIP ABL Credit Agreement) made with respect to such Letter of Credit Disbursements, all interest, fees, costs, expenses, indemnities (contingent or otherwise), premiums, penalties, and other amounts accrued or charged with respect to any of the ABL Obligations (other than Excess ABL Obligations) as and when the same accrues or becomes due and payable (or is required to be cash collateralized), including the same as would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable, in whole or in part, in any such Insolvency Proceeding); *plus*

(c) the aggregate amount of contingent reimbursement DIP ABL Obligations in respect of undrawn Letters of Credit outstanding under the DIP ABL Credit Agreement on the Closing Date and any replacement Letters of Credit with respect thereto, which replacement Letters of Credit shall be in an aggregate undrawn face amount no greater than that of the Letters of Credit being replaced; *plus*

(d) Protective Advances and Overadvances (each as defined in the ABL Documents) in an outstanding principal amount not to exceed $15,000,000; *plus*

(e) solely after the delivery of a Carve Out Trigger Notice (as defined in the Orders), the amount of ABL Obligations incurred to fund the Carve Out Reserves (as defined in the Orders); *plus*

(f) the amount of the then-outstanding ABL Bank Product Obligations that constitute secured ABL Obligations in an aggregate outstanding amount

not to exceed the sum of $20,000,000 plus the aggregate outstanding amount of any ABL Hedge Obligations evidenced by a Hedge Agreement in effect on the Petition Date in respect of interest rate Hedge Agreements, *minus*

(g) the amount of all permanent reductions of the revolving credit commitments under the DIP ABL Credit Agreement in accordance with the provisions thereof.

Any net increase in the aggregate principal amount of an Advance or Letter of Credit (each, as defined in the DIP ABL Credit Agreement), on a U.S. Dollar equivalent basis, after such Advance is made or such Letter of Credit issued that is caused by a fluctuation in the exchange rate of the currency in which such Advance or Letter of Credit is denominated will be ignored in determining whether the ABL Cap has been exceeded.

"**ABL Claimholder**" means any of the DIP ABL Claimholders and the Pre-Petition ABL Claimholders, as the context requires.

"**ABL Collateral**" means, collectively, all of the DIP ABL Collateral and the Pre-Petition ABL Collateral.

"**ABL Collateral Documents**" means, collectively, all of the DIP ABL Collateral Documents and the Pre-Petition ABL Collateral Documents.

"**ABL Default**" means any DIP ABL Default, or any "Event of Default", as such term is defined in the Pre-Petition ABL Credit Agreement.

"**ABL DIP Guarantor**" and "**ABL DIP Guarantors**" have the respective meanings set forth in the preamble.

"**ABL Documents**" means the DIP ABL Documents and the Pre-Petition ABL Documents.

"**ABL Guaranty**" means, collectively, any DIP ABL Guaranty and any Pre-Petition ABL Guaranty.

"**ABL Hedge Obligations**" means, collectively, all of the DIP ABL Hedge Obligations and the Pre-Petition ABL Hedge Obligations.

"**ABL Lender**" means any DIP ABL Lender or any Pre-Petition ABL Lender.

"**ABL Obligations**" means, collectively, any DIP ABL Obligations and any Pre-Petition ABL Obligations.

"**ABL Priority Collateral**" means all of each Grantor's right, title, and interest in and to the following types of property of such Grantor, wherever located and whether such Grantor has such right, title, and interest in such property now or hereafter acquires it, would constitute ABL Priority Collateral (including, for the avoidance of doubt, any such assets that, but for the application of Section 552 of the Bankruptcy Code or any similar provision of the CCAA (or any provision of any other Bankruptcy Law)):

(a) all accounts (except to the extent that such accounts constitute specifically identifiable proceeds of the Term Priority Collateral);

(b) all inventory;

(c) all instruments, chattel paper (including all tangible and electronic chattel paper) and other contracts, in each case to the extent governing, evidencing, substituting for, arising from or constituting proceeds of any accounts, other Receivables, inventory, or other ABL Priority Collateral;

(d) (i) all deposit accounts, (ii) all securities accounts, security entitlements, and securities, and (iii) all commodity accounts and commodity contracts and, in each case with respect to clauses (i) through (iii) above, all cash, money, cash equivalents, money checks instruments, funds, ACH transfers, wired funds, investment property, securities entitlements, and other funds or property held in or on deposit therein, except, in each case, (A) subject to the provisions of this Agreement (including Sections 3.10 and 4.2), identifiable proceeds of Term Loan Priority Collateral, (B) Equity Interests issued by any Grantor or any of its Subsidiaries, and (C) the DIP Term Loan Funding Account and any Term Loan Collateral Account and, in each case, any cash, money, cash equivalents, money, checks, instruments, funds, ACH transfers, wired funds, investment property, securities entitlements, and other funds or property held in or on deposit therein;

(e) all contracts, documents of title and other documents that evidence the ownership of or right to receive or possess, or that otherwise relate to, any inventory, accounts, other Receivables, or other ABL Priority Collateral, including contracts, documents of title, and documents that relate to the acquisition or sale or other disposition of any inventory, and all contracts, documents of title, or other documents that arise from or constitute proceeds of accounts, Receivables, inventory, or other ABL Priority Collateral;

(f) all tax refunds;

(g) all guaranties, contracts of suretyship, insurance, letters of credit, letter of credit rights, security and other credit enhancements (including repurchase agreements) and supporting obligations, in each case in respect of the accounts, other Receivables, inventory, or other ABL Priority Collateral, including (i) rights of stoppage in transit, replevin, repossession, reclamation and other rights and remedies of an unpaid vendor, lien or secured party, and (ii) identifiable deposits by and property of account debtors or other persons securing the obligations of account debtors in respect of accounts or other Receivables;

(h) all commercial tort claims and general intangibles (other than Intellectual Property) to the extent (i) arising from, relating to or constituting proceeds of any accounts, other Receivables, inventory, or other ABL Priority Collateral, (ii) related to or arising out of the purchase, manufacture, distribution, sale or other disposition of a Grantor's inventory, or (iii) related to or arising out of the collection of or realization upon any accounts, other Receivables, inventory, or other ABL Priority Collateral of a Grantor;

(i) all cash, money, and Cash Equivalents (except to the extent that such amounts constitute (x) identifiable proceeds of Term Loan Priority Collateral or (y) amounts in the DIP Term Loan Funding Account);

(j) all Investment Related Property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts or commodity accounts) and all monies, credit balances, deposits and other property of any Grantor now or hereafter held or received by or in transit to DIP ABL Agent or any other DIP ABL Claimholders or at any other depository institution, bank, securities intermediary or other similar institution from or for the account of any Grantor, whether for safekeeping, pledge, custody, transmission, collection or otherwise, and all "Advances" (as defined in the DIP ABL Credit Agreement), in each case, except (i) the Equity Interests of the Subsidiaries of Holdings owned by any DIP Guarantor and (ii) to the extent that such Investment Related Property or other assets constitute identifiable proceeds of Term Loan Priority Collateral;

(k) all claims under policies of casualty insurance and all proceeds of casualty insurance, in each case, payable by reason of loss or damage to any accounts, other Receivables, inventory or other ABL Priority Collateral;

(l) to the extent not otherwise described above, all Receivables;

(m) all Books evidencing, relating to or referring to any of the foregoing items of ABL Priority Collateral; and

(n) all substitutions, replacements, accessions, accessories, products or proceeds of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to or destruction of or other involuntary conversion (including claims in respect of condemnation) of any kind or nature of any or all of the foregoing items of ABL Priority Collateral.

Notwithstanding the foregoing, the ABL Priority Collateral shall not include any Excluded Assets.

For purposes of clarification, and notwithstanding anything to the contrary set forth in this Agreement, (i) except as expressly set forth above, Intellectual Property shall not constitute ABL Priority Collateral, but instead shall constitute Term Loan Priority Collateral, (ii) any of the items set forth in this definition that are or become branded, or produced through the use or other application of, any Intellectual Property, whether pursuant to the exercise of rights pursuant to Section 3.9 or otherwise, shall constitute ABL Priority Collateral, and no proceeds arising from any Disposition of any such ABL Priority Collateral shall be, or be deemed to be, attributable to Term Loan Priority Collateral and (iii) except as expressly set forth above, Equity Interests (including the Equity Interests of the Subsidiaries of Holdings owned by any DIP Guarantor) and the proceeds thereof shall not constitute ABL Priority Collateral, but instead shall constitute Term Loan Priority Collateral.

"**ABL Priority Obligations**" means all ABL Obligations other than Excess ABL Obligations.

"**ABL Retained Interest**" has the meaning set forth in Section 10.8.

"**Agent**" means any ABL Agent or any Term Loan Agent, as the context requires.

"**Agreement**" has the meaning set forth in the preamble.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect, or any successor statute.

"**Bankruptcy Law**" means (i) the BIA, (ii) the CCAA, (iii) the WURA, (iv) the Bankruptcy Code, (v) any other federal, state, provincial or foreign law for the relief of debtors or benefit of creditors, (vi) the arrangement or reorganization provisions under the *Canada Business Corporations Act* and similar provincial corporate statutes and (vii) any other similar statute or law, in each case as applicable and as now and hereafter in effect, or any successor statute.

"**BIA**" means the *Bankruptcy and Insolvency Act* (Canada), as now and hereafter in effect, or any successor statute.

"**Books**" means books and records (including each Grantor's Records indicating, summarizing, or evidencing such Grantor's assets (including the Collateral) or liabilities, each Grantor's Records relating to such Grantor's business operations or financial condition, and each Grantor's goods or General Intangibles related to such information).

"**Business Day**" means any day other than a Saturday, Sunday, or day on which commercial banks in the state of New York are authorized or required by law to remain close.

"**Cases**" has the meaning set forth in the preamble.

"**Cash Equivalents**" means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or Canada or issued by any agency thereof and backed by the full faith and credit of the United States or Canada, in each case maturing within one (1) year from the date of acquisition thereof, (b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state, or any province of Canada, or any public instrumentality thereof maturing within 1 year from the date of acquisition thereof and, at the time of acquisition, having an investment grade rating from either S&P Global Ratings ("**S&P**") or Moody's Investors Service, Inc. ("**Moody's**"), (c) commercial paper maturing no more than one (1) year from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody's, (d) certificates of deposit, time deposits, overnight bank deposits or bankers' acceptances maturing within 1 year from the date of acquisition thereof issued by any bank organized under the laws of the United States or any state thereof or the District of Columbia or any United States branch of a foreign bank, or any bank listed on Schedule I of the Bank Act (Canada), having at the date of acquisition thereof combined capital and surplus of not less than $250,000,000, (e) Deposit Accounts maintained with (i) any bank that satisfies the criteria described in clause (d) above, or (ii) any other bank organized under the laws of the United States or any state thereof, or the federal laws of Canada, so long as the amount maintained with any such other bank is less than or equal to $250,000 and is insured by the Federal Deposit Insurance Corporation or the Canadian Deposit Insurance Corporation, as the case may be, (f) repurchase obligations of any commercial bank satisfying the requirements of clause (d) of this definition or recognized securities dealer having combined capital and surplus of not less than $250,000,000, having a term of not more than 30 days, with respect to securities satisfying the criteria in clauses (a) or (d) above, (g) debt securities with maturities of one (1) year or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the criteria described in clause (d) above, (h) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (g) above, and (i) shares of investment companies that are registered under the Investment Company Act of 1940 and substantially all of the investments of which are one or more of the types of assets described in clauses (a) through (g) above.

"**CCAA**" means the *Companies' Creditors Arrangement Act (Canada)*, as now and hereafter in effect, or any successor statute.

"**CCAA A&R Initial Order**" shall mean the CCAA Initial Order as amended and restated by the CCAA Court at the hearing of the CCAA Comeback Motion to: (i) approve service and/or substitute service on all secured creditors of the CCAA Debtors likely to be affected by the CCAA DIP Charge; and (ii) provide for the full priming of the CCAA DIP Charge on all of the Collateral of the CCAA Debtors on the terms contemplated thereby.

"**CCAA Case**" and "**CCAA Cases**" shall have the meaning provided in the recitals to this Agreement.

"**CCAA Court**" shall have the meaning provided in the recitals to this Agreement.

"**CCAA Debtors**" means Connors Bros. Clover Leaf Seafoods Company, Clover Leaf Holdings Company, K.C.R. Fisheries Ltd., 6162410 Canada Limited, Connors Bros. Holdings Company, and Connors Bros. Seafoods Company.

"**CCAA DIP Charge**" shall mean a super-priority priming charge granted by the CCAA Court on all of the Collateral of the CCAA Debtors.

"**CCAA Comeback Motion**" shall mean the motion seeking the CCAA A&R Initial Order to be heard by the CCAA Court not later than ten (10) days following the entry of the CCAA Initial Order, which motion shall be served by the CCAA Debtors on the service list established in the CCAA Cases, all secured creditors of the CCAA Debtors and any other Person as may be requested by the Agent.

"**CCAA Initial Order**" shall mean an order of the CCAA Court (as the same may be amended, supplemented, or modified from time to time after entry thereof in accordance with the terms thereof), in form and substance satisfactory to the Agent, which order shall, among other things, authorize the Loan Documents and the DIP Term Loan Credit Documents to which any CCAA Debtor is a party and the Transactions contemplated by this Agreement and grant the CCAA DIP Charge, with only such modifications as are satisfactory to the Agent, in its sole discretion.

"**Claimholders**" means, with respect to the DIP ABL Obligations, the DIP ABL Claimholders, with respect to the Pre-Petition ABL Obligations, the Pre-Petition ABL Claimholders, with respect to the DIP Term Loan Obligations, the DIP Term Loan Claimholders, and with respect to the Pre-Petition Term Loan Obligations, the Pre-Petition Term Loan Claimholders.

"**Closing Date**" means November 26, 2019.

"**Collateral**" means all of the assets and property of any Grantor, whether real, personal or mixed, which constitute ABL Collateral or Term Loan Collateral.

"**Debtors**" means Bumble Bee Parent, Inc., a Delaware corporation, Bumble Bee Holdings, Inc., a Georgia corporation, Bumble Bee Foods, LLC, a Delaware limited liability company, Anova Food, LLC, a Virginia limited liability company, and Bumble Bee Capital Corp., a Delaware corporation.

"**Default Disposition**" means any private or public Disposition of (i) all or any material portion of the ABL Priority Collateral by one or more Grantors with the consent of DIP ABL Agent after the occurrence and during the continuance of an DIP ABL Default (and prior to the Discharge of ABL Obligations) or (ii) all or any material portion of the Term Loan Priority Collateral by one or more Grantors

with the consent of DIP Term Loan Agent after the occurrence and during the continuance of a DIP Term Loan Default (and prior to the Discharge of Term Loan Obligations), which Disposition is conducted by such Grantors with the consent of DIP ABL Agent in the case of the former, or DIP Term Loan Agent in the case of the latter, in connection with good faith efforts by DIP ABL Agent or DIP Term Loan Agent, as the case may be, to collect the ABL Obligations through the Disposition of ABL Priority Collateral or the Term Loan Obligations through the Disposition of Term Loan Priority Collateral.

"**DIP ABL Agent**" has the meaning set forth in the preamble.

"**DIP ABL Bank Product Obligations**" means "Bank Product Obligations" as that term is defined in the DIP ABL Credit Agreement as in effect on the Closing Date.

"**DIP ABL Claimholders**" means, at any relevant time, the holders of DIP ABL Obligations at that time, including DIP ABL Lenders, the Underlying Issuer (as defined in the DIP ABL Credit Agreement), Bank Product Providers (as defined in the DIP ABL Credit Agreement), and Agent (as defined in the DIP ABL Credit Agreement).

"**DIP ABL Collateral Documents**" means the Orders, security agreements, pledge agreements, mortgages, hypothecs, collateral assignments, deeds of trust, deeds to secure debt and related agreements, and any other agreements, documents or instruments pursuant to which a Lien is granted (or purported to be granted) to secure any DIP ABL Obligations or under which rights or remedies with respect to such Liens are governed.

"**DIP ABL Collateral**" means all of the assets and property of any Grantor, whether real, personal or mixed, with respect to which a consensual Lien is granted (or purported to be granted) as security for any DIP ABL Obligation. For the avoidance of doubt, the DIP ABL Collateral shall not include any Excluded Assets.

"**DIP ABL Conforming Amendment**" means any amendment to any DIP ABL Document that is substantively identical to a corresponding amendment to a comparable provision of a DIP Term Loan Document.

"**DIP ABL Credit Agreement**" has the meaning set forth in the recitals.

"**DIP ABL Default**" means any "Event of Default", as such term is defined in the DIP ABL Credit Agreement.

"**DIP ABL Documents**" means the DIP ABL Collateral Documents, the DIP ABL Credit Agreement, the DIP ABL Guaranty, the DIP ABL Mortgages, and each of the other Loan Documents (as defined in the DIP ABL Credit Agreement).

"**DIP ABL Guaranty**" has the meaning set forth in the recitals to this Agreement, but shall also include each other guaranty made by any other guarantor in favor of DIP ABL Agent.

"**DIP ABL Hedge Obligations**" means "Hedge Obligations" as that term is defined in the DIP ABL Credit Agreement as in effect on the Closing Date.

"**DIP ABL Lenders**" means the "Lenders" as defined in the DIP ABL Credit Agreement.

"**DIP ABL Mortgages**" means each mortgage, deed of trust, deed of hypothec, and other document or instrument under which any Lien on real property owned or leased by any Grantor is granted

to secure any DIP ABL Obligations or under which rights or remedies with respect to any such Liens are governed.

"**DIP ABL Obligations**" means all obligations and all amounts owing, due, or secured under the terms of the DIP ABL Credit Agreement or any other DIP ABL Document, whether now existing or arising hereafter, including all principal, premium, interest, fees, attorneys fees, costs, charges, expenses, reimbursement obligations, obligations with respect to Letters of Credit, obligations to post cash collateral in respect of Letters of Credit or DIP ABL Bank Product Obligations or indemnities in respect thereof, any other indemnities or guarantees, and all other amounts payable under or secured by any DIP ABL Document, in each case whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured.

"**DIP ABL Security Agreements**" means each of the Canadian Security Document, the Luxembourg Security Agreement, and the U.S. Security Agreement as such terms are defined in the DIP ABL Credit Agreement, in each case to be dated on or about of November 26, 2019, between the Grantors specified therein and the DIP ABL Agent, together with each other pledge agreement or security agreement executed in connection therewith.

"**DIP Borrower**" and "**DIP Borrowers**" have the respective meanings set forth in the recitals.

"**DIP Guarantor**" and "**DIP Guarantors**" have the respective meanings set forth in the preamble.

"**DIP Term Funding Account**" means the "DIP Term Funding Account" as that term is defined in the DIP Term Loan Agreement.

"**DIP Term Loan Agent**" has the meaning set forth in the preamble.

"**DIP Term Loan Agreement**" has the meaning set forth in the recitals.

"**DIP Term Loan Claimholders**" means, as of any date of determination, the holders of the DIP Term Loan Obligations at that time, including (a) DIP Term Loan Agent and (b) the DIP Term Loan Lenders.

"**DIP Term Loan Collateral Documents**" means all "Security Documents" as that term is defined in the DIP Term Loan Agreement.

"**DIP Term Loan Collateral**" means any and all of the assets and property of any Grantor, whether real, personal, or mixed, with respect to which a consensual Lien is granted as security for any DIP Term Loan Obligations. For the avoidance of doubt, the DIP Term Loan Collateral shall not include any Excluded Assets.

"**DIP Term Loan Conforming Amendment**" means any amendment to any DIP Term Loan Document that is substantively identical to a corresponding amendment to a comparable provision of a DIP ABL Document.

"**DIP Term Loan Default**" means any "Event of Default", as such term is defined in the DIP Term Loan Credit Agreement.

"**DIP Term Loan Documents**" means the DIP Term Loan Collateral Documents, the DIP Term Loan Agreement, the DIP Term Loan Guaranty, the DIP Term Loan Mortgages and each of the other Credit Documents (as defined in the DIP Term Loan Agreement).

"**DIP Term Loan Funding Account**" has the meaning set forth in the DIP Term Loan Agreement.

"**DIP Term Loan Guaranty**" has the meaning set forth in the recitals to this Agreement but shall also include each other guaranty made by any other guarantor in favor of the DIP Term Loan Agent.

"**DIP Term Loan Lenders**" has the meaning set forth in the recitals.

"**DIP Term Loan Mortgages**" means each mortgage, deed of trust, deed of hypothec, and other document or instrument under which any Lien on real property owned or leased by any Grantor is granted to secured any DIP Term Loan Obligations or under which rights or remedies with respect to any such Liens are governed.

"**DIP Term Loan Obligations**" means all advances to, and debts, liabilities, obligations, covenants and duties of any Grantor arising under any DIP Term Loan Document or otherwise with respect to any loans made under the DIP Term Loan Agreement, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees, expenses and premiums (including any Exit Fee (as defined in the DIP Term Loan Agreement)) that accrue after the commencement by or against any Grantor or any proceeding under the Bankruptcy Code, the CCAA or any other Bankruptcy Law naming such person as a debtor in such proceeding, regardless of whether such interest, fees and expenses are allowed claims in such proceeding.

"**DIP Term Loan Security Agreements**" means all "Security Agreements" as that term is defined in the DIP Term Loan Agreement, together with each other pledge agreement or security agreement executed in connection with the DIP Term Loan Agreement.

"**Discharge of ABL Obligations**" means, except to the extent otherwise expressly provided in Section 5.5 or in Section 6.8:

(a) the payment in full in cash of all DIP ABL Obligations (other than outstanding Letters of Credit, DIP ABL Bank Product Obligations, and contingent indemnification obligations for which no underlying claim has been asserted);

(b) termination or expiration of all commitments, if any, to extend credit that would constitute DIP ABL Obligations;

(c) termination or cash collateralization (in an amount and in the manner required by the DIP ABL Credit Agreement) of all outstanding Letters of Credit (as defined in the DIP ABL Credit Agreement);

(d) with respect to DIP ABL Bank Product Obligations, in the discretion of the applicable DIP ABL Claimholder, either (i) cash collateralization of such obligations in an amount reasonably determined by the applicable DIP ABL Claimholder to be equal to the potential amount of such obligations, or (ii) at the option of the DIP ABL Claimholder with respect to such obligations, termination of the

applicable agreement governing such DIP ABL Bank Product Obligations and making of all payments pursuant thereto, as applicable;

(e) cash collateralization for any costs, expenses and contingent indemnification obligations consisting of DIP ABL Obligations not yet due and payable but with respect to which a claim has been threatened or asserted (which, for the avoidance of doubt, includes costs and expenses incurred with respect to any actual or potential Challenge (as such term is defined in either of the Orders)), in each case in writing (in an amount reasonably determined by the applicable DIP ABL Claimholder); and

(f) the Discharge of Pre-Petition ABL Obligations.

"**Discharge of Pre-Petition ABL Obligations**" has the meaning ascribed to the term "Discharge of ABL Obligations" in the Pre-Petition Intercreditor Agreement.

"**Discharge of Pre-Petition Term Loan Obligations**" has the meaning ascribed to the term "Discharge of Term Loan Obligations" in the Pre-Petition Intercreditor Agreement.

"**Discharge of Term Loan Obligations**" means, except to the extent otherwise expressly provided in Section 5.5 or in Section 6.8:

(a) the payment in full in cash of all DIP Term Loan Obligations (other than contingent indemnification obligations for which no underlying claim has been asserted);

(b) [reserved];

(c) cash collateralization for any costs, expenses and contingent indemnification obligations consisting of DIP Term Loan Obligations not yet due and payable but with respect to which a claim has been threatened or asserted (which, for the avoidance of doubt, includes costs and expenses incurred with respect to any actual or potential Challenge (as such term is defined in either of the Orders)), in each case in writing (in an amount reasonably determined by the applicable DIP Term Loan Claimholder); and

(d) the Discharge of Pre-Petition Term Loan Obligations.

"**Disposition**" or "**Dispose**" means the sale, assignment, transfer, license, lease (as lessor), exchange, or other disposition (including any sale and leaseback transaction) of any property by any person (or the granting of any option or other right to do any of the foregoing).

"**Enforcement Notice**" shall mean a written notice delivered by either the DIP ABL Agent or the DIP Term Loan Agent to the other Agents stating that a DIP ABL Default or a DIP Term Loan Default, as applicable, has occurred and is continuing under the DIP ABL Credit Agreement or the DIP Term Loan Agreement, as applicable, and that an Enforcement Period has commenced with respect to the ABL Priority Collateral or Term Loan Priority Collateral, as applicable, specifying the relevant event of default, stating the current balance of the ABL Obligations or the Term Loan Obligations, as applicable, and requesting the current balance of the ABL Obligations or Term Loan Obligations, as applicable, owing to the noticed party.

"**Enforcement Period**" shall mean the period of time following the receipt by either the DIP ABL Agent or the DIP Term Loan Agent of an Enforcement Notice from the other and continuing until the earliest of (a) in case of an Enforcement Period commenced by the DIP Term Loan Agent, the Discharge of Term Loan Obligations, (b) in the case of an Enforcement Period commenced by the DIP ABL Agent, the Discharge of ABL Obligations, or (c) the applicable Agent terminates, or agrees in writing to terminate, the Enforcement Period (including in connection with a waiver or cure of the default that gave rise to such Enforcement Notice).

"**Equity Interests**" means all shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in a person, whether voting or nonvoting, including common stock, preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission or any successor thereto under the Securities Exchange Act of 1934, as amended and as in effect from time to time).

"**Excess ABL Obligations**" means the sum of (a) the portion of the principal amount of the outstanding Advances (under and as defined in the DIP ABL Credit Agreement), the outstanding Advances (under and as defined in the Pre-Petition ABL Credit Agreement) and the Letter of Credit Disbursements (under and as defined in the DIP ABL Credit Agreement) not yet reimbursed by the Borrowers, including outstanding Advances (under and as defined in the DIP ABL Credit Agreement) made with respect to such Letter of Credit Disbursements, that is in excess of the ABL Cap, plus (b) the portion of interest and fees that accrues or is charged with respect to that portion of the principal amount of the Advances (under and as defined in the DIP ABL Credit Agreement), the Advances (under and as defined in the Pre-Petition ABL Credit Agreement) and Letter of Credit Disbursements (under and as defined in the DIP ABL Credit Agreement) not yet reimbursed by the Borrowers, including outstanding Advances (under and as defined in the DIP ABL Credit Agreement) made with respect to such Letter of Credit Disbursements, in excess of the ABL Cap as described in clause (a) of this definition.

"**Excess ABL Purchase Triggering Event**" means, with respect to the purchase option in favor of the Term Loan Claimholders, any time on or after the first date after the Term Loan Application Date upon which the aggregate outstanding principal amount of the ABL Obligations exceeds $145,000,000.

"**Excess Term Loan Obligations**" means the sum of (a) the portion of the principal amount of the loans outstanding under the DIP Term Loan Documents and the loans outstanding under the Pre-Petition Term Loan Documents that is in excess of the Term Loan Cap, plus (b) the portion of interest and fees that accrues or is charged with respect to that portion of the principal amount of the loans described in clause (a) of this definition.

"**Excluded Assets**" means any assets described as "Excluded Assets" in both the DIP ABL Security Agreements and the DIP Term Loan Security Agreements, and with respect to which a Lien is not granted (and not purported to be granted) as security for the ABL Obligations or the Term Loan Obligations (excluding, for the avoidance of doubt, any asset that, but for the application of Section 552 of the Bankruptcy Code or any applicable provision of the CCAA (or any provision of any other Bankruptcy Law), would constitute Collateral).

"**Exercise any Secured Creditor Remedies**" or "**Exercise of Secured Creditor Remedies**" means (a) the taking of any action to enforce any Lien in respect of, exercise any right, remedy or power with respect to, or otherwise take any action to enforce its interest in or realize upon, or take any other action available to it in respect of, the Collateral, including the institution of any judicial or non-judicial foreclosure proceedings, the noticing of any public or private sale or other disposition pursuant to

Article 9 of the UCC or other applicable law, having or seeking to have a trustee, receiver, receiver-manager, liquidator or similar official appointed for or over the Collateral or taking any action to take possession of the Collateral, the noticing of any public or private sale or other Disposition pursuant to Article 9 of the UCC or other applicable law, or any diligently pursued in good faith attempt to vacate or obtain relief from a stay or other injunction restricting any other action described in this definition, (b) the exercise of any right or remedy provided to a secured creditor under the Orders, the ABL Documents or the Term Loan Documents (including, in either case, any delivery of any notice to otherwise seek to obtain payment directly from any account debtor of any Grantor or the taking of any action or the exercise of any right or remedy in respect of the setoff or recoupment against the Collateral or proceeds of Collateral), under applicable law, at equity, in an Insolvency Proceeding or otherwise, including credit bidding or otherwise the acceptance of Collateral in full or partial satisfaction of a Lien, (c) the sale, assignment, transfer, lease, license, or other Disposition of all or any portion of the Collateral, by private or public sale or any other means, (d) the solicitation of bids from third parties to conduct the Disposition of all or a material portion of Collateral to the extent undertaken and being diligently pursued in good faith to consummate the Disposition of such Collateral within a commercially reasonable time, (e) the engagement or retention of sales brokers, marketing agents, investment bankers, accountants, appraisers, auctioneers, or other third parties for the purposes of valuing, marketing, or Disposing of, all or a material portion of the Collateral to the extent undertaken and being diligently pursued in good faith to consummate the Disposition of such Collateral within a commercially reasonable time, (f) the exercise of any other enforcement right relating to the Collateral (including the exercise of any voting rights relating to any capital stock composing a portion of the Collateral or seeking relief from the automatic stay or other stay) whether under the Orders, the DIP ABL Documents, the Pre-Petition ABL Documents, the DIP Term Loan Documents, the Pre-Petition Term Loan Documents, under applicable law of any jurisdiction, in equity, in the Cases or another Insolvency Proceeding, or otherwise, (g) subject to, and to the extent not inconsistent with, Section 6.3, the pursuit of Default Dispositions relative to all or a material portion of the Collateral to the extent undertaken and being diligently pursued in good faith to consummate the Disposition of such Collateral within a commercially reasonable time, or (h) the commencement of, or the joinder with any creditor in commencing, any Insolvency Proceeding against any Grantor or any assets of any Grantor, but in all cases excluding (i) the establishment of borrowing base reserves, collateral ineligibles, or other conditions for advances, (ii) the changing of advance rates or advance sublimits, (iii) the imposition of a default rate or late fee, (iv) the collection and application of accounts or other monies deposited from time to time in deposit accounts or securities accounts, in each case, to the extent constituting ABL Priority Collateral, against the ABL Obligations pursuant to the provisions of the DIP ABL Documents or the Pre-Petition ABL Documents, as applicable (including, without limitation, the notification of account debtors, depositary institutions or any other person to deliver proceeds of Collateral to the DIP ABL Agent), (v) the cessation of lending pursuant to the provisions of the DIP ABL Documents, including upon the occurrence of a default on the existence of an overadvance, (vi) the filing of a proof of claim in any Insolvency Proceeding (including in the Cases), (vii) the consent by any ABL Agent or the requisite ABL Lenders to the disposition by any Grantor of any of the ABL Priority Collateral (other than in connection with liquidation of the ABL Priority Collateral by or at the request of any ABL Agent), and (viii) the acceleration of the Term Loan Obligations or the ABL Obligations.

"**Exigent Circumstances**" means (a) a good faith belief that a fraud has been committed by any Grantor in connection with the ABL Obligations or Term Loan Obligations, (b) any withholding of collections of Accounts or other Proceeds or any other property in violation of the terms of the DIP ABL Documents, or (c) an event or circumstance that in the reasonable judgment of the DIP ABL Agent or the DIP Term Loan Agent, as applicable, materially and imminently threatens the value of, or ability of the DIP ABL Agent or the DIP Term Loan Agent, as applicable, to realize upon, a portion the ABL Priority Collateral or the Term Loan Priority Collateral, as applicable, such as, without limitation, fraudulent removal, concealment, destruction (other than to the extent covered by insurance), material waste or abscondment thereof.

"**Final Order**" has the meaning specified in the DIP ABL Credit Agreement.

"**Governmental Authority**" means the government of the United States of America, Canada, Luxembourg or any other nation, any political subdivision thereof, whether state, provincial, or local, and any agency, authority, instrumentality, regulatory body, court, central bank, or other entity exercising executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of or pertaining to government.

"**Grantors**" means each DIP Borrower, each DIP Guarantor, and each other person that may, as applicable, from time to time execute and deliver an ABL Collateral Document or a Term Loan Collateral Document as a "debtor," "grantor," "obligor," or "pledgor" (or the equivalent thereof).

"**Guarantor**" and "**Guarantors**" have the respective meanings set forth in the recitals.

"**Hedge Agreement**" means a "swap agreement" as the term is defined in Section 101(53B)(A) of the Bankruptcy Code.

"**Indebtedness**" means "Indebtedness" as that term is defined in the DIP ABL Credit Agreement as in effect on the Closing Date.

"**Insolvency Proceeding**" means:

(a) any voluntary or involuntary case or proceeding under any Bankruptcy Law with respect to any Grantor;

(b) any filing under the BIA of a notice of intention to make a proposal, or a proposal is made, under the BIA;

(c) any other voluntary or involuntary insolvency or bankruptcy case or proceeding, or any receivership, liquidation or other similar case or proceeding with respect to any Grantor or with respect to a material portion of its assets;

(d) any liquidation, dissolution, or winding up of any Grantor (other than as permitted by the DIP Term Loan Documents or the DIP ABL Documents) whether voluntary or involuntary and whether or not involving insolvency or bankruptcy;

(e) any assignment for the benefit of creditors or any other marshaling of assets for creditors of any Grantor or any other similar arrangement in respect of such Grantor's creditors generally, and liabilities of any Grantor; or

(f) any of the Cases.

"**Intellectual Property**" means the "Intellectual Property" as that term is defined in the Term Loan Security Agreement as in effect on the Closing Date.

"**Interim Order**" has the meaning specified in the DIP ABL Credit Agreement.

"**Investment Related Property**" means any and all investment property (as that term is defined in the UCC or the PPSA, as applicable).

"**Letters of Credit**" means the "Letters of Credit," as that term is defined in the DIP ABL Credit Agreement.

"**Lien**" means any lien, mortgage, pledge, assignment, security interest, hypothec, charge, or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust, or other preferential arrangement having the practical effect of any of the foregoing.

"**Litigation Provisions**" means (a) in the case of the DIP ABL Documents, any representation and warranty, covenant, default, DIP ABL Default or any other provision relating to any "Civil Antitrust Claim," "DOJ Payment," "DOJ Reserve", "DOJ Settlement," "Other DOJ Individuals," "Other DOJ Matter" or "Other Payment" (in each case, as defined in the DIP ABL Credit Agreement as in effect on the Closing Date) and (b) in the case of the Term Loan Documents, any representation and warranty, covenant, default, DIP Term Loan Default or any other provision relating to the "Civil Cases," "Criminal Cases" or "Plea Agreement" (in each case, as defined in the Term Loan Agreement as in effect on the Closing Date).

"**Mortgage**" means each mortgage, deed of trust, deed of hypothec or deed to secure debt pursuant to which a Grantor grants to the (a) DIP ABL Agent, for the benefit of the DIP ABL Claimholders, Liens upon the real estate Collateral owned by such Grantor, as security for the DIP ABL Obligations, (b) DIP Term Loan Agent, for the benefit of the DIP Term Loan Claimholders, Liens upon the real estate Collateral owned by such Grantor, as security for the DIP Term Loan Obligations, (c) Pre-Petition ABL Agent, for the benefit of the Pre-Petition ABL Claimholders, Liens upon the real estate Collateral owned by such Grantor, as security for the Pre-Petition ABL Obligations, or (d) Pre-Petition Term Loan Agent, for the benefit of the Pre-Petition Term Loan Claimholders, Liens upon the real estate Collateral owned by such Grantor, as security for the Pre-Petition Term Loan Obligations.

"**Obligations**" shall mean, as applicable, (a) all ABL Obligations and (b) all Term Loan Obligations.

"**Orders**" means, the Interim Order, the Final Order, CCAA Initial Order and the CCAA A&R Initial Order.

"**person**" means any natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority, or other entity.

"**Pledged Collateral**" has the meaning set forth in Section 5.4(a).

"**PPSA**" means the Personal Property Security Act (Ontario) or the Personal Property Security Act of any province to which relevant property is subject, or any other applicable federal or provincial statute (including the Civil Code of Quebec) pertaining to the granting, perfecting, priority or ranking of security interests, liens, hypothecs or personal property, and any successor statutes, together with any regulations thereunder, in each case as in effect from time to time.

"**Pre-Petition ABL Agent**" has the meaning set forth in the preamble.

"**Pre-Petition ABL Bank Product Obligations**" has the meaning ascribed to "Bank Product Obligations" in the Pre-Petition ABL Credit Agreement.

"**Pre-Petition ABL Claimholders**" means, at any relevant time, the holders of Pre-Petition ABL Obligations at that time, including Pre-Petition ABL Lenders, the Underlying Issuer (as defined in the Pre-Petition ABL Credit Agreement), Bank Product Providers (as defined in the Pre-Petition ABL Credit Agreement), and Agents (as defined in the Pre-Petition ABL Credit Agreement).

"**Pre-Petition ABL Collateral**" has the meaning ascribed to "ABL Collateral" in the Pre-Petition Intercreditor Agreement.

"**Pre-Petition ABL Collateral Document**" has the meaning ascribed to "ABL Collateral Document" in the Pre-Petition Intercreditor Agreement.

"**Pre-Petition ABL Credit Agreement**" has the meaning set forth in the recitals.

"**Pre-Petition ABL Documents**" has the meaning ascribed to the term "ABL Documents" in the Pre-Petition Intercreditor Agreement.

"**Pre-Petition ABL Guaranty**" has the meaning ascribed to the term "ABL Guaranty" in the Pre-Petition Intercreditor Agreement.

"**Pre-Petition ABL Hedge Obligations**" has the meaning ascribed to "Hedge Obligations" in the Pre-Petition ABL Credit Agreement.

"**Pre-Petition ABL Obligations**" has the meaning ascribed to the term "ABL Obligations" in the Pre-Petition Intercreditor Agreement.

"**Pre-Petition ABL Roll Up**" has the meaning set forth in Section 4.1(a).

"**Pre-Petition Closing Date**" means August 15, 2017.

"**Pre-Petition Intercreditor Agreement**" has the meaning set forth in the recitals.

"**Pre-Petition Term Loan Agent**" has the meaning set forth in the preamble.

"**Pre-Petition Term Loan Agreement**" has the meaning set forth in the recitals.

"**Pre-Petition Term Loan Claimholders**" means, as of any date of determination, the holders of the Pre-Petition Term Loan Obligations at that time, including (a) Term Loan Agent (as defined in the Pre-Petition Term Loan Agreement) and (b) the Term Loan Lenders (as defined in the Pre-Petition Term Loan Agreement).

"**Pre-Petition Term Loan Collateral**" has the meaning ascribed to "Term Loan Collateral" in the Pre-Petition Intercreditor Agreement.

"**Pre-Petition Term Loan Collateral Document**" has the meaning ascribed to "Term Loan Collateral Document" in the Pre-Petition Intercreditor Agreement.

"**Pre-Petition Term Loan Documents**" has the meaning ascribed to the term "Term Loan Documents" in the Pre-Petition Intercreditor Agreement.

"**Pre-Petition Term Loan Guaranty**" has the meaning ascribed to the term "Term Loan Guaranty" in the Pre-Petition Intercreditor Agreement.

"**Pre-Petition Term Loan Obligations"** has the meaning ascribed to the term "Term Loan Obligations" in the Pre-Petition Intercreditor Agreement.

"**Priority Collateral**" means, with respect to the ABL Claimholders, all ABL Priority Collateral, and with respect to the Term Loan Claimholders, all Term Loan Priority Collateral

"**Purchase Notice**" has the meaning set forth in Section 10.1.

"**Purchase Triggering Event**" means with respect to the purchase option in favor of the Term Loan Claimholders:

(a) the acceleration of the DIP ABL Obligations and/or termination of all or substantially all of the commitments under the DIP ABL Credit Agreement;

(b) the Exercise of Secured Creditor Remedies by DIP ABL Agent or any DIP ABL Claimholder with respect to all or a material portion of the ABL Priority Collateral;

(c) prior to the occurrence of an DIP ABL Default, the DIP ABL Lenders or other DIP ABL Claimholders do not fund loans or other extensions of credit requested by any of the DIP Borrowers under the DIP ABL Credit Agreement for a period of more than five (5) consecutive Business Days (unless the reason for not funding is that the DIP Borrowers do not have availability or have failed to satisfy any of the relevant conditions to funding set forth in the DIP ABL Credit Agreement); or

(d) the commencement of an Insolvency Proceeding with respect to any Grantor that is not a Debtor or a CCAA Debtor or any Subsidiary of a Grantor that is not a Debtor or a CCAA Debtor.

"**Real Estate Asset**" means, at any time of determination, any fee interest of any Grantor in owned real property.

"**Receivables**" shall mean all of the following now owned or hereafter arising or acquired property of any Grantor: (a) all Accounts; (b) all amounts at any time payable to any Grantor in respect of the sale or other disposition by any Grantor of any Account; (c) all interest, fees, late charges, penalties, collection fees and other amounts due or to become due or otherwise payable in connection with any Account; (d) all tax refunds; and (e) all receivables, payment intangibles, and other rights to payment of each Grantor and other contact rights, chattel paper, instruments, notes, and other forms of obligations owing to any Grantor, in each case arising from the sale, lease, rental, license or other disposition of Inventory or Accounts or other ABL Priority Collateral, or the provision of services rendered or to be rendered or otherwise directly related to any Accounts or Inventory or other ABL Priority Collateral of a Grantor (including, without limitation, choses in action, causes of action, or other rights and claims against carriers and shippers, rights to indemnification, and identifiable Proceeds thereof, casualty or any similar types of insurance, in each case relating to ABL Priority Collateral and identifiable Proceeds thereof).

"**Records**" means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

"**Refinance**" means, in respect of any indebtedness, to refinance, modify, extend, renew, defease, supplement, restructure, replace, refund or repay, or to issue other indebtedness in exchange or replacement for such indebtedness, in whole or in part, whether with the same or different lenders, arrangers or agents. "**Refinanced**" and "**Refinancing**" shall have correlative meanings.

"**Securities Account**" means a securities account (as that term is defined in the UCC or the PPSA, as applicable).

"**Stock**" means all shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in a person, whether voting or nonvoting, including common stock, preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

"**Subsidiary**" of a person means a corporation, partnership, limited liability company, or other entity in which that person directly or indirectly owns or controls the shares of capital stock having ordinary voting power to elect a majority of the board of directors (or appoint other comparable managers) of such corporation, partnership, limited liability company, or other entity.

"**Term DIP Guarantor**" and "**Term DIP Guarantors**" have the respective meanings set forth in the preamble.

"**Term Loan Application Date**" means the date on or after the date hereof when a portion of the proceeds of the Initial Term Loans (as such term is defined in the DIP Term Loan Agreement) are applied to the repayment of a portion of the outstanding principal balance of the Pre-Petition ABL Obligations.

"**Term Loan Cap**" means, as of any date of determination, the sum (which amount shall be increased by the amount of all interest (including any interest paid-in-kind and added to the principal amount thereof), fees, premiums, penalties, costs, expenses, indemnities (contingent or otherwise), and other amounts accrued or charged with respect to any of the Term Loan Obligations (other than Excess Term Loan Obligations) as and when the same accrues or becomes due and payable (or is required to be cash collateralized), irrespective of whether the same is added to the principal amount of the Term Loan Obligations and including the same as would accrue and become due but for the commencement of an Insolvency Proceeding (including, but not limited to, the Cases and the CCAA Cases), whether or not such amounts are allowed or allowable, in whole or in part, in any such Insolvency Proceeding) of (a) $756,733,814 minus (b) the aggregate amount of all payments or prepayments of the principal amount of the term loans under the Pre-Petition Term Loan Agreement and DIP Term Loan Agreement (in each case, other than payments of such term loans in connection with a Refinancing thereof) on and after the Closing Date.

Any net increase in the aggregate principal amount of a loan, on a U.S. Dollar Equivalent basis, after the loan is made that is caused by a fluctuation in the exchange rate of the currency in which the loan is denominated will be ignored in determining whether the Term Loan Cap has been exceeded.

"**Term Loan Claimholders**" means any of the DIP Term Loan Claimholders and the Pre-Petition Term Loan Claimholders.

"**Term Loan Collateral Account**" means any deposit account that solely contains Term Loan Priority Collateral or identifiable proceeds of the Term Loan Priority Collateral and which has been specifically identified as a "Term Loan Collateral Account" in writing to each ABL Agent and each Term Loan Agent (it being understood that any property in such deposit account which is not Term Loan Priority Collateral or identifiable proceeds of Term Loan Priority Collateral shall not be Term Loan Priority Collateral solely by virtue of being on deposit in such deposit account).

"**Term Loan Collateral**" means, collectively, all of the DIP Term Loan Collateral and the Pre-Petition Term Loan Collateral.

"**Term Loan Collateral Documents**" means, collectively, all of the DIP Term Loan Collateral Documents and the Pre-Petition Term Loan Collateral Documents.

"**Term Loan Default**" means any DIP Term Loan Default, or any "Event of Default", as such term is defined in the Pre-Petition Term Loan Agreement.

"**Term Loan Documents**" means the DIP Term Loan Documents and the Pre-Petition Term Loan Documents.

"**Term Loan Guaranty**" means, collectively, any DIP Term Loan Guaranty and any Pre-Petition Term Loan Guaranty.

"**Term Loan Lender**" means any DIP Term Loan Lender or any Pre-Petition Term Loan Lender.

"**Term Loan Obligations**" means, collectively, all of the DIP Term Loan Obligations and Pre-Petition Term Loan Obligations.

"**Term Loan Priority Collateral**" means all of each Grantor's right, title, and interest in and to the following types of property of such Grantor that do not constitute ABL Priority Collateral (including, for the avoidance of doubt, any such assets that, but for the application of Section 552 of the Bankruptcy Code or any applicable provision of the CCAA (or any provision of any other Bankruptcy Law)), wherever located and whether such Grantor has such right, title, and interest in such property now or hereafter acquires it:

(a) all Investment Related Property (including Equity Interests) that does not constitute ABL Priority Collateral;

(b) all equipment;

(c) all Intellectual Property (including the "Bumble Bee" brand and all other brands);

(d) all Negotiable Collateral (as defined in the Term Loan Security Agreements) that does not constitute ABL Priority Collateral;

(e) all Real Estate Assets;

(f) all general intangibles, instruments, Books and supporting obligations related to the foregoing and proceeds of the foregoing (except to the extent that any of the foregoing constitute ABL Priority Collateral);

(g) all other goods (including but not limited to fixtures) and assets of each Grantor not constituting ABL Priority Collateral, whether tangible or intangible and wherever located;

(h) the DIP Term Loan Funding Account and any Term Loan Collateral Account and, in each case, any cash, money, cash equivalents, money checks instruments, funds, ACH transfers, wired funds, investment property and other funds or property held in or on deposit therein;

(i) any other Term Loan Collateral that does not constitute ABL Priority Collateral.

Notwithstanding the foregoing, the Term Loan Priority Collateral shall not include any Excluded Assets.

"**Term Loan Priority Obligations**" means all Term Loan Obligations other than Excess Term Loan Obligations.

"**UCC**" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

"**Use Period**" means the period commencing on the date that the DIP ABL Agent (or any DIP ABL Claimholder acting with the consent of the DIP ABL Agent) commences the Exercise of Secured Creditor Remedies in connection with any ABL Priority Collateral in a manner as provided in Section 3.8 (having theretofore furnished the Term Loan Agents with an Enforcement Notice) and ending on the earlier to occur of (i) 180 days thereafter and (ii) the Discharge of ABL Obligations. If any stay or other order that prohibits DIP ABL Agent or the other DIP ABL Claimholders from commencing and continuing to Exercise any Secured Creditor Remedies or to liquidate and sell the ABL Priority Collateral has occurred by operation of law or has been entered by a court of competent jurisdiction, such 180-day period shall be tolled during the pendency of any such stay or other order and the Use Period shall be so extended and upon lifting of the automatic stay or other stay, if there are fewer than 180 days remaining in such 180 day period, then such 180 day period shall be extended so that each DIP ABL Agent and the DIP ABL Claimholders have 180 days upon lifting of the automatic stay or other stay.

"**WURA**" means the Winding Up and Restructuring Act (Canada).

1.3 Construction. The definitions of terms in this Agreement shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." The term "or" shall be construed to have, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." Any term used in this Agreement and not defined in this Agreement shall have the meaning set forth in the DIP ABL Credit Agreement. Unless the context requires otherwise:

(a) except as otherwise provided herein, any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, restated, supplemented, modified, renewed, extended, Refinanced, refunded, or replaced;

(b) any reference to any agreement, instrument, or other document herein "as in effect on the Closing Date" (not including, except as otherwise provided herein, any reference to an agreement, instrument or other document "dated as of the Closing Date" or similar formulation) shall be construed as referring to such agreement, instrument, or other document without giving effect to any amendment, restatement, supplement, modification, or Refinance after the Closing Date;

(c) any definition of or reference to ABL Obligations or the Term Loan Obligations herein shall be construed as referring to the ABL Obligations or the Term Loan Obligations (as applicable) as from time to time amended, restated, supplemented, modified, renewed, extended, Refinanced, refunded, or replaced;

(d) any reference herein to any person shall be construed to include such person's successors and assigns;

(e) the words "herein," "hereof," and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;

(f) all references herein to Sections shall be construed to refer to Sections of this Agreement; and

(g) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights.

1.4 Interpretation in Québec. For all purposes pursuant to which the interpretation or construction of this Agreement may be subject to the laws of the Province of Québec or a court or tribunal exercising jurisdiction in the Province of Québec, (i) "personal property" shall include "movable property", (ii) "real property" shall include "immovable property", (iii) "tangible property" shall include "corporeal property", (iv) "intangible property" shall include "incorporeal property", (v) "security interest", "mortgage" and "lien" shall include a "hypothec", "prior claim" and a "resolutory clause", (vi) all references to filing, registering or recording under the Code shall include publication under the Register of Personal and Movable Real Rights of Québec, (vii) all references to "perfection" of or "perfected" liens or security interest shall include a reference to an "opposable" or "set up" lien or security interest as against third parties, (viii) any "right of offset", "right of setoff" or similar expression shall include a "right of compensation", (ix) "goods" shall include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (x) an "agent" shall include a "mandatary", (xi) "construction liens" shall include "legal hypothecs", (xii) "joint and several" shall include solidary, (xiii) "gross negligence or willful misconduct" shall be deemed to be "intentional or gross fault", (xiv) "beneficial ownership" shall include "ownership on behalf of another as "mandatary", (xv) "easement" shall include "servitude", (xvi) "priority" shall include "prior claim", (xvii) "survey" shall include "certificate of location and plan", (xviii) "fee simple title" shall include "absolute ownership" and (xix) "leasehold interest" shall include "valid lease" ", (xx) "leasehold interest" shall include "valid lease", (xxi) "accounts" and "accounts receivable" shall include "claims", (xxii) "guarantee" and "guarantor" shall include "suretyship" and "surety" respectively, and (xxiii) "Deposit Account" shall include a "financial account" (as defined in the *Civil Code of Quebec*). The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. *Les parties aux présentes confirment que c'est leur volonté que cette convention et les autres documents de crédit soient rédigés en langue anglaise seulement et que tous les documents, y compris tous avis, envisagés par cette convention et les autres documents peuvent être rédigés en langue anglaise seulement.*

SECTION 2. Lien Priorities.

2.1 Relative Priorities. Notwithstanding the date, time, method, manner, or order of grant, attachment, or perfection of any Liens securing (or purportedly securing) the ABL Obligations granted with respect to the Collateral or of any Liens securing (or purportedly securing) the Term Loan Obligations granted with respect to the Collateral (including, in each case, irrespective of whether any such Lien is granted, or secures Obligations relating to the period, before or after the commencement of any Insolvency Proceeding in respect of any Grantor that is not a Debtor or a CCAA Debtor and, with respect to any Debtor or CCAA Debtor, irrespective of whether the Cases are dismissed or converted to a case under chapter 7 of

the Bankruptcy Code or otherwise or whether the CCAA Cases are dismissed or otherwise terminated) and notwithstanding any contrary provision of the UCC, the PPSA or any other applicable law, the Orders or the ABL Documents or the Term Loan Documents, as applicable, or any defect or deficiencies in, or failure to attach or perfect, the Liens securing (or purportedly securing) any of the Obligations, or any other circumstance whatsoever, the DIP ABL Agent, on behalf of the DIP ABL Claimholders, Pre-Petition ABL Agent, on behalf of the Pre-Petition ABL Claimholders, DIP Term Loan Agent, on behalf of the DIP Term Loan Claimholders and the Pre-Petition Term Loan Agent, on behalf of the Pre-Petition Term Loan Claimholders, hereby agree that:

(a) any Lien with respect to the ABL Priority Collateral securing any ABL Priority Obligations under the DIP ABL Documents now or hereafter held by or on behalf of, or created for the benefit of, DIP ABL Agent or any of the DIP ABL Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, court order, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Lien with respect to the ABL Priority Collateral securing (A) any Term Loan Obligations, (B) any Excess ABL Obligations, and (C) any Pre-Petition ABL Obligations;

(b) any Lien with respect to the ABL Priority Collateral securing any Term Loan Obligations now or hereafter held by or on behalf of, or created for the benefit of, any Term Loan Agent or any of the Term Loan Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, court order, operation of law, subrogation or otherwise, shall be (A) junior and subordinate in all respects to all Liens with respect to the ABL Priority Collateral securing any ABL Priority Obligations, (B) excluding the extent to which such Lien secures Excess Term Loan Obligations, senior in all respects and prior to any Lien with respect to the ABL Priority Collateral securing any Excess ABL Obligations and (C) to the extent such Lien secures Excess Term Loan Obligations, junior and subordinate to all Liens with respect to the ABL Priority Collateral securing Excess ABL Obligations;

(c) any Lien with respect to the Term Loan Priority Collateral securing any Term Loan Priority Obligations under the DIP Term Loan Documents now or hereafter held by or on behalf of, or created for the benefit of, DIP Term Loan Agent or any of the DIP Term Loan Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, court order, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Lien with respect to the Term Loan Priority Collateral securing (A) any ABL Obligations, (B) any Excess Term Loan Obligations, and (C) any Pre-Petition Term Loan Obligations; and

(d) any Lien with respect to the Term Loan Priority Collateral securing any ABL Obligations now or hereafter held by or on behalf of, or created for the benefit of, any ABL Agent, any of the ABL Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, court order, operation of law, subrogation or otherwise, shall be (A) junior and subordinate in all respects to all Liens with respect to the Term Loan Priority Collateral securing any Term Loan Priority Obligations, (B) excluding the extent to which such Lien secures Excess ABL Obligations, senior in all respects and prior to any Lien with respect to the Term Loan Priority Collateral securing any Excess Term Loan Obligations and (C) to the extent such Lien secures Excess ABL Obligations, junior and subordinate to all Liens with respect to the Term Loan Priority Collateral securing Excess Term Loan Obligations.

The subordination of Liens provided for in this Agreement shall continue to be effective with respect to any part of the Collateral from and after the Closing Date whether such Liens are declared, or ruled to be, invalid, unenforceable, void or not allowed by a court of competent jurisdiction, as a result of any action taken by the Term Loan Agent or the ABL Agent, as applicable, or any failure by such person to take any action, with respect to any financing statement (including any amendment to or continuation thereof), mortgage or other perfection document.

2.2 Prohibition on Contesting Liens. Each Term Loan Agent, for itself and on behalf of each Term Loan Claimholder, and each ABL Agent, for itself and on behalf of each ABL Claimholder, agrees that it will not (and hereby irrevocably, absolutely and unconditionally waives any right to), directly or indirectly, contest (directly or indirectly), seek the avoidance of, support any other person in contesting (directly or indirectly), in any proceeding (including any of the Cases, the CCAA Cases or any other Insolvency Proceeding), or encourage, support or discuss with any other person a challenge or contestation of (a) the priority, validity, attachment, perfection or enforceability of a Lien in the Collateral held by or on behalf of an ABL Agent or any other ABL Claimholder or by or on behalf of a Term Loan Agent or any other Term Loan Claimholder, (b) the priority, validity, perfection or enforceability of any Obligations (including any ABL Guaranty or Term Loan Guaranty), including the allowability or priority of any Obligations in any of the Cases, the CCAA Cases or any other Insolvency Proceeding, or (c) the validity or enforceability of, or the priorities, rights or duties established by, or other provisions of this Agreement; provided, however that nothing in this Agreement shall be construed to prevent or impair the rights of any ABL Agent, any ABL Claimholder, any Term Loan Agent, or any Term Loan Claimholder to enforce the terms of this Agreement, including the provisions of this Agreement relating to the priority of the Liens securing the ABL Obligations and the Term Loan Obligations, as applicable, as provided in Sections 2.1, 3 and 6.2.

2.3 New Liens. During the term of this Agreement, so long as neither the Discharge of ABL Obligations nor the Discharge of Term Loan Obligations has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor that is not a Debtor or a CCAA Debtor, and, in the case of any Debtor or CCAA Debtor, whether or not the Cases have been dismissed or converted to a case under chapter 7 of the Bankruptcy Code or whether or not the CCAA Cases have been dismissed or otherwise terminated, the parties hereto agree that no Grantor shall:

(a) grant or suffer to exist any Liens on any asset to secure any Term Loan Obligation unless such Grantor also offers to grant, and, at the option of the ABL Agents, grants a Lien on such asset to secure the ABL Obligations concurrently with the grant of a Lien thereon in favor of each Term Loan Agent in accordance with the priorities set forth in this Agreement; or

(b) grant or suffer to exist any Liens on any asset to secure any ABL Obligations unless such Grantor also offers to grant, and, at the option of the Term Loan Agents, grants a Lien on such asset to secure the Term Loan Obligations concurrently with the grant of a Lien thereon in favor of each ABL Agent in accordance with the priorities set forth in this Agreement.

To the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available to each ABL Agent or any ABL Claimholder, the Term Loan Agents, on behalf of each Term Loan Claimholder, agrees that any amounts received by or distributed to any of them pursuant to or as a result of Liens granted in contravention of this Section 2.3 shall be subject to Section 4.2, and without limiting any other rights and remedies available to each Term Loan Agent or any Term Loan Claimholder, the ABL Agents, on behalf of each ABL Claimholder, agrees that any amounts received

by or distributed to any of them pursuant to or as a result of Liens granted in contravention of this Section 2.3 shall be subject to Section 4.2.

2.4 Cooperation in Designating Collateral.

(a) The parties hereto agree that it is their intention that the ABL Collateral and the Term Loan Collateral be identical except as except as otherwise provided herein or in the Orders. In furtherance of the foregoing and of Section 9.8, the parties hereto agree to and the Grantors shall, in each case subject to the other provisions of this Agreement upon request by any ABL Agent or any Term Loan Agent, cooperate in good faith (and direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the ABL Priority Collateral and the Term Loan Priority Collateral and the steps taken or to be taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the ABL Documents and the Term Loan Documents.

(b) The foregoing to the contrary notwithstanding, each of the parties agrees that to the extent that any ABL Agent or any Term Loan Agent obtains a Lien in an asset (of a type that is not included in the types of assets included in the Collateral as of the Closing Date or which would not constitute Collateral without a grant of a security interest or lien separate from the ABL Documents or Term Loan Documents, as applicable, as in effect immediately prior to obtaining such Lien on such asset) which the other party to this Agreement elects not to obtain after receiving prior written notice thereof in accordance with the provisions of Section 2.3, the Collateral securing the ABL Obligations and the Term Loan Obligations will not be identical, and the provisions of the documents, agreements and instruments evidencing such Liens also will not be substantively similar, and any such difference in the scope or extent of perfection with respect to the Collateral resulting therefrom are hereby expressly permitted by this Agreement.

2.5 Conflict with Orders. Any conflict or ambiguity as between this Agreement and the Orders shall, to the extent legally enforceable as between the parties hereto, be resolved in favor of the Orders.

SECTION 3. Exercise of Remedies.

3.1 Exercise of Remedies by Term Loan Agent. Until the Discharge of ABL Obligations has occurred, whether or not any Insolvency Proceedings has been commenced by or against any Grantor that is not a Debtor or a CCAA Debtor, each Term Loan Agent and each Term Loan Claimholder:

(a) will not exercise or seek to exercise any rights, powers, or remedies with respect to any ABL Priority Collateral (including any Exercise of Secured Creditor Remedies with respect to any ABL Priority Collateral); provided, however, that upon the occurrence of a DIP Term Loan Default and for so long as such DIP Term Loan Default is continuing, the DIP Term Loan Agent may Exercise any Secured Creditor Remedies with respect to the ABL Priority Collateral after a period of one hundred eighty (180) days (provided, that such one hundred eighty (180) day period shall be tolled for any period during which each ABL Agent is stayed by an order issued in any Insolvency Proceeding or by any other court of competent jurisdiction from exercising its default and enforcement rights and remedies against substantially all or a material portion of the ABL Priority Collateral) has elapsed since the date on which the DIP ABL Agent receives an Enforcement Notice from the DIP Term Loan Agent with respect to such

DIP Term Loan Default (the "**ABL Priority Standstill Period**") (it being understood that, if at any time after the delivery by the DIP Term Loan Agent of the Enforcement Notice that commences an ABL Priority Standstill Period, no DIP Term Loan Default is continuing, the DIP Term Loan Agent may not Exercise any Secured Creditor Remedies with respect to the ABL Priority Collateral until the passage of a new ABL Priority Standstill Period commenced by a new Enforcement Notice relative to the occurrence of a new DIP Term Loan Default under the DIP Term Loan Documents); provided, further, however, that any Exercise of Secured Creditor Remedies with respect to any ABL Priority Collateral by any Term Loan Agent is at all times subject to the provisions of this Agreement;

(b) subject to Section 3.4 and Section 3.7 and the Orders, will not, directly or indirectly contest, protest, object to (and seek or be awarded any relief of any nature whatsoever based on any such objection), interfere with, hinder or delay any (i) action to enforce or collect (or attempt to collect) the ABL Obligations, or (ii) Exercise of Secured Creditor Remedies by any ABL Agent or any ABL Claimholder with respect to any ABL Priority Collateral (regardless of whether any action or failure to act by or on behalf of such ABL Agent or the ABL Claimholders is adverse to the interest of any Term Loan Agent or any Term Loan Claimholder), and have no right to direct any ABL Agent to Exercise any Secured Creditor Remedies or take any other action under the ABL Documents;

(c) will not, in any manner, contest, oppose or otherwise bring into question the validity, priority, perfection or enforceability of any of the ABL Documents;

(d) will not object to (and waive any and all claims with respect to) any waiver or forbearance by any ABL Agent or any ABL Claimholder from Exercising any Secured Creditor Remedies;

(e) will not take or cause to be taken any action the purpose or effect of which is, or could be, to make any Lien that any Term Loan Claimholder has on ABL Priority Collateral equal with, or to give any Term Loan Claimholder any preference or priority relative to, any Lien that any ABL Claimholder has with respect to such ABL Priority Collateral;

(f) will have no right to (i) direct any ABL Agent or any ABL Claimholder to exercise any right, remedy or power or (ii) consent to the exercise by any ABL Agent or any ABL Claimholder of any right, remedy or power with respect to any ABL Priority Collateral;

(g) acknowledge and agree that no covenant, agreement or restriction contained in the Term Loan Documents shall be deemed to restrict in any way the rights and remedies of any ABL Agent or any ABL Claimholder with respect to the ABL Priority Collateral as set forth in this Agreement and the ABL Documents; and

(h) will not attempt, directly or indirectly, whether by judicial proceedings or otherwise, to challenge the enforceability of any provision of this Agreement.

3.2 Exercise of Remedies by ABL Agent. Until the Discharge of Term Loan Obligations has occurred, whether or not any Insolvency Proceedings has been commenced by or against any Grantor that is not a Debtor or a CCAA Debtor, each ABL Agent and each ABL Claimholder:

(a) will not exercise or seek to exercise any rights, powers, or remedies with respect to any Term Loan Priority Collateral (including any Exercise of Secured Creditor Remedies with respect to any Term Loan Priority Collateral); provided, however, that upon the occurrence of an DIP ABL Default and for so long as such DIP ABL Default is continuing, the DIP ABL Agent may Exercise any Secured Creditor Remedies with respect to the Term Loan Priority Collateral after a period of one hundred eighty (180) days (provided, that such one hundred eighty (180) day period shall be tolled for any period during which each Term Loan Agent is stayed by an order issued in any Insolvency Proceeding or by any other court of competent jurisdiction from exercising its default and enforcement rights and remedies against substantially all or a material portion of the Term Loan Priority Collateral) has elapsed since the date on which the DIP Term Loan Agent receives an Enforcement Notice from the DIP ABL Agent with respect to such DIP ABL Default (the "**Term Loan Priority Standstill Period**") (it being understood that, if at any time after the delivery by the DIP ABL Agent of the Enforcement Notice that commences a Term Loan Priority Standstill Period, no DIP ABL Default is continuing, the DIP ABL Agent may not Exercise any Secured Creditor Remedies with respect to the Term Loan Priority Collateral until the passage of a new Term Loan Priority Standstill Period commenced by a new Enforcement Notice relative to the occurrence of a new DIP ABL Default under the ABL Documents); provided, further, however, that any Exercise of Secured Creditor Remedies with respect to any Term Loan Priority Collateral by any ABL Agent is at all times subject to the provisions of this Agreement;

(b) subject to Section 3.4 and Section 3.7 and the Orders, will not, directly or indirectly, contest, protest, object to (and seek or be awarded any relief of any nature whatsoever based on any such objection), interfere with, hinder or delay any (i) action to enforce or collect (or attempt to collect) the Term Loan Obligations, or (ii) Exercise of Secured Creditor Remedies by any Term Loan Agent or any Term Loan Claimholder with respect to any Term Loan Priority Collateral (regardless of whether any action or failure to act by or on behalf of such Term Loan Agent or the Term Loan Claimholders is adverse to the interest of any ABL Agent or the any ABL Claimholder), and have no right to direct Term Loan Agent to Exercise any Secured Creditor Remedies or take any other action under the Term Loan Documents;

(c) will not, in any manner, contest, oppose or otherwise bring into question the validity, priority, perfection or enforceability of any of the Term Loan Documents;

(d) will not object to (and waive any and all claims with respect to) any waiver or forbearance by any Term Loan Agent or any Term Loan Claimholder from Exercising any Secured Creditor Remedies;

(e) will not take or cause to be taken any action the purpose or effect of which is, or could be, to make any Lien that any ABL Claimholder has on Term Loan Priority Collateral equal with, or to give any ABL Claimholder any preference or priority relative to, any Lien that any Term Loan Claimholders has with respect to such Term Loan Priority Collateral;

(f) will have no right to (i) direct any Term Loan Agent or any Term Loan Claimholder to exercise any right, remedy or power or (ii) consent to the exercise by any Term Loan Agent or any Term Loan Claimholder of any right, remedy or power with respect to any Term Loan Priority Collateral;

(g) acknowledge and agree that no covenant, agreement or restriction contained in the ABL Documents shall be deemed to restrict in any way the rights and remedies of any Term Loan Agent or any Term Loan Claimholder with respect to the Term Loan Priority Collateral as set forth in this Agreement and the ABL Documents; and

(h) will not attempt, directly or indirectly, whether by judicial proceedings or otherwise, to challenge the enforceability of any provision of this Agreement.

3.3 Exclusive Enforcement Rights. (a) Until the Discharge of ABL Obligations has occurred, whether or not any Insolvency Proceedings has been commenced by or against any Grantor that is not a Debtor or a CCAA Debtor but subject to the first proviso in Section 3.1(a), DIP ABL Agent shall have the exclusive right to Exercise any Secured Creditor Remedies with respect to any ABL Priority Collateral (and in connection therewith, make determinations regarding the release or Disposition thereof or any restrictions with respect thereto), in each case without any consultation with or the consent of any Term Loan Agent or any Term Loan Claimholder, and (b) until the Discharge of Term Loan Obligations has occurred, whether or not any Insolvency Proceedings has been commenced by or against any Grantor that is not a Debtor or a CCAA Debtor but subject to the first proviso in Section 3.2(a), DIP Term Loan Agent shall have the exclusive right to Exercise any Secured Creditor Remedies with respect to any Term Loan Priority Collateral and in connection therewith, subject to Section 3.8, make determinations regarding the release or Disposition thereof or any restrictions with respect thereto without any consultation with or the consent of any ABL Agent or any ABL Claimholder. In connection with (x) any Exercise of Secured Creditor Remedies with respect to the ABL Priority Collateral, each ABL Agent may enforce the provisions of the ABL Documents and exercise remedies thereunder, all in such order and in such manner as it may determine in the exercise of its sole discretion, or (y) any Exercise of Secured Creditor Remedies with respect to the Term Loan Priority Collateral, each Term Loan Agent may enforce the provisions of the Term Loan Documents and exercise remedies thereunder, all in such order and in such manner as it may determine in the exercise of its sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to Dispose of Collateral, to incur expenses in connection with such Disposition, and to exercise all the rights and remedies of a secured creditor under the UCC, the PPSA, the Bankruptcy Laws or other applicable law.

3.4 Permitted Actions. Anything to the contrary in this Section 3 notwithstanding, each Term Loan Agent and each ABL Agent may:

(a) if an Insolvency Proceedings has been commenced by or against any Grantor that is not a Debtor or a CCAA Debtor and in connection with the Cases or the CCAA Cases, file a proof of claim or statement of interest with respect to its Collateral or otherwise with respect to the Term Loan Obligations or the ABL Obligations, as applicable and as the case may be, or otherwise file any pleadings, objections, motions or agreements which assert rights or interests available to unsecured creditors of such Grantor arising under any Insolvency Proceeding or applicable non-bankruptcy law, in each case not inconsistent with the terms of this Agreement or applicable law (including the Bankruptcy Laws), except that no Claimholder may take (or support any other person in taking) any action as an unsecured creditor that such party

could not take as a secured creditor pursuant to this Agreement (including pursuant to Sections 2.2, 3.1, 3.2, 3.3, 3.6, or 6 of this Agreement);

(b) subject to the Orders, the Bankruptcy Code, the CCAA, the Bankruptcy Laws or other applicable law, take any action (not adverse to the priority status of the Liens on the Collateral of the other, or the rights, subject to the terms of this Agreement, of the other or any Claimholders to Exercise any Secured Creditor Remedies) in order to create or perfect its Lien in and to the Collateral;

(c) file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding, or other pleading made by any person objecting to or otherwise seeking the disallowance or subordination of its claims or the claims of its Claimholders, or the avoidance of its Liens;

(d) make any arguments and motions that are, in each case, in accordance with the terms of this Agreement;

(e) vote on any plan of reorganization or plan of arrangement;

(f) join (but not exercise any control with respect to) any judicial foreclosure proceeding or other judicial lien enforcement proceeding with respect to the Priority Collateral of the other Agent initiated by such other Agent to the extent that any such action could not reasonably be expected, in any material respect, to restrain, hinder, limit, delay for any material period or otherwise interfere with the Exercise of Secured Creditor Remedies by such other Agent (it being understood that, (i) with respect to ABL Priority Collateral, neither any Term Loan Agent nor any Term Loan Claimholder shall be entitled to receive any proceeds thereof unless otherwise expressly permitted herein and (ii) with respect to Term Loan Priority Collateral, neither any ABL Agent nor any ABL Claimholder shall be entitled to receive any proceeds thereof unless otherwise expressly permitted herein); and

(g) take any action described in clauses (i) through (viii) of the definition of Exercise of Secured Creditor Remedies.

3.5 Retention of Proceeds.

(a) Each Term Loan Agent agrees that prior to the Discharge of ABL Obligations, but subject to Section 3.5(c) below, no Term Loan Claimholders shall be permitted to retain any proceeds of ABL Priority Collateral in any circumstance unless and until the Discharge of ABL Obligations has occurred, and any such proceeds received or retained in any other circumstance will be subject to Section 4.2.

(b) Each ABL Agent agrees that prior to the Discharge of Term Loan Obligations, but subject to Section 3.5(c) below, no ABL Claimholders shall be permitted to retain any proceeds of Term Loan Priority Collateral in any circumstance unless and until the Discharge of Term Loan Obligations has occurred, and any such proceeds received or retained in any other circumstance will be subject to Section 4.2.

(c) Notwithstanding anything contained in this Agreement to the contrary, in the event of any Disposition or series of related Dispositions that includes ABL Priority Collateral and Term Loan Priority Collateral (including in connection with

or as a result of the sale of the capital stock of a Grantor that owns assets that are ABL Priority Collateral), then solely for purposes of this Agreement, the allocation of proceeds of such Disposition to the ABL Priority Collateral shall be based upon, in the case of (i) any ABL Priority Collateral consisting of inventory, the book value thereof as assessed on the date of such Disposition, (ii) any ABL Priority Collateral consisting of accounts receivable, the book value thereof as assessed on the date of such Disposition and (iii) all other ABL Priority Collateral and Term Loan Priority Collateral, fair market value of such ABL Priority Collateral and Term Loan Priority Collateral sold, as determined by the Grantors in their reasonable judgment or, if the aggregate amount of such other ABL Priority Collateral and Term Loan Priority Collateral sold is greater than $20,000,000, an independent appraiser.

3.6 Non-Interference. Subject to Sections 3.1, 3.2, 3.3 and 3.4, each Term Loan Agent, for itself and on behalf of its respective Term Loan Claimholders, and each ABL Agent, for itself and on behalf of its respective ABL Claimholders, hereby:

(a) subject to Section 3.7, agrees that it will not, directly or indirectly, take any action that would restrain, hinder, limit, delay, or otherwise interfere with any Exercise of Secured Creditor Remedies by any other Agent with respect to such other Agent's Priority Collateral or that is otherwise prohibited hereunder, including any Disposition of any other Agent's Priority Collateral, whether by foreclosure or otherwise; and

(b) subject to Section 3.7, waives any and all rights it or its Claimholders may have as a junior lien creditor or otherwise to object to the manner in which such other Agent seeks to enforce or collect such other party's respective Obligations or enforce the Liens securing such Obligations granted in any of such other Agent's Priority Collateral, regardless of whether any action or failure to act by or on behalf of such other Agent is adverse to the interest of it or its Claimholders.

3.7 Commercially Reasonable Dispositions; Notice of Exercise.

(a) Each Term Loan Agent, for itself and on behalf of its respective Term Loan Claimholders, hereby irrevocably, absolutely, and unconditionally waives any right to object (and seek or be awarded any relief of any nature whatsoever based on any such objection), at any time prior or subsequent to any disposition of any of the ABL Priority Collateral, on the ground(s) that any such disposition of ABL Priority Collateral (x) would not be or was not "commercially reasonable" within the meaning of any applicable UCC, PPSA or other applicable law and/or (y) would not or did not comply with any other requirement under any applicable UCC, PPSA or under any other applicable law governing the manner in which a secured creditor (including one with a Lien on real property) is to realize on its collateral. Each ABL Agent, for itself and on behalf of its respective ABL Claimholders, hereby irrevocably, absolutely and unconditionally waives any right to object (and seek or be awarded any relief of any nature whatsoever based on any such objection), at any time prior to or subsequent to any disposition of any Term Loan Priority Collateral, on the ground(s) that any such disposition of Term Loan Priority Collateral (i) would not be or was not "commercially reasonable" within the meaning of any applicable UCC, PPSA or other applicable law and/or (ii) would not or did not comply with any other requirement under any applicable UCC, PPSA or under any other applicable law governing the manner in which a secured creditor (including one with a Lien on real property) is to realize on its Collateral.

(b) Except as expressly set forth in this Agreement, subject to the Orders each Term Loan Claimholder and each ABL Claimholder shall have any and all rights and remedies it may have as a creditor under any applicable law, including the right to the Exercise of Secured Creditor Remedies; provided, however, that (i) the Exercise of Secured Creditor Remedies with respect to the Collateral (and any judgment Lien obtained in connection therewith) shall be subject to the Lien priorities set forth herein and to the provisions of this Agreement and (ii) no Claimholder may take (or support any other person in taking) any action as an unsecured creditor that such party could not take as a secured creditor pursuant to this Agreement (including pursuant to Sections 2.2, 3.1, 3.2, 3.3, 3.6, or 6 of this Agreement). Subject to the Orders, each ABL Agent may enforce the provisions of the ABL Documents, as applicable, each Term Loan Agent may enforce the provisions of applicable Term Loan Documents, as applicable, and each Agent may Exercise any Secured Creditor Remedies, all in such order and in such manner as each may determine in the exercise of its sole discretion, consistent with the terms of this Agreement and mandatory provisions of applicable law; provided, however, that each ABL Agent and each Term Loan Agent agrees to provide to the other (x) an Enforcement Notice prior to (unless there are Exigent Circumstances, in which case such notice may be provided promptly thereafter) its Exercise of Secured Creditor Remedies and (y) copies of any notices that it is required under applicable law to deliver to any Grantor; provided further, however, that any ABL Agent's failure to provide copies of any such notices to the any Term Loan Agent shall not impair any of the ABL Agents' rights hereunder or under any of the ABL Documents and any Term Loan Agent's failure to provide copies of any such notices to any ABL Agent shall not impair any of the Term Loan Agents' rights hereunder or under any of the Term Loan Documents. Each Term Loan Agent, each Term Loan Claimholder, each ABL Agent, and each ABL Claimholder agrees that it will not institute any suit or other proceeding or assert in any suit, the Cases, the CCAA Cases, any other Insolvency Proceeding or other proceeding any claim, in the case of each Term Loan Agent and each Term Loan Claimholder, against any ABL Agent or any other ABL Claimholder, and in the case of each ABL Agent and each other ABL Claimholder, against any Term Loan Agent or any other Term Loan Claimholder, seeking damages from or other relief by way of specific performance, instructions or otherwise, with respect to, any action taken or omitted to be taken by such person with respect to the Collateral which is consistent with the terms of this Agreement, and none of such parties shall be liable for any such action taken or omitted to be taken.

3.8 Inspection and Access Rights.

(a) If any Term Loan Agent, or any agent or representative of any Term Loan Agent, or any receiver, shall, after any Term Loan Default, obtain possession or physical control of any of the real properties subject to a Mortgage or any of the tangible Term Loan Priority Collateral located on any premises other than real properties subject to a Mortgage or control over any intangible Term Loan Priority Collateral, such Term Loan Agent shall promptly notify the ABL Agents in writing of that fact, and the ABL Agents may thereafter notify such Term Loan Agent in writing as to whether such ABL Agent desires to exercise access rights under this Section 3.8. In addition, if any ABL Agent, or any agent or representative of any ABL Agent, or any receiver, shall obtain possession or physical control of any of the real properties subject to a Mortgage or any of the tangible Term Loan Priority Collateral located on any premises other than real properties subject to a Mortgage or control over any intangible Term Loan Priority Collateral, following the delivery to the Term Loan Agents of an Enforcement Notice,

then such ABL Agent may at any time thereafter notify the Term Loan Agents in writing that such ABL Agent is exercising its access rights under this Agreement under either circumstance. Upon delivery of such notice by such ABL Agent to the Term Loan Agents, the parties shall confer in good faith to coordinate with respect to such ABL Agent's exercise of such access rights. Consistent with the definition of "Use Period," access rights may apply to differing parcels of real properties subject to a Mortgage and to different assets that constitute a portion of the Term Loan Priority Collateral, in each case at differing times, in which case, a differing Use Period will apply to each such property and to each such portion of the Term Loan Priority Collateral.

(b) Without limiting any rights any ABL Agent or any other ABL Claimholder may otherwise have under applicable law or by agreement and whether or not any Term Loan Agent or any other Term Loan Claimholder has commenced and is continuing to Exercise any Secured Creditor Remedies of such Term Loan Agent, each ABL Agent or any other person (including any ABL Claimholder) acting with the consent, or on behalf, of any ABL Agent, shall have an irrevocable, non-exclusive right to have access to, and a royalty-free and rent-free license and right to use the Term Loan Priority Collateral (including, without limitation, equipment, fixtures, general intangibles and real property and equipment, processors, computers and other machinery related to the storage or processing of records, documents or files, but excluding Intellectual Property) during the Use Period (i) during normal business hours on any Business Day, to access the ABL Priority Collateral that (x) is stored or located in or on, (y) has become an accession with respect to (within the meaning of Section 9-335 of the UCC), or (z) has been commingled with (within the meaning of Section 9-336 of the UCC), Term Loan Priority Collateral, and (ii) in order to assemble, inspect, copy or download information stored on, take actions to perfect its Lien on, process raw materials or work-in-process into finished Inventory, take possession of, move, package, prepare and advertise for sale or disposition, sell (by public auction, private sale or similar sale, whether in bulk, in lots or to customers in the ordinary course of business or otherwise and which sale may include augmented Inventory of the same type sold in Grantors' business), store, collect, take reasonable actions to protect, secure and otherwise enforce the rights of such ABL Agent in and to the ABL Priority Collateral, or otherwise deal with the ABL Priority Collateral, in each case without the involvement of or interference by any Term Loan Claimholder or liability to any Term Loan Claimholder; provided that (A) any such license or right to use is granted on an "AS IS" basis, without any representation or warranty whatsoever (including any representation or warranty as to merchantability, fitness for a particular purpose or non-infringement), (B) any such license or right to use shall automatically terminate upon the sale of all (but not less than all) of the ABL Priority Collateral with respect to which such ABL Agent elects to utilize such Term Loan Priority Collateral, and shall not extend or transfer to the purchaser of such ABL Priority Collateral, and (C) any ABL Agent's use of such Term Loan Priority Collateral shall be reasonable and lawful. This Agreement will not restrict the rights of any Term Loan Agent to sell, assign or otherwise transfer the related Term Loan Priority Collateral prior to the expiration of the Use Period if (but only if) the purchaser, assignee or transferee thereof agrees to be bound by the provisions of this Section 3.8.

(c) During the period of actual occupation, use and/or control by any ABL Claimholder and/or any ABL Agent (or their respective employees, agents, advisers and representatives) of any Term Loan Priority Collateral or other assets or property, such ABL Claimholders and such ABL Agent shall be obligated to repair at their expense any physical damage (ordinary wear and tear excepted) to such Term Loan

Priority Collateral caused by such occupancy, use or control by such ABL Agent or its agents, representatives or designees, and to leave such Term Loan Priority Collateral or other assets or property in substantially the same condition as it was at the commencement of such occupancy, use or control, ordinary wear and tear excepted; provided, however, that such ABL Agent and such ABL Claimholder will not be liable for any diminution in the value of the Term Loan Priority Collateral caused by the absence of the ABL Priority Collateral therefrom. Notwithstanding the foregoing, in no event shall any ABL Claimholders or any ABL Agent have any liability to any Term Loan Claimholder and/or to any Term Loan Agent pursuant to this Section 3.8 as a result of any condition (including any environmental condition, claim or liability) on or with respect to the Term Loan Priority Collateral existing prior to the date of the exercise by such ABL Claimholders (or such ABL Agent, as the case may be) of their rights under this Section 3.8 and such ABL Claimholder and/or such ABL Agent shall have no duty or liability to maintain the Term Loan Priority Collateral in a condition or manner better than that in which it was maintained prior to the use thereof by such ABL Claimholder and/or such ABL Agent, or for any diminution in the value of the Term Loan Priority Collateral that results solely from ordinary wear and tear resulting from the use of the Term Loan Priority Collateral by such ABL Claimholder and/or such ABL Agent in the manner and for the time periods specified under this Section 3.8. Without limiting the rights granted in this Section 3.8, such ABL Claimholders and such ABL Agent shall use commercially reasonable efforts to cooperate with the Term Loan Claimholders and/or the Term Loan Agent in connection with any efforts made by the Term Loan Claimholders and/or the Term Loan Agent to sell the Term Loan Priority Collateral.

(d) Consistent with the definition of the term "Use Period," if any order or injunction is issued or stay is granted or is otherwise effective by operation of law that prohibits any ABL Agent from exercising any of its rights hereunder, then the Use Period granted to such ABL Agent under this Section 3.8 shall be stayed during the period of such prohibition and shall continue thereafter for the number of days remaining as required under this Section 3.8. Each Term Loan Agent agrees, for the benefit of each ABL Agent, that it shall not sell or dispose of any of the Term Loan Priority Collateral during the Use Period unless the buyer agrees in writing to acquire the Term Loan Priority Collateral subject to the terms of Section 3.8 of this Agreement and agrees therein to comply with the terms of this Section 3.8. The rights of each ABL Agent and each ABL Claimholder under this Section 3.8 during the Use Period shall continue notwithstanding such foreclosure, sale or other disposition by any Term Loan Agent.

(e) No ABL Agent and no ABL Claimholder shall be obligated to pay any amounts to any Term Loan Agent or any Term Loan Claimholders (or any person claiming by, through or under any Term Loan Claimholders, including any purchaser of the Term Loan Priority Collateral) or to any Grantor, for or in respect of the use by any ABL Agent and any ABL Claimholder of the Term Loan Priority Collateral; provided that such ABL Agent or such other ABL Claimholder shall be obligated to pay any third-party expenses related thereto, including costs with respect to heat, light, electricity and water with respect to that portion of any premises so used or occupied, or that arise as a result of such use. In the event, and only in the event, that in connection with its use of some or all of the premises constituting Term Loan Priority Collateral, such ABL Agent or such other ABL Claimholder requires the services of any employees of the Grantors, such ABL Agent or such other ABL Claimholder shall pay directly to any such employees the appropriate, allocated wages of such employees, if any, during the time periods that such ABL Agent or such other ABL Claimholder requires their services. In

each case, all amounts paid by any ABL Agent or any other ABL Claimholder hereunder shall be added to the outstanding principal balance of the ABL Obligations.

(f) Each ABL Claimholders shall use the Term Loan Priority Collateral in accordance with applicable law.

(g) Subject to Section 3.7, each Term Loan Agent and the other Term Loan Claimholders (i) will cooperate with each ABL Agent in its efforts pursuant to Section 3.8(b) to enforce such Agent's Liens in the ABL Priority Collateral and to finish any work-in-process and assemble the ABL Priority Collateral, (ii) will not hinder or restrict in any respect any ABL Agent from enforcing its Liens in the ABL Priority Collateral or from finishing any work-in-process or assembling the ABL Priority Collateral pursuant to Section 3.8(b), and (iii) will, subject to the rights of any landlords under real estate leases, permit such ABL Collateral Agent, its employees, agents, advisers and representatives to exercise the rights described in Section 3.8(b).

(h) Subject to the terms hereof, each Term Loan Agent may advertise and conduct public auctions or private sales of the Term Loan Priority Collateral, without the involvement of or interference by any ABL Claimholder or liability to any ABL Claimholder as long as, in the case of an actual sale, the respective purchaser assumes and agrees in advance in writing to the obligations of each Term Loan Agent and each Term Loan Claimholder under this Section 3.8. If any ABL Agent conducts a public auction or private sale of the ABL Priority Collateral at any of the real property included within the Term Loan Priority Collateral, such ABL Agent shall provide the Term Loan Agents with reasonable notice and use reasonable efforts to hold such auction or sale in a manner which would not unduly disrupt the Term Loan Agents' use of such real property.

(i) In addition to and in furtherance of the foregoing, each Term Loan Agent, in its capacity as a secured party (or as a purchaser, assignee or transferee, as applicable), and to the extent of its interest therein, hereby grants to each ABL Agent, effective upon the commencement of the Use Period, a nonexclusive, irrevocable, royalty-free, worldwide license to use any and all Intellectual Property now owned or hereafter acquired by the Grantors (except to the extent such grant is prohibited by any rule of law, statute or regulation), that is included as part of the Term Loan Priority Collateral (and including in such license, access to all media in which any of such licensed Intellectual Property are recorded or stored and to all computer software and programs used for the compilation or printout thereof) as is or may be necessary or advisable in such ABL Agent's reasonable judgment for such ABL Agent to process, ship, produce, store, supply, lease, complete, sell, liquidate or otherwise deal with the ABL Priority Collateral in existence on or prior to the last day of the Use Period (but not to commence new orders), or to collect or otherwise realize upon any Accounts in existence on or prior to the last day of the Use Period comprising ABL Priority Collateral, in each case, solely during the Use Period in connection with any Exercise of Secured Creditor Remedies; provided that (i) any such license shall automatically terminate upon the sale of all (but not less than all) of the ABL Priority Collateral and shall not extend or transfer to the purchaser of such ABL Priority Collateral, (ii) such ABL Agent's use of such Intellectual Property shall be reasonable and lawful, and (iii) any such license is granted on an "AS IS" basis, without any representation or warranty whatsoever (including any representation or warranty as to merchantability, fitness for a particular purpose or non-infringement). Each Term Loan Agent (i) acknowledges and consents to

the grant to each ABL Agent by the Loan Parties of the license referred to in the ABL Collateral Documents, and (ii) agrees that its Liens in the Term Loan Priority Collateral shall be subject in all respects to such license. Furthermore, each Term Loan Agent agrees that, in connection with any Exercise of Secured Creditor Remedies conducted by such Term Loan Agent in respect of Term Loan Priority Collateral, such Term Loan Agent shall provide written notice to any purchaser, assignee or transferee pursuant to an Exercise of Secured Creditor Remedies that the applicable assets are subject to such license.

(j) Each ABL Agent and each ABL Claimholder shall indemnify each Term Loan Agent and any Term Loan Claimholders for any injury or damage to persons or Term Loan Priority Collateral (other than (i) diminution in value (as opposed to actual physical damage) as a result of its removal of ABL Priority Collateral therefrom and (ii) ordinary wear and tear) caused by any act or omission of such ABL Agent or ABL Claimholder or its respective employees, agents and representatives in connection the exercise of its rights of access and the use under this Section 3.8 to the extent not covered by insurance. Each ABL Agent shall promptly repair, at such ABL Agent's expense, any physical damage to any Term Loan Priority Collateral to the extent caused by the occupation and/or use thereof by such ABL Agent or any of its respective ABL Claimholders or any of its or their respective employees, agents, advisers or representatives acting under the direction of such ABL Agent or its respective ABL Claimholder (other than (i) diminution in value (as opposed to actual physical damage) as a result of the removal of ABL Priority Collateral therefrom and (ii) ordinary wear and tear). Except to the extent expressly provided in this Section 3.8, no ABL Agent nor ABL Claimholder shall be obligated to secure, protect, insure or repair any such Term Loan Collateral. In no event shall any ABL Agent or any ABL Lender have any liability to any Term Loan Agent or any Term Loan Lender pursuant to this Section 3.8 or otherwise as a result of any condition on or with respect to the Term Loan Priority Collateral existing prior to the date of the exercise by such ABL Agent of its rights under this Section 3.8 or, to the extent not caused as a result of any act or omission of any ABL Agent, any ABL Claimholder or any of their respective employees, agents, advisers or representatives, and each ABL Agent and each ABL Claimholder shall have no duty or liability to maintain the Term Loan Priority Collateral in a condition or manner better than that in which it was maintained prior to the use thereof by such ABL Agent and/or such ABL Claimholder, as applicable. Each ABL Agent, for itself and on behalf of its respective ABL Claimholders, hereby acknowledges that, during the period that any Term Loan Agent has acquired control or possession of any Term Loan Collateral, neither any Term Loan Agent nor any other Term Loan Claimholder shall be obligated to take any action to protect or to procure insurance with respect to any ABL Priority Collateral, it being understood that neither any Term Loan Agent or any Term Loan Claimholder shall have any responsibility for loss or damage to ABL Priority Collateral (other than as a result of any gross negligence or willful misconduct of the Term Loan Agent or the Term Loan Claimholders or their agents).

(k) For the avoidance of doubt, and without limiting the generality of the other provisions of this Agreement, it is hereby acknowledged and agreed that each ABL Agent and each ABL Claimholder shall have the right to bring an action to enforce their rights under this Section 3.8 and Section 3.9, including an action seeking possession of the applicable Collateral and/or specific performance of this Section 3.8 and Section 3.9.

3.9 Sharing of Information and Access. In the event that any ABL Agent shall, in the exercise of its rights under any of the ABL Collateral Documents or otherwise, receive possession or control of any books and records of any Grantor which contain information identifying or pertaining to any of the Term Loan Priority Collateral, such ABL Agent shall, upon request from any Term Loan Agent and as promptly as practicable thereafter, either make available to such Term Loan Agent such books and records for inspection and duplication or provide to such Term Loan Agent copies thereof. In the event that any Term Loan Agent shall, in the exercise of its rights under any of the Term Loan Documents or otherwise, receive possession or control of any books and records of any Grantor which contain information identifying or pertaining to any of the ABL Priority Collateral, such Term Loan Agent shall, upon request from any ABL Agent and as promptly as practicable thereafter, either make available to such ABL Agent such books and records for inspection and duplication or provide to such ABL Agent copies thereof.

3.10 Tracing of and Priorities in Proceeds. Each ABL Agent, for itself and on behalf of its respective ABL Claimholders, and each Term Loan Agent, for itself and on behalf of its respective Term Loan Claimholders, further agree that prior to an issuance of any Enforcement Notice by such Claimholder, any proceeds of Collateral obtained in accordance with the terms of the ABL Documents and the Term Loan Documents, whether or not deposited in deposit accounts or securities accounts subject to control agreements, which are used by any Grantor to acquire other property which is Collateral shall not (solely as between the Claimholders) be treated as Proceeds of Collateral for purposes of determining the relative priorities in the Collateral which was so acquired. In addition, unless and until the Discharge of ABL Obligations occurs, each Term Loan Agent, for itself and on behalf of its respective Term Loan Claimholders, each hereby consents to the application of amounts received prior to the receipt by any ABL Agent of an Enforcement Notice issued by any Term Loan Agent, of cash or other proceeds of Collateral, deposited into deposit accounts or securities accounts, to the repayment of ABL Obligations pursuant to the applicable ABL Documents.

SECTION 4. Proceeds.

4.1 Application of Proceeds.

(a) Except as otherwise provided in the Orders (and except with respect to any "roll-up" of the Pre-Petition ABL Obligations provided for therein with the proceeds of the DIP ABL Obligations (the "**Pre-Petition ABL Roll Up**")), prior to the Discharge of ABL Obligations, except as otherwise provided in Section 3.5, any ABL Priority Collateral or proceeds thereof received (or amounts distributed on account of a Lien in the ABL Priority Collateral or the proceeds thereof) by any ABL Agent or any ABL Claimholder or any Term Loan Agent or any Term Loan Claimholder with respect to ABL Priority Collateral shall be delivered to the ABL Agents and shall be applied or further distributed in the following order of application:

(i) first, to the DIP ABL Agent for application to the ABL Priority Obligations (including costs and expenses of the DIP ABL Agent in connection with any Exercise of Secured Creditor Remedies and any Insolvency Proceeding) under the DIP ABL Documents in accordance with the Orders and the terms of the relevant DIP ABL Documents until the payment in full in cash or cash collateralization of the ABL Priority Obligations under the DIP ABL Documents has occurred;

(ii) second, to the Pre-Petition ABL Agent for application to the ABL Priority Obligations (including costs and expenses of the Pre-Petition ABL Agent in connection with any Exercise of Secured

Creditor Remedies and any Insolvency Proceeding) under the Pre-Petition ABL Documents in accordance with the Orders and the terms of the relevant Pre-Petition ABL Documents until the payment in full in cash or cash collateralization of the ABL Priority Obligations under the Pre-Petition ABL Documents has occurred (including, for the avoidance of doubt, by way of the Pre-Petition ABL Roll Up);

(iii) third, to the DIP Term Loan Agent for application to the Term Loan Priority Obligations (including costs and expenses of the DIP Term Loan Agent in connection with any Exercise of Secured Creditor Remedies and any Insolvency Proceeding) under the DIP Term Loan Documents in accordance with the Orders and the terms of the relevant DIP Term Loan Documents until the payment in full in cash or cash collateralization of the Term Loan Priority Obligations under the DIP Term Loan Documents has occurred;

(iv) fourth, to the Pre-Petition Term Loan Agent for application to the Term Loan Priority Obligations (including costs and expenses of the Pre-Petition Term Loan Agent in connection with any Exercise of Secured Creditor Remedies and any Insolvency Proceeding) under the Pre-Petition Term Loan Documents in accordance with the Orders and the terms of the relevant Pre-Petition Term Loan Documents until the payment in full in cash or cash collateralization of the Term Loan Priority Obligations under the Pre-Petition Term Loan Documents has occurred;

(v) fifth, to the DIP ABL Agent for application to the Excess ABL Obligations (including costs and expenses of the DIP ABL Agent in connection with any Exercise of Secured Creditor Remedies and any Insolvency Proceeding) in accordance with the Orders and the terms of the relevant ABL Documents until the payment in full in cash or cash collateralization of the Excess ABL Obligations has occurred;

(vi) sixth, to the DIP Term Loan Agent for application to the Excess Term Loan Obligations (including costs and expenses of the DIP Term Loan Agent in connection with any Exercise of Secured Creditor Remedies and any Insolvency Proceeding) in accordance with the Orders and the terms of the relevant DIP Term Loan Documents until the payment in full in cash or cash collateralization of the Excess Term Loan Obligations has occurred; and

(vii) seventh, the balance, if any, in accordance with the Orders to the Grantors or as a court of competent jurisdiction may direct.

(b) Except as otherwise provided in the Orders (and except with respect to the Pre-Petition ABL Roll Up), prior to the Discharge of Term Loan Obligations, except as otherwise provided in Section 3.5, any Term Loan Priority Collateral or proceeds thereof received (or amounts distributed on account of a Lien in the Term Loan Priority Collateral or the proceeds thereof) by any ABL Agent or any ABL Claimholder or any Term Loan Agent or any Term Loan Claimholder with respect to Term Loan Priority Collateral shall be delivered to the Term Loan Agents and shall be applied or further distributed in the following order of application:

(i) first, to the DIP Term Loan Agent for application to the Term Loan Priority Obligations (including costs and expenses of the DIP Term Loan Agent in connection with any Exercise of Secured Creditor Remedies and any Insolvency Proceeding) under the DIP Term Loan Documents in accordance with the Orders and the terms of the relevant DIP Term Loan Documents until the payment in full in cash of the Term Loan Priority Obligations under the DIP Term Loan Documents has occurred;

(ii) second, to the Pre-Petition Term Loan Agent for application to the Term Loan Priority Obligations (including costs and expenses of the Pre-Petition Term Loan Agent in connection with any Exercise of Secured Creditor Remedies and any Insolvency Proceeding) under the Pre-Petition Term Loan Documents in accordance with the Orders and the terms of the relevant Pre-Petition Term Loan Documents until the payment in full in cash or cash collateralization of the Term Loan Priority Obligations under the Pre-Petition Term Loan Documents has occurred;

(iii) third, to the DIP ABL Agent for application to the ABL Priority Obligations (including costs and expenses of the DIP ABL Agent in connection with any Exercise of Secured Creditor Remedies and any Insolvency Proceeding) under the DIP ABL Documents in accordance with the Orders and the terms of the relevant DIP ABL Documents until the payment in full in cash or cash collateralization of the ABL Priority Obligations under the DIP ABL Documents has occurred;

(iv) fourth, to the Pre-Petition ABL Agent for application to the ABL Priority Obligations (including costs and expenses of the Pre-Petition ABL Agent in connection with any Exercise of Secured Creditor Remedies and any Insolvency Proceeding) under the Pre-Petition ABL Documents in accordance with the Orders and the terms of the relevant Pre-Petition ABL Documents until the payment in full in cash or cash collateralization of the ABL Priority Obligations under the Pre-Petition ABL Documents has occurred (including, for the avoidance of doubt, by way of the Pre-Petition ABL Roll Up);

(v) fifth, to the DIP Term Loan Agent for application to the Excess Term Loan Obligations (including costs and expenses of the DIP Term Loan Agent in connection with any Exercise of Secured Creditor Remedies and any Insolvency Proceeding) in accordance with the Orders and the terms of the relevant DIP Term Loan Documents until the payment in full in cash or cash collateralization of the Excess Term Loan Obligations has occurred;

(vi) sixth, to the DIP ABL Agent for application to the Excess ABL Obligations (including costs and expenses of the DIP ABL Agent in connection with any Exercise of Secured Creditor Remedies and any Insolvency Proceeding) in accordance with the Orders and the terms of the relevant ABL Documents until the payment in full in cash or cash collateralization of the Excess ABL Obligations has occurred; and

(vii) seventh, the balance, if any, in accordance with the Orders to the Grantors or as a court of competent jurisdiction may direct.

(c) If any Exercise of Secured Creditor Remedies with respect to the Collateral produces non-cash proceeds, then such non-cash proceeds shall be held by such Agent that conducted the Exercise of Secured Creditor Remedies as additional Collateral and, at such time as such non-cash proceeds are monetized, shall be applied as set forth above.

4.2 Turnover. Unless and until the earlier of Discharge of ABL Obligations or the Discharge of Term Loan Obligations has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor that is not a Debtor or a CCAA Debtor, except as otherwise provided in Section 3.5, (a) any ABL Priority Collateral, proceeds thereof (including assets or proceeds subject to Liens referred to in the final sentence of Section 2.3), or amounts distributed on account of a Lien in the ABL Priority Collateral or the proceeds thereof, or any insurance proceeds described in Section 5.2(a) received by any Term Loan Agent or any Term Loan Claimholder, (i) pursuant to any Term Loan Document, or by the exercise of any rights available to it under applicable law, or in any Insolvency Proceeding, or pursuant to any Exercise of Secured Creditor Remedies or through any other exercise of remedies, if such Term Loan Agent or such Term Loan Claimholder obtains actual knowledge or notice from any ABL Agent (in the case of any mandatory prepayment received by such Term Loan Agent pursuant to Section 4.02(c) or (f) of the DIP Term Loan Agreement or Section 4.02(c), (d) or (f) of the Pre-Petition Term Loan Agreement, such actual knowledge or notice from an ABL Agent to be obtained by such Term Loan Agent or such Term Loan Claimholder prior to the date that is 10 days after the receipt by such ABL Agent of written notice with respect to such mandatory prepayment so received by such Term Loan Agent (A) that the applicable Asset Sale, Canadian Asset Sale or Recovery Event (as each such term is defined in the DIP Term Loan Agreement and Pre-Petition Term Loan Agreement as in effect on the Closing Date) has occurred, and (B) certifying the amount of the mandatory prepayment that was made to such Term Loan Agent in connection with such Asset Sale, Canadian Asset Sale or Recovery Event, as applicable) that such Term Loan Agent or such Term Loan Claimholder has possession of such ABL Priority Collateral or proceeds thereof and the aggregate amount of such proceeds of ABL Priority Collateral, or (ii) as a result of any Term Loan Agent's or any Term Loan Claimholder's collusion with any Grantor in violating the rights of any ABL Agent or any ABL Claimholder (within the meaning of Section 9-332 of the UCC), in each case, shall be segregated and held in trust and shall reasonably promptly be paid over to the such ABL Agent for the benefit of its respective ABL Claimholders in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct; provided, that in no event shall the making by any Grantor of any regularly scheduled payment of principal, interest or expenses, any mandatory prepayment pursuant to Section 4.02(e) of the Pre-Petition Term Loan Agreement or any voluntary prepayment of principal, in each case in respect of the Term Loan Obligations in accordance with the provisions of the Term Loan Documents prior to the commencement by any Agent of the Exercise of Secured Creditor Remedies, be subject to the turnover provisions set forth above in this Section 4.2(a), and (b) any Term Loan Priority Collateral, proceeds thereof (including assets or proceeds subject to Liens referred to in the final sentence of Section 2.3), or amounts distributed on account of a Lien in the Term Loan Priority Collateral or the proceeds thereof, or any insurance proceeds described in Section 5.2(b) received by any ABL Agent or any ABL Claimholder, (i) pursuant to any ABL Document, or by the exercise of any rights available to it under applicable law, or in any Insolvency Proceeding, or pursuant to any Exercise of Secured Creditor Remedies or through any other exercise of remedies, if such ABL Agent or such ABL Claimholder obtains actual knowledge or notice from such Term Loan Agent, in each case at any time prior to the later of (x) 3 Business Days after the receipt by such ABL Agent or such ABL Claimholder of such Term Loan Priority Collateral or proceeds thereof and (y) 5 days after the receipt by such ABL Agent or such ABL Claimholder of such Term Loan Priority Collateral or proceeds thereof, that such ABL Agent or such ABL Claimholder has possession of such Term Loan Priority Collateral or proceeds thereof and the aggregate amount of such

proceeds of Term Loan Priority Collateral, or (ii) as a result of any ABL Agent's or any ABL Claimholder's collusion with any Grantor in violating the rights of any Term Loan Agent or any Term Loan Claimholder (within the meaning of Section 9-332 of the UCC), shall be segregated and held in trust and shall reasonably promptly be paid over to such Term Loan Agent for the benefit of the Term Loan Claimholders in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct; provided, that if the ABL Agents and the ABL Claimholders no longer have possession of such proceeds of Term Loan Priority Collateral at the time that they received actual knowledge or notice from a Term Loan Agent thereof as is contemplated above in subclause (b)(i) hereof, then to the extent that such ABL Agent subsequently receives cash proceeds that constitute ABL Priority Collateral, to the extent not prohibited by applicable law, such ABL Agent may satisfy any obligations that it has pursuant to this Section 4.2(b) by turning over to such Term Loan Agent a portion of such proceeds of ABL Priority Collateral equal to the amount of the proceeds of the Term Loan Priority Collateral previously received by such ABL Agent or such ABL Claimholder. Each Term Loan Agent and each ABL Agent is hereby authorized to make any such endorsements as agent for the other or any of its Claimholders. This authorization is coupled with an interest and is irrevocable until the earlier of the Discharge of ABL Obligations or the Discharge of Term Loan Obligations.

Each Term Loan Agent for itself and each Term Loan Claimholder agrees that if, at any time, all or part of any payment with respect to any ABL Obligations secured by any ABL Priority Collateral previously made shall be rescinded for any reason whatsoever, it will upon request promptly pay over to such ABL Agent any payment received by it in respect of any such ABL Priority Collateral and shall promptly turn any such ABL Priority Collateral then held by it over to such ABL Agent, and the provisions set forth in this Agreement will be reinstated as if such payment had not been made, until the payment and satisfaction in full of such ABL Obligations.

Each ABL Agent for itself and each ABL Claimholder agrees that if, at any time, all or part of any payment with respect to any Term Loan Obligations secured by any Term Loan Priority Collateral previously made shall be rescinded for any reason whatsoever, it will promptly pay over to such Term Loan Agent any payment received by it in respect of any such Term Loan Priority Collateral and shall promptly turn any such Term Loan Priority Collateral then held by it over to such Term Loan Agent, and the provisions set forth in this Agreement will be reinstated as if such payment had not been made, until the payment and satisfaction in full of such Term Loan Obligations.

4.3 No Subordination of the Relative Priority of Claims. Anything to the contrary contained herein notwithstanding, the subordination of the Liens of Term Loan Claimholders in respect of the ABL Priority Collateral to the Liens of ABL Claimholders therein and of the Liens of ABL Claimholders in respect of the Term Loan Priority Collateral to the Liens of Term Loan Claimholders therein as set forth herein is with respect to the priority of the respective Liens held by or on behalf of them only and shall not constitute a subordination of the Term Loan Obligations to the ABL Obligations or the ABL Obligations to the Term Loan Obligations.

4.4 Application of Payments. Subject to the other terms of this Agreement and the Orders, all payments received (not in violation of this Agreement and the Orders) by (a) any ABL Agent or the ABL Claimholders may be applied, reversed and reapplied, in whole or in part, to the ABL Obligations to the extent provided for in the ABL Documents and (b) the any Term Loan Agent or the Term Loan Claimholders may be applied, reversed and reapplied, in whole or in part, to the Term Loan Obligations to the extent provided for in the Term Loan Documents.

4.5 Revolving Nature of ABL Obligations. Each Term Loan Agent, on behalf of its respective Term Loan Claimholders, acknowledges and agrees that the DIP ABL Credit Agreement, and Pre-Petition ABL Credit Agreement include revolving commitments and that the amount of the ABL Obligations that

may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed.

SECTION 5. Releases; Dispositions; Other Agreements.

5.1 Releases.

(a) If, in connection with the Exercise of Secured Creditor Remedies by any ABL Agent as provided for in Section 3, irrespective of whether an ABL Default or a Term Loan Default has occurred and is continuing, such ABL Agent releases any of its Liens on any part of the ABL Priority Collateral, then the Liens of each Term Loan Agent on such ABL Priority Collateral shall be automatically, unconditionally, and simultaneously released so long as all proceeds therefrom are applied to permanently repay the ABL Obligations, together with a concurrent permanent reduction of any revolving loan commitment under the applicable ABL Documents in an amount equal to the amount of any such principal repayment of Advances (as defined in the DIP ABL Credit Agreement and the Pre-Petition ABL Credit Agreement); provided, however, that any proceeds remaining after the Discharge of ABL Obligations shall be subject to the Liens of the Term Loan Claimholders. Each Term Loan Agent, for itself or on behalf of any of its respective Term Loan Claimholders, promptly shall execute and deliver to any ABL Agent such termination or amendment statements, releases, and other documents as such ABL Agent may request in writing to effectively confirm such release, at the cost and expense of the Grantors and without the consent or direction of any other Term Loan Claimholders.

(b) If, in connection with the Exercise of Secured Creditor Remedies by any Term Loan Agent as provided for in Section 3, irrespective of whether an ABL Default or a Term Loan Default has occurred and is continuing, such Term Loan Agent releases any of its Liens on any part of the Term Loan Priority Collateral, then the Liens of each ABL Agent on such Term Loan Priority Collateral shall be automatically, unconditionally, and simultaneously released so long as all proceeds therefrom are applied to permanently repay, repurchase, or otherwise retire the Term Loan Obligations; provided, however, that any proceeds remaining after the Discharge of Term Loan Obligations shall be subject to the Liens of the ABL Claimholders. Each ABL Agent, for itself or on behalf of any of its respective ABL Claimholders, promptly shall execute and deliver to any Term Loan Agent such termination or amendment statements, releases, and other documents as such Term Loan Agent may request in writing to effectively confirm such release, at the cost and expense of the Grantors and without the consent or direction of any other ABL Claimholders.

(c) If, in connection with any Disposition of any ABL Priority Collateral permitted under the terms of both the ABL Documents and the Term Loan Documents, in each case as in effect at the time of such Disposition, any ABL Agent, for itself or on behalf of any ABL Claimholders, releases any of its Liens on the portion of the ABL Priority Collateral that is the subject of such Disposition, other than (i) in connection with the Discharge of ABL Obligations, or (ii) after the occurrence and during the continuance of any DIP Term Loan Default, then the Liens of each Term Loan Agent on such Collateral shall be automatically, unconditionally, and simultaneously released. Each Term Loan Agent, for itself or on behalf of any of its respective Term Loan Claimholders, promptly shall execute and deliver to any ABL Agent such termination or amendment statements, releases, and other documents as such ABL Agent

may request in writing to effectively confirm such release, at the cost and expense of the Grantors and without the consent or direction of any other Term Loan Claimholders.

(d) If, in connection with any Disposition of any Term Loan Priority Collateral permitted under the terms of both the Term Loan Documents and the ABL Documents, in each case as in effect at the time of such Disposition, any Term Loan Agent, for itself or on behalf of any Term Loan Claimholders, releases any of its Liens on the portion of the Term Loan Priority Collateral that is the subject of such Disposition, other than (i) in connection with the Discharge of Term Loan Obligations, or (ii) after the occurrence and during the continuance of any DIP ABL Default, then the Liens of each ABL Agent on such Collateral shall be automatically, unconditionally, and simultaneously released. Each ABL Agent, for itself or on behalf of any its respective ABL Claimholders, promptly shall execute and deliver to any Term Loan Agent such termination or amendment statements, releases, and other documents as such Term Loan Agent may request to effectively confirm such release, at the cost and expense of the Grantors and without the consent or direction of any other ABL Claimholders.

(e) Each ABL Agent, with respect to the Term Loan Priority Collateral, on behalf of its respective ABL Claimholders, hereby irrevocably constitutes and appoints each Term Loan Agent with respect to such Term Loan Priority Collateral and any officer or agent of such Term Loan Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such ABL Agent or in such ABL Agent's own name, from time to time in such Term Loan Agent's discretion exercised in good faith, for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary to accomplish the purposes of this Section 5.1, including any endorsements or other instruments of transfer or release.

(f) Each Term Loan Agent, with respect to the ABL Priority Collateral, on behalf of its respective Term Loan Claimholders, hereby irrevocably constitutes and appoints each ABL Agent with respect to such ABL Priority Collateral and any officer or agent of such ABL Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Term Loan Agent or in such Term Loan Agent's own name, from time to time in such ABL Agent's discretion exercised in good faith, for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary to accomplish the purposes of this Section 5.1, including any endorsements or other instruments of transfer or release.

5.2 Insurance.

(a) Unless and until the ABL Agents have provided written notice to the Term Loan Agents that the Discharge of ABL Obligations has occurred: (i) each ABL Agent and the ABL Claimholders shall have the sole and exclusive right, subject to the rights of Grantors under the ABL Documents, to adjust and settle any claim under any insurance policy covering the ABL Priority Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting the ABL Priority Collateral; and (ii) all proceeds of any such insurance policy and any such award (or any payments with respect

to a deed in lieu of condemnation) if in respect of ABL Priority Collateral, shall be paid, subject to the rights of Grantors under the ABL Documents, first, to the ABL Claimholders, until the Discharge of ABL Obligations, second, to the Term Loan Claimholders, until the Discharge of Term Loan Obligations, and third, to the owner of the subject property, such other person as may be entitled thereto, or as a court of competent jurisdiction may otherwise direct. If any Term Loan Agent or any Term Loan Claimholders shall at any time receive any proceeds of any such insurance policy or award in contravention of this Agreement, it shall hold such proceeds in trust and upon request pay over such proceeds to the ABL Agents.

(b) Unless and until the Term Loan Agents have provided written notice to the ABL Agents that the Discharge of Term Loan Obligations has occurred: (i) each Term Loan Agent and the Term Loan Claimholders shall have the sole and exclusive right, subject to the rights of Grantors under the Term Loan Documents, to adjust and settle any claim under any insurance policy covering the Term Loan Priority Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting the Term Loan Priority Collateral; and (ii) all proceeds of any such insurance policy and any such award (or any payments with respect to a deed in lieu of condemnation) if in respect of Term Loan Priority Collateral, shall be paid, subject to the rights of Grantors under the Term Loan Documents, first, to the Term Loan Claimholders, until the Discharge of Term Loan Obligations, second, to the ABL Claimholders, until the Discharge of ABL Obligations, and third, to the owner of the subject property, such other person as may be entitled thereto, or as a court of competent jurisdiction may otherwise direct. If any ABL Agent or any ABL Claimholders shall at any time receive any proceeds of any such insurance policy or award in contravention of this Agreement, it shall hold such proceeds in trust and upon request pay over such proceeds to the Term Loan Agents.

In the event that any proceeds are derived from any insurance policy that covers ABL Priority Collateral and Term Loan Priority Collateral, the ABL Agents and the Term Loan Agents, at the direction of the applicable Term Loan Claimholders, will work jointly and in good faith to collect, adjust or settle (subject to the rights of the Grantors under the applicable ABL Documents and the applicable Term Loan Documents) any claim under the relevant insurance policy.

Notwithstanding anything contained in this Agreement to the contrary, in the event that any proceeds are derived from any insurance policy that covers ABL Priority Collateral and Term Loan Priority Collateral where the allocation of proceeds is not stipulated between ABL Priority Collateral and Term Loan Priority Collateral, then the allocation of proceeds of such insurance policy to the ABL Priority Collateral shall be based upon, in the case of (A) any ABL Priority Collateral consisting of inventory, at book value as assessed on the date of such loss, (B) any ABL Priority Collateral consisting of accounts receivable, at the face amount thereof and (C) all other ABL Priority Collateral and Term Loan Priority Collateral, at fair market value of such ABL Priority Collateral and Term Loan Priority Collateral lost, as determined by Grantors in their reasonable judgment or, if the aggregate amount of such other ABL Priority Collateral and Term Loan Priority Collateral sold is greater than $20,000,000, an independent appraiser.

5.3 Amendments; Refinancings; Legend.

(a) Subject to the terms of the Orders, the ABL Documents may be amended, restated, supplemented, or otherwise modified in accordance with their terms and the ABL Obligations may be Refinanced in accordance with the terms of the ABL Documents, in each case without notice to, or the consent of, any Term Loan Agent or

any Term Loan Claimholders, all without affecting the lien subordination or other provisions of this Agreement and the Orders; provided, however, that, in the case of any such Refinancing secured by any Collateral, the holders of such Refinancing debt (or an authorized representative on their behalf) bind themselves (in a writing addressed to such Term Loan Agent for the benefit of itself and its respective Term Loan Claimholders in form and substance reasonably acceptable to such Term Loan Agent) to the terms of this Agreement; provided further, however, that any such amendment, restatement, supplement, modification, or Refinancing shall not, without the prior written consent of each Term Loan Agent:

(i) increase the "Applicable Margin" (or similar term) applicable to the Pre-Petition ABL Obligations by more than 3.00% per annum applicable thereto (excluding increases (A) resulting from application of (or change in level of grid applicable in accordance with its terms) the pricing grid set forth in the Pre-Petition ABL Credit Agreement as in effect on the Pre-Petition Closing Date, (B) resulting from the accrual of interest at the "default rate" as in effect on the Pre-Petition Closing Date, or (C) resulting from changes in reference rates in accordance with their terms as in effect on the Pre-Petition Closing Date);

(ii) increase the "Base Rate Margin" or "LIBOR Rate Margin" (or similar term) applicable to the DIP ABL Obligations by more than 3.00% per annum applicable thereto (excluding increases (A) resulting from the accrual of interest at the "default rate" as in effect on the Closing Date, or (B) resulting from changes in reference rates in accordance with their terms as in effect on the Closing Date);

(iii) change any representations and warranties, covenants, defaults, Events of Default, or any other provisions under any ABL Document (including the addition of representations and warranties, covenants, defaults, Events of Default, or any other provisions not contained in the ABL Documents as in effect on the Closing Date) in a manner that would restrict any Grantor from making payments of the Term Loan Obligations that would otherwise be permitted under the ABL Documents as in effect on the Closing Date;

(iv) change any Litigation Provisions under any ABL Document (including the addition of any Litigation Provisions not contained in the ABL Documents as in effect on the Closing Date) in a manner that makes them more restrictive on the Grantors; provided, that if at such time such Litigation Provisions under the ABL Documents are less restrictive on the Grantors than the analogous Litigation Provision under the Term Loan Documents, then any such Litigation Provisions may be changed (or new Litigation Provisions added) so long as such Litigation Provisions (as so modified or supplemented) are not more restrictive on the Grantors than the analogous Litigation Provision under the Term Loan Documents;

(v) add or make more restrictive any event of default or any covenant under the ABL Documents or add or make any change to any event of default or any covenant which would have the effect of making such event of default or covenant more restrictive on the Grantors than the events

of default or covenants in effect under the ABL Documents on the date of this Agreement, unless (x) such event of default or covenant (after giving effect thereto) is not more restrictive on the Grantors than the analogous event of default or covenant under the relevant Term Loan Document, (y) such amendment, restatement, supplement, modification, or Refinancing consists solely of one or more amendments to existing provisions of the ABL Documents (and does not include the addition of a new covenant or event of default) with respect to which there is no substantially identical provision set forth in the provisions of the Term Loan Documents, or (z) a DIP Term Loan Conforming Amendment with respect thereto is executed in connection therewith;

(vi) modify (or have the effect of a modification of) the mandatory prepayment provisions of any ABL Document in a manner that makes them more restrictive on the Grantors;

(vii) shorten the scheduled maturity date under the DIP ABL Credit Agreement (excluding, for the avoidance of doubt, any of the foregoing that results from an acceleration of the Obligations in accordance with the terms of the ABL Documents or any repayment in full of the ABL Obligations in connection with a Refinancing thereof); or

(viii) contravene the provisions of this Agreement;

provided further, however, that, if such Refinancing debt is secured by a Lien on any Collateral the holders of such Refinancing debt shall be deemed bound by the terms hereof regardless of whether or not such writing is provided. For the avoidance of doubt, the sale or other transfer of indebtedness is not restricted by this Agreement but the provisions of this Agreement shall be binding on all holders of ABL Obligations and Term Loan Obligations.

(b) Subject to the terms of the Orders, the Term Loan Documents may be amended, restated, supplemented, or otherwise modified in accordance with their terms and the Term Loan Obligations may be Refinanced in full but not in part in accordance with the terms of the Term Loan Documents, in each case without notice to, or the consent of, any ABL Agent or any ABL Claimholders, all without affecting the lien subordination or other provisions of this Agreement and the Orders; provided, however, that, in the case of any such Refinancing secured by any Collateral, the holders of such Refinancing debt (or an authorized representative on their behalf) bind themselves (in a writing addressed to such ABL Agent for the benefit of itself and its respective ABL Claimholders as such ABL Agent shall reasonably request) to the terms of this Agreement; provided further, however, that any such amendment, restatement, supplement, modification, or Refinancing shall not, without the prior written consent of each ABL Agent:

(i) increase (x) the "Applicable Margin" (or similar term) applicable to the Pre-Petition Term Loan Obligations by more than an amount that exceeds 3.00% in the aggregate per annum, payable in cash, and (y) the "Applicable Margin" (or similar term) applicable to the Pre-Petition Term Loan Obligations by more than 3.00% per annum payable in kind, in each case, applicable thereto (excluding increases (A) resulting from the accrual of interest at the "default rate" as in effect on the Pre-Petition Closing

Date, or (B) resulting from changes in reference rates in accordance with their terms as in effect on the Pre-Petition Closing Date);

(ii) increase (x) the "Applicable Margin" (or similar term) applicable to the DIP Term Loan Obligations by more than an amount that exceeds 3.00% in the aggregate per annum, payable in cash, and (y) the "Applicable Margin" (or similar term) applicable to the DIP Term Loan Obligations by more than 3.00% per annum payable in kind, in each case, applicable thereto (excluding increases (A) resulting from the accrual of interest at the "default rate" as in effect on the Closing Date, or (B) resulting from changes in reference rates in accordance with their terms as in effect on the Closing Date);

(iii) change any representations and warranties, covenants, defaults, Events of Default, or any other provisions under any Term Loan Document (including the addition of representations and warranties, covenants, defaults, Events of Default, or any other provisions not contained in the Term Loan Documents as in effect on the Closing Date) in a manner that would restrict any Grantor from making payments of the ABL Obligations that would otherwise be permitted under the Term Loan Documents as in effect on the Closing Date;

(iv) change any Litigation Provisions under any Term Loan Document (including the addition of any Litigation Provisions not contained in the Term Loan Documents as in effect on the Closing Date) in a manner that makes them more restrictive on the Grantors; provided, any such Litigation Provisions may be changed (or new Litigation Provisions added) so long as such Litigation Provision is not more restrictive to the Grantors than the analogous Litigation Provision under the ABL Documents;

(v) add or make more restrictive any event of default or any covenant under the Term Loan Documents or add or make any change to any event of default or any covenant which would have the effect of making such event of default or covenant more restrictive on the Grantors than the events of default or covenants in effect under the Term Loan Documents on the date of this Agreement, unless (x) such event of default or covenant (after giving effect thereto) is not more restrictive on the Grantors than the analogous event of default or covenant under the relevant ABL Document, (y) such amendment, restatement, supplement, modification, or Refinancing consists solely of one or more amendments to existing provisions of the Term Loan Documents (and does not include the addition of a new covenant or event of default) with respect to which there is no substantially identical provision set forth in the provisions of the ABL Documents, or (z) a DIP ABL Conforming Amendment with respect thereto is executed in connection therewith;

(vi) add or modify (or have the effect of a modification of or an addition to) any of the mandatory prepayment provisions of any Term Loan Document or any of the provisions of the Term Loan Documents providing for scheduled payments of the principal balance of the Term Loan Obligations, in each case that increases the amount payable under the Term

Loan Documents during any fiscal year, or that requires that any such payment be made earlier than the date scheduled for such payment pursuant to the provisions of the Term Loan Documents as in effect on the Closing Date;

(vii) shorten the scheduled maturity date under the DIP Term Loan Agreement (excluding, for the avoidance of doubt, any of the foregoing that results from an acceleration of the Obligations in accordance with the terms of the Term Loan Documents or any repayment in full of the Term Loan Obligations in connection with a Refinancing thereof); or

(viii) contravene the provisions of this Agreement;

provided further, however, that, if such Refinancing debt is secured by a Lien on any Collateral the holders of such Refinancing debt shall be deemed bound by the terms hereof regardless of whether or not such writing is provided. For the avoidance of doubt, the sale or other transfer of indebtedness is not restricted by this Agreement but the provisions of this Agreement shall be binding on all holders of ABL Obligations and Term Loan Obligations.

(c) So long as the Discharge of ABL Obligations has not occurred, each Term Loan Agent agrees that each Term Loan Collateral Document shall include the following language (or similar language acceptable to the ABL Agents):

"Anything herein to the contrary notwithstanding, the liens and security interests granted to Brookfield Principal Credit LLC, as administrative agent and collateral agent pursuant to this Agreement and the exercise of any right or remedy by Brookfield Principal Credit LLC hereunder, are subject to the provisions of the Intercreditor Agreement dated as of November 26, 2019, (as amended, restated, supplemented, or otherwise modified from time to time, the "**Intercreditor Agreement**"), by and between Wells Fargo Capital Finance, LLC, in its capacity as ABL Agents, and Brookfield Principal Credit LLC, in its capacity as Term Loan Agents. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control."

(d) So long as the Discharge of Term Loan Obligations has not occurred, each ABL Agent agrees that each ABL Collateral Document shall include the following language (or similar language acceptable to Term Loan Agents):

"Anything herein to the contrary notwithstanding, the liens and security interests granted to Wells Fargo Capital Finance, LLC, as administrative agent and/or collateral agent, pursuant to this Agreement and the exercise of any right or remedy by Wells Fargo Capital Finance, LLC, as administrative agent and/or collateral agent hereunder, are subject to the provisions of the Intercreditor Agreement dated as of November 26, 2019, (as amended, restated, supplemented, or otherwise modified from time to time, the "**Intercreditor Agreement**"), by and between Wells Fargo Capital Finance, LLC, in its capacity as ABL Agents, and Brookfield Principal Credit LLC, in its capacity as Term Loan Agents. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control."

(e) No consent furnished by any ABL Agent or any Term Loan Agent pursuant to this Section 5.3 shall be deemed to constitute the modification or

waiver of any provisions of the ABL Documents or the Term Loan Documents, each of which remain in full force and effect as written and as modified in accordance with the provisions thereof.

5.4 Bailee for Perfection.

(a) Each ABL Agent and each Term Loan Agent each agree to hold or control that part of the Collateral that is in its possession or control (or in the possession or control of its agents or bailees), to the extent that possession or control thereof is taken to perfect a Lien thereon under the UCC, PPSA or other applicable law (such Collateral being referred to as the "**Pledged Collateral**"), as gratuitous bailee and as a non-fiduciary agent for the benefit of and on behalf of the each Term Loan Agent and each ABL Agent, as applicable (such bailment and agency being intended, among other things, to satisfy the requirements of possession or control under the PPSA, Sections 8-301(a)(2), 9-313(c), 9-104, 9-105, 9-106, and 9-107 of the UCC or other applicable law), solely for the purpose of perfecting the Lien granted under the Term Loan Documents or the ABL Documents, as applicable, subject to the terms and conditions of this Section 5.4. Each Term Loan Agent and each Term Loan Claimholder hereby appoints each ABL Agent as their gratuitous bailee for the purposes of perfecting their Liens in all Pledged Collateral in which such ABL Agent has a perfected Liens under the UCC, the PPSA or other applicable law. Each ABL Agent and each ABL Claimholder hereby appoints each Term Loan Agent as their gratuitous bailee for the purposes of perfecting their Liens in all Pledged Collateral in which such Term Loan Agent has a perfected Liens under the UCC, the PPSA or other applicable law. Each ABL Agent and each Term Loan Agent hereby accept such appointments pursuant to this Section 5.4(a) and acknowledge and agree that it shall act for the benefit of and on behalf of the other Claimholders with respect to any Pledged Collateral and that any Proceeds received by the ABL Agents or Term Loan Agents, as the case may be, under any Pledged Collateral shall be applied in accordance with Section 4. Unless and until the Discharge of ABL Obligations, each Term Loan Agent agrees to promptly notify each ABL Agent of any Pledged Collateral constituting ABL Priority Collateral held by it or known by it to be held by any other Term Loan Claimholders, and, immediately upon the request of any ABL Agent in writing at any time prior to the Discharge of ABL Obligations, each Term Loan Agent agrees to deliver to such ABL Agent any such Pledged Collateral held by it or by any other Term Loan Claimholders, together with any necessary endorsements (or otherwise allow such ABL Agent to obtain control of such Pledged Collateral). Unless and until the Discharge of Term Loan Obligations, each ABL Agent agrees to promptly notify each Term Loan Agent of any Pledged Collateral constituting Term Loan Priority Collateral held by it or known by it to be held by any other ABL Claimholders, and, promptly following the request of any Term Loan Agent in writing at any time prior to the Discharge of Term Loan Obligations, each ABL Agent agrees to deliver to such Term Loan Agent any such Pledged Collateral held by it, together with any necessary endorsements (or otherwise use commercially reasonable efforts to cooperate with Term Loan Agent to obtain control of such Pledged Collateral). Each ABL Agent hereby agrees that upon the Discharge of ABL Obligations, upon the written request of any Term Loan Agent, to the extent that the applicable control agreement is in full force and effect and has not been terminated, such ABL Agent shall continue to act as such a gratuitous bailee and non-fiduciary agent for each Term Loan Agent (solely for the purpose of perfecting the Liens granted under the Term Loan Documents and at the expense of Grantors) with respect to the deposit account or securities account that is the subject of such control agreement, until the earlier to occur

of (x) 30 days after the date when the Discharge of ABL Obligations has occurred (or such later date to which the such ABL Agent agrees in its reasonable discretion), and (y) the date when a control agreement is executed in favor of such Term Loan Agent(s) with respect to such deposit account or securities account.

(b) Each ABL Agent and the ABL Claimholders shall have no obligation whatsoever to each Term Loan Agent or any Term Loan Claimholder to ensure that the Pledged Collateral is genuine or owned by any of the Grantors or to preserve rights or benefits of any person except as expressly set forth in this Section 5.4. Each Term Loan Agent and the Term Loan Claimholders shall have no obligation whatsoever to each ABL Agent or any ABL Claimholder to ensure that the Pledged Collateral is genuine or owned by any of the Grantors or to preserve rights or benefits of any person except as expressly set forth in this Section 5.4. The duties or responsibilities of each ABL Agent under this Section 5.4 shall be limited solely to holding or controlling the Pledged Collateral as a gratuitous bailee and a non-fiduciary agent in accordance with this Section 5.4 and delivering the Pledged Collateral upon a Discharge of ABL Obligations as provided in paragraph (d) of this Section 5.4. The duties or responsibilities of each Term Loan Agent under this Section 5.4 shall be limited solely to holding or controlling the Pledged Collateral as a gratuitous bailee and a non-fiduciary agent in accordance with this Section 5.4 and delivering the Pledged Collateral upon a Discharge of Term Loan Obligations as provided in paragraph (e) of this Section 5.4.

(c) Each ABL Agent acting pursuant to this Section 5.4 shall not have by reason of the ABL Collateral Documents, the Term Loan Collateral Documents, or this Agreement a fiduciary relationship in respect of any Term Loan Agent or any Term Loan Claimholder. Each Term Loan Agent acting pursuant to this Section 5.4 shall not have by reason of the ABL Collateral Documents, the Term Loan Collateral Documents, or this Agreement a fiduciary relationship in respect of any ABL Agent or any ABL Claimholder.

(d) Each ABL Agent shall transfer to the Term Loan Agents (i) any proceeds of any ABL Priority Collateral in which the Term Loan Agents continues to hold a Lien remaining following any sale, transfer or other disposition of such ABL Priority Collateral (in each case, unless such Term Loan Agent's Lien on all such ABL Priority Collateral is terminated and released prior to or concurrently with such sale, transfer, disposition, payment or satisfaction), following the Discharge of ABL Obligations, or (ii) if such ABL Agent is in possession of all or any part of such ABL Priority Collateral after the Discharge of ABL Obligations, such ABL Priority Collateral or any part thereof remaining, in each case without representation or warranty on the part of such ABL Agent or any ABL Claimholder. At such time, each ABL Agent further agrees to take all other action reasonably requested by the Term Loan Agents in writing at the expense of the Grantors (including amending any outstanding control agreements) to enable the Term Loan Agents to obtain a first priority Lien in the Collateral. To the extent no Term Loan Obligations that are secured by such Pledged Collateral remain outstanding as confirmed in writing by the Term Loan Agents (so as to allow such person to obtain possession or control of such Pledged Collateral), the ABL Agents shall deliver the remaining Pledged Collateral (if any) together with any necessary endorsements to the Grantors. Without limiting the foregoing, each Term Loan Agent agrees for itself and each of its respective Term Loan Claimholders that no ABL Agent nor any ABL Claimholder will have any duty or obligation first to marshal or realize upon the ABL Priority Collateral, or to sell, dispose of or otherwise liquidate all or any portion of the

ABL Priority Collateral, in any manner that would maximize the return to the Term Loan Claimholders, notwithstanding that the order and timing of any such realization, sale, disposition or liquidation may affect the amount of proceeds actually received by any Term Loan Claimholders from such realization, sale, disposition or liquidation.

(e) Each Term Loan Agent shall transfer to ABL Agents (i) any proceeds of any Term Loan Priority Collateral in which the ABL Agents continues to hold a Lien remaining following any sale, transfer or other disposition of such Term Loan Priority Collateral (in each case, unless such ABL Agent's Lien on all such Term Loan Priority Collateral is terminated and released prior to or concurrently with such sale, transfer, disposition, payment or satisfaction), following the Discharge of Term Loan Obligations, or (ii) if such Term Loan Agent is in possession of all or any part of such Term Loan Priority Collateral after the Discharge of Term Loan Obligations, such Term Loan Priority Collateral or any part thereof remaining, in each case without representation or warranty on the part of such Term Loan Agent or any Term Loan Claimholder. At such time, each Term Loan Agent further agrees to take all other action reasonably requested by the ABL Agents in writing at the expense of the Grantors (including amending any outstanding control agreements) to enable the ABL Agents to obtain a first priority Lien in the Collateral. To the extent no ABL Obligations that are secured by such Pledged Collateral remain outstanding as confirmed in writing by the ABL Agents (so as to allow such person to obtain possession or control of such Pledged Collateral), the Term Loan Agents shall deliver the remaining Pledged Collateral (if any) together with any necessary endorsements to the Grantors. Without limiting the foregoing, each ABL Agent agrees for itself and each of its respective ABL Claimholders that no Term Loan Agent nor any Term Loan Claimholder will have any duty or obligation first to marshal or realize upon the Term Loan Priority Collateral, or to sell, dispose of or otherwise liquidate all or any portion of the Term Loan Priority Collateral, in any manner that would maximize the return to the ABL Claimholders, notwithstanding that the order and timing of any such realization, sale, disposition or liquidation may affect the amount of proceeds actually received by any ABL Claimholders from such realization, sale, disposition or liquidation.

5.5 When Discharge of Obligations Deemed to Not Have Occurred.

(a) If the Grantors enter into any Refinancing of the ABL Obligations that is intended to be secured by the ABL Priority Collateral on a first-priority basis, then a Discharge of ABL Obligations shall be deemed not to have occurred for all purposes of this Agreement, and the obligations under such Refinancing of such ABL Obligations shall be treated as ABL Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, and the lender or group of lenders or any of their designees under the ABL Documents effecting such Refinancing shall be ABL Agent for all purposes of this Agreement. The lender or group of lenders or any of their designees under such ABL Documents shall agree (in a writing addressed to each Term Loan Agent for the benefit of itself and its respective Term Loan Claimholders) to be bound by the terms of this Agreement.

(b) If the Grantors enter into any Refinancing of the Term Loan Obligations that is intended to be secured by the Term Loan Priority Collateral on a first-priority basis, then a Discharge of Term Loan Obligations shall be deemed not to have occurred for all purposes of this Agreement, and the obligations under such Refinancing

of such Term Loan Obligations shall be treated as Term Loan Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, and the lender or group of lenders or any of their designees under the Term Loan Documents effecting such Refinancing shall be Term Loan Agent for all purposes of this Agreement. The lender or group of lenders or any of their designees under such Term Loan Documents shall agree (in a writing addressed to each ABL Agent for the benefit of itself and its respective ABL Claimholders) to be bound by the terms of this Agreement.

5.6 Injunctive Relief. Should any Claimholder in any way take, attempt to, or threaten to take any action contrary to terms of this Agreement with respect to the Collateral, or fail to take any action required by this Agreement, each Term Loan Agent, each ABL Agent or any other Claimholder may obtain relief against such Claimholder by injunction, specific performance, or other appropriate equitable relief, it being understood and agreed by each ABL Agent, each Term Loan Agent and each Claimholder that (a) non-breaching Claimholders' damages from such actions may at that time be difficult to ascertain and may be irreparable, and (b) each Claimholder waives any defense that such Claimholders cannot demonstrate damage and/or be made whole by the awarding of damages. Each ABL Agent, each Term Loan Agent and each Claimholder hereby irrevocably waive any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by any ABL Agent, ABL Claimholder, Term Loan Agent, or Term Loan Claimholder, as the case may be.

SECTION 6. Insolvency Proceedings.

6.1 Enforceability and Continuing Priority. This Agreement shall be applicable, in respect of any Debtor, except as otherwise provided in the Orders, during the Cases, any CCAA Debtor, during the CCAA Cases, and in respect of any Grantor that is not a Debtor or a CCAA Debtor, both before and after the commencement of any Insolvency Proceeding, and all converted or succeeding cases in respect thereof. The relative rights of Claimholders in or to any distributions from or in respect of any Collateral or Proceeds of Collateral, shall continue after the commencement of any Insolvency Proceeding. Accordingly, the provisions of this Agreement (including the provisions of Section 2.1 hereof) are intended to be and shall be enforceable as a subordination agreement within the meaning of Section 510(a) of the Bankruptcy Code and any equivalent provision of the CCAA. All references in this Agreement to any person that is a Grantor will include such person as a debtor-in-possession and any receiver or trustee for such person in an Insolvency Proceeding.

6.2 Sales.

(a) Until the Discharge of ABL Obligations, each Term Loan Agent, for itself and its respective Term Loan Claimholders, agree that such Term Loan Claimholders will not object or oppose (or support, any person in objecting or opposing), and will be deemed to have consented to pursuant to Section 363(f) of the Bankruptcy Code or any similar provisions under the CCAA or any other applicable Bankruptcy Laws, (i) a motion to sell or otherwise dispose of any ABL Priority Collateral under Sections 363, 365 or 1129 of the Bankruptcy Code or any similar provisions under the CCAA or any other applicable Bankruptcy Laws, free and clear of any Liens or other claims, (ii) a motion establishing notice, sale or bidding procedures for such Disposition (including any break-up fee or other bidder protections) or (iii) a motion to permit a credit bid of all or any portion of the claims of the ABL Claimholders under Section 363(k) of the Bankruptcy Code or any similar provisions under the CCAA or any other applicable Bankruptcy Laws, in each case, if the ABL Agent has consented to such sale or

Disposition of such ABL Priority Collateral; provided that (x) the terms of any proposed order approving such transaction provide for the parties' respective Liens to attach to the proceeds of the ABL Priority Collateral that is the subject of such sale or Disposition, subject to the lien priorities set forth in Section 2.1 and the other terms and conditions of this Agreement, or such proceeds are applied among the ABL Obligations and the Term Loan Obligations in accordance with Section 4.1; and (y) such motion to sell or otherwise dispose of any ABL Priority Collateral does not impair the rights of the Term Loan Claimholders under Section 363(k) of the Bankruptcy Code or any similar provisions under the CCAA or any other applicable Bankruptcy Laws (except that the Term Loan Claimholders will be permitted to "credit bid" their claims (including under Section 363, 365 or 1129 of the Bankruptcy Code, or any similar provisions under the CCAA or any other applicable Bankruptcy Laws) in such sale only if any such credit bid submitted on account of Term Obligations results in the Discharge of ABL Obligations). Each Term Loan Agent for itself and its respective Term Loan Claimholders further agrees that it will not object to or oppose, or support any party in opposing, the right of the ABL Claimholders to credit bid under Section 363(k) of the Bankruptcy Code or any similar provisions under the CCAA or any other applicable Bankruptcy Laws with respect to the ABL Priority Collateral, subject to the provision of the immediately preceding sentence; provided that the Term Loan Claimholders shall not be deemed to have agreed to any credit bid by other Claimholders in connection with a single sale of both Term Loan Priority Collateral and ABL Priority Collateral.

(b) Until the Discharge of Term Loan Obligations, each ABL Agent, for itself and its respective ABL Claimholders, agree that such ABL Claimholders will not object or oppose (or support any person in objecting or opposing), and will be deemed to have consented to pursuant to Section 363(f) of the Bankruptcy Code or any similar provisions under the CCAA or any other applicable Bankruptcy Laws, (i) a motion to sell or otherwise dispose of any Term Loan Priority Collateral under Sections 363, 365 or 1129 of the Bankruptcy Code or any similar provisions under the CCAA or any other applicable Bankruptcy Laws, free and clear of any Liens or other claims, (ii) a motion establishing notice, sale or bidding procedures for such Disposition (including any break-up fee or other bidder protections) or (iii) a motion to permit a credit bid of all or any portion of the claims of the Term Loan Claimholders under Section 363(k) of the Bankruptcy Code or any similar provisions under the CCAA or any other applicable Bankruptcy Laws, in each case, if the Term Loan Agent has consented to such sale or Disposition of such Term Loan Priority Collateral; provided that (x) the terms of any proposed order approving such transaction provide for the parties' respective Liens to attach to the proceeds of the Term Loan Priority Collateral that is the subject of such sale or Disposition, subject to the lien priorities set forth in Section 2.1 and the other terms and conditions of this Agreement, or such proceeds are applied among the ABL Obligations and the Term Loan Obligations in accordance with Section 4.1; and (y) such motion to sell or otherwise dispose of any Term Loan Priority Collateral does not impair the rights of the ABL Claimholders under Section 363(k) of the Bankruptcy Code or any similar provisions under the CCAA or any other applicable Bankruptcy Laws (except that the ABL Claimholders will be permitted to "credit bid" their claims (including under Section 363, 365 or 1129 of the Bankruptcy Code, or any similar provisions under the CCAA or any other applicable Bankruptcy Laws) in such sale only if any such credit bid submitted on account of ABL Obligations results in the Discharge of Term Loan Obligations). Each ABL Agent for itself and its respective ABL Claimholders further agrees that it will not object to or oppose, or support any party in opposing, the right of the Term Loan Claimholders to credit bid under Section 363(k) of the Bankruptcy Code

or any similar provision under the CCAA or any other applicable Bankruptcy Laws with respect to the Term Loan Priority Collateral, subject to the provision of the immediately preceding sentence; provided that the ABL Claimholders shall not be deemed to have agreed to any credit bid by other Claimholders in connection with a single sale of both ABL Priority Collateral and Term Loan Priority Collateral.

6.3 Interest, Fees, Etc.

(a) Until the Discharge of ABL Obligations has occurred, the Term Loan Claimholders agree not to oppose or seek to challenge any claim by an ABL Claimholder for allowance or payment in the Cases, the CCAA Cases or any future Insolvency Proceeding of any interest on ABL Obligations or any other fees, costs or expenses in connection thereto.

(b) Until the Discharge of Term Loan Obligations has occurred, the ABL Claimholders agree not to oppose or seek to challenge any claim by a Term Loan Claimholder for allowance or payment in the Cases, the CCAA Cases or any future Insolvency Proceeding of any interest on Term Loan Obligations or any other fees, costs or expenses in connection thereto.

6.4 Avoidance Issues. If any Claimholder is required in any of the Cases, the CCAA Cases, any Insolvency Proceeding in respect of any Grantor that is not a Debtor or a CCAA Debtor or any converted or succeeding cases in respect thereof to turn over, disgorge or otherwise pay to the estate of any Grantor any amount paid in respect of the Obligations of such Claimholder (a "**Recovery**"), then such Claimholders shall be entitled to a reinstatement of the applicable Obligations with respect to all such recovered amounts, and all rights, interests, priorities and privileges recognized in this Agreement shall apply with respect to any such Recovery. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair, or otherwise affect the obligations of the parties hereto from such date of reinstatement.

SECTION 7. Reliance; Waivers; Etc.

7.1 Reliance. Other than any reliance on the terms of this Agreement, each ABL Agent, on behalf of its respective ABL Claimholders, acknowledges that it and such ABL Claimholders have, independently and without reliance on any other Agent or any other Claimholders, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into such ABL Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the ABL Documents or this Agreement. Other than any reliance on the terms of this Agreement, each Term Loan Agent, on behalf of its respective Term Loan Claimholders, acknowledges that it and such Term Loan Claimholders have, independently and without reliance on any other Agent or any other Claimholder, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the Term Loan Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the Term Loan Documents or this Agreement.

7.2 No Warranties or Liability. Each ABL Agent, on behalf of its respective ABL Claimholders, acknowledges and agrees that each Term Loan Agent and each Term Loan Claimholder has made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability, or enforceability of any of the Term Loan Documents, the ownership by any Grantor of any Collateral, or the perfection or priority of any Liens thereon. Except as otherwise

expressly provided herein, each Term Loan Agent and the other Term Loan Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the Term Loan Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. Each Term Loan Agent, on behalf of its respective Term Loan Claimholders, acknowledges and agrees that each ABL Agent and each ABL Claimholder has made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability, or enforceability of any of the ABL Documents, the ownership of any Collateral, or the perfection or priority of any Liens thereon. Except as otherwise expressly provided herein, each ABL Agent and the other ABL Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under their respective ABL Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. For the avoidance of doubt, neither any ABL Agent nor any ABL Claimholder shall have any liability of any kind or nature to any Term Loan Agent or any Term Loan Claimholder for making any loans, issuing any letters of credit or making any other extensions of credit available to any Loan Party in accordance with the provisions of the DIP ABL Credit Agreement and this Agreement, regardless of whether the foregoing is permitted under the DIP Term Loan Agreement or would result in a Term Loan Default, and each Term Agent, on behalf of each Term Loan Claimholder, hereby irrevocably waives and releases any and all such claims. Except as expressly provided herein, each Term Loan Agent and each Term Loan Claimholder shall have no duty to any ABL Agent or any ABL Claimholders, and each ABL Agent and each ABL Claimholder shall have no duty to any Term Loan Agent or any Term Loan Claimholders, to act or refrain from acting in a manner that allows, or results in, the occurrence or continuance of an event of default or default under any agreements with any Grantor (including the ABL Documents and the Term Loan Documents), regardless of any knowledge thereof which they may have or be charged with. Each Term Loan Agent hereby waives to the fullest extent permitted by law any claim that may be had against any ABL Agent or any ABL Claimholder arising out of any actions which the such ABL Agent or such ABL Claimholder take or omit to take (including, actions with respect to the creation, perfection or continuation of Liens on any Collateral, actions with respect to the foreclosure upon, sale, release or depreciation of, or failure to realize upon, any of the Collateral and actions with respect to the collection of any claim for all or any part of the ABL Obligations from any account debtor, guarantor or any other party), or the valuation, use, protection or release of any security for such ABL Obligations. Each ABL Agent hereby waives to the fullest extent permitted by law any claim that may be had against any Term Loan Agent or any Term Loan Claimholder arising out of any actions which such Term Loan Agent or such Term Loan Claimholder take or omit to take (including, actions with respect to the creation, perfection or continuation of Liens on any Collateral, actions with respect to the foreclosure upon, sale, release or depreciation of, or failure to realize upon, any of the Collateral and actions with respect to the collection of any claim for all or any part of the Term Loan Obligations from any account debtor, guarantor or any other party), or the valuation, use, protection or release of any security for such Term Loan Obligations.

7.3 No Waiver of Lien Priorities.

(a) No right of any ABL Claimholder, any ABL Agent or any of them to enforce any provision of this Agreement or any ABL Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any Grantor or by any act or failure to act by any ABL Claimholder or any ABL Agent, or by any noncompliance by any person with the terms, provisions, and covenants of this Agreement, any of the ABL Documents or any of the Term Loan Documents, regardless of any knowledge thereof which such ABL Agent or such ABL Claimholders, or any of them, may have or be otherwise charged with. No right of any Term Loan Claimholder, any Term Loan Agent or any of them to enforce any provision of this Agreement or any Term Loan Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any Grantor or by any act or failure to act by any Term Loan Claimholder or any Term Loan Agent, or by any noncompliance by any person

with the terms, provisions, and covenants of this Agreement, any of the Term Loan Documents or any of the ABL Documents, regardless of any knowledge thereof which such Term Loan Agent or such Term Loan Claimholders, or any of them, may have or be otherwise charged with.

(b) Without in any way limiting the generality of the foregoing paragraph (a) (but subject to any rights of Grantors under the ABL Documents and the Term Loan Documents and subject to the provisions of Section 5.3(a)), each ABL Claimholder, each ABL Agent and any of them may, at any time and from time to time in accordance with the ABL Documents and/or applicable law, without the consent of, or notice to, any Term Loan Agent or any Term Loan Claimholders, without incurring any liabilities to any Term Loan Agent or any Term Loan Claimholders and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of any Term Loan Agent or any Term Loan Claimholders is affected, impaired, or extinguished thereby) do any one or more of the following without the prior written consent of any Term Loan Agent or any Term Loan Claimholders:

(i) change the manner, place, or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase, or alter, the terms of any of the ABL Obligations or any Lien on any ABL Collateral or guarantee thereof or any liability of any Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the ABL Obligations, without any restriction as to the tenor or terms of any such increase or extension) or otherwise amend, renew, exchange, extend, modify, or supplement in any manner any Liens held by any ABL Agent or any ABL Claimholders, the ABL Obligations, or any of the ABL Documents;

(ii) sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the ABL Priority Collateral or any liability of any Grantor to any ABL Claimholder or any ABL Agent, or any liability incurred directly or indirectly in respect thereof;

(iii) settle or compromise any ABL Obligation or any other liability of any Grantor or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including the ABL Obligations) in any manner or order that is not inconsistent with the terms of this Agreement; and

(iv) exercise or delay in or refrain from exercising any right or remedy against any Grantor or any other person, elect any remedy and otherwise deal freely with any Grantor or any ABL Priority Collateral and any security and any guarantor or any liability of any Grantor to any ABL Agent or any ABL Claimholder or any liability incurred directly or indirectly in respect thereof.

(c) Except as otherwise provided herein, each Term Loan Agent also agrees that each ABL Claimholder and each ABL Agent shall have no liability to

any Term Loan Agent or any Term Loan Claimholders, and each Term Loan Agent hereby waives any claim against any ABL Claimholder or any ABL Agent, arising out of any and all actions which any ABL Claimholders or any ABL Agent may, pursuant to the terms hereof, take, permit or omit to take with respect to:

(i) the ABL Documents;

(ii) the collection of the ABL Obligations; or

(iii) the foreclosure upon, or sale, liquidation, or other Disposition of, or the failure to foreclose upon, or sell, liquidate, or otherwise Dispose of, any ABL Priority Collateral. Each Term Loan Agent agrees that each ABL Claimholder and each ABL Agent has no duty to them in respect of the maintenance or preservation of the ABL Priority Collateral, the ABL Obligations, or otherwise.

(d) Without in any way limiting the generality of the foregoing paragraph (a) (but subject to any rights of Grantors under the Term Loan Documents and subject to the provisions of Section 5.3(b)), each Term Loan Claimholder, each Term Loan Agent and any of them may, at any time and from time to time in accordance with the Term Loan Documents and/or applicable law, without the consent of, or notice to, any ABL Agent or any ABL Claimholders, without incurring any liabilities to any ABL Agent or any ABL Claimholders and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of any ABL Agent or any ABL Claimholders is affected, impaired, or extinguished thereby) do any one or more of the following without the prior written consent of any ABL Agent or any ABL Claimholders:

(i) change the manner, place, or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase, or alter, the terms of any of the Term Loan Obligations or any Lien on any Term Loan Collateral or guarantee thereof or any liability of any Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the Term Loan Obligations, without any restriction as to the tenor or terms of any such increase or extension) or otherwise amend, renew, exchange, extend, modify, or supplement in any manner any Liens held by any Term Loan Agent or any Term Loan Claimholders, the Term Loan Obligations, or any of the Term Loan Documents;

(ii) subject to Section 3.8, sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the Term Loan Priority Collateral or any liability of any Grantor to any Term Loan Claimholder or any Term Loan Agent, or any liability incurred directly or indirectly in respect thereof;

(iii) settle or compromise any Term Loan Obligation or any other liability of any Grantor or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including the Term

Loan Obligations) in any manner or order that is not inconsistent with the terms of this Agreement; and

(iv) exercise or delay in or refrain from exercising any right or remedy against any Grantor or any other person, elect any remedy and otherwise deal freely with any Grantor or any Term Loan Priority Collateral and any security and any guarantor or any liability of any Grantor to any Term Loan Agent or any Term Loan Claimholder or any liability incurred directly or indirectly in respect thereof.

(e) Except as otherwise provided herein, each ABL Agent also agrees that each Term Loan Claimholder and each Term Loan Agent shall have no liability to any ABL Agent or any ABL Claimholders, and each ABL Agent hereby waives any claim against any Term Loan Claimholder or any Term Loan Agent, arising out of any and all actions which any Term Loan Claimholders or any Term Loan Agent may, pursuant to the terms hereof, take, permit or omit to take with respect to:

(i) the Term Loan Documents;

(ii) the collection of the Term Loan Obligations; or

(iii) the foreclosure upon, or sale, liquidation, or other Disposition of, or the failure to foreclose upon, or sell, liquidate, or otherwise Dispose of, any Term Loan Priority Collateral. Each ABL Agent agrees that each Term Loan Claimholder and each Term Loan Agent has no duty to them in respect of the maintenance or preservation of the Term Loan Priority Collateral, the Term Loan Obligations, or otherwise.

(f) Until the Discharge of ABL Obligations and the Discharge of Term Loan Obligations, each ABL Agent and each Term Loan Agent agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead, or otherwise assert, or otherwise claim the benefit of, any marshaling, appraisal, valuation, or other similar right that may otherwise be available under applicable law with respect to each other Agent's Priority Collateral or any other similar rights a junior secured creditor may have under applicable law.

7.4 Obligations Unconditional. For so long as this Agreement is in full force and effect, all rights, interests, agreements and obligations of each ABL Agent, each ABL Claimholder, each Term Loan Agent and each Term Loan Claimholder, respectively, hereunder shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any ABL Documents or any Term Loan Documents or any reversal, vacating, stay, modification or amendment of the Orders;

(b) except as otherwise expressly restricted in this Agreement, any change in the time, manner, or place of payment of, or in any other terms of, all or any of the ABL Obligations or Term Loan Obligations, or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any ABL Document or any Term Loan Document;

(c) except as otherwise expressly restricted in this Agreement, any exchange, release, voiding, avoidance or non perfection of any Lien in any Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the ABL Obligations or Term Loan Obligations or any guarantee thereof;

(d) the status (including the dismissal or conversion to chapter 7 under the Bankruptcy Code) of any of the Cases or the CCAA Cases, or the commencement of any Insolvency Proceeding in respect of any Grantor that is not a Debtor or a CCAA Debtor; or

(e) any other circumstances which otherwise might constitute a defense available to, or a discharge of, any Grantor in respect of each ABL Agent, the ABL Obligations, any ABL Claimholder, each Term Loan Agent, the Term Loan Obligations or any Term Loan Claimholder in respect of this Agreement.

SECTION 8. Representations and Warranties.

8.1 Representations and Warranties of Each Party. Each party hereto represents and warrants to the other parties hereto as follows:

(a) Such party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder;

(b) This Agreement has been duly executed and delivered by such party and constitutes a legal, valid and binding obligation of such party, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law); and

(c) The execution, delivery, and performance by such party of this Agreement (i) do not require any consent or approval of, registration or filing with or any other action by any governmental authority and (ii) will not violate any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents or by-laws of such party or any order of any governmental authority or any provision of any agreement or other instrument binding upon such party.

8.2 Representations and Warranties of Each Agent. Each Agent each represents and warrants to the other that it has been authorized by the ABL Claimholders or the Term Loan Claimholders, as applicable, under the ABL Loans Documents or the Term Loan Documents, as applicable, to enter into this Agreement and that each of the agreements, covenants, waivers, and other provisions hereof is valid, binding, and enforceable against the other ABL Claimholders or the other Term Loan Claimholders, as applicable, as fully as if they were parties hereto, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

SECTION 9. Miscellaneous.

9.1 Conflicts. Except to the extent expressly provided in Section 9.15, in the event of any conflict between the provisions of this Agreement and the provisions of any of the ABL Documents or any of the Term Loan Documents, the provisions of this Agreement shall govern and control.

9.2 Effectiveness; Continuing Nature of this Agreement; Severability. This Agreement shall become effective when executed and delivered by the parties hereto. This is a continuing agreement of lien subordination (as opposed to debt or claim subordination) and the Claimholders may continue, at any time and without notice to any Agent or any other Claimholder, to extend credit and other financial accommodations to or for the benefit of any Grantor constituting ABL Obligations or Term Loan Obligations, as applicable, in reliance hereof. Each Term Loan Agent and each ABL Agent hereby waives any right it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency Proceeding (including but not limited to the Cases and the CCAA Cases). Consistent with, but not in limitation of, the preceding sentence, each ABL Agent and each Term Loan Agent, on behalf of the applicable Claimholders, irrevocably acknowledges that this Agreement constitutes a "subordination agreement" within the meaning of both New York law and Section 510(a) of the Bankruptcy Code or any similar provision under the CCAA. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. All references to any Grantor shall include such Grantor as debtor and debtor-in-possession and any receiver or trustee for such Grantor in, as applicable, the Cases, the CCAA Cases or any other Insolvency Proceeding. This Agreement shall terminate and be of no further force and effect:

(a) with respect to any ABL Agent, any ABL Claimholder, and the ABL Obligations, on the date that the Discharge of ABL Obligations has occurred; and

(b) with respect to any Term Loan Agent, any Term Loan Claimholder, and the Term Loan Obligations, on the date that the Discharge of Term Loan Obligations has occurred.

9.3 Amendments; Waivers. Except as provided in the last sentence of this Section, no amendment, modification, or waiver of any of the provisions of this Agreement shall be effective unless the same shall be in writing signed on behalf of each party hereto or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time. Any amendments, modifications or waivers can be effected by any ABL Agent, at the direction of the requisite ABL Claimholders under the ABL Documents, and by any Term Loan Agent, at the direction of the requisite Term Loan Claimholders under the Term Loan Documents. Notwithstanding the foregoing, no Grantor shall have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except to the extent its rights under the ABL Documents, the Term Loan Documents or this Agreement are directly affected. In connection with any Refinancing of the Term Loan Obligations or ABL Obligations permitted under Section 5.3(a) or 5.3(b), as applicable, this Agreement may be amended at the request and sole expense of the Grantors, and without the consent of any ABL Agent or any Term Loan Agent, (i) to add parties (or any authorized agent or trustee therefor) providing any such Refinancing, (ii) to establish that Liens on any Term Loan Priority Collateral securing such Refinanced debt shall have the same priority as the Liens on any Term Loan Priority Collateral securing the debt being Refinanced and (iii) to establish that the Liens on any ABL Priority Collateral securing such Refinanced debt shall have the same priority as the Liens on any ABL Priority Collateral securing the debt being Refinanced.

9.4 Information Concerning Financial Condition of the Grantors. Each ABL Agent and each ABL Claimholder, on the one hand, and each Term Loan Agent and each Term Loan Claimholder, on the other hand, shall each be responsible for keeping themselves informed of (a) the financial condition of the Grantors and all endorsers and/or guarantors of the ABL Obligations or the Term Loan Obligations and (b) all other circumstances bearing upon the risk of nonpayment of the ABL Obligations or the Term Loan Obligations. Each ABL Agent and the ABL Claimholders shall have no duty to advise any Term Loan Agent or any Term Loan Claimholder of information known to it or them regarding such condition or any such circumstances or otherwise. Each Term Loan Agent and the Term Loan Claimholders shall have no duty to advise any ABL Agent or any ABL Claimholder of information known to it or them regarding such condition or any such circumstances or otherwise. In the event any ABL Agent or any ABL Claimholders, or any Term Loan Agent or any Term Loan Claimholders, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to any other party to this Agreement, it or they shall be under no obligation:

(a) to make, and each ABL Agent and ABL Claimholders, or each Term Loan Agent and Term Loan Claimholders, as the case may be, shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness, or validity of any such information so provided;

(b) to provide any additional information or to provide any such information on any subsequent occasion;

(c) to undertake any investigation; or

(d) to disclose any information, which pursuant to accepted or reasonable commercial practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

9.5 Subrogation. (a) With respect to any payments or distributions in cash, property, or other assets that any Term Loan Claimholders or any Term Loan Agent pays over to any ABL Agent or any ABL Claimholder under the terms of this Agreement, such Term Loan Claimholder and such Term Loan Agent shall be subrogated to the rights of such ABL Agents and such ABL Claimholders and (b) with respect to any payments or distributions in cash, property, or other assets that any ABL Claimholders or any ABL Agent pays over to any Term Loan Agent or any Term Loan Claimholder under the terms of this Agreement, such ABL Claimholder and such ABL Agent shall be subrogated to the rights of such Term Loan Agents and Term Loan Claimholders; provided, however, that, each ABL Agent and each Term Loan Agent each hereby agrees not to assert or enforce any such rights of subrogation it may acquire as a result of any payment hereunder until the Discharge of ABL Obligations or Discharge of Term Loan Obligations, as applicable, has occurred. Any payments or distributions in cash, property or other assets received by any ABL Agent or any ABL Claimholder that are paid over to any Term Loan Agent or any Term Loan Claimholder pursuant to this Agreement shall not reduce any of the ABL Obligations. Any payments or distributions in cash, property or other assets received by any Term Loan Agent or any Term Loan Claimholder that are paid over to any ABL Agent or any ABL Claimholder pursuant to this Agreement shall not reduce any of the Term Loan Obligations. Notwithstanding the foregoing provisions of this Section 9.5, none of the ABL Claimholders shall have any claim against any of the Term Loan Claimholders for any impairment of any subrogation rights herein granted to the Term Loan Claimholders and none of the Term Loan Claimholders shall have any claim against any of the ABL Claimholders for any impairment of any subrogation rights herein granted to the ABL Claimholders.

9.6 **SUBMISSION TO JURISDICTION; WAIVERS.**

(a) **ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO SHALL BE BROUGHT IN THE BANKRUPTCY COURT AND, IF THE BANKRUPTCY COURT DOES NOT HAVE, OR ABSTAINS FROM, JURISDICTION, TO ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY, AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY:**

(i) **ACCEPTS GENERALLY AND UNCONDITIONALLY THE JURISDICTION AND VENUE OF SUCH COURTS;**

(ii) **WAIVES ANY DEFENSE OF FORUM NON CONVENIENS;**

(iii) **AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 9.7; AND**

(iv) **AGREES THAT SERVICE AS PROVIDED IN CLAUSE (iii) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT. NOTWITHSTANDING THE FOREGOING, IN THE EVENT ANY GRANTOR IS SUBJECT TO AN INSOLVENCY PROCEEDING, THE PARTIES HERETO MAY SEEK TO ENFORCE THIS AGREEMENT IN THE COURT OR OTHER TRIBUNAL HAVING JURISDICTION OVER OR OTHERWISE OVERSEEING SUCH INSOLVENCY PROCEEDING.**

(b) **NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED HEREIN SHALL BE DEEMED TO CONSTITUTE CONSENT TO JURISDICTION OF THE BANKRUPTCY COURT FOR ANY PURPOSE OTHER THAN THE ENFORCEMENT OF THIS AGREEMENT AND THE ORDERS. NOTHING CONTAINED HEREIN SHALL BE DEEMED CONSENT TO THE JURISDICTION BEFORE ANY BANKRUPTCY COURT IN THE CASES.**

(c) **EACH OF THE PARTIES HERETO (INCLUDING HOLDINGS ON BEHALF OF ITSELF AND ITS SUBSIDIARIES) HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER HEREOF, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER**

COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE; MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 9.6(c) AND EXECUTED BY ABL AGENT AND TERM LOAN AGENT), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS HERETO. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

9.7 Notices. All notices to Term Loan Claimholders and ABL Claimholders permitted or required under this Agreement shall also be sent to each Term Loan Agent and each ABL Agent, respectively. Unless otherwise specifically provided herein, any notice hereunder shall be in writing and may be personally served or sent by facsimile or United States mail or courier service or electronic mail and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of facsimile or electronic mail, or 3 Business Days after depositing it in the United States mail with postage prepaid and properly addressed. For the purposes hereof, the addresses of the parties hereto shall be as may be designated by such party in a written notice to all of the other parties. Grantors shall provide written notice to each ABL Agent of the Discharge of Term Loan Obligations and shall provide written notice to each Term Loan Agent of the Discharge of ABL Obligations.

9.8 Further Assurances. Each ABL Agent and each Term Loan Agent agree to take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as any ABL Agent or any Term Loan Agent may reasonably request to effectuate the terms of and the Lien priorities contemplated by this Agreement, all at the expense of Grantors to the extent permitted by the Orders.

9.9 **APPLICABLE LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.**

9.10 Binding on Successors and Assigns. This Agreement shall be binding upon each ABL Agent, each ABL Claimholder, each Term Loan Agent, each Term Loan Claimholder, and each of their respective successors and assigns.

9.11 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

9.12 Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by telecopy shall be effective

as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

9.13 No Third Party Beneficiaries. This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and its respective successors and assigns and shall inure to the benefit of and bind each of ABL Claimholders and Term Loan Claimholders. In no event shall any Grantor be a third party beneficiary of this Agreement.

9.14 Provisions Solely to Define Relative Rights. The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of each ABL Agent and ABL Claimholders on the one hand and each Term Loan Agent and Term Loan Claimholders on the other hand. No Grantor or any other creditor thereof shall have any rights hereunder and no Grantor may rely on the terms hereof. Nothing in this Agreement shall impair, as between Grantors and each ABL Agent and its respective ABL Claimholders, or as between Grantors and each Term Loan Agent and its respective Term Loan Claimholders, the obligations of Grantors, which are absolute and unconditional, to pay principal, interest, fees and other amounts as provided in the ABL Documents and the Term Loan Documents, respectively, including as and when the same shall become due and payable in accordance with their terms.

9.15 Costs and Attorneys Fees. In the event it becomes necessary for any ABL Agent, any ABL Claimholder, any Term Loan Agent, or any Term Loan Claimholder to commence or become a party to any proceeding or action to enforce the provisions of this Agreement, the Bankruptcy Court, the CCAA Court or other court or body before which the same shall be tried shall award to the prevailing party all costs and expenses thereof, including reasonable attorneys fees, the usual and customary and lawfully recoverable court costs, and all other expenses in connection therewith.

9.16 Specific Performance. Each ABL Agent and each Term Loan Agent may demand specific performance of this Agreement. Any ABL Agent, on behalf of itself and its respective ABL Claimholders, and each Term Loan Agent, on behalf of itself and its respective Term Loan Claimholders, hereby irrevocably waive any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by any ABL Agent or the other ABL Claimholders or any Term Loan Agent or the other Term Loan Claimholders, as applicable. Without limiting the generality of the foregoing or of the other provisions of this Agreement, in seeking specific performance in the Cases or the CCAA Cases (or any other Insolvency Proceeding), each ABL Agent or each Term Loan Agent may seek such or any other relief as if it were the "holder" of the claims of the other agent's Claimholders under Section 1126(a) of the Bankruptcy Code or any equivalent provision of the CCAA or otherwise had been granted an irrevocable power of attorney by the other Agent's Claimholders.

SECTION 10. Term Loan Claimholder Purchase Option.

10.1 Right to Purchase; Purchase Notice. Upon the occurrence and during the continuation of a Purchase Triggering Event or at any time following an Excess ABL Purchase Triggering Event, then, in any such case, any one or more of the Term Loan Claimholders (acting in their individual capacity or through one or more affiliates) designated by holders of more than 50% of the aggregate outstanding principal amount of the Term Loan Obligations shall have the right, but not the obligation, to purchase (at par) all (but not less than all) of the ABL Priority Obligations pursuant to this Section 10.1. In order to exercise such purchase option, the Term Loan Agent or the designated Term Loan Claimholders shall deliver a written notice (a "**Purchase Notice**") to each ABL Agent, which Purchase Notice shall (A) be signed by the designated Term Loan Claimholders committing to such purchase (the "**Purchasing Creditors**") and indicate the percentage of the ABL Priority Obligations to be purchased by each Purchasing Creditor (which aggregate commitments must add up to 100% of the ABL Priority Obligations),

(B) state that (1) it is a Purchase Notice delivered pursuant to Section 10.1 of this Agreement and (2) the offer contained therein is irrevocable, and (C) identify the proposed purchase date (which shall not be not less than two (2) Business Days after, and not more than 15 Business Days after the receipt by the ABL Agents of the Purchase Notice); provided, that, with respect to each Purchase Triggering Event (but not, for the avoidance of doubt, with respect to any Excess ABL Purchase Triggering Event), such purchase option shall expire if such Term Loan Agent or the designated Term Loan Claimholders fail to deliver a Purchase Notice within ten (10) Business Days following the first date such Term Loan Agent obtains actual knowledge of the occurrence of such Purchase Triggering Event. Upon receipt of a Purchase Notice by the ABL Agents, the Purchasing Creditors shall have from the date of delivery thereof to and including the date that is fifteen (15) Business Days after the Purchase Notice was received by the ABL Agents to consummate such purchase of all (but not less than all) of the ABL Priority Obligations pursuant to this Section 10 (the date of such purchase, the "**Purchase Date**"). The Purchase Notice, if given, shall be irrevocable.

10.2 Notice to Term Loan Claimholders. Each Term Loan Agent, on behalf of its respective Term Loan Claimholders, solely as among themselves, agrees that upon the occurrence of any Purchase Triggering Event or any Excess ABL Purchase Triggering Event, each Term Loan Agent shall send a notice to all its respective Term Loan Claimholders giving each Term Loan Claimholder the option to purchase at least its pro rata share of the ABL Priority Obligations. No Term Loan Claimholder shall be required to participate in any purchase offer hereunder, and each Term Loan Claimholder acknowledges and agrees that a purchase offer may be made by any or all of the Term Loan Claimholders, subject to the requirements of the preceding sentence and Section 10.1.

10.3 Purchase Price, Cash Collateral, Assumption of Commitments, Etc. On the Purchase Date, the ABL Claimholders shall sell to the Purchasing Creditors and the Purchasing Creditors shall purchase from the ABL Claimholders, all (but not less than all) of the ABL Priority Obligations. On the Purchase Date, the Purchasing Creditors shall:

(a) pay to ABL Agents, for the benefit of their respective ABL Claimholders, as the purchase price therefor, the full amount of all the ABL Priority Obligations then outstanding and unpaid, other than (i) indemnification and reimbursement obligations for which no claim or demand for payment has been threatened or asserted, in each case in writing, at such time, and (ii) ABL Priority Obligations cash collateralized in accordance with clause (b) below,

(b) furnish cash collateral to each ABL Agent in an amount equal to the sum of (A) 105% (or 115% in the case of letters of credit denominated in a currency other than U.S. Dollars that are not cash collateralized in such other currency) of the aggregate undrawn amount of any issued and outstanding letters of credit (such cash collateral shall be applied to the reimbursement of any drawing under a letter of credit as and when such drawing is paid and, if a letter of credit expires undrawn or not fully drawn, the cash collateral held by such ABL Agent in respect of such letter of credit shall be remitted to the Term Loan Agents for the benefit of the Purchasing Creditors), plus (B) an amount as such ABL Agent determines is reasonably necessary to secure such ABL Agent and its respective ABL Claimholders in respect of any outstanding ABL Bank Product Obligations (such cash collateral shall be applied to the reimbursement of such ABL Bank Product Obligations as and when such obligations become due and payable and, at such time as all of such ABL Bank Product Obligations are paid in full (other than indemnification and reimbursement obligations for which no claim or demand for payment has been threatened or asserted, in each case in writing), the remaining cash collateral held by such ABL Agent in respect of such ABL Bank Product

Obligations shall be remitted to the Term Loan Agents for the benefit of the Purchasing Creditors), plus (C) any claims demands, actions, suits, proceedings, investigations, liabilities, fines, costs, penalties, damages or other indemnification obligations that are threatened or asserted, in each case in writing, and the subject of the indemnification provisions of the DIP ABL Credit Agreement and Pre-Petition ABL Credit Agreement (such cash collateral shall be applied to the reimbursement of such obligations as and when they become due and payable and, at such time as all of such obligations are paid in full, the remaining cash collateral held by such ABL Agent in respect of indemnification obligations shall be remitted to the Term Loan Agents for the benefit of the Purchasing Creditors),

(c) assume the remaining commitments (if any) of the ABL Claimholders to extend credit under the DIP ABL Credit Agreement and Pre-Petition ABL Credit Agreement,

(d) pay to ABL Agents and the other ABL Claimholders the amount of all expenses to the extent incurred, earned and due and payable in accordance with the ABL Documents (including the reimbursement of attorneys fees, financial examination expenses, and appraisal fees), and

(e) agree to reimburse the ABL Agents and the other ABL Claimholders for any loss, cost, damage or expense (including reasonable and documented out-of-pocket attorneys' fees and legal expenses) in connection with any commissions, fees, costs or expenses related to any issued and outstanding letters of credit, banker's acceptances and similar instruments as described above and any checks or other payments provisionally credited to the ABL Priority Obligations, and/or as to which such ABL Agent and its respective ABL Claimholders have not yet received final payment.

10.4 Remittance. Such purchase price and cash collateral shall be remitted by wire transfer of federal funds to such bank account of the ABL Agents as ABL Agents may designate in writing to the Term Loan Agents for such purpose. Interest shall be calculated to but excluding the Business Day on which such purchase and sale shall occur if the amounts so paid by the Purchasing Creditors to the bank account designated by such ABL Agent are received in such bank account prior to 2:00 p.m., New York time, and interest shall be calculated to and including such Business Day if the amounts so paid by the Purchasing Creditors to the bank account designated by such ABL Agent are received in such bank account later than 2:00 p.m., New York time.

10.5 Purchase Documentation. Such purchase shall be effected by the execution and delivery of a customary form of assignment and acceptance agreement and shall be expressly made without representation or warranty of any kind by any ABL Agent and the other ABL Claimholders as to the ABL Priority Obligations so purchased, or otherwise, and without recourse to any ABL Agent or any other ABL Claimholder, except that each ABL Claimholder shall represent and warrant: (i) that the amount quoted by such ABL Claimholder as its portion of the purchase price represents the amount shown as owing with respect to the claims transferred as reflected on its books and records, (ii) it owns, or has the right to transfer to the Purchasing Creditors, the rights being transferred, and (iii) such transfer will be free and clear of Liens.

10.6 Resignation Rights. In the event that any one or more of the Purchasing Creditors exercises and consummates the purchase option set forth in this Section 10, (i) each ABL Agent and each Issuing Bank (as defined in the DIP ABL Credit Agreement and Pre-Petition ABL Credit Agreement) and

Swingline Lender (as defined in the DIP ABL Credit Agreement and Pre-Petition ABL Credit Agreement) shall have the right, but not the obligation, to immediately resign under the as defined in the DIP ABL Credit Agreement and Pre-Petition ABL Credit Agreement, as applicable, and (ii) the Purchasing Creditors shall have the right, but not the obligation, to require each ABL Agent, each Issuing Bank and each Swingline Lender to immediately resign under the DIP ABL Credit Agreement and Pre-Petition ABL Credit Agreement, as applicable.

10.7 Exercise any Secured Creditor Remedies Following Purchase Notice. During the period following receipt of a Purchase Notice and continuing through and including the Purchase Date, each ABL Agent shall not, without the prior written consent of the Term Loan Agents, unless Exigent Circumstances exist in which case no such consent shall be required (provided, each ABL Agent shall use commercially reasonable efforts to the extent practicable to consult with the Term Loan Agent in respect thereof), (x) Exercise any Secured Creditor Remedies consisting of a foreclosure or other Disposition of all or a material portion of the ABL Priority Collateral or (y) make any Overadvance or any Protective Advance (in each case, as defined in the ABL Documents), except to the extent resulting from any Advance made to fund the payment of accrued interest, fees or Lender Group Expenses (as such term is defined in the DIP ABL Credit Agreement) that are due and payable; provided that, if for any reason, the Purchasing Creditors shall fail to complete the purchase of the ABL Priority Obligations by the date set forth in the Purchase Notice, each ABL Agent shall be entitled to immediately commence (or to continue) any Exercise of Secured Creditor Remedies in respect of the ABL Priority Collateral.

10.8 ABL Retained Interest. In the event that any one or more of the Purchasing Creditors exercises and consummates the purchase option set forth in this Section 10, (a) the ABL Claimholders shall retain their indemnification and reimbursement rights under the ABL Documents for actions or other matters arising on or prior to the date of such purchase, and (b) and in the event that, at the time of such purchase, there exists Excess ABL Obligations, the consummation of such purchase option shall not include (nor shall the purchase price be calculated with respect to) such Excess ABL Obligations (clauses (a) and (b), the "**ABL Retained Interest**"). In the event that an ABL Retained Interest exists, each Grantor and each ABL Claimholder shall, at the request of the Purchasing Creditors, execute an amendment to the DIP ABL Credit Agreement or the Pre-Petition ABL Credit Agreement acknowledging and agreeing that such ABL Retained Interest consisting of Excess ABL Obligations is a last-out tranche of the ABL Obligations, payable after payment in full of all of the ABL Priority Obligations and subject to the terms of this Agreement with respect to the Term Loan Obligations. Interest with respect to such ABL Retained Interest consisting of Excess ABL Obligations shall continue to accrue and be payable in accordance with the terms of the ABL Documents, the ABL Retained Interest shall continue to be secured by the Collateral, and the ABL Retained Interest shall be paid (or cash collateralized, as applicable) in accordance with the terms of the ABL Documents and this Agreement. Each ABL Claimholder shall continue to have all rights and remedies of a lender under the applicable ABL Documents; provided, that no ABL Lender shall have any right to vote on, or otherwise consent to (in each case in respect of its interest in the ABL Retained Interest), any amendment, waiver, departure from, or other modification of any provision of any ABL Document, except that (i) the consent of each such ABL Lender shall be required for those matters that, under the DIP ABL Credit Agreement and Pre-Petition ABL Credit Agreement that require the agreement or consent of all applicable ABL Lenders party thereto or all ABL Lenders directly and adversely affected thereby, and (ii) the consent of each of the ABL Lenders that hold a portion of the ABL Retained Interest shall be required for any amendment, waiver, departure from, or other modification of any provision of any ABL Document that is inconsistent with the priorities or other provisions set forth in this Agreement with respect to the ABL Retained Interest.

SECTION 11. Condition Precedent. The effectiveness of this Agreement is subject to the satisfaction of each of the following conditions:

(a) the entry of the Interim Order;

(b) the entry of the CCAA Initial Order;

(c) the satisfaction or waiver of the conditions set forth in Section 5 of the DIP Term Loan Agreement and the making of the term loans in accordance with the provisions thereof; and

(d) the satisfaction or waiver of the conditions set forth in Sections 3.1 and 3.2 of the DIP ABL Credit Agreement.

SECTION 12. Limited Effect on Existing Intercreditor Agreements. Nothing in this Agreement is intended or shall be construed to amend, alter, limit, diminish or otherwise affect the rights, remedies, terms or agreements set forth in any other subordination or intercreditor agreement to which the Pre-Petition ABL Agent and the Pre-Petition Term Loan Agent are parties, including, without limitation, in connection with the Pre-Petition Term Loan Obligations and the Pre-Petition ABL Obligations under the Pre-Petition Intercreditor Agreement, except that by their signatures below, each of **WELLS FARGO CAPITAL FINANCE, LLC**, in its capacity as ABL Agent under (and as defined in) the Pre-Petition Intercreditor Agreement, and **BROOKFIELD PRINCIPAL CREDIT LLC**, in its capacities as Term Loan Agent and under (and as defined in) the Pre-Petition Intercreditor Agreement, hereby agree as follows:

(a) They have no objection to the financings or liens contemplated by the Orders, the DIP ABL Documents or the DIP Term Loan Documents and agree that consummation of the transactions described therein is permitted by and does not violate in any respect the Pre-Petition Intercreditor Agreement, and

(b) (i) Discharge of ABL Obligations under (and as defined in) the Pre-Petition Intercreditor Agreement shall not occur unless and until (in addition to the other requirements therefor) Discharge of ABL Obligations under (and as defined in) this Agreement occurs, and (ii) Discharge of Term Loan Obligations under (and as defined in) the Pre-Petition Intercreditor Agreement shall not occur unless and until (in addition to the other requirements therefor) Discharge of Term Loan Obligations under (and as defined in) this Agreement occurs; provided, however, that until the effectiveness of the Pre-Petition ABL Roll Up, the DIP ABL Credit Agreement shall be deemed a "refinancing" of the Pre-Petition ABL Obligations, and upon its effectiveness the Pre-Petition ABL Roll Up shall constitute a Discharge of ABL Obligations under (and as defined in) the Pre-Petition Intercreditor Agreement.

[Signature pages to follow.]

ACKNOWLEDGMENT

Each of the undersigned hereby acknowledges that it has received a copy of the foregoing Intercreditor Agreement and consents thereto, agrees to recognize all rights granted thereby to each ABL Agent, the ABL Claimholders, each Term Loan Agent, and the Term Loan Claimholders, and will not do any act or perform any obligation which is not in accordance with the agreements set forth therein. Each of the undersigned further acknowledges and agrees that it is not an intended beneficiary or third party beneficiary under the foregoing Intercreditor Agreement.

[Signature pages to follow.]

Exhibit F

Milestones

(a) On the Petition Date:

(i) the Debtors shall file a motion with the Bankruptcy Court seeking approval of each of the DIP Term Facility and the DIP ABL Credit Facility; and

(ii) the Debtors shall have entered into the Stalking Horse APA.

(b) On the CCAA Filing Date, the CCAA Cases shall have been initiated in the CCAA Court, and on or before the Business Day immediately following the CCAA Filing Date, the CCAA Court shall have issued and entered the CCAA Initial Order.

(c) On or before the Business Day immediately following the date on which the Bankruptcy Court holds the hearing regarding the Interim Order, the Bankruptcy Court shall have entered the Interim Order.

(i) On or before the date that is one (1) day after the Petition Date, the Debtors shall have filed the Bidding Procedures Motion in the Bankruptcy Court.

(d) On or before the date that is six (6) days after the CCAA Filing Date, the CCAA Debtors shall have filed the CCAA Comeback Motion.

(e) On or before the date that is fifteen (15) days after the CCAA Filing Date, the CCAA Court shall have issued and entered the CCAA A&R Initial Order.

(f) On or before the date that is twenty-nine (29) days after the Petition Date, each of the Bankruptcy Court and the CCAA Court shall have entered the Bidding Procedures Order.

(g) On or before the date that is twenty-nine (29) days after the Petition Date, the Bankruptcy Court shall have entered the Final Order.

(h) On or before January 20, 2020, the Bid Deadline (as defined in the Bidding Procedures Order) shall have occurred.

(i) On or before January 23, 2020, the Debtors and the CCAA Debtors shall have commenced the Auction, if necessary.

(j) On or before January 29, 2020:

(i) the hearing in the Bankruptcy Court to consider approval of the Stalking Horse APA and the Stalking Horse Transaction, or another alternative transaction pursuant to the Bidding Procedures, shall have occurred; and

(ii) the hearing in the CCAA Court to consider approval of the CCAA Approval and Vesting Order shall have occurred.

(k) On or before January 31, 2020:

(i) the Bankruptcy Court shall have entered the Sale Order; and

(ii) the CCAA Court shall have issued and entered the CCAA Approval & Vesting Order.

(l) On or before March 31, 2020, the sale transaction approved in the Sale Order and CCAA Approval and Vesting Order shall be consummated and closed.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
SOUTHERN FOODS GROUPS, LLC, *et al.*,	)	Case No. 19-36313 (DRJ)
Debtors.[1]	)	(Jointly Administered)

INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, 507, AND 552 AND RULES 2002, 4001, 6003, 6004, AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN SENIOR SECURED SUPERPRIORITY POST-PETITION FINANCING, AND (B) USE CASH COLLATERAL, (II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) PROVIDING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES, (IV) SCHEDULING A FINAL HEARING, AND (V) GRANTING RELATED RELIEF
(Docket No. 72)

Upon the motion, dated November 12, 2019 (the "Motion"),[2] of Dean Foods Company ("Dean Foods" or "DIP Borrower") and certain of its affiliates, the debtors and debtors-in-possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Cases"),

[1] The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southern Foods Group, LLC (1364); Dean Foods Company (9681); Alta-Dena Certified Dairy, LLC (1347); Berkeley Farms, LLC (8965); Cascade Equity Realty, LLC (3940); Country Fresh, LLC (6303); Dairy Information Systems Holdings, LLC (9144); Dairy Information Systems, LLC (0009); Dean Dairy Holdings, LLC (9188); Dean East II, LLC (9192); Dean East, LLC (8751); Dean Foods North Central, LLC (7858); Dean Foods of Wisconsin, LLC (2504); Dean Holding Company (8390); Dean Intellectual Property Services II, Inc. (3512); Dean International Holding Company (9785); Dean Management, LLC (7782); Dean Puerto Rico Holdings, LLC (6832); Dean Services, LLC (2168); Dean Transportation, Inc. (8896); Dean West II, LLC (9190); Dean West, LLC (8753); DFC Aviation Services, LLC (1600); DFC Energy Partners, LLC (3889); DFC Ventures, LLC (4213); DGI Ventures, Inc. (6766); DIPS Limited Partner II (7167); Franklin Holdings, Inc. (8114); Fresh Dairy Delivery, LLC (2314); Friendly's Ice Cream Holdings Corp. (7609); Friendly's Manufacturing and Retail, LLC (9828); Garelick Farms, LLC (3221); Mayfield Dairy Farms, LLC (3008); Midwest Ice Cream Company, LLC (0130); Model Dairy, LLC (7981); Reiter Dairy, LLC (3675); Sampson Ventures, LLC (7714); Shenandoah's Pride, LLC (2858); Steve's Ice Cream, LLC (6807); Suiza Dairy Group, LLC (2039); Tuscan/Lehigh Dairies, Inc. (6774); Uncle Matt's Organic, Inc. (0079); and Verifine Dairy Products of Sheboygan, LLC (7200). The debtors' mailing address is 2711 North Haskell Avenue, Suite 3400, Dallas, TX 75204.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Motion or the DIP Credit Agreement (as defined below), as applicable.

seeking the entry of this interim order (the "Interim Order") and a Final Order (as defined below) pursuant to Sections 105, 361, 362, 363, 364, 503, 506, 507 and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules"), the Local Bankruptcy Rules for the Southern District of Texas (the "Local Rules"), and the Procedures for Complex Chapter 11 Bankruptcy Cases (the "Complex Case Rules") promulgated by the United States Bankruptcy Court for the Southern District of Texas (I) authorizing the Debtors to (A) obtain senior secured superpriority post-petition financing, and (B) use cash collateral, (II) granting liens and superpriority administrative expense claims, (III) providing adequate protection to the Prepetition Secured Parties (as defined below), (IV) scheduling a final hearing, and (V) granting related relief, the Debtors sought, among other things, the following relief:

(i) the Court's authorization for the DIP Borrower to obtain, and for each subsidiary of the DIP Borrower that is a Debtor in these Cases (collectively, the "DIP Guarantors" and, together with the DIP Borrower, the "DIP Loan Parties") to guarantee (unconditionally and on a joint and several basis) senior, secured, superpriority, priming, debtor-in-possession financing in an aggregate principal amount of $425,000,000 (the "DIP Facility"), participation in which has been offered to each of the Prepetition Revolving Lenders (as defined below) on a *pro rata* basis, consisting of: (A) a new money revolving credit facility in the aggregate principal amount of up to $236,200,000 (the "DIP Revolving Facility"), which shall be available for the incurrence of new money revolving loans (the "DIP Revolving Loans"), including, up to a $25,000,000 sub-limit (the "DIP L/C Sub-Limit"), and subject to certain conditions thereon, the issuance of letters of credit (the

"DIP Letters of Credit"); and (B) upon the entry of the Final Order, term loans (the "DIP Roll-Up Loans" and, together with the DIP Revolving Loans, the "DIP Loans"; and the DIP Loans, collectively, with the DIP Letters of Credit and with any other financial accommodations provided for under the DIP Facility, the "DIP Extensions of Credit") in an aggregate principal amount not to exceed the aggregate principal amount of all Prepetition Revolving Loans outstanding as of the Petition Date (as defined below), which Prepetition Revolving Loans shall be, on a dollar-for-dollar basis, refinanced as (and deemed repaid by) the DIP Roll-Up Loans (the "Revolver Refinancing");

(ii) the Court's authorization for the Debtors, subject to satisfaction (or waiver) of all applicable conditions precedent under the DIP Loan Documents (as defined below) in accordance therewith:

(a) during the period (the "Interim Period") from the date hereof through and including the earlier to occur of (x) the date of entry of the Final Order by this Court and (y) the Termination Date (as defined below), in accordance with the terms of the DIP Credit Agreement (as defined below), to (1) incur DIP Revolving Loans and (2) subject to, and to the extent of any availability under, the DIP L/C Sub-Limit, obtain issuance of DIP Letters of Credit, in an aggregate principal amount (with respect to DIP Revolving Loans and any DIP Letters of Credit) not to exceed $50,000,000 (the "Interim Availability"), and

(b) upon entry of the Final Order and thereafter until the Termination Date, in accordance with the terms of the DIP Credit Agreement, (1)(A) to incur DIP Revolving Loans and (B) subject to, and to the extent of any availability under, the DIP L/C Sub-Limit, obtain issuance of DIP Letters of Credit (with respect to

the foregoing clauses (A) and (B), in an aggregate principal amount not to exceed $236,200,000 (including the aggregate amount borrowed under the DIP Facility during the Interim Period)), and (2) to incur DIP Roll-Up Loans in an aggregate principal amount not to exceed $188,800,000 and consummate the Revolver Refinancing;

(iii) the Court's authorization for the Debtors to enter into, execute and deliver documentation evidencing the DIP Facility, including, without limitation, the Senior Secured Superpriority Debtor-in-Possession Credit Agreement, by and among, the DIP Borrower, Coöperatieve Rabobank U.A., New York Branch ("Rabobank"), as arranger, Rabobank, as administrative agent and as collateral agent (in such capacities, collectively, the "DIP Agent"), and as the Issuing Bank (in such capacity, the "DIP Issuing Bank"), the financial institutions from time to time party thereto as lenders (the "DIP Lenders" and, together with the DIP Agent, the DIP Issuing Bank, and each other Holder of Secured Obligations under and as defined in the DIP Credit Agreement, the "DIP Secured Parties"), in substantially the form attached hereto as Exhibit 1 (the "DIP Credit Agreement" and, collectively with this Interim Order, the Final Order, and all other Loan Documents (as defined in the DIP Credit Agreement), including, without limitation, all fee letters and agreements entered into in connection therewith, in each case, as hereafter amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof, collectively, the "DIP Loan Documents"), in each case, to which they are a party, and to perform such other and further acts as may be necessary or appropriate in connection therewith, or otherwise required under the DIP Loan Documents;

(iv) the Court's authorization for the Debtors to use the proceeds of the DIP Facility in accordance with the 13-week cash flow forecast prepared by the Debtors and annexed hereto as Exhibit 2 (as updated from time to time pursuant to the DIP Loan Documents and subject to the prior approval of the Required Lenders, the "DIP Budget")[3], subject to any Permitted Variances and as otherwise provided herein and in the other DIP Loan Documents;

(v) the granting by the Court, as of the Petition Date (as defined below), to the DIP Agent (for the benefit of the DIP Lenders) in respect of the DIP Obligations (as defined below), of a superpriority administrative expense claim pursuant to Section 364(c)(1) of the Bankruptcy Code and first priority priming liens on and security interests in substantially all assets and property of the Debtors (now owned or hereafter acquired), pursuant to Sections 364(c)(2), (c)(3) and (d)(1) of the Bankruptcy Code, in each case, as and to the extent, and subject to the priorities, set forth more fully below and in the DIP Loan Documents, and subject to the Carve-Out (as defined below);

(vi) the Court's authorization for the Debtors to use "cash collateral" as such term is defined in Section 363 of the Bankruptcy Code (the "Cash Collateral") in which the Prepetition Secured Parties have an interest;

(vii) the granting by the Court, as of the Petition Date, of the Adequate Protection Superpriority Claim (as defined below) and Adequate Protection Liens (as defined below), to the extent of and as compensation for any Diminution in Value (as defined below), and

[3] For the avoidance of doubt, any waiver or consent to a budget variance entered into by the Debtors and the DIP Agent (with the consent of the requisite DIP Secured Parties as provided in and consistent with their respective rights under the DIP Loan Documents) pursuant to the DIP Credit Agreement shall be deemed a waiver or consent with respect to any provision in this Interim Order requiring compliance with, or providing authorization subject to,the DIP Budget as it pertains to the applicable budget variance.

the payment of fees and expenses to the Prepetition Agent (as defined below) for the benefit of the Prepetition Secured Parties, in each case, as set forth more fully below and subject to the Carve-Out;

(viii) modification by the Court of the automatic stay imposed by Section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Facility, this Interim Order and the other DIP Loan Documents;

(ix) the scheduling by the Court of a final hearing (the "Final Hearing") to consider entry of a Final Order as provided in the DIP Credit Agreement (the "Final Order") granting the relief requested in the Motion on a final basis and approving the form of notice with respect to the Final Hearing and the transactions contemplated by the Motion;

(x) the waiver by the Court of any applicable stay (including under Bankruptcy Rule 6004) and provision for the immediate effectiveness of this Interim Order; and

the Court having jurisdiction to consider the matters raised in the Motion pursuant to U.S.C. § 1334; and the Court having authority to hear the matters raised in the Motion pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the requested relief being a core proceeding that the Court can determine pursuant to 28 U.S.C. § 157(b)(2); and due and proper notice of the Motion and opportunity for a hearing on the Motion having been given to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion, the *Declaration of Gary Ralhfs in Support of the First Day Motions and Pursuant to Local Bankruptcy Rule 1007-2*, and *the Declaration of Bo S. Yi in Support of the Motion*; and the Court having held an interim hearing on the Motion on November [●], 2019 (the

"Interim Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Interim Hearing establish just cause for the relief granted herein; and the Court having found the relief requested in the Motion to be fair, reasonable, and in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and the Court having determined that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing as contemplated by Bankruptcy Rule 4001(b)(2); and all objections, if any, to the entry of this Interim Order having been withdrawn, resolved or overruled by the Court; and upon all of the proceedings had before the Court; after due deliberation and consideration, and for good and sufficient cause appearing therefor:

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[4]

A. **Petition Date.** On November 12, 2019 (the "Petition Date"), the Debtors filed voluntary petitions under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "Court") commencing these Cases. The Debtors have continued in the management and operation of their businesses and properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases.

B. **Jurisdiction and Venue.** The Court has jurisdiction over these proceedings, pursuant to 28 U.S.C. § 1334. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases and the proceedings on the Motion is proper in this

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

district pursuant to 28 U.S.C. §§ 1408 and 1409. Pursuant to Bankruptcy Rule 7008 and Local Rule 7008-1, the Debtors consent to the entry of a final order by the Court in connection with the Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

C. **Committee Formation.** As of the date hereof, no official committee of unsecured creditors has been appointed in the Cases (together with any other statutory committee, a "Committee").

D. **Notice**. Notice of the Interim Hearing and the relief requested in the Motion has been provided by telecopy, email, overnight courier and/or hand delivery, to (i) the United States Trustee for the Southern District of Texas, (ii) those creditors holding the 30 largest unsecured claims against the Debtors' estates (on a consolidated basis), (iii) White & Case LLP, as counsel to Coöperatieve Rabobank U.A., New York Branch, the administrative agent under Debtors' prepetition receivables purchase agreement and administrative agent under Debtors' prepetition secured revolving credit facility, (iv) the indenture trustee under the Debtors' prepetition unsecured bond indenture, (v) Mayer Brown LLP, as counsel to PNC Bank, National Association, the predecessor co-agent, purchaser, and letter of credit issuer under the Receivables Financing Agreement (as defined below), (vi) Paul, Weiss, Rifkind, Wharton & Garrison LLP, as counsel to an ad hoc group of prepetition unsecured noteholders, (vii) the Securities and Exchange Commission, (viii) the Internal Revenue Service, (ix) the United States Attorney's Office for the Southern District of Texas, (x) the state attorneys general for states in which the Debtors conduct business, (xi) all other parties asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors, and (xii) any party that has requested notice pursuant to Bankruptcy Rule 2002 (the "Notice Parties"). Under the circumstances, such notice of the Interim

Hearing and the relief requested in the Motion constitutes due, sufficient and appropriate notice and complies with Section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002, 4001(b) and (c) and 9014, the Local Rules and the Complex Case Rules.

E. **Prepetition Secured Indebtedness.**

(i) Prepetition Revolving Credit Facility

(a) Dean Foods, as borrower, each lender party thereto from time to time (the "Prepetition Revolving Lenders"), and Rabobank, as administrative agent and collateral agent (in such capacities, the "Prepetition Agent," and together with the Prepetition Revolving Lenders, and the Issuing Bank and each other Holder of Secured Obligations under (and in each case as defined in) the Prepetition Revolving Credit Agreement (as defined below), the "Prepetition Secured Parties"), are parties to that certain Credit Agreement, dated as of February 22, 2019 (as amended, amended and restated, waived, supplemented and/or modified from time to time, the "Prepetition Revolving Credit Agreement" and, together with the Prepetition Security Agreement and the Prepetition Guaranty (each as defined below), and the other Loan Documents (as defined in the Prepetition Revolving Credit Agreement), in each case, as amended, amended and restated, waived, supplemented and/or modified from time to time, the "Prepetition Loan Documents"), which provided for a revolving borrowing base credit facility in the aggregate principal amount of up to $265,000,000 (which amount was increased by $85,000,000 to an aggregate principal amount of up to $350,000,000 as of August 27, 2019, pursuant to certain supplements to the Prepetition Revolving Credit Agreement), including a letter of credit sub-limit of up to $25,000,000 and

swingline availability in an aggregate principal amount of up to $10,000,000 (the "Prepetition Revolving Credit Facility").

(b) Pursuant to that certain Guaranty, dated as of February 22, 2019 (as amended, amended and restated, waived, supplemented and/or modified from time to time, the "Prepetition Guaranty"), each of the subsidiaries of Dean Foods party thereto from time to time (together with Dean Foods, as borrower, the "Prepetition Loan Parties") unconditionally guaranteed on a joint and several basis the Prepetition Obligations (as defined below), which guaranty is secured by the Prepetition Collateral (as defined below).

(c) Pursuant to that certain Pledge and Security Agreement, dated as of February 22, 2019 (as amended, amended and restated, waived, supplemented and/or modified from time to time, the "Prepetition Security Agreement") and the other Prepetition Loan Documents, the Prepetition Obligations owed to the Prepetition Secured Parties are secured by first priority Liens (as defined in the Prepetition Revolving Credit Agreement, the "Prepetition Liens") on, and security interests in, all of the Collateral (as defined in the Prepetition Revolving Credit Agreement), collectively, the "Prepetition Collateral").

(ii) Receivables Financing

(a) Dairy Group Receivables, L.P. ("Dairy Group") and Dairy Group Receivables II, L.P. (together with Dairy Group, the "Receivables Sellers"), as sellers, certain subsidiaries of Dean Foods who originated the receivables sold to the Receivables Sellers, as Servicers (as defined in the Receivables Financing Agreement (as defined below), the "Receivables Financing Servicers"), the

Purchasers (as defined in the Receivables Financing Agreement, the "Receivables Purchasers"), Rabobank, as agent for the Receivables Purchasers (in such capacity, the "Receivables Financing Agent"), and as issuer of letters of credit (in such capacity, the "Receivables LC Issuer"), are parties to that certain Eighth Amended and Restated Receivables Purchase Agreement, dated as of February 22, 2019 (as amended by the Ninth Amended and Restated Receivables Purchase Agreement, dated on or before the Effective Date under and as defined in the DIP Credit Agreement, and as may be further amended and restated, waived, supplemented and/or modified from time to time, the "Receivables Financing Agreement" and, together with the other Transaction Documents (as defined in the Receivables Financing Agreement), the "Receivables Financing Documents"), which provided for a receivables securitization facility in the aggregate principal amount of up to $450,000,000, which shall be reduced to $425,000,000 upon entry by the Court of an order approving the continuation and amendment of the Receivables Purchase Agreement on an interim basis (the "Interim Securitization Order"), including the ability to issue letters of credit up to an aggregate face amount of $450,000,000, which shall be reduced to $425,000,000 upon entry of the Interim Securitization Order (collectively, the "Receivables Financing") pursuant to which the Receivables Sellers sold certain accounts receivables belonging to certain subsidiaries of Dean Foods to the Receivables Purchasers.

(b) Notwithstanding that transfers of the Transferred Receivables pursuant to (and as defined in) the Receivables Financing Agreement are intended to be true sales, the Obligations under (and as defined in) the Receivables Financing

Agreement owed by Receivables Sellers and the Receivables Financing Servicers to the Receivables Purchasers are secured by first priority protective liens on, and security interests in, the Transferred Receivables and other Pool Assets (as defined in the Receivables Financing Agreement and, collectively with the Transferred Receivables, the "Receivables Financing Collateral").

(c) Pursuant to that certain Fifth Amended and Restated Performance Undertaking, dated February 22, 2019 (as amended pursuant to that certain Sixth Amended and Restated Performance Undertaking, dated as of the Closing Date, and as may be further amended, restated, supplemented, or otherwise modified from time to time) and that certain Fourth Amended and Restated Performance Undertaking, dated as of February 22, 2019 (as amended pursuant to that certain Fifth Amended and Restated Performance Undertaking, dated on or before the Effective Date under and as defined in the DIP Credit Agreement, and as may be further amended, restated, supplemented or otherwise modified from time to time), the DIP Borrower has provided to the Receivables Financing Agent, for itself and for the benefit of the Receivables Purchasers and the applicable Receivables Sellers, an absolute, unconditional and continuing guaranty of the full and punctual performance by each of the Receivables Financing Originators of certain obligations under the Receivables Financing Documents.

(iii) Prepetition Unsecured Notes. Pursuant to that certain Indenture, dated as of February 25, 2015 (as amended, amended and restated, waived, supplemented and/or modified from time to time, the "Prepetition Indenture"), among Dean Foods, as issuer, The Bank of New York Mellon Trust Company, N.A., as trustee, and the Guarantors (as

defined in the Prepetition Indenture), Dean Foods issued 6.50% Senior Notes due March 15, 2023 in an aggregate principal amount of $700,000,000.

(iv) Intercreditor Agreement. The respective rights of the Prepetition Secured Parties, on the one hand, and the Receivables Purchasers and Receivables Sellers, on the other hand, to, and the priority of their respective rights to and security interests in, the Lender Collateral and the Securitization Assets (each as defined therein), are set forth in that certain Intercreditor Agreement, dated as of February 22, 2019, among certain of the Debtors, the Prepetition Agent and the Receivables Financing Agent (as amended, amended and restated, waived, supplemented and/or modified from time to time, the "Intercreditor Agreement").

F. **Stipulations as to Prepetition Obligations**. Without limiting the rights of a Committee (if any is appointed) or any other party in interest, in each case, with standing and requisite authority, as and to the extent set forth in paragraph 6 hereof, the Debtors permanently, immediately, and irrevocably acknowledge, represent, stipulate and agree:

(i) Prepetition Obligations.

(a) As of the Petition Date, the Prepetition Loan Parties were justly and lawfully indebted and liable to the Prepetition Secured Parties under the Prepetition Loan Documents, without objection, defense, counterclaim or offset of any kind, in the aggregate principal amount of not less than $188,800,000 on account of outstanding Loans under (and as defined in) the Prepetition Revolving Credit Agreement (the "Prepetition Revolving Loans"), plus all accrued and unpaid interest thereon, and any fees, expenses, indemnification obligations, guarantee obligations, reimbursement obligations, including, without limitation, any

attorneys', accountants', consultants', appraisers' and financial and other advisors' fees that are chargeable to or reimbursable by the Prepetition Loan Parties, and all other Obligations under (and as defined in) the Prepetition Revolving Credit Agreement (collectively, the "Prepetition Obligations").

(b) **Enforceability of the Prepetition Obligations.** (i) The Prepetition Obligations constitute legal, valid, binding, non-avoidable obligations of the Prepetition Loan Parties enforceable in accordance with the terms of the applicable Prepetition Loan Documents, and (ii) no offsets, recoupments, challenges, contests, attacks, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition Liens or the Prepetition Obligations exist, and no portion of the Prepetition Liens or the Prepetition Obligations is subject to any challenge, cause of action, or defense, including avoidance, disallowance, disgorgement, subordination (equitable or otherwise), re-characterization, or other challenge of any kind or nature under the Bankruptcy Code, applicable non-bankruptcy law or otherwise.

(c) **Enforceability of Prepetition Liens.** The Prepetition Liens granted by the Prepetition Secured Parties, to or for the benefit of the Prepetition Agent and the other Prepetition Loan Parties, as security for the Prepetition Obligations, encumber the Prepetition Collateral, as the same existed on or at any time prior to the Petition Date. The Prepetition Liens have been properly recorded and perfected under applicable non-bankruptcy law, and are legal, valid, enforceable, non-avoidable, and not subject to contest, avoidance, attack, offset, re-characterization, subordination or other challenge of any kind or nature under the Bankruptcy Code,

applicable non-bankruptcy law or otherwise. As of the Petition Date, and without giving effect to this Interim Order, the Debtors are not aware of any liens or security interests over the Prepetition Collateral of the Prepetition Loan Parties having priority over the Prepetition Liens, except certain Permitted Liens (as defined in the Prepetition Revolving Credit Agreement). The Prepetition Liens were granted to or for the benefit of the Prepetition Agent and the other Prepetition Secured Parties for fair consideration and reasonably equivalent value, and were granted contemporaneously with, or covenanted to be provided as inducement for, the making of the loans and/or commitments and other financial accommodations secured thereby.

(ii) **Indemnity.** The Prepetition Secured Parties and the DIP Secured Parties have acted in good faith, and without negligence, misconduct or violation of public policy or law, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting or obtaining requisite approvals of the DIP Facility and the use of Cash Collateral, including in respect of the granting of the DIP Liens (as defined below) and the Adequate Protection Liens, any challenges or objections to the DIP Facility or the use of Cash Collateral, the DIP Loan Documents, and all other documents related to and all transactions contemplated by the foregoing. Accordingly, without limitation to any other right to indemnification, the Prepetition Secured Parties and the DIP Secured Parties shall be and hereby are indemnified and held harmless by the Debtors in respect of any claim or liability incurred in respect thereof or in any way related thereto in accordance with the terms of the Prepetition Loan Documents or the DIP Loan Documents, as applicable. No exception or defense in contract, law or equity exists as of

the date of this Interim Order to any obligation set forth, as the case may be, in this paragraph F(ii), in the DIP Loan Documents, or in the Prepetition Loan Documents to indemnify and/or hold harmless the DIP Agent, any other DIP Secured Party, or any Prepetition Secured Party, as the case may be, and any such defenses are hereby waived.

(iii) **No Control.** None of the DIP Secured Parties or the Prepetition Secured Parties are control persons or insiders of the Debtors or any of their affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from the DIP Facility, the Prepetition Obligations, the DIP Loan Documents and/or the Prepetition Loan Documents.

(iv) **No Claims or Causes of Action.** As of the date hereof, there exist no claims or causes of action against any of the DIP Agent, the other DIP Secured Parties, or the Prepetition Secured Parties with respect to, in connection with, related to, or arising from the DIP Loan Documents, the Prepetition Loan Documents, the DIP Facility and/or the Prepetition Revolving Obligations that may be asserted by the DIP Loan Parties, the Prepetition Loan Parties or, to the Debtors' knowledge, any other person or entity.

(v) **Release.** The Debtors, on behalf of themselves and their respective estates, forever and irrevocably release, discharge, and acquit all former, current and future DIP Secured Parties and any Prepetition Secured Parties that become DIP Lenders, all holders of participation interests under the DIP Credit Agreement or the Prepetition Revolving Credit Agreement, all Affiliates of the DIP Secured Parties and of the Prepetition Secured Parties, and each of the former, current and future officers, employees, directors, agents, representatives, owners, members, partners, financial and other advisors and consultants, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and

predecessors and successors in interest of each DIP Secured Party and each Prepetition Secured Party and of each of their respective Affiliates, in each case in its capacity as such (collectively, the "Releasees") of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending or threatened including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description, arising out of, in connection with, or relating to the DIP Facility, the DIP Loan Documents, the Prepetition Revolving Credit Facility and the other Prepetition Loan Documents and/or the transactions contemplated hereunder or thereunder including, without limitation, (x) any so-called "lender liability" or equitable subordination claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with respect to the validity, priority, perfection or avoidability of the liens or claims of the DIP Agent, the other DIP Secured Parties, and/or the Prepetition Secured Parties. The Debtors further waive and release any defense, right of counterclaim, right of setoff or deduction of the payment of the Prepetition Obligations and the DIP Obligations that the Debtors now have or may claim to have against the Releasees arising out of, connected with, or relating to any and all acts, omissions or events occurring prior to the entry of this Interim Order.

H. **Immediate Need for Postpetition Financing and Use of Cash Collateral.** The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rule

4001(b)(2) and (c)(2) and the Local Bankruptcy Rules. Good cause has been shown for entry of this Interim Order. An immediate need exists for the Debtors to obtain funds and liquidity to, as the case may be, continue operations, pay the costs and expenses of administering the Cases, and administer and preserve the value of their businesses and estates. The ability of the Debtors to finance their operations, to preserve and maintain the value of the Debtors' assets and to maximize the return for all creditors requires the immediate availability of the DIP Facility and the use of Cash Collateral. In the absence of the immediate availability of such funds and liquidity in accordance with the terms hereof, the continued operation of the Debtors' businesses would not be possible, and immediate and irreparable harm to the Debtors and their estates and creditors would occur. Further, the possibility for a successful restructuring would be jeopardized in the absence of the availability of funds in accordance with the terms of this Interim Order. Thus, the ability of the Debtors to preserve and maintain the value of their assets and maximize the return for creditors requires the availability of working capital from the DIP Facility and the use of Cash Collateral.

I. **No Credit Available on More Favorable Terms.** The Debtors have been unable to obtain on more favorable terms and conditions than those provided in this Interim Order (i) adequate unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense, (ii) credit for money borrowed with priority over any or all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code, (iii) credit for money borrowed secured by a lien on property of the estate that is not otherwise subject to a lien, or (iv) credit for money borrowed secured by a junior lien on property of the estate that is subject to a lien. The Debtors are unable to obtain credit for borrowed money without granting the DIP Liens and the DIP Superpriority Claim (as defined below) to (or for the benefit of) the DIP Secured

Parties, or without granting the adequate protection (including the Revolver Refinancing) as set forth herein.

J. **Adequate Protection for Secured Parties.** The Prepetition Agent and the other Prepetition Secured Parties have negotiated in good faith regarding the Debtors' use of Prepetition Collateral (including Cash Collateral) to fund the administration of the Debtors' estates and continued operation of their businesses, in accordance with the terms hereof and the DIP Budget (subject to Permitted Variances). The Prepetition Secured Parties have agreed to permit the Debtors to use the Prepetition Collateral, including the Cash Collateral, in accordance with the terms hereof, including the DIP Budget (subject to Permitted Variances), during the Interim Period, subject to the terms and conditions set forth in this Interim Order and in the other DIP Loan Documents, including the protections afforded parties acting in "good faith" under Section 363(m) of the Bankruptcy Code. The Prepetition Secured Parties are entitled to the adequate protection as and to the extent set forth herein pursuant to Sections 361, 362, and 363 of the Bankruptcy Code. Based on the Motion and on the record presented to the Court at the Interim Hearing, the terms of the proposed adequate protection arrangements and of the use of Prepetition Collateral (including Cash Collateral) are fair and reasonable, reflect the Debtors' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the Prepetition Agent and Prepetition Secured Parties' consent thereto; provided, that nothing in this Interim Order or the other DIP Loan Documents shall (i) be construed as a consent by any Prepetition Secured Party that it would be adequately protected in the event any debtor-in-possession financing is provided by a third party (i.e., other than the DIP Lenders), or a consent to the terms of any financing or use of Cash Collateral, including the consent to any lien encumbering the Prepetition Collateral (whether senior or junior) pursuant to any financing or use of Cash Collateral, in each case, except

under the terms hereof, or (ii) prejudice, limit or otherwise impair the rights of the Prepetition Agent (for the benefit of the Prepetition Secured Parties) to seek new, different or additional adequate protection under any circumstances after the date hereof.

K. **Section 552.** In light of, as applicable, the subordination of the Prepetition Liens and the Adequate Protection Liens to the DIP Liens and the Carve-Out, and the granting of the DIP Liens on the Prepetition Collateral, the Prepetition Secured Parties are each entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code and, subject to the entry of the Final Order, the "equities of the case" exception shall not apply.

L. **Extension of Financing.** The DIP Secured Parties are committing to provide financing to the Debtors in accordance with the DIP Credit Agreement and the other DIP Loan Documents (including the DIP Budget, subject to Permitted Variances), and subject to (i) the entry of this Interim Order (and the Final Order), approval of each provision of the DIP Credit Agreement, and (ii) findings by this Court that such financing is essential to the Debtors' estates (and the continued operation of the DIP Loan Parties), that the DIP Secured Parties are good faith financiers, and that the DIP Secured Parties' claims, superpriority claims, security interests and liens and other protections granted pursuant to and in connection with this Interim Order (and the Final Order) and the DIP Facility (including the DIP Superpriority Claim and the DIP Liens), will not be affected by any subsequent reversal, modification, vacatur, stay or amendment of, as the case may be, this Interim Order, the Final Order, or any other order, as provided in Section 364(e) of the Bankruptcy Code. The Prepetition Secured Parties have consented to the use of the Prepetition Collateral and the Cash Collateral, solely in respect of the DIP Facility provided by the DIP Secured Parties, and not in respect of any other postpetition financing or cash collateral facility.

M. **Business Judgment and Good Faith Pursuant to Section 364(e).**

(i) The terms and conditions of the DIP Facility, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration.

(ii) All obligations incurred, payments made, and transfers or grants of security set forth in this Interim Order and the other DIP Loan Documents by any DIP Loan Party are granted to or for the benefit of the DIP Secured Parties for fair consideration and reasonably equivalent value, and are granted contemporaneously with the making of the loans and/or commitments and other financial accommodations secured thereby.

(iii) The DIP Facility and the DIP Loan Documents were negotiated in good faith and at arm's length among the Debtors, the DIP Agent, the other DIP Secured Parties, and the Prepetition Secured Parties.

(iv) The use of the proceeds to be extended under the DIP Facility and the DIP Loan Documents will be so extended in good faith and for valid business purposes and uses, as a consequence of which the DIP Secured Parties are entitled to the protection and benefits of Section 364(e) of the Bankruptcy Code.

N. **Relief Essential; Best Interest.** The relief requested in the Motion (and provided in this Interim Order), is necessary, essential and appropriate for the continued operation of the Debtors' businesses and the management and preservation of the Debtors' assets and property, and satisfies the requirements of Bankruptcy Rule 6003. It is in the best interest of the Debtors' estates, and consistent with the Debtors' exercise of their fiduciary duties, that the Debtors be allowed to enter into the DIP Facility, incur the DIP Obligations, grant the liens and claims contemplated

herein and under the DIP Loan Documents to the DIP Secured Parties and the Prepetition Secured Parties, and use Prepetition Collateral, including Cash Collateral, as contemplated herein.

NOW, THEREFORE, on the Motion of the Debtors and the record before this Court with respect to the Motion, including the record made during the Interim Hearing, and with the consent of the Debtors, the Prepetition Secured Parties and the DIP Secured Parties, and good and sufficient cause appearing therefor,

IT IS ORDERED that:

1. **Motion Granted.** The Motion is granted in accordance with the terms and conditions set forth in this Interim Order. Any objections to the Motion with respect to entry of this Interim Order to the extent not withdrawn, waived or otherwise resolved, and all reservation of rights included therein, are hereby denied and overruled.

2. **DIP Facility.**

(a) **DIP Obligations, etc.** The Debtors are expressly and immediately authorized and empowered to enter into the DIP Facility and to incur and to perform all obligations under the DIP Facility (including the DIP Obligations) in accordance with and subject to this Interim Order (and, upon its entry, the Final Order) and the other DIP Loan Documents, to enter into, execute and/or deliver all DIP Loan Documents and all other instruments, certificates, agreements and documents, and to take all actions, which may be reasonably required or otherwise necessary for the performance by the DIP Loan Parties under the DIP Facility, including the creation and perfection of the DIP Liens described and provided for herein. The Debtors are hereby authorized and directed to (i) pay all principal, interest, fees and expenses, indemnities and other amounts described herein and in the other DIP Loan Documents as such shall accrue and become due hereunder or thereunder, including, without limitation, (A) the non-refundable

payment to the Arranger, the DIP Agent or the DIP Lenders (as the case may be) of any arrangement, backstop, upfront or administrative fee in any letter agreement between the Debtors, on the one hand, and the DIP Agent, Arranger and/or the DIP Lenders, on the other hand; and (B) the reasonable fees and expenses of White & Case LLP (as counsel to the Prepetition Agent and DIP Agent and as counsel to the Receivables Financing Agent), FTI Consulting (as financial advisors), and any other attorneys and financial and other advisors and consultants of the DIP Agent and the DIP Lenders (including any local counsel and any additional counsel to the Receivables Financing Agent) as may be reasonably required (the "DIP Lender Professionals"), in each case, as and to the extent provided for herein and in accordance with the other DIP Loan Documents (collectively, all loans, advances, extensions of credit, financial accommodations, fees, expenses and other liabilities, and all other Obligations (including indemnities and similar obligations) in respect of DIP Extensions of Credit, the DIP Facility and the DIP Loan Documents, the "DIP Obligations"), and (ii) upon the entry of the Final Order, and subject to paragraph 6 hereof, to (x) incur the DIP Roll-Up Loans, which shall be deemed to refinance (and repay), on a dollar-for-dollar basis, all outstanding Prepetition Revolving Loans, in accordance with the terms and conditions of this Interim Order and the other DIP Loan Documents and (y) and immediately pay in cash all accrued and unpaid interest and fees outstanding in respect of the Prepetition Revolving Loans as of the date the DIP Roll-Up Loans are incurred, as provided herein and in accordance with the Prepetition Loan Documents. The DIP Obligations shall not otherwise be subject to further approval of this Court. The DIP Loan Documents and all DIP Obligations shall represent, constitute and evidence, as the case may be, valid and binding obligations of the Debtors, enforceable against the Debtors, their estates and any successors thereto in accordance with their terms. All obligations incurred, payments made, and transfers or grants of security set forth in this

Interim Order and in the other DIP Loan Documents by any DIP Loan Party are granted to or for the benefit of the DIP Secured Parties for fair consideration and reasonably equivalent value, and are granted contemporaneously with the making of the loans and/or commitments and other financial accommodations secured thereby (subject, in the case of the DIP Roll-Up Loans, to paragraph 6 hereof). No obligation incurred, payment made, transfer or grant of security set forth in the DIP Loan Documents by any DIP Loan Party as approved under this Interim Order shall be stayed, restrained, voided, voidable or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim. The term of the DIP Facility shall commence following the entry of this Interim Order on the Effective Date and end on the Termination Date, subject to the terms and conditions set forth herein and in the other DIP Loan Documents, including the protections afforded a party acting in good faith under Section 364(e) of the Bankruptcy Code.

(b) **Authorization to Borrow, etc.** In order to enable them to continue to operate their businesses, subject to the terms and conditions of this Interim Order and the other DIP Loan Documents, the DIP Borrower is hereby authorized under the DIP Facility during the Interim Period to borrow (and the DIP Guarantors are authorized to guarantee repayment of) DIP Revolving Loans and, subject to any conditions or limitations set forth in the DIP Loan Documents, to issue DIP Letters of Credit, in an aggregate principal amount not to exceed the Interim Availability (and, with respect to any DIP Letters of Credit, the DIP L/C Sublimit) under the DIP Facility.

(c) **Conditions Precedent.** The DIP Lenders shall have no obligation to make any DIP Extension of Credit or any other financial accommodation hereunder or under the other DIP Loan Documents unless all conditions precedent to making DIP Extensions of Credit under

the DIP Loan Documents have been satisfied or waived in accordance with the terms of the DIP Loan Documents.

(d) **DIP Collateral.** As used herein, "DIP Collateral" shall mean, all now owned or hereafter acquired assets and property, whether real or personal, of the Debtors including, without limitation, all Prepetition Collateral, all assets and property pledged under the DIP Loan Documents, and all cash, any investment of such cash, inventory, accounts receivable, including intercompany accounts (and all rights associated therewith), other rights to payment whether arising before or after the Petition Date, contracts, contract rights, chattel paper, goods, investment property, inventory, deposit accounts, "core concentration accounts," "cash collateral accounts", any bank accounts, and in each case all amounts on deposit therein (or credited thereto) from time to time, equity interests (including all the equity interests of any Debtor in any foreign subsidiary), securities accounts, securities entitlements, securities, commercial tort claims, books, records, plants, equipment, farm products, general intangibles, documents, instruments, interests in leases and leaseholds, interests in real property (whether or not such real property constituted Prepetition Collateral under the Prepetition Loan Documents), fixtures, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, letter of credit rights, supporting obligations, machinery and equipment, patents, copyrights, trademarks, tradenames, other intellectual property, all licenses therefor, interests of any Debtor in any foreign subsidiary, and all proceeds, rents, profits, products and substitutions, if any, of any of the foregoing, and including, solely upon entry of the Final Order, the proceeds of all of the Debtors' claims and causes of action under Sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code, and any other avoidance or similar action under the Bankruptcy Code or similar state law (collectively, the "Avoidance Actions"), whether received by judgment, settlement or otherwise. Notwithstanding

the foregoing, the DIP Collateral shall not include any Excluded Property (as defined in the DIP Credit Agreement); provided, however, that DIP Collateral shall include proceeds and products of such Excluded Property (except to the extent such proceeds or products also constitute Excluded Property).

(e) **DIP Liens.** Effective immediately upon the entry of this Interim Order, and subject to the Carve-Out, as set forth more fully in this Interim Order, the DIP Agent and each of the other DIP Secured Parties, in order to secure the DIP Obligations, are hereby granted the following security interests and liens, which shall immediately be valid, binding, perfected, continuing, enforceable and non-avoidable (all liens and security interests granted to the DIP Agent and the DIP Secured Parties (x) during the Interim Period, in respect of the DIP Obligations under the DIP Revolving Facility (including, subject to any conditions or limitation specified in the DIP Loan Documents, any DIP Letters of Credit issued under the DIP L/C Sublimit) and (y) upon entry of the Final Order, in respect of the remaining DIP Revolving Loans (including, subject to any conditions or limitation specified in the DIP Loan Documents, any DIP Letters of Credit issued under the DIP L/C Sublimit) and the DIP Roll-Up Loans (pursuant to this Interim Order, any Final Order and the other DIP Loan Documents, the "DIP Liens")):

(I) pursuant to Section 364(c)(2) of the Bankruptcy Code, valid, enforceable, perfected and non-avoidable first priority liens on and security interests in all DIP Collateral that was not encumbered by valid, enforceable, perfected and non-avoidable liens as of the Petition Date; and

(II) pursuant to Section 364(c)(3) and Section 364(d) of the Bankruptcy Code, valid, enforceable, perfected and non-avoidable first priority priming liens on and security interests in all other DIP Collateral,

which liens and security interests shall, in each case, be (x) junior only to any pre-existing liens as of the Petition Date of a third party, *i.e.*, not any Prepetition Secured Parties (each a "Third Party Lienholder") on the DIP Collateral, but solely to the extent that such liens and security interests of any Third Party Lienholders were, in each case, as of the Petition Date, valid enforceable, perfected and non-avoidable liens, or were perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code, and (i) senior to the Prepetition Liens or (ii) attached to property of the Debtors that did not constitute Prepetition Collateral (such liens in the preceding clauses (i) and (ii), the "Permitted Third Party Liens"), and (y) senior to all other liens on, and security interests in the DIP Collateral, including without limitation, the Prepetition Liens, the Adequate Protection Liens, and the liens of any Third Party Lienholders which are *pari passu* with or junior to the Prepetition Liens.

Notwithstanding anything to the contrary contained in this Interim Order or any other DIP Loan Documents, all DIP Liens securing DIP Obligations in respect of the DIP Revolving Facility (including, subject to any conditions or limitation specified in the DIP Loan Documents, any DIP Letters of Credit issued under DIP L/C Sublimit) shall, upon entry of the Final Order, be *pari passu* with the DIP Roll-Up Loans.

(f) **DIP Liens Senior to Other Liens.** Effective immediately upon entry of this Interim Order, the DIP Liens shall secure all of the DIP Obligations in respect of the DIP Revolving Facility (including the DIP L/C Sublimit) and, upon entry of the Final Order, also in respect of the DIP Roll-Up Loans, and shall not, without the consent of the DIP Agent, be made

subject or subordinate to, or *pari passu* with, (1) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under Section 551 of the Bankruptcy Code, (2) any lien or security interest arising on or after the Petition Date (but shall be subject to the Carve-Out), or (3) any other lien or security interest under Section 363 or 364 of the Bankruptcy Code or otherwise, other than to the Carve-Out or to the extent expressly provided herein, by any court order heretofore or hereafter entered in the Cases. The DIP Liens and the Adequate Protection Liens shall be valid and enforceable against any trustee appointed in the Cases, upon the conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (such cases or proceedings, "Successor Cases"), and/or upon the dismissal of any of the Cases. It is understood and agreed, and hereby ordered, that, notwithstanding the immediately preceding sentence or anything else to the contrary set forth in this Interim Order, in any other DIP Loan Document, or in any other order of this Court entered in the Cases, any amounts advanced or expended by the Prepetition Secured Parties or the DIP Secured Parties, in their sole and absolute discretion and without requiring the consent or approval of any other party, after the occurrence and during the continuation of an Event of Default, directly or indirectly, to protect, preserve, maintain, market, sell or liquidate the Prepetition Collateral or DIP Collateral, including to fund the Debtors' operations during a sale process pursuant to Section 363 of the Bankruptcy Code, and any reasonable professional or advisory fees and expenses of White & Case LLP (as counsel to the Prepetition Agent and DIP Agent and as counsel to the Receivables Financing Agent), FTI Consulting, any local counsel, any additional counsel to the Receivables Financing Agent, and any other advisors, appraisers and/or liquidators retained by the DIP Agent in accordance with the DIP Loan Documents to assist or advise it in such capacities and for such purposes, shall be added to the DIP Obligations for all purposes hereunder and under

the other DIP Loan Documents. The DIP Liens and the Adequate Protection Liens shall not be subject to Sections 510, 549, 550 or 551 of the Bankruptcy Code or, upon entry of the Final Order, the "equities of the case" exception of Section 552 of the Bankruptcy Code or Section 506(c) of the Bankruptcy Code.

(g) **Superpriority Administrative Claim.** Effective immediately upon the entry of this Interim Order, and subject to the Carve-Out, the DIP Agent and each of the other DIP Secured Parties, are hereby granted, pursuant to Section 364(c)(1) of the Bankruptcy Code, an allowed superpriority claim in the amount of the DIP Obligations owed to them and outstanding from time to time (all such claims granted to the DIP Agent and the other DIP Secured Parties, (x) during the Interim Period, in respect of DIP Obligations under the DIP Revolving Facility (including, subject to any conditions or limitation specified in the DIP Loan Documents, any DIP Letters of Credit issued under the DIP L/C Sublimit), and (y) upon entry of the Final Order, in respect of DIP Obligations under the DIP Revolving Facility (including, subject to any conditions or limitation specified in the DIP Loan Documents, any DIP Letters of Credit issued under the DIP L/C Sublimit) and in respect of the DIP Roll-Up Loans, the "DIP Superpriority Claim"), which shall be payable from and have recourse to all assets and properties of the Debtors, and which shall be against each of the Debtors who are DIP Loan Parties (jointly and severally), with priority over any and all other administrative expenses, adequate protection claims, diminution in value claims, and all other claims asserted against the Debtors now existing or hereafter arising of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all other administrative expenses or other claims arising under any other provisions of the Bankruptcy Code, including Sections 105, 326, 327, 328, 330, 331, 363, 364, 365, 503, 506(b), 506(c) (subject to the entry of

the Final Order), 507(a) (other than 507(a)(1)), 546, 726, 1113, or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, subject only to the Carve-Out, and *pari passu* solely with respect to any superpriority administrative expense claim granted to the Receivables Financing Agent or the Receivables Purchasers pursuant to the Interim Securitization Order (the "Receivables Superpriority Claim"), which DIP Superpriority Claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under Section 503(b) of the Bankruptcy Code and shall be payable from and have recourse to all pre- and post-petition assets and property, whether existing on the Petition Date or thereafter acquired, of the Debtors and all proceeds thereof (excluding Avoidance Actions, but including, effective upon entry of the Final Order, proceeds of Avoidance Actions). Other than with respect to the Carve-Out and as expressly provided herein, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under Sections 328, 330 and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these proceedings or in any Successor Cases, and no priority claims are, or will be, senior to, prior to or *pari passu* with the DIP Liens, the DIP Superpriority Claim, any of the DIP Obligations, Prepetition Liens, or any other claims of the DIP Secured Parties arising hereunder or under the other DIP Loan Documents, or otherwise, in connection with the DIP Facility.

3. **Authorization and Approval to Use Cash Collateral and Proceeds of DIP Facility.** Subject to the terms and conditions of this Interim Order, the other DIP Loan Documents, and the DIP Budget (subject to Permitted Variances), and to the adequate protection granted to or for the benefit of the Prepetition Secured Parties as hereinafter set forth, each Debtor is authorized during the Interim Period (and not beyond) to (a) use the Cash Collateral and (b)(i) use DIP Loans,

including the proceeds thereof, and (ii) issue DIP Letters of Credit under the DIP Facility in an amount not to exceed the Interim Availability. Notwithstanding anything herein to the contrary, the Debtors' right to use proceeds of DIP Facility or to use Cash Collateral shall terminate on the Termination Date, including upon written notice being provided by the DIP Agent to the Debtors that an Event of Default has occurred and is continuing; provided that, solely as and to the extent provided in paragraph 14 below, during the Default Notice Period (as defined below), the Loan Parties shall be permitted to continue to use Cash Collateral and proceeds of the DIP Facility in the ordinary course of business and in accordance with the DIP Budget (subject to Permitted Variances), and may request an expedited hearing before the Court to address such issues as may be heard pursuant to paragraph 14 below. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or their estates or other proceeds resulting therefrom outside the ordinary course of business, except as permitted herein (subject to any required Court approval).

4. **Adequate Protection for Prepetition Secured Parties.** As adequate protection for the interests of the Prepetition Secured Parties in the Prepetition Collateral (including Cash Collateral), the Prepetition Agent for the benefit of the Prepetition Secured Parties shall receive adequate protection as follows:

(i) **Adequate Protection Liens.** Until the Revolver Refinancing occurs (and, thereafter, on a contingent basis until the expiration of the Challenge Period), to the extent of, and in an aggregate amount equal to, the aggregate diminution in value of such interests, from and after the Petition Date, calculated in accordance with Section 506(a) of the Bankruptcy Code, resulting from, among other things, the use, sale or lease by the Debtors of the Prepetition Collateral (including from the use of Cash Collateral), the granting of the

DIP Liens, and the subordination of the Prepetition Liens thereto and to the Carve-Out, and the imposition or enforcement of the automatic stay of Section 362(a) of the Bankruptcy Code (collectively, "Diminution in Value"), pursuant to Sections 361, 363(e) and 364(d) of the Bankruptcy Code, the Prepetition Agent and each of the other Prepetition Secured Parties, shall have replacement security interests in and liens upon (the "Adequate Protection Liens") all of the DIP Collateral, which Adequate Protection Liens shall be (i) subject to the Carve-Out, (ii) junior and subject to the DIP Liens and any Permitted Third Party Liens and (iii) senior and prior to all other liens thereon. The Adequate Protection Liens shall in all cases be subject to the Carve-Out.

(ii) **Adequate Protection Superpriority Claims.** Until the Revolver Refinancing occurs (and, thereafter, on a contingent basis until the expiration of the Challenge Period), to the extent of the aggregate Diminution in Value, the Prepetition Agent and each of the other Prepetition Secured Parties shall have, subject to the payment of the Carve-Out, an allowed superpriority administrative expense claim (the "Adequate Protection Superpriority Claim") as provided for in Section 507(b) of the Bankruptcy Code, immediately junior and subject to the DIP Superpriority Claim and any Receivables Superpriority Claim, and payable from and having recourse to all DIP Collateral; provided, that the Prepetition Secured Parties shall not receive or retain any payments, property, distribution or other amounts in respect of the Adequate Protection Superpriority Claim unless and until the DIP Obligations and (without duplication) the DIP Superpriority Claim has indefeasibly been paid in full in cash.

(iii) **Adequate Protection Payments, etc.**

(I) (x) From and after the entry of this Interim Order, the Prepetition Agent (for the benefit of the Prepetition Secured Parties) shall receive from the Debtors, cash payment of all accrued and unpaid interest and fees owing by the Debtors, whether incurred or accrued prior to or on or after the Petition Date, under the Prepetition Revolving Credit Agreement, at the applicable default rates provided for in the Prepetition Revolving Credit Agreement (including LIBOR pricing options, which shall remain available until such time as the LIBOR Borrowing (as defined in the Prepetition Revolving Credit Agreement) expire, at which time such loans will accrue interest at the Alternate Base Rate (as defined in the Prepetition Revolving Credit Agreement)) and on the payment dates provided therein, including all accrued and unpaid letter of credit participation fees, unused commitment fees, and fronting fees owing to the Issuing Bank under (and as defined in) the Prepetition Revolving Credit Agreement and/or the other Prepetition Secured Parties under the Prepetition Loan Documents, whether incurred or accrued prior to or on or after the Petition Date, and (y) immediately upon the entry of the Final Order, subject to paragraph 6 hereof, the Debtors shall (1) incur the DIP Roll-Up Loans, which shall be deemed to refinance (and repay), on a dollar-for-dollar basis, all outstanding Prepetition Revolving Loans, in accordance with the terms and conditions of this Interim Order and the other DIP Loan Documents and (2) pay to the Prepetition Secured Parties, in cash, all remaining accrued and unpaid interest and fees owing by the Debtors under

the Prepetition Revolving Credit Agreement as of the date the DIP Roll-Up Loans are incurred, at the applicable default rates provided for in the Prepetition Revolving Credit Agreement, including all accrued and unpaid letter of credit participation fees, unused commitment fees, and fronting fees owing to the Issuing Bank under (and as defined in) the Prepetition Revolving Credit Agreement and/or the other Prepetition Secured Parties under the Prepetition Loan Documents.

(II) Promptly upon the entry of this Interim Order (and in the case of legal professionals retained by any Prepetition Lender, within three (3) business days after receipt of an invoice therefrom), the Debtors shall pay all reasonable and documented fees, costs and expenses of the Prepetition Agent and the Prepetition Secured Parties, including cash payments of all reasonable and documented professional and advisory fees, costs and expenses of the Prepetition Agent and the Prepetition Secured Parties incurred in connection with the negotiation, administration, and monitoring of the Prepetition Loan Documents, Prepetition Revolving Credit Facility, the Receivables Financing Documents, the DIP Loan Documents and/or the DIP Facility, including, without, limitation, the reasonable documented fees, costs and expenses of the Prepetition Agent's legal, financial, other advisory, tax, investment banking and other professionals (including, without limitation, White & Case LLP (as counsel to the Prepetition Agent and DIP Agent and as counsel to the Receivables Financing Agent), FTI Consulting, and any local counsel, any additional

counsel to the Receivables Financing Agent, and any replacement or addition thereto that the Prepetition Agent deems reasonably appropriate), and any legal professionals retained by any Prepetition Lender (collectively, the "Prepetition Lender Professionals"), incurred in connection with the negotiation, execution, administration, and monitoring of the Prepetition Loan Documents, the Receivables Financing Documents, the DIP Loan Documents and/or the DIP Facility as of the Petition Date, and thereafter, until the Revolver Refinancing has occurred, and subject to the procedures set forth in paragraph 17(b) hereof, promptly upon the receipt of invoices therefor, the Debtors shall pay all reasonable and documented fees, costs and expenses of the Prepetition Agent incurred in connection with the negotiation, execution, administration and monitoring of the Prepetition Loan Documents, the Receivables Financing Documents, the DIP Loan Documents and/or the DIP Facility, including the professional and advisory fees of the Prepetition Lender Professionals. Payment of any amounts set forth in this clause (II) shall not be subject to disgorgement.

(iv) **DIP Roll-Up Loans**. Subject to the entry of the Final Order, the Debtors shall use the DIP Roll-Up Loans to consummate the Revolver Refinancing.

(v) **Financial Reporting, etc.** Until the Revolver Refinancing occurs, the Debtors shall deliver to the Prepetition Agent all monthly financial reporting given to the U.S. Trustee, and all of the financial reporting and notices as, and when, required to be provided to the DIP Agent under, and in all instances consistent with, the DIP Loan

Documents; provided that delivery of such reports and notices to the DIP Agent (in its capacity as such) shall satisfy the requirements of this paragraph.

5. **DIP Lien and Adequate Protection Replacement Lien Perfection.** This Interim Order shall be sufficient and conclusive evidence of the validity, perfection and priority of the DIP Liens and the Adequate Protection Liens without the necessity of filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any other action to validate or perfect the DIP Liens and the Adequate Protection Liens or to entitle the DIP Liens and the Adequate Protection Liens to the priorities granted herein. Notwithstanding the foregoing, the DIP Agent and the Prepetition Agent may, each in their sole discretion, file such financing statements, mortgages, security agreements, notices of liens and other similar documents, and are hereby granted relief from the automatic stay of Section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, security agreements, notices and other agreements or documents shall be deemed to have been filed or recorded at the time and on the Petition Date. It shall constitute a Default if, as and to the extent required under the DIP Loan Documents, the Debtors shall not execute and deliver to the DIP Agent and the Prepetition Agent all such financing statements, mortgages, security agreements, notices and other documents as the DIP Agent and the Prepetition Agent may reasonably request to evidence, confirm, validate or perfect, or to insure the contemplated priority of, the DIP Liens and the Adequate Protection Liens. The DIP Agent and the Prepetition Agent, in their discretion, may file a certified copy of this Interim Order as a financing statement or a notice with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which any Debtor has real or personal property and, in such event, the subject filing or recording officer shall be authorized to

file or record such copy of this Interim Order. To the extent that the Prepetition Agent is the secured party under any account control agreements, listed as loss payee under any of the Debtors' insurance policies or is the secured party under any Prepetition Loan Document, the DIP Agent is also deemed to be the secured party under such account control agreements, loss payee under the Debtors' insurance policies or is the secured party under any loan document, financing statement, deed of trust, mortgage or other instrument or document which may otherwise be required under the law of any jurisdiction to validate, attach, perfect or prioritize liens (any such instrument or document, a "Security Document"), the DIP Agent is also deemed to be the secured party under each such account control agreement, loss payee under the Debtors' insurance policies, and the secured party under each such Security Document, and shall have all rights and powers attendant to that position (including, without limitation, rights of enforcement) and shall act in that capacity and distribute any proceeds recovered or received in accordance with the terms of this Interim Order and/or the Final Order, as applicable, and the other DIP Loan Documents. The Prepetition Agent shall serve as agent for the DIP Agent for purposes of perfecting their respective security interests and liens on all DIP Collateral comprised of Prepetition Collateral that is of a type such that perfection of a security interest therein may be accomplished only by possession or control by a secured party.

6. **Reservation of Certain Third Party Rights and Bar of Challenges and Claims.** The Debtors' stipulations, admissions, agreements, releases, and waivers contained in this Interim Order, including the stipulations set forth in Paragraph F of this Interim Order (the "Stipulations"), are and shall be binding upon the Debtors and any and all of the Debtors' successors-in-interest and assigns (including, without limitation, any chapter 7 or chapter 11 trustee, responsible person, examiner with expanded powers, or other estate representative). The Stipulations, and all other

admissions, agreements, releases and waivers set forth in this Interim Order also are and shall be binding upon all other parties-in-interest (including any Committee) and each of their respective successors-in-interest and assigns, unless, and solely to the extent that (i) such parties-in-interest, in each case with standing and requisite authority to do so (subject in all respects to any agreement or applicable law which may limit or affect such entity's right or ability to do so) have timely filed the proper pleadings, and timely commenced the appropriate proceedings under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in paragraph 7 below), (a) objecting to or challenging any of the Stipulations or (b) otherwise asserting or prosecuting any action against the Prepetition Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, or employees in connection with matters covered by the Stipulations (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "Challenge"), by no later than (x) with respect to the official committee of unsecured creditors (if one is appointed), the date that is sixty (60) days from the date such committee is appointed and (y) with respect to all other parties in interest, the date that is seventy-five (75) days from the entry of this Interim Order (the period described in the immediately preceding clauses (x) and (y) shall be referred to as the "Challenge Period," and the date that is the next calendar day after the termination of the Challenge Period shall be referred to as the "Challenge Period Termination Date"), as such date may be extended as to any such party-in-interest by the Prepetition Agent (with the consent of the Required Lenders (as defined in the Prepetition Revolving Credit Agreement)) and each applicable individual Prepetition Secured Party that is the subject of a Challenge or by any such later date as has been ordered by the Court for cause upon a motion filed and served within the Challenge Period (before giving effect to such

extension) and (ii) this Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding, and any such judgment has become final and is not subject to any further review or appeal. Any Challenge not asserted by the timely and proper filing of a pleading by a party-in-interest with the requisite standing and authority as contemplated herein prior to the Challenge Termination Date shall be deemed forever waived, released, and barred with respect to such party-in-interest. To the extent a party-in-interest with requisite standing and authority timely and properly commences a Challenge prior to the Challenge Period Termination Date, all claims, causes of action and other matters not specifically set forth in such Challenge shall be deemed forever waived, released, and barred with respect to such party-in-interest. To the extent the Stipulations (or any of them) are (x) not subject to a Challenge timely and properly commenced prior to the Challenge Period Termination Date or (y) subject to a Challenge timely and properly commenced prior to the Challenge Period Termination Date, to the extent any such Challenge does not result in a final and non-appealable judgment or order of the Court that is inconsistent with such Stipulations, then, in each case, without further notice, motion or application to, or order of, or hearing before, this Court and without the need or requirement to file any proof of claim: (a) any and all such Challenges by any Committee, and any other party in interest shall be deemed to be forever waived, released, and barred (including in any Successor Case); and (b) the Prepetition Obligations shall be deemed to be an allowed secured claim within the meaning of Sections 502 and 506 of the Bankruptcy Code for all purposes in connection with the Cases, and all of the Stipulations and all other waivers, releases and affirmations set forth in this Interim Order (or any not properly and timely challenged) shall be in full force and effect and shall be binding, conclusive and final on any person, entity or party-in-interest, including any Committee (in each case, and their successors-in-interest and assigns), in the Cases and in any

Successor Case for all purposes, without any further order of the Court, and shall not be subject to challenge or objection by the Committee or any other party-in-interest, including, without limitation, any trustee, responsible individual, examiner with expanded powers or other representative of the Debtors' estates. If any Challenge is timely and properly filed during the Challenge Period, the Stipulations and all other waivers, releases and affirmations contained in this Interim Order shall nonetheless remain binding, and preclusive as provided in this paragraph 6, on all other parties in interest (including any Committee), and on any other person or entity, except for the plaintiff or movant timely and successfully asserting such Challenge, as set forth in a final, non-appealable order of a court of competent jurisdiction. Notwithstanding anything to the contrary herein, the right to commence any Challenge under this Interim Order is only preserved as against any particular Prepetition Obligation or Prepetition Collateral, or against any Prepetition Secured Party to the extent such Challenge is commenced timely and properly, prior to the Challenge Period Termination Date, and in respect of such Prepetition Obligation, Prepetition Collateral, or Prepetition Secured Party, and is otherwise waived as set forth in this paragraph 6. All remedies or defenses of any party with respect to any Challenge are hereby preserved. Nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code), including any Committee (if any) appointed in these Cases, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, any Challenges with respect to the Prepetition Obligation, and an order of the Court (or any other court of competent jurisdiction) conferring such standing on a Committee or other party in interest shall be a prerequisite for the prosecution of a Challenge by the Committee or such other party-in-interest.

7. **Limitations on Use of Cash Collateral**. Notwithstanding anything herein to the contrary, no portion of the proceeds of the DIP Facility, the DIP Collateral, Prepetition Collateral,

including Cash Collateral, or the Carve-Out, and no disbursements set forth in the DIP Budget, may be used for the payment of professional fees, disbursements, costs, or expenses incurred by any person in connection with (a) incurring indebtedness other than as expressly provided in this Interim Order or the DIP Budget, (b) preventing, hindering, impeding, or delaying any of the Prepetition Agent's or any other Prepetition Secured Party's enforcement or realization upon, or exercise of rights in respect of, any of the Prepetition Collateral or DIP Collateral, other than to seek a determination that an Event of Default has not occurred or is not continuing or in connection with a remedies hearing, (c) seeking to amend or modify any of the rights or interests granted to the Prepetition Agent or any other Prepetition Secured Party under this Interim Order or Prepetition Loan Documents, including seeking to use Cash Collateral on a contested basis, (d) asserting, commencing, or prosecuting any claims or causes of action, including, without limitation, any Challenge or any other actions under chapter 5 of the Bankruptcy Code (or any similar law), against the Prepetition Agent or any other Prepetition Secured Party, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, or employees, or (e) asserting, joining, commencing, supporting, investigating, or prosecuting any Challenge, or any other action for any claim, counterclaim, action, cause of action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination, or similar relief against, or adverse to the material interests of the Prepetition Secured Parties, arising out of, in connection with, or relating to the Prepetition Loan Documents, or the transactions contemplated thereunder, including, without limitation, (i) any action arising under the Bankruptcy Code, (ii) any so-called "lender liability" claims and causes of action, (iii) any action with respect to the validity and extent of the Prepetition Obligations or the validity, extent, perfection and priority of the Prepetition Liens, (iv) any action seeking to invalidate, set aside, avoid, reduce, set

off, offset, recharacterize, subordinate (whether equitable, contractual, or otherwise), recoup against, disallow, impair, raise any defenses, cross-claims, or counterclaims, or raise any other challenges under the Bankruptcy Code or any other applicable domestic or foreign law or regulation against, or with respect to, the Prepetition Liens, in whole or in part, or (v) appeal or otherwise challenge this Interim Order or the Final Order; provided that no more than $75,000 in the aggregate of the proceeds of the DIP Facility, the DIP Collateral, Prepetition Collateral, the Cash Collateral, and the Carve-Out may be used by any Committee to investigate (but not prosecute or Challenge, or initiate the prosecution of, including the preparation of any complaint or motion on account of) the Stipulations.

8. **Carve-Out.**

(a) As used in this Interim Order, the "Carve-Out" shall mean a carve-out from the DIP Superpriority Claims, the DIP Liens, claims pursuant to section 507(b) of the Bankruptcy Code, and the Adequate Protection Liens and the Prepetition Liens, in an amount equal to the sum of (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the Carve-Out Trigger Notice (as defined herein)); (ii) all reasonable and documented fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code, in an aggregate amount not to exceed $75,000 (without regard to the Carve-Out Trigger Notice); (iii) to the extent allowed by the Court at any time, whether by interim order, procedural order or otherwise, all unpaid fees and expenses, other than any Transaction Fees (as defined below) (the "Professional Fees") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code or by a Committee, if any, pursuant to section 328 and 1103 of the Bankruptcy Code (collectively, the "Professional Persons"), at any time on or before the first

business day following the (a) delivery by the DIP Agent of a Carve-Out Trigger Notice and (b) the Termination Date (including as a result of the occurrence of an Event of Default) (such day, the "Carve-Out Trigger Date"), whether allowed by the Court prior to or after the Carve-Out Trigger Date; and (iv) Professional Fees incurred after the Carve-Out Trigger Date in an amount not to exceed $8,000,000 (the "Post-Carve-Out Trigger Notice Cap"), in each case subject to the limits imposed by this Interim Order and the Final Order. For purposes of the foregoing, "Carve-Out Trigger Notice" shall mean a written notice delivered by email by the DIP Agent to the Debtors' lead restructuring counsel, the U.S. Trustee, and counsel to any Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default under the DIP Loan Documents stating that the Post-Carve-Out Trigger Notice Cap has been invoked. For the avoidance of doubt, the incurrence or payment of any amounts subject to the Carve-Out shall not be restricted by the DIP Budget.

(b) The Carve-Out shall not include any restructuring, completion, sale, success, divestiture or other transaction fees of any investment bankers or financial advisors of the Debtors or a Committee, if any (such fees, "Transaction Fees"), provided, however, that a Transaction Fee which is earned and payable by the Debtors, upon consummation of an applicable transaction, pursuant to an engagement letter between the Debtors and the Debtors' investment banker, Evercore, which is acceptable to the DIP Agent (with the consent of the requisite DIP Secured Parties as provided in and consistent with their respective rights under the DIP Loan Documents) and is approved by the Court, shall be payable prior to any distribution to, the DIP Secured Parties or the Prepetition Secured Parties, solely from any proceeds received by the Debtors resulting from such transaction.

(c) Prior to the occurrence of the Carve-Out Trigger Date, the Debtors are authorized (subject to the DIP Budget) to pay Professional Fees that are authorized to be paid in accordance with the provisions of the Bankruptcy Code and any order entered by the Court establishing procedures for the payment of compensation to Professional Persons in these Cases, as the same may be due and payable, and such payments shall not reduce the Carve-Out. Upon the occurrence of the Carve-Out Trigger Date, the Post-Carve-Out Trigger Notice Cap shall be reduced, dollar-for-dollar, by the amount of any Professional Fees incurred and accruing by the Debtors or any Committee, and paid to the applicable Professional Persons, following delivery of the Carve-Out Trigger Notice to the Debtors.

(d) Immediately upon the Carve-Out Trigger Date, and prior to the payment of any DIP Secured Party or Prepetition Secured Party on account of adequate protection, the Carve-Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve (the "Carve-Out Reserve") in an amount equal to the sum of the amounts set forth in paragraphs 8(a)(i) through 8(a)(iv) above.

(e) The Carve-Out Reserve shall be held in a segregated non-interest bearing account in trust at the DIP Agent to pay allowed Professional Fees benefiting from the Carve-Out as provided herein, and the Carve-Out Reserve shall be available only to satisfy such allowed Professional Fees benefiting from the Carve-Out until such Professional Fees are paid in full.

(f) To the extent the Carve-Out Reserve has not been reduced to zero after the payment in full of such obligations, it shall be used to pay the DIP Agent for the benefit of the DIP Secured Parties until the DIP Obligations have been indefeasibly paid in full in cash and all commitments under the DIP Facility have been terminated. Notwithstanding anything to the

contrary herein, the Prepetition Agent and the DIP Agent, each on behalf of itself and the relevant secured parties, (y) shall not sweep or foreclose on the Carve-Out Reserve prior to satisfaction in full of all obligations benefitting from the Carve-Out as provided herein, and (z) shall have a security interest upon any residual interest in the Carve-Out Reserve, available following satisfaction in cash in full of all obligations benefitting from the Carve-Out as provided herein, and the priority of such liens on the residual interest shall be consistent with this Interim Order. Further, notwithstanding anything to the contrary herein, (A) the failure of the Carve-Out Reserve to satisfy in full the Professional Fees shall not affect the priority of the Carve-Out and (B) in no way shall the Carve-Out, the Post-Trigger Date Carve-Out Amount, the Carve-Out Reserve, or any of the foregoing be construed as a cap or limitation on the amount of the Professional Fees due and payable by the Debtors.

(g) Notwithstanding anything to the contrary herein or in the DIP Loan Documents, the Carve-Out shall be senior to the DIP Obligations, the DIP Superpriority Claims, the DIP Liens, the Adequate Protection Obligations, the 507(b) Claims, the Adequate Protection Liens, the Prepetition Liens, and all other liens and claims granted under this Interim Order, the DIP Loan Documents, or otherwise securing or in respect of the DIP Obligations or the Adequate Protection Obligations.

(h) The DIP Secured Parties and the Prepetition Secured Parties reserve the right to review and object to any fee statement, interim application or monthly application issued or filed by the Professionals Persons. Notwithstanding anything to the contrary herein or in the DIP Loan Documents, the payment of any allowed Professional Fees pursuant to the Carve-Out shall not, and shall not be deemed, to (i) reduce any Debtor's obligations owed to the DIP Agent, the other DIP Secured Parties, the Prepetition Agent or the other Prepetition Secured Parties

(whether under this Interim Order or otherwise) or (ii) other than as necessary to permit the payment of such allowed Professional Fees (in each case, subject to the terms of and as expressly provided in this Interim Order with respect to the Carve-Out), modify, alter or otherwise affect any of the liens and security interests of such parties (whether granted under this Interim Order or otherwise) in the Prepetition Collateral or the DIP Collateral (or their claims against the Debtors). The DIP Agent, the other DIP Secured Parties, the Prepetition Agent and the other Prepetition Secured Parties shall not be responsible for the direct payment or reimbursement of any Professional Fees, or any fees or expenses of the U.S. Trustee or Clerk of the Court (or of any other entity) incurred in connection with the Cases or any Successor Case, and nothing in this Interim Order or otherwise shall be construed to obligate such parties in any way to pay such compensation or to reimburse such expenses.

9. **Section 506(c) Claims.** Subject to the entry of the Final Order, as a further condition of the DIP Facility and the DIP Extensions of Credit under the DIP Credit Agreement and the other DIP Loan Documents, any obligation of the DIP Secured Parties to make DIP Extensions of Credit, and the Debtors' authorization to use the Cash Collateral, the Debtors (and any successors thereto or any representatives thereof, including any trustees appointed in the Cases or any Successor Case) shall be deemed to have waived any rights, benefits or causes of action under Section 506(c) of the Bankruptcy Code as they may relate to or be asserted against the DIP Secured Parties, the DIP Liens, the DIP Collateral, the Prepetition Secured Parties, the Prepetition Liens or the Prepetition Collateral. Except for the Carve-Out, nothing contained in this Interim Order, in the Final Order or in the other DIP Loan Documents shall be deemed a consent by the Prepetition Secured Parties or the DIP Secured Parties to any charge, lien, assessment or claim

against, or in respect of, the DIP Collateral or the Prepetition Collateral under Section 506(c) of the Bankruptcy Code or otherwise.

10. **Collateral Rights; Limitations in Respect of Subsequent Court Orders.** Upon the entry of this Interim Order, and thereafter, unless the DIP Agent (at the direction of the Required Lenders) and the Prepetition Agent (at the direction of the requisite lenders under the Prepetition Loan Documents) have provided their prior written consent, or all DIP Obligations and Prepetition Obligations have been indefeasibly paid and satisfied in full in cash (including the cash collateralization of all DIP Letters of Credit, and any prepetition letters of credit under the Prepetition Loan Documents (the "Prepetition LCs") in accordance with the DIP Loan Documents and the Prepetition Loan Documents, as the case may be) and discharged, it shall constitute an Event of Default if the Debtors shall seek in these Cases, or in any Successor Case, or there shall be entered in these Cases or in any Successor Case (or in each case any proceeding ancillary thereto), any order which authorizes any of the following: (i) except as and to the extent expressly permitted by the DIP Credit Agreement, the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral and/or entitled to priority administrative status which is superior to or *pari passu* with those granted pursuant to this Interim Order (other than any Receivables Superpriority Claim) to or for the benefit of the DIP Secured Parties or the Prepetition Secured Parties, or (ii) the use of proceeds of the DIP Facility or Cash Collateral for any purpose other than as permitted under the DIP Credit Agreement and in accordance with the DIP Budget (subject to Permitted Variances).

11. **Proceeds of Subsequent Financing.** Without limiting the provisions and protections of paragraph 10 above, if at any time prior to the indefeasible repayment and satisfaction in full in cash of all DIP Obligations (including the cash collateralization of all DIP

Letters of Credit and Prepetition LCs (if any), in accordance with the DIP Loan Documents and the Prepetition Loan Documents, as the case may be), and the termination of the DIP Secured Parties' obligations to make DIP Extensions of Credit, including subsequent to the confirmation of any Chapter 11 plan or plans with respect to the Debtors, the Debtors, the Debtors' estates, any trustee, any examiner with enlarged powers or any responsible officer subsequently appointed, shall obtain credit or incur debt in violation of this Interim Order or the other DIP Loan Documents, then all of the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Agent for application in accordance with the DIP Loan Documents, the relevant Prepetition Loan Documents, and under applicable law (and with respect to payment of any Prepetition Obligations, subject to paragraph 6 hereof).

12. **Cash Management.** It shall constitute a Default if the Debtors' cash management system shall not at all times be maintained in accordance with the terms of the DIP Loan Documents and the order of this Court approving the maintenance of the Debtors' cash management system [Dkt. No. 107]. Other than the Collections Accounts (as defined in the Interim Securitization Order, the DIP Agent shall be deemed to have "control" over all bank accounts for all purposes of perfection under the Uniform Commercial Code pursuant to this Interim Order and, if required, pursuant to control agreements reasonably acceptable to the DIP Agent.

13. **Disposition of DIP Collateral.** It shall constitute an Event of Default if the Debtors shall sell (including, without limitation, any sale and leaseback transaction), transfer (including any assignment of rights), lease, encumber or otherwise dispose of any portion of the DIP Collateral, except as permitted by the DIP Credit Agreement (including with respect to the Receivables Financing, in accordance with the Interim Securitization Order and the Receivables Financing Documents).

14. **Events of Default; Rights and Remedies Upon Event of Default.**

(a) Any automatic stay otherwise applicable to the DIP Secured Parties is hereby modified so that, upon and after the occurrence of the Termination Date, the DIP Agent (or the other DIP Secured Parties, to the extent expressly permitted under the DIP Loan Documents) shall, subject to subparagraphs (b) and (c) of this paragraph 14 (including the Default Notice Period to the extent provided therein) and, solely in the case of a Termination Date resulting from an Event of Default, following (i) the delivery of a written notice to counsel to the Debtors, counsel for any Committee appointed in the Cases, and the U.S. Trustee (such notice, a "Default Notice") and (ii) the filing of an emergency motion on the Court's docket, during which period the Court shall hold an expedited hearing (at which hearing the burden shall be on any party opposing the exercise of remedies, and the DIP Secured Parties shall not be required to satisfy the applicable standard for relief from the automatic stay), be entitled to exercise all of their rights and remedies in respect of the DIP Collateral, in accordance with this Interim Order and the other DIP Loan Documents. The term "Termination Date" shall mean (a) the Scheduled Maturity Date, (b) the effective date of any Chapter 11 plan with respect to the Debtors confirmed by the Court; (c) the date on which all or substantially all of the assets of the Debtors are sold in a sale under any Chapter 11 plan or pursuant to Section 363 of the Bankruptcy Code; (d) the date which is forty-five (45) days after the Petition Date, if the Court has not entered the Final Order by such date; (e) the occurrence of an Event of Default under and as defined in the DIP Credit Agreement, and (f) the acceleration of the DIP Obligations and/or termination of the commitments under the DIP Revolving Facility, in accordance with the terms of the DIP Loan Documents.

(b) Upon the delivery by the DIP Agent of a Default Notice: (i) all commitments of the DIP Lenders to provide any DIP Extensions of Credit shall immediately be

suspended, (ii) the Debtors shall have no right to request any DIP Extensions of Credit, to use proceeds of any DIP Extensions of Credit or DIP Collateral, or to use Cash Collateral, other than to use such Cash Collateral and proceeds of DIP Extensions of Credit towards the satisfaction of the DIP Obligations and the Carve-Out, as provided herein; provided, that, during the Default Notice Period (as defined below) the Debtors may, subject to the limitations set forth herein and in the other DIP Loan Documents, continue to use Cash Collateral and proceeds of DIP Extensions of Credit previously drawn or issued (and any other cash on hand or on deposit in any deposit account or other bank account of a Debtor) in the ordinary course of business, and in accordance with the DIP Budget, to pay for payroll or other expenditures incurred prior to the Termination Date which are critical to the Debtors' operations and the preservation of the DIP Collateral; and (iii) subject to the provisions of this paragraph 14, the DIP Agent shall be permitted to apply such proceeds in accordance with the terms of this Interim Order. The Debtors and any Committee shall be entitled to an emergency hearing before this Court within five (5) days after the giving of written notice by the DIP Agent of the occurrence of an Event of Default (the "Default Notice Period"). If the Debtors or any Committee do not contest the occurrence of the Event of Default within the Default Notice Period, or if the Debtors or any Committee do timely contest the occurrence of an Event of Default and the Court after notice and a hearing declines (or otherwise within the Default Notice Period fails) to stay the enforcement thereof, the Termination Date shall be deemed to have occurred for all purposes, and the automatic stay shall terminate as to the DIP Agent in all respects, as provided in this paragraph 14. Nothing herein shall preclude the DIP Agent from seeking an order from the Court upon written notice (electronically in a manner that generates a receipt for delivery, or via overnight mail) to the U.S. Trustee, counsel to the Debtors and counsel to the Committee, if any, authorizing the DIP Agent to exercise any enforcement rights

or remedies with respect to the DIP Collateral on less than five (5) days' notice, or the Debtors' right to contest such relief.

(c) Upon the occurrence of the Termination Date (but subject, only in the case of the occurrence of the Termination Date resulting from an Event of Default, following the expedited hearing to be held in accordance with paragraph 14(a) hereof), the DIP Agent is authorized to exercise all remedies and proceed under or pursuant to the applicable DIP Loan Documents and the Prepetition Loan Documents, including, without limitation, to require the DIP Borrower to cash collateralize any DIP Letters of Credit, in accordance with the DIP Loan Documents. All proceeds realized in connection with the exercise of the rights and remedies of the DIP Secured Parties, or the Prepetition Secured Parties (subject to obtaining the requisite relief from the automatic stay), shall be turned over and applied in accordance with the terms of this Interim Order, the DIP Loan Documents and the Prepetition Loan Documents.

(d) The automatic stay imposed under Section 362(a) of the Bankruptcy Code is hereby modified pursuant to the terms of the DIP Loan Documents as necessary to (i) permit the Debtors to grant the Adequate Protection Liens and the DIP Liens and to incur all DIP Obligations and all liabilities and obligations to the Prepetition Secured Parties hereunder and under the other DIP Loan Documents, as the case may be, and (ii) authorize the DIP Agent, the other DIP Secured Parties to retain and apply payments, and otherwise enforce their respective rights and remedies hereunder.

(e) Upon the occurrence of a Termination Date, or the delivery by the DIP Agent of a Default Notice (subject to the Default Notice Period), and subject to the terms of this paragraph 14, including, subparagraph (g) hereof, the Prepetition Agent and other Prepetition Secured Parties may seek a hearing on an expedited basis to consider whether the automatic stay

may be lifted so that the Prepetition Agent (on behalf of the Prepetition Secured Parties) may exercise any and all of their rights set forth in this Interim Order or in the Prepetition Loan Documents.

(f) Nothing included herein shall prejudice, impair, or otherwise affect the Prepetition Agent's or the DIP Agent's rights to seek (on behalf of the Prepetition Secured Parties and the DIP Secured Parties, respectively), subject to their relative rights and priorities herein, any other or supplemental relief in respect of the Debtors (including, as the case may be, other or additional adequate protection) nor the DIP Agent's or Prepetition Agent's rights to suspend or terminate the making of DIP Extensions of Credit or use of Cash Collateral in accordance with this Interim Order and the other DIP Loan Documents, or the rights of the Debtors to oppose such relief. The delay or failure to exercise rights and remedies under this Interim Order or any DIP Loan Document or Prepetition Loan Document, as applicable, shall not constitute a waiver of the DIP Agent's, the DIP Secured Parties', the Prepetition Agent's or the Prepetition Secured Parties' respective rights hereunder, thereunder or otherwise, as applicable. The occurrence of an Event of Default or the Termination Date shall not affect the validity, priority or enforceability of any and all rights, remedies, benefits and protections provided (or that continue to be provided) to the DIP Agent, the DIP Secured Parties, the Prepetition Agent or the Prepetition Secured Parties under this Interim Order, which rights, remedies, benefits and protections shall survive the Termination Date, as provided herein.

(g) Notwithstanding anything in this Interim Order to the contrary, neither the Prepetition Agent (on behalf of itself or the other Prepetition Secured Parties) or the other Prepetition Secured Parties shall be permitted to exercise any rights or remedies unless and until the DIP Obligations are indefeasibly paid and satisfied in full in cash (including the cash

collateralization of all DIP Letters of Credit, in accordance with the DIP Loan Documents) and discharged.

15. **Applications of Proceeds of Collateral, Payments and Collections.** As a condition to the DIP Extensions of Credit and the authorization to use Cash Collateral, each Debtor has agreed that all Cash Collateral, all proceeds of any DIP Collateral or Prepetition Collateral (including proceeds realized from a sale or disposition thereof), any amounts held on account of the DIP Collateral or Prepetition Collateral, all payments and collections received by the Debtors with respect to all DIP Collateral and Prepetition Collateral, and all other amounts remitted by any non-Debtor affiliates to any Debtors in respect of, among other things, asset sales and certain other transactions in accordance with the DIP Credit Agreement shall only be used and applied in accordance with this Interim Order, the DIP Credit Agreement, and the other DIP Loan Documents (including repayment and reduction of the DIP Obligations), and in accordance with the DIP Budget (subject to Permitted Variances).

16. **Proofs of Claim, etc.** None of the DIP Secured Parties or the Prepetition Secured Parties shall be required to file proofs of claim in any of the Cases or any Successor Cases for any claim allowed herein, and the Debtors' Stipulations shall be deemed to constitute a timely filed proof of claim against each of the applicable Debtors in the Cases. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Cases or any Successor Cases to the contrary, the DIP Agent, on behalf of itself and the DIP Secured Parties, and the Prepetition Agent, on behalf of itself and the Prepetition Secured Parties, respectively, are hereby authorized and entitled, in each of their sole and absolute discretion, but not required, to file (and amend and/or supplement, as it sees fit) a master proof of claim and/or aggregate proofs of claim in each of the Cases or any Successor Cases for any claim allowed herein; for avoidance

of doubt, any such proof of claim may (but is not required to be) filed as one consolidated proof of claim against all of the Debtors, rather than as separate proofs of claim against each Debtor. Any proof of claim filed by the DIP Agent or the Prepetition Agent shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the respective DIP Secured Parties or Prepetition Secured Parties. Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation administrative claims) in any of the Cases or any Successor Cases shall not apply to the DIP Agent, the other DIP Secured Parties, the Prepetition Agent or the other Prepetition Secured Parties.

17. **Other Rights and Obligations.**

(a) **Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order.** Based on the findings set forth in this Interim Order and in accordance with Section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility as approved by this Interim Order, in the event any or all of the provisions of this Interim Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court, the DIP Secured Parties are entitled to the protections provided in Section 364(e) of the Bankruptcy Code, and no such appeal, modification, amendment or vacatur shall affect the validity and enforceability of any advances made hereunder or the liens or priority authorized or created hereby. Notwithstanding any such modification, amendment or vacatur, any claim granted to the DIP Secured Parties hereunder arising prior to the effective date of such modification, amendment, vacatur or stay of any DIP Liens or of the DIP Superpriority Claim granted to or for the benefit of the DIP Secured Parties shall be governed in all respects by the original provisions of this Interim Order, and the DIP Secured Parties shall be entitled to all of the rights, remedies, privileges and benefits, including the DIP Liens and the DIP Superpriority Claim granted herein, with respect to

any such claim. Because the DIP Extensions of Credit are made in reliance on this Interim Order and the other DIP Loan Documents, the DIP Obligations incurred by the Debtors or owed the DIP Secured Parties prior to the effective date of any stay, modification or vacatur of this Interim Order shall not, as a result of any subsequent order in the Cases or in any Successor Cases, be subordinated, lose their lien priority or superpriority administrative expense claim status, or be deprived of the benefit of the status of the liens and claims granted to the DIP Secured Parties under this Interim Order.

(b) **Expenses.** To the fullest extent provided in this Interim Order and in the other DIP Loan Documents, the Debtors will pay all prepetition and post-petition fees expenses incurred by the DIP Secured Parties (including, without limitation, the reasonable fees and disbursements of the DIP Lender Professionals, and any other local counsel or additional securitization counsel that any DIP Secured Party shall retain and any internal or third-party appraisers, consultants, financial, restructuring or other advisors and auditors advising any such counsel), including in connection with (i) the negotiation, preparation, execution, delivery, funding and administration of the DIP Loan Documents, including, without limitation, all due diligence fees and expenses incurred or sustained in connection with the DIP Loan Documents, (ii) the Cases or any Successor Cases, or (iii) enforcement of any rights or remedies under the DIP Loan Documents. Payment of all such fees and expenses, and the fees and expenses of the Prepetition Secured Parties that are paid as adequate protection hereunder, shall not be subject to allowance by the Court, and the Prepetition Secured Parties, the Prepetition Lender Professionals, the DIP Secured Parties, and the DIP Lender Professionals (and any other professionals for the DIP Secured Parties), shall not be required to file an application seeking compensation for services or reimbursement of expenses with the Court or comply with the U.S. Trustee fee guidelines, but

shall provide its fee and expense statements or invoices, in summary form, which shall not be required to contain time entries but shall include the number of hours billed by the applicable professional (except for financial advisors compensated on other than an hourly basis) and a summary statement of services provided and the expenses incurred and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client or other privilege, any information constituting attorney work product, or any other confidential or otherwise sensitive information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine) to the Debtors, with copies to be provided to the Office of the U.S. Trustee and counsel for the Committee (if any) contemporaneously with the delivery of such fee and expense statements or invoices to the Debtors. The Debtors shall pay in cash all such fees and expenses of any DIP Lender Professional, (i) promptly upon the entry of this Interim Order (or, in the case of DIP Lender Professionals retained by any Prepetition Lender, within three (3) business days after receipt of an invoice therefrom), and (ii) thereafter, within ten (10) days of presentment of such statements or invoices, if no written objections to the reasonableness of the fees and expenses charged in any such statement or invoice (or portion thereof) is made.. Any objection raised by the Debtors, the U.S. Trustee or the Committee (if any) with respect to such fee and expense statements or invoices (with notice of such objection provided to the DIP Agent and to the respective DIP Lender Professional) may be made only on the basis of "reasonableness," and shall specify in writing the amount of the contested fees and expenses and the detailed basis for such objection. To the extent an objection only contests a portion of an invoice, the undisputed portion thereof shall be promptly paid. If any such objection to payment of an invoice (or any portion thereof) is not otherwise resolved between the Debtors, any Committee or the U.S. Trustee and the issuer of the invoice,

either party may submit such dispute to the Court for a determination as to the reasonableness of the relevant disputed fees and expenses set forth in the invoice. This Court shall retain the jurisdiction to resolve any dispute as to the reasonableness of any fees and expenses. Such fees and expenses shall not be subject to the DIP Budget and shall not be subject to any offset, defense, claim, counterclaim or diminution of any type, kind or nature whatsoever. For the avoidance of doubt, and without limiting any of the forgoing or any other provision of this Interim Order, each of the fees specified in Section 2.12 of the DIP Credit Agreement (including, any commitment fees, upfront fees, administrative agent fees, arranger fees, exit fees, letter of credit participation fees, letter of credit fronting fees, and unused line fees), are, in each case, upon entry of this Interim Order and irrespective of any subsequent order approving or denying the DIP Facility or any other financing pursuant to Section 364 of the Bankruptcy Code, fully entitled to all protections of Section 364(e) of the Bankruptcy Code and are deemed fully earned, non-refundable, irrevocable, and non-avoidable as of the date of this Interim Order.

(c) **Credit Bid.** The DIP Agent, with the consent of the Required Lenders shall have the right (on behalf of the DIP Lenders) to credit-bid the amount of the DIP Obligations (other than, prior to the Challenge Period Termination Date, the DIP Roll-Up Loans) in connection with any sale of all or substantially all of the Debtors' assets and property, including, without limitation, any sale occurring pursuant to Section 363 of the Bankruptcy Code or included as part of any Chapter 11 plan subject to confirmation under Section 1129(b)(2)(A)(iii) of the Bankruptcy Code.

(d) **Binding Effect.** The provisions of this Interim Order shall be binding upon and inure to the benefit of the DIP Secured Parties and the Prepetition Secured Parties, the Debtors, and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estates of

the Debtors) whether in the Cases, in any Successor Cases, or upon dismissal of any such Chapter 11 or Chapter 7 cases.

(e) **No Waiver.** The failure of the DIP Secured Parties or the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order, the other DIP Loan Documents or the Prepetition Loan Documents or otherwise, as applicable, shall not constitute a waiver of any of the DIP Secured Parties' or Prepetition Secured Parties' rights hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair any of the rights, claims, privileges, objections, defenses or remedies of the DIP Secured Parties or the Prepetition Secured Parties under the Bankruptcy Code or under non-bankruptcy law against any other person or entity in any court, including without limitation, the rights of the DIP Agent and the Prepetition Agent (i) to request conversion of the Cases to cases under Chapter 7, dismissal of the Cases, or the appointment of a trustee in the Cases, (ii) to propose, subject to the provisions of Section 1121 of the Bankruptcy Code, any Chapter 11 plan, or (iii) to exercise any of the rights, claims or privileges (whether legal, equitable or otherwise) on behalf of the DIP Secured Parties or the Prepetition Secured Parties, as applicable.

(f) **No Third Party Rights.** Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, third party or incidental beneficiary.

(g) **Intercreditor Matters.** Nothing in this Interim Order shall be construed to convey on any individual DIP Lender or Prepetition Revolving Lender any consent, voting or other rights beyond those (if any) set forth in the DIP Loan Documents and Prepetition Loan Documents, as applicable. Nothing in this Interim Order shall be construed to impair, modify or otherwise

affect (i) the Intercreditor Agreement or (ii) any other intercreditor, subordination or similar agreement or arrangement in respect of the Prepetition Obligations and the obligations under the Receivables Financing Documents, which in each case are enforceable to the fullest extent provided by section 510(a) of the Bankruptcy Code and applicable law.

(h) **No Marshaling.** Subject to a Final Order, neither the DIP Secured Parties nor the Prepetition Secured Parties shall be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as applicable; *provided*, *however*, that the DIP Secured Parties and Prepetition Secured Parties shall use commercially reasonable efforts to first use all DIP Collateral other than any proceeds of Avoidance Actions to repay the DIP Superpriority Claim and the Adequate Protection Superpriority Claim, as applicable.

(i) **Section 552(b).** The DIP Secured Parties and the Prepetition Secured Parties shall each be entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code and, subject to a Final Order, the "equities of the case" exception under Section 552(b) of the Bankruptcy Code shall not apply to the DIP Secured Parties or the Prepetition Secured Parties with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral or the DIP Collateral.

(j) **Consent.** Nothing in this Interim Order shall be construed to convey on any individual DIP Secured Party or individual Prepetition Secured Party any consent, voting or waiver rights beyond those (if any) set forth in the DIP Loan Documents or the Prepetition Loan Documents, as applicable.

(k) **Amendment.** The Debtors and the DIP Agent (with the written consent of the requisite DIP Secured Parties as provided in and consistent with their respective rights under

the DIP Loan Documents) may amend, modify, supplement or waive any provision of the DIP Loan Documents without further notice to or approval of the Court, unless such amendment, modification, supplement or waiver (x) increases the interest rate (other than as a result of the imposition of the default rate or changes to any base rate, LIBOR or similar component thereof) or fees (other than consent fees in connection with such amendment, modification, supplement or waiver) charged in connection with the DIP Facility, (y) increases the commitments of the DIP Lenders to make DIP Extensions of Credit under the DIP Loan Documents, or (z) changes the Termination Date to an earlier date. Except as otherwise provided herein, no waiver, modification, or amendment of any of the provisions hereof shall be effective unless set forth in writing, signed by, or on behalf of, all the Debtors and the DIP Agent (after having obtained the approval of the requisite DIP Secured Parties as provided in the DIP Loan Documents) and approved by the Court after notice to parties in interest.

(l) **Priority of Terms**. To the extent of any conflict between or among (a) the express terms or provisions of any of the other DIP Loan Documents, the Motion, any other order of this Court (other than the Final Order when entered), or any other agreements, on the one hand, and (b) the terms and provisions of this Interim Order, on the other hand, unless such term or provision herein is phrased in terms of "defined in" or "as set forth in" the DIP Credit Agreement, the terms and provisions of this Interim Order shall govern.

(m) **Survival of Interim Order.** The provisions of this Interim Order and any actions taken pursuant hereto shall survive, and shall not be modified, impaired or discharged by, any order which may be entered (i) confirming any Chapter 11 plan in the Cases, (ii) converting any of the Cases to a case under Chapter 7 of the Bankruptcy Code, (iii) dismissing any of the Cases, (iv) terminating the joint administration of these Cases, (v) withdrawing of the reference of

any of the Cases from this Court or (vi) providing for abstention from handling or retaining of jurisdiction of any of the Cases in this Court. The terms and provisions of this Interim Order, including the DIP Liens and DIP Superpriority Claim granted pursuant to this Interim Order, and any protections granted to or for the benefit of the Prepetition Secured Parties (including the Adequate Protection Liens and the Adequate Protection Superpriority Claim), shall continue in full force and effect notwithstanding the entry of such order, or in the event any or all of the provisions of this Interim Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court, and such DIP Liens and DIP Superpriority Claim and protections for the Prepetition Secured Parties (including the Adequate Protection Liens and the Adequate Protection Superpriority Claim) shall maintain their priorities as provided by this Interim Order, the other DIP Loan Documents and the Prepetition Loan Documents (as the case may be), including the Intercreditor Agreement and any other intercreditor arrangement or agreements in respect thereof, until all of the DIP Obligations and the Prepetition Obligations have been indefeasibly paid and satisfied in full in cash (including the cash collateralization of all DIP Letters of Credit and any Prepetition LCs in accordance with the DIP Loan Documents and the Prepetition Loan Documents, as the case may be) and discharged. The Court shall retain jurisdiction, notwithstanding any such dismissal, for the purpose of enforcing the claims, liens and security interests referred to in this paragraph 17(m).

(n) **Enforceability.** This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.

(o) **Waiver of any Applicable Stay.** Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Interim Order and this Interim Order shall be immediately effective and enforceable upon its entry.

18. **Final Hearing.**

(a) The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility is scheduled for December 20, 2019, at 9:00 a.m. (Central Time) at the United States Bankruptcy Court for the Southern District of Texas, Houston Division. If no objections to the relief sought in the Final Hearing are filed and served in accordance with this Interim Order, no Final Hearing may be held, and a separate Final Order may be presented by the Debtors and entered by this Court.

(b) On or before November 20, 2019, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice"), together with copies of this Interim Order and the Motion, on the Notice Parties and to any other party that has filed a request for notices with this Court prior thereto and to any Committee after the same has been appointed, or Committee counsel, if the same shall have been appointed. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of the Court no later than December 12, 2019 at 5:00 pm (Central Time), which objections shall be served so that the same are received on or before such date by: (a) counsel for the Debtors, Davis, Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: Brian M. Resnick; (b) local counsel for the Debtors, Norton Rose Fulbright US LLP, 1301 McKinney Street, Suite 5100, Houston, Texas 77010, Attn: William R. Greendyke; (c) counsel for the DIP Agent and the Prepetition Agent, White & Case LLP, 1221 Avenue of the Americas, New York, NY 10020, Attn:

Scott Greissman and Elizabeth Feld; (d) local counsel for the DIP Agent and the Prepetition Agent, Gray Reed, 1300 Post Oak Blvd, Suite 2000. Houston, TX 77056, Attn: Jason S. Brookner; (e) counsel for PNC Bank, Mayer Brown LLP, 1221 Avenue of the Americas, New York, NY 10020, Attn: Brian Trust; (f) counsel to any Committee; and (g) the U.S. Trustee.

19. **Retention of Jurisdiction.** The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

Signed: November 14, 2019.

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1
DIP CREDIT AGREEMENT

SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT

dated as of

November [●], 2019,

among

DEAN FOODS COMPANY,
as Borrower and debtor-in-possession under Chapter 11 of the Bankruptcy Code,

the Lenders Party Hereto,

and

COÖPERATIEVE RABOBANK U.A., NEW YORK BRANCH,
as Administrative Agent and Issuing Bank

COÖPERATIEVE RABOBANK U.A., NEW YORK BRANCH,
as Lead Arranger and Bookrunner

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SCHEDULES:

EXHIBITS:

SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof, this "Agreement") dated as of November [●], 2019, is by and among DEAN FOODS COMPANY, a Delaware corporation and a debtor and debtor-in-possession under chapter 11 of the Bankruptcy Code (the "Borrower"), the Lenders party hereto, and COÖPERATIEVE RABOBANK U.A., NEW YORK BRANCH, as Administrative Agent and Issuing Bank.

WHEREAS, on November [●], 2019 (the "Petition Date"), the Borrower and certain of the Borrower's subsidiaries (collectively, the "Debtors" and each individually, a "Debtor") each commenced cases (collectively, the "Bankruptcy Cases" and each individually, a "Bankruptcy Case") under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "Bankruptcy Court");

WHEREAS, the Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, prior to the Petition Date, certain financial institutions provided financing to the Borrower, certain of the other Loan Parties and their respective subsidiaries pursuant to (i) that certain Credit Agreement, dated as of February 22, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time through the Petition Date, the "Pre-Petition Credit Agreement") by and among the Borrower, the lenders from time to time party thereto (the "Pre-Petition Lenders") and Coöperatieve Rabobank U.A., New York Branch ("Rabobank"), as administrative agent for the Pre-Petition Lenders (in such capacity, the "Pre-Petition Administrative Agent") and (ii) that certain Eighth Amended and Restated Receivables Purchase Agreement, dated as of February 22, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time through the Petition Date, the "Pre-Petition Receivables Purchase Agreement") by and among Dairy Group Receivables, L.P. and Dairy Group Receivables II, L.P., as sellers, the financial institutions from time to time party thereto as purchasers, PNC Bank, National Association, as co-agent and issuing bank, Rabobank, as agent for the purchasers and the other parties thereto;

WHEREAS, the Borrower has requested that the Lenders and the Issuing Banks make available to the Loan Parties for the purposes specified in this Agreement a senior secured, superpriority debtor-in-possession facility in an aggregate principal amount of $425,000,000, pursuant to which (i) the Lenders and the Issuing Banks will provide a "new money" revolving credit facility in a maximum principal amount of $236,200,000.00, which may be drawn by way of cash advances or, subject to a sublimit, in the form of letters of credit, and (ii) on the Final Order Date (as defined below), all of the outstanding loans under the Pre-Petition Credit Agreement (the "Pre-Petition Revolving Loans") will be, on a dollar-for-dollar basis, refinanced, and deemed repaid by (and converted into) term loans hereunder;

WHEREAS, the Lenders and the Issuing Banks are willing to provide such financing only if (a) all of the Obligations under the Loan Documents, and all other obligations of the Loan Parties (whether as borrower or guarantors) owing to the Administrative Agent and the Lenders (i)

constitute allowed superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code in the Bankruptcy Cases with priority over any and all other administrative expense claims of the kind specified or ordered pursuant to any provision of the Bankruptcy Code; provided that the superpriority administrative expense status of the Obligations shall be subject only to the Carve-Out and certain claims in connection with the Permitted Receivables Financing, and (ii) are secured by senior Liens on Collateral in which the Loan Parties have an interest (including pledges of Equity Interests), in each case pursuant to the Collateral Documents and/or as provided in the Orders, and (b) on or before the Effective Date, (i) the Pre-Petition Receivables Purchase Agreement is amended and restated by the parties thereto on terms acceptable to the Lenders and the Issuing Bank and (ii) the Bankruptcy Court enters an order approving the continuation postpetition of the Permitted Receivables Financing;

WHEREAS, the Borrower's and the other Loan Parties' business is a mutual and collective enterprise and the Borrower and the other Loan Parties believe that the loans and other financial accommodations provided to the Borrower under this Agreement will enhance the aggregate borrowing powers of the Borrower and facilitate the administration of the Bankruptcy Cases and their loan relationship with the Administrative Agent and the Lenders, all to the mutual advantage of the Borrower and the other Loan Parties;

WHEREAS, the Borrower acknowledges that it and the other Loan Parties will receive substantial direct and indirect benefits by reason of the making of loans and other financial accommodations to the Borrower as provided in this Agreement; and

WHEREAS, the Administrative Agent's, the Lenders' and the Issuing Banks' willingness to extend financial accommodations to the Borrower as more fully set forth in this Agreement and the other Loan Documents is done solely as an accommodation to the Borrower and the other Loan Parties and at the Borrower's and the other Loan Parties' request and in furtherance of the Borrower's and the other Loan Parties' mutual and collective enterprise.

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

ARTICLE I

Definitions

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

"ABR", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

"Acceptable Plan" means any chapter 11 plan for each of the Bankruptcy Cases, (a) the provisions of which are in form and substance reasonably satisfactory to the Required Lenders or (b) which provides (i) for the Full Satisfaction of the Secured Obligations upon

confirmation or effectiveness of such plan and (ii) market standard exculpations, indemnities and releases in favor of the Administrative Agent, the Lenders, the Issuing Bank, the other Holders of Secured Obligations, and their respective related parties in such capacities (as reasonably determined by the Required Lenders).

"Actual Capital Expenditures Amount" means the sum of all Capital Expenditures made by the Borrower and its Restricted Subsidiaries during the relevant period of determination which corresponds to the Capital Expenditures identified in the Agreed Capital Expenditures Budget, as determined in a manner consistent with the Agreed Capital Expenditures Budget.

"Actual Operating Cash Receipts" means all cash or other collections received by the Borrower and its Restricted Subsidiaries from operations which correspond to the cash and other collections identified by the line item under the heading "Operating Cash Receipts" in the Agreed Budget, as determined in a manner consistent with the Agreed Budget.

"Actual Operating Disbursements Amount" means the sum of all disbursements, expenses and payments made by the Borrower and its Restricted Subsidiaries during the relevant period of determination which corresponds to the disbursements, expenses and payments identified on a line-by-line basis described under the heading "Total Operating Disbursements" in the Agreed Budget, as determined in a manner consistent with the Agreed Budget.

"Adjusted LIBO Rate" means, with respect to any LIBOR Borrowing for any Interest Period, an interest rate per annum equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"Administrative Agent" means Rabobank, in its capacity as administrative agent for the Lenders under the Loan Documents and any successor Administrative Agent appointed pursuant to Article VIII.

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth in Section 9.01, or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. Notwithstanding the foregoing, no individual shall be an Affiliate solely by reason of his or her being a director, officer or employee of the Borrower or any of its Subsidiaries.

"Agent Fee Letter" means that certain Fee Letter, dated as of November 11, 2019, executed by the Borrower setting forth the applicable fees relating to this Agreement to be paid to the Administrative Agent, on its behalf and on behalf of the Lenders.

"Agent's Group" has the meaning assigned to such term in Article VIII.

"Aggregate Commitment" means the aggregate of the Commitments of all of the Lenders, as reduced from time to time pursuant to the terms and conditions hereof.

"Aggregate Revolving Commitment" means the aggregate of the Revolving Commitments of all of the Revolving Lenders, as reduced from time to time pursuant to the terms and conditions hereof. As of the Effective Date, the Aggregate Revolving Commitment is $236,200,000.00.

"Agreed Budget" means the initial budget prepared by the Borrower in the form of Exhibit B and initially furnished to the Administrative Agent and the Lenders on or before the Effective Date and which is approved by, and in substance reasonably satisfactory to, the Administrative Agent and the Lenders as the same shall be updated, modified or supplemented from time to time as provided in Section 5.12.

"Agreed Budget Variance Report" means a weekly report (i) provided by the Borrower to the Administrative Agent (a) showing, in each case, by line item a comparison of (I) the Actual Operating Disbursements Amount to the Budgeted Operating Disbursements Amount through the Friday of the Prior Week and for the Cumulative Period and (II) the Actual Operating Cash Receipts to the Budgeted Operating Cash Receipts through the Friday of the Prior Week and for the Cumulative Period (in each case, as provided in Section 5.12(c), as applicable), noting therein the variances from the applicable budgeted amounts set forth for such period in the Agreed Budget, and shall include explanations for all material variances (including whether such variance is permanent in nature or timing related) and (b) an analysis demonstrating the Borrower is in compliance with the budget covenants set forth in Section 5.12, and (ii) certified by a Responsible Officer of the Borrower. The Agreed Budget Variance Report shall be in a form, and shall contain supporting information, reasonably satisfactory to the Required Lenders.

"Agreed Capital Expenditures Budget" means the initial capital expenditures forecast for the twelve months following the Petition Date as set forth in the Agreed Budget delivered to the Administrative Agent and the Lenders on or before the Effective Date and which is approved by, and in substance reasonably satisfactory to, the Administrative Agent and the Lenders, as the same shall be updated, modified or supplemented from time to time as provided in Section 5.12.

"Alternate Base Rate" means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate at such time, (b) the Federal Funds Rate in effect on such day plus 1/2 of 1% and (c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%, and if the Alternate Base Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. For the purposes of this definition, the Adjusted LIBO Rate shall be determined using the Adjusted LIBO Rate as otherwise determined by the Administrative Agent in accordance with the definition of "Adjusted LIBO Rate", except that (i) if a given day is a Business Day, such determination shall be made on such day (rather than two Business Days prior to the commencement of an Interest Period) or (ii) if a given day is not a Business Day, the Adjusted LIBO Rate for such day shall be

the rate determined by the Administrative Agent pursuant to preceding clause (i) for the most recent Business Day preceding such day. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Rate, or such Adjusted LIBO Rate shall be effective as of the opening of business on the day of such change in the Prime Rate, the Federal Funds Rate, or such Adjusted LIBO Rate, respectively.

"Anti-Corruption Laws" has the meaning assigned to such term in Section 3.18.

"Anti-Terrorism Laws" means any laws, regulations, or orders of any Governmental Authority of the United States, the United Nations, European Union or the Netherlands relating to terrorism financing or money laundering, including, but not limited to, the International Emergency Economic Powers Act (50 U.S.C. § 1701 et seq.), the Trading With the Enemy Act (50 U.S.C. § 5 et seq.), the International Security Development and Cooperation Act (22 U.S.C. § 2349aa-9 et seq.), the Act, and any applicable rules or regulations promulgated pursuant to or under the authority of any of the foregoing.

"Applicable Percentage" means, with respect to any Lender, a percentage equal to a fraction the numerator of which is such Lender's Revolving Commitment, DIP Term Loan Commitments and DIP Term Loans and the denominator of which is the Aggregate Revolving Commitment and the aggregate principal amount of all DIP Term Loan Commitments and DIP Term Loans of all Lenders; provided that, in the case of Section 2.21 when a Defaulting Lender shall exist, "Applicable Percentage" shall mean the percentage of the Aggregate Revolving Commitment and aggregate DIP Term Loan Commitments and DIP Term Loans (disregarding any Defaulting Lender's Revolving Commitment) represented by such Lender's Revolving Commitment, DIP Term Loan Commitments and/or DIP Term Loans. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments and to any Lender's status as a Defaulting Lender at the time of determination.

"Applicable Rate" means, for any day, with respect to any ABR Loan or LIBOR Loan, or with respect to the commitment fees payable hereunder, as the case may be, the applicable rate per annum set forth below under the caption "ABR Spread", "LIBOR Spread" or "Commitment Fee Rate", as the case may be:

LIBOR Spread	ABR Spread	Commitment Fee Rate
7.00%	6.00%	0.50%

"Applicable Revolving Credit Percentage" means with respect to any Revolving Lender at any time, such Revolving Lender's Applicable Percentage in respect of the Revolving Commitments at such time.

"Appraisal" means, (a) with respect to the Initial Borrowing Base Properties owned by a Loan Party as of the Effective Date, a current appraisal of such real property and equipment located therein prepared by an appraiser reasonably selected and engaged by the Administrative

Agent with the consent of the Borrower, and prepared on a basis and in form and substance, reasonably satisfactory to the Administrative Agent (provided that the Administrative Agent and the Lenders, by their execution below, hereby agree that the current appraisals of such real property and equipment located therein delivered to the Pre-Petition Administrative Agent on or after February 1, 2019, in respect of "Eligible Property" under (and as defined in) the Pre-Petition Credit Agreement on the Petition Date shall satisfy the requirements of this clause (a) with respect to the Eligible Property covered by such Appraisals) and (b) with respect to the Initial Borrowing Base Properties not included in the calculation of the Borrowing Base as of the Effective Date or any other DIP Collateral Real Property owned by a Loan Party after the Effective Date and included in the calculation of the Borrowing Base, a current appraisal of such real property and equipment located therein prepared by an appraiser selected and engaged by the Borrower, which appraiser shall be reasonably satisfactory to the Administrative Agent, and prepared on a basis and in form and substance, reasonably satisfactory to each of the Borrower and the Administrative Agent.

"Appraised Value" means, with respect to any (a) real property, the "highest and best use value" thereof as set forth on the most recent Appraisal for such real property delivered to the Administrative Agent, and (b) equipment, the "highest and best use value" thereof as set forth on the most recent Appraisal for such equipment delivered to the Administrative Agent.

"Approved Fund" means any Person (other than a natural person or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Arranger" means Rabobank in its capacity as lead arranger, bookrunner and backstop party.

"Asset Sale" means any sale, transfer, lease or other disposition (including pursuant to a sale and leaseback transaction or as the result of the division of any Person), whether pursuant to a single transaction or a series of related transactions, of any property, business, line of business, enterprise or asset of the Borrower or any Restricted Subsidiary (including the Equity Interests of any Subsidiary), other than (i) Excluded Dispositions and (ii) sales, transfers or dispositions described in Section 6.05(c), 6.05(d), 6.05(f), 6.05(g) or 6.05(h).

"Assignment and Assumption" means an assignment and assumption agreement entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

"Attributed Principal Amount" means, on any day, with respect to the Permitted Receivables Financing entered into by the Receivables Financing SPCs, the aggregate amount (with respect to any such transaction, the "Invested Amount") paid to, or borrowed by, such Person as of such date under the Permitted Receivables Financing, minus the aggregate amount received

by the applicable Receivables Financier and applied to the reduction of the Invested Amount under the Permitted Receivables Financing.

"Auto-Extension Letter of Credit" has the meaning assigned to such term in Section 2.06(b)(viii).

"Availability Period" means the period from and including the Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitments.

"Available Revolving Commitment" means, at any time, the Aggregate Revolving Commitments then in effect minus the Revolving Exposure of all Lenders at such time.

"Avoidance Actions" has the meaning specified in the Interim Order or, after entry thereof, the Final Order.

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

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

"Banking Services" means Lender Banking Services and Non-Lender Banking Services.

"Banking Services Agreement" means any agreement entered into by the Borrower or any Restricted Subsidiary in connection with Banking Services.

"Banking Services Obligations" means any and all obligations of the Borrower or any Restricted Subsidiary, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) in connection with Banking Services.

"Bankruptcy Cases" has the meaning specified in the recitals to this Agreement.

"Bankruptcy Code" means Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended, modified, succeeded or replaced from time to time.

"Bankruptcy Court" has the meaning specified in the recitals to this Agreement.

"Bankruptcy Event" means, with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or

appointment, provided that a Bankruptcy Event shall not result solely by virtue of (x) any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof or (y) the appointment of a trustee, administrator, custodian, or similar Person by a Governmental Authority under or based on the law in the country where such Person or its direct or indirect parent company is subject to home jurisdiction, if applicable Law requires that such appointment not be disclosed, provided, further, that such ownership interest or appointment (as applicable) does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Benefit Plan" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Borrower" has the meaning assigned to such term in the preamble of the Agreement.

"Borrowing" means Loans of the same Class and Type, made, converted or continued on the same date and, in the case of LIBOR Loans, as to which a single Interest Period is in effect.

"Borrowing Base" means (a) 65% of the Appraised Value of all Eligible Property, as determined based on the Borrowing Base Certificate then most recently delivered pursuant to Section 5.01(f), minus (b) the sum of (i) the Carve-Out and (ii) the aggregate principal amount of all DIP Term Loans then outstanding (or, prior to the Final Order Date, the aggregate outstanding principal amount of all Loans then outstanding, together with accrued and unpaid interest thereon, and all accrued and unpaid fees, under (and as defined in) the Pre-Petition Credit Agreement). For the avoidance of doubt, the Borrower shall be permitted from time to time, in its sole discretion, to increase the amount of the Borrowing Base by including additional property which satisfies the requirements with respect to Eligible Property and delivering a Borrowing Base Certificate with respect to such additional property in accordance with Section 5.01(f).

"Borrowing Base Certificate" means a certificate signed by a Responsible Officer of the Borrower, substantially in the form of Exhibit C-1, with such changes thereto as Administrative Agent may from time to time reasonably request, and appropriately completed.

"Borrowing Request" means a request by the Borrower for a Borrowing in accordance with Section 2.02 substantially in the form attached hereto as Exhibit D-1, or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

"Budgeted Capital Expenditures Amount" means the amount of budgeted capital expenditures set forth in the Agreed Capital Expenditures Budget during the relevant period of determination.

"Budgeted Operating Cash Receipts" means the line item contained in the Agreed Budget under the heading "Operating Cash Receipts" during the relevant period of determination.

"Budgeted Operating Disbursements Amount" means the sum of the line items contained in the Agreed Budget under the heading "Total Operating Disbursements" during the relevant period of determination.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent's Office is located and, if such day relates to any LIBOR Loan, means any day that is also a day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

"Capital Expenditures" means for any period, with respect to any Person, the aggregate of all expenditures by such Person for the acquisition or leasing (pursuant to a Capital Lease) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period but excluding normal maintenance which is properly charged to operation) which are required to be capitalized under GAAP on a balance sheet of such Person; provided that Capital Expenditures shall not include any such expenditure made in accordance with Section 2.11(b)(ii) with the cash proceeds of any Recovery Event.

"Capital Expenditures Test Date" means each date of delivery of financial statements delivered pursuant to Section 5.01(b)(ii) .

"Capital Lease" means any lease of property, real or personal, the obligations with respect to which are required to be capitalized on a balance sheet of the lessee in accordance with GAAP; provided however that for all purposes of this Agreement and the other Loan Documents, any obligation relating to (a) any lease that was accounted for by the Borrower as an operating lease as of December 31, 2018 and (b) any similar lease entered into at any time after December 31, 2018 by the Borrower or any Subsidiary, shall in each case be accounted for as obligations relating to an operating lease and not as Capital Lease.

"Capital Lease Obligations" means the aggregate principal component of capitalized lease obligations relating to a Capital Lease determined in accordance with GAAP.

"Carve-Out" has the meaning assigned to such term in the Orders.

"Cash Collateralize" means, to deliver to the Administrative Agent, for the benefit of one or more of any Issuing Bank or the Lenders, as collateral for the LC Exposure or obligations of Lenders to fund participations in respect of the LC Exposure, cash or deposit account balances or, if the Administrative Agent and each applicable Issuing Bank shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and each applicable Issuing Bank. "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Equivalents" means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States), in each case maturing within one year from the date of acquisition thereof;

(b) investments in (1) commercial paper and variable or fixed rate notes issued by (A) any domestic commercial bank of recognized standing having capital and surplus in excess of $250,000,000 or (B) any bank whose short-term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody's is at least P-1 or the equivalent thereof (any such bank described in this clause (b) being an "Approved Bank") (or by the parent company thereof) or (2) any commercial paper or variable rate notes issued by, or guaranteed by any domestic corporation rated A-1 (or the equivalent thereof) or better by S&P or P-1 (or the equivalent thereof) or better by Moody's, and in each case maturing within 270 days from the date of acquisition thereof;

(c) investments in certificates of deposit, banker's acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any Approved Bank;

(d) repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (b) above;

(e) auction preferred stock rated in the highest short-term credit rating category by S&P or Moody's with a maximum maturity of one year, for which the reset date will be used to determine the maturity date; and

(f) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least $5,000,000,000.

"Cash Management Order" means any order of the Bankruptcy Court entered in the Bankruptcy Cases, together with all extensions, modifications and amendments thereto, consistent

with the Orders and in form and substance reasonably satisfactory to the Required Lenders, which among other matters authorizes the Borrower and the other Loan Parties to maintain their existing treasury, depository, purchase card, and other cash management arrangements (as set forth in the Pre-Petition Credit Agreement) or such other arrangements as shall be reasonably acceptable to the Required Lenders in all material respects.

"Change in Control" means (a) the acquisition of record or beneficial ownership by any Person or group (as such terms are used in Section 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee or director benefit plan or stock plan of the Borrower or a Subsidiary or any trustee or fiduciary with respect to any such plan when acting in that capacity or any trust related to any such plan), of Equity Interests representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower; or (b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower ceases to be individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above (or individuals previously approved under this clause (iii)) constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (such approval, in the case of clauses (ii) or (iii), either by a specific vote or by approval of the Borrower's proxy statement in which such member was named as a nominee for election as a director). As used herein, "beneficial ownership" shall have the meaning provided in Rule 13d-3 of the SEC under the Securities Act of 1934.

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

"CIP Regulations" has the meaning assigned to such term in Section 9.14.

"Class", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are DIP Term Loans or Revolving Loans.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"Collateral" means the "DIP Collateral" as defined in the Orders and in each other Collateral Document, as applicable, and, in any event, shall exclude the Excluded Property.

"Collateral Documents" means, collectively, the Orders and all agreements, instruments, mortgages, deeds of trust and other documents executed in connection with any Orders and/or this Agreement that are intended to create, perfect or evidence Liens to secure the Secured Obligations, including, without limitation, all other security agreements, pledge agreements, loan agreements, mortgages, notes, guarantees, subordination agreements, pledges, powers of attorney, consents, assignments, contracts, fee letters, notices, leases, UCC financing statements and fixture filings and all other written matter whether heretofore, now, or hereafter executed by the Borrower or any of its Subsidiaries and delivered to the Administrative Agent (including, without limitation, the Security Agreement and each Mortgage (if any)).

"Commitment" means, with respect to each Lender, such Lender's DIP Term Loan Commitment and/or Revolving Commitment, as applicable.

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

"Communications" has the meaning assigned to such term in Section 9.01(d).

"Compliance Certificate" means a certificate substantially in the form of Exhibit C-2.

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Contingent Subordinated Obligation" means the contingent subordinated obligation payable to Dairy Farmers of America described on Schedule 6.01.

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

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Cumulative Period" means (i) with respect to the covenant set forth in Section 5.12(c)(i), the rolling four-week period most recently ended on the latest Friday occurring prior to the delivery of the applicable Agreed Budget Variance Report and (ii) with respect to the covenant

set forth in Section 5.12(c)(ii), the rolling four-week period most recently ended on the latest Friday occurring prior to the delivery of the applicable Agreed Budget Variance Report.

"Debtor" has the meaning specified in the recitals in this Agreement.

"Debtor Relief Laws" means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States, any applicable State thereof or other applicable jurisdictions from time to time in effect.

"Default" means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"Defaulting Lender" means, subject to Section 2.21(b), any Lender that has (a) failed to (i) fund any portion of its Loans within 2 Business Days of the date required to be funded by it hereunder unless such Lender's failure to fund is based on such Lender's good faith determination that the conditions precedent to each funding under this Agreement have not been satisfied and such Lender has notified the Administrative Agent in writing of such determination (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing), or (ii) pay to the Administrative Agent, any Issuing Bank or any other Lender any other amount required to be paid by it (including in respect to its participation in Letters of Credit) within 2 Business Days of the date when due, (b) notified the Borrower, the Administrative Agent, any Issuing Bank or any Lender in writing that it does not intend or expect to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend or expect to comply with its funding obligations (i) under this Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a loan under this Agreement cannot be satisfied) or (ii) under other agreements in which it is obligated to extend credit unless, in the case of this clause (ii), such obligation is subject to a good faith dispute, (c) failed, within three Business Days after request by the Administrative Agent, to confirm that it will comply with the terms of this Agreement relating to its obligations (and is financially able to meet such obligations) to fund prospective Loans and participations in then outstanding Letters of Credit unless subject to a good faith dispute based on such Lender's good faith determination that the conditions precedent to funding under this Agreement have not been satisfied and such Lender has notified the Administrative Agent in writing of such determination, provided that any such Lender shall cease to be a Defaulting Lender under this clause (c) upon receipt of such confirmation by the Administrative Agent, (d) has, or has a direct or indirect parent company that has, become the subject of a Bankruptcy Event or (e) become the subject of a Bail-In Action. Any determination by Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (e) of this definition shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.21(b)) upon delivery of written notice of such determination to the Borrower, each Issuing Bank, and each Lender.

"Departing Lender" has the meaning set forth in Section 2.20(a).

"Designated Jurisdiction" means any country or territory that is, or whose government is, the subject of any Sanction, including, without limitation, currently the Region of Crimea, Cuba, Iran, North Korea, Sudan and Syria.

"DIP Collateral Real Property" means collectively, (i) each Initial Borrowing Base Property (other than the El Paso Real Property) and (ii) each other parcel of real property of any Loan Party (including the El Paso Real Property) that constitutes or is intended to constitute Collateral pursuant to the Orders; provided however, that real property and Improvements thereon referred to in this clause (ii) shall not constitute DIP Collateral Real Property until the date upon which the Administrative Agent has received a Flood Certificate for such real property and if applicable, related Borrower notices and flood insurance as required by Section 5.09.

"DIP Super-Priority Claim" has the meaning set forth in Section 3.22(i).

"DIP Term Loan" has the meaning specified in Section 2.01(b).

"DIP Term Loan Commitment" means, for each applicable Lender, the commitment of such Lender to convert the principal amount of its Pre-Petition Revolving Loans on the Petition Date into DIP Term Loans on the Final Order Date in the aggregate principal amount set forth opposite such Lender's name in Schedule 1.01(a) directly below the column entitled "DIP Term Loan Commitment". The aggregate amount of DIP Term Loan Commitments as of the date hereof is $188,800,000.00.

"dollars", "Dollars" or "$" refers to lawful money of the United States of America.

"Domestic Subsidiary" means any Subsidiary that is incorporated or organized under the laws of the United States of America, any state thereof or in the District of Columbia.

"ECP" means an "eligible contract participant" as defined in Section 1(a)(18) of the Commodity Exchange Act or any regulations promulgated thereunder and the applicable rules issued by the Commodity Futures Trading Commission and/or the SEC.

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

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Effective Date" means the first Business Day on which all of the conditions specified in Section 4.01 are satisfied or waived in accordance with the terms of this Agreement.

"Electronic Signature" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

"Electronic System" means any electronic system, including e-mail, e-fax, Intralinks®, Debt Domain, SyndTrak, and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

"Eligible Equipment" means equipment (as that term is defined in the UCC) located on any real property constituting Eligible Real Property and used in the ordinary course of a Loan Party's business; provided, however, an item of equipment shall not be included in Eligible Equipment if:

(a) a Loan Party does not have good, valid, and marketable title thereto or such equipment is subject to a Capital Lease,

(b) the Administrative Agent does not have a valid and perfected first priority Lien thereon, subject to no other Liens except for Permitted Encumbrances,

(c) a Loan Party does not have actual and exclusive possession thereof,

(d) the Administrative Agent has not received an Appraisal of such item of equipment, or

(e) it is an aircraft, or an automobile, truck, rail car, or any vehicle subject to a certificate of title, or consists of office furniture, computers, phones or other office equipment.

"Eligible Property" means the Eligible Equipment and the Eligible Real Property.

"Eligible Real Property" means real property owned by a Loan Party located in the United States of America constituting (a) Initial Borrowing Base Property or (b) other DIP Collateral Real Property of a Loan Party approved by the Administrative Agent acting reasonably; provided, in each case, that Eligible Real Property shall not include the following:

(a) any parcel of real property with respect to which the applicable Loan Party has not satisfied each of the PP&E Conditions as and to the extent required pursuant to the terms of this Agreement,

(b) any parcel of real property with respect to which the applicable Loan Party does not have good, valid, and marketable title thereto, subject only to a valid and perfected first priority Lien of the Administrative Agent and Permitted Encumbrances,

(c) any parcel of real property with respect to which the Administrative Agent has not received an Appraisal, or

(d) any parcel of real property that is not the location of a processing, packing or manufacturing plant or cold storage facility currently being operated and used by the Borrower or its Restricted Subsidiary in the ordinary course of business (an "Operating Facility"); it being acknowledged that any parcel of real property contiguous or adjacent to such Operating Facility or otherwise considered to be part of or integral to the operation of such Operating Facility shall not be otherwise considered to be ineligible pursuant to this clause (d).

"El Paso Real Property" means the real property located at 511 N. Raynor Street, El Paso, Texas 79903 or otherwise associated with tax parcel E014-999-0640-4100.

"Environmental Indemnity Agreement" means an environmental indemnity agreement by and between the Administrative Agent and any Loan Party that owns Initial Borrowing Base Property or other Eligible Property, in form and substance reasonably acceptable to the Administrative Agent, as the same shall be amended, modified and supplemented and in effect from time to time.

"Environmental Laws" means all laws, rules, regulations, codes, ordinances, permits, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, pollution, preservation or reclamation of the environment or natural resources, or the management, generation, transportation, storage, handling, use, or release or threatened release of, or exposure to, any Hazardous Material, as has been, is now, or may at any time hereafter be, in effect.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities, and including any Lien filed against any DIP Collateral Real Property), of the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"Equity Issuance" means any issuance by the Borrower or any of its Restricted Subsidiaries to any Person which is not the Borrower or a Subsidiary of (a) shares of its Equity Interests or Hybrid Equity Securities (excluding issuances of Equity Interests to directors, officers, consultants or other employees under any equity award program, employee stock purchase plan or other employee benefit plan in existence from time to time), (b) any shares of its Equity Interests pursuant to the exercise of options (excluding for purposes hereof the issuance of Equity Interests pursuant to the exercise of stock options held by directors, officers, consultants or other employees or former employees of the Loan Parties or personal representatives or heirs or beneficiaries of any of them) or warrants or (c) any shares of its Equity Interests or Hybrid Equity Securities pursuant to the conversion of any debt securities to equity.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with the Borrower or any Subsidiary, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 and 430 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" means (a) the occurrence of any "reportable event", as defined in Section 4043(c) of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the notice is waived or otherwise not required); (b) the failure by the Borrower or any ERISA Affiliate to make sufficient contributions for any Plan or any Multiemployer Plan in order to meet the minimum funding standards as determined under Section 412 of the Code, Section 430 of the Code or Section 303 of ERISA for any plan year; (c) the occurrence with respect to any Plan subject to Section 433 of the Code or any Multiemployer Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (d) the filing pursuant to Section 412(d) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (e) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (f) the receipt by the Borrower or any ERISA Affiliate from the PBGC or other governmental entity of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (g) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan or (h) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent, within the meaning of Title IV of ERISA.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Event of Default" has the meaning assigned to such term in Section 7.01.

"Excluded Disposition" means the sale, transfer, lease or other disposition of (a) [reserved], (b) obsolete or worn out property or assets in the ordinary course of business or equipment that is no longer useful to the business in the ordinary course in accordance with past practice as in existence immediately prior to the Petition Date, (c) any inventory and materials in the ordinary course of business and on ordinary business terms, (d) cash or Cash Equivalents in the ordinary course of business, (e) accounts receivable in connection with the collection or compromise thereof in the ordinary course of business, and (f) property and assets to the extent that such property or asset is exchanged for credit against the purchase price of similar replacement property or assets.

"Excluded Property" means the collective reference to (a)(i) any property of any Unrestricted Subsidiary and (ii) any Equity Interests of any Unrestricted Subsidiary that is not a Wholly-Owned Subsidiary of the Borrower on the Effective Date (provided that, if at any time such Unrestricted Subsidiary becomes a Wholly-Owned Subsidiary of the Borrower after the Effective Date, the Equity Interests of such Unrestricted Subsidiary shall no longer constitute Excluded Property and shall at all times from and after such time constitute Collateral), (b) any leased real property interest or other leasehold interest, (c) any property the pledge of which would require consent, approval or authorization from any Governmental Authority (to the extent such consent, approval or authorization has not been obtained or waived), (d) any property which, subject to the terms of Section 6.10, is subject to a Lien of the type described in Section 6.02(e) pursuant to documents which prohibit such Loan Party from granting any other Liens in such property, (e) any "intent-to-use" Trademark (as defined in the Security Agreement) applications filed in the U.S. Patent and Trademark Office to the extent, if any, that the grant of a security interest therein would be in violation of the Lanham Act (15 U.S.C. 1051, et seq.) or result in the forfeiture of a Loan Party's right therein, and (f) any General Intangible (as defined in the UCC), permit, lease, license, contract or other Instrument (as defined in the UCC) of such Loan Party or Equity Interest in any Person that is not a Wholly-Owned Subsidiary of one or more of the Loan Parties solely to the extent that the grant of a security interest in such General Intangible, permit, lease, license, contract or other Instrument or Equity Interest in the manner contemplated by the Collateral Documents, under the terms thereof, under any agreement applicable thereto, or under the Bankruptcy Code or other applicable Law, is prohibited or would give the other parties thereto the right to terminate, accelerate or otherwise alter such Loan Party's rights, titles and interests thereunder (including upon the giving of notice or the lapse of time or both); provided that (x) any such limitation described in this clause (f) on the security interests granted hereunder shall only apply to the extent that any such prohibition could not be rendered ineffective pursuant to the UCC, the Bankruptcy Code or any other applicable Law or principles of equity and (y) in the event of the termination or elimination of any such prohibition or the requirement for any consent contained in the Bankruptcy Code or any other applicable Law, General Intangible, permit, lease, license, contract or other Instrument, to the extent sufficient to permit any such item to become Collateral, or upon the granting of any such consent, or waiving or terminating any requirement for such consent, a security interest in such General Intangible, permit, lease, license, contract or other Instrument shall be automatically and simultaneously granted hereunder and shall be included as Collateral. In addition, (1) other assets may be designated as "Excluded Property" if the Administrative Agent determines that the cost of obtaining a perfected security interest therein is excessive in relation to the value afforded thereby and (2) upon the sale, conveyance or

contribution thereof to a Receivables Financing SPC in connection with the Permitted Receivables Financing, the Securitization Assets, including the Transferred Assets, shall be automatically released from the security interests created pursuant to the Collateral Documents (and the Administrative Agent shall, at the expense of the Borrower, execute such documentation reasonably necessary to evidence such release); provided however, that the Administrative Agent and the Holders of Secured Obligations shall have a Lien in all amounts due to a Loan Party from a Receivables Financing SPC in connection with any such sale, conveyance or contribution of Accounts and related Transferred Assets; provided further, that any Transferred Asset repurchased by any Originator having paid the relevant repurchase price for such Transferred Asset in full to the Seller shall not be a "Transferred Asset" from and after the date of such repurchase unless such Transferred Asset has subsequently been transferred to the Seller.

"Excluded Swap Obligation" means, with respect to any Loan Party, any Specified Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Loan Party of, or the grant by such Loan Party of a security interest to secure, such Specified Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party's failure for any reason to constitute an ECP at the time the guarantee of such Loan Party or the grant of such security interest becomes or would become effective with respect to such Specified Swap Obligation. If a Specified Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Specified Swap Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. Federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.20) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan or Commitment or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.17(f) and (d) any U.S. Federal withholding Taxes imposed under FATCA.

"Farm Credit Fee Letter" means that certain fee letter, dated November 12, 2019, executed by the Borrower setting forth the applicable fees to be paid to CoBank ACB for its arrangement of certain Farm Credit Lenders as Voting Participants on the Effective Date.

"Farm Credit Lender" means a federally-chartered Farm Credit System lending institution organized under the Farm Credit Act of 1971, as the same may be amended or supplemented from time to time.

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

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average of the quotations for such day for such transactions received by Administrative Agent from three federal funds brokers of recognized standing selected by it.

"Fee Letters" means the Agent Fee Letter and the Arranger Fee Letter and the Farm Credit Fee Letter.

"Final Order" means, collectively, the order of the Bankruptcy Court entered in the Bankruptcy Cases after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court, which order shall be substantially in the form of the Interim Order (with only such modifications thereto as are necessary to convert the Interim Order into a final order and authorize the approval of the DIP Term Loans and such other modifications satisfactory in form and substance to the Administrative Agent and the Required Lenders and each other Lender or percentage of Lenders that would have a right to consent to such modifications in accordance with Section 9.02(b)), and from which no appeal or motion to reconsider has been timely filed, or if timely filed, the making of the Loans, the issuance of any Letter of Credit and/or the performance by any Loan Party of any of their respective obligations under any of the Loan Documents shall not be the subject of a presently effective stay pending such appeal (unless the Administrative Agent waives such requirement), together with all extensions, modifications and amendments thereto, in form and substance satisfactory to the Administrative Agent and the Required Lenders and each other Lender or percentage of Lenders that would have a right to consent to such modifications in accordance with Section 9.02(b).

"Final Order Date" means the date on which the Final Order is entered by the Bankruptcy Court.

"Financial Officer" means the chief executive officer, chief financial officer, principal accounting officer, treasurer or controller of the Borrower.

"Flood Certificate" means a life of loan "Standard Flood Hazard Determination Form" of the Federal Emergency Management Agency and any successor Governmental Authority performing a similar function, in form and substance satisfactory to Administrative Agent.

"Flood Insurance Laws" means, collectively, (a) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (b) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (c) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (d) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (e) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto and all applicable rules and regulations promulgated under (a) through (e).

"Flood Zone" means areas having special flood hazards as described in the National Flood Insurance Act of 1968, as amended from time to time, and any successor statute.

"Foreign Asset Sale" has the meaning set forth in Section 2.11(f).

"Foreign Lender" means any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is located and any other Lender that is not a United States person within the meaning of Section 7701(a)(30) of the Code. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Recovery Event" has the meaning set forth in the Section 2.11(f).

"Foreign Subsidiary" means any Subsidiary which is not a Domestic Subsidiary.

"Fronting Exposure" means, at any time there is a Defaulting Lender, such Defaulting Lender's Applicable Revolving Credit Percentage of the outstanding LC Exposure other than LC Exposure as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

"Fully Satisfied" or "Full Satisfaction" means, as of any date, that on or before such date:

(a) with respect to the Loans and Letters of Credit: (i) the principal of and interest accrued to such date on the Loans and outstanding LC Disbursements (other than the contingent LC Exposure) shall have been paid in full in cash, (ii) all fees, expenses, and other amounts then due and payable (other than the contingent LC Exposure and other contingent amounts for which a claim has not been made) shall have been paid in full in cash, (iii) the Commitments shall have expired or irrevocably been terminated, and (iv) the contingent LC Exposure, if any, shall have been secured by: (A) the grant of a first-priority, perfected Lien on cash in an amount at least equal to 105% of the amount of such LC Exposure, (B) the issuance of a "back-to-back" letter of credit in form and substance reasonably acceptable to the Issuing Bank with an original face amount at least equal to 105% of the amount of such LC Exposure and issued

by an issuing bank reasonably satisfactory to the Issuing Bank or (C) other collateral which is reasonably acceptable to the Issuing Bank; and

(b) with respect to the Banking Services Obligations and Swap Obligations: (i) all termination payments, fees, expenses, and other amounts then due and payable under the related Banking Services Agreements or Swap Agreements shall have been paid in full in cash, and (ii) unless otherwise waived by the applicable provider of Banking Services or Holder of Secured Obligations to which such Swap Obligations are owed, all contingent amounts which could be payable under the related Banking Services Agreements or Swap Agreements shall have been secured by: (A) the grant of a first-priority, perfected Lien on cash in an amount at least equal to 105% of the amount of such contingent amounts, (B) the issuance of a letter of credit in form and substance reasonably acceptable to the applicable provider of Banking Services or Holder of Secured Obligations to which such Swap Obligations are owed and in an amount at least equal to 105% of the amount of such contingent obligations and issued by an issuing bank reasonably satisfactory to such applicable provider of Banking Services or Holder of Secured Obligations to which such Swap Obligations are owed or (C) other collateral which is reasonably acceptable to the applicable provider of Banking Services; provided the amount of such Banking Services Obligations or Swap Obligations shall be determined in accordance with Section 8.13.

"Funding Account" means the deposit account of the Borrower to which the Administrative Agent is authorized by the Borrower to transfer the proceeds of any Borrowings requested or authorized pursuant to this Agreement.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, consistently applied and as in effect from time to time.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank) and any group or body charged with setting regulatory capital rules or standards (including, without limitation, the Basel Committee on Banking Supervision or any successor or similar authority thereto).

"Guarantee" means, with respect to any Person, without duplication, any obligations of such Person (other than endorsements in the ordinary course of business of negotiable instruments for deposit or collection) guaranteeing or intended to guarantee any Indebtedness of any other Person in any manner, whether direct or indirect, and including without limitation any obligation, whether or not contingent, (a) to purchase any such Indebtedness or any property constituting security therefor, (b) to advance or provide funds or other support for the payment or purchase of any such Indebtedness or to maintain working capital, solvency or other balance sheet condition of such other Person (including without limitation keep well agreements, maintenance agreements or similar agreements or arrangements) for the benefit of any holder of

Indebtedness of such other Person, (c) to lease or purchase assets, securities or services primarily for the purpose of assuring the holder of such Indebtedness, or (d) to otherwise assure or hold harmless the holder of such Indebtedness against loss in respect thereof. The amount of any Guarantee hereunder shall (subject to any limitations set forth therein) be deemed to be an amount equal to the outstanding principal amount (or maximum principal amount, if larger) of the Indebtedness in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Holders of Secured Obligations" means the holders of the Secured Obligations from time to time and shall include (i) each Lender and each Issuing Bank in respect of its Loans and LC Exposure respectively, (ii) the Administrative Agent, the Issuing Banks and the Lenders in respect of all other present and future obligations and liabilities of the Borrower and each Loan Party of every type and description arising under or in connection with this Agreement or any other Loan Document, (iii) each Lender and Affiliate of such Lender and each provider of Non-Lender Banking Services in respect of Swap Agreements and Banking Services Agreements entered into with such Person by the Borrower or any Restricted Subsidiary, (iv) each indemnified party under Section 9.03 in respect of the obligations and liabilities of the Borrower to such Person hereunder and under the other Loan Documents, and (v) their respective successors and (in the case of a Lender, permitted) transferees and assigns.

"Hybrid Equity Securities" means any securities issued by the Borrower, any Restricted Subsidiary or a financing vehicle of the Borrower or any Restricted Subsidiary that (i) are classified as possessing a minimum of "intermediate equity content" by S&P and Basket C equity credit by Moody's and (ii) other than solely through the issuance of Equity Interests, (A) do not require any repayments or prepayments, any redemptions, repurchases, sinking fund payments or defeasement, or any mandatory preferred cash dividends, and (B) do not otherwise provide for (1) any obligations thereunder or in connection therewith to become due prior to their scheduled maturity or (2) an ability (with or without the giving of notice, the lapse of time or both) for the holder or holders of any such securities or any trustee or agent on its or their behalf to cause any such obligations to become due, in each case, prior to at least 180 days after the Maturity Date.

"Improvement" means any walled and roofed building, any building in the course of construction that qualifies for insurance coverage, and any manufactured (mobile) homes.

"Indebtedness" means, as of any date of determination with respect to any Person, without duplication: (a) the outstanding principal amount of all obligations for borrowed money, whether current or long-term and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments or upon which interest payments are customarily made; (b) the maximum amount of all letters of credit (including standby and commercial) and bankers'

acceptances, including unpaid reimbursement obligations in respect of drawn amounts under letters of credit or bankers' acceptance facilities; (c) all attributable indebtedness under Capital Leases, synthetic leases, account receivables securitization programs (including the Permitted Receivables Financing), off-balance sheet loans or similar off-balance sheet financing products; (d) all obligations of such Person under conditional sale or other title retention agreements relating to assets purchased by such Person (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business); (e) all obligations issued or assumed as the deferred purchase price of assets or services purchased (other than contingent earn-out payments and other contingent deferred payments to the extent not fixed and payable, and trade debt incurred in the ordinary course of business and due within six (6) months of the incurrence thereof) which would appear as liabilities on a balance sheet; (f) all preferred Equity Interests issued by such Person and which by the terms thereof could be (at the request of the holders thereof or otherwise) subject to mandatory sinking fund payments, redemption or other acceleration; (g) all obligations of such Person under take-or-pay or similar arrangements; (h) all net obligations of such Person under Swap Agreements; (i) the Indebtedness of any partnership or unincorporated joint venture in which such Person is a general partner or a joint venture to the extent such Person would be liable therefor under applicable law or any agreement or instruments by virtue of such Person's interest in such other Person, except to the extent that Indebtedness is expressly made non recourse to such Person; (j) all Guarantees with respect to outstanding Indebtedness of the type specified in clauses (a) through (i) above of another person; and (k) all Indebtedness of the type specified in clauses (a) through (j) above of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, assets owned or acquired by such Person, whether or not the obligations secured thereby have been assumed.

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

"Ineligible Institution" means (a) a natural person, (b) a Defaulting Lender, (c) the Borrower, any of its Subsidiaries or any of its Affiliates, or (d) a company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof.

"Initial Borrowing Base Property" means each parcel of real property that was a Mortgaged Property under, and as defined in, the Pre-Petition Credit Agreement as in effect on the Petition Date and is described on Schedule 1.01(b) (and, if applicable, equipment located thereon) with respect to which a first priority lien (subject to only to the Carve-Out and Permitted Liens) is granted to the Administrative Agent for the benefit of the Holders of Secured Obligations pursuant to the Orders.

"Intercreditor Agreement" means that certain Intercreditor Agreement dated as of the Effective Date (including any and all supplements thereto) and executed between the Administrative Agent and Rabobank, together with any of its permitted successors and assigns thereunder, as Receivables Financier, and as amended, amended and restated, supplemented or otherwise modified from time to time.

"Interest Election Request" means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.08 in the form attached hereto as Exhibit D-2; or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

"Interest Payment Date" means (a) with respect to any ABR Loan, (i) the second Business Day following the last day of each calendar month and (ii) the Maturity Date and (b) with respect to any LIBOR Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and the Maturity Date.

"Interest Period" means with respect to any LIBOR Borrowing, the period commencing on the date such LIBOR Loan is disbursed, converted to or continued and ending on the date that is one month thereafter; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a LIBOR Borrowing only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the preceding Business Day, (ii) any Interest Period pertaining to a LIBOR Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (iii) no Interest Period shall extend beyond the Maturity Date.

"Interim Order" means the order of the Bankruptcy Court entered in the Bankruptcy Cases after an interim hearing in form and substance satisfactory to the Administrative Agent and the Lenders, together with all extensions, modifications and amendments thereto, in form and substance satisfactory to the Administrative Agent and the Required Lenders (and each other Lender or percentage of Lenders that would have a right to consent to such modifications in accordance with Section 9.02(b)) which, among other matters but not by way of limitation, (i) authorizes the Borrower and the other Loan Parties to execute and perform under the terms of this Agreement and the other Loan Documents, (ii) authorizes Revolving Loans during the period after the Interim Order Date and prior to the Final Order Date in the amounts and on the terms set forth herein, and (iii) grants the DIP Super-Priority Claims and the Liens on the assets of the Loan Parties referred to herein and in the other Loan Documents.

"Interim Order Date" means the date on which the Interim Order is entered by the Bankruptcy Court.

"IRS" means the United States Internal Revenue Service.

"Issuing Bank" means Rabobank in its individual capacity as an issuer of Letters of Credit hereunder and its successors in such capacity as provided in Section 2.06(i) and any Lender appointed by the Borrower (with the consent of such Lender and the Administrative Agent) as such by notice to the Lenders as a replacement for any Issuing Bank who is at the time of such appointment a Defaulting Lender. Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term

"Issuing Bank" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"Laws" means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case having the force of law.

"LC Collateral Account" has the meaning assigned to such term in Section 2.06(j).

"LC Commitment" means, with respect to each Issuing Bank, the commitment, if any, of such Issuing Bank to issue Letters of Credit, expressed as an amount representing the maximum possible aggregate amount of such Issuing Bank's LC Exposure hereunder, as such commitment may be reduced, terminated or increased from time to time pursuant to the provisions of this Agreement. The initial amount of each Issuing Bank's LC Commitment is set forth on Schedule 1.01(a), or in the Assignment and Assumption pursuant to which such Issuing Bank shall have assumed its LC Commitment, as applicable.

"LC Disbursement" means a payment made by an Issuing Bank pursuant to a Letter of Credit.

"LC Exposure" means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate amount of all unreimbursed LC Disbursements, including all Letter of Credit Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.05. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"Lender Banking Services" means each and any of the following bank services provided to the Borrower or any Restricted Subsidiary by any Lender or any of its Affiliates: (a) credit cards or debit cards for commercial customers (including, without limitation, commercial credit cards, debit cards and purchasing cards), (b) stored value cards and (c) treasury or other cash management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, overdrafts and interstate depository network services).

"Lender Parent" means, with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

"Lenders" means the Persons listed on the Schedule 1.01(a) and any other Person that shall have become a Lender hereunder pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

"Letter of Credit" means any letter of credit issued hereunder providing for the payment of cash upon the honoring of a presentation thereunder. A Letter of Credit may be a commercial letter of credit or a standby letter of credit.

"LIBO Rate" means, with respect to any Borrowing for any Interest Period, a rate per annum equal to the London interbank offered rate as administered by the ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for deposits in U.S. dollars with a term equivalent to such Interest Period as displayed on the Reuters screen page that displays such rate (currently page LIBOR01) (or, in the event such rate does not appear on a Reuters page or screen, on the appropriate page of such other information service that publishes such rate as shall be selected by Administrative Agent from time to time in its reasonable discretion) at approximately 11:00 a.m., London time, 2 Business Days prior to the commencement of such Interest Period; provided that in no event shall the LIBO Rate be less than zero. In the event that such rate is not available at such time for any reason, then the LIBO Rate with respect to such Borrowing for such Interest Period shall be the rate at which dollar deposits in the amount of the requested Borrowing and for a maturity comparable to such Interest Period are offered by the principal London office of Rabobank in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, 2 Business Days prior to the commencement of such Interest Period; provided that in no event shall such rate be less than zero.

"LIBO Screen Rate" shall mean the LIBO Rate quote on the applicable screen page the Administrative Agent designates in its reasonable discretion to determine the LIBO Rate (or such other commercially available source providing such quotations as may be designated by the Administrative Agent in its reasonable discretion from time to time).

"LIBO Successor Rate" has the meaning assigned to such term in Section 2.14(c).

"LIBO Successor Rate Conforming Changes" shall mean, with respect to any proposed LIBO Successor Rate, any conforming changes to the definition of LIBO Rate, Adjusted LIBO Rate, Alternate Base Rate, Applicable Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other administrative matters in each case as may be appropriate, in the reasonable discretion of the Administrative Agent, to reflect the adoption of such LIBO Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBO Successor Rate exists, in such other manner of administration as the Administrative Agent reasonably determines in consultation with the Borrower).

"LIBOR", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, assignment for security, levy, attachment, charge, security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale

agreement, Capital Lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Loan Documents" means this Agreement, any promissory notes issued pursuant to this Agreement, each Compliance Certificate, each Borrowing Base Certificate, each Agreed Budget, each Agreed Budget Variance Report, any Letter of Credit applications, the Collateral Documents, the Subsidiary Guaranty, the Environmental Indemnity Agreements, the Fee Letters, all Borrowing Requests, all Interest Election Requests, the Intercreditor Agreement, the Interim Order (and, on and after the Final Order Date, the Final Order) and all other agreements, instruments, documents and certificates identified in Section 4.01 executed and delivered to, or in favor of, the Administrative Agent or any Lenders and including all other pledges, powers of attorney, consents, assignments, contracts, notices, letter of credit agreements and all other written matter whether heretofore, now or hereafter executed by or on behalf of any Loan Party, or any employee of any Loan Party, and delivered to the Administrative Agent or any Lender in connection with this Agreement or the transactions contemplated hereby. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative. For the avoidance of doubt, Loan Documents shall not include Organization Documents of the Borrower or any of its Restricted Subsidiaries, notwithstanding the fact that the same are delivered to the Administrative Agent and the Lenders pursuant to Section 4.01.

"Loan Parties" means the Borrower and the Subsidiary Guarantors.

"Loans" means the loans and advances made by the Lenders pursuant to this Agreement in the form of DIP Term Loans and Revolving Loans.

"Material Adverse Effect" means (A) a material adverse change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent) or financial condition of the Borrower and its Restricted Subsidiaries (other than any Receivables Financing SPC), taken as a whole ((i) other than (x) the filing of the Bankruptcy Cases, (y) those events, conditions and circumstances related and/or leading up to and customarily resulting from the commencement of the Bankruptcy Cases (including defaults under agreements that have no effect under the terms of the Bankruptcy Code as a result of the commencement of the Bankruptcy Cases) and (z) any reduction in payment terms by suppliers and vendors relating to or resulting from the commencement of the Bankruptcy Cases and (ii) taking into account the effect of the automatic stay under the Bankruptcy Code); (B) a material impairment of the rights and remedies of the Administrative Agent, any Issuing Bank or any Lender under any Loan Document, or of the ability of the Borrower or any Subsidiary Guarantor to pay the Obligations and to perform its obligations under any Loan Document to which it is a party; or (C) a material adverse effect upon the legality, validity, binding effect or enforceability against the Borrower or any Subsidiary Guarantor of any Loan Document to which it is a party.

"Material Indebtedness" means (i) the Contingent Subordinated Obligation, and (ii) Indebtedness (other than the Loans and Letters of Credit but including the Permitted Receivables Financing), or obligations in respect of one or more Swap Agreements, of any one or more of the Borrower and its Subsidiaries in an aggregate principal amount exceeding $25,000,000. For purposes of determining Material Indebtedness, the "obligations" of the Borrower or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

"Maturity Date" means the earliest to occur of:

(a) the effective date of a plan of reorganization filed in the Bankruptcy Cases that is confirmed pursuant to an order of the Bankruptcy Court;

(b) the date of consummation of a sale, pursuant to section 363 of the Bankruptcy Code or otherwise, of all or substantially all of the Debtors' assets;

(c) the date that is forty-five (45) days after the Petition Date if a Final Order has not been entered by the Bankruptcy Court by such date;

(d) the Interim Order or the Final Order, as applicable, ceasing to be in full force and effect for any reason;

(e) the acceleration of the Obligations or termination by the Administrative Agent and/or the Required Lenders of the Revolving Commitments; and

(f) the Scheduled Maturity Date.

"Maturity Extension Conditions" shall mean:

(a) a Financial Officer of the Borrower shall provide written notice (an "Extension Election Notice") to the Administrative Agent and the Lenders of the exercise of such Extension Election not more than thirty (30) days and not fewer than fifteen (15) days prior to the Scheduled Maturity Date of the Extended Scheduled Maturity Date, which notice shall be irrevocable when delivered and shall be confirmed promptly by telephonic notice to the Administrative Agent and shall certify, represent and warrant that on the date of delivery of such Extension Election Notice, both immediately before and after such delivery:

(i) the representations and warranties of the Borrower set forth in this Agreement shall be true and correct in all material respects (or in all respects if the applicable representation or warranty is qualified by Material Adverse Effect or materiality); and

(ii) no Default or Event of Default shall have occurred and be continuing or result therefrom;

(b) such Extension Election shall certify, and be accompanied by:

(i) an updated, modified or supplemented rolling 13-week detailed budget commencing with the following Friday (with such supporting detail as the

Administrative Agent and its financial advisor may reasonably request), and such updated, modified or supplemented budget shall become the "Agreed Budget" subject to and in accordance with Section 5.12; and

(ii) an updated Borrowing Base Certificate;

(c) the Borrower shall have paid to the Administrative Agent for the account of each Lender an aggregate fee equal to 0.50% of the maximum amount of each such Lender's Loans and Commitments at the time of the delivery of the applicable Extension Election Notice; and

(d) on the original Scheduled Maturity Date:

(i) the representations and warranties of the Borrower set forth in this Agreement shall be true and correct in all material respects (or in all respects if the applicable representation or warranty is qualified by Material Adverse Effect or materiality); and

(ii) no Default or Event of Default shall have occurred and be continuing or result from the extension of the Scheduled Maturity Date; and

(e) the Borrower shall have filed a disclosure statement and Acceptable Plan and/or a Sale Motion (as applicable) (it being understood and agreed that this clause (e) shall be deemed to be satisfied if the Borrower has satisfied the milestones set forth in Section 5.14).

"Maximum Available Amount" means at any time, the lesser of (a) the lesser of (x) the Aggregate Revolving Commitments then in effect and (y) the Total Revolving Outstandings Cap at such time and (b) the Borrowing Base as reflected in the most recently delivered Borrowing Base Certificate.

"Milestones" has the meaning set forth in Section 5.14.

"Moody's" means Moody's Investors Service, Inc.

"Mortgages" means each mortgage, leasehold mortgage, deed to secure debt, deed of trust, leasehold deed of trust, and similar agreement executed by any Loan Party after the Effective Date, for the benefit of Administrative Agent and the Holders of Secured Obligations, granting a Lien on any real property of such Loan Party.

"Mortgaged Property" means each parcel of owned real property and the improvements thereto with respect to which a Mortgage is granted (or is required to be granted) pursuant to Section 5.10.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"National Flood Insurance Program" means the National Flood Insurance Program created pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act

of 1973, the National Flood Insurance Reform Act of 1994 and the Flood Insurance Reform Act of 2004, in each case as amended from time to time, and any successor statute.

"Net Cash Proceeds" means, with respect to any Asset Sale, (a) the cash proceeds received in respect of such Asset Sale including any cash received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but excluding any interest payments), but only as and when received, net of (b) the sum of (i) all fees and out-of-pocket expenses paid to third parties (other than Affiliates) in connection with such Asset Sale, (ii) the amount of all payments required to be made as a result of such Asset Sale to repay Indebtedness (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such Asset Sale and (iii) the amount of all taxes paid (or reasonably estimated to be payable) and the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable, in each case during the year that such Asset Sale occurred or the next succeeding year and that are directly attributable to such Asset Sale (as determined reasonably and in good faith by a Financial Officer).

"Non-Extension Notice Date" has the meaning assigned to such term in Section 2.06(b)(viii).

"Non-Lender Banking Services" means each and any of the following bank products provided, pursuant to agreements entered into prior to the Effective Date, to the Borrower or any Restricted Subsidiary in the ordinary course of business by any Person that immediately prior to the Effective Date was a "Lender" under (and as defined in) the Pre-Petition Credit Agreement but is not a Lender or an Affiliate of a Lender under this Agreement: (a) credit cards or debit cards for commercial customers (including, without limitation, commercial credit cards, debit cards and purchasing cards), (b) stored value cards and (c) treasury or other cash management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, overdrafts and interstate depository network services).

"Obligations" means all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations of the Loan Parties to the Lenders or to any Lender, the Administrative Agent, the Issuing Banks or to any Issuing Bank or any indemnified party arising under the Loan Documents, and including interest, fees and expenses that accrue after the Effective Date. Furthermore, on and from the Final Order Date, all "Obligations" of any Lender under (and as defined in) the Pre-Petition Credit Agreement shall be deemed "Obligations" hereunder with similar effect, and with the priority set forth in Section 2.18 of this Agreement and the Orders.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Order" means, as the context may require, the Interim Order or the Final Order, whichever is then applicable.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

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

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19 or 2.20).

"Participant" has the meaning set forth in Section 9.04.

"Participant Register" has the meaning assigned to such term in Section 9.04(c).

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Permitted Encumbrances" means:

(a) Liens imposed by law for Taxes that are not yet delinquent or are being contested in compliance with Section 5.04;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's, landlord's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being contested in compliance with Section 5.04;

(c) pledges and deposits under workers' compensation, unemployment insurance and other social security laws or regulations;

(d) deposits or pledges to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(e) judgment Liens in respect of judgments (or appeal or surety bond relating to such judgments) that do not constitute an Event of Default under clause (k) of Article VII;

(f) easements, zoning restrictions, licenses, title restrictions, rights-of-way and similar encumbrances on real property imposed by law or incurred or granted by the Borrower or any Subsidiary in the ordinary course of business that do not secure any material monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of the Borrower or any Subsidiary;

(g) minor imperfections in title that do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of Borrower or any Subsidiary; and

(h) other immaterial Liens acceptable to the Administrative Agent in its reasonable discretion;

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness.

"Permitted Liens" means, at any time, Liens in respect of property of the Borrower or any Restricted Subsidiary permitted to exist at such time pursuant to the terms of Section 6.02.

"Permitted Receivables Financing" means the receivables financing transactions contemplated by the Ninth Amended and Restated Receivables Purchase Agreement, dated on or before the Effective Date (as amended, amended and restated, supplemented or otherwise modified from time to time), by and among Dairy Group Receivables, L.P. and Dairy Group Receivables II, L.P., as sellers (the "Sellers"), the financial institutions from time to time party thereto as purchasers, Rabobank, as agent for the purchasers and the other parties thereto, pursuant to which (i) certain Loan Parties that are Originators (as defined therein) sell (as determined in accordance with GAAP) accounts (as defined in the Uniform Commercial Code as in effect in the State of New York), (collectively, together with certain general intangibles relating thereto and the right to collections thereon, being the "Transferred Assets") to a Receivables Financing SPC, (ii) such Receivables Financing SPC then sells (as determined in accordance with GAAP) any such Transferred Assets (or an interest therein) to any Person that is not a Subsidiary or Affiliate of the Borrower (with respect to any such transaction, the "Receivables Financier") and is a Purchaser (as defined thereunder), (iii) such Loan Parties provide indemnities to the Receivables Financier and Receivables Financier SPC to which Transferred Assets are transferred and (iv) the Borrower undertakes to guarantee obligations and agrees to fulfill its own obligations under each Performance Undertaking (as defined thereunder); provided that (A) such financing shall not involve any recourse to any Loan Party or any Subsidiary (other than a Receivables Financing

SPC) for any reason other than (x) repurchases of non-eligible assets or (y) indemnifications for losses other than credit losses relating to the Transferred Assets, (B) such financing is subject to the Intercreditor Agreement and (C) any amendments or modifications to any of the terms thereof arising after the Petition Date shall not be materially adverse to the interests of the Lenders (including, without limitation, shortening the final maturity or average life to maturity, requiring any payment to be made sooner than originally scheduled or increasing the interest rate or fees applicable thereto, reducing any advance rates, adding additional defaults events of default, adding conditions or limitations to the availability of such financing, adding additional financial tests, reducing any advance rates thereunder or changing any subordination provision thereof (in each case, other than to cure clear errors or defects in the underlying documents)).

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

"Petition Date" has the meaning specified in the recitals to this Agreement.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Plan Process" means a standalone Chapter 11 plan process proposed by the Debtors, which shall be in form and substance reasonably acceptable to the Required Lenders.

"Pledge Subsidiary" means (i) each Domestic Subsidiary, (ii) each Foreign Subsidiary and (iii) each Receivables Financing SPC; provided that notwithstanding anything to the contrary herein, in no event shall a Pledge Subsidiary include a Subsidiary to the extent, and for so long as, all of the Equity Interests of such Subsidiary constitute Excluded Property.

"PP&E Conditions" means the requirements with respect to Mortgaged Property set forth in Section 5.11(a).

"PP&E Conditions Completion Date" means the Business Day on which the Borrower has satisfied the PP&E Conditions in accordance with Section 5.11(a), as reasonably determined by the Administrative Agent and as evidenced by notice to the Lenders.

"Pre-Petition" means the time period ending immediately prior to the filing of the applicable Bankruptcy Cases on the Petition Date.

"Pre-Petition Administrative Agent" has the meaning specified in the recitals to this Agreement.

"Pre-Petition Cash Collateral" has the meaning assigned to the term "Cash Collateral" in the Orders.

"Pre-Petition Credit Agreement" has the meaning specified in the recitals to this Agreement.

"Pre-Petition Lenders" has the meaning specified in the recitals to this Agreement.

"Pre-Petition Receivables Purchase Agreement" has the meaning specified in the recitals to this Agreement.

"Pre-Petition Secured Parties" means, collectively, all "Holders of Secured Obligations" under and as defined in the Pre-Petition Credit Agreement.

"Prime Rate" means the rate of interest per annum published in the Wall Street Journal as the U.S. dollar "prime rate" for such day and if the Wall Street Journal does not publish such rate on such day then such rate as most recently published prior to such day.

"Prior Week" means, as of any date of determination, the immediately preceding week ended on a Sunday and commencing on the prior Monday.

"PTE" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"Rabobank" has the meaning set forth in the recitals to this Agreement.

"Receivables Financier" has the meaning set forth in the definition of Permitted Receivables Financing.

"Receivables Financing SPC" means each of Dairy Group Receivables, L.P. and Dairy Group Receivables II, L.P.

"Recipient" means (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank, as applicable.

"Recovery Event" means the receipt by the Borrower or any of its Restricted Subsidiaries of any cash insurance proceeds or condemnation award payable by reason of theft, loss, physical destruction or damage, taking (by exercise of the power of eminent domain or otherwise) or similar event with respect to any of their respective property or assets.

"Register" has the meaning set forth in Section 9.04.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, trustees, officers, employees, administrators, managers, representatives, partners, agents and advisors of such Person and such Person's Affiliates.

"Replacement Lender" has the meaning set forth in Section 2.20(a).

"Report Date" has the meaning set forth in Section 5.01(f).

"Required Lenders" means, at any time, Lenders having Loans and unused Commitments representing more than 50% of the sum of the total Loans and unused Commitments at such time; provided if there are three or more Lenders (Lenders that are Affiliates of one another shall be deemed to be one Lender for purposes hereof), then Required Lenders shall in no event be less than three Lenders. For purposes of making a determination of Required Lenders, (a) the Commitments of, and the portion of the Revolving Exposure held or deemed held by, any Defaulting Lender shall be excluded, and (b) any Voting Participant shall be deemed to be a Lender.

"Requirement of Law" means, as to any Person, the Organization Documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Resignation Effective Date" has the meaning assigned to such term in Article VIII.

"Responsible Officer" means the chief executive officer, president, vice president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party, and, solely for purposes of the delivery of incumbency and secretary certificates, the secretary or any assistant secretary of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

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

"Restricted Subsidiaries" means the Subsidiaries of the Borrower that are not Unrestricted Subsidiaries.

"Revolving Commitment" means, with respect to each Lender, the commitment, if any, of such Lender to make Revolving Loans and to acquire participations in Letters of Credit hereunder, expressed as an amount representing the maximum possible aggregate amount of such Lender's Revolving Exposure hereunder, as such commitment may be (a) reduced or terminated from time to time pursuant to Section 2.09, (b) reduced from time to time pursuant to Section 2.11(b), and (c) reduced or increased from time to time pursuant to assignments by or to such

Lender pursuant to Section 9.04. The initial amount of each Lender's Revolving Commitment is set forth on Schedule 1.01(a), or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Revolving Commitment, as applicable.

"Revolving Exposure" means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender's Revolving Loans and its LC Exposure at such time.

"Revolving Lender" means a Lender with a Revolving Commitment (or who held a Revolving Commitment before giving effect to any termination thereof or as a result of the occurrence of the Maturity Date) or who holds a Revolving Loan.

"Revolving Loan" means a Loan made pursuant to Section 2.01(a).

"S&P" means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business.

"Sale Motion" means a motion filed by the Debtors pursuant to section 363 of the Bankruptcy Code seeking approval of (x) any sales contemplated by the Sale Process (as stalking horse bidder(s)) and (y) proposed bidding procedures with respect to any such sales, each in form and substance reasonably acceptable to the Required Lenders.

"Sale Process" means a process proposed by the Debtors for the sale of all or substantially all of the business and assets of the Borrower and its Subsidiaries, the Equity Interest of any of the Guarantors that is a Debtor, or the sale of one or more individual business units; provided that such sale or other disposition shall be in form and substance reasonably acceptable to the Required Lenders, or shall contemplate the Full Satisfaction of the Secured Obligations upon consummation of such sale or other disposition.

"Sanction(s)" means any sanctions or trade embargo imposed, administered or enforced by OFAC, the United States Department of State, the United Nations Security Council, the European Union, the Netherlands, or to the extent applicable to the Borrower or any Restricted Subsidiary, any other sanctions authority.

"Scheduled Maturity Date" means the date that is nine (9) months after the Petition Date; provided that, at the election of the Borrower (an "Extension Election"), and subject to compliance by the Borrower with the each of the Maturity Extension Conditions, such date shall be extended (on not more than one occasion) to the date that is twelve (12) months after the Petition Date (or an earlier date elected by the Borrower in its sole discretion) (such date, the "Extended Scheduled Maturity Date").

"Scheduled Unavailability Date" has the meaning assigned to such term in Section 2.14(c).

"SEC" means the United States Securities and Exchange Commission.

"Secured Obligations" means all Obligations, together with all Swap Obligations and Banking Services Obligations owing to one or more Lenders or their respective Affiliates (or a Person that was a Lender or Affiliate of a Lender at the time the Swap Obligation or Banking Services Obligation was entered into) or any other Person with respect to Banking Services Obligations arising in connection with Non-Lender Banking Services; provided that the definition of "Secured Obligations" shall not create any guarantee by any Loan Party of (or grant of security interest by any Loan Party to support, as applicable) any Excluded Swap Obligations of such Loan Party for purposes of determining any obligations of any Loan Party. "Security Agreement" means that certain Pledge and Security Agreement (including any and all supplements thereto), dated as of the Effective Date, between the Loan Parties and the Administrative Agent, for the benefit of the Administrative Agent and the other Holders of Secured Obligations, and any other pledge or security agreement entered into, after the Effective Date by any other Loan Party (as required by this Agreement or any other Loan Document), or any other Person, as the same may be amended, restated or otherwise modified from time to time.

"Securitization Assets" has the meaning set forth in the Intercreditor Agreement.

"Senior Notes" means those certain 6.5% Senior Notes due 2023 issued pursuant to the terms of the Indenture dated as of February 25, 2015 by and between the Borrower, the guarantors listed therein and The Bank of New York Trust Company, as trustee, in an aggregate outstanding principal amount of $700,000,000 as of the Petition Date.

"Specified Subsidiary" means any Restricted Subsidiary that is not a Loan Party (or not required to become a Loan Party pursuant to the terms of this Agreement).

"Specified Swap Obligation" means, with respect to any Loan Party, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act or any rules or regulations promulgated thereunder.

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board and any other banking authority, domestic or foreign, to which the Administrative Agent or any Lender (including any branch, Affiliate or other fronting office making or holding a Loan) is subject for eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. LIBOR Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions, or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity (a) of which

securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, Controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"Subsidiary" means any direct or indirect subsidiary of the Borrower.

"Subsidiary Guarantor" means each Restricted Subsidiary that becomes a party to a Subsidiary Guaranty (including pursuant to a joinder or supplement thereto).

"Subsidiary Guaranty" means that certain Guaranty dated as of the Effective Date (including any and all supplements thereto) and executed by each Subsidiary Guarantor, and any other guaranty agreements as are requested by the Administrative Agent and its counsel, in each case as amended, amended and restated, supplemented or otherwise modified from time to time.

"Super-Majority Required Lenders" means, at any time, Lenders having Loans and unused Commitments representing more than 75% of the sum of the total Loans and unused Commitments at such time; provided if there are three or more Lenders (Lenders that are Affiliates of one another shall be deemed to be one Lender for purposes hereof), then Super-Majority Required Lenders shall in no event be less than three Lenders. For purposes of making a determination of Super-Majority Required Lenders, (a) the Commitments of, and the portion of the Revolving Exposure held or deemed held by, any Defaulting Lender shall be excluded, and (b) any Voting Participant shall be deemed to be a Lender.

"Swap Agreement" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions (other than in respect of Equity Interests of the Borrower), in each case entered into to hedge or mitigate risks to which the Borrower or any Subsidiary reasonably believes it has actual exposure or entered into in order to effectively cap, collar or exchange interest rates; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Subsidiaries shall be a Swap Agreement.

"Swap Obligations" of a Person means any and all obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all Swap Agreements permitted hereunder to the extent the provider of such Swap Agreement is a Lender (or an Affiliate of such Lender) or was a Lender (or an Affiliate of any such Lender at the time such Swap Agreement is entered into, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction.

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

"Title Companies" has the meaning assigned to such term in Section 5.11(a).

"Total Revolving Outstandings Cap" means (x) during the period prior to the entry of the Final Order, $50,000,000 in principal amount at any time outstanding and (y) upon and after entry of the Final Order, $236,200,000.00 in principal amount at any time outstanding.

"Transactions" means the execution, delivery and performance by the Loan Parties of the Loan Documents, the amendment and restatement of the Pre-Petition Receivables Purchase Agreement on or before the Effective Date, the borrowing (or deemed borrowing) of Loans and other credit extensions, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.

"Transferred Assets" has the meaning set forth in the definition of Permitted Receivables Financing.

"Type", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the issue of perfection of security interests.

"Unrestricted" means, when referring to cash or Cash Equivalents, that such cash or Cash Equivalents (i) do not appear (and would not be required to appear) as "restricted" on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries or on a standalone balance sheet of the Borrower or any individual Restricted Subsidiary (in each case, unless such appearance is related to the Loan Documents or the Collateral Documents and the Liens created thereunder to secure the Secured Obligations), (ii) are not subject to any Lien in favor of any other Person other than the Administrative Agent for the benefit of the Holders of Secured Obligations and (iii) are generally available for use by the Borrower and its Restricted Subsidiaries; provided that in no event shall Unrestricted cash or Cash Equivalents include the actual dollar amount of any checks issued, or wires or ACH payments initiated, by the Borrower or any of its Restricted Subsidiaries to any Person other than the Borrower or a Restricted Subsidiary thereof.

"Unrestricted Subsidiary" means each of Dean Foods Foundation, DF-AP, LLC, DF-AP #1 LLC, Franklin Plastics, Inc., Good Karma Foods, Inc., Carnival Ice Cream, N.V., Importadora y Distribuidora Dean Foods, S.A. de C.V., Tenedora Dean Foods Internacional, S.A. de C.V., Dairy Group Receivables II, L. P., Dairy Group Receivables GP II, LLC, Dairy Group Receivables, L.P. and Dairy Group Receivables GP, LLC.

"U.S. Person" means a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" has the meaning assigned to such term in Section 2.17(f)(ii)(B)(3).

"Voting Participant" has the meaning assigned to such term in Section 9.04(c).

"Voting Participant Notification" has the meaning assigned to such term in Section 9.04(c).

"Wholly-Owned Subsidiary" means, with respect to any Person, a Subsidiary of such Person, 100% of the Equity Interests of which (other than directors' qualifying shares or shares required by law to be owned by a resident of the jurisdiction of such Subsidiary) shall be owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Withholding Agent" means any Loan Party and the Administrative Agent.

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

SECTION 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a "Revolving Loan") or by Type (e.g., a "LIBOR Loan") or by Class and Type (e.g., a "LIBOR Revolving Loan"). Borrowings also may be classified and referred to by Class (e.g., a "Revolving Borrowing") or by Type (e.g., a "LIBOR Borrowing") or by Class and Type (e.g., a "LIBOR Revolving Borrowing").

SECTION 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". The word "law" shall be construed as referring to all statutes, rules, regulations, codes and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply), and all judgments, orders and decrees, of all Governmental Authorities. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any definition of or reference to any statute, rule or regulation shall be construed as referring thereto as from time to time

amended, restated, supplemented or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person shall be construed to include such Person's successors and assigns (subject to any restrictions on assignment set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (d) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (g) the words "ordinary course of business" (or words of similar import) shall be construed to mean actions or activities consistent with such Person's past practice or consistent or ordinary for similar Persons in such subject Person's industry, as in existence on the Petition Date.

SECTION 1.04. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change in GAAP occurring after the Effective Date or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made (i) without giving effect to any election under Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at "fair value", as defined therein, and (ii) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

SECTION 1.05. Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Letter of Credit documentation related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

SECTION 1.06. Times of Day; Rates. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable). The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent

have any liability with respect to the administration, submission or any other matter related to the rates in the definitions of "LIBO Rate" or "Adjusted LIBO Rate" or with respect to any comparable or successor rate thereto.

SECTION 1.07. Division. If, in connection with any division or plan of division of a Subsidiary consummated by a Loan Party in its discretion under Delaware law (or any comparable event under a different jurisdiction's law), any new Person comes into existence, such new Person shall be deemed, for purposes of Section 5.10 to have been organized on the first date of its existence by the holders of its Equity Interests at such time, and the Borrower or any Restricted Subsidiary shall be deemed, for purposes of Section 6.04, to have made an investment in the amount of the fair market value of the assets transferred by the Borrower or such Subsidiary to such resulting Person (less the cash consideration received) in each case on the date of such Person's formation.

ARTICLE II

The Credits

SECTION 2.01. Commitments. Subject to the terms and conditions set forth herein:

(a) Each Lender agrees (severally and not jointly) to make Revolving Loans in dollars to the Borrower from time to time on any Business Day during the Availability Period in an aggregate principal amount that will not result in (a) such Lender's Revolving Exposure exceeding such Lender's Applicable Revolving Credit Percentage of the lesser of the Aggregate Revolving Commitment and the Total Revolving Outstandings Cap at such time, (b) the aggregate outstanding principal amount of Revolving Loans exceeding the Total Revolving Outstandings Cap or (c) the sum of the total Revolving Exposures then outstanding exceeding the Maximum Available Amount. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans.

(b) On and from the Final Order Date, in accordance with the terms of the Final Order and Section 4.03 hereof (and, for the avoidance of doubt, without the need for a Borrowing Request), each Lender that is a Pre-Petition Lender agrees that the aggregate outstanding principal amount of its Pre-Petition Revolving Loans as of the Petition Date shall be deemed exchanged for and converted into a term loan to the Borrower hereunder (each, a "DIP Term Loan") on a dollar-for-dollar basis, which exchange and conversion (for the avoidance of doubt) shall not constitute a novation, and such DIP Term Loans shall be deemed a LIBOR Borrowing with an Interest Period of one month hereunder on the Final Order Date and shall constitute Obligations hereunder for all purposes under the Loan Documents and in the Orders. Amounts of DIP Term Loans prepaid or repaid may not be reborrowed.

SECTION 2.02. Loans and Borrowings.

(a) Each Loan shall be made (or deemed made) as part of a Borrowing consisting of Loans of the same Class made by the Lenders ratably in accordance with their respective Revolving Commitments and/or DIP Term Loan Commitments, as applicable. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender

of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to Section 2.14, each Borrowing shall be comprised entirely of ABR Loans or LIBOR Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any LIBOR Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan (and in the case of an Affiliate, the provisions of Sections 2.14, 2.15, 2.16 and 2.17 shall apply to such Affiliate to the same extent as to such Lender); provided that (i) any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement and (ii) the non-performance of a Lender's obligations by any domestic or foreign branch or Affiliate of such Lender so nominated by it shall not relieve the Lender from its obligations under this Agreement.

(c) At the commencement of each Interest Period for any LIBOR Revolving Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of $500,000 and not less than $2,500,000. At the time that each ABR Revolving Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of $500,000 and not less than $2,500,000; provided that an ABR Revolving Borrowing may be in an aggregate amount that is equal to the entire unused balance of the Maximum Available Amount or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e). Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of ten (10) LIBOR Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect to such Borrowing would end after the Maturity Date.

SECTION 2.03. Requests for Revolving Borrowings. To request a Revolving Borrowing, the Borrower shall notify the Administrative Agent of such request either by delivery of a written Borrowing Request signed by the Borrower (delivered by hand or telecopy) or, after the Effective Date, by telephone (provided that any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Borrowing Request) (a) in the case of a LIBOR Borrowing, not later than 1:30 p.m., New York City time, three Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 12:00 p.m., New York City time, on the date of the proposed Borrowing; provided that any such notice of an ABR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e) may be given not later than 9:00 a.m., New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Borrowing Request signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

(i) the aggregate amount of the requested Borrowing;

(ii) the date of such Borrowing, which shall be a Business Day;

(iii) whether such Borrowing is to be an ABR Borrowing or a LIBOR Borrowing;

(iv) in the case of a LIBOR Borrowing, the initial Interest Period to be applicable thereto and the last day thereof, which shall be a period contemplated by the definition of the term "Interest Period";

(v) the Maximum Available Amount in effect on such date both immediately before and after giving effect to such Borrowing;

(vi) in the case of a Revolving Borrowing, the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.07; and

(vii) compliance with the applicable conditions set forth in Section 4.02 and that the Effective Date shall have occurred prior to the requested date of such Borrowing.

If no election as to the Type of Revolving Borrowing is specified, then the requested Revolving Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested LIBOR Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Revolving Loan to be made (or deemed made) as part of the requested Revolving Borrowing.

SECTION 2.04. Intentionally Omitted.

SECTION 2.05. Intentionally Omitted.

SECTION 2.06. Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, the Issuing Banks agree that, in reliance upon the agreements of the Lenders set forth in this Section 2.06, the Borrower may request the issuance of Letters of Credit denominated in dollars as the applicant thereof for its own account or for the account of any Domestic Subsidiary, in a form reasonably acceptable to the Administrative Agent and the relevant Issuing Bank, from time to time on any Business Day during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the relevant Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. The Borrower unconditionally and irrevocably agrees that, in connection with any Letter of Credit issued for the support of any Subsidiary's obligations as provided in the first sentence of this paragraph, the Borrower will be fully responsible for the reimbursement of LC Disbursements in accordance with the terms hereof, the payment of interest thereon and the payment of fees due under Section 2.12(b) to the same extent as if it were the sole account party in respect of such Letter of Credit (the Borrower hereby irrevocably waiving any defenses that might

otherwise be available to it as a guarantor or surety of the obligations of such a Subsidiary that is an account party in respect of any such Letter of Credit).

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions.

(i) To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the relevant Issuing Bank) to an Issuing Bank (which Issuing Bank shall be selected by the Borrower) and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof, the documents to be presented by such beneficiary in case of any drawing thereunder, the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder, the purpose and nature of the requested Letter of Credit and such other information as the applicable Issuing Bank may require. Such notice must be received by the applicable Issuing Bank and the Administrative Agent not later than 11:00 a.m. at least two Business Days (or such later date and time as the Administrative Agent and the applicable Issuing Bank may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. If requested by such Issuing Bank, the Borrower also shall submit a letter of credit application on such Issuing Bank's standard form in connection with any request for a Letter of Credit.

(ii) Promptly after receipt of any Letter of Credit application, the applicable Issuing Bank will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such request from the Borrower and, if not, the applicable Issuing Bank will provide the Administrative Agent with a copy thereof. Unless the applicable Issuing Bank has received written notice from any Lender, the Administrative Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, the applicable Issuing Bank shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with the applicable Issuing Bank's usual and customary business practices.

(iii) A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the amount of the LC Exposure shall not exceed $25,000,000, (ii) each Issuing Bank's LC Exposure shall not exceed such Issuing

Bank's LC Commitment, and (iii) the sum of the total Revolving Exposures shall not exceed the Maximum Available Amount.

(iv) the Issuing Banks shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Banks from issuing the Letter of Credit, or any Law applicable to the Issuing Banks or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Banks shall prohibit, or request that the Issuing Banks refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon the Issuing Banks with respect to the Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Banks are not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon the Issuing Banks any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which the Issuing Banks in good faith deem material;

(B) the beneficiary of such Letter of Credit is subject to Sanctions;

(C) the issuance of the Letter of Credit would violate one or more policies of the Issuing Banks applicable to letters of credit generally;

(D) except as otherwise agreed by the Administrative Agent and the Issuing Banks, the Letter of Credit is in an initial stated amount less than $100,000, in the case of a commercial Letter of Credit, or $500,000, in the case of a standby Letter of Credit;

(E) the Letter of Credit is to be denominated in a currency other than Dollars;

(F) subject to Section 2.21, any Lender is at that time a Defaulting Lender, unless the Issuing Banks have entered into arrangements, including the delivery of Cash Collateral as required by Section 2.22, satisfactory to the Issuing Banks (in their sole discretion) with the Borrower or such Lender to eliminate the Issuing Banks' actual or potential Fronting Exposure (after giving effect to Section 2.21) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other LC Exposure as to which the Issuing Banks have actual or potential Fronting Exposure, as it may elect in its sole discretion; or

(G) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(v) The Issuing Banks shall not amend any Letter of Credit if the Issuing Banks would not be permitted at such time to issue the Letter of Credit in its amended form under the terms hereof.

(vi) The Issuing Banks shall be under no obligation to amend any Letter of Credit if (A) the Issuing Banks would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(vii) The Issuing Banks shall act on behalf of the Lenders with respect to any Letters of Credit issued by any Issuing Bank and the documents associated therewith, and the Issuing Banks shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article VIII with respect to any acts taken or omissions suffered by the Issuing Banks in connection with Letters of Credit issued by it or proposed to be issued by it and pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article VIII included the Issuing Banks with respect to such acts or omissions, and (B) as additionally provided herein with respect to the Issuing Banks.

(viii) If the Borrower so requests, the applicable Issuing Bank shall issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the Issuing Bank to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the Issuing Bank, the Borrower shall not be required to make a specific request to the Issuing Bank for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the Issuing Bank to permit the extension of such Letter of Credit at any time to an expiry date not later than the latest expiration date permitted for such letter of Credit pursuant to Section 2.06(c); provided, however, that the Issuing Bank shall not permit any such extension if (A) the Issuing Bank has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof, or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the Issuing Bank not to permit such extension.

(c) Expiration Date. Each Letter of Credit shall expire (or be subject to termination by notice from the relevant Issuing Bank to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter

of Credit or such later date as may be agreed to by the relevant Issuing Bank (or, in the case of any renewal or extension thereof, including any Auto-Extension Letter of Credit, one year after such renewal or extension) and (ii) the date that is five Business Days prior to the Maturity Date; provided that a Letter of Credit may expire up to (but not later than) one year beyond the Maturity Date so long as the Borrower Cash Collateralizes 105% of the face amount of such Letter of Credit in the manner described in Section 2.06(j) no later than the Maturity Date on terms and conditions reasonably acceptable to the relevant Issuing Bank and the Administrative Agent.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of any Issuing Bank or the Lenders, each Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Revolving Credit Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the relevant Issuing Bank, such Lender's Applicable Revolving Credit Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the applicable Issuing Bank shall notify the Borrower and the Administrative Agent thereof. Not later than 11:00 a.m., New York City time, on the date of any LC Disbursement by an Issuing Bank under a Letter of Credit, the Borrower shall reimburse such Issuing Bank through the Administrative Agent in an amount equal to the amount of such drawing if the Borrower shall have received notice of such LC Disbursement prior to 9:00 a.m., New York City time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; provided that the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.05 that such payment be financed with an ABR Revolving Borrowing in an equivalent amount of such LC Disbursement and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Applicable Revolving Credit Percentage thereof. Promptly following receipt of such notice, each Lender shall pay to the Administrative Agent its Applicable Revolving Credit Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Lenders),

and the Administrative Agent shall promptly pay to such Issuing Bank the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the applicable Issuing Bank or, to the extent that Lenders have made payments pursuant to this paragraph to reimburse such Issuing Bank, then to such Lenders and such Issuing Bank as their interests may appear. Any payment made by a Lender pursuant to this paragraph to reimburse an Issuing Bank for any LC Disbursement (other than the funding of ABR Revolving Loans as contemplated above) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by an Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor any Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the relevant Issuing Bank; provided that the foregoing shall not be construed to excuse any Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of any Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised care in each such determination and that:

(i) an Issuing Bank may replace a purportedly lost, stolen, or destroyed original Letter of Credit or missing amendment thereto with a replacement marked as such or waive a requirement for its presentation;

(ii) an Issuing Bank may accept documents that appear on their face to be in substantial compliance with the terms of a Letter of Credit without responsibility for further investigation, regardless of any notice or information to the contrary, and may

make payment upon presentation of documents that appear on their face to be in substantial compliance with the terms of such Letter of Credit and without regard to any non-documentary condition in such Letter of Credit;

(iii) an Issuing Bank shall have the right, in its sole discretion, to decline to accept such documents and to make such payment if such documents are not in strict compliance with the terms of such Letter of Credit; and

(iv) this sentence shall establish the standard of care to be exercised by an Issuing Bank when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof (and the parties hereto hereby waive, to the extent permitted by applicable Law, any standard of care inconsistent with the foregoing).

Without limiting the foregoing, none of the Administrative Agent, the Lenders, any Issuing Bank, or any of their Related Parties shall have any liability or responsibility by reason of (A) any presentation that includes forged or fraudulent documents or that is otherwise affected by the fraudulent, bad faith, or illegal conduct of the beneficiary or other Person, (B) an Issuing Bank declining to take-up documents and make payment (x) against documents that are fraudulent, forged, or for other reasons by which that it is entitled not to honor or (y) following the Borrower's waiver of discrepancies with respect to such documents or request for honor of such documents or (C) an Issuing Bank retaining proceeds of a Letter of Credit based on an apparently applicable attachment order, blocking regulation, or third-party claim notified to such Issuing Bank.

(g) Disbursement Procedures. Each Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Such Issuing Bank shall promptly notify the Administrative Agent and the Borrower by telephone (provided that any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Borrowing Request) of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such Issuing Bank and the Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If any Issuing Bank shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Revolving Loans; provided that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.13(c) shall apply. Interest accrued pursuant to this paragraph shall be for the account of such Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph (e) of this Section to reimburse such Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) Replacement of any Issuing Bank. Any Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any

such replacement of an Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit then outstanding and issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization. If the maturity of the Loans has been accelerated in accordance with Article VII, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders (or Lenders with LC Exposure representing greater than 50% of the total LC Exposure) demanding the deposit of Cash Collateral pursuant to this paragraph, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders (the "LC Collateral Account"), an amount in cash equal to 105% of the LC Exposure as of such date plus accrued and unpaid interest thereon; provided that the obligation to deposit such Cash Collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in clause (h) or (i) of Article VII. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the Secured Obligations. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account and the Borrower hereby grants the Administrative Agent a security interest in the LC Collateral Account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the relevant Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Lenders with LC Exposure representing greater than 50% of the total LC Exposure), be applied to satisfy other Secured Obligations. If the Borrower is required to provide an amount of Cash Collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after all such Events of Defaults have been cured or waived.

(k) Reports by Issuing Banks to the Administrative Agent. On the Business Day following the end of each calendar quarter, each Issuing Bank (other than Rabobank) shall furnish to the Administrative Agent a report setting forth (i) the issuance and expiration dates, and the face amount, of each Letter of Credit issued by such Issuing Bank during the most recently completed calendar quarter, (ii) the aggregate undrawn amount of all Letters of Credit issued by such Issuing

Bank that are outstanding as of such date and (iii) the aggregate amount of all LC Disbursements made by such Issuing Bank that have not been reimbursed by or on behalf of the Borrower prior to such date.

(l) Applicability of ISP and UCP; Limitation of Liability. Unless otherwise expressly agreed by the Issuing Banks and the Borrower when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, the Issuing Banks shall not be responsible to the Borrower for, and the Issuing Banks' rights and remedies against the Borrower shall not be impaired by, any action or inaction of the Issuing Banks required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where the Issuing Banks or the beneficiary are located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(m) Illegality under Letters of Credit. If, at any time, it becomes unlawful for any Issuing Bank to comply with any of its obligations under any Letter of Credit (including, but not limited to, as a result of any Sanctions), the obligations of such Issuing Bank with respect to such Letter of Credit shall be suspended (and all corresponding rights shall cease to accrue) until such time as it may again become lawful for such Issuing Bank to comply its obligations under such Letter of Credit, and such Issuing Bank shall not be liable for any losses that the Loan Parties may incur as a result.

(n) Conflict with Letter of Credit Documents. In the event of any conflict between the terms hereof and the terms of any Letter of Credit documentation, the terms hereof shall control.

SECTION 2.07. Funding of Borrowings.

(a) DIP Term Loans. On and from the Final Order Date, upon entry of the Final Order and subject to section 4.03 hereof, the outstanding principal amount of Pre-Petition Revolving Loans of each Pre-Petition Lender as of the Petition Date, shall be refinanced and deemed to be repaid by, and exchanged for, on a dollar-for-dollar basis, DIP Term Loans under this Agreement.

(b) Revolving Loans.

(i) Each Lender shall make each Revolving Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 4:00 p.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to such Lender's Applicable Revolving Credit Percentage. The Administrative Agent will make such Loans available to the Borrower by (i) promptly crediting the amounts so received, in like

funds, to the Funding Account or (ii) wire transfer of such funds, in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; provided, however, that if, on the date the Borrowing Request with respect to such Borrowing is given by the Borrower, there are LC Disbursements outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such LC Disbursements, and second, shall be made available to the Borrower as provided above; provided that ABR Revolving Loans to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e) shall be remitted by the Administrative Agent to the relevant Issuing Bank.

(ii) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(iii) A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.07(b) shall be conclusive, absent manifest error.

(iv) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Borrowing set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(v) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

SECTION 2.08. Interest Elections.

(a) The DIP Term Loans shall, initially, be a LIBOR Borrowing with an Interest Period of one month and each other Borrowing initially shall be of the Type specified in the applicable Borrowing Request therefor and, in the case of any such other Borrowing that is a LIBOR Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a LIBOR Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Interest Election Request signed by the Borrower. Notwithstanding any contrary provision herein, this Section shall not be construed to permit the Borrower to elect an Interest Period for LIBOR Loans that does not comply with Section 2.02(d).

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a LIBOR Borrowing; and

(iv) if the resulting Borrowing is a LIBOR Borrowing, the Interest Period to be applicable thereto after giving effect to such election and the last day of such Interest Period, which shall be an interest period of one month (as contemplated by the definition of the term "Interest Period").

If any such Interest Election Request requests a LIBOR Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each relevant Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a LIBOR Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a LIBOR Borrowing and (ii) unless repaid, each LIBOR Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.09. Termination and Reduction of Commitments.

(a) The DIP Term Loan Commitments shall terminate on the earlier of the Final Order Date (after giving effect to the Borrowing of DIP Term Loans deemed made on such date) and the Maturity Date. Unless previously terminated, the Revolving Commitments shall terminate on the Maturity Date.

(b) The Borrower may at any time terminate the Revolving Commitments upon (i) the payment in full in cash of all outstanding Revolving Loans, together with accrued and unpaid interest thereon and on any Letters of Credit, (ii) the cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to the Administrative Agent of a cash deposit (or at the discretion of the Administrative Agent a backup standby letter of credit satisfactory to the Administrative Agent) equal to 105% of the LC Exposure as of such date), (iii) the payment in full in cash of the accrued and unpaid fees in respect of the Revolving Commitments, and (iv) the payment in full in cash of all reimbursable expenses and other Obligations in respect of the Revolving Commitments together with accrued and unpaid interest thereon.

(c) The Borrower may from time to time reduce the Revolving Commitments; provided that (i) each reduction of such Revolving Commitments shall be in an amount that is an integral multiple of $1,000,000 and not less than $5,000,000 and (ii) the Borrower shall not terminate or reduce the Revolving Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.11, the sum of the Revolving Exposures would exceed the lesser of the Aggregate Revolving Commitments and the Total Revolving Outstandings Cap at such time.

(d) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Revolving Commitments under paragraph (b) or (c) of this Section at least one Business Day prior to the effective date of such termination or reduction, specifying such

election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Revolving Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities or the occurrence of any one or more other transactions, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Revolving Commitments shall be permanent. Each reduction of the Revolving Commitments shall be made ratably among the Lenders in accordance with their respective Revolving Commitments.

SECTION 2.10. Repayment of Loans; Evidence of Debt.

(a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan on the Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein absent manifest error; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender and its registered assigns a promissory note payable to such Lender and in the form attached hereto as Exhibit E. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the payee named therein and its registered assigns.

SECTION 2.11. Prepayment of Loans.

(a) The Borrower shall have the right at any time and from time to time to make a prepayment in respect of the Borrowings in whole or in part without premium or penalty but

subject to breakfunding payments pursuant to Section 2.16 and any amount payable pursuant to Section 2.12(c), subject to prior notice in accordance with this paragraph (e) of this Section, provided that each such prepayment shall be applied as set forth in clause (d) below.

(b) (i) Within three (3) Business Days following the receipt by any Loan Party or any Restricted Subsidiary of any Net Cash Proceeds derived from any Asset Sale or series of Asset Sales which cumulatively aggregate in excess of $5,000,000 from all such Asset Sales during the term of this Agreement, the Borrower shall prepay the Obligations in an aggregate amount equal to one hundred percent (100%) of the Net Cash Proceeds so received (each such prepayment to be applied as set forth in clause (d) below), and (ii) to the extent of cash proceeds received in connection with a Recovery Event which are in excess of $5,000,000 in the aggregate and which are not applied to repair, replace or relocate damaged property or to purchase or acquire fixed or capital assets in replacement of the assets lost or destroyed within thirty (30) days of the receipt of such cash proceeds, the Borrower shall prepay the Obligations in an aggregate amount equal to one hundred percent (100%) of such cash proceeds net of all third-party costs incurred to obtain such cash proceeds (such prepayment to be applied as set forth in clause (d) below).

(c) If at any time (including, without limitation, on any Report Date):

(i) the sum of the aggregate principal amount of all of the Revolving Exposures exceeds the Maximum Available Amount, the Borrower shall immediately repay Revolving Borrowings and/or Cash Collateralize LC Exposure in an account with the Administrative Agent pursuant to Section 2.06(j), as applicable, in an aggregate principal amount sufficient to cause the aggregate principal amount of all Revolving Exposures to be less than or equal to the Maximum Available Amount; and/or

(ii) the aggregate amount of the sum of (x) Unrestricted cash and Cash Equivalents owned or held by the Borrower and its Restricted Subsidiaries (for the avoidance of doubt, excluding the Receivables Financing SPCs and/or any not-for-profit Subsidiary) (determined after giving pro forma effect to the making of any Revolving Loan on such date and the application of proceeds therefrom and from any other Unrestricted cash or Cash Equivalents on hand on such date (to the extent such proceeds and/or other Unrestricted cash or Cash Equivalents are actually utilized by the Borrower and/or any such Restricted Subsidiary on the date of incurrence of such Revolving Loan for a permitted purpose under this Agreement other than an investment in cash or Cash Equivalents)), less (y) the Budgeted Operating Disbursements Amount set forth in the then current Agreed Budget for the immediately succeeding week, less (z) the Carve-Out, exceeds $30,000,000 (for purposes of Unrestricted cash denominated in a currency other than Dollars, taking the Dollar equivalent of such Unrestricted cash as determined on the intended date of borrowing of such Revolving Loan) (such amount of Unrestricted cash and Cash Equivalents in excess of $30,000,000, the "Excess Unrestricted Cash Amount") for a period of five (5) consecutive Business Days, the Borrower shall, on the immediately succeeding Business Day following such five (5) Business Day period, repay Revolving Borrowings in an account with the Administrative Agent pursuant to Section 2.06(j), as applicable, in an aggregate principal amount equal to such Excess Unrestricted Cash Amount.

Each such prepayment pursuant to this clause (c) shall be applied as set forth in clause (d) below.

(d) All such amounts pursuant to Section 2.11(a), (b) and (c) shall be applied, first, to prepay the Revolving Loans ratably until the Revolving Loans are paid in full, second, to Cash Collateralize outstanding LC Exposure until such LC Exposure is Cash Collateralized in full and third, after all then outstanding Revolving Loans are paid in full, and all outstanding LC Exposure is Cash Collateralized, to prepay the DIP Term Loans ratably. Within the parameters of the applications set forth above, prepayments shall be applied first to ABR Loans and then to LIBOR Loans in direct order of Interest Period maturities. If an Event of Default has occurred and is continuing at the time of any mandatory prepayment, the proceeds thereof shall be applied in accordance with Section 2.18(b).

(e) The Borrower shall notify the Administrative Agent by telephone (confirmed by telecopy) of any prepayment hereunder (i) in the case of prepayment of a LIBOR Borrowing, not later than 1:30 p.m., New York City time, three Business Days before the date of prepayment (or such later time reasonably acceptable to the Administrative Agent or, with respect to prepayments required pursuant to Section 2.11(b)(i) or (c), such later time prior to the making of such prepayment that is necessary to accommodate the requirements for more timely payments set forth in such Section) or (ii) in the case of prepayment of an ABR Borrowing, not later than 1:30 p.m., New York City time, one Business Day before the date of prepayment (or such later time reasonably acceptable to the Administrative Agent or, with respect to prepayments required pursuant to Section 2.11(b)(i) or (c), such later time prior to the making of such prepayment that is necessary to accommodate the requirements for more timely payments set forth in such Section). Each such notice shall be irrevocable and shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and any amount payable thereon pursuant to Section 2.12(c); provided that, a notice of prepayment delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities or incurrence of Indebtedness or a Change in Control, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent not later than 12:00 noon New York City time (or such later time as the Administrative Agent may approve in its sole discretion), one Business Date prior to the specified effective date) if such condition is not satisfied. Each such notice shall be in a form reasonably approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be reasonably approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Revolving Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by (i) accrued interest to the extent required by Section 2.13, (ii) breakfunding payments pursuant to Section 2.16 and (iii) any applicable amount payable pursuant to Section 2.12(c).

(f) Notwithstanding any other provisions of this Section 2.11, (i) to the extent that any or all of the Net Cash Proceeds of any Asset Sale by a Foreign Subsidiary (each such Asset Sale a "Foreign Asset Sale") or the cash proceeds received in connection with any Recovery Event incurred by a Foreign Subsidiary (each such Recovery Event a "Foreign Recovery Event") are

prohibited or delayed by applicable foreign Law or the applicable Organization Documents of such Foreign Subsidiary from being repatriated to the Borrower to repay the Obligations pursuant to Section 2.11(b), the portion of such Net Cash Proceeds so affected will not be required to be applied to repay the Obligations at the time provided in Section 2.11(b), but may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law or applicable Organization Documents of such Foreign Subsidiary will not permit repatriation to the Borrower (the Borrower hereby agreeing to use, and cause its Subsidiaries to use, all commercially reasonable efforts to overcome or eliminate any such restrictions on repatriation and/or minimize any such costs of prepayment and/or use the other cash and Cash Equivalents of the Borrower and its Subsidiaries that are not affected by such restrictions to make the relevant prepayment), and if within one year following the date on which the respective prepayment would otherwise have been required such repatriation of any of such affected Net Cash Proceeds is permitted under the applicable local law or the applicable Organization Documents of such Foreign Subsidiary, such repatriation will be immediately effected and such repatriated Net Cash Proceeds will be promptly (and in any event not later than two (2) Business Days after such repatriation) applied (net of additional taxes payable or reserved against as a result thereof and additional costs relating to such repatriation) to the repayment of the Obligations pursuant to this Section 2.11 or (ii) to the extent that the Borrower has determined in good faith, after consultation with the Administrative Agent, that repatriation to the Borrower to repay the Obligations pursuant to Section 2.11(b) of any of or all the Net Cash Proceeds of any Foreign Asset Sale or Net Cash Proceeds of any Foreign Recovery Event attributable to Foreign Subsidiaries would have adverse tax consequences (including any reduction in tax attributes) with respect to such Net Cash Proceeds, such Net Cash Proceeds so affected will not be required to be applied to repay such Obligations at the time provided in Section 2.11(b), but may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable adverse tax consequences with respect to such Net Cash Proceeds remain (the Borrower hereby agreeing to use all commercially reasonable efforts to overcome or eliminate any adverse tax consequences and/or use the other cash and Cash Equivalents of the Borrower and its Subsidiaries that are not affected by such adverse tax consequences to make the relevant prepayment), and if within one year following the date on which the respective prepayment would otherwise have been required such repatriation of any of such affected Net Cash Proceeds would no longer have adverse tax consequences, such repatriation will be immediately effected and such repatriated Net Cash Proceeds will be promptly (and in any event not later than two Business Days after such repatriation) applied (net of additional taxes payable or reserved against as a result thereof and additional costs relating to such repatriation) to the repayment of the Obligations pursuant to this Section 2.11. The annual aggregate amount of Net Cash Proceeds from Asset Sales and Recovery Events that are exempted from prepaying the Obligations pursuant to Section 2.11(b) shall be reduced by the Net Cash Proceeds from Foreign Asset Sales and Foreign Recovery Events that are exempted from prepaying the Obligations by operation of this Section 2.11(f).

SECTION 2.12. Fees.

(a) The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender a commitment fee, which shall accrue at the Applicable Rate on the average daily amount of the Available Revolving Commitment of such Revolving Lender during the period from and including the Effective Date to but excluding the date on which such Commitment

terminates. Accrued commitment fees shall be payable in arrears on the last day of each calendar month and on the date on which the Commitments terminate, commencing on the first such date to occur after the date hereof. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to LIBOR Revolving Loans on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to the applicable Issuing Bank for its own account a fronting fee, which shall accrue at the rate of 0.125% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements in respect of Letters of Credit issued by such Issuing Bank) during the period from and including the Effective Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure, as well as such Issuing Bank's standard fees and commissions with respect to the issuance, amendment, cancellation, negotiation, transfer, presentment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of each calendar month shall be payable in arrears on the last day of each such calendar month and on the date on which the Commitments terminate, commencing on the first such date to occur after the Effective Date; provided that any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to any Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) In the event all or any portion of the DIP Term Loans of a Lender are repaid, prepaid, refinanced or replaced at any time (whether voluntary or mandatory, including as a result of acceleration or at the Maturity Date) or any Commitment of a Lender is permanently refinanced, replaced, terminated, expired, cancelled or reduced (whether voluntary or mandatory, including in connection with any prepayment or as a result of acceleration or at the Maturity Date (but excluding, for the avoidance of doubt, the termination of DIP Term Loan Commitments in connection with the making of DIP Term Loans of the equivalent principal amount (on a dollar-for-dollar basis) on the Final Order Date in accordance with Section 2.09(a)), such repayment, prepayment, refinancing, replacement, termination, expiration, cancellation or reduction will be made together with an exit fee in an amount equal to (i) 1.25% of the aggregate principal amount of the DIP Term Loans so repaid, prepaid, refinanced or replaced and (ii) without duplication of any payment pursuant to the preceding clause (i), 1.25% of the aggregate principal amount of Commitments so permanently refinanced, replaced, terminated, expired, cancelled or reduced.

(d) The Borrower agrees to pay to the Administrative Agent, the Arranger and CoBank, ACB, in each case for its own account, the fees set forth in the applicable Fee Letter and

such other fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent, the Borrower and the Arranger, or the Borrower and CoBank, ACB, as the case may be.

(e) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the relevant Issuing Bank, the Arranger or CoBank, ACB, in the case of fees payable to any of them) for distribution, in the case of commitment, participation and exit fees, to the Lenders. Fees paid shall not be refundable under any circumstances.

SECTION 2.13. Interest.

(a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each LIBOR Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, (i) immediately upon the occurrence of any Event of Default described in clause (a), (o), (p), (q), (s), (t), (u) or (w) of Article VII, and (ii) at the election of Administrative Agent or the Required Lenders upon the occurrence of any other Event of Default, the Borrower shall pay interest on the principal amount of all outstanding Loans and, to the fullest extent permitted by law, the outstanding amount of all interest, fees and other amounts owed under this Agreement, at a rate per annum equal to 2.00% plus (i) in the case of any Loan, the rate otherwise applicable to such Loan as provided in the preceding clauses of this section, and (ii) in the case of any other amount the rate applicable to ABR Loans as provided in clause (a) of this Section.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon the earlier of termination of the Commitments and the Maturity Date; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any LIBOR Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.14. Alternate Rate of Interest; Illegality; LIBO Successor Rate.

(a) Alternate Rate of Interest. If prior to the commencement of any Interest Period for a LIBOR Borrowing:

(i) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period; or

(ii) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Revolving Borrowing to, or continuation of any Revolving Borrowing as, a LIBOR Borrowing shall be ineffective, and (ii) if any Borrowing Request requests a LIBOR Borrowing, such Borrowing shall be made as an ABR Borrowing.

(b) Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to the Adjusted LIBO Rate, or to determine or charge interest rates based upon the Adjusted LIBO Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue LIBOR Loans or to convert ABR Loans to LIBOR Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), convert all LIBOR Loans of such Lender to ABR Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBOR Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBOR Loans. Upon any such conversion, the Borrower shall also pay accrued interest on the amount so converted.

(c) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents:

(i) if the Administrative Agent reasonably determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or Required Lenders (as applicable) have determined, that:

(A) adequate and reasonable means do not exist for ascertaining the LIBO Rate for any requested Interest Period, including, without limitation, because the LIBO Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(B) the administrator of the LIBO Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Rate or the LIBO Screen Rate shall no longer be made available, or used for determining the interest rate applicable to loans (such specific date, the "Scheduled Unavailability Date"); or

(ii) if the Administrative Agent and the Borrower determine that syndicated loans currently being executed, or that include language similar to that contained in this Section, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace the LIBO Rate,

then, reasonably promptly after such determination by the Administrative Agent or receipt by the Administrative Agent of such notice, as applicable, the Administrative Agent and the Borrower may amend this Agreement to replace the LIBO Rate with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein), giving due consideration to any evolving or then prevailing market convention for determining interest rates for loans for similar Dollar denominated syndicated credit facilities for such alternative benchmarks (any such proposed rate, a "LIBO Successor Rate"), together with any proposed LIBO Successor Rate Conforming Changes and notwithstanding anything in Section 9.02 to the contrary, any such amendment (which shall be in form and substance reasonably satisfactory to the Borrower) shall become effective at 5:00 p.m. (New York time) on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders do not accept such amendment. If no LIBO Successor Rate has been determined and the circumstances under clause (i) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain LIBOR Loans shall be suspended, (to the extent of the affected LIBOR Loans or Interest Periods), and (y) the Adjusted LIBO Rate component shall no longer be utilized in determining the Alternate Base Rate. Upon receipt of such notice, Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of LIBOR Loans (to the extent of the affected LIBOR Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of ABR Loans (subject to the foregoing clause (y)) in the amount specified therein. Notwithstanding anything else herein, any definition of LIBO Successor Rate shall provide that in no event shall such LIBO Successor Rate be less than zero for purposes of this Agreement.

SECTION 2.15. Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender or any Issuing Bank (except any statutory reserve requirement included in the calculation of the Adjusted LIBO Rate);

(ii) impose on any Lender or any Issuing Bank or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein; or

(iii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, continuing, converting into or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender, such Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender, such Issuing Bank or such other Recipient hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender, such Issuing Bank or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, such Issuing Bank or such other Recipient, as the case may be, for such actual and direct costs (but not including anticipated profits) reasonably incurred or reduction suffered.

(b) If any Lender or any Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or such Issuing Bank's capital or on the capital of such Lender's or such Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered as reasonably determined by such Lender or such Issuing Bank (which determination shall be made in good faith (and not on an arbitrary or capricious basis) and generally consistent with similarly situated customers of such Lender or such Issuing Bank, as applicable, under agreements having provisions similar to this Section 2.15, after consideration of such factors as such Lender or such Issuing Bank, as applicable, then reasonably determines to be relevant; provided that neither such Lender nor such Issuing Bank, as applicable, shall be required to disclose any confidential or proprietary information in connection therewith).

(c) A certificate of a Lender or an Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or such Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or such Issuing Bank, as the case may be, the amount shown as due on any such certificate within 15 days after receipt thereof.

(d) Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or such Issuing Bank's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or an Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or such Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such Issuing Bank's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.16. Break Funding Payments. In the event of (a) the payment of any principal of any LIBOR Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any LIBOR Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any LIBOR Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.09(d) and is revoked in accordance therewith), or (d) the assignment of any LIBOR Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.20, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a LIBOR Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

SECTION 2.17. Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction

or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.17) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by the Borrower. The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for, Other Taxes.

(c) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.17, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by the Loan Parties. The Loan Parties shall indemnify each Recipient, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate setting forth in reasonable detail the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.17(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person:

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. Federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable;

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit F-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed originals of IRS Form W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this

clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.17 (including by the payment of additional amounts pursuant to this Section 2.17), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.17 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 2.17 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, and the Full Satisfaction of the Secured Obligations.

(i) Defined Terms. For purposes of this Section 2.17, the term "Lender" includes each Issuing Bank and the term "applicable law" includes FATCA.

SECTION 2.18. Payments Generally; Allocation of Proceeds; Sharing of Set-offs.

(a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to 2:00 p.m., New York City time, on the date when due, in immediately available funds, free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices as the Administrative Agent may from time to time notify to the Borrower and the Lenders, except payments to be made directly to an Issuing

Bank as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) Any proceeds of Collateral received by the Administrative Agent (i) not constituting either (A) a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall be applied as specified by the Borrower) or (B) a mandatory prepayment made when an Event of Default has not occurred and is continuing at the time (which shall be applied in accordance with Section 2.11) or (ii) after an Event of Default has occurred and is continuing and the Administrative Agent so elects or the Required Lenders so direct, shall be applied ratably first, to pay any fees, indemnities, or expense reimbursements including amounts then due to the Administrative Agent and any Issuing Bank from the Borrower (other than in connection with Swap Obligations and Banking Services Obligations), second, to pay any fees or expense reimbursements then due to the Lenders from the Borrower (other than in connection with Swap Obligations and Banking Services Obligations), third, to pay interest then due and payable on the Loans and the Letters of Credit ratably, fourth, to prepay principal on the Revolving Loans and unreimbursed LC Disbursements ratably, to pay an amount to the Administrative Agent equal to the aggregate undrawn face amount of all outstanding Letters of Credit and the aggregate amount of any unpaid LC Disbursements, to be held as Cash Collateral for such Obligations and to pay any amounts owing with respect to Swap Obligations (all such amounts under this "fourth" item being applied ratably in accordance with all such amounts due), fifth, to prepay principal on the DIP Term Loans ratably, sixth, to the payment of any other Secured Obligation due to the Administrative Agent or any Lender (or its Affiliate) by the Borrower or any Loan Party (other than Banking Services Obligations arising with respect to Non-Lender Banking Services), seventh, to the payment of all Banking Services Obligations arising in connection with Non-Lender Banking Services and eighth, to the payment of the surplus, if any, to whoever may be lawfully entitled to receive such surplus. Notwithstanding the foregoing, amounts received from any Loan Party shall not be applied to any Excluded Swap Obligation of such Loan Party. Notwithstanding anything to the contrary contained in this Agreement, unless so directed by the Borrower, or unless a Default is in existence, none of the Administrative Agent or any Lender shall apply any payment which it receives to any LIBOR Loan, except (a) on the expiration date of the Interest Period applicable to any such LIBOR Loan or (b) in the event, and only to the extent, that there are no outstanding ABR Loans of the same Class and, in any event, the Borrower shall pay the break funding payment required in accordance with Section 2.16. The Administrative Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Secured Obligations.

(c) If any Lender shall, by exercising any right of set off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Revolving Loans or participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and participations in LC Disbursements

and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans and participations in LC Disbursements of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans and participations in LC Disbursements; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Banks hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Banks, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or each Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.05(b), 2.06(d) or (e), 2.07(b), 2.18(c) or 9.03(c), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender and for the benefit of the Administrative Agent or the applicable Issuing Bank to satisfy such Lender's obligations to it under such Section until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account over which the Administrative Agent shall have exclusive control as Cash Collateral for, and application to, any future funding obligations of such Lender under any such Section; in the case of each of clauses (i) and (ii) above, in any order as determined by the Administrative Agent in its discretion.

SECTION 2.19. Mitigation Obligations. If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount or make any indemnity payment to any Lender or any Governmental Authority for the account of any Lender pursuant to

Section 2.17, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as the case may be, in the future and (ii) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be materially disadvantageous to such Lender (and the Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment).

SECTION 2.20. Departing Lenders; Replacement of Lenders.

(a) In addition to any rights and remedies that may be available to the Borrower under this Agreement or applicable law, if any Lender (x) shall become affected by any of the changes or events described in Sections 2.15 or 2.17 and the Borrower is required to pay additional amounts or make indemnity payments with respect to the Lender thereunder, (y) becomes a Defaulting Lender or (z) has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of Section 9.02 or any other provision of any Loan Document requires the consent of all affected Lenders and with respect to which the Required Lenders shall have granted their consent (any such Lender being hereinafter referred to as a "Departing Lender"), then in such case, the Borrower may, at its sole expense and effort, upon notice to the Administrative Agent and such Departing Lender, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 9.04), all of its interests, rights (other than its existing rights to payments pursuant to Sections 2.15 and 2.17) and obligations under this Agreement and the related Loan Documents to an any Person other than an Ineligible Institution that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment) (a "Replacement Lender"); provided, that

(i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 9.04(b)(ii)(A);

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and LC Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with applicable Laws; and

(v) in the case of an assignment resulting from clause (z) of this Section 2.20(a), the applicable assignee shall have consented to the applicable amendment, waiver or consent.

(b) Upon any assignment by any Lender pursuant to this Section 2.20 becoming effective, the Replacement Lender shall thereupon be deemed to be a "Lender" for all purposes of this Agreement (unless such Replacement Lender was, itself, a Lender prior thereto) and such Departing Lender shall thereupon cease to be a "Lender" for all purposes of this Agreement and shall have no further rights or obligations hereunder (other than pursuant to Section 2.15 or 2.17 and Section 9.03) while such Departing Lender was a Lender.

(c) Notwithstanding any Departing Lender's failure or refusal to assign its rights, obligations, Loans and Commitments under this Section 2.20, the Departing Lender shall cease to be a "Lender" for all purposes of this Agreement and the Replacement Lender shall be substituted therefor upon payment to the Departing Lender by the Replacement Lender of all amounts set forth in this Section 2.20 without any further action of the Departing Lender.

(d) Notwithstanding anything in this Section to the contrary, (i) any Lender that acts as an Issuing Bank may not be replaced hereunder at any time it has any Letter of Credit outstanding hereunder unless arrangements satisfactory to such Lender (including the furnishing of a backstop standby letter of credit in form and substance, and issued by an issuer, reasonably satisfactory to such Issuing Bank or the depositing of cash collateral into a cash collateral account in amounts and pursuant to arrangements reasonably satisfactory to such Issuing Bank) have been made with respect to such outstanding Letter of Credit and (ii) the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with the terms of Article VIII.

SECTION 2.21. Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders, Super-Majority Required Lenders and Section 9.02(b).

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 9.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Bank hereunder; third, to Cash Collateralize the Issuing Banks' Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.22; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this

Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the Issuing Banks' future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.22; sixth, to the payment of any amounts owing to the Lenders or the Issuing Banks as a result of any judgment of a court of competent jurisdiction obtained by any Lender or the Issuing Banks against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or LC Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and LC Disbursements owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Disbursements owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in Letters of Credit are held by the Lenders pro rata in accordance with the Commitments without giving effect to clause (iv) below. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Commitment and Letter of Credit Fees.

(A) No Defaulting Lender shall be entitled to receive any commitment fee due under Section 2.12(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive fees with respect to Letters of Credit due under Section 2.12(b) for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Revolving Credit Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.22.

(C) With respect to any fees not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in

Letters of Credit that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to each Issuing Bank, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Bank's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in Letters of Credit shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Revolving Credit Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. Subject to Section 9.20, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, Cash Collateralize the Issuing Banks' Fronting Exposure in accordance with the procedures set forth in Section 2.22.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent and each Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held pro rata by the Lenders in accordance with the Commitments (without giving effect to paragraph (a)(iv) above), whereupon, such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) New Letters of Credit. So long as any Lender is a Defaulting Lender, no Issuing Bank shall be required to issue, extend, increase, reinstate or renew any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

SECTION 2.22. Cash Collateral.

(a) Obligation to Cash Collateralize. At any time that there shall exist a Defaulting Lender, within one Business Day following the written request of the Administrative

Agent or any Issuing Bank (with a copy to the Administrative Agent), the Borrower shall Cash Collateralize the Issuing Banks' Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.21(a)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the 105% of the Fronting Exposure of the Issuing Bank.

(b) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the Issuing Banks, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lender's obligation to fund participations in respect of Letters of Credit, to be applied pursuant to clause (c) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent and the Issuing Banks as herein provided, or that the total amount of such Cash Collateral is less than the 105% of the Fronting Exposure of the Issuing Bank, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section or Section 2.21 in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of Letters of Credit (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce any Issuing Bank's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the Administrative Agent and each Issuing Bank that there exists excess Cash Collateral; provided that, subject to Section 2.21 the Person providing Cash Collateral and each Issuing Bank may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations and; provided further that to the extent that such Cash Collateral was provided by the Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

ARTICLE III

Representations and Warranties

The Borrower represents and warrants to the Administrative Agent, the Issuing Bank and the Lenders that:

SECTION 3.01. Organization; Powers; Subsidiaries. Each of the Borrower and its Restricted Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and, subject to the entry of the Interim Order (or the Final Order, when entered), has all requisite power and authority to carry on its business as now

conducted, execute, deliver and perform its obligations under the Loan Documents to which it is a party, and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required. Schedule 3.01 sets forth (a) a correct and complete list of the name and relationship to the Borrower of each and all of the Borrower's Subsidiaries, (b) a true and complete listing of each class of each of the Restricted Subsidiaries' authorized Equity Interests, of which all of such issued shares are validly issued, outstanding, fully paid and non-assessable, and owned beneficially and of record by the Persons identified on Schedule 3.01, and (c) the type of entity of the Borrower and each of its Subsidiaries. All of the issued and outstanding Equity Interests owned by any Loan Party have been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and issued and are fully paid and non-assessable.

SECTION 3.02. Authorization; Enforceability. Subject to entry and the terms of the Interim Order (or the Final Order, when applicable), the Transactions are within each Loan Party's corporate or limited liability company powers, will not contravene the terms of any Loan Party's Organization Documents and have been duly authorized by all necessary corporate, limited liability company and, if required, stockholder action. Subject to entry and the terms of the Interim Order (or the Final Order, when applicable), the Loan Documents to which each Loan Party is a party have been duly executed and delivered by such Loan Party and constitute a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable Debtor Relief Laws and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at Law.

SECTION 3.03. Governmental Approvals; No Conflicts. Subject to entry and the terms of the Interim Order (or the Final Order, when applicable), the Transactions (a) do not require any material consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except for filings necessary to perfect Liens created pursuant to the Loan Documents and the filing on or about the Effective Date of one or more current reports on Form 8-K with respect to the Transactions, (b) will not violate any material Law applicable to the Borrower or any of its Restricted Subsidiaries, (c) except as could not reasonably be expected to have a Material Adverse Effect, will not violate or result in a default under any indenture, agreement or other instrument binding upon the Borrower or any of its Restricted Subsidiaries or its assets (except those as to which waivers or consents have been obtained), and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower or any of its Restricted Subsidiaries, except Liens created pursuant to the Loan Documents.

SECTION 3.04. Financial Condition; No Material Adverse Change.

(a) The Borrower has heretofore furnished to the Lenders its (i) consolidated balance sheet and statements of income, stockholders equity and cash flows as of and for the fiscal years ended December 31, 2017 and December 31, 2018, reported on by Deloitte & Touche LLP, independent public accountants, and (ii) unaudited consolidated balance sheet and related statements of income, stockholders' equity and cash flows as of and for the fiscal quarters ended March 31, 2019 and June 30, 2019. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its consolidated Subsidiaries as of such date in accordance with GAAP.

(b) Since Petition Date, there has been no development or event which has had or could reasonably be expected to have a Material Adverse Effect.

SECTION 3.05. Properties.

(a) Each of the Borrower and its Restricted Subsidiaries has (i) good title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (iii) marketable title to (in the case of all other personal property), all of their respective assets, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect. All such assets are free and clear of Liens except for Permitted Liens.

(b) The Borrower and each of its Restricted Subsidiaries owns, has the legal right to use or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property necessary to its business as currently conducted, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect, and, to the knowledge of the Borrower or any of its Restricted Subsidiaries, the use thereof by the Borrower and its Restricted Subsidiaries does not infringe upon the rights of any other Person except for such infringements that, in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

SECTION 3.06. Litigation and Environmental Matters.

(a) Other than the Bankruptcy Cases, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any of its Restricted Subsidiaries (i) as to which there is a reasonable probability of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve this Agreement or the Transactions.

(b) Except for any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, (i) none of the Borrower or any of its Restricted Subsidiaries has received any written or actual notice of any claim with respect to any Environmental Liability or has knowledge or reason to believe that any such notice will be received or is threatened and (ii) none of the Borrower or any of its Restricted Subsidiaries (1) has, at any time during the last five (5) years, failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law or (2) has become subject to any Environmental Liability.

SECTION 3.07. Compliance with Laws and Agreements. Each of the Borrower and its Restricted Subsidiaries is in compliance with all Laws applicable to it or its property, and all orders, writs, injunctions, and decrees of any Governmental Authority applicable to it or its property, all Material Indebtedness and all other indentures, agreements and other instruments binding upon it or its property, in each case except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.08. Investment Company Status. Neither the Borrower nor any of its Subsidiary Guarantors is required to register as an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

SECTION 3.09. Taxes. Each of the Borrower and its Restricted Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Restricted Subsidiary, as applicable, has set aside on its books adequate reserves to the extent required by GAAP or (b) to the extent that the failure to do so could not be expected to result in a Material Adverse Effect. There is no tax assessment proposed in writing, or to the knowledge of any Loan party, threatened, against the Borrower or any Restricted Subsidiary that could, if made, be reasonably expected to have a Material Adverse Effect. Neither the Borrower or any Restricted Subsidiary thereof is party to any tax sharing agreement.

SECTION 3.10. ERISA. Except as set forth on Schedule 3.10(a), neither Borrower, any Restricted Subsidiary nor any of their respective ERISA Affiliates is party to, contributes to, is obligated to contribute to, or otherwise has any obligation or is bound by (a) any Multiemployer Plan or (b) any Plan subject to Section 433 of the Code. Except as set forth on Schedule 3.10(b), no ERISA Event has occurred within the previous five (5) years or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. Except as set forth on Schedule 3.10(b), neither the Borrower, any Restricted Subsidiary nor any of their respective ERISA Affiliates reasonably anticipates that any Material Adverse Effect will arise from any increase either in the annual financial expense for any Plan or Multiemployer Plan (determined in accordance with Statement of Financial Accounting Standards No. 87) or in the annual minimum funding contribution for any Plan or Multiemployer Plan (determined in accordance with the assumptions used for funding such Plan or Multiemployer Plan pursuant to Section 412, 430, 431 or 432 of the Code), and neither the Borrower, any Restricted Subsidiary nor any of their respective ERISA Affiliates is aware of any facts that could form the basis for materially changing the method of determining the actuarial assumptions, interest rates, or other calculations associated with any Plan or Multiemployer Plan. None of the assets of the Borrower, any Restricted Subsidiary or any of their respective ERISA Affiliates is the subject of any Lien arising under Section 303(k) of ERISA or Section 430(k) of the Code, and there are no facts which could be expected to give rise to such a Lien. Except as set forth on Schedule 3.10, as of the Effective Date, the present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan. Except as set forth on Schedule 3.10, as of the Effective Date, no Multiemployer Plan is subject to the additional funding rules of Section 432 of the Code for multiemployer plans that are in endangered or critical status. As of the Effective Date, no Loan Party is nor will be (a) an employee benefit plan subject to ERISA, (b) a plan or account subject to Section 4975 of the Code; (c) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Code; or (d) a "governmental plan" within the meaning of ERISA.

SECTION 3.11. Disclosure. All financial projections and forecasts delivered to the Administrative Agent and the Lenders in connection with this Agreement have been prepared by the

Borrower in good faith based upon assumptions believed by the Borrower to be reasonable at the time made available to the Administrative Agent and the Lenders, it being recognized by the Administrative Agent and the Lenders that such projections are as to future events and are not to be viewed as facts and are subject to significant uncertainties and contingencies, many of which are beyond the Borrower's control, and that actual results during the period or periods covered by such projections may differ significantly from the projected results and such differences may be material. There is no fact now known to the Borrower or any of its Subsidiaries which has, or could reasonably be expected to have, a Material Adverse Effect which fact has not been set forth herein or in the periodic and other reports filed by the Borrower or any Subsidiary with the SEC, in the financial statements of the Borrower and its Subsidiaries furnished to the Administrative Agent and/or the Lenders, or in any certificate, opinion or other written statement made or furnished by any Loan Party to the Administrative Agent and/or the Lenders. None of the reports, financial statements, certificates or other information furnished by or on behalf of the Borrower to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document (as modified or supplemented by other information so furnished) or delivered hereunder contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time delivered. Notwithstanding anything contained in this Section 3.11, the parties hereto acknowledge and agree that uncertainty is inherent in any forecasts and projections and that such forecasts and projections (including the Agreed Budget and the Agreed Capital Expenditures Budget) do not constitute guarantees of future performance. The information included in the Beneficial Ownership Certification is true and correct in all material respects.

SECTION 3.12. Use of Proceeds. The proceeds of the Loans have been (or will be, as the case may be) used only as permitted under Section 5.08.

SECTION 3.13. Intentionally Omitted.

SECTION 3.14. Labor Disputes. As of the Effective Date, there are no labor controversies, strikes, lockouts or slowdowns pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any of its Restricted Subsidiaries (i) which could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, or (ii) that involve this Agreement or the Transactions.

SECTION 3.15. No Default. No Default has occurred and is continuing.

SECTION 3.16. Federal Reserve Regulations. No part of the proceeds of any Loan have been or will be used, whether directly or indirectly, for any purpose that entails a violation of any of the regulations of the Board, including Regulations T, U, and X.

SECTION 3.17. Business Locations; Taxpayer Identification Number. Set forth on Schedule 3.17(a) is a list of all locations where any tangible personal property of any Loan Party is located as of the Effective Date. Set forth on Schedule 3.17(b) is the chief executive office, exact legal name, U.S. tax payer identification number and organizational identification number of each Loan Party as of the Effective Date.

SECTION 3.18. Sanctions; Anti-Corruption.

(a) Neither the Borrower nor any of its Subsidiaries, nor, to the knowledge of the Borrower and its Subsidiaries, any director, officer or employee thereof, is an individual or entity that is, or is owned or controlled by any Persons that are, the subject or target of any Sanctions, or located, organized or resident in a Designated Jurisdiction. No Loan or Letters of Credit, nor the proceeds from any Loan or Letter of Credit, has been or will be used, directly or indirectly, to lend, contribute, provide or has otherwise made available to fund any activity or business of any Person who is the target of any Sanctions, or in any other manner that will result in any material violation by any Lender, the Administrative Agent, the Arrangers, any Issuing Bank, or any Participant of Sanctions.

(b) The Borrower and its Restricted Subsidiaries have instituted and maintained policies and procedures reasonably designed to promote and achieve material compliance by the Loan Parties, the Restricted Subsidiaries and their respective directors, officers and employees (in each case solely to the extent of their course of employment) with the United States Foreign Corrupt Practices Act of 1977 and other similar anti-bribery, anti-corruption and anti-money laundering legislation, rules or regulations, including those of any other jurisdictions applicable to Borrower or any of its Restricted Subsidiaries (collectively, "Anti-Corruption Laws"). The Borrower, its Restricted Subsidiaries and, to the knowledge of the Borrower and its Restricted Subsidiaries, their respective directors, officers and employees (in each case solely to the extent of their course of employment by the Borrower and its Restricted Subsidiaries), are in compliance with all applicable Sanctions and Anti-Corruption Laws in all material respects.

SECTION 3.19. Real Property. Set forth on Part 1 of Schedule 3.19 is a complete and correct list, as of the Effective Date, of all of the real property owned by the Borrower or any Restricted Subsidiary, indicating in each case the use of the respective property, the identity of the owner, and the location of the respective property. To the knowledge of the Borrower, (x) as of the Effective Date, except as set forth on Part 2 of Schedule 3.19, no Initial Borrowing Base Property owned by a Loan Party has Improvements located in a Flood Zone and in which flood insurance has been made available under the National Flood Insurance Program and (y) no Eligible Property owned by a Loan Party and included in the calculation of the Borrowing Base set forth in the most recent Borrowing Base Certificate delivered pursuant to Section 5.01(f) has Improvements located in a Flood Zone and in which flood insurance has been made available under the National Flood Insurance Program. Each Loan Party maintains flood insurance for each of the DIP Collateral Real Properties (or the portion of such properties that contains Improvements located in a Flood Zone), (a) in an amount equal to the lesser of (i) the fair market value of each such property or (ii) the maximum available insurance amount under the National Flood Insurance Program and (b) is otherwise in compliance with the Flood Insurance Laws.

SECTION 3.20. Insurance. The properties of the Loan Parties and their Restricted Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Loan Party or the applicable Restricted Subsidiary operates, including the use of self-insurance plans.

The property and general liability insurance coverage of the Loan Parties as in effect on the Effective Date is outlined as to carrier, policy number, expiration date, type and amount on Schedule 3.20.

SECTION 3.21. EEA Financial Institutions. No Loan Party is an EEA Financial Institution.

SECTION 3.22. Security and Priority. (a) Subject to entry and the terms of the Interim Order (or the Final Order, when applicable), all of the Obligations of each Loan Party are authorized by each Order and shall, subject to the Carve-Out, at all times:

(i) pursuant to section 364(c)(1) of the Bankruptcy Code, constitute joint and several allowed superpriority administrative expense claims against the Loan Parties (without the need to file any proof of claim) with priority over any and all claims against the Loan Parties (other than claims in connection with the Permitted Receivables Financing), now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 363, 364(c)(1), 365, 503(a), 503(b), 506(c) (upon entry of the Final Order), 507(a), 507(b), 507(d), 726, 1113 or 1114 of the Bankruptcy Code (including any adequate protection obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims (the "DIP Super-Priority Claims") shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which DIP Super-Priority Claims shall be payable from and have recourse to all pre- and post-petition assets and property, whether existing on the Petition Date or thereafter acquired, of the Loan Parties and all proceeds thereof (excluding Avoidance Actions but including, effective upon entry of the Final Order and to the extent provided for therein, the proceeds of any Avoidance Actions), subject only to the Liens thereon to the extent set forth in the Orders and the Carve-Out. The DIP Super-Priority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim Order (or, after entry thereof, the Final Order) or any provision thereof is vacated, reversed, amended or otherwise modified, on appeal or otherwise;

(ii) pursuant to section 361, 362, 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code and the Collateral Documents, be secured by a valid, binding, perfected, continuing, enforceable, non-avoidable first priority security interest in and Lien on the Collateral of each Loan Party (subject to the Carve-Out and the Liens permitted by Section 6.02) to the extent such Collateral is not subject to valid, enforceable, perfected and non-avoidable Liens as of the Petition Date; and

(iii) pursuant to sections 364(c)(3) and 364(d)(1) of the Bankruptcy Code and the Collateral Documents, be secured by a valid, binding, perfected, continuing, enforceable, non-avoidable security interest and Lien on all other Collateral of each Loan Party (excluding Avoidance Actions, but, upon entry of the Final Order, including proceeds of Avoidance Actions), which security interests and Liens on such Collateral shall in each case be (i) senior to and prime all other Liens and security interests (other than liens and security interests identified in subclause (ii) below) in the Loan Parties' Collateral, (ii) junior only to any valid, binding, enforceable,

perfected and unavoidable Liens in favor of third parties that were (x) in existence immediately prior to the Petition Date, or (y) perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, but in each case, solely to the extent that such Liens and security interests of such third parties are, as of the Petition Date, senior to the Prepetition Liens (as defined in the Orders) and (iii) subject to the Carve-Out and the Liens permitted by Section 6.02.

(b) Upon (and at all times after) the entry, and subject to the terms, of each of the Interim Order and the Final Order, each such Order shall is effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid, enforceable and perfected security interest in the Collateral of the Loan Parties and proceeds thereof.

(c) Upon (and at all times after) the entry, and subject to the terms, of each of the Interim Order and the Final Order, each such Order and the Loan Documents is sufficient to provide the DIP Super-Priority Claims and security interests in and Liens on the Collateral of the Loan Parties described in, and with the priority provided in, Section 3.22(a) hereof.

SECTION 3.23. Orders. (a) The Loan Parties are in compliance in all material respects with the terms and conditions of the Interim Order or the Final Order, as applicable.

(b) The Interim Order, or at all times after the Final Order Date, the Final Order, is in full force and effect and has not been vacated, reversed, terminated, or rescinded or, without the prior written consent of the Administrative Agent and the Lenders, given in their respective sole discretion, amended or modified.

(c) No appeal of the Order shall have been filed, or, if the Order is the subject of a pending appeal in any respect, none of such Order, the making of the Loans or the performance by Borrower or any other Loan Party of any of its obligations under any of the Loan Documents shall be the subject of a presently effective stay pending appeal. The Borrower, the Administrative Agent and the Lenders shall be entitled to rely in good faith upon the Order, notwithstanding objection thereto or appeal therefrom by any interested party. The Borrower, the Administrative Agent, the Lenders and the Issuing Bank shall be permitted and required to perform their respective obligations in compliance with this Agreement notwithstanding any such objection or appeal unless the relevant Order has been stayed by a court of competent jurisdiction.

SECTION 3.24. Bankruptcy Cases. (a) The Bankruptcy Cases were commenced on the Petition Date in accordance with applicable Laws and proper notice thereof was given for (i) the motion seeking approval of the Loan Documents and the Interim Order and Final Order, (ii) the hearing for the entry of the Interim Order and (iii) following the entry of the Interim Order, the hearing for entry of the Final Order. The Borrower and the other Loan Parties shall give, on a timely basis as specified in the Interim Order or the Final Order, as applicable, all notices required to be given as specified in the Interim Order or Final Order, as applicable.

(b) Notwithstanding the provisions of section 362 of the Bankruptcy Code, and subject to the provisions of Article VII and the applicable provisions of the Interim Order or the Final Order, as the case may be (and subject to any notice required hereunder or thereunder), upon the maturity (whether by acceleration or otherwise) of any of the Obligations, the Administrative

Agent and the Lenders shall be entitled to immediate payment of the Obligations and to enforce the remedies provided for hereunder, under the Order or under applicable Laws, without further motion or application to, or order from, the Bankruptcy Court.

(c) No order has been entered in any of the Bankruptcy Cases (i) for the appointment of a Chapter 11 trustee, (ii) for the appointment of an examiner (other than a fee examiner) or receiver having expanded powers (beyond those set forth under Sections 1106(a)(3) and (4) of the Bankruptcy Code) under section 1104 of the Bankruptcy Code or (iii) to convert any of the Bankruptcy Cases to a case under Chapter 7 of the Bankruptcy Code or to dismiss any of the Bankruptcy Cases.

SECTION 3.25. Agreed Budget and Agreed Capital Expenditures Budget. The initial Agreed Budget attached to this Agreement as Exhibit B and the initial Agreed Capital Expenditures Budget, which were each furnished to the Administrative Agent and the Lenders on or prior to the Effective Date, and each subsequent Agreed Budget or Agreed Capital Expenditures Budget delivered in accordance with Section 5.12, has been prepared in good faith, with due care and based upon assumptions the Borrower believes to be reasonable assumptions on the date of delivery of the then-applicable Agreed Budget or Agreed Capital Expenditures Budget. To the knowledge of the Borrower, as of the Effective Date, no facts exist that (individually or in the aggregate) could reasonably be expected to result in any material change in the Agreed Budget or the Agreed Capital Expenditures Budget. The Borrower shall hereafter deliver to the Administrative Agent and the Lenders updates to the Agreed Budget or Agreed Capital Expenditures Budget in accordance with Section 5.12.

ARTICLE IV

Conditions

SECTION 4.01. Effective Date. The obligations of the Lenders to make Loans and of Issuing Bank to issue Letters of Credit hereunder shall not become effective until the date on which the Administrative Agent shall have received each of the following, in each case reasonably satisfactory to the Administrative Agent (and to the extent specified below, to each Lender) in form and substance:

(a) Executed Counterparts. From each party thereto, a counterpart of this Agreement and the other Loan Documents to be executed and delivered as of the Effective Date, signed and delivered on behalf of such party.

(b) [Reserved].

(c) Corporate Documents. Such documents and certificates as the Administrative Agent may reasonably request relating to the organization, existence and good standing of each Loan Party, the authorization of the Transactions, the identity, authority and capacity of each Responsible Officer authorized to act on behalf of a Loan Party in connection with the Loan Documents and any other legal matters relating to the Loan Party, this Agreement, the other Loan Documents or the Transactions.

(d) Collateral Documents.

(A) The Administrative Agent shall have received the Security Agreement, duly executed and delivered by the Loan Parties and the Administrative Agent. In addition, Administrative Agent shall have received evidence that all filings, registrations and recordings have been made in the appropriate governmental offices, and all other action has been taken, that Administrative Agent deems necessary or desirable in order to create, in favor of Administrative Agent on behalf of the Holders of Secured Obligations, a perfected first-priority Lien on the Collateral described in the Interim Order and/or the Security Agreement, subject to no other Liens except for the Carve-Out and Permitted Liens. Without limiting the foregoing, each Loan Party shall deliver to the Administrative Agent: (x) all certificates, if any, representing the outstanding Equity Interests of each Pledge Subsidiary, promissory notes, if any, evidencing all Indebtedness owed to such Loan Party as of the Effective Date to the extent required to be pledged pursuant to the Security Agreement, and stock powers and instruments of transfer, endorsed in blank, with respect to such stock certificates and promissory notes; and (y) all documentation, including UCC financing statements, required by law or reasonably requested by the Administrative Agent to be filed, registered or recorded to create or perfect the Liens intended to be created under the Interim Order and/or the Security Agreement.

(B) The Collateral Documents and the Interim Order, upon entry thereof, shall be effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, legal, valid, enforceable, perfected and unavoidable Liens on and security interests in the Collateral as set forth in Section 3.22 and subject in all respects to Section 9.23. The Loan Parties shall have delivered UCC financing statements, in suitable form for filing, and shall have made arrangements for the filing thereof that are reasonably acceptable to the Administrative Agent. For the avoidance of doubt, the Interim Order shall deem any and all Liens granted by the Loan Parties to be perfected.

(e) Insurance. Subject to Section 5.17, evidence that all insurance required to be maintained under this Agreement and the Collateral Documents has been obtained and is in effect, together with the certificates of insurance, naming Administrative Agent, on behalf of the Lenders and any Issuing Bank, as an additional insured and a lender's loss payee, as the case may be, under all insurance policies maintained with respect to the assets and properties of the Loan Parties that constitute Collateral and all endorsements thereto required under this Agreement and the Collateral Documents. The Administrative Agent and Lenders shall have received Flood Certificates for each DIP Collateral Real Property described in clause (i) of the definition thereof and to the extent applicable, signed Borrower notices and flood insurance required to be maintained under this Agreement.

(f) Borrowing Base Certificate. The Administrative Agent and the Lenders shall have received on or prior to the Effective Date a Borrowing Base Certificate which calculates the Borrowing Base as of Effective Date.

(g) Agreed Budget. The Administrative Agent and the Lenders shall have received a copy of the Agreed Budget, certified by a Responsible Officer of the Borrower, and in form and substance satisfactory to the Administrative Agent and the Lenders.

(h) Amendment and Restatement of Pre-Petition Receivables Financing Agreement. The Pre-Petition Receivables Financing Agreement has been amended and restated pursuant to the Permitted Receivables Financing and documentation relating thereto, in each case on terms and in form and substance reasonably acceptable to the Administrative Agent and the Required Lenders and the Administrative Agent shall have received satisfactory evidence that such amendment and restatement has occurred and copies of all amendments and restatements of, or amendments to, any material documents related to the Permitted Receivables Financing, in each case together with all exhibits and schedules thereto, in connection therewith certified by a Responsible Officer of Borrower.

(i) Financial Compliance. The financial statements referenced in Section 3.04 shall have been delivered to the Administrative Agent and the Lenders (and, by its execution of this Agreement, each of the Administrative Agent and each Lender acknowledges receipt of such financial statements for the fiscal years ended December 31, 2017 and December 31, 2018, and the fiscal quarters ended March 31, 2019 and June 30, 2019).

(j) Officer's Certificate. A certificate of a Responsible Officer of the Borrower, dated the Effective Date, certifying (i) either (x) evidence that all authorizations or approvals of any Governmental Authority and approvals or consents of any other Person, required in connection with the Transactions shall have been obtained, or (y) that no such authorizations, approvals, and consents are so required, and (ii) compliance with the conditions set forth in clauses (a), (b), (c), (e), (f), (g), (h), (i) and (j) of Section 4.02.

(k) [Reserved].

(l) Fees. Evidence that the Borrower shall have paid all accrued fees and expenses of the Administrative Agent and the Lenders as required to be paid on the Effective Date under the terms of the Agent Fee Letter or any other letter agreements between the Borrower and the Administrative Agent, including (unless waived by the Administrative Agent) the fees, charges and disbursements of White & Case LLP, counsel to the Administrative Agent, FTI Consulting, as financial adviser, and counsel to each of the Lenders, in each case, in connection with the negotiation, preparation, execution, and delivery of the Loan Documents (directly to such counsel if requested by Administrative Agent or the applicable Lender) to the extent invoiced prior to the Effective Date (or, with respect to counsel of any Lender, at least three (3) Business Days prior to the Effective Date), plus such additional amounts of such fees, charges, and disbursements as shall constitute its reasonable estimate of such fees, charges, and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent).

(m) Know Your Customer Requirements. (i) All documents, certificates, and other information reasonably requested in writing (which may be via e-mail) by each Lender pursuant to Section 9.14 and (ii) a Beneficial Ownership Certification in relation to the Borrower (with applicable exemption noted thereon), in each case prior to the Effective Date .

(n) Financing Orders. The Interim Order shall have been entered by the Bankruptcy Court and shall be in full force and effect and shall not have been (i) stayed, vacated,

reversed or rescinded, and any appeal of such order shall not have been timely filed and a stay of such order pending appeal shall not be presently effective or (ii) without the prior written consent of the Administrative Agent and the Required Lenders (given in their sole discretion), revised, amended or modified. The Debtors shall be in compliance in all respects with the Interim Order.

(o) Other Bankruptcy Court Orders. The Cash Management Order and all other "first day orders" or other orders to be entered on or prior to the Effective Date (including, without limitation, an order of the Bankruptcy Court approving the continuation of the Permitted Receivables Financing), including all payments approved by the Bankruptcy Court in any such orders, shall be reasonably satisfactory in form and substance to the Administrative Agent and the Required Lenders in all respects, shall have been entered by the Bankruptcy Court, and shall not have been (i) stayed, vacated, reversed or rescinded or (ii) without the prior written consent of the Administrative Agent and the Required Lenders, revised, amended or modified (not to be unreasonably withheld).

The Administrative Agent shall notify the Borrower, the Issuing Bank, and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received written notice from such Lender prior to the proposed Effective Date specifying its objection thereto.

SECTION 4.02. Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing (other than the DIP Term Loans), and of any Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of the Borrower set forth in this Agreement shall be true and correct in all material respects (or in all respects if the applicable representation or warranty is qualified by Material Adverse Effect or materiality) on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable (provided that to the extent any such representation or warranty expressly relates to an earlier date, such representation or warranty shall instead be true and correct in all material respects (or in all respects if the applicable representation or warranty is qualified by Material Adverse Effect or materiality) as of such earlier date).

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default or Event of Default shall have occurred and be continuing.

(c) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, the total Revolving Exposures of all Lenders shall not exceed the Maximum Available Amount.

(d) The Administrative Agent and, if applicable, an Issuing Bank shall have received a Borrowing Request in accordance with the requirements hereof, which Borrowing

Request or notice shall be consistent with, and for a purpose permitted under, the Agreed Budget in accordance with Section 5.12.

(e) No injunction, writ, restraining order, or other order of any nature (whether temporary, preliminary or permanent) restricting or prohibiting, directly or indirectly, any Borrowing or issuance, amendment, extension or renewal of a Letter of Credit shall have been issued and remain in force by any Governmental Authority (including, without limitation, the Bankruptcy Court) against the Borrower, any other Loan Party, any Lender, the applicable Issuing Bank or any of their respective Affiliates, and such Borrowing or issuance, amendment, extension or renewal of a Letter of Credit shall not violate any requirement of applicable Laws.

(f) Since the Petition Date, no Material Adverse Effect shall have occurred.

(g) The Interim Order and, following entry of the Final Order, the Final Order, shall be in full force and effect, and shall not have been (x) stayed, vacated, reversed or rescinded, and any appeal of such Order shall not have been timely filed or, if such Order is the subject of a pending appeal in any respect, none of such Order, the making of the Loans, the issuance of Letters of Credit or the performance by Borrower or any other Loan Party of any of its obligations under any of the Loan Documents shall be the subject of a presently effective stay pending appeal, and (y)(A) with respect to the Interim Order, without the prior written consent of the Administrative Agent and the Required Lenders (and each other Lender or percentage of Lenders that would have a right to consent to such modifications in accordance with Section 9.02(b)), given in their sole discretion, revised, amended or modified or (B) with respect to the Final Order, without the prior written consent (not to be unreasonably withheld or delayed) of the Administrative Agent and the Required Lenders (and each other Lender or percentage of Lenders that would have a right to consent to such modifications in accordance with Section 9.02(b)), revised, amended or modified.

(h) [Reserved].

(i) Solely with respect to the issuance, amendment, renewal or extension of any Letter of Credit, (x) at the time of request for issuance, amendment, renewal or extension of such Letter of Credit, and (y) both immediately before and after such issuance, amendment, renewal or extension thereof there shall be no remaining capacity for the issuance of letters of credit under the Permitted Receivables Financing at such time and such Letter of Credit shall not have been requested to replace or backstop or otherwise support obligations owing, or letters of credit issued, under the Permitted Receivables Financing.

(j) Solely with respect to a Borrowing of Revolving Loans, the aggregate amount of the sum of (x) Unrestricted cash and Cash Equivalents owned or held by the Borrower and its Restricted Subsidiaries (for the avoidance of doubt, excluding the Receivables Financing SPCs and/or any not-for-profit Subsidiary) (determined after giving pro forma effect to the making of each such Revolving Loan and the application of proceeds therefrom and from any other Unrestricted cash or Cash Equivalents on hand (to the extent such proceeds and/or other Unrestricted cash or Cash Equivalents are actually utilized by the Borrower and/or any such Restricted Subsidiary on the date of incurrence of such Revolving Loan for a permitted purpose under this Agreement other than an investment in cash or Cash Equivalents)), less (y) the Budgeted

Operating Disbursements Amount set forth in the then current Agreed Budget for the immediately succeeding week less (z) the Carve-Out, shall not exceed $30,000,000 (for purposes of Unrestricted cash denominated in a currency other than Dollars, taking the Dollar equivalent of such Unrestricted cash as determined on the intended date of borrowing of such Revolving Loan).

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a) through (k) of this Section 4.02.

SECTION 4.03. DIP Term Loan Borrowing. Notwithstanding anything herein to the contrary, to the extent the Effective Date shall have occurred on or prior to such date, the DIP Term Loans shall be (and be deemed to have been) made immediately and automatically upon entry of the Final DIP Order (and subject to the terms thereof), without the need for the taking of any action by any other Person or the satisfaction of any other conditions.

ARTICLE V

Affirmative Covenants

Until the Secured Obligations have been Fully Satisfied, the Borrower covenants and agrees with the Administrative Agent, the Issuing Banks and the Lenders that:

SECTION 5.01. Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent for delivery to each Lender:

(a) by no later than the earlier of the date on which such financial statements are required to be filed by the Borrower with the SEC (without giving effect to any extensions thereof) and the date which occurs 90 days after the end of each fiscal year of the Borrower, (i) its audited consolidated balance sheet and related statements of income, stockholders' equity and cash flows as of the end of and for such year (including, for the avoidance of doubt, for the fiscal year ending December 31, 2019), setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent public accountants of recognized national standing to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP, accompanied by any management letter prepared by said accountants and (ii) consolidated balance sheet and related statements of income and cash flows of the Borrower and its Restricted Subsidiaries, in each case as at the end of such fiscal year, setting forth in comparative form the corresponding consolidated figures for the preceding fiscal year, accompanied by a certificate of a Financial Officer of the Borrower, which certificate shall state that such financial statements fairly present in all material respects the financial condition and results of operations of the Borrower and its Restricted Subsidiaries, in accordance with GAAP, as at the end of and for such period (subject to normal year-end audit adjustments);

(b) (i) by no later than the earlier of the date on which such financial statements are required to be filed by the Borrower with the SEC (without giving effect to any extensions

thereof) and the date which occurs 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, beginning with the fiscal quarter ending September 30, 2019, the unaudited consolidated balance sheet and related statements of income, stockholders' equity and cash flows for the Borrower and its Restricted Subsidiaries and for the Borrower and its Subsidiaries as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries or the Borrower and its Restricted Subsidiaries in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(ii) by no later than the date which occurs 30 days after the end of each fiscal month of the Borrower, beginning with the fiscal month ending October 31, 2019, the unaudited consolidated balance sheet and related statements of income, stockholders' equity and cash flows for the Borrower and its Restricted Subsidiaries and for the Borrower and its Restricted Subsidiaries as of the end of and for such fiscal month and the then elapsed portion of the fiscal year, (A) including a report of Capital Expenditures for such fiscal month, together with commentary on the variances from the amounts set forth in the Agreed Capital Expenditures Budget for such period, beginning with the fiscal month of November 2019; and (B) setting forth in comparative form the corresponding consolidated figures for the preceding fiscal year, accompanied by a certificate of a Financial Officer of the Borrower, which certificate shall state that such financial statements present the financial condition and results of operations of the Borrower and its Restricted Subsidiaries in a manner consistent with past practice, and subject to normal year-end audit adjustments and the absence of footnotes;

(c) (I) concurrently with any delivery of financial statements under clause (a) or (b)(i) above, a Compliance Certificate executed by a Financial Officer of the Borrower (i) certifying (x) as to whether a Default has occurred and is continuing and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (y) that the Borrower is in compliance with the covenants contained in Section 5.12(c) and (z) that the Borrower and its Restricted Subsidiaries are in compliance with the covenants contained in Article VI and (ii) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate, and (II) no later than (A) for the first eight (8) calendar weeks occurring after the Petition Date, 12:00 p.m. (New York time) on Friday of each calendar week and (B) thereafter, 5:00 p.m. (New York time) on Thursday of each calendar week (or, in each case, if any such day is not a Business Day, the next Business Day) in each case, occurring after the Petition Date, an Agreed Budget Variance Report (which such delivery under this clause (c) may, unless the Administrative Agent requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes) (provided that the first Agreed Budget Variance Report shall be delivered no later than 12:00 p.m. (New York time) on November 29, 2019 for the period through November 22, 2019 and for the Cumulative Period);

(d) promptly after the same become publicly available, to the extent not available by electronic or other readily accessible means, copies of all periodic and other reports, proxy statements and other non-confidential materials filed by the Borrower or any Restricted Subsidiary with the SEC, or with any national securities exchange, or distributed by the Borrower to its shareholders generally, as the case may be;

(e) concurrently with any delivery of financial statements under clause (a) or (b) above, a certificate containing information regarding the amount of all Asset Sales that were made during such prior fiscal year and amounts received in connection with any Recovery Event during such prior fiscal year;

(f) on (i) the Effective Date (after giving effect to any Loans made on such date), (ii) the Final Order Date (after giving effect to the incurrence of the DIP Term Loans hereunder), (iii) each date on which any Asset Sale or Recovery Event occurs with respect to any Eligible Property with a value (as determined by reference to the most recent Borrowing Base Certificate delivered by the Borrower pursuant to this clause (f) as applicable) in excess of $10,000,000 in the aggregate for all such events since the last Borrowing Base Certificate was delivered, (iv) a date within 5 Business Days after each date on which any equipment or real property with a value (as determined by reference to the most recent Borrowing Base Certificate delivered by the Borrower pursuant to this clause (f)) in excess of $10,000,000 in the aggregate for all such equipment and real property since the last Borrowing Base Certificate was delivered that is used in calculating the Borrowing Base no longer qualifies as Eligible Equipment or Eligible Real Property, respectively and (v) each date on which the Borrower elects to include any additional property in the calculation of the Borrowing Base and satisfies the requirements with respect to Eligible Property (each such date, a "Report Date"), a Borrowing Base Certificate prepared as of the applicable Report Date, including a reasonably detailed calculation of the Borrowing Base as of such Report Date, and solely in the case of clause (v) above, together with copies of the Appraisals for all additional Eligible Property included in the calculation of the Borrowing Base;

(g) [reserved];

(h) by no later than 4:00 p.m. (New York time) every Friday (or, if such day is not a Business Day, the next Business Day), a weekly report of aggregate accounts receivable, aggregate bank balances and aggregate one and two day "check float" reports, in each case, of the Borrower and its Restricted Subsidiaries on a consolidating basis;

(i) by no later than 4:00 p.m. (New York time) on December 19, 2019 (but no earlier than December 16, 2019), an updated, modified or supplemented rolling 13-week detailed budget commencing with the following Saturday (with such supporting detail as the Administrative Agent and its financial advisor may request);

(j) as soon as reasonably practicable following receipt of a bona fide written expression of interest with respect to any material Asset Sale that the Borrower determines in good faith is reasonably capable of being consummated, the details thereof; provided that none of the Borrower or any Restricted Subsidiary shall be required to disclose or provide any information (i) that constitutes non-financial trade secrets or non-financial proprietary information of the Borrower

or any of its Subsidiaries or any of their respective customers and/or suppliers, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or any of their respective representatives) is prohibited by any applicable law, (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product or (iv) in respect of which the Borrower or any Restricted Subsidiary owes confidentiality obligations to any third party (provided such confidentiality obligations were not entered into solely in contemplation of the requirements of this Section 5.01(j)); provided, further, that in the event the Borrower does not provide any certificate, report or information requested pursuant to this clause (j) in reliance on the preceding proviso, the Borrower shall provide notice to the Administrative Agent that such certificate, report or information is being withheld and the Borrower shall use commercially reasonable efforts to describe, to the extent both feasible and permitted under applicable law or confidentiality obligations, or without waiving such privilege, as applicable, the applicable certificate, report or information;

(k) as soon as reasonably practicable in advance of filing, copies of all material pleadings, motions and applications to be filed by any of the Loan Parties in the Bankruptcy Cases;

(l) [reserved];

(m) [reserved];

(n) as soon as reasonably practicable following such delivery, all written reports regularly delivered by any of the Loan Parties to any official or unofficial creditors' committee or their respective advisors in the Bankruptcy Cases;

(o) promptly upon the reasonable request of the Administrative Agent, an accounting of all monies deposited in, and the balances in, the Deposit Accounts of the Loan Parties; and

(p) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary as the Administrative Agent or any Lender (through the Administrative Agent) may reasonably request; provided that none of the Borrower or any Restricted Subsidiary shall be required to disclose or provide any information (i) that constitutes non-financial trade secrets or non-financial proprietary information of the Borrower or any of its Subsidiaries or any of their respective customers and/or suppliers, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or any of their respective representatives) is prohibited by any applicable law, (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product or (iv) in respect of which the Borrower or any Restricted Subsidiary owes confidentiality obligations to any third party (provided such confidentiality obligations were not entered into solely in contemplation of the requirements of this Section 5.01(p)); provided, further, that in the event the Borrower does not provide any certificate, report or information requested pursuant to this clause (p) in reliance on the preceding proviso, the Borrower shall provide notice to the Administrative Agent that such certificate, report or information is being withheld and the Borrower shall use commercially reasonable efforts to describe, to the extent both feasible and permitted under applicable law or confidentiality

obligations, or without waiving such privilege, as applicable, the applicable certificate, report or information.

Documents required to be delivered pursuant to Section 5.01(a) or 5.01(b)(i) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at www.deanfoods.com; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third party website or whether sponsored by the Administrative Agent); provided, that (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent upon its request to the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify the Administrative Agent (by facsimile or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining copies of such documents.

SECTION 5.02. Notices of Material Events. The Borrower will furnish to the Administrative Agent and each Lender prompt written notice (in any event, within 5 Business Days) upon any Responsible Officer of the Borrower obtaining actual knowledge thereof, of the following:

(a) the occurrence of any Default;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting any Loan Party, any Subsidiary or any Affiliate thereof (other than the Bankruptcy Cases) that has a reasonable probability of an adverse determination and that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(d) the occurrence of any Environmental Liability that, alone or together with any other Environmental Liability that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(e) the occurrence of any event or transaction for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.11;

(f) any change in the information provided in the Beneficial Ownership Certification that would result in a change to any exemption set forth therein; and

(g) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 5.03. Existence; Conduct of Business. The Borrower will, and will cause each of its Restricted Subsidiaries to, (a) do or cause to be done all things necessary to preserve, renew and keep in full force and effect (i) its legal existence and (ii) the rights, qualifications, licenses, permits, franchises, governmental authorizations, intellectual property rights, licenses and permits necessary in the conduct of its business, except, with respect to clause (ii), where failure to so maintain could not reasonably be expected to have a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03 and (b) carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise as it is presently conducted (and those ancillary or reasonably related thereto).

SECTION 5.04. Payment of Obligations. To the extent permitted by the Bankruptcy Court and provided for in the Agreed Budget, the Borrower will, and will cause each of its Restricted Subsidiaries to, pay or discharge all Material Indebtedness and all other material liabilities and obligations, including Taxes, before the same shall become delinquent or in default (subject, where applicable, to specified grace periods), except where the validity or amount thereof is being contested in good faith by appropriate proceedings and (a) the Borrower or such Restricted Subsidiary has set aside on its books adequate reserves with respect thereto to the extent required by GAAP or (b) the failure to make payment could not reasonably be expected to result in a Material Adverse Effect or the imposition of a Lien on any material portion of any Loan Party's property.

SECTION 5.05. Maintenance of Properties. The Borrower will, and will cause each of its Restricted Subsidiaries to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear and obsolescence excepted.

SECTION 5.06. Books and Records; Inspection Rights. The Borrower will, and will cause each of its Restricted Subsidiaries to, (i) keep proper books of record and account in which complete entries in accordance with GAAP are made of all material dealings and transactions in relation to its business and activities and (ii) permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, including environmental assessment reports and Phase I or Phase II studies, to discuss its affairs, finances and condition with its officers and to conduct field exams and appraisals of inventory, machinery and equipment, all at such reasonable times and as often as reasonably requested. The Borrower acknowledges that the Administrative Agent, after exercising its rights of inspection, may prepare and distribute to the Lenders certain reports pertaining to the assets for internal use by the Administrative Agent and the Lenders.

SECTION 5.07. Compliance with Laws. (a) The Borrower will, and will cause each of its Restricted Subsidiaries to, comply with all Laws applicable to it or its property (including, without

limitation, ERISA and Environmental Laws and the Bankruptcy Code, the Orders and any other order of the Bankruptcy Court), except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

(b) The Borrower will maintain in effect and enforce policies and procedures reasonably designed to achieve material compliance by the Loan Parties, the Restricted Subsidiaries and their respective directors, officers and employees (in each case solely to the extent of their course of employment) with Anti-Corruption Laws and applicable Anti-Terrorism Laws and Sanctions.

SECTION 5.08. Use of Proceeds. The Borrower will use the proceeds of the Revolving Loans and Letters of Credit (a) to pay fees, interest, payments and expenses associated with this Agreement and the other Loan Documents, including certain fees and expenses of professionals retained by the Administrative Agent and the other Holders of Secured Obligations, (b) to fund the cost of administrating the Bankruptcy Cases (including, without limitation, adequate protection payments and professional fees and expenses), (c) to finance other Pre-Petition and pre-filing expenses that are approved by the Bankruptcy Court and permitted by the Agreed Budget (subject to permitted variances), (d) for working capital and general corporate purposes, and (e) with respect to the proceeds of the DIP Term Loans, to refinance and replace in full the aggregate principal amount of the Pre-Petition Revolving Loans and other Pre-Petition obligations outstanding under the Pre-Petition Credit Agreement on the Final Order Date; provided that, for the avoidance of doubt, the Debtors' use of the Collateral to pay obligations benefiting from the Carve-Out shall not be limited or deemed limited by any Agreed Budget. No part of the proceeds of the Loans and other credit extensions under this Agreement and the other Loan Documents or Pre-Petition Cash Collateral shall be used to prosecute, investigate or for proceedings to, contest the claims of the Holders of Secured Obligations or Pre-Petition Secured Parties or the liens in favor of the Holders of Secured Obligations or Pre-Petition Secured Parties that secure the Obligations or Pre-Petition Revolving Loans, or prevent, hinder or delay any of the Administrative Agent's or the Holders of Secured Obligations', or the Pre-Petition Administrative Agent's or Pre-Petition Secured Parties' enforcement or realization upon any of the Collateral or collateral securing the Pre-Petition Obligations, other than with respect to seeking a determination of whether an Event of Default has not occurred or is not continuing; provided that up to $75,000 in the aggregate of the proceeds of Revolving Loans, the Collateral, the collateral securing any Pre-Petition Indebtedness and the Carve-Out shall be made available to a Committee (as defined in the Interim Order) for investigation costs in respect of any Pre-Petition Indebtedness and liens in accordance with the Interim Order (or the Final Order, as applicable). No part of the proceeds of any Loan or Letter of Credit will be used, whether directly or indirectly, for any purpose that entails a violation of any of the regulations of the Board, including Regulations T, U and X, or in violation of Section 3.18.

SECTION 5.09. Insurance. The Borrower will, and will cause each of its Restricted Subsidiaries to, maintain with financially sound and reputable carriers (a) insurance in such amounts, and against such risks (including loss or damage by fire and other normally insured perils and loss in transit; business interruption; and general liability), and such other hazards, as is customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations (including the use of self-insurance plans), (b) with respect to each DIP Collateral Real

Property with Improvements located in a Flood Zone and in which flood insurance has been made available under the National Flood Insurance Program, flood insurance in an amount and otherwise sufficient to comply with all Flood Insurance Laws , and (c) all insurance required pursuant to the Collateral Documents. The Borrower will furnish to the Lenders, upon request of the Administrative Agent, information in reasonable detail as to the insurance so maintained, including, without limitation, annual renewals of flood insurance policies and other evidence of compliance with the flood insurance requirements in this Section 5.09. The Borrower shall use commercially reasonable efforts to deliver to the Administrative Agent certificates of insurance and endorsements (x) to all "All Risk" physical damage insurance policies on all of the Loan Parties' tangible property and assets and business interruption insurance policies naming the Administrative Agent lender loss payee, and (y) to all general liability policies naming the Administrative Agent an additional insured. The Borrower will furnish to the Administrative Agent and the Lenders prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any material portion of the Collateral or interest therein under power of eminent domain or by condemnation or similar proceeding.

SECTION 5.10. Subsidiary Guarantors; Pledges; Collateral; Further Assurances

(a) As promptly as possible but in any event by the earlier of (i) five (5) days (or such later date as may be agreed upon by the Administrative Agent) after (x) any Person (other than an Unrestricted Subsidiary) becomes a Subsidiary of the Borrower or (y) any Subsidiary qualifies independently as, or is designated by the Borrower as, a Subsidiary Guarantor and (ii) the date on which any Person that is not a Subsidiary Guarantor guarantees the obligations of the Borrower or any Subsidiary under the Senior Notes or any Material Indebtedness of any Loan Party (the date of such creation, designation, qualification or guarantee being the "Trigger Date"), the Borrower shall provide the Administrative Agent with written notice thereof setting forth information in reasonable detail describing the material assets of such Person and shall, (x) in the case of a Person described in the preceding clause (i), within thirty (30) days (or such later date as may be agreed to by the Administrative Agent) after the Trigger Date or (y) in the case of a Person described in the preceding clause (ii), on the Trigger Date (or such later date as may be agreed to by the Administrative Agent), cause each such Subsidiary to deliver to the Administrative Agent appropriate joinders to the Subsidiary Guaranty and the Security Agreement pursuant to which such Subsidiary agrees to be bound by the terms and provisions thereof, such Subsidiary Guaranty and Security Agreement and take such other action (including delivering such UCC financing statements, executing and delivering security agreements for filing and recording in the U.S. Patent and Trademark Office and the U.S. Copyright Office and, if reasonably requested by the Administrative Agent, executing and delivering Mortgages covering the real property and fixtures owned by such Subsidiary) as shall be reasonably necessary or advisable in the opinion of the Administrative Agent, and in form and substance reasonably satisfactory to the Administrative Agent, to create and perfect valid and enforceable first-priority priming Liens, subject to no other Liens except for the Carve-Out and Permitted Encumbrances, on substantially all of the property of such new Subsidiary as collateral security for the Secured Obligations, in each case to be accompanied by appropriate corporate resolutions, other corporate documentation and legal opinions in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

The Borrower shall furnish to Administrative Agent updated Schedules 3.01, and 3.19 with respect to such new Subsidiary, in form and detail reasonably satisfactory to Administrative Agent;

(b) The Borrower will cause, and will cause each other Loan Party to cause, all existing and newly-acquired owned and leased property (whether personal, tangible, intangible, or mixed property but excluding Excluded Property) to be subject at all times (subject to the time periods in clause (a) above) to first priority, perfected Liens in favor of the Administrative Agent for the benefit of the Holders of Secured Obligations to secure the Secured Obligations in accordance with the terms and conditions of the Collateral Documents, subject in any case to Permitted Liens. Without limiting the generality of the foregoing, the Borrower will cause the issued and outstanding Equity Interests of each Pledge Subsidiary directly owned by the Borrower or any other Loan Party to be subject at all times (subject to the time periods in clause (a) above) to a first priority, perfected Lien in favor of the Administrative Agent to secure the Secured Obligations in accordance with the terms and conditions of the Collateral Documents or such other security documents as the Administrative Agent shall reasonably request (it being understood and agreed that any such pledge of Equity Interests of a Receivables Financing SPC shall contain such remedy standstills (up to 365 days after the payment in full of the Permitted Receivables Financing) and other customary provisions for pledges of this type).

(c) Subject to the terms of the Orders, if any real property is acquired by any Loan Party after the Effective Date, the Borrower shall notify the Administrative Agent and the Lenders thereof, and, if reasonably requested by the Administrative Agent, the Borrower shall promptly cause such assets to be subjected to a Lien securing the Secured Obligations and shall take, and cause the other Loan Parties to take, such actions as are necessary or reasonably requested by the Administrative Agent to grant and perfect such Liens and deliver such other documents (including the delivery of such Mortgages, title insurance commitments, exception documents, surveys, Flood Certificates, Environmental Indemnity Agreements, surveys and engineering, soils and other reports, environmental assessments, opinions of counsel and other documents as may be reasonably requested by Administrative Agent) as is consistent with those required to be delivered in accordance with Section 5.11, all at the expense of such Loan Party.

(d) Without limiting the foregoing, the Borrower will, and will cause each Subsidiary to, execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, agreements and instruments, and will take or cause to be taken such further actions, which may be required by law or which the Administrative Agent may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all at the expense of the Borrower.

(e) If any additional assets (excluding Excluded Property) are acquired by a Loan Party after the Effective Date (other than assets constituting Collateral under the Orders that become subject to the Lien in favor of the Administrative Agent under the Orders and/or other then existing Collateral Documents upon acquisition thereof), the Borrower will notify the Administrative Agent thereof, and, if requested by the Administrative Agent, the Borrower will, within thirty (30) days (or such later date as may be agreed to by the Administrative Agent), cause such assets to be subjected to a Lien securing the Secured Obligations and will take, and cause the

other Loan Parties to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect such Liens, including actions described in paragraph (c) of this Section, all at the expense of the Borrower.

(f) Subject to the terms of the Orders, the Borrower shall cause each Subsidiary resulting from a division of a Loan Party to execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents), which may be required under any applicable law, or which the Administrative Agent may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Collateral Documents or the validity or priority of any such Lien, and to deliver such appropriate corporate resolutions, other corporate documentation and legal opinions in form and substance reasonably satisfactory to the Administrative Agent and its counsel as the Administrative Agent may request in its reasonable discretion, all at the expense of the Borrower.

(g) Notwithstanding the provisions of this Section 5.10 or Section 5.11 to the contrary, (i) no pledge of a security interest in any Excluded Property shall be required, (ii) no account control agreement (unless requested by the Administrative Agent in its reasonable discretion), foreign law pledge, foreign law security agreement or legal opinion of foreign counsel shall be required and (ii) no Appraisal with respect to any real property that is not included in the calculation of the Borrowing Base shall be required.

SECTION 5.11. Mortgaged Property.

(a) PP&E Conditions.

(i) No later than the date that is sixty (60) days after the Interim Order Date (or such later date as may be agreed upon by the Administrative Agent in its sole discretion), the Borrower shall deliver or cause to be delivered to the Administrative Agent (A) with respect to the Initial Borrowing Base Properties title searches conducted by a Title Company, which shall reveal no Liens or other issues of title other than Permitted Encumbrances and (B) with respect to the DIP Collateral Real Property described in clause (ii) of the definition thereof, Flood Certificates and, if applicable, related Borrower notices and evidence of flood insurance in compliance with Section 5.09; and

(ii) With respect to any real property of the Loan Parties, including the Initial Borrowing Base Properties, within sixty (60) days after reasonable request by the Administrative Agent (or such later date as may be agreed upon by the Administrative Agent in its sole discretion), the Borrower shall deliver or cause to be delivered to the Administrative Agent the following documents, each of which shall be executed (and, where appropriate, acknowledged) by Persons reasonably satisfactory to the Administrative Agent in form and substance reasonably acceptable to the Administrative Agent:

(A) one or more Mortgages covering the Initial Borrowing Base Property or other Eligible Real Property, as the Administrative Agent may request, in each case duly executed and delivered by the parties thereto in recordable form (in such number of copies as the Administrative Agent shall have reasonably requested);

(B) one or more Environmental Indemnity Agreements, in each case duly executed and delivered by each Loan Party that owns an Initial Borrowing Base Property or other Eligible Property;

(C) (1) solely with respect to the Initial Borrowing Base Property or other Eligible Property, one or more mortgagee policies of title insurance in the form of and issued by one or more title companies reasonably satisfactory to the Administrative Agent (the "Title Companies"), insuring the validity and first-priority of the Liens created under each Mortgage for and in amounts and containing such endorsements and affirmative coverage reasonably satisfactory to the Administrative Agent, subject only to Permitted Encumbrances, and (2) with respect to other real property of the Loan Parties, title searches conducted by a Title Company, which shall reveal no Liens or other issues of title other than Permitted Encumbrances, and in each case, to the extent necessary or advisable under applicable law, for filing in the appropriate county land office, UCC financing statements covering fixtures, in each case appropriately completed and, appropriate, duly executed;

(D) to the extent otherwise available, copies of the most recent as-built surveys of each parcel of the Mortgaged Property or such other documentation as may be required by the Title Companies to remove any survey exception from the policies of title insurance delivered pursuant to Section 5.11(a)(ii)(C) above;

(E) to the extent otherwise available, copies of the most recent environmental assessment reports and Phase I or Phase II studies with respect to such Mortgaged Property; and

(F) such other documents and instruments in connection with the Mortgages and DIP Collateral Real Property as shall reasonably be deemed necessary by the Administrative Agent (including Flood Certificates for all DIP Collateral Real Property and, if applicable, related Borrower notices and evidence of flood insurance in compliance with Section 5.09 and customary opinions of counsel with respect to the Mortgages in the states where the Mortgaged Properties are located), and evidence that all other actions that the Administrative Agent may deem necessary or desirable in order to create valid first and subsisting Liens on the property described in the Mortgages has been taken.

In addition, the Borrower shall have paid to the Title Companies (i) all expenses and premiums of the Title Companies in connection with the issuance of such policies and

(ii) an amount equal to the recording and stamp taxes payable in connection with recording the Mortgages in the appropriate county land office.

(b) Environmental Reports. If the Administrative Agent at any time has a reasonable basis to believe that there may be a material violation of any Environmental Laws by, or any material Environmental Liability of, any Loan Party or related to any Initial Borrowing Base Property or any other Eligible Real Property or Mortgaged Property, or any real property adjacent to any such real Initial Borrowing Base Property or other Eligible Real Property or Mortgaged Property that is likely to materially and adversely affect an Initial Borrowing Base Property or other Eligible Real Property or Mortgaged Property, then the Borrower shall, upon the request of the Administrative Agent, provide the Administrative Agent with such environmental reports and assessments, engineering studies or other written material or data as Administrative Agent may reasonably require relating thereto.

(c) Environmental Remediation. In the event that the Administrative Agent reasonably determines, from the environmental reports or information delivered pursuant to Section 5.11(b) or pursuant to any other reasonably reliable information, that remedial action to correct an environmental condition is required under Environmental Law with respect to any Loan Party or the Initial Borrowing Base Property, any other Eligible Real Property or Mortgaged Property or any other property of any Loan Party, the Borrower shall take such action as is required under Environmental Law to cure any material violation or potential violation of any Environmental Laws or any material actual or potential Environmental Liability relating to such environmental condition.

(d) Appraisals. Except to the extent received by the Administrative Agent on or prior to the Interim Order Date, the Borrower shall use commercially reasonable efforts (which shall, in any event, include the payment of professional fees, costs and expense of appraisal firms performing such Appraisals) to, no later than the date that is sixty (60) days after the Interim Order Date (or such later date as may be agreed upon by the Administrative Agent in its sole discretion), deliver to the Administrative Agent an Appraisal with respect to each Initial Borrowing Base Property owned by a Loan Party as of the Effective Date.

SECTION 5.12. Agreed Budget; Capital Expenditures. (a) The use of Revolving Loans and other credit extensions by the Borrower under this Agreement and the other Loan Documents shall be limited in accordance with the Agreed Budget (subject to variances permitted under Section 5.12(c)). The initial Agreed Budget shall be in the form of Exhibit B for the first thirteen (13) week period from the Petition Date, and such initial Agreed Budget shall be approved by, and in form and substance reasonably satisfactory to the Administrative Agent and the Lenders (it being acknowledged and agreed that the initial Agreed Budget attached hereto as Exhibit B is approved by and satisfactory to the Administrative Agent and Lenders). Furthermore, following the Petition Date, the Agreed Budget shall be updated, modified or supplemented by the Borrower (i)(x) on January 24, 2020 and (y) from and after February 25, 2020, on the first Friday of each calendar month thereafter (or, if such day is not a Business Day, the next Business Day), (ii) at its election if the average price payable by the Borrower and its Restricted Subsidiaries for raw milk as indicated in any existing Agreed Budget increases by 10% when compared to the immediately preceding Agreed Budget delivered hereunder or (iii) upon the written request of the Administrative Agent or the Required Lenders from time to time, and, in the case

of each of (i), (ii) and (iii) above, each such updated, modified or supplemented budget shall be approved in writing (including by email) by, and shall be in form and substance reasonably satisfactory to, the Administrative Agent and the Required Lenders and no such updated, modified or supplemented budget shall be effective until so approved and once so approved shall be deemed an Agreed Budget; provided that the Administrative Agent and the Required Lenders shall be deemed to have approved an Agreed Budget delivered after the Petition Date pursuant to this Section 5.12(a) unless the Administrative Agent or Lenders constituting the Required Lenders shall have objected to such Agreed Budget within five (5) Business Days after delivery thereof; provided, further, that (A) in the event the Administrative Agent and the Required Lenders are deemed to have approved an Agreed Budget as a result of their failure to object within such five (5) Business Day period after delivery thereof, the prior Agreed Budget shall continue in effect until the end of the period to which such prior Agreed Budget relates, and (B) in the event the Administrative Agent and the Required Lenders, on the one hand, and the Borrower, on the other hand, cannot agree as to an updated, modified or supplemented budget, the prior Agreed Budget shall continue in effect, with weekly details for any periods after the initial 13-week period to be derived in a manner reasonably satisfactory to the Required Lenders from the cash flow forecasts prepared by the Borrower. Each Agreed Budget delivered to the Administrative Agent and the Lenders shall be accompanied by such supporting documentation as reasonably requested by the Administrative Agent or the Required Lenders. Each Agreed Budget shall be prepared in good faith, with reasonable due care and based upon assumptions which the Borrower believes to be reasonable at the time of delivery thereof. To the extent any such updated Agreed Budget is approved pursuant to this Section 5.12(a), the line item amounts set forth therein shall be used to calculate the projected line items commencing with the week in which such updated Agreed Budget is approved by the Administrative Agent and the Required Lenders and for subsequent weeks set forth therein, and any prior weeks tested as part of any then applicable cumulative period shall be calculated using the projected line items set forth in the previously Agreed Budget in which such prior weeks were first forecasted (unless otherwise approved by the Administrative Agent and the Required Lenders).

(b) [Reserved].

(c) Commencing with:

(i) the period from the Petition Date through the fourth Friday thereafter and each two-week period ended on a Friday thereafter, the Borrower shall not permit the Actual Operating Disbursements Amount for the Cumulative Period to exceed 110% of the Budgeted Operating Disbursements Amount for such Cumulative Period;

(ii) the period from the Petition Date through the fourth Friday thereafter, and for each two-week period ended on a Friday thereafter, the Borrower shall not permit the Actual Operating Cash Receipts for the Cumulative Period to be less than 92.5% of the Budgeted Operating Cash Receipts as set forth in the Agreed Budget for such Cumulative Period; and/or

(iii) the fiscal month of the Borrower in which the Petition Date occurs, on each Capital Expenditures Test Date, the Borrower shall not permit the Actual Capital Expenditures Amount since the Effective Date and through the end of such fiscal month to exceed 110% of the Budgeted Capital Expenditures Amount for such period.

(d) The Administrative Agent and the Lenders (i) may assume that the Borrower will comply with the Agreed Budget and the Agreed Capital Expenditures Budget, (ii) shall have no duty to monitor such compliance and (iii) shall not be obligated to pay (directly or indirectly from the Collateral or otherwise) any unpaid expenses incurred or authorized to be incurred pursuant to any Agreed Budget. The line items in the Agreed Budget and the Agreed Capital Expenditures Budget for payment of interest, expenses and other amounts to the Administrative Agent and the Lenders are estimates only, and the Borrower remains obligated to pay any and all Obligations in accordance with the terms of the Loan Documents and the applicable Order regardless of whether such amounts exceed such estimates. Nothing in any Agreed Budget or Agreed Capital Expenditures Budget shall constitute an amendment or other modification of any Loan Document or any of the borrowing restrictions or other lending limits set forth therein.

SECTION 5.13. Agreement to Deliver Collateral Documents. The Loan Parties shall (a) cause all of the Collateral (including, without limitation, all owned and leased real and personal property and assets of each Loan Party but excluding Excluded Property) to be subject at all times to senior priority, perfected Liens in favor of the Administrative Agent to secure the Obligations pursuant to the terms and conditions, and subject to the priorities, set forth herein and in the Interim Order and the Final Order, and (b) deliver, to the extent reasonably requested by the Administrative Agent, security agreements, pledge agreements, recordations, filings, documents, deeds of trust and other agreements and appropriate UCC-1 financing statements in form and substance reasonably satisfactory to the Administrative Agent.

SECTION 5.14. Milestones. The Loan Parties shall ensure that each of the milestones set forth below (collectively, the "Milestones") is achieved in accordance with the applicable timing referred to below (or by such later time as approved in writing by the Administrative Agent and the Required Lenders):

(a) on or before the date falling thirty (30) days after the Petition Date, the Debtors shall have delivered to the Administrative Agent a draft Sale Motion;

(b) within forty-five (45) days after the Petition Date, the Final Order shall have been entered by the Bankruptcy Court;

(c) on or before the date falling ninety (90) days after the Petition Date, the Debtors shall have delivered to the Administrative Agent an election of whether it intends to pursue a Sale Process, a Plan Process or a combination of both;

(d) if a Sale Process is elected, on or before the date falling ninety (90) days after the Petition Date, the Debtors shall have filed a Sale Motion;

(e) if a Plan Process is elected, on or before the date falling ninety (90) days after the Petition Date, the Debtors shall have filed an Acceptable Plan and related disclosure statement (in each case, in form and substance acceptable to the Required Lenders) with respect to any Plan Process;

(f) if a Sale Process is elected, on or before the date falling one hundred twenty (120) days after the Petition Date, the Bankruptcy Court shall have entered an order approving the Sale Motion;

(g) if a Sale Process is elected, on or before the date falling one hundred sixty (160) days after the Petition Date, the Bankruptcy Court shall have entered an order approving each sale contemplated by any relevant Sale Process following completion of the process contemplated by the bid procedures described in the Sale Motion;

(h) if a Plan Process is elected, on or before the date falling one hundred sixty (160) days after the Petition Date, the Bankruptcy Court shall have entered an order confirming an Acceptable Plan; and

(i) if a Sale Process is elected, on or before the date falling two hundred forty (240) days after the Petition Date, the Bankruptcy Code shall have entered an order confirming an Acceptable Plan.

SECTION 5.15. Periodic Calls. From time to time (but no more often than once per week) upon reasonable request of the Administrative Agent, the Borrower shall conduct and participate in status calls with the Administrative Agent and Lenders (and their respective advisors) to discuss (i) the Agreed Budget or the Agreed Budget Variance Reports and/or any other reports or information delivered pursuant to Section 5.01 or Section 5.12 or otherwise, (ii) the financial operations and performance of the Loan Parties' business, or (iii) such other matters relating to the Loan Parties as the Administrative Agent (or its agents or advisors) shall reasonably request (subject to limitations on confidentiality arrangements and/or to protect attorney-client privilege).

SECTION 5.16. Deposit Accounts. If the Loan Parties shall elect to close any Deposit Accounts that existed on the Petition Date (all of which Deposit Accounts existing on the Petition Date are identified on Schedule 5.16) or establish or otherwise acquire any new Deposit Accounts, then the Loan Parties shall reasonably promptly provide notice to the Administrative Agent of such election. Upon entry of the Order and the Cash Management Order (and except as otherwise provided in the Cash Management Order or the Order), the Borrower shall, and shall cause each other Loan Party to, comply with the terms of the Cash Management Order and the Orders in all material respects.

SECTION 5.17. Post-Closing Obligations. The Borrower shall execute and deliver, or cause to be executed and delivered, to the Administrative Agent such agreements and other documents described on Schedule 5.17 and take or cause to be taken such actions, and otherwise comply with such obligations, as are specified on Schedule 5.17, in each case, on or before the deadlines specified on Schedule 5.17 for such documents, actions or obligations; provided that the Administrative Agent in its discretion may from time to time extend in writing (which may be via email from the Administrative Agent or counsel to the Administrative Agent on their behalf) the deadlines set forth on Schedule 5.17 if the Borrower are using commercially reasonable efforts to obtain or perform the items required by such deadlines. All conditions precedent, affirmative covenants and representations contained in this Agreement and the other Loan Documents shall be deemed modified to the extent necessary to effect the foregoing (and to permit the taking of the actions described above within the time periods required

above, rather than as elsewhere provided in the Loan Documents); provided that to the extent any representation and warranty would not be true, any covenant breached or any condition precedent not met under this Agreement and/or the other Loan Documents and a Default or Event of Default would occur and be continuing solely as of the fact that the foregoing actions were not taken on the Effective Date (any such Default or Event of Default, a "Related Default"), the respective representation and warranty shall be required to be true and correct in all material respects (or, to the extent qualified by materiality, in all respects) and the respective covenant complied with and condition precedent met at the time the respective action is taken (or was required to be taken) in accordance with the foregoing provisions of this Section 5.17 (and such Related Default shall be deemed not to have occurred and/or be continuing to the extent occurring as a result of such failure to comply) and the parties hereto acknowledge and agree that the failure to take any of the actions set forth in Section 5.17, within the relevant time periods required above (after giving effect to any extension provided by the Administrative Agent in its discretion, as permitted above), shall give rise to an immediate Event of Default pursuant to this Agreement.

ARTICLE VI

Negative Covenants

Until the Secured Obligations have been Fully Satisfied, the Borrower covenants and agrees with the Administrative Agent, the Issuing Banks and the Lenders that:

SECTION 6.01. Indebtedness. The Borrower will not, and will not permit any Restricted Subsidiary to, create, incur or suffer to exist any Indebtedness, except:

(a) the Secured Obligations;

(b) Indebtedness existing on the Petition Date and set forth on Schedule 6.01 (including the Indebtedness under the Senior Notes and the Pre-Petition Credit Agreement);

(c) intercompany Indebtedness permitted by Section 6.04 (other than Section 6.04(i) or (o)); provided, that if any such Indebtedness is owed by a Loan Party, such Indebtedness and any Lien on the assets of such Loan Party related thereto shall be subordinated to the Secured Obligations in right of payment and security on terms reasonably satisfactory to the Administrative Agent;

(d) Indebtedness of the Borrower or any Restricted Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets (whether or not constituting purchase money Indebtedness), including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof; provided that the aggregate principal amount of Indebtedness permitted by this clause (d) shall not exceed $25,000,000 at any time outstanding;

(e) obligations in respect of the Permitted Receivables Financing in an aggregate principal amount not to exceed (x) $425,000,000 at any time outstanding plus (y) from time to time on a temporary basis (i) solely to the extent, and for so long as, reasonably necessary to replace any "Existing Letters of Credit" (as defined in the Permitted Receivables Facility as in effect on the Effective Date, the "Existing AR Facility Letters of Credit") and (ii) as and to the extent expressly permitted pursuant to, and in accordance with, the terms of the Permitted Receivables Facility (as in effect on the Effective Date), additional amounts not to exceed the face amount of such Existing AR Facility Letters of Credit being so replaced;

(f) [reserved];

(g) [reserved];

(h) Indebtedness in respect of Swap Agreements entered into in the ordinary course of business and not for any speculative purposes;

(i) [reserved];

(j) [reserved];

(k) Indebtedness in respect of workers' compensation claims, property casualty or liability insurance, take-or-pay obligations in supply arrangements, self-insurance obligations, performance, bid and surety bonds and completion guaranties, in each case in the ordinary course of business;

(l) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn by the Borrower or any Subsidiary in the ordinary course of business against insufficient funds, so long as such Indebtedness is promptly repaid; and

(m) other Indebtedness of a type described in clause (d), (e), (f), (g) or (i) of the definition thereof (and clause (j) of the definition of Indebtedness to the extent relating to Indebtedness of a type described in such specified clauses of the definition of Indebtedness) of the Borrower and its Restricted Subsidiaries in a principal amount of up to but not to exceed $5,000,000 in the aggregate at any one time outstanding.

SECTION 6.02. Liens. The Borrower will not, and will not permit any Restricted Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, except:

(a) Liens securing the Secured Obligations;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of, or leased by, the Borrower or any Restricted Subsidiary existing on the Petition Date and set forth on Schedule 6.02; provided that

(i) such Lien shall not apply to any other property or asset of the Borrower or any Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the Effective Date;

(d) Liens securing obligations, with aggregate net outstanding amounts payable not in excess of $5,000,000, under Swap Agreements;

(e) Liens on fixed or capital assets acquired, constructed or improved by the Borrower or any Restricted Subsidiary; provided that (i) such security interests secure Indebtedness permitted by Section 6.01(d), (ii) such security interests and the Indebtedness secured thereby are incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such security interests shall not apply to any other property or assets of the Borrower or any Subsidiary;

(f) [reserved];

(g) Liens upon real or personal property heretofore leased or leased after the Effective Date (under operating or Capital Leases) in the ordinary course of business by the Borrower or any of its Restricted Subsidiaries in favor of the lessor created at the inception of the lease transaction, securing obligations of the Borrower or any of its Restricted Subsidiaries under or in respect of such lease and extending to or covering only the property subject to such lease and improvements thereon;

(h) Liens of sellers or creditors of sellers of farm products encumbering such farm products when sold to any of the Borrower or its Restricted Subsidiaries pursuant to the Food Security Act of 1985 or pursuant to similar state laws to the extent such Liens may be deemed to extend to the assets of such Person;

(i) protective Uniform Commercial Code filings with respect to personal property leased by, or consigned to, any of the Borrower or its Restricted Subsidiaries;

(j) Liens granted to provide adequate protection pursuant to the Interim Order;

(k) Liens in favor of a Receivables Financing SPC or a Receivables Financier created or deemed to exist in connection with the Permitted Receivables Financing (including any related filings of any financing statements), but only to the extent that any such Lien relates to the applicable Transferred Assets actually sold, contributed, financed or otherwise conveyed or pledged pursuant to such transaction;

(l) Liens securing the obligations under the Pre-Petition Credit Agreement; provided that such Liens existed on the Petition Date;

(m) [reserved];

(n) normal and customary rights of setoff upon deposits of cash in favor of banks or other depository institutions;

(o) Liens of sellers of goods to the Borrower and its Subsidiaries arising under Article 2 of the UCC or similar provisions of applicable law in the ordinary course of business, covering only the goods sold and securing only the unpaid purchase price for such goods and related expenses;

(p) Liens in favor of customs and revenue authorities arising as a matter of law to secure the payment of customs duties in connection with the importation of goods;

(q) Liens solely on any cash earnest money deposits made in connection with an investment permitted by Section 6.04;

(r) transfer restrictions, purchase options, calls or similar rights of third-party joint venture partners with respect to Equity Interests of joint venture entities;

(s) other Liens on assets of the Borrower and its Restricted Subsidiaries securing other obligations of the Borrower and its Restricted Subsidiaries in an aggregate principal amount not to exceed $5,000,000 at any one time outstanding;

(t) non-exclusive licenses or sublicenses by the Borrower or any of its Restricted Subsidiaries of intellectual property in the ordinary course of business; provided that the same do not in any material respect interfere with the business of the Borrower and its Restricted Subsidiaries, individually and/or taken as a whole, or materially detract from the use or value of the relative assets of the Borrower and its Restricted Subsidiaries, individually and/or taken as a whole; and

(u) if a Sale Process is elected or another Asset Sale permitted hereunder is undertaken, Liens arising by virtue of the asset purchase agreements approved in connection with the Sale Process or otherwise permitted to be entered into hereunder, in each case limited to customary encumbrances applicable solely to the assets sold (or to be sold) in connection therewith securing the contractual rights of the purchaser.

SECTION 6.03. Fundamental Changes.

(a) The Borrower will not, and will not permit any Restricted Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or divide, liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing and such action is permitted (or not prohibited) pursuant to the Orders, (i) any Subsidiary of the Borrower (other than a Receivables Financing SPC) may merge into the Borrower in a transaction in which the Borrower is the surviving corporation, (ii) any Subsidiary (other than a Receivables Financing SPC) may merge into any Loan Party in a transaction in which the surviving entity is a Loan Party and (iii) any Subsidiary that is not a Loan Party (other than a Receivables Financing SPC) may merge into the Borrower or any of its Restricted Subsidiaries (other than a Receivables Financing SPC) in a transaction in which a Restricted Subsidiary is the surviving corporation; provided that any such merger involving a Person that is not a Wholly-Owned Subsidiary immediately prior to such merger shall not be permitted unless also permitted by Section 6.04.

(b) The Borrower will not, nor will it permit any of its Restricted Subsidiaries to, (i) engage to any substantial extent in any business other than operations involved in the manufacture, processing and distribution of food, beverage or packaging products or businesses of the type conducted by the Borrower and its Subsidiaries on the Petition Date or (ii) change its fiscal year from the basis in effect on the Petition Date.

SECTION 6.04. Investments, Loans, Advances and Acquisitions. The Borrower will not, and will not permit any Restricted Subsidiary to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a Loan Party and a Wholly-Owned Subsidiary prior to such merger) any Equity Interests, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit (whether through purchase of assets, merger or otherwise), except:

(a) investments in cash and Cash Equivalents;

(b) investments in existence on the Petition Date and described on Schedule 6.04;

(c) operating deposit accounts with depository institutions;

(d) [reserved];

(e) purchases of inventory and other assets to be sold or used in the ordinary course of business;

(f) investments (including, but not limited to, intercompany loans) (i) by any Subsidiary of the Borrower in any Loan Party, (ii) by any Loan Party in any other Loan Party and (iii) by Restricted Subsidiaries of the Borrower that are not Loan Parties in Restricted Subsidiaries of the Borrower that are not Loan Parties, in each case, made in the ordinary course of business or in accordance with past practice;

(g) investments by the Borrower and its Restricted Subsidiaries in the Equity Interests of their Subsidiaries to the extent outstanding as of the Petition Date;

(h) loans and advances to employees of the Borrower and/or its Restricted Subsidiaries in the ordinary course of business not exceeding $2,500,000 in the aggregate;

(i) investments in the form of Swap Agreements permitted by Section 6.01(h);

(j) deposits to secure bids, tenders, utilities, vendors, leases, licenses, statutory obligations, surety and appeal bonds and other deposits of like nature arising in the ordinary course of business;

(k) investments by any Receivables Financing SPC or any Loan Party in a Receivables Financing SPC, in each case, made in connection with the Permitted

Receivables Financing, and loans permitted by the Permitted Receivables Financing that are made by a Loan Party to a Receivables Financing SPC or by a Receivables Financing SPC to a Loan Party in connection therewith;

(l) [reserved];

(m) [reserved];

(n) investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors or other disputes with customers or suppliers to the extent reasonably necessary in order to prevent or limit loss and Investments consisting of the prepayment of suppliers and service providers on customary terms in the ordinary course of business;

(o) Guarantees permitted by Section 6.01 (other than Section 6.01(c));

(p) to the extent permitted by Section 6.05 (other than Section 6.05(f)), non-cash consideration received in connection with sales or dispositions;

(q) to the extent constituting an investment by such Person, the payment, prepayment, redemption or acquisition for value of Indebtedness of such Person permitted by Section 6.07(a); and

(r) investments in Good Karma Foods, Inc. in an aggregate amount not to exceed $1,500,000 at any time outstanding; provided that the aggregate amount of such investment during the period from the Petition Date to the date sixty (60) days after the Petition Date shall not exceed $500,000.

For purposes of covenant compliance, the amount of any investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such investment, less any amount repaid, returned, distributed or otherwise received in respect of any investment, in each case, in cash.

SECTION 6.05. Asset Sales. The Borrower will not, and will not permit any Restricted Subsidiary to, sell, transfer, lease or otherwise dispose of any asset, including any Equity Interest owned by it, and including, without limitation, pursuant to a division or plan of division of any Restricted Subsidiary under Delaware law (or any comparable event under a different jurisdiction's law), except:

(a) any Excluded Disposition;

(b) sales, leases, transfers and dispositions of obsolete or worn-out property (including intellectual property), tools or equipment no longer used or useful in its business or real property no longer used or useful in its business in the ordinary course or

in a manner consistent with past practice; provided, that the proceeds thereof are used to repay the Obligations to the extent required by clauses (b) or (c) of Section 2.11;

(c) sales, leases, transfers and dispositions of assets (i) from a Loan Party to another Loan Party and (ii) from any Specified Subsidiary to a Loan Party or another Specified Subsidiary;

(d) any sale of Transferred Assets by such Person to a Receivables Financing SPC and subsequently to the Receivables Financier in connection with the Permitted Receivables Financing;

(e) sale and leaseback transactions permitted by Section 6.06;

(f) to the extent constituting a sale, transfer, lease or other disposition, including pursuant to a division or plan of division, the creation of Liens, the consummation of fundamental changes, the making of investments and the making of Restricted Payments permitted by Sections 6.02, 6.03, 6.04 and 6.07, respectively (except to the extent permitted pursuant to cross reference to this Section 6.05 or any clause contained in this Section 6.05);

(g) to the extent constituting a sale or disposition, the unwinding of any Swap Agreement pursuant to its terms;

(h) transfers of condemned property as a result of the exercise of "eminent domain" or other similar policies to the respective Governmental Authority or agency that has condemned same (whether by deed in lieu of condemnation or otherwise), and transfers of properties that have been subject to a casualty to the respective insurer of such property as part of an insurance settlement; provided, that the proceeds thereof are used to repay the Obligations to the extent required by clauses (b) or (c) of Section 2.11;

(i) to the extent constituting a sale, transfer, lease or other disposition, non-exclusive licenses or sublicenses by the Borrower or any of its Subsidiaries of intellectual property in the ordinary course of business; provided that the same do not in any material respect interfere with the business of the Borrower and its Restricted Subsidiaries, individually and/or taken as a whole, or materially detract from the use or value of the relative assets of the Borrower and its Restricted Subsidiaries, individually and/or taken as a whole;

(j) sales, transfers, leases and other dispositions of other assets so long as the aggregate amount thereof sold or otherwise disposed of by the Borrower and its Restricted Subsidiaries during the term of this Agreement shall not have a net book value in excess of $25,000,000; provided that the Net Cash Proceeds thereof are used to repay the Obligations to the extent required by clauses (b) or (c) of Section 2.11; and

(k) if a Sale Process is elected, pursuant to a Sale Process referred to in Section 5.14.

SECTION 6.06. Sale and Leaseback Transactions. The Borrower will not, and will not permit any Restricted Subsidiary to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred, except for such transactions in existence on the Petition Date and described on Schedule 6.06.

SECTION 6.07. Restricted Payments. The Borrower will not, nor will it permit any Restricted Subsidiary to, directly or indirectly, declare, order, make or set apart any sum for or pay any Restricted Payment, except (a) to make dividends or other distributions payable to any Loan Party (directly or indirectly through Subsidiaries, and, in the case of dividends or other distributions paid by Subsidiaries, ratably (or less than ratably) to other Persons that own the applicable class of Equity Interests in such Subsidiary), (b) to make dividends to or repurchases from the Borrower or the holders of ownership interests of such Restricted Subsidiary the proceeds of which shall be used to pay taxes that are then due and payable and which relate to the business of the Borrower and its Restricted Subsidiaries, and (c) to the extent constituting Restricted Payments, the Borrower and its Subsidiaries may enter into and consummate transactions expressly permitted by Section 6.04.

SECTION 6.08. Prepayment of Other Indebtedness. The Borrower will not, nor will it permit any Restricted Subsidiary to, directly or indirectly, declare, order, set apart any sum for or make any voluntary or mandatory payment, prepayment, redemption, acquisition for value, refund, refinancing or exchange of (a) any Indebtedness or claim arising prior to the Petition Date except as set forth in the Agreed Budget (subject to permitted variances) or payments made pursuant to the Permitted Receivables Financing and (b) any Indebtedness arising after the Petition Date (including, without limitation, any interest, premium or other amounts owing in respect thereof but excluding, for the avoidance of doubt, regularly scheduled payments at maturity), except (i) with respect to Indebtedness under the Loan Documents or the Permitted Receivables Financing and (ii) for payments made pursuant to the Interim Order or the Final Order (including, without limitation, in connection with the deemed making of the DIP Term Loans on the Final Order Date) and, in each case, as set forth in the Agreed Budget (subject to permitted variances) or otherwise reasonably acceptable to the Administrative Agent and the Required Lenders.

SECTION 6.09. Transactions with Affiliates. Except as expressly permitted by this Agreement, the Borrower will not, nor will it permit any of its Restricted Subsidiaries to, directly or indirectly: (a) make any investment in an Affiliate other than investments permitted hereunder; (b) transfer, sell, lease, assign or otherwise dispose of any assets to an Affiliate other than transfers, sales, leases, assignments or other dispositions permitted hereunder; (c) merge into or consolidate with or purchase or acquire assets from an Affiliate other than transactions permitted under Section 6.03 or 6.04; or (d) enter into any other transaction directly or indirectly with or for the benefit of an Affiliate (including, without limitation, guarantees and assumptions of obligations of an Affiliate); provided that (i) the Borrower and its Restricted Subsidiaries may continue to be party to the Permitted Receivables Financing, (ii) any Affiliate who is an individual may serve as a director, officer or employee of the Borrower or any of its Restricted Subsidiaries and receive reasonable compensation for his or her services in such capacity, and (iii) the Borrower and its Restricted Subsidiaries may enter into transactions (other than extensions of credit by the Borrower or any of its Subsidiaries to an Affiliate

that are not investments permitted hereunder) that are not otherwise prohibited hereunder so long as such transactions are on fair and reasonable terms (including as to monetary or business consideration arising therefrom) substantially as advantageous to the Borrower and its Restricted Subsidiaries as the terms (including as to monetary or business consideration) that would be obtained in a comparable arm's length transaction with a Person not an Affiliate.

SECTION 6.10. Restrictive Agreements.

(a) The Borrower will not, nor will it permit any Restricted Subsidiary to, enter into, or permit to exist, any Contractual Obligation (including Organization Documents) that encumbers or restricts the ability of any such Person to (i) in the case of any Restricted Subsidiary pay dividends or make any other distributions to any Loan Party on its Equity Interests or with respect to any other interest or participation in, or measured by, its profits, (ii) pay any Indebtedness or other obligation owed to any Loan Party, (iii) make loans or advances to any Loan Party, (iv) sell, lease or transfer any of its properties or assets to any Loan Party, or (v) act as a Subsidiary Guarantor pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extension thereof, except (in respect of any of the matters referred to in clauses (i)-(v) above) for such encumbrances or restrictions existing under or by reason of (A) this Agreement and the other Loan Documents, (B) applicable Law, (C) any document or instrument governing Indebtedness incurred pursuant to Section 6.01(d); provided that any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith, (D) Indebtedness of a Subsidiary which is not a Loan Party which is permitted by Section 6.01, so long as such restrictions do not impair the ability of the Loan Parties to perform their obligations under this Agreement or any other Loan Document, (E) any restrictions regarding licenses or sublicenses by the Borrower and its Subsidiaries of intellectual property in the ordinary course of business (in which case such restriction shall relate only to such intellectual property), (F) customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary or assets pending such sale; provided that such restrictions and conditions apply only to the Subsidiary or assets that are to be sold and such sale is permitted hereunder, (G) restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the assets securing such Indebtedness, (H) customary provisions in leases and other contracts restricting the assignment thereof, (I) restrictions contained in documents executed in connection with the Permitted Receivables Financing (provided that such restrictions, as whole, are no more restrictive that those contained in such documents as in effect on the Petition Date), (J) any Lien permitted hereunder or any document or instrument governing any such Lien; provided that any such restriction contained therein relates only to the asset or assets subject to such Lien, (K) any document or instrument governing the Senior Notes as in effect on the Petition Date, (L) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 6.04 and applicable solely to such joint venture and are entered into in the ordinary course of business, (M) [reserved], and (N) any agreements existing on the Petition Date and set forth on Schedule 6.10.

(b) The Borrower will not, nor will it permit any Restricted Subsidiary to, enter into, assume or become subject to any agreement prohibiting or otherwise restricting the creation or assumption of any Lien upon its properties or assets to secure the Secured Obligations pursuant to the Loan Documents, whether now owned or hereafter acquired, or requiring the grant of any

security for such obligation if security is given for the Secured Obligations except (i) pursuant to this Agreement and the other Loan Documents, (ii) pursuant to applicable Law, (iii) pursuant to any document or instrument governing Indebtedness incurred pursuant to Section 6.01(d); provided that in the case of Section 6.01(d) any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith, (iv) customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary or assets pending such sale; provided that such restrictions and conditions apply only to the Subsidiary or assets that are to be sold and such sale is permitted hereunder, (v) restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the assets securing such Indebtedness, (vi) customary provisions in leases and other contracts restricting the assignment thereof, (vii) pursuant to the documents executed in connection with the Permitted Receivables Financing (but only to the extent that the related prohibitions against other encumbrances are no more restrictive than those in effect on the Petition Date and pertain to the applicable Transferred Assets actually sold, contributed, financed or otherwise conveyed or pledged pursuant to the Permitted Receivables Financing, (viii) restrictions in any document or instrument governing any Permitted Lien; provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien, (ix) [reserved], (x) software and other intellectual property licenses pursuant to which the Borrower or Subsidiary is the licensee of the relevant software or intellectual property, as the case may be, (in which case, any prohibition or limitation shall relate only to the assets subject of the applicable license), (xi) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 6.04 and applicable solely to such joint venture and are entered into in the ordinary course of business, (xii) any agreements existing on the Petition Date and set forth on Schedule 6.10 and (x) restrictions or conditions contained in any document or instrument governing the Senior Notes as in effect on the Petition Date.

SECTION 6.11. Amendments to Other Indebtedness. Except in connection with a confirmed plan of reorganization in the Bankruptcy Cases which is reasonably satisfactory to the Administrative Agent and the Required Lenders (or which provides for the Full Satisfaction of the Secured Obligations on the date of effectiveness of such plan), the Borrower will not, nor will it permit any Restricted Subsidiary to, amend or modify (or permit the amendment or modification of) any of the terms of any Indebtedness (including, without limitation, the Permitted Receivables Financing and documentation relating thereto) arising prior to or after the Petition Date in a manner materially adverse to the interests of the Lenders (including, without limitation, shortening the final maturity or average life to maturity, requiring any payment to be made sooner than originally scheduled or increasing the interest rate or fees applicable thereto, reducing any advance rates, adding additional defaults events of default, adding conditions or limitations to the availability of such financing, adding additional financial tests, reducing any advance rates thereunder or changing any subordination provision thereof (in each case, other than to cure clear errors or defects in the underlying documents)).

SECTION 6.12. Intentionally Omitted.

SECTION 6.13. Sanctions. The Loan Parties will not, directly or indirectly, use the proceeds of any Loan or Letter of Credit, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (a) to fund any activity or business of or with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is, or whose government

is, the target of any Sanctions, unless otherwise authorized by applicable Laws; or (b) in any other manner that will result in any violation by any Person participating in the Loans or Letters of Credit, whether as the Administrative Agent, Arranger, Issuing Bank, Lender, or Participant, of any Sanctions.

SECTION 6.14. Anti-Corruption Laws. The Loan Parties will not, directly or indirectly, use the proceeds of any Loan or Letter of Credit for any purpose which would breach, in any material respect, any Anti-Corruption Law.

SECTION 6.15. Chapter 11 Claims. The Borrower shall not, nor shall it permit any Subsidiary that is a Debtor to, directly or indirectly, incur, create, assume, suffer to exist or permit any administrative expense claim (other than any superpriority administrative expense claim granted in respect of the Permitted Receivables Financing) or Lien that is pari passu with or senior to the claims or Liens, as the case may be, of the Administrative Agent and the other Holders of Secured Obligations, against the Loan Parties hereunder, or apply to the Bankruptcy Court for authority so to do, except for the Carve-Out and Liens permitted to be senior pursuant to Section 6.02.

SECTION 6.16. Revision of Orders; Application to Bankruptcy Court. The Borrower shall not, nor shall it permit any Subsidiary to, directly or indirectly:

(a) seek, consent to or suffer to exist (or support any Person that seeks) any modification, stay, vacation, reversal or amendment of the Interim Order or the Final Order except for any material substantive modifications and amendments agreed to in writing by Administrative Agent and the Required Lenders; provided that, any waiver, consent or amendment of any Order that is materially and disproportionately adverse in any respect to any Lender relative to any other Lender shall require the written consent of such adversely and disproportionately affected Lender in addition to the Administrative Agent and the Required Lenders; or

(b) apply to the Bankruptcy Court for authority (or support any Person that seeks) to take any action prohibited by this Article VI (except to the extent such application and the taking of such action is conditioned upon the receiving the written consent of the Administrative Agent and the requisite applicable Lenders).

ARTICLE VII

Events of Default; Remedies

SECTION 7.01. Events of Default. If any of the following events ("Events of Default") shall occur:

(a) Non-Payment of Principal. The Borrower or any other Loan Party shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) Non-Payment of Other Amounts. The Borrower or any other Loan Party shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount

referred to in paragraph (a) above) payable under this Agreement, when and as the same shall become due and payable and such failure shall continue unremedied for a period of three (3) Business Days;

(c) Representations and Warranties. Any information contained in any Compliance Certificate or Agreed Budget Variance Report, or any representation or warranty made or deemed made by or on behalf of any Loan Party or any other Restricted Subsidiary in or in connection with this Agreement or any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been false or incorrect in any material respect when made or deemed made (unless any such certification, representation or warranty is qualified as to materiality or as to Material Adverse Effect, in which case such certification, representation, or warranty shall prove to have been incorrect in any respect); provided that for the avoidance of doubt, no variance in any Agreed Budget Variance Report shall be (or be deemed) such a material misrepresentation or misstatement if upon correction thereof, the Borrower would remain in compliance with its covenants hereunder.

(d) Non-Compliance with Specific Covenants. The Borrower or any Restricted Subsidiary shall fail to observe or perform any covenant, condition or agreement contained in (i) Section 5.01(f), 5.02(a), 5.03 (with respect to the Borrower's existence), 5.08, 5.11, 5.12, 5.14, 5.17 or in Article VI or (ii) Section 5.13, 5.15 or 5.16 and, in the case of this clause (ii), such failure shall continue unremedied for a period of five (5) Business Days after the earlier of a Responsible Officer of the Borrower or any of its Restricted Subsidiaries having knowledge of such breach or notice thereof from the Administrative Agent;

(e) Other Non-Compliance. Any of the Borrower or any of its Restricted Subsidiaries shall fail to observe or perform any covenant, condition or agreement contained in this Agreement or any other Loan Document (other than those which constitute a default under another Section of this Article VII), and such failure shall continue unremedied for a period of fifteen (15) days after the earlier of a Responsible Officer of the Borrower or any of its Restricted Subsidiaries having knowledge of such breach or notice thereof from the Administrative Agent;

(f) Payment Default to Other Indebtedness. The Borrower or any of its Restricted Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount in respect of the Permitted Receivables Facility or any other postpetition Material Indebtedness, when and as the same shall become due and payable (giving effect to any applicable waivers or grace periods) (except to the extent any such payment is prohibited pursuant to the Orders));

(g) Cross-Default to Other Indebtedness. Any event or condition (other than (i) any required prepayment of Indebtedness secured by a Permitted Lien that becomes due as the result of the disposition of the assets subject to such Lien so long as such disposition is permitted by this Agreement and permitted (or not prohibited) by the Orders and (ii) any defaults that occur solely as a result of the commencement of the Bankruptcy Cases) occurs that results in the Permitted Receivables Financing or any other Material Indebtedness becoming due prior to its

scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of (or purchaser(s) party to) the Permitted Receivables Financing or any other Material Indebtedness or any trustee or agent on its or their behalf to cause the Permitted Receivables Financing or any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that no Event of Default under this clause (g) shall occur if the remedies under any Material Indebtedness resulting from such event or condition are subject to the automatic stay applicable under Section 362 of the Bankruptcy Code;

(h) [Reserved]

(i) [Reserved]

(j) [Reserved]

(k) Judgments. After the Petition Date, one or more judgments for the payment of money (excluding any "first day orders" or any order fixing the amount of any claim in the Bankruptcy Cases) in an aggregate amount in excess of $25,000,000 (to the extent not covered by insurance or other creditworthy indemnitor) shall be rendered against the Borrower or any Restricted Subsidiary or any combination thereof and the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed (including pursuant to the Bankruptcy Code), or any action not in violation of the automatic stay applicable under section 362 of the Bankruptcy Code shall be legally taken by a postpetition judgment creditor to attach or levy upon any assets of the Borrower or any Restricted Subsidiary to enforce any such judgment;

(l) ERISA. An ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(m) Change in Control. A Change in Control shall occur; or

(n) Invalidity of Loan Documents. Any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms (or any Loan Party shall challenge the enforceability of any Loan Document or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms);

(o) Dissolution or Liquidation. Any Loan Party or any Subsidiary thereof voluntarily or involuntarily dissolves or is dissolved, liquidates or is liquidated or files a motion with the Bankruptcy Court seeking (or supports or consents to any Person seeking) authorization to so dissolve or liquidate (including, without limitation, under any Debtor Relief Law);

(p) Certain Orders. An order with respect to any of the Bankruptcy Cases shall be entered by the Bankruptcy Court (or any of the Debtors shall file an application or motion or

pleading for entry of or in support of an order) (i) appointing a Chapter 7 trustee, or a Chapter 11 trustee under section 1104 of the Bankruptcy Code, (ii) appointing an examiner (other than a fee examiner) or receiver with enlarged powers (beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) relating to the operation of the business under section 1106(b) of the Bankruptcy Code, (iii) dismissing any of the Bankruptcy Cases or converting any of the Bankruptcy Cases under section 1112 of the Bankruptcy Code or otherwise to a case under chapter 7 of the Bankruptcy Code or (iv) providing for the disposition without the Administrative Agent's consent of all or material portion of any of the assets of any Loan Party or any other Restricted Subsidiary of the Borrower, any Equity Interest of any Loan Party or any other Restricted Subsidiary of the Borrower, or any material business line of the Loan Parties and their Restricted Subsidiaries either through a sale under section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Bankruptcy Cases or otherwise except (I) as otherwise permitted by the Orders, (II) pursuant to a transaction that is permitted (and subject to any mandatory prepayment obligations (as applicable)) under this Agreement or (III) pursuant to a transaction that provides for the Full Satisfaction of the Secured Obligations;

(q) Non-Compliance with the Final Order or Interim Order. Any Loan Party or any of Restricted Subsidiary of the Borrower fails or neglects to comply with any provision of the Final Order or the Interim Order, as applicable;

(r) Exclusivity. The period pursuant to section 1121 of the Bankruptcy Code during which the Debtors have the exclusive right to file a plan of reorganization or solicit acceptance thereof expires or an order shall have been entered by the Bankruptcy Court terminating or reducing such period, unless such termination or reduction is consented to by the Administrative Agent (or in each case any of the Loan Parties shall seek to, or shall support (whether by way of motion or other pleadings filed with the Bankruptcy Court or any other writing executed by any Loan Party) any other Person's motion to, have such an order entered, in each case unless the Administrative Agent consents to such action);

(s) Entry of Unapproved Order. An order with respect to any of the Bankruptcy Cases shall be entered by the Bankruptcy Court, or any of the Loan Parties or any other Restricted Subsidiary of the Borrower shall have filed or supported a motion or other pleading for entry of an order, (i) to revoke, reverse, stay, vacate, terminate, extend, rescind or seek reconsideration of any provision of the Cash Management Order or the order approving the Permitted Receivables Financing, (ii) to modify, supplement or amend any provision of the Interim Order, the Final Order or this Agreement without the prior written consent of the Administrative Agent and the affected Lenders or (iii) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority as to any of the Loan Parties, equal or superior to the priority of the Lenders in respect of the Obligations, other than any superpriority administrative expense claim granted in respect of the Permitted Receivables Financing, subject only to the extent of the Carve-Out, or (iv) to grant or permit the grant of a Lien on the Collateral (other than a Lien permitted by Section 6.02) that is senior to or *pari passu* with the Liens on such Collateral securing the Obligations (other than a Lien permitted by Section 6.02), (v) to permit charging of any of the Collateral under section 506(c) of the Bankruptcy Code against the Secured Parties, or (vi) without the prior written consent of the Required Lenders, to authorize financing for any of the Loan Parties under section 364 of the Bankruptcy Code (other

than the transactions contemplated by the Loan Documents and any Permitted Receivables Financing) unless such financing is expressly permitted hereunder or such order contemplates the Full Satisfaction of the Secured Obligations upon consummation thereof;

(t) Filing of Unapproved Plan. An order shall be entered by the Bankruptcy Court confirming a plan of reorganization or liquidation in any of the Bankruptcy Cases (or an order shall be entered by the Bankruptcy Court approving a disclosure statement related to such plan) other than an Acceptable Plan, or any of the Loan Parties or any of their Subsidiaries shall file, propose, support, or fail to contest in good faith the filing or confirmation of such a plan;

(u) Relief from the Automatic Stay. The Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under section 362 of the Bankruptcy Code to a holder or holders of any Lien (other than a holder or holders of a Lien ranking senior in priority to the Liens securing the Loans) or a Lien on any part of the Collateral securing the Loans to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any such Collateral with a value in excess of $5,000,000 in the aggregate or the Equity Interests in any Loan Party or any Subsidiary whose Equity Interest (or portion thereof) has been pledged as security for the Obligations (unless constituting a sale or other disposition permitted by Section 6.05) or permit any such third parties to exercise other remedies that would have a Material Adverse Effect);

(v) Pre-Petition Cash Collateral. The Bankruptcy Court shall enter an order denying or terminating the use of Pre-Petition Cash Collateral, and the Debtors have not obtained use of cash collateral (consensually or non-consensually).

(w) Unenforceability of the Interim Order or Final Order. Any material provision of the Interim Order or the Final Order shall for any reason cease to be valid or binding or enforceable against any of the Loan Parties, or any of the Loan Parties or any other Subsidiary of the Borrower shall so state in writing; or any of the Loan Parties or any other Subsidiary of the Borrower shall commence or join in any legal proceeding to contest in any manner that the Interim Order or the Final Order constitutes a valid and enforceable agreement, or any of the Loan Parties or any other Subsidiary of the Borrower shall commence or join in any legal proceeding to contest the validity or perfection of any of the Liens in favor of the Holders of Secured Obligations, or any of the Loan Parties shall commence or join in any legal proceeding to assert that it has no further obligation or liability under the Interim Order or the Final Order;

(x) Motion against the Holders of Secured Obligations. Any of the Loan Parties or any other Subsidiary of the Borrower shall seek to, or shall support (whether by way of motion or other pleadings filed with the Bankruptcy Court or any other writing executed by any Loan Party or by oral argument) any other person's motion to: (i) disallow in whole or in part any of the Obligations arising under this Agreement or any other Loan Document (or any such order is entered), or (ii) challenge the validity and enforceability of the Liens or security interests granted or confirmed herein or in the Interim Order or the Final Order in favor of the Holders of Secured Obligations;

(y) Prohibited Payment. Any of the Borrower or any Restricted Subsidiary shall make any payment (as adequate protection or otherwise), or application for authority to pay, on

account of any claim or debt arising prior to the Petition Date other than payments authorized by the Bankruptcy Court in respect of the Interim Order, the Final Order or by any other orders entered by the Bankruptcy Court in amounts consistent with the Agreed Budget;

(z) Failure to Conduct Business. If any Loan Party or other Restricted Subsidiary is enjoined, restrained or in any way prevented by an order of a court of competent jurisdiction (other than an order of the Bankruptcy Court approved by the Required Lenders) from continuing to conduct all or any material part of its business or affairs;

(aa)Failure to Satisfy Milestones. Any of the Milestones are not satisfied in accordance with the terms (including the deadline for satisfaction) relating to such Milestone;

(bb) Consolidation. Any Loan Party or any other Restricted Subsidiary of the Borrower shall consolidate or combine with any other Person except to the extent expressly permitted by Section 6.05 or pursuant to a confirmed Acceptable Plan; or

(cc) Roll-Up. The Bankruptcy Court does not approve on the Final Order Date, or any determination is made by the Bankruptcy Court at any time, that it will not approve the "roll-up" of the Pre-Petition Revolving Loans into DIP Term Loans under this Agreement, in a manner and on terms satisfactory to the affected Lenders and in accordance with Section 2.01(b);

then, and in any such event, and at any time thereafter during the continuance of such event, the Administrative Agent, on behalf of the Holders of Secured Obligations, may, and at the direction of the Required Lenders shall, take any or all of the following actions at the same or different times, subject to any applicable notice period in the Orders, but without any action, approval, further order or application of the Bankruptcy Court, and without the requirement to give prior notice:

(i) declare the Commitment of each Lender to make Loans and/or any obligation of the Issuing Banks to issue Letters of Credit to be terminated, reduced or otherwise restricted whereupon such Commitments and obligations shall be terminated, reduced or restricted to the extent that any such Commitment or obligation remains;

(ii) in the case of this clause (ii), at the direction of the Required Lenders, declare the unpaid principal amount of all or any portion of the outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind (except any notice required by the Orders), all of which are hereby expressly waived by the Borrower;

(iii) require that the Borrower Cash Collateralize that portion of the L/C Obligations composed of the aggregate undrawn amount of Letters of Credit (in an amount equal to 105% of the Fronting Exposure of the Issuing Banks) if applicable; and

(iv) subject to the proviso below, in the case of this clause (iv), at the direction of the Required Lenders, exercise on behalf of itself, the Issuing Banks, the Lenders and

the other Holders of Secured Obligations all rights and remedies available to it, the Issuing Banks, the Lenders and the other Holders of Secured Obligations under the Loan Documents, including to enforce any and all Liens and security interests created pursuant to the Collateral Documents or exercise of any other rights or remedies with respect to the Collateral (including rights to set off or apply any amounts in any bank accounts that are a part of the Collateral);

provided that immediately upon the giving of any notice of the occurrence and continuance of an Event of Default by the Administrative Agent in accordance with the Orders, (w) any obligation of each Lender to make Loans and/or and any obligation of Issuing Banks to issue Letters of Credit shall be suspended; (x) the Administrative Agent may block or limit withdrawals from any bank accounts that are a part of the Collateral (including, without limitation, by sending any control activation notices to depositary banks pursuant to any control agreement), (i) in accordance with the Agreed Budget and the Loan Documents to fund payroll, make any required utilities payments and make any other critical payments necessary to continue operations, and (ii) to satisfy the Carve-Out, (y) except as otherwise expressly provided herein and in the Orders, the Loan Parties shall deliver and cause the delivery of the proceeds of the Loans and any Collateral to the Administrative Agent as provided herein; and (z) the Administrative Agent shall be permitted to apply such proceeds in accordance with the terms herein and in the Loan Documents.

SECTION 7.02. Prohibition on Credit Bidding By Lenders.

Each Lender hereby agrees that, except as otherwise provided in any Loan Documents or with the written consent of the Administrative Agent and the Required Lenders, it will not take any enforcement action with respect to all or any portion of the Collateral, accelerate obligations under any Loan Documents, or exercise any right that it might otherwise have under applicable Laws to credit bid at foreclosure sales, UCC sales or other similar Dispositions of all or any portion of the Collateral.

ARTICLE VIII

The Administrative Agent and Issuing Banks

SECTION 8.01. Authorization and Action.

(a) Each of the Lenders and Issuing Banks hereby irrevocably appoints the Administrative Agent to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article VIII are solely for the benefit of the Administrative Agent, the Lenders, and the Issuing Banks, and no Loan Party has rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable

law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the collateral agent under the Loan Documents, and each of the Lenders and Issuing Banks hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and Issuing Bank for purposes of acquiring, holding, and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as collateral agent and any co-agents, sub-agents, and attorneys-in-fact appointed by Administrative Agent pursuant to Section 8.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of Articles VIII and IX as if set forth in full herein with respect thereto. The Administrative Agent is authorized on behalf of all the Lenders, without the necessity of any notice to or further consent from the Lenders or the Issuing Bank, from time to time to take any action with respect to any Collateral or the Loan Documents which may be necessary to perfect and maintain perfected the Liens upon any Collateral granted pursuant to any Collateral Document.

SECTION 8.02. Administrative Agent and its Affiliates.

(a) The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, own securities of, lend money to, act as the financial advisor or in any advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

(b) Each Lender and Issuing Bank understands that the Person serving as the Administrative Agent, acting in its individual capacity, and its Affiliates (collectively, the "Agent's Group") is engaged in a wide range of financial services and businesses (including investment management, financing, securities trading, corporate and investment banking and research) (such services and businesses are collectively referred to in this Article VIII as "Activities") any may engage in the Activities with or on behalf of one or more of the Loan Parties or their respective Affiliates. Furthermore, the members of the Agent's Group may, in undertaking the Activities, engage in trading in financial products or undertake other investment businesses for its own account or on behalf of others (including the Loan Parties and their Affiliates and including holding, for its own account or on behalf of others, equity, debt and similar positions in the Borrower, another Loan Party or their respective Affiliates), including trading in or holding long, short or derivative positions in securities, loans, or other financial products of one or more of the Loan parties or their Affiliates. Each Lender and Issuing Bank understands and agrees that in engaging in the Activities, the members of the Agent's Group may receive or otherwise obtain information concerning the Loan Parties or their Affiliates (including information concerning the ability of the Loan Parties to

perform their respective obligations hereunder and under the other Loan Documents) which information may not be available to any of the Lenders that are not members of the Agent's Group. Neither the Administrative Agent nor any other member of the Agent's Group shall have any duty to disclose to any Lender or Issuing Bank or use on behalf of any Lender or Issuing Bank, nor be liable for the failure to so disclose or use, any information whatsoever about or derived from the Activities or otherwise (including any information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Loan Party or any Affiliate of any Loan Party) or to account for any revenue or profits obtained in connection with the Activities, except that the Administrative Agent shall deliver or otherwise make available to each Lender such documents as are expressly required by any Loan Document to be transmitted by the Administrative Agent to the Lenders.

(c) Each Lender and Issuing Bank further understands that there may be situations where members of the Agent's Group or their respective customers (including the Loan Parties and their Affiliates) either now have or may in the future have interests or take actions that may conflict with the interests of any one or more of the Lenders or Issuing Banks (including the interests of any Lender or Issuing Bank hereunder and under the other Loan Documents). Each Lender and Issuing Bank agrees that no member of the Agent's Group is or shall be required to restrict its activities as a result of any Person serving as the Administrative Agent being a member of the Agent's Group, and that each member of the Agent's Group may undertake any Activities without further consultation with or notification of any Lender or Issuing Bank. None of (i) this Agreement nor any other Loan Document, (ii) the receipt by the any members of the Agent's Group of information (including information concerning the ability of the Loan Parties to perform their respective obligations hereunder and under the other Loan Documents), or (iii) any other matter, shall give rise to any fiduciary, equitable, or contractual duties (including any duty of trust, care or confidence) owing by the Administrative Agent or any member of the Agent's Group to any Lender or Issuing Bank including any such duty that would prevent or restrict any member of the Agent's Group from acting on behalf of customers (including the Loan Parties or their Affiliates) or for its own account.

SECTION 8.03. Duties. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) and may (but, except as expressly contemplated hereby or by the other Loan Documents, is not required to) seek instructions from the Lenders or Required Lenders (or any other applicable percentage of Lenders) with respect to any matter or duty hereunder or under any other Loan Document; provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may

expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law;

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of their respective Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity; and

(d) shall not be liable for any damage or loss resulting from or caused by events or circumstances beyond the Administrative Agent's reasonable control, including nationalization, expropriation, currency or funds transfer restrictions, the interruption, disruption, or suspension of the normal procedures and practices of any securities market, power, mechanical, communications, or other technological failures or interruptions, computer viruses or the like, fires, floods, earthquakes, or other natural disasters, civil, and military disturbance, acts of war or terrorism, riots, revolution, acts of God, work stoppages, strikes, national disasters of any kind, or other similar events or acts, or errors by the Borrower in its instructions to the Administrative Agent.

SECTION 8.04. Administrative Agent's Reliance, Etc.

(a) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Article VIII and Section 9.02) and shall be fully protected in all cases in acting, or refraining from acting, in accordance with a request or consent of such number or percentage of Lenders or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until a Loan Party, a Lender, or an Issuing Bank has given written notice describing such Default or Event of Default to the Administrative Agent. The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein or therein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

(b) The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument,

document, or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent, or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for a Loan Party), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

(c) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into,

participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(d) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (c) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (c), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

SECTION 8.05. Sub-Agents. The Administrative Agent may perform any and all its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers by or through their respective Related Parties. The Administrative Agent is authorized on behalf of all the Lenders, without the necessity of any notice to or further consent from the Lenders or the Issuing Banks, from time to time to permit any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent to take any action with respect to any Collateral or the Loan Documents which may be necessary to perfect and maintain perfected the Liens upon any Collateral granted pursuant to any Collateral Document. The exculpatory provisions of this Article VIII, as well as all other indemnity and expense reimbursement provisions of this Agreement (including, without limitation, Section 9.03), shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Administrative Agent and as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

SECTION 8.06. Resignation.

(a) The Administrative Agent may resign at any time by giving notice of its resignation to the Lenders, the Issuing Banks, and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with and, so long as no Event of Default then exists, subject to the approval (not to be unreasonably withheld or delayed) of, the Borrower, to appoint a successor, which shall be a financial institution with an office in the

United States, or an Affiliate of any such financial institution with an office in the United States. If no successor shall have been so appointed by the Required Lenders and, if applicable, the Borrower and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders, the "Resignation Effective Date"), then the retiring Administrative Agent may, on behalf of the Lenders and Issuing Banks, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) With effect from the Resignation Effective Date (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any possessory Collateral held by the Administrative Agent on behalf of the Lenders or Issuing Banks under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such Collateral until such time as a successor Administrative Agent is appointed) and (ii) except for any indemnity payments owed to the retiring Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each Issuing Bank directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as the Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Administrative Agent (other than any rights to indemnity payments owed to the retiring Administrative Agent) and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Section and Section 9.03 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as the Administrative Agent.

(c) Any resignation by Rabobank as the Administrative Agent pursuant to this Section shall also constitute its resignation as Issuing Bank. In the event of any such resignation as an Issuing Bank, the Borrower shall be entitled to appoint any Revolving Lender that is willing to accept such appointment as successor issuing bank. Upon the acceptance of a successor's appointment as the Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank, (ii) the retiring Issuing Bank shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements reasonably satisfactory to the retiring Issuing Bank to effectively assume the obligations of the retiring Issuing Bank with respect to such Letters of Credit.

SECTION 8.07. Lender Credit Decision. Each Lender and Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has

deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. In this regard, each Lender further acknowledges that White & Case LLP is acting in this transaction as special counsel to Rabobank only, except to the extent otherwise expressly stated in any legal opinion or any Loan Document. Each other party hereto will consult with its own legal counsel to the extent that it deems necessary in connection with the Loan Documents and the matters contemplated therein.

SECTION 8.08. Other Agent Titles. Anything herein to the contrary notwithstanding, neither the "Bookrunner" or "Lead Arranger" listed on the cover page hereof or the "Arranger" referenced herein shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an Issuing Bank hereunder.

SECTION 8.09. Agent May File Proofs of Claim; Bankruptcy Events. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party or any Subsidiary, the Administrative Agent (irrespective of whether the principal of any Loan or LC Disbursement shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand any Loan Party or any other Person primarily or secondarily liable) shall be entitled and empowered (but not obligated), by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Disbursements and all other Obligations or Secured Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks, and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Banks, and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Banks, and the Administrative Agent under Article II and Section 9.03) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same in accordance with this Agreement;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and Issuing Bank to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Article II and Section 9.03.

SECTION 8.10. Collateral.

(a) The Holders of Secured Obligations irrevocably authorize the Administrative Agent, at its option and in its discretion:

(i) to release any Lien (A) on all Collateral upon the Full Satisfaction of all Secured Obligations, (B) with respect to any Collateral that is sold or otherwise disposed of to a Person other than a Loan Party pursuant to a disposition permitted by Section 6.05, or (C) subject to Section 9.02, as may be approved, authorized, or ratified in writing by the Required Lenders;

(ii) [reserved];

(iii) [reserved];

(iv) to confirm in writing whether specific items or types of Loan Parties' property are or are not included in the Collateral pursuant to the Loan Documents;

(v) to release any Subsidiary Guarantor from its obligations under the Guaranty Agreement if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents; and

(vi) to enter into the Intercreditor Agreement, and perform all obligations thereunder, respectively, and to enter into any amendments of the Intercreditor Agreement which do not materially modify the rights of the Holders of the Secured Obligations thereunder, and the Holders of the Secured Obligations agree to be bound by the terms thereof.

(b) Upon request by the Administrative Agent at any time, the Holders of Secured Obligations will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Subsidiary Guarantor from its obligations under the Subsidiary Guaranty pursuant to this Section 8.10.

(c) The Administrative Agent, at the sole expense of the Loan Parties, shall execute and deliver to the Loan Parties all releases or other documents reasonably necessary or desirable to evidence or effect any release of Liens or release of Guaranty Agreement authorized under Section 8.10(a), in each case, without recourse to, or representation or warranty from, the Administrative Agent; provided**,** that (i) the Administrative Agent shall not be required to execute any document necessary to evidence such release authorized under clause (i)(B) or (v) of Section 8.10(a) unless a Responsible Officer of the Borrower shall certify in writing to the Administrative Agent that the transaction requiring such release is permitted under the Loan Documents (it being acknowledged that the Administrative Agent may rely on any such certificate without further enquiry), (ii) the Administrative Agent shall not be required to execute any document necessary to evidence such release on terms that, in the Administrative Agent's opinion, would expose the Administrative Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (iii) no such release shall in any manner discharge, affect, or impair the Secured Obligations or any Liens (other than those expressly being released) upon (or obligations of any Loan Parties in respect

of) all interests retained by the Loan Parties, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral. To the extent the Administrative Agent is required to execute any releases or other documents in accordance with this Section 8.10(c), the Administrative Agent shall do so promptly upon request of the Borrower without the consent or further agreement of any Holder of Secured Obligations.

(d) The Administrative Agent shall have no obligation whatsoever to any of the Holders of Secured Obligations to assure that the Collateral exists or is owned by any Loan Party or its Subsidiaries or is cared for, protected, or insured or has been encumbered, or that the Administrative Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or to continue exercising, any of the rights, authorities and powers granted or available to the Administrative Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, the Administrative Agent may act in any manner it may deem appropriate, in its sole discretion given the Administrative Agent's own interest in the Collateral in its capacity as one of the Lenders and that the Administrative Agent shall have no other duty or liability whatsoever to any Holders of Secured Obligations as to any of the foregoing, except as otherwise provided herein.

(e) The Holders of Secured Obligations hereby irrevocably authorize the Administrative Agent, based upon the instruction of the Required Lenders, to (i) consent to, credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including under section 363 of the Bankruptcy Code, (ii) credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale or other disposition thereof conducted under the provisions of the UCC, including pursuant to Section 9-610 or 9-620 of the UCC, or (iii) credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any other sale or foreclosure conducted by the Administrative Agent (whether by judicial action or otherwise) in accordance with applicable law. In connection with any such credit bid or purchase, (A) the Secured Obligations owed to the Holders of Secured Obligations shall be entitled to be, and shall be, credit bid on a ratable basis (with Secured Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not unduly delay the ability of Administrative Agent to credit bid or purchase at such sale or other disposition of the Collateral and, if such claims cannot be estimated without unduly delaying the ability of the Administrative Agent to credit bid, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the asset or assets purchased by means of such credit bid) and the Holders of Secured Obligations whose Secured Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Secured Obligations credit bid in relation to the aggregate amount of Secured Obligations so credit bid) in the asset or assets so purchased (or in the Equity Interests of the acquisition vehicle or vehicles that are used to consummate such purchase), and (B) the Administrative Agent, based upon the instruction of the Required Lenders, may accept non-cash consideration, including debt and equity securities issued by such acquisition vehicle or vehicles and in connection therewith the Administrative Agent may reduce the Secured Obligations owed

to the Holders of Secured Obligations (ratably based upon the proportion of their Secured Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) based upon the value of such non-cash consideration.

(f) The Holders of the Secured Obligations acknowledge and agree that, Rabobank or any of its Affiliates is, and may at any time be, the Receivables Financier under the Permitted Receivables Financing.

SECTION 8.11. Issuing Banks. No Issuing Bank nor any of their respective Related Parties shall be liable for any action taken or omitted to be taken by any of them hereunder or otherwise in connection with any Loan Document except for its or their own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. Without limiting the generality of the preceding sentence, Issuing Banks (a) shall have no duties or responsibilities except those expressly set forth in the Loan Documents, and shall not by reason of any Loan Document be a trustee or fiduciary for any Lender or for the Administrative Agent, (b) shall not be required to initiate any litigation or collection proceedings under any Loan Document, (c) shall not be responsible to any Lender or the Administrative Agent for any recitals, statements, representations, or warranties contained in any Loan Document, or any certificate or other documentation referred to or provided for in, or received by any of them under, any Loan Document, or for the value, validity, effectiveness, enforceability, or sufficiency of any Loan Document or any other documentation referred to or provided for therein or for any failure by any Person to perform any of its obligations thereunder, (d) may consult with legal counsel (including counsel for the Loan Parties or the Administrative Agent), independent public accountants, and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants, or experts, and (e) shall incur no liability under or in respect of any Loan Document by acting upon any notice, consent, certificate, or other instrument or writing believed by it to be genuine and signed or sent by the proper party or parties. As to any matters not expressly provided for by any Loan Document, each Issuing Bank shall in all cases be fully protected in acting, or in refraining from acting, hereunder in accordance with instructions signed by the Required Lenders, and such instructions of the Required Lenders and any action taken or failure to act pursuant thereto shall be binding on all of the Lenders and the Administrative Agent; **provided, however**, that no Issuing Bank shall be required to take any action which such Issuing Bank reasonably believes exposes it to personal liability or which such Issuing Bank reasonably believes is contrary to any Loan Document or applicable law.

SECTION 8.12. Agency for Perfection. The Administrative Agent hereby appoints each other Lender as its agent (and each Lender hereby such appointment) for the purpose of perfecting the Administrative Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the UCC can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Administrative Agent thereof, and, promptly upon the Administrative Agent's request therefor shall deliver possession or control of such Collateral to the Administrative Agent or in accordance with the Administrative Agent's instructions.

SECTION 8.13. Affiliates of Lenders; Banking Services Providers; Swap Obligations. By accepting the benefits of the Loan Documents, any Affiliate of a Lender, or any Person providing Non-Lender Banking Services, that is owed any Secured Obligation is bound by the terms of the Loan Documents. Notwithstanding the foregoing: (a) neither the Administrative Agent, any Lender

nor any Loan Party shall be obligated to deliver any notice or communication required to be delivered to any Lender under any Loan Documents to any Affiliate of any Lender or any Person providing Non-Lender Banking Services; and (b) no Affiliate of any Lender or Person providing Non-Lender Banking Services that is owed any Secured Obligation shall be included in the determination of the Required Lenders or entitled to consent to, reject, or participate in any manner in any amendment, waiver or other modification of any Loan Document. The Administrative Agent shall deal solely and directly with the related Lender of any such Affiliate in connection with all matters relating to the Loan Documents. The Secured Obligation owed to such Affiliate shall be considered the Secured Obligations of its related Lender for all purposes under the Loan Documents and such Lender shall be solely responsible to the other parties hereto for all the obligations of such Affiliate under any Loan Document. It is understood and agreed that the rights and benefits under this Agreement, the Collateral Documents, and the Subsidiary Guaranties of each Lender or Affiliate of a Lender that provides Lender Banking Services or is owed any Swap Obligations and each Person providing Non-Lender Banking Services, in such capacity, consist exclusively of such Lender's, Affiliate's or other Person's right to share in payments and collections of the Collateral and payments under the Subsidiary Guaranties; provided that for the avoidance of doubt, (i) obligations of the Borrower or any Subsidiary under any Banking Services Agreement or Swap Agreement shall be secured and guaranteed pursuant to the Collateral Documents and Subsidiary Guaranties, respectively, only to the extent that, and for so long as, the other Secured Obligations are so secured and guaranteed and (ii) any release of Collateral or any Subsidiary Guarantors effected in the manner permitted by this Agreement shall not require the consent of holders of obligations under Banking Services Agreements or Swap Agreements. All Banking Services Obligations and Swap Obligations shall be secured but on a silent basis, so that notwithstanding any other provision, if any, in this Agreement or any Collateral Document or Subsidiary Guaranty, no Lender or Affiliate of a Lender that provides Lender Banking Services or is owed any Swap Obligations and no provider of Non-Lender Banking Services shall be able to take any action in respect of the Collateral or Subsidiary Guaranties nor instruct the Required Lenders or the Administrative Agent to take any such action nor have any rights in connection with the management or release of any Collateral or the obligations of any Subsidiary Guarantor under any Subsidiary Guaranty. By accepting the benefits of the Collateral and the Subsidiary Guaranties, such Lender, Affiliate or other Person shall be deemed to have appointed the Administrative Agent as its agent and agreed to be bound by the Loan Documents as a Holder of Secured Obligations, subject to the limitations set forth in this paragraph. The Administrative Agent shall not owe any fiduciary duty, duty of loyalty, duty of care, duty of disclosure, or any other obligation whatsoever to any Lender or Affiliate of a Lender that provides Banking Services or is owed any Swap Obligations or any provider of Non-Lender Banking Services, in each case with respect to any Banking Services Obligation or Swap Obligation. The Administrative Agent shall have no duty to determine the amount or the existence of any amounts owing under any Banking Services Agreements or Swap Agreements. In connection with any such distribution of payments and collections or termination or release by the Administrative Agent of any Liens or Subsidiary Guarantors thereunder, the Administrative Agent shall be entitled to assume no amounts are due under any Banking Services Agreement or Swap Agreement unless such Lender or Affiliate of a Lender that provides Lender Banking Services or is owed any Swap Obligations or such provider of Non-Lender Banking Services has notified the Administrative Agent in writing of the amount of any such liability owed to it at least 5 Business Days prior to such distribution, termination, or release.

ARTICLE IX

Miscellaneous

SECTION 9.01. Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to the Borrower, to Dean Foods Corporation, 2711 N. Haskell Avenue, Suite 3400, Dallas, Texas 75204, Attention: Office of the General Counsel;

(ii) if to the Administrative Agent in connection with any Borrowing Request, Interest Election Request, or any payment or prepayment of the Obligations, to it at c/o Rabobank Corporate Banking Services, 245 Park Avenue, 38th Floor, New York, NY 10167; Telecopy No. (914) 304-9327; Telephone No. (212) 574-7325 / (212) 574-7346; Attention: Ann McDonough/Vivian Li; Email: fm.am.syndicatedloans@rabobank.com and Vivian.Li@rabobank.com;

(iii) if to Rabobank as Issuing Bank, to it at c/o Rabo Support Services, Inc., at Rabobank Corporate Banking Services, 245 Park Avenue 38th Floor, New York, NY 10167; Attention: Sandra Rodriguez; Telecopy No. (914) 304-9329; Telephone No. (212) 574-7315; Email: Sandra.L.Rodriguez@rabobank.com with a copy to: RaboNYSBL@rabobank.com;

(iv) if to the Administrative Agent in connection with any other matter (including deliveries under Section 5.01 and other matters), to it at Rabobank Loan Syndications, 245 Park Avenue, 37th Floor, New York, NY 10167, Attention: Loan Syndications; Telecopy No. (212) 808-2578; Telephone No. (212) 808-6808; Email: syndications.ny@rabobank.com; and

(v) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through Electronic Systems, to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Notices and other communications to the Lenders and the Issuing Banks hereunder may be delivered or furnished by using Electronic Systems pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices

pursuant to Article II unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent, the Issuing Banks, or the Borrower may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) Each of the Borrower, the Administrative Agent and each Issuing Bank may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent and the Issuing Banks. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(d) Electronic Systems.

(i) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make Communications (as defined below) available to the Issuing Banks and the Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak, ClearPar or a substantially similar Electronic System.

(ii) Any Electronic System used by the Administrative Agent is provided "as is" and "as available". The Agent Parties (as defined below) do not warrant the adequacy of such Electronic Systems and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or any Electronic System. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Loan Party, any Lender, any Issuing Bank or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or

expenses (whether in tort, contract or otherwise) arising out of any Loan Party's or the Administrative Agent's transmission of communications or notices through IntraLinks, Syndtrak, ClearPar, or a substantially similar electronic transmission system, any other electronic platform or electronic messaging service, or through an Electronic System. "Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or any Issuing Bank by means of electronic communications pursuant to this Section, including through an Electronic System.

(e) Reliance by Administrative Agent, Issuing Bank and Lenders. The Administrative Agent, the Issuing Banks and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices, Borrowing Requests and Interest Election Requests) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, the Issuing Banks, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

SECTION 9.02. Waivers; Amendments.

(a) No failure or delay by the Administrative Agent, any Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Banks and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or any Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (x) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders, or (y) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent with the consent of the Required Lenders and the Loan Party or Loan Parties that are parties thereto; provided that no such agreement shall,

(i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce or forgive the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce or forgive any interest or fees or other amounts payable hereunder, without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary to amend Section 2.13(c), (iii) postpone any scheduled date of payment of the principal amount of any Loan or LC Disbursement (other than any reduction of the amount of, or any extension of the payment date for, the mandatory prepayments required under Section 2.11, in each case which shall only require the approval of the Required Lenders), or any date for the payment of any interest, fees or other Obligations payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender directly affected thereby, (iv) change Section 2.18(b) or (c) in a manner that would alter the manner in which payments are shared, without the written consent of each Lender adversely affected thereby, (v) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender, (vi) release all or substantially all of the Subsidiary Guarantors from their obligations under the Subsidiary Guaranty (except as otherwise permitted herein or in the other Loan Documents), without the written consent of each Lender, (vii) except as provided in Section 8.10 or in any Collateral Document, release all or substantially all of the Collateral, without the written consent of each Lender, (viii) except as provided in Section 8.10, contractually subordinate the payment of all Obligations to any other Indebtedness or contractually subordinate the priority of all of the Liens in favor of the Administrative Agent securing the Secured Obligations to the Liens securing any other Funded Indebtedness (other than Indebtedness permitted by Section 6.01(d)), without the written consent of each Lender adversely affected thereby, or (ix) amend the definition of "Borrowing Base" or any defined term used therein in a manner that results in more credit being made available to the Borrower based upon the Borrowing Base without the written consent of the Super-Majority Required Lenders; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or any Issuing Bank hereunder without the prior written consent of the Administrative Agent or such Issuing Bank, as the case may be (it being understood that any change to Section 2.21 shall require the consent of the Administrative Agent and the Issuing Banks). The Administrative Agent may also amend Schedule 1.01(a) to reflect assignments entered into pursuant to Section 9.04. Notwithstanding the foregoing, no consent with respect to any amendment, waiver or other modification of this Agreement shall be required of any Defaulting Lender, except with respect to any amendment, waiver or other modification referred to in clause (i), (ii) or (iii) of the first proviso of this paragraph and then only in the event such Defaulting Lender shall be directly affected by such amendment, waiver or other modification.

(c) [Reserved].

(d) Notwithstanding anything to the contrary herein (i) the Administrative Agent may, with the consent of the Borrower only, amend, modify or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect or inconsistency and (ii) the Administrative Agent may, in its discretion, grant extensions of time for the creation or

perfection of security interests in, and Mortgages on, or obtaining of title insurance or taking of other actions with respect to, particular assets (including extensions beyond the Effective Date or any date set forth in Schedule 5.17) as and to the extent expressly provided in this Agreement.

SECTION 9.03. Expenses; Indemnity; Damage Waiver.

(a) The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by each of the Administrative Agent and its Affiliates and each of the Lenders party hereto as of the Effective Date, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent and/or counsel for each of the Lenders party hereto as of the Effective Date, and of consultants, advisors, appraisers and auditors, in connection with the syndication and distribution (including, without limitation, via the internet or through a service such as Intralinks or DebtDomain) of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of the Loan Documents or any amendments, modifications or waivers of the provisions of the Loan Documents (whether or not the transactions contemplated hereby or thereby shall be consummated) and the preparation and review of pleadings, documents and reports related to the Bankruptcy Cases (and any successor cases relating thereto), attendance at meetings, court hearings or conferences related to the Bankruptcy Cases (and any successor cases relating thereto) and general monitoring of the Bankruptcy Cases (and any successor cases relating thereto), (ii) all reasonable and documented out-of-pocket expenses incurred by any Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, (iii) all out-of-pocket expenses incurred by the Administrative Agent, any Issuing Bank or any Lender, including the fees, charges and disbursements of any counsel for the Administrative Agent, any Issuing Bank or any Lender, in connection with the enforcement, collection or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit, and (iv) without limiting the generality of the foregoing, all reasonable fees and expenses of any financial advisory, appraisal or accounting firm retained by or for the benefit of the Administrative Agent).

(b) The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), the Arrangers, each Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, penalties, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned, leased or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or

prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any of its Subsidiaries, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, penalties, liabilities or related expenses (1) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from (x) the gross negligence or willful misconduct of such Indemnitee or (y) the material breach of any express obligation of an Indemnitee under this Agreement pursuant to a claim initiated by the Borrower or (2) arise out of any investigation, litigation or proceeding that does not involve an act or omission by the Borrower or any Subsidiary and solely in connection with a dispute among Indemnitees (except when and to the extent that one of the parties to such dispute was acting in its capacity as an Agent, Issuing Bank or other agency capacity and, in such case, excepting only such party). This Section 9.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims or damages arising from any non-Tax claim.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent (or any sub-agent thereof) or any Issuing Bank under paragraph (a) or (b) of this Section, but without affecting the Borrower's obligations to make such payments, each Lender severally agrees to pay to the Administrative Agent or any Issuing Bank, as the case may be, such Lender's Applicable Percentage (or with respect to payments to an Issuing Bank, its Applicable Revolving Credit Percentage) (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), of such unpaid amount (it being understood that the Borrower's failure to pay any such amount shall not relieve the Borrower of any default in the payment thereof); provided that the unreimbursed expense or indemnified loss, claim, damage, penalty, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any sub-agent thereof) or any Issuing Bank in its capacity as such.

(d) To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof, other than, in each case, for direct or actual damages resulting from such Indemnitee's (x) gross negligence, (y) willful misconduct or (z) material breach of express obligations hereunder pursuant to a claim initiated by the Borrower, in each case as determined by a final and non-appealable judgment of a court of competent jurisdiction. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) All amounts due under this Section shall be payable promptly after written demand therefor.

(f) The agreements of this Section and the indemnity provision of Section 9.01(e) shall survive the resignation or replacement of the Administrative Agent and/or the Issuing Banks, the replacement of any Lender, and the Full Satisfaction of the Secured Obligations.

SECTION 9.04. Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of an Issuing Bank that issues any Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of an Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Persons (other than an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Administrative Agent; and

(B) other than with respect to any DIP Term Loan, each Issuing Bank;

provided that no DIP Term Loan Commitment (and no underlying Pre-Petition obligations relating thereto) may be assigned by any Person between the Effective Date and the effectuation of the DIP Term Loans upon the entry of the Final DIP Order unless such Person transfers such DIP Term Loan Commitment and the related underlying Pre-Petition obligations simultaneously, in the same amount and to the same Person.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund, an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5,000,000 with integral multiples of $500,000 in excess thereof unless each of the

Borrower and the Administrative Agent otherwise consent; provided that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement; provided that this clause shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Loans;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500, such fee to be paid by either the assigning Lender or the assignee Lender or shared between such Lenders; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower and its Affiliates, the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03). Upon request, the Borrower (at its expense) shall execute and deliver a promissory note in the form of Exhibit E to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount (and stated interest) of the

Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent, the Issuing Banks and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, any Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.05(b), 2.06(d) or (e), 2.07(b), 2.18(c) or 9.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) (i) Any Lender may, without the consent of the Borrower, the Administrative Agent or the Issuing Banks, sell participations to one or more banks or other entities (a "Participant"), other than an Ineligible Institution, in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, the Issuing Banks and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to have this Agreement enforced by the Administrative Agent on its behalf, and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the requirements and limitations therein, including the requirements under Section 2.17(f) (it being understood that the documentation required under Section 2.17(f) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender; provided such Participant agrees to be subject to Section 2.18(c) as though it were a Lender. The Borrower and the Administrative Agent shall be entitled to conclusively rely on information

contained in notices delivered pursuant to this paragraph. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.15 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

(iii) Notwithstanding anything in Section 9.04(c) to the contrary, any Participant that is a Farm Credit Lender that (i) has purchased a participation in a minimum amount of $10,000,000.00, (ii) has been designated as a voting Participant (a "Voting Participant") in a notice (a "Voting Participant Notice") sent by the relevant Lender or existing Voting Participant to the Administrative Agent and (iii) receives, prior to becoming a Voting Participant, the consent of the Administrative Agent (such consent to be required only to the extent and under the circumstances it would be required if such Voting Participant were to become a Lender pursuant to an assignment in accordance with Section 9.04(b) and such consent is not required for an assignment to an existing Voting Participant), shall be entitled to vote as if such Voting Participant were a Lender on all matters subject to a vote by the Lender, and the voting rights of the selling Lender or existing Voting Participant shall be correspondingly reduced, on a dollar-for-dollar basis. Each Voting Participant Notice shall include, with respect to each Voting Participant, the information that would be included by a prospective Lender in an Assignment and Assumption. Notwithstanding the foregoing, each Farm Credit Lender designated as a Voting Participant on Schedule 9.04 shall be a Voting Participant without delivery of a Voting Participation Notification and without the prior written consent of the Administrative Agent. The Administrative Agent and the Borrower shall be entitled to conclusively rely on information contained in Voting Participant Notices and all other notices delivered pursuant hereto. The voting rights of each Voting Participant are solely for the benefit of such Voting Participant and shall not inure to any assignee or participant of such Voting Participant that is not a Farm Credit Lender.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) Notwithstanding anything to the contrary contained herein, if at any time Rabobank assigns all of its Commitments and Loans pursuant to Section 9.04(b), Rabobank may, upon 30 days' notice to the Borrower and the Lenders, resign as an Issuing Bank. In the event of any such resignation as an Issuing Bank, the Borrower shall be entitled to appoint from among the Lenders a successor Issuing Bank hereunder; provided that such Lender consents in writing and in advance to becoming a successor Issuing Bank hereunder; provided further, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of Rabobank as an Issuing Bank. If Rabobank resigns as an Issuing Bank, it shall retain all the rights, powers, privileges and duties of an Issuing Bank hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an Issuing Bank and all Obligations with respect thereto (including the right to require the Lenders to make ABR Loans or fund risk participations pursuant to Section 2.06(e)). Upon the appointment of a successor Issuing Bank, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank and (b) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Rabobank to effectively assume the obligations of Rabobank with respect to such Letters of Credit.

SECTION 9.05. Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

SECTION 9.06. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable

to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, e-mailed.pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. The words "execute", "execution", "signed", "signature", "delivery", and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including, without limitation, Assignment and Assumptions, amendments, Borrowing Requests, waivers and consents) shall be deemed to include Electronic Signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

SECTION 9.07. Severability. Any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower or any Subsidiary Guarantor against any of and all the Secured Obligations held by such Lender, irrespective of whether or not such Lender shall have made any demand under the Loan Documents and although such obligations may be unmatured. The applicable Lender shall notify the Borrower, the Administrative Agent of such set-off or application; provided that any failure to give or any delay in giving such notice shall not affect the validity of any such set-off or application under this Section. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process.

(a) This Agreement and the other Loan Documents and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Loan Document (except, as to any other loan document, as expressly set forth therein) and the Transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the Law of the State of New York and, to the extent applicable, the Bankruptcy Code.

(b) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Bankruptcy Court and, if the Bankruptcy Court does not have, or abstains from, jurisdiction, the Supreme Court of the State of New York sitting in New York County, Borough of Manhattan, and of the United States District Court for the Southern District of New York, and any appellate court from any thereof in any action or proceeding arising out of or relating to any Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, any Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

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

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED

TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12. Confidentiality. Each of the Administrative Agent, the Issuing Banks and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and its and its Affiliates' respective directors, trustees, officers, employees and agents, including accountants, auditors, legal counsel and other advisors who have a need to know such Information in connection with the transactions contemplated by the Loan Documents (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by Requirement of Law or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower, its Subsidiaries and their obligations, (g) with the prior consent of the Borrower, (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, an Issuing Bank or any Lender on a nonconfidential basis from a source other than the Borrower (which source is not known by such recipient to be in breach of confidentiality obligations to the Borrower or any Subsidiary), (i) on a confidential basis to any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder, (j) on a confidential basis to its insurers, reinsurers and insurance brokers, or (k) on a confidential basis to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers of other market identifiers with respect to the credit facilities provided hereunder. For the purposes of this Section, "Information" means all information received from a Loan Party or any Subsidiary relating to the Loan Parties or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by such Loan Party or any Subsidiary (other than any such information received from a source that is known by such recipient to be in breach of confidentiality obligations to such Loan Party or any Subsidiary). Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Arrangers and the Lenders in connection with the administration of this

Agreement, the other Loan Documents, and the Commitments, but only to the extent consistent with information that has previously been publicly disclosed by the Borrower.

EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.12 FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER AND ITS RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE BORROWER AND ITS AFFILIATES, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES AND ITS SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.

SECTION 9.13. Several Obligations; Nonreliance; Violation of Law. The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan or perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. Each Lender hereby represents that it is not relying on or looking to any margin stock for the repayment of the Borrowings provided for herein. Anything contained in this Agreement to the contrary notwithstanding, neither any Issuing Bank nor any Lender shall be obligated to extend credit to the Borrower in violation of any Requirement of Law.

SECTION 9.14. USA PATRIOT Act. Each of the Administrative Agent, the Issuing Bank, and each Lender that is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act") hereby notifies each Loan Party that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the Act. The Borrower hereby agrees to provide, and cause each other Loan Party to provide, such information promptly upon the request of the Administrative Agent or any Lender. Each Lender subject to the Act acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on the Administrative Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to the USA Patriot Act or the regulations thereunder, including the regulations contained in 31 CFR 103.121 (as hereafter

amended or replaced, the "***CIP Regulations***"), or any other Anti-Terrorism Law, including any programs involving any of the following items relating to or in connection with any Loan Party, its Affiliates or its agents, this Agreement, the Loan Documents or the transactions hereunder or contemplated hereby: (a) any identity verification procedures, (b) any record-keeping, (c) comparisons with government lists, (d) customer notices, or (e) other procedures required under the CIP Regulations or such other law.

SECTION 9.15. Disclosure. The Borrower and each Lender hereby acknowledges and agrees that the Administrative Agent and/or its Affiliates from time to time may hold investments in, make other loans to or have other relationships with any of the Borrower, its Subsidiaries and their respective Affiliates.

SECTION 9.16. Appointment for Perfection. Each Lender hereby appoints each other Lender as its agent for the purpose of perfecting Liens, for the benefit of the Administrative Agent and the Holders of Secured Obligations, in assets which, in accordance with Article 9 of the UCC or any other applicable law can be perfected only by possession. Should any Lender (other than the Administrative Agent) obtain possession of any such Collateral, such Lender shall notify the Administrative Agent thereof, and, promptly upon the Administrative Agent's request therefor shall deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent's instructions.

SECTION 9.17. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.18. No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Lenders and their Affiliates, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Lenders and their Affiliates is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) no Lender or any of its Affiliates has any obligation to the

Borrower or any of its Affiliates with respect to the transactions contemplated hereby except, in the case of a Lender, those obligations expressly set forth herein and in the other Loan Documents; and (iii) each of the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and no Lender or any of its Affiliates has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against each of the Lenders and their Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 9.19. Release of Subsidiary Guarantors.

(a) A Subsidiary Guarantor shall automatically be released from its obligations under the Subsidiary Guaranty upon the consummation of any transaction permitted by this Agreement as a result of which such Subsidiary Guarantor ceases to be a Subsidiary; provided that, if so required by this Agreement, the Required Lenders shall have consented to such transaction and the terms of such consent shall not have provided otherwise. In connection with any termination or release pursuant to this Section, the Administrative Agent shall (and is hereby irrevocably authorized by each Lender to) execute and deliver to any Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence such termination or release. Any execution and delivery of documents pursuant to this Section shall be without recourse to or warranty by the Administrative Agent.

(b) Further, the Administrative Agent may (and is hereby irrevocably authorized by each Lender to), upon the request of the Borrower, release any Subsidiary Guarantor from its obligations under the Subsidiary Guaranty if such Subsidiary Guarantor is no longer a Subsidiary upon the consummation of a transaction permitted by this Agreement.

(c) At such time as the Secured Obligations (other than Obligations expressly stated to survive such payment and termination) shall have been Fully Satisfied, the Subsidiary Guaranty and all obligations (other than those expressly stated to survive such termination) of each Subsidiary Guarantor thereunder shall automatically terminate, all without delivery of any instrument or performance of any act by any Person.

SECTION 9.20. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Solely to the extent any Lender or Issuing Bank that is an EEA Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender or Issuing Bank that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

SECTION 9.21. Construction; Independence of Covenants.

(a) The Borrower, each other Loan Party (by its execution of the Loan Documents to which it is a party), the Administrative Agent and each Lender acknowledges that each of them has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review the Loan Documents with its legal counsel and that the Loan Documents shall be construed as if jointly drafted by the parties thereto.

(b) All covenants and other agreements contained in this Agreement or any other Loan Document shall be given independent effect so that, if a particular action or condition is not permitted by any of such covenants or other agreements, the fact that such action or condition would be permitted by an exception to, or otherwise be within the limitations of, another covenant or other agreement shall not avoid the occurrence of a Default if such action is taken or such condition exists.

SECTION 9.22. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) in the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution

Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 9.22, the following terms have the following meanings:

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Covered Entity" means any of the following:

(i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"***Default Right***" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"***QFC***" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

SECTION 9.23. Orders. The Loan Parties, the Administrative Agent, the Issuing Banks and the Lenders hereby expressly agree that in the event of any conflict between this Agreement and the Orders, the Orders shall control.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

BORROWER:

DEAN FOODS COMPANY,
as the Borrower

By: _____
Name:
Title:

ISSUING BANK AND ADMINISTRATIVE AGENT:

COÖPERATIEVE RABOBANK U.A., NEW YORK BRANCH, an Issuing Bank and Administrative Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

LENDERS:

COÖPERATIEVE RABOBANK U.A., NEW YORK BRANCH, as a Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

[●], as a Lender

By: _____
Name:
Title:

[●], as a Lender

By: _____
Name:
Title:

[●], as a Lender

By: _____
Name:
Title:

[●], as a Lender

By: _____
Name:
Title:

EXHIBIT 2
DIP BUDGET

Dean Foods
Exhibit 2: DIP Budget

HIGHLY CONFIDENTIAL
DRAFT

$ in millions

Forecast														
Week Ending	15-Nov	22-Nov	29-Nov	6-Dec	13-Dec	20-Dec	27-Dec	3-Jan	10-Jan	17-Jan	24-Jan	31-Jan	7-Feb	**Period**
Week #	1	2	3	4	5	6	7	8	9	10	11	12	13	**Total**
Operating Cash Receipts	$ 119	$ 121	$ 134	$ 138	$ 143	$ 149	$ 157	$ 145	$ 139	$ 145	$ 127	$ 108	$ 143	$ 1,767
Operating Disbursements	(13)	(83)	(76)	(89)	(103)	(194)	(130)	(89)	(70)	(237)	(174)	(103)	(96)	(1,458)
Net Operating Cashflows	**$ 106**	**$ 37**	**$ 58**	**$ 49**	**$ 40**	**$ (45)**	**$ 27**	**$ 56**	**$ 68**	**$ (92)**	**$ (47)**	**$ 5**	**$ 47**	**$ 309**
Ch 11. & Other Disbursements	(121)	(82)	(68)	(19)	(13)	(10)	(6)	(4)	(3)	(4)	-	(7)	(2)	(338)
Total Net Cash Flow	**$ (15)**	**$ (45)**	**$ (10)**	**$ 30**	**$ 27**	**$ (55)**	**$ 21**	**$ 51**	**$ 66**	**$ (96)**	**$ (47)**	**$ (2)**	**$ 45**	**$ (29)**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
SOUTHERN FOODS GROUP, LLC, *et al.*,	)	Case No. 19-36313 (DRJ)
Debtors.[1]	)	(Jointly Administered)

ORDER AUTHORIZING (I) DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF LIEN CLAIMANTS AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS

[RELATES TO DKT. NO. 11]

Upon the motion (the "**Motion**")[2] of Southern Foods Group, LLC, Dean Foods Company, and certain of their affiliates (collectively, the "**Debtors**") for entry of interim and final orders, pursuant to sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (a) authorizing, but not directing, the Debtors to pay, in their sole discretion, all or a portion of the Lienholder Claims and (b) authorizing the Debtors' financial institutions to

[1] The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southern Foods Group, LLC (1364); Dean Foods Company (9681); Alta-Dena Certified Dairy, LLC (1347); Berkeley Farms, LLC (8965); Cascade Equity Realty, LLC (3940); Country Fresh, LLC (6303); Dairy Information Systems Holdings, LLC (9144); Dairy Information Systems, LLC (0009); Dean Dairy Holdings, LLC (9188); Dean East II, LLC (9192); Dean East, LLC (8751); Dean Foods North Central, LLC (7858); Dean Foods of Wisconsin, LLC (2504); Dean Holding Company (8390); Dean Intellectual Property Services II, Inc. (3512); Dean International Holding Company (9785); Dean Management, LLC (7782); Dean Puerto Rico Holdings, LLC (6832); Dean Services, LLC (2168); Dean Transportation, Inc. (8896); Dean West II, LLC (9190); Dean West, LLC (8753); DFC Aviation Services, LLC (1600); DFC Energy Partners, LLC (3889); DFC Ventures, LLC (4213); DGI Ventures, Inc. (6766); DIPS Limited Partner II (7167); Franklin Holdings, Inc. (8114); Fresh Dairy Delivery, LLC (2314); Friendly's Ice Cream Holdings Corp. (7609); Friendly's Manufacturing and Retail, LLC (9828); Garelick Farms, LLC (3221); Mayfield Dairy Farms, LLC (3008); Midwest Ice Cream Company, LLC (0130); Model Dairy, LLC (7981); Reiter Dairy, LLC (3675); Sampson Ventures, LLC (7714); Shenandoah's Pride, LLC (2858); Steve's Ice Cream, LLC (6807); Suiza Dairy Group, LLC (2039); Tuscan/Lehigh Dairies, Inc. (6774); Uncle Matt's Organic, Inc. (0079); and Verifine Dairy Products of Sheboygan, LLC (7200). The debtors' mailing address is 2711 North Haskell Avenue, Suite 3400, Dallas, TX 75204.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

receive, process, honor, and pay checks or wire transfers used by the Debtors to pay the foregoing, as more fully described in the Motion; and the Court having jurisdiction to consider the matters raised in the Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas*, dated May 24, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due, proper, and adequate notice of the Motion under Bankruptcy Rule 6004(a) and opportunity for a hearing on the Motion having been given to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the Rahlfs Declaration; and the Court having held a hearing on the Motion; and the Court having determined that the legal and factual bases set forth in the Motion and the Rahlfs Declaration and at the hearing establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion being in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and the Court having determined that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003; and upon all of the proceedings had before the Court; and all objections to the Motion, if any, having been withdrawn, resolved, or amended; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Debtors are authorized, but not directed, to pay all or some of the Lienholder Claims as the Debtors determine, in their sole discretion, to be necessary or appropriate, in an final amount not to exceed $25,000,000 in the aggregate.

2. The Debtors, in their sole discretion, may condition payment to the Lien Claimants upon agreement by the applicable Lien Claimant to continue to supply goods or services to the Debtors on such creditor's Customary Trade Terms[3] for a period following the date of the agreement or on other such terms and conditions as are acceptable to the Debtors.

3. As a further condition of receiving payment of a Lienholder Claim, the Debtors are authorized, in their sole discretion, to require that the applicable Lien Claimant agree to take whatever action is necessary to remove any existing Liens or Interests at such Lien Claimant's sole cost and expense and waive any right to assert a Lien or Interest on account of the paid claim of such Lien Claimant.

4. The Debtors may, in their sole discretion, undertake to cause Lien Claimants to enter into an agreement, including provisions substantially in the form attached to the Motion (the "**Vendor Agreement**"), as a condition to paying a Lienholder Claim.

5. Any party that accepts payment from the Debtors on account of a Lienholder Claim shall be deemed to have agreed to the terms and provisions of this Order.

6. The Debtors are authorized, but not directed, to enter into Vendor Agreements when the Debtors determine, in their sole discretion, that it is appropriate to do so in connection with making payments to Lien Claimants; *provided, however*, that the Debtors' inability to enter into a Vendor Agreement shall not preclude them from paying a Lienholder Claim when, in their sole discretion, such payment is necessary to the Debtors' operations.

7. If the Debtors determine that, in their sole discretion, a Lien Claimant has not complied with the terms and provisions of a Vendor Agreement or has failed to continue to

[3] As used herein, "**Customary Trade Terms**" means, with respect to a Lien Claimant, (a) the normal and customary trade terms, practices, and programs (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability, and other applicable terms and programs) that were most favorable to the Debtors and in effect between such creditor and the Debtors prior to the Petition Date or (b) such other trade terms as agreed by the Debtors and such creditor.

provide Customary Trade Terms following the date of the Vendor Agreement, or on such terms as were individually agreed to between the Debtors and such creditor, the Debtors may terminate such Vendor Agreement, together with the other benefits to the creditor as contained in this Order; *provided*, *however*, that the Vendor Agreement may be reinstated if (a) such determination is subsequently reversed by the Court for good cause after it is shown that the determination was materially incorrect after notice and a hearing following a motion from the creditor, (b) the underlying default under the Vendor Agreement is fully cured by the creditor not later than five business days after the date the initial default occurred, or (c) the Debtors, in their sole discretion, reach a subsequent agreement with the creditor.

8. If a Vendor Agreement is terminated as set forth above, or if a Lien Claimant that has received payment of a Lienholder Claim later refuses to continue to supply goods or services for the applicable period in compliance with the Vendor Agreement or this Order, then the Debtors may, in their sole discretion, and without further order of the Court (a) declare that the payment of such Lienholder Claim is a voidable post-petition transfer pursuant to section 549(a) of the Bankruptcy Code that the Debtors may recover from such a Lien Claimant in cash, (b) demand that the creditor immediately return such payments in respect of its Lienholder Claim to the extent that the aggregate amount of such payments exceeds the post-petition obligations then outstanding, without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever, and (c) upon recovery of such payment by the Debtors, such creditor's Lienholder Claim shall be reinstated in such an amount as to restore the Debtors and the applicable Lien Claimant to their original positions, as if the agreement had never been entered into and the payment of the creditor's Lienholder Claim had not been made.

9. The Debtors shall maintain a matrix/schedule of payments made pursuant to this Order, including the following information: (a) the names of the payee; (b) the nature of the payment; (c) the amount of the payment; (d) the Debtor or Debtors that made the payment; (e) the payment date; and (f) the purpose of such payment. The Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee, the administrative agent under the Debtors' proposed post-petition financing facility, and any official committee appointed in the Chapter 11 Cases monthly on the day on which they file their Monthly Operating Report.

10. All Vendor Agreements shall be deemed to have terminated, together with the other benefits to Lien Claimants as contained in this Order, upon entry of an order converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code.

11. Payments of Lienholder Claims may include a communication of the following statement:

> By accepting this payment, the payee agrees to the terms of the Order of the United States Bankruptcy Court for the Southern District of Texas, dated November _ , 2019, in the jointly administered chapter 11 cases of Southern Foods Group, LLC, *et al.* (Case No. 19-36313), entitled "*Final Order Authorizing (i) Debtors To Pay Certain Prepetition Claims of Lien Claimants and (ii) Financial Institutions To Honor and Process Related Checks and Transfers*" and submits to the jurisdiction of that Court for enforcement thereof.

12. All applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks, drafts, wires, check transfer requests, or automated clearing house transfers evidencing amounts paid by the Debtors under this Order whether presented prior to, on, or after the Petition Date. Such banks and financial institutions

are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

13. The Debtors are authorized, but not required to issue, in their sole discretion, new post-petition checks, or effect new fund transfers, for the Lienholder Claims to replace any prepetition checks or fund transfer requests that may be dishonored or rejected, and to reimburse the Lien Claimants or the applicable payee, as the case may be, for any fees or costs incurred by them in connection with a dishonored or voided check or funds transfer.

14. Nothing in this Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtors' rights with respect to such matters are expressly reserved.

15. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by, any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

16. Nothing in this Order nor the Debtors' payment of claims pursuant to this Order shall be construed as or deemed to constitute (a) an agreement or admission by the Debtors as to the priority, validity, or secured status of any claim against the Debtors on any ground, (b) a grant of third party beneficiary status or bestowal of any additional rights on any third party, (c) a waiver or impairment of any rights, claims, or defenses of the Debtors' rights to dispute any claim on any grounds, (d) a promise by the Debtors to pay any claim, or (e) an implication or admission by the Debtors that such claim is payable pursuant to this Order.

17. Notwithstanding anything to the contrary in this Order, in the event of any inconsistency between the terms of this Order and the terms of (a) any order of this Court approving the debtor-in-possession financing facility and use of cash collateral (the "**DIP Order**"), including, without limitation, any budget in connection therewith, or (b) any order approving the Debtors' continued performance under their securitization facility (the "**Securitization Order**"), the terms of the DIP Order or the Securitization Order, as applicable, shall govern.

18. The requirements of Bankruptcy Rule 6003 are satisfied by the contents of the Motion.

19. Any Bankruptcy Rule (including, but not limited to, Bankruptcy Rule 6004(h)) or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

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

21. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed: November 14, 2019.

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
SOUTHERN FOODS GROUPS, LLC, *et al.*,	)	Case No. 19-36313 (DRJ)
Debtors.[1]	)	(Jointly Administered)

FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, 507, AND 552 AND RULES 2002, 4001, 6003, 6004, AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN SENIOR SECURED SUPERPRIORITY POST-PETITION FINANCING, AND (B) USE CASH COLLATERAL, (II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) PROVIDING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES, AND (IV) GRANTING RELATED RELIEF

Upon the motion, dated November 12, 2019 (the "Motion"),[2] of Dean Foods Company ("Dean Foods" or "DIP Borrower") and certain of its affiliates, the debtors and debtors-in-possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Cases"), seeking the entry of the Interim Order (as defined below) and a final order (this "Final Order")

[1] The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southern Foods Group, LLC (1364); Dean Foods Company (9681); Alta-Dena Certified Dairy, LLC (1347); Berkeley Farms, LLC (8965); Cascade Equity Realty, LLC (3940); Country Fresh, LLC (6303); Dairy Information Systems Holdings, LLC (9144); Dairy Information Systems, LLC (0009); Dean Dairy Holdings, LLC (9188); Dean East II, LLC (9192); Dean East, LLC (8751); Dean Foods North Central, LLC (7858); Dean Foods of Wisconsin, LLC (2504); Dean Holding Company (8390); Dean Intellectual Property Services II, Inc. (3512); Dean International Holding Company (9785); Dean Management, LLC (7782); Dean Puerto Rico Holdings, LLC (6832); Dean Services, LLC (2168); Dean Transportation, Inc. (8896); Dean West II, LLC (9190); Dean West, LLC (8753); DFC Aviation Services, LLC (1600); DFC Energy Partners, LLC (3889); DFC Ventures, LLC (4213); DGI Ventures, Inc. (6766); DIPS Limited Partner II (7167); Franklin Holdings, Inc. (8114); Fresh Dairy Delivery, LLC (2314); Friendly's Ice Cream Holdings Corp. (7609); Friendly's Manufacturing and Retail, LLC (9828); Garelick Farms, LLC (3221); Mayfield Dairy Farms, LLC (3008); Midwest Ice Cream Company, LLC (0130); Model Dairy, LLC (7981); Reiter Dairy, LLC (3675); Sampson Ventures, LLC (7714); Shenandoah's Pride, LLC (2858); Steve's Ice Cream, LLC (6807); Suiza Dairy Group, LLC (2039); Tuscan/Lehigh Dairies, Inc. (6774); Uncle Matt's Organic, Inc. (0079); and Verifine Dairy Products of Sheboygan, LLC (7200). The debtors' mailing address is 2711 North Haskell Avenue, Suite 3400, Dallas, TX 75204.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Motion or the DIP Credit Agreement (as defined below), as applicable.

pursuant to Sections 105, 361, 362, 363, 364, 503, 506, 507 and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules"), the Local Bankruptcy Rules for the Southern District of Texas (the "Local Rules"), and the Procedures for Complex Chapter 11 Bankruptcy Cases (the "Complex Case Rules") promulgated by the United States Bankruptcy Court for the Southern District of Texas (I) authorizing the Debtors to (A) obtain senior secured superpriority post-petition financing, and (B) use cash collateral, (II) granting liens and superpriority administrative expense claims, (III) providing adequate protection to the Prepetition Secured Parties (as defined below), (IV) scheduling a final hearing, and (V) granting related relief, the Debtors sought, among other things, the following relief:

(i) the Court's authorization for the DIP Borrower to obtain, and for each subsidiary of the DIP Borrower that is a Debtor in these Cases (collectively, the "DIP Guarantors" and, together with the DIP Borrower, the "DIP Loan Parties") to guarantee (unconditionally and on a joint and several basis) senior, secured, superpriority, priming, debtor-in-possession financing in an aggregate principal amount of $425,000,000 (the "DIP Facility"), participation in which has been offered to each of the Prepetition Revolving Lenders (as defined below) on a *pro rata* basis, consisting of: (A) a new money revolving credit facility in the aggregate principal amount of up to $236,200,000 (the "DIP Revolving Facility"), which shall be available for the incurrence of new money revolving loans (the "DIP Revolving Loans"), including, up to a $25,000,000 sub-limit (the "DIP L/C Sub-Limit"), and subject to certain conditions thereon, the issuance of letters of credit (the "DIP Letters of Credit"); and (B) term loans (the "DIP Roll-Up

Loans" and, together with the DIP Revolving Loans, the "DIP Loans"; and the DIP Loans, collectively, with the DIP Letters of Credit and with any other financial accommodations provided for, under, or in respect of the DIP Facility, the "DIP Extensions of Credit") in an aggregate principal amount not to exceed the aggregate principal amount of all Prepetition Revolving Loans outstanding as of the Petition Date (as defined below), which Prepetition Revolving Loans shall be, on a dollar-for-dollar basis, refinanced as (and deemed repaid by) the DIP Roll-Up Loans (the "Revolver Refinancing");

(ii) the Court's authorization for the Debtors, subject to satisfaction (or waiver) of all applicable conditions precedent under the DIP Loan Documents (as defined below) in accordance therewith:

(a) during the period from the date of entry of the Interim Order through and including the date of entry of this Final Order (the "Interim Period") in accordance with the terms of the DIP Credit Agreement (as defined below), to (1) incur DIP Revolving Loans and (2) subject to, and to the extent of any availability under, the DIP L/C Sub-Limit, obtain issuance of DIP Letters of Credit, in an aggregate principal amount (with respect to DIP Revolving Loans and any DIP Letters of Credit) not to exceed $50,000,000;

(b) from the entry of this Final Order until the Termination Date, in accordance with the terms of the DIP Credit Agreement, to continue to incur DIP Revolving Loans and subject to, and to the extent of any availability under, the DIP L/C Sub-Limit, obtain issuance of DIP Letters of Credit, in an aggregate

principal amount not to exceed $236,200,000 (including the aggregate amount borrowed under the DIP Facility during the Interim Period); and

(c) immediately upon the entry of this Final Order, to incur DIP Roll-Up Loans in an aggregate principal amount not to exceed $188,800,000 and consummate the Revolver Refinancing;

(iii) the Court's authorization for the Debtors to enter into, execute and deliver documentation evidencing the DIP Facility, including, without limitation, the Senior Secured Superpriority Debtor-in-Possession Credit Agreement, by and among, the DIP Borrower, Coöperatieve Rabobank U.A., New York Branch ("Rabobank"), as arranger, Rabobank, as administrative agent and as collateral agent (in such capacities, collectively, the "DIP Agent"), and as the Issuing Bank (in such capacity, the "DIP Issuing Bank"), the financial institutions from time to time party thereto as lenders (the "DIP Lenders" and, together with the DIP Agent, the DIP Issuing Bank, and each other Holder of Secured Obligations under and as defined in the DIP Credit Agreement, the "DIP Secured Parties"), in substantially the form attached as Exhibit 1 to the Interim Order (the "DIP Credit Agreement" and, collectively with this Final Order, the Interim Order (as applicable), and all other Loan Documents (as defined in the DIP Credit Agreement), including, without limitation, all fee letters and agreements entered into in connection therewith, in each case, as thereafter amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof, collectively, the "DIP Loan Documents"), in each case, to which they are a party, and to perform such other and further acts as may be necessary or appropriate in connection therewith, or otherwise required under the DIP Loan Documents;

(iv) the Court's authorization for the Debtors to use the proceeds of the DIP Facility in accordance with the 13-week cash flow forecast prepared by the Debtors and annexed as Exhibit 2 to the Interim Order (as updated from time to time pursuant to the DIP Loan Documents and subject to the prior approval of the Required Lenders, the "DIP Budget" (and upon two (2) Business Days' prior notice (to the extent reasonably practicable under the circumstances) having been given to Committee Counsel (as defined below), provided that failure to give notice shall not affect the validity of the updated DIP Budget and that such notice shall not be deemed to create any Committee approval rights))[3], subject to any permitted variances (as and to the extent provided in the DIP Credit Agreement, the "Permitted Variances"), and as otherwise provided herein and in the other DIP Loan Documents;

(v) the granting by the Court, as of the Petition Date (as defined below), to the DIP Agent (for the benefit of the DIP Secured Parties) in respect of the DIP Obligations (as defined below), of a superpriority administrative expense claim pursuant to Section 364(c)(1) of the Bankruptcy Code and first priority priming liens on and security interests in substantially all assets and property of the Debtors (now owned or hereafter acquired), pursuant to Sections 364(c)(2), (c)(3) and (d)(1) of the Bankruptcy Code, in each case, as and to the extent, and subject to the priorities, set forth more fully below and in the DIP Loan Documents, and subject to the Carve-Out (as defined below);

[3] For the avoidance of doubt, any waiver or consent to a budget variance entered into by the Debtors and the DIP Agent (with the consent of the requisite DIP Secured Parties as provided in and consistent with their respective rights under the DIP Loan Documents, and upon prior notice (to the extent reasonably practicable under the circumstances) of any such consent being given to Committee Counsel (provided, that failure to give notice shall not affect the validity of any DIP Budget or any consent given to any budget variance, and that such notice shall not be deemed to create any Committee approval rights)) pursuant to the DIP Credit Agreement shall be deemed a waiver or consent with respect to any provision in this Final Order requiring compliance with, or providing authorization subject to, the DIP Budget as it pertains to the applicable budget variance.

(vi) the Court's authorization for the Debtors to use "cash collateral" as such term is defined in Section 363 of the Bankruptcy Code (the "Cash Collateral") in which the Prepetition Secured Parties have an interest;

(vii) the granting by the Court, as of the Petition Date, of the Adequate Protection Superpriority Claim and Adequate Protection Liens (each as defined below), to the extent of and as compensation for any Diminution in Value (as defined below), and the payment of fees and expenses to the Prepetition Agent (as defined below) for the benefit of the Prepetition Secured Parties, in each case, as set forth more fully below and subject to paragraph I hereof and to the Carve-Out; and

(viii) modification by the Court of the automatic stay imposed by Section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Facility, this Final Order and the other DIP Loan Documents;

(ix) the scheduling by the Court of a Final Hearing (as defined below) to consider entry of this Final Order granting the relief requested in the Motion on a final basis and approving the form of notice with respect to the Final Hearing and the transactions contemplated by the Motion; and

(x) the waiver by the Court of any applicable stay (including under Bankruptcy Rule 6004) and provision for the immediate effectiveness of this Final Order; and

the Court having jurisdiction to consider the matters raised in the Motion pursuant to U.S.C. § 1334; and the Court having authority to hear the matters raised in the Motion pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the requested relief being a core proceeding that the Court

can determine pursuant to 28 U.S.C. § 157(b)(2); and due and proper notice of the Motion and opportunity for a hearing on the Motion having been given to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion, the *Declaration of Gary Ralhfs in Support of the First Day Motions and Pursuant to Local Bankruptcy Rule 1007-2* (the "First Day Declaration"), and *the Declaration of Bo S. Yi in Support of the Motion* (the "DIP Declaration," and together with the First Day Declaration, the "DIP Declarations"); and the Court having held a hearing on November 13, 2019 to consider entry of the Interim Order (the "Interim Hearing"); and the Court having held a hearing on December [20], 2019 to consider entry of this Final Order (the "Final Hearing"); and the Court having entered on November 14, 2019 the *Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503,506, 507, and 552 and Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (I) Authorizing the Debtors to (A) Obtain Senior Secured Superpriority Post-Petition Financing, and (B) Use Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Providing Adequate Protection to Prepetition Secured Parties, (IV) Scheduling Final Hearing, and (V) Granting Related Relief* [Docket No. 133] (the "Interim Order"); and the Court having determined that the legal and factual bases set forth in the Motion and in the Declarations, and at the Interim Hearing and Final Hearing establish just cause for the relief granted herein; and the Court having found the relief requested in the Motion to be fair, reasonable, and in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and the Court having determined that the relief requested in the Motion is essential for the continued operation of the Debtors' businesses; and all objections, if any, to the entry of this Final Order having been withdrawn, resolved or

overruled by the Court; and upon all of the proceedings had before the Court; after due deliberation and consideration, and for good and sufficient cause appearing therefor:

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[4]

A. **Petition Date.** On November 12, 2019 (the "Petition Date"), the Debtors filed voluntary petitions under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "Court") commencing these Cases. The Debtors have continued in the management and operation of their businesses and properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases.

B. **Jurisdiction and Venue.** The Court has jurisdiction over these proceedings, pursuant to 28 U.S.C. § 1334. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases and the proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. Pursuant to Bankruptcy Rule 7008 and Local Rule 7008-1, the Debtors consent to the entry of a final order by the Court in connection with the Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

C. **Committee Formation.** On November 22, 2019, the United States Trustee for the Southern District of Texas (the "U.S. Trustee") appointed an official committee of unsecured creditors in the Cases (the "Committee").

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

D. **Notice**. Notice of the Final Hearing and the relief requested in the Motion has been provided by telecopy, email, overnight courier and/or hand delivery, to (i) the U.S. Trustee, (ii) those creditors holding the 30 largest unsecured claims against the Debtors' estates (on a consolidated basis), (iii) White & Case LLP, as counsel to Coöperatieve Rabobank U.A., New York Branch, the administrative agent under Debtors' prepetition receivables purchase agreement and administrative agent under Debtors' prepetition secured revolving credit facility, (iv) the indenture trustee under the Debtors' prepetition unsecured bond indenture, (v) Mayer Brown LLP, as counsel to PNC Bank, National Association, the predecessor co-agent, purchaser, and letter of credit issuer under the Receivables Financing Agreement (as defined below), (vi) Paul, Weiss, Rifkind, Wharton & Garrison LLP, as counsel to an ad hoc group of prepetition unsecured noteholders, (vii) Akin Gump Strauss Hauer & Feld LLP, as counsel to the Committee ("Committee Counsel"), (viii) the Securities and Exchange Commission, (ix) the Internal Revenue Service, (x) the United States Attorney's Office for the Southern District of Texas, (xi) the state attorneys general for states in which the Debtors conduct business, (xii) all other parties asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors, and (xiii) any party that has requested notice pursuant to Bankruptcy Rule 2002 (the "Notice Parties"). Such notice of the Final Hearing and the relief requested in the Motion constitutes due, sufficient and appropriate notice and complies with Section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002, 4001(b) and (c) and 9014, the Local Rules and the Complex Case Rules.

E. **Prepetition Obligations.** Without limiting the rights of the Committee or any other party in interest, in each case, with standing and requisite authority, as and to the extent set

forth in paragraph 6 hereof, the Debtors permanently, immediately, and irrevocably acknowledge, represent, stipulate and agree:

(i) Prepetition Revolving Credit Facility

(a) Dean Foods, as borrower, each lender party thereto from time to time (the "Prepetition Revolving Lenders"), and Rabobank, as administrative agent and collateral agent (in such capacities, the "Prepetition Agent," and together with the Prepetition Revolving Lenders, and the Issuing Bank and each other Holder of Secured Obligations under (and in each case as defined in) the Prepetition Revolving Credit Agreement (as defined below), the "Prepetition Secured Parties"), are parties to that certain Credit Agreement, dated as of February 22, 2019 (as amended, amended and restated, waived, supplemented and/or modified from time to time, the "Prepetition Revolving Credit Agreement" and, together with the Prepetition Security Agreement and the Prepetition Guaranty (each as defined below), and the other Loan Documents (as defined in the Prepetition Revolving Credit Agreement), in each case, as amended, amended and restated, waived, supplemented and/or modified from time to time, the "Prepetition Loan Documents"), which provided for a revolving borrowing base credit facility in the aggregate principal amount of up to $265,000,000 (which amount was increased by $85,000,000 to an aggregate principal amount of up to $350,000,000 as of August 27, 2019, pursuant to certain supplements to the Prepetition Revolving Credit Agreement), including a letter of credit sub-limit of up to $25,000,000 and swingline availability in an aggregate principal amount of up to $10,000,000 (the "Prepetition Revolving Credit Facility").

(b) Pursuant to that certain Guaranty, dated as of February 22, 2019 (as amended, amended and restated, waived, supplemented and/or modified from time to time, the "Prepetition Guaranty"), each of the subsidiaries of Dean Foods party thereto from time to time (together with Dean Foods, as borrower, the "Prepetition Loan Parties") unconditionally guaranteed on a joint and several basis the Prepetition Obligations (as defined below), which guaranty is secured by the Prepetition Collateral (as defined below).

(c) Pursuant to that certain Pledge and Security Agreement, dated as of February 22, 2019 (as amended, amended and restated, waived, supplemented and/or modified from time to time, the "Prepetition Security Agreement") and the other Prepetition Loan Documents, the Prepetition Obligations owed to the Prepetition Secured Parties are secured by first priority Liens (as defined in the Prepetition Revolving Credit Agreement, the "Prepetition Liens") on, and security interests in, all of the Collateral (as defined in the Prepetition Revolving Credit Agreement), collectively, the "Prepetition Collateral").

(ii) Receivables Financing

(a) Dairy Group Receivables, L.P. ("Dairy Group") and Dairy Group Receivables II, L.P. (together with Dairy Group, the "Receivables Sellers"), as sellers, certain subsidiaries of Dean Foods who originated the receivables sold to the Receivables Sellers, as Servicers (as defined in the Receivables Financing Agreement (as defined below), the "Receivables Financing Servicers"), the Purchasers (as defined in the Receivables Financing Agreement, the "Receivables Purchasers"), Rabobank, as agent for the Receivables Purchasers (in such

capacity, the "Receivables Financing Agent"), and as issuer of letters of credit (in such capacity, the "Receivables LC Issuer"), are parties to that certain Eighth Amended and Restated Receivables Purchase Agreement, dated as of February 22, 2019 (as amended by the Ninth Amended and Restated Receivables Purchase Agreement, dated on or before the Effective Date under and as defined in the DIP Credit Agreement, and as may be further amended and restated, waived, supplemented and/or modified from time to time, the "Receivables Financing Agreement" and, together with the other Transaction Documents (as defined in the Receivables Financing Agreement), the "Receivables Financing Documents"), which provided for a receivables securitization facility in the aggregate principal amount of up to $450,000,000, which was reduced to $425,000,000 upon entry by the Court of the *Interim Order Pursuant to 11 U.S.C. §§ 105, 362, 363, 364, 503(b), 507(b) and Rules 4001, 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (I) Authorizing Certain Debtors to Continue Selling Receivables and Related Rights Pursuant to a Securitization Facility, (II) Modifying the Automatic Stay, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* [Docket No. 110] (the "Interim Securitization Order," and together with the final order approving the continuation and amendment of the Receivables Purchase Agreement on a final basis, in each case, as applicable the "Securitization Order"), including the ability to issue letters of credit up to an aggregate face amount of $450,000,000, which was also reduced to $425,000,000 upon entry of the Interim Securitization Order (collectively, the "Receivables Financing"), pursuant to which the Receivables Sellers sold certain accounts

receivables belonging to certain subsidiaries of Dean Foods to the Receivables Purchasers.

(b) Notwithstanding that transfers of the Transferred Receivables pursuant to (and as defined in) the Receivables Financing Agreement are intended to be true sales, the Obligations under (and as defined in) the Receivables Financing Agreement owed by Receivables Sellers and the Receivables Financing Servicers to the Receivables Purchasers are secured by first priority protective liens on, and security interests in, the Transferred Receivables and other Pool Assets (as defined in the Receivables Financing Agreement, and collectively with the Transferred Receivables, the "Receivables Financing Collateral").

(c) Pursuant to (i) that certain Fifth Amended and Restated Performance Undertaking, dated February 22, 2019 (as amended pursuant to that certain Sixth Amended and Restated Performance Undertaking, dated as of the Closing Date, and as may be further amended, restated, supplemented, or otherwise modified from time to time) and (ii) that certain Fourth Amended and Restated Performance Undertaking, dated as of February 22, 2019 (as amended pursuant to that certain Fifth Amended and Restated Performance Undertaking, dated on or before the Effective Date under and as defined in the DIP Credit Agreement, and as may be further amended, restated, supplemented or otherwise modified from time to time), the DIP Borrower has provided to the Receivables Financing Agent, for itself and for the benefit of the Receivables Purchasers and the applicable Receivables Sellers, an absolute, unconditional and continuing guaranty of the full and punctual performance by each of the Receivables

Financing Originators of certain obligations under the Receivables Financing Documents.

(iii) Prepetition Unsecured Notes. Pursuant to that certain Indenture, dated as of February 25, 2015 (as amended, amended and restated, waived, supplemented and/or modified from time to time, the "Prepetition Indenture"), among Dean Foods, as issuer, The Bank of New York Mellon Trust Company, N.A., as trustee, and the Guarantors (as defined in the Prepetition Indenture), Dean Foods issued 6.50% Senior Notes due March 15, 2023 in an aggregate principal amount of $700,000,000.

(iv) Intercreditor Agreement. The respective rights of the Prepetition Secured Parties, on the one hand, and the Receivables Purchasers and Receivables Sellers, on the other hand, to, and the priority of their respective rights to and security interests in, the Lender Collateral and the Securitization Assets (each as defined therein), are set forth in that certain Intercreditor Agreement, dated as of February 22, 2019, among certain of the Debtors, the Prepetition Agent and the Receivables Financing Agent (as amended, amended and restated, waived, supplemented and/or modified from time to time, the "Intercreditor Agreement").

F. **Stipulations as to Prepetition Obligations**. Without limiting the rights of the Committee or any other party in interest, in each case, with standing and requisite authority, as and to the extent set forth in paragraph 6 hereof, the Debtors permanently, immediately, and irrevocably acknowledge, represent, stipulate and agree:

(i) Prepetition Obligations.

(a) As of the Petition Date, the Prepetition Loan Parties were justly and lawfully indebted and liable to the Prepetition Secured Parties under the

Prepetition Loan Documents, without objection, defense, counterclaim or offset of any kind, in the aggregate principal amount of not less than $188,800,000 on account of outstanding Loans under (and as defined in) the Prepetition Revolving Credit Agreement (the "Prepetition Revolving Loans"), plus all accrued and unpaid interest thereon, and any fees, expenses, indemnification obligations, guarantee obligations, reimbursement obligations, including, without limitation, any attorneys', accountants', consultants', appraisers' and financial and other advisors' fees that are chargeable to or reimbursable by the Prepetition Loan Parties, and all other Secured Obligations under (and as defined in) the Prepetition Revolving Credit Agreement (collectively, the "Prepetition Obligations").

(b) **Enforceability of the Prepetition Obligations.** (i) The Prepetition Obligations constitute legal, valid, binding, non-avoidable obligations of the Prepetition Loan Parties enforceable in accordance with the terms of the applicable Prepetition Loan Documents, and (ii) no offsets, recoupments, challenges, contests, attacks, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition Liens or the Prepetition Obligations exist, and no portion of the Prepetition Liens or the Prepetition Obligations is subject to any challenge, cause of action, or defense, including avoidance, disallowance, disgorgement, subordination (equitable or otherwise), re-characterization, or other challenge of any kind or nature under the Bankruptcy Code, applicable non-bankruptcy law or otherwise.

(c) **Enforceability of Prepetition Liens.** The Prepetition Liens granted by the Prepetition Loan Parties, to or for the benefit of the Prepetition

Agent and the other Prepetition Secured Parties, as security for the Prepetition Obligations, encumber the Prepetition Collateral, as the same existed on or at any time prior to the Petition Date. The Prepetition Liens have been properly recorded and perfected under applicable non-bankruptcy law, and are legal, valid, enforceable, non-avoidable, and not subject to contest, avoidance, attack, offset, re-characterization, subordination or other challenge of any kind or nature under the Bankruptcy Code, applicable non-bankruptcy law or otherwise. As of the Petition Date, and without giving effect to the Interim Order or this Final Order, the Debtors are not aware of any liens or security interests over the Prepetition Collateral of the Prepetition Secured Parties having priority over the Prepetition Liens, except certain Permitted Liens (as defined in the Prepetition Revolving Credit Agreement). The Prepetition Liens were granted to or for the benefit of the Prepetition Agent and the other Prepetition Secured Parties for fair consideration and reasonably equivalent value, and were granted contemporaneously with, or covenanted to be provided as inducement for, the making of the loans and/or commitments and other financial accommodations secured thereby.

(ii) **Indemnity.** The Prepetition Secured Parties and the DIP Secured Parties have acted in good faith, and without negligence, misconduct or violation of public policy or law, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting or obtaining requisite approvals of the DIP Facility and the use of Cash Collateral, including in respect of the granting of the DIP Liens (as defined below) and any Adequate Protection Liens, any challenges or objections to the DIP Facility or the use of Cash Collateral, the DIP Loan Documents,

and all other documents related to and all transactions contemplated by the foregoing. Accordingly, without limitation to any other right to indemnification (including any and all rights of the Prepetition Secured Parties to indemnification under the Prepetition Loan Documents), the DIP Secured Parties shall be and hereby are indemnified and held harmless by the Debtors in respect of any claim or liability incurred in respect thereof or in any way related thereto in accordance with the terms of the DIP Loan Documents. No exception or defense in contract, law or equity existed as of the date of the Interim Order or exists as of the date of this Final Order to any obligation set forth, as the case may be, in this paragraph F(ii), in the DIP Loan Documents, or in the Prepetition Loan Documents to indemnify and/or hold harmless the DIP Agent, any other DIP Secured Party, or any Prepetition Secured Party, as the case may be, and any such defenses are hereby waived.

(iii) **No Control.** None of the DIP Secured Parties or the Prepetition Secured Parties are control persons or insiders of the Debtors or any of their affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from the DIP Facility, the Prepetition Obligations, the DIP Loan Documents and/or the Prepetition Loan Documents.

(iv) **No Claims or Causes of Action.** As of the date hereof, there exist no claims or causes of action against any of the DIP Agent, the other DIP Secured Parties, or the Prepetition Secured Parties with respect to, in connection with, related to, or arising from the DIP Loan Documents, the Prepetition Loan Documents, the DIP Facility, the DIP Obligations and/or the Prepetition Obligations that may be asserted by the DIP Loan

Parties, the Prepetition Loan Parties or, to the Debtors' knowledge, any other person or entity.

(v) **Release.** The Debtors, on behalf of themselves and their respective estates, forever and irrevocably release, discharge, and acquit all former, current and future DIP Secured Parties and any Prepetition Secured Parties, all holders of participation interests under the DIP Credit Agreement or the Prepetition Revolving Credit Agreement, all Affiliates of the DIP Secured Parties and of the Prepetition Secured Parties, and each of the former, current and future officers, employees, directors, agents, representatives, owners, members, partners, financial and other advisors and consultants, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors and successors in interest of each DIP Secured Party and each Prepetition Secured Party and of each of their respective Affiliates, in each case in its capacity as such (collectively, the "Releasees") of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending or threatened including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description, arising out of, in connection with, or relating to the DIP Obligations, the DIP Loan Documents, the Prepetition Obligations and the other Prepetition Loan Documents and/or the transactions contemplated hereunder or thereunder including, without limitation, (x) any so-called "lender liability" or equitable

subordination claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with respect to the validity, priority, perfection or avoidability of the liens or claims of the DIP Agent, the other DIP Secured Parties, and/or the Prepetition Secured Parties. The Debtors further waive and release any defense, right of counterclaim, right of setoff or deduction of the payment of the Prepetition Obligations and the DIP Obligations that the Debtors now have or may claim to have against the Releasees arising out of, connected with, or relating to any and all acts, omissions or events occurring prior to the entry of this Final Order.

G. **Immediate Need for Postpetition Financing and Use of Cash Collateral.** Good cause has been shown for entry of this Final Order. An immediate need exists for the Debtors to continue to obtain funds and liquidity to, as the case may be, continue operations, pay the costs and expenses of administering the Cases, and administer and preserve the value of their businesses and estates. The ability of the Debtors to finance their operations, to preserve and maintain the value of the Debtors' assets and to maximize the return for all creditors requires the continued availability of the DIP Facility and use of Cash Collateral. In the absence of the continued availability of such funds and liquidity in accordance with the terms hereof, the continued operation of the Debtors' businesses would not be possible, and immediate and irreparable harm to the Debtors and their estates and creditors would occur. Further, the possibility for a successful restructuring would be jeopardized in the absence of the availability of funds in accordance with the terms of this Final Order. Thus, the ability of the Debtors to preserve and maintain the value of their assets and maximize the return for creditors requires the availability of working capital from the DIP Facility and the use of Cash Collateral.

H. **No Credit Available on More Favorable Terms.** The Debtors have been unable to obtain on more favorable terms and conditions than those provided in this Final Order and the Interim Order, (i) adequate unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense, (ii) credit for money borrowed with priority over any or all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code, (iii) credit for money borrowed secured by a lien on property of the estate that is not otherwise subject to a lien, or (iv) credit for money borrowed secured by a junior lien on property of the estate that is subject to a lien. The Debtors are unable to obtain credit for borrowed money without granting the DIP Liens and the DIP Superpriority Claim (as defined below) to (or for the benefit of) the DIP Secured Parties, or without granting the adequate protection (including authorization for the Revolver Refinancing) as and to the extent set forth herein and in the Interim Order.

I. **Adequate Protection for Secured Parties.** The Prepetition Agent and the other Prepetition Secured Parties have negotiated in good faith regarding the Debtors' use of Prepetition Collateral (including Cash Collateral) to fund the administration of the Debtors' estates and continued operation of their businesses, in accordance with the terms hereof and the DIP Budget (subject to any Permitted Variances). The Prepetition Secured Parties agreed to permit the Debtors to use the Prepetition Collateral, including the Cash Collateral, in accordance with the terms hereof, including the DIP Budget (subject to any Permitted Variances), subject to the terms and conditions set forth in this Final Order and in the other DIP Loan Documents, including the protections afforded parties acting in "good faith" under Section 363(m) of the Bankruptcy Code. The Prepetition Secured Parties are entitled to the adequate protection as and to the extent set forth herein pursuant to Sections 361, 362, and 363 of the Bankruptcy Code.

Based on the Motion and on the record presented to the Court at the Interim Hearing and the Final Hearing, the terms of the proposed adequate protection arrangements and of the use of Prepetition Collateral (including Cash Collateral) are fair and reasonable, reflect the Debtors' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the Prepetition Agent and Prepetition Secured Parties' consent thereto; provided, that nothing in this Final Order, the Interim Order, or the other DIP Loan Documents shall (i) be construed as a consent by any Prepetition Secured Party that it would be adequately protected in the event any debtor-in-possession financing is provided by a third party (i.e., other than the DIP Lenders), or a consent to the terms of any financing or use of Cash Collateral, including the consent to any lien encumbering the Prepetition Collateral (whether senior or junior) pursuant to any financing or use of Cash Collateral, in each case, except under the terms hereof, or (ii) prejudice, limit or otherwise impair the rights of the Prepetition Agent (for the benefit of the Prepetition Secured Parties) to seek new, different or additional adequate protection under any circumstances after the date hereof. For the avoidance of doubt, the adequate protection granted by this Final Order applies in respect of (1) solely until the date of consummation of the Revolver Refinancing, the Prepetition Revolving Loans that are converted to or deemed refinanced by the DIP Roll-Up Loans hereunder, (2) all other Prepetition Obligations that are not converted to or deemed refinanced by the DIP Roll-Up Loans (including any indemnification obligations), and (3) any DIP Roll-Up Loans that, whether as a result of a successful Challenge or otherwise, are unwound or converted back into Prepetition Obligations.

J. **Section 552.** In light of, as applicable, the subordination of the Prepetition Liens (and any Adequate Protection Liens) to the DIP Liens and the Carve-Out, and the granting of the DIP Liens on the Prepetition Collateral, the Prepetition Secured Parties are each entitled to all of

the rights and benefits of Section 552(b) of the Bankruptcy Code, and the "equities of the case" exception shall not apply.

K. **Extension of Financing.** The DIP Secured Parties committed to provide financing to the Debtors in accordance with the DIP Credit Agreement and the other DIP Loan Documents (including the DIP Budget, subject to any Permitted Variances), and subject to (i) the entry of the Interim Order, the entry of this Final Order, and approval of each provision of the DIP Loan Documents, and (ii) findings by this Court that such financing is essential to the Debtors' estates (and the continued operation of the DIP Loan Parties), that the DIP Secured Parties are good faith financiers, and that the DIP Secured Parties' claims, superpriority claims, security interests and liens and other protections granted pursuant to and in connection with the Interim Order, this Final Order and the DIP Loan Documents (including the DIP Superpriority Claim and the DIP Liens), will not be affected by any subsequent reversal, modification, vacatur, stay or amendment of, as the case may be, this Final Order, the Interim Order, or any other order, as provided in Section 364(e) of the Bankruptcy Code. The Prepetition Secured Parties have consented to the use of the Prepetition Collateral and the Cash Collateral, solely in respect of the DIP Facility provided by the DIP Agent and the DIP Lenders, and not in respect of any other postpetition financing or cash collateral facility.

L. **Business Judgment and Good Faith Pursuant to Section 364(e).**

(i) The terms and conditions of the DIP Facility, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration.

(ii) All obligations incurred, payments made, and transfers or grants of security set forth in this Final Order, the Interim Order, and the other DIP Loan Documents by any DIP Loan Party are (and were) granted to or for the benefit of the DIP Secured Parties for fair consideration and reasonably equivalent value, and are (and were) granted contemporaneously with the making of the loans and/or commitments and other financial accommodations secured thereby.

(iii) The DIP Facility and the DIP Loan Documents were negotiated in good faith and at arm's length among the Debtors, the DIP Agent, the other DIP Secured Parties, and the Prepetition Secured Parties.

(iv) The use of the proceeds to be extended under the DIP Facility and the DIP Loan Documents will be so extended in good faith and for valid business purposes and uses, as a consequence of which the DIP Secured Parties are entitled to the protection and benefits of Section 364(e) of the Bankruptcy Code.

M. **Relief Essential; Best Interest.** The relief requested in the Motion (and provided in this Final Order), is necessary, essential and appropriate for the continued operation of the Debtors' businesses and the management and preservation of the Debtors' assets and property, and satisfies the requirements of Bankruptcy Rule 6003. It is in the best interest of the Debtors' estates, and consistent with the Debtors' exercise of their fiduciary duties, that the Debtors be allowed to enter into the DIP Facility, incur the DIP Obligations, grant the liens and claims contemplated herein and under the DIP Loan Documents to the DIP Secured Parties and the Prepetition Secured Parties, and use Prepetition Collateral, including Cash Collateral, as contemplated herein.

NOW, THEREFORE, on the Motion of the Debtors and the record before this Court with respect to the Motion, including the record made during the Interim Hearing and the record made during the Final Hearing, and with the consent of the Debtors, the Prepetition Secured Parties and the DIP Secured Parties, and good and sufficient cause appearing therefor,

IT IS ORDERED that:

1. **Motion Granted.** The Motion is granted in accordance with the terms and conditions set forth in this Final Order. Any objections to the Motion with respect to entry of this Final Order to the extent not withdrawn, waived or otherwise resolved, and all reservation of rights included therein, are hereby denied and overruled.

2. **DIP Facility.**

(a) **DIP Obligations, etc.** The Debtors are expressly and immediately authorized and empowered, on a final basis, to enter into the DIP Facility and to continue to incur and to perform all obligations under the DIP Facility (including the DIP Obligations) in accordance with and subject to this Final Order and the other DIP Loan Documents, to enter into, execute and/or deliver (to the extent not previously entered into, executed or delivered) all DIP Loan Documents and all other instruments, certificates, agreements and documents, and to take all actions, which may be reasonably required or otherwise necessary for the performance by the DIP Loan Parties under the DIP Facility, including the creation and perfection of the DIP Liens described and provided for herein. The Debtors are hereby authorized and directed to (i) pay (to the extent not previously paid pursuant to the Interim Order) all principal, interest, fees and expenses, indemnities under the DIP Loan Documents, and other amounts described herein and in the other DIP Loan Documents as such shall accrue and become due hereunder or thereunder, including, without limitation, (A) the non-refundable payment to the Arranger, the DIP Agent or

the DIP Lenders (as the case may be) of any arrangement, backstop, upfront or administrative fee in any letter agreement between the Debtors, on the one hand, and the DIP Agent, Arranger and/or the DIP Lenders, on the other hand; and (B) the reasonable fees and expenses of White & Case LLP (as counsel to the Prepetition Agent and DIP Agent and as counsel to the Receivables Financing Agent), FTI Consulting (as financial advisors), and any other attorneys and financial and other advisors and consultants of the DIP Agent and the DIP Lenders (including any local counsel and any additional counsel to the Receivables Financing Agent) as may be reasonably required (the "DIP Lender Professionals"), in each case, as and to the extent provided for herein and in accordance with the other DIP Loan Documents (collectively, all loans, advances, extensions of credit, financial accommodations, fees, expenses and other liabilities, and all other Secured Obligations (including indemnities and similar obligations) in respect of DIP Extensions of Credit, the DIP Facility and the DIP Loan Documents, the "DIP Obligations"), and (ii) subject to paragraphs 4(i), 6 and 7 hereof, to (x) incur the DIP Roll-Up Loans, which shall be deemed to refinance (and repay), on a dollar-for-dollar basis, all outstanding Prepetition Revolving Loans, in accordance with the terms and conditions of this Final Order and the other DIP Loan Documents and (y) and immediately pay in cash all accrued and unpaid interest and fees outstanding in respect of the Prepetition Revolving Loans, as provided herein and in accordance with the Prepetition Loan Documents. The DIP Obligations shall not otherwise be subject to further approval of this Court. The DIP Loan Documents and all DIP Obligations shall represent, constitute and evidence, as the case may be, valid and binding obligations of the Debtors, enforceable against the Debtors, their estates and any successors thereto in accordance with their terms. All obligations incurred, payments made, and transfers or grants of security set forth in this Final Order, in the Interim Order, and in the other DIP Loan Documents by any DIP

Loan Party are, and were, granted to or for the benefit of the DIP Secured Parties for fair consideration and reasonably equivalent value, and are, and were, granted contemporaneously with the making of the loans and/or commitments and other financial accommodations secured thereby (subject, in the case of the DIP Roll-Up Loans, to paragraphs 4(i), 6 and 7 hereof). Subject, solely in the case of the DIP Roll-Up Loans, to paragraphs 4(i), 6 and 7 hereof, no obligation incurred, payment made, transfer or grant of security set forth in the DIP Loan Documents by any DIP Loan Party as approved under the Interim Order or this Final Order shall be stayed, restrained, voided, voidable or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim. The term of the DIP Facility commenced following the entry of the Interim Order on the Effective Date and shall end on the Termination Date, subject to the terms and conditions set forth herein and in the other DIP Loan Documents, including the protections afforded a party acting in good faith under Section 364(e) of the Bankruptcy Code.

(b) **Authorization to Borrow, etc.** In order to enable them to continue to operate their businesses, subject to the terms and conditions of this Final Order and the other DIP Loan Documents, (i) the DIP Borrower is hereby authorized under the DIP Facility to continue to borrow (and the DIP Guarantors are authorized to continue to guarantee repayment of) DIP Revolving Loans and, subject to any conditions or limitations set forth in the DIP Loan Documents, to issue DIP Letters of Credit, in an aggregate principal amount not to exceed $236,200,000 (including any amounts borrowed during the Interim Period, and with respect to any DIP Letters of Credit, subject to the DIP L/C Sublimit) under the DIP Facility and (ii) the DIP Borrower is hereby authorized under the DIP Facility to incur (and, subject to paragraph 2(d), the DIP Guarantors are authorized to guarantee repayment of) DIP Roll-Up Loans in an

aggregate principal amount not to exceed $188,800,000 and consummate the Revolver Refinancing.

(c) **Conditions Precedent.** The DIP Lenders shall have no obligation to make any DIP Extension of Credit or any other financial accommodation hereunder or under or in respect of the other DIP Loan Documents unless all conditions precedent to making DIP Extensions of Credit under the DIP Loan Documents have been satisfied or waived in accordance with the terms of the DIP Loan Documents.

(d) **DIP Collateral.** As used herein, "DIP Collateral" shall mean, all now owned or hereafter acquired assets and property, whether real or personal, of the Debtors including, without limitation, all Prepetition Collateral, all assets and property pledged under the DIP Loan Documents, and all cash, any investment of such cash, inventory, accounts receivable, including intercompany accounts (and all rights associated therewith), other rights to payment whether arising before or after the Petition Date, contracts, contract rights, chattel paper, goods, investment property, inventory, deposit accounts, "core concentration accounts," "cash collateral accounts", any bank accounts, and in each case all amounts on deposit therein (or credited thereto) from time to time, equity interests (including all the equity interests of any Debtor in any foreign subsidiary), securities accounts, securities entitlements, securities, commercial tort claims, books, records, plants, equipment, farm products, general intangibles, documents, instruments, interests in leases and leaseholds, interests in real property (whether or not such real property constituted Prepetition Collateral under the Prepetition Loan Documents), fixtures, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, letter of credit rights, supporting obligations, machinery and equipment, patents, copyrights, trademarks, tradenames, other intellectual property, all licenses therefor, interests of any Debtor in any

foreign subsidiary, and all proceeds, rents, profits, products and substitutions, if any, of any of the foregoing and including, the proceeds of all of the Debtors' claims and causes of action under Sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code, and any other avoidance or similar action under the Bankruptcy Code or similar state law (collectively, the "Avoidance Actions"), whether received by judgment, settlement or otherwise. Notwithstanding the foregoing, the DIP Collateral shall not include any Excluded Property (as defined in the DIP Credit Agreement); provided, however, that DIP Collateral shall include proceeds and products of such Excluded Property (except to the extent such proceeds or products also constitute Excluded Property).[5] Notwithstanding anything in this Final Order or the DIP Loan Documents to the contrary, the collateral securing the DIP Roll-Up Loans shall not include the assets of any Debtors that were not obligated on the Prepetition Obligations, and the Debtors obligated on the DIP Roll-Up Loans shall not include any Debtors that were not obligated on the Prepetition Obligations.[6]

(e) **DIP Liens.** Effective immediately upon entry of (i) the Interim Order, with regard to all DIP Obligations incurred during the Interim Period and (ii) this Final Order, with regard to all DIP Obligations, including, without limitation, the DIP Roll-Up Loans, in each case subject to the Carve-Out, and as set forth more fully in this Final Order and the other DIP Loan Documents, the DIP Agent and each of the other DIP Secured Parties, in order to secure

[5] For the avoidance of doubt, the capitalized term "Collateral" in the DIP Credit Agreement shall mean the DIP Collateral as defined in this Final Order and the "Collateral" (or any equivalent term) as defined in each other Collateral Document (as defined in the DIP Credit Agreement), as applicable, and, in any event, shall exclude the Excluded Property (as defined in the DIP Credit Agreement).

[6] For the avoidance of doubt, all references in this Final Order to the Debtors who were not obligated on the Prepetition Obligations are limited solely to the following entities (i) Cascade Equity Realty, LLC, (ii) Dairy Information Systems Holdings, LLC, (iii) Dairy Information Systems, LLC, (iv) Dean International Holding Company, (v) Dean Puerto Rico Holdings, LLC, (vi) DFC Aviation Services, LLC, (vii) DFC Energy Partners, LLC, and (viii) Franklin Holdings, Inc.

the DIP Obligations, were (and continue to be) granted or are hereby granted, as applicable, the following security interests and liens, which (subject, solely in the case of the DIP Roll-Up Loans, to paragraphs 4(i), 6 and 7 hereof) are immediately valid, binding, perfected, continuing, enforceable and non-avoidable (all liens and security interests granted to the DIP Agent and the DIP Secured Parties pursuant to the Interim Order, this Final Order and the other DIP Loan Documents, the "DIP Liens"):

(I) pursuant to Section 364(c)(2) of the Bankruptcy Code, valid, enforceable, perfected and non-avoidable first priority liens on and security interests in all DIP Collateral that was not encumbered by valid, enforceable, perfected and non-avoidable liens as of the Petition Date; and

(II) pursuant to Section 364(c)(3) and Section 364(d) of the Bankruptcy Code, valid, enforceable, perfected and non-avoidable first priority priming liens on and security interests in all other DIP Collateral, which liens and security interests shall, in each case, be (x) junior only to any pre-existing liens as of the Petition Date of a third party, *i.e.*, not any Prepetition Secured Parties (each a "Third Party Lienholder") on the DIP Collateral, but solely to the extent that such liens and security interests of any Third Party Lienholders were, in each case, as of the Petition Date, valid enforceable, perfected and non-avoidable liens, or were perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code, and (i) senior to the Prepetition Liens or (ii) attached to property of the Debtors that did not constitute Prepetition Collateral (such liens in the preceding clauses (i) and (ii), the "Permitted Third Party

Liens"), and (y) senior to all other liens on, and security interests in the DIP Collateral, including without limitation, the Prepetition Liens, any Adequate Protection Liens, and the liens of any Third Party Lienholders which are *pari passu* with or junior to the Prepetition Liens.[7]

Notwithstanding anything to the contrary contained in this Final Order, the Interim Order, or any other DIP Loan Documents, but subject to paragraph 2(d) hereof, (i) the DIP Liens securing the DIP Roll-Up Loans shall be *pari passu* with the DIP Liens securing all other DIP Obligations, including in respect of the DIP Revolving Facility and any DIP Letters of Credit and (ii) no DIP Liens granted in respect of the DIP Roll-Up Loans shall extend to the assets of the Debtors who were not obligated on the Prepetition Obligations.

(f) **DIP Liens Senior to Other Liens.** Effective immediately upon entry of (i) the Interim Order, with regard to all DIP Obligations incurred during the Interim Period and (ii) this Final Order, with regard to all DIP Obligations, including, without limitation, the DIP Roll-Up Loans, in each case subject to the Carve-Out, and as set forth more fully in this Final Order and the other DIP Loan Documents, the DIP Liens shall (or, as applicable, shall continue to) secure all of the DIP Obligations and, subject, solely in the case of the DIP Roll-Up Loans, to paragraphs 4(i), 6 and 7 hereof, shall not, without the consent of the DIP Agent, be made subject or subordinate to, or *pari passu* with, (1) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under Section 551 of the Bankruptcy Code, (2) any lien or security interest arising on or after the Petition Date (but shall be subject to the Carve-Out), or (3) any other lien or security interest under Section 363 or 364 of the

[7] Nothing herein shall constitute a finding or ruling by this Court that any alleged Permitted Third Party Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing herein shall prejudice the rights of any party-in-interest, including, but not limited to, the Debtors, the DIP Agent, the DIP Secured Parties, the Prepetition Secured Parties, or the Committee, to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Permitted Third Party Lien and/or security interests.

Bankruptcy Code or otherwise, other than to the Carve-Out or to the extent expressly provided herein, by any court order heretofore or hereafter entered in the Cases, provided that no DIP Liens granted in respect of the DIP Roll-Up Loans shall extend to the assets of the Debtors who were not obligated on the Prepetition Obligations. The DIP Liens and any Adequate Protection Liens shall be valid and enforceable against any trustee appointed in the Cases, upon the conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (such cases or proceedings, "Successor Cases"), and/or upon the dismissal of any of the Cases. It is understood and agreed, and hereby ordered, that, notwithstanding the immediately preceding sentence or anything else to the contrary set forth in this Final Order, in the Interim Order, in any other DIP Loan Document, or in any other order of this Court entered in the Cases, any amounts advanced or expended by the Prepetition Secured Parties or the DIP Secured Parties, in their sole and absolute discretion and without requiring the consent or approval of any other party, after the occurrence and during the continuation of an Event of Default, directly or indirectly, to protect, preserve, maintain, market, sell or liquidate the Prepetition Collateral or DIP Collateral, including to fund the Debtors' operations during a sale process pursuant to Section 363 of the Bankruptcy Code, and any reasonable professional or advisory fees and expenses of White & Case LLP (as counsel to the Prepetition Agent and DIP Agent and as counsel to the Receivables Financing Agent), FTI Consulting, any local counsel, any additional counsel to the Receivables Financing Agent, and any other advisors, appraisers and/or liquidators retained by the DIP Agent in accordance with the DIP Loan Documents to assist or advise it in such capacities and for such purposes, shall be added to the DIP Obligations for all purposes hereunder and under the other DIP Loan Documents. The DIP Liens and the Adequate Protection Liens shall not be subject to Sections

510, 549, 550 or 551 of the Bankruptcy Code, the "equities of the case" exception of Section 552 of the Bankruptcy Code, or Section 506(c) of the Bankruptcy Code.

(g) **Superpriority Administrative Claim.** Effective immediately upon entry of (i) the Interim Order, with regard to all DIP Obligations incurred during the Interim Period and (ii) this Final Order, with regard to all DIP Obligations, including, without limitation, the DIP Roll-Up Loans, in each case subject to the Carve-Out and, solely in the case of the DIP Roll-Up Loans, paragraphs 4(i), 6 and 7 hereof, and as set forth more fully in this Final Order and the other DIP Loan Documents, pursuant to Section 364(c)(1) of the Bankruptcy Code, and subject in each case to the Carve-Out, the DIP Agent and the other DIP Secured Parties were granted (and continue to be granted) or are hereby granted, as applicable, an allowed superpriority claim in the amount of the DIP Obligations owed to them and outstanding from time to time (all such claims granted to the DIP Agent and the DIP Secured Parties pursuant to the Interim Order and this Final Order, the "DIP Superpriority Claim"), which shall be payable from and have recourse to all assets and properties of the Debtors, and which shall be against each of the Debtors who are DIP Loan Parties (jointly and severally), with priority over any and all other administrative expenses, adequate protection claims, diminution in value claims, and all other claims asserted against the Debtors now existing or hereafter arising of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all other administrative expenses or other claims arising under any other provisions of the Bankruptcy Code, including Sections 105, 326, 327, 328, 330, 331, 363, 364, 365, 503, 506(b), 506(c), 507(a) (other than 507(a)(1)), 546, 726, 1113, or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, subject only to the Carve-Out,

and *pari passu* solely with respect to any superpriority administrative expense claim granted (or continued to be granted) to the Receivables Financing Agent or the Receivables Purchasers pursuant to the Securitization Order (the "Receivables Superpriority Claim"), which DIP Superpriority Claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under Section 503(b) of the Bankruptcy Code and shall be payable from and have recourse to all pre- and post-petition assets and property, whether existing on the Petition Date or thereafter acquired, of the Debtors and all proceeds thereof (excluding Avoidance Actions, but including proceeds of Avoidance Actions). Other than with respect to the Carve-Out and as expressly provided herein, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under Sections 328, 330 and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these proceedings or in any Successor Cases, and no priority claims are, or will be, senior to, prior to or *pari passu* with the DIP Liens, the DIP Superpriority Claim, any of the DIP Obligations, the Adequate Protection Liens, the Adequate Protection Superprioity Claims, the Prepetition Liens, or any other claims of the DIP Secured Parties arising hereunder or under the other DIP Loan Documents, or otherwise, in connection with the DIP Facility, provided that, notwithstanding anything contained in this Final Order to the contrary, any DIP Superpriority Claim granted on account of the DIP Roll-Up Loans shall have recourse solely to the Debtors who were Prepetition Loan Parties.

3. **Authorization and Approval to Use Cash Collateral and Proceeds of DIP Facility.** Subject to the terms and conditions of this Final Order, the other DIP Loan Documents, and the DIP Budget (subject to any Permitted Variances), and to any adequate protection granted to or for the benefit of the Prepetition Secured Parties as hereinafter set forth, each Debtor is

authorized to (a) use the Cash Collateral and (b)(i) DIP Loans, including the proceeds thereof, (ii) issue DIP Letters of Credit under the DIP Facility, and (iii) to incur DIP Roll-Up Loans and consummate the Revolver Refinancing. Notwithstanding anything herein to the contrary, the Debtors' right to use proceeds of the DIP Facility or to use Cash Collateral shall terminate on the Termination Date, including upon written notice being provided by the DIP Agent to the Debtors and Committee Counsel that an Event of Default has occurred and is continuing; provided that, solely as and to the extent provided in paragraph 14 below, during the Default Notice Period (as defined below), the DIP Loan Parties shall be permitted to continue to use Cash Collateral and proceeds of the DIP Facility in the ordinary course of business and in accordance with the DIP Budget (subject to Permitted Variances), and may request an expedited hearing before the Court to address such issues as may be heard pursuant to paragraph 14 below. Nothing in this Final Order shall authorize the disposition of any assets of the Debtors or their estates or other proceeds resulting therefrom outside the ordinary course of business, except as permitted herein and in the DIP Loan Documents (subject to any required Court approval).

4. **Revolver Refinancing; Adequate Protection for Prepetition Secured Parties.**

(i) **Revolver Refinancing.**

(a) The Debtors are authorized and directed to immediately consummate the Revolver Refinancing, including, subject to paragraphs 6 and 7 hereof, to (1) incur the DIP Roll-Up Loans, which shall be deemed to refinance (and repay), on a dollar-for-dollar basis, all outstanding Prepetition Revolving Loans, in accordance with the terms and conditions of this Final Order and the other DIP Loan Documents and (2) pay to the Prepetition Secured Parties, in cash, all remaining accrued and unpaid interest and fees owing by the Debtors under the

Prepetition Revolving Credit Agreement, at the applicable default rates provided for in the Prepetition Revolving Credit Agreement, including all accrued and unpaid letter of credit participation fees, unused commitment fees, and fronting fees owing to the Issuing Bank under (and as defined in) the Prepetition Revolving Credit Agreement, and/or the other Prepetition Secured Parties under the Prepetition Loan Documents, and any professional and advisory fees of the Prepetition Secured Parties required to be paid pursuant to the Prepetition Loan Documents.

(b) Notwithstanding the foregoing, in the event that there is a timely and successful Challenge by the Committee or any party in interest with the requisite authority and standing in accordance with paragraph 6 hereof, as set forth in a final, non-appealable order of a court of competent jurisdiction, this Court may, pursuant to further order (entered after notice and a hearing), fashion an appropriate remedy with respect to the DIP Roll-Up Loans, which may include reversing the deemed repayment and treatment of the Prepetition Revolving Loans as DIP Roll-Up Loans, in whole or in part, or recharacterization or disgorgement of any repayment of the DIP Roll-Up Loans, in each case to the extent that (i) the DIP Roll-Up Loans resulted in the conversion of any Prepetition Obligations consisting of an unsecured claim or other claim or amount not allowable under section 502 of the Bankruptcy Code into a DIP Roll-Up Loan and (ii) such conversion unduly advantaged the applicable Prepetition Secured Party. Notwithstanding anything to the contrary herein, but subject to the preceding sentence, a successful Challenge shall not in any way affect the validity,

enforceability or priority of the DIP Obligations or the DIP Liens, and no obligation, payment, transfer or grant of security under the DIP Credit Agreement, the other DIP Loan Documents, the Interim Order, or this Final Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under section 502(d) of the Bankruptcy Code), or be subject to any defense, reduction, setoff, recoupment or counterclaim.

(c) Notwithstanding anything to the contrary in this Final Order, the DIP Credit Agreement, or the other DIP Loan Documents, until the Challenge Termination Date, no repayment or prepayment of the DIP Roll-Up Loans shall be permitted prior to the occurrence of the Termination Date and, after the occurrence of the Termination Date, any such repayment shall be subject to the provisions of clause 4(i)(b) of this Final Order.

(ii) **Adequate Protection for Prepetition Secured Parties.** As adequate protection for any interests of the Prepetition Secured Parties in the Prepetition Collateral (including Cash Collateral), the Prepetition Agent for the benefit of the Prepetition Secured Parties shall receive adequate protection as follows:

(a) **Adequate Protection Liens.** To the extent of, and in an aggregate amount equal to, the aggregate diminution in value of such interests, from and after the Petition Date, calculated in accordance with Section 506(a) of the Bankruptcy Code, resulting from the use, sale or lease by the Debtors of the Prepetition Collateral (including from the use of Cash Collateral), the granting of the DIP Liens, and the subordination of the Prepetition Liens thereto and to the

Carve-Out, and the imposition or enforcement of the automatic stay of Section 362(a) of the Bankruptcy Code (collectively, "Diminution in Value"), pursuant to Sections 361, 363(e) and 364(d) of the Bankruptcy Code, the Prepetition Agent and each of the other Prepetition Secured Parties, shall have replacement security interests in and liens upon (the "Adequate Protection Liens") all of the DIP Collateral of the Debtors (other than of the Debtors who were not obligated on the Prepetition Obligations), which Adequate Protection Liens shall be (i) subject to the Carve-Out, (ii) junior and subject to the DIP Liens and any Permitted Third Party Liens and (iii) senior and prior to all other liens thereon. The Adequate Protection Liens shall in all cases be subject to the Carve-Out.

(b) **Adequate Protection Superpriority Claims.** To the extent of the aggregate Diminution in Value, the Prepetition Agent and each of the other Prepetition Secured Parties shall have, subject to the payment of the Carve-Out, an allowed superpriority administrative expense claim (the "Adequate Protection Superpriority Claim") as provided for in Section 507(b) of the Bankruptcy Code against each Debtor (other than the Debtors who were not obligated on the Prepetition Obligations), immediately junior and subject to the DIP Superpriority Claim and any Receivables Superpriority Claim, and payable from and having recourse to all DIP Collateral (other than DIP Collateral owned by Debtors who were not obligated on the Prepetition Obligations); provided, that the Prepetition Secured Parties shall not receive or retain any payments, property, distribution or other amounts in respect of the Adequate Protection Superpriority Claim unless

and until the DIP Obligations and (without duplication) the DIP Superpriority Claim have indefeasibly been paid in full in cash.

(c) **Adequate Protection Payments**. Notwithstanding anything to the contrary in this paragraph 4 or in the Interim Order, in the event of a timely and successful Challenge, in accordance with paragraph 6 hereof, as set forth in a final, non-appealable order of a court of competent jurisdiction, any or all payments of accrued and unpaid interest and fees (other than any payment of professional and advisory fees) made to the Prepetition Secured Parties pursuant to clause (2) of paragraph 4(i)(a) or pursuant to the Interim Order as adequate protection, may be subject to disgorgement or recharacterization as payments of principal if so ordered by the Court.

(iii) **Continuing Effect**. For the avoidance of doubt, any surviving obligations as set forth in any DIP Loan Documents, Prepetition Loan Documents, or any document related to the Revolver Refinancing, including, without limitation, any reimbursement or indemnification obligations, shall continue and survive any discharge of the Revolver Refinancing.

5. **DIP Lien and Adequate Protection Replacement Lien Perfection.** This Final Order (and the Interim Order) shall be sufficient and conclusive evidence of the validity, perfection and priority of the DIP Liens and any Adequate Protection Liens without the necessity of filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any other action to validate or perfect the DIP Liens and any Adequate Protection Liens or to entitle the DIP Liens and any Adequate Protection Liens to the priorities granted herein and in the

Interim Order. Notwithstanding the foregoing, the DIP Agent (and, if applicable, the Prepetition Agent) may each, in their respective sole discretion, file such financing statements, mortgages, security agreements, notices of liens and other similar documents, and are hereby granted relief from the automatic stay of Section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, security agreements, notices and other agreements or documents shall be deemed to have been filed or recorded at the time and on the Petition Date. It shall constitute a Default if, as and to the extent required under the DIP Loan Documents, the Debtors shall not execute and deliver to the DIP Agent (and, if applicable, the Prepetition Agent) all such financing statements, mortgages, security agreements, notices and other documents as the DIP Agent (and, if applicable, the Prepetition Agent) may reasonably request to evidence, confirm, validate or perfect, or to insure the contemplated priority of, the DIP Liens and any Adequate Protection Liens. The DIP Agent (and, if applicable, the Prepetition Agent), in their respective discretion, may file a certified copy of this Final Order (and the Interim Order, if applicable) as a financing statement or a notice with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which any Debtor has real or personal property and, in such event, the subject filing or recording officer shall be authorized to file or record such copy of the Interim Order and/or this Final Order. To the extent that the Prepetition Agent is the secured party under any account control agreements, listed as loss payee under any of the Debtors' insurance policies or is the secured party under any Prepetition Loan Document, the DIP Agent is also deemed to be the secured party under such account control agreements, loss payee under the Debtors' insurance policies or is the secured party under any loan document, financing statement, deed of trust, mortgage or other instrument or document which may otherwise be required under the law of any jurisdiction to validate,

attach, perfect or prioritize liens (any such instrument or document, a "Security Document"), the DIP Agent is also deemed to be the secured party under each such account control agreement, loss payee under the Debtors' insurance policies, and the secured party under each such Security Document, and shall have all rights and powers attendant to that position (including, without limitation, rights of enforcement) and shall act in that capacity and distribute any proceeds recovered or received in accordance with the terms of this Final Order (or the Interim Order, as applicable) and the other DIP Loan Documents. The Prepetition Agent shall serve as agent for the DIP Agent for purposes of perfecting their respective security interests and liens on all DIP Collateral comprised of Prepetition Collateral that is of a type such that perfection of a security interest therein may be accomplished only by possession or control by a secured party.

6. **Reservation of Certain Third Party Rights and Bar of Challenges and Claims.** The Debtors' stipulations, admissions, agreements, releases, and waivers contained in this Final Order, including the stipulations set forth in Paragraphs E and F of this Final Order (the "Stipulations"), are and shall be binding upon the Debtors and any and all of the Debtors' successors-in-interest and assigns (including, without limitation, any chapter 7 or chapter 11 trustee, responsible person, examiner with expanded powers, or other estate representative). The Stipulations, and all other admissions, agreements, releases and waivers set forth in this Final Order also are and shall be binding upon all other parties-in-interest (including the Committee) and each of their respective successors-in-interest and assigns, unless, and solely to the extent that (i) such parties-in-interest, in each case with standing and requisite authority to do so (subject in all respects to any agreement or applicable law which may limit or affect such entity's right or ability to do so) have timely filed the proper pleadings, and timely commenced the appropriate proceedings under the Bankruptcy Code and Bankruptcy Rules, including, without

limitation, as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in paragraph 7 below), (a) objecting to or challenging any of the Stipulations or (b) otherwise asserting or prosecuting any action against the Prepetition Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, or employees in connection with matters covered by the Stipulations (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "Challenge"), by no later than, with respect to all issues including valuation of the Prepetition Collateral, (x) with respect to the Committee, one hundred and five (105) days from the appointment of the Committee on November 22, 2019; provided, however, that the Committee shall provide the Prepetition Revolving Lenders with a status report with respect to the Committee's investigation by no later than the date that is sixty (60) days from the appointment of the Committee on November 22, 2019 and (y) with respect to all other parties in interest, the date that is seventy-five (75) days from the entry of the Interim Order (the period described in the immediately preceding clauses (x) and (y) shall be referred to as the "Challenge Period," and the date that is the next calendar day after the termination of the Challenge Period shall be referred to as the "Challenge Period Termination Date"), as such date may be extended as to any such party-in-interest by the Prepetition Agent (with the consent of the Required Lenders (as defined in the Prepetition Revolving Credit Agreement)) and each applicable individual Prepetition Secured Party that is the subject of a Challenge or by any such later date as has been ordered by the Court for cause upon a motion filed and served within the Challenge Period (before giving effect to such extension) and (ii) this Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding, and any such judgment has become final and is not subject to any further review or appeal; provided that in the event that the Committee

files a motion seeking standing or authority to pursue a Challenge against any Prepetition Secured Party with respect to any causes of action belonging to the Debtors or their estates, which motion for standing filed in, or in connection with, any Challenge shall set forth with specificity the basis for such challenge or claim and include a substantially final complaint setting forth the proposed causes of action for which such party seeks standing (a "Standing Motion") by no later than on or before one hundred and five (105) days after the appointment of the Committee on November 22, 2019, the Challenge Period shall be extended, solely with respect to the Challenge(s) for which the Committee seeks standing pursuant to the Standing Motion, to the date that is the earlier of the entry of a final nonappealable order (i) denying any Standing Motion or (ii) in connection with any Challenge; provided, further, that (x) the hearing with respect to the Standing Motion shall not be adjourned without the written consent of the Prepetition Revolving Lenders unless otherwise ordered by the Court and (y) the Committee agrees to request an expedited hearing on the Standing Motion from the Court and to take all commercially reasonable steps to have the Standing Motion heard as soon as practicable. Any Challenge not asserted by the timely and proper filing of a pleading by a party-in-interest with the requisite standing and authority as contemplated herein prior to the Challenge Period Termination Date shall be deemed forever waived, released, and barred with respect to such party-in-interest. To the extent a party-in-interest with requisite standing and authority timely and properly commences a Challenge prior to the Challenge Period Termination Date, all claims, causes of action and other matters not specifically set forth in such Challenge shall be deemed forever waived, released, and barred with respect to such party-in-interest. To the extent the Stipulations (or any of them) are (x) not subject to a Challenge timely and properly commenced prior to the Challenge Period Termination Date or (y) subject to a Challenge timely and properly

commenced prior to the Challenge Period Termination Date, to the extent any such Challenge does not result in a final and non-appealable judgment or order of the Court that is inconsistent with such Stipulations, then, in each case, without further notice, motion or application to, or order of, or hearing before, this Court and without the need or requirement to file any proof of claim: (a) any and all such Challenges by the Committee, and any other party in interest shall be deemed to be forever waived, released, and barred (including in any Successor Case); and (b) the Prepetition Obligations shall be deemed to be an allowed secured claim within the meaning of Sections 502 and 506 of the Bankruptcy Code for all purposes in connection with the Cases (or, after the occurrence of the Revolver Refinancing, an allowed secured claim under the DIP Facility), and all of the Stipulations and all other waivers, releases and affirmations set forth in this Final Order (or any not properly and timely challenged) shall be in full force and effect and shall be binding, conclusive and final on any person, entity or party-in-interest, including the Committee (in each case, and their successors-in-interest and assigns), in the Cases and in any Successor Case for all purposes, without any further order of the Court, and shall not be subject to challenge or objection by the Committee or any other party-in-interest, including, without limitation, any trustee, responsible individual, examiner with expanded powers or other representative of the Debtors' estates. If any Challenge is timely and properly filed during the Challenge Period, the Stipulations and all other waivers, releases and affirmations contained in this Final Order shall nonetheless remain binding, and preclusive as provided in this paragraph 6, on all other parties in interest (including the Committee), and on any other person or entity, except for the plaintiff or movant timely and successfully asserting such Challenge, as set forth in a final, non-appealable order of a court of competent jurisdiction. Notwithstanding anything to the contrary herein, the right to commence any Challenge under this Final Order is only

preserved as against any particular Prepetition Obligation (including any Prepetition Revolving Loan that has been converted to or deemed refinanced by the DIP Roll-Up Loans) or Prepetition Collateral, or against any Prepetition Secured Party (including any DIP Lender whose Prepetition Revolving Loan has been converted to or deemed refinanced by the DIP Roll-Up Loans) to the extent such Challenge is commenced timely and properly, prior to the Challenge Period Termination Date, and in respect of such Prepetition Obligation, Prepetition Collateral, or Prepetition Secured Party, and is otherwise waived as set forth in this paragraph 6. All remedies or defenses of any party with respect to any Challenge are hereby preserved. Nothing in this Final Order vests or confers on any person (as defined in the Bankruptcy Code), including the Committee, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, any Challenges with respect to the Prepetition Obligation, and an order of the Court (or any other court of competent jurisdiction) conferring such standing on the Committee or other party in interest shall be a prerequisite for the prosecution of a Challenge by the Committee or such other party in interest (other than any Challenge for which the Committee or such other party in interest already has standing as a matter of law).

7. **Limitations on Use of Cash Collateral**. Notwithstanding anything herein to the contrary, no portion of the proceeds of the DIP Facility, the DIP Collateral, Prepetition Collateral, including Cash Collateral, or the Carve-Out, and no disbursements set forth in the DIP Budget, may be used for the payment of professional fees, disbursements, costs, or expenses incurred by any person in connection with (a) incurring indebtedness other than as expressly provided in this Final Order, the Interim Order or the DIP Budget, (b) preventing, hindering, impeding, or delaying any of the DIP Agent's or any other DIP Secured Party's enforcement or realization upon, or exercise of rights in respect of, any of the Prepetition Collateral or DIP

Collateral, other than to seek a determination that an Event of Default has not occurred or is not continuing or in connection with a remedies hearing, (c) seeking to amend or modify any of the rights or interests granted to the DIP Agent, any other DIP Secured Party, the Prepetition Agent or any other Prepetition Secured Party under this Final Order or Prepetition Loan Documents, including seeking to use Cash Collateral on a contested basis, (d) asserting, commencing, or prosecuting any claims or causes of action, including, without limitation, any Challenge or any other actions under chapter 5 of the Bankruptcy Code (or any similar law), against the DIP Agent, any other DIP Secured Party, the Prepetition Agent, or any other Prepetition Secured Party, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, or employees, (or any Releasees under and as defined in the Securitization Order) or (e) asserting, joining, commencing, supporting, investigating, or prosecuting any Challenge, or any other action for any claim, counterclaim, action, cause of action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination, or similar relief against, or adverse to the material interests of the DIP Secured Parties, the Prepetition Secured Parties, or any Releasees under and as defined in the Securitization Order, or arising out of, in connection with, or relating to the DIP Documents, Prepetition Loan Documents, the Amended Transaction Documents (as defined in the Securitization Order) or the transactions contemplated thereunder, including, without limitation, (i) any action arising under the Bankruptcy Code, (ii) any so-called "lender liability" claims and causes of action, (iii) any action with respect to the validity and extent of the DIP Obligations, the Prepetition Obligations, or the Facility Obligations (as defined in the Securitization Order) or the validity, extent, perfection and priority of the DIP Liens, the Prepetition Liens, or the Securitization Liens (as defined in the Securitization Order), (iv) any action seeking to

invalidate, set aside, avoid, reduce, set off, offset, recharacterize, subordinate (whether equitable, contractual, or otherwise), recoup against, disallow, impair, raise any defenses, cross-claims, or counterclaims, or raise any other challenges under the Bankruptcy Code or any other applicable domestic or foreign law or regulation against, or with respect to, the DIP Liens, the Prepetition Liens, or the Securitization Liens (as defined in the Securitization Order), in whole or in part, or (v) appeal or otherwise challenge this Final Order (or the Interim Order) or the Securitization Order; provided that no more than $200,000 in the aggregate (the "Investigation Budget") of the proceeds of the DIP Facility, the DIP Collateral, Prepetition Collateral, the Cash Collateral, and the Carve-Out may be used by the Committee to investigate (but not prosecute or Challenge, or initiate the prosecution of, including the preparation of any complaint or motion on account of) the Stipulations; provided that any fees and expenses in excess of the Investigation Budget incurred in connection with the foregoing or any prosecution or Challenge relating thereto and allowed by the Bankruptcy Court under Bankruptcy Code sections 328, 330, 331 and/or 503(b) may be permitted to be paid in accordance with applicable orders of this Court, including any interim compensation orders, provided that the administrative expenses in respect thereof shall be subordinate in all respects to the Carve-Out, the DIP Superpriority Claim, and any Receivables Superiority Claim (and, for the avoidance of doubt, may not be paid from any proceeds of the DIP Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral, or the Carve-Out (including any Carve-Out Reserve) until the indefeasible repayment and Full Satisfaction (as defined in the DIP Credit Agreement) of all DIP Obligations and any Prepetition Obligations in accordance with the DIP Loan Documents and the Prepetition Loan Documents, as the case may be); and provided that, subject to the Challenge Period as provided in paragraph

6 and subject to this paragraph 7, nothing contained in this Final Order or the DIP Loan Documents shall restrict the Committee's ability to contest issues related to valuation.

8. **Carve-Out.**

(a) As used in this Final Order, the "Carve-Out" shall mean a carve-out from the DIP Superpriority Claims, the DIP Liens, claims pursuant to section 507(b) of the Bankruptcy Code, any Adequate Protection Liens and the Prepetition Liens, in an amount equal to the sum of (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the Carve-Out Trigger Notice (as defined herein)); (ii) all reasonable and documented fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code, in an aggregate amount not to exceed $75,000 (without regard to the Carve-Out Trigger Notice); (iii) all reasonable, documented, ordinary course out-of-pocket expenses of individual members of the Committee solely in their capacity as such (but expressly excluding any and all fees and expenses of professional persons employed by such Committee members individually); (iv) to the extent allowed by the Court at any time, whether by interim order, procedural order or otherwise (unless subsequently disallowed), all paid and unpaid fees and expenses, other than any Transaction Fees (as defined below) (the "Professional Fees") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code or by the Committee, pursuant to section 328 and 1103 of the Bankruptcy Code (collectively, the "Professional Persons"), at any time on or before the first business day following the (a) delivery by the DIP Agent of a Carve-Out Trigger Notice and (b) the Termination Date (including as a result of the occurrence of an Event of Default) (such day, the "Carve-Out Trigger Date"), whether allowed by the Court prior to or after the Carve-Out Trigger Date; and

(v) Professional Fees incurred after the Carve-Out Trigger Date in an amount not to exceed $8,000,000 (the "Post-Carve-Out Trigger Notice Cap"), in each case subject to the limits imposed by this Final Order. For purposes of the foregoing, "Carve-Out Trigger Notice" shall mean a written notice delivered by email by the DIP Agent to the Debtors' lead restructuring counsel, the U.S. Trustee, and counsel to the Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default under the DIP Loan Documents stating that the Post-Carve-Out Trigger Notice Cap has been invoked. For the avoidance of doubt, the incurrence or payment of any amounts subject to the Carve-Out shall not be restricted by the DIP Budget.

(b) The Carve-Out shall not include any restructuring, completion, sale, success, divestiture or other transaction fees of any investment bankers or financial advisors of the Debtors or the Committee, provided, however, that a (i) Sale Fee or a Restructuring Fee, as defined in, and which is earned and payable by the Debtors upon consummation of an applicable transaction pursuant to, an engagement letter between the Debtors and the Debtors' investment banker, Evercore, which is acceptable to the DIP Agent (with the consent of the requisite DIP Secured Parties as provided in and consistent with their respective rights under the DIP Loan Documents) and is approved by the Court and (ii) a sale or restructuring fee, upon consummation of an applicable transaction pursuant to, an engagement letter between the Committee and the Committee's investment banker, Miller Buckfire, which is acceptable to the DIP Agent (with the consent of the requisite DIP Secured Parties) and is approved by the Court, shall be payable prior to any distribution to, the DIP Secured Parties or the Prepetition Secured Parties, solely from any proceeds received by the Debtors resulting from such transaction.

(c) Prior to the occurrence of the Carve-Out Trigger Date, the Debtors are authorized to pay Professional Fees that are authorized to be paid in accordance with the provisions of the Bankruptcy Code and any order entered by the Court establishing procedures for the payment of compensation to Professional Persons in these Cases, as the same may be due and payable. Upon the occurrence of the Carve-Out Trigger Date, the Post-Carve-Out Trigger Notice Cap shall be reduced, dollar-for-dollar, by the amount of any Professional Fees incurred and accruing by the Debtors or the Committee, and paid to the applicable Professional Persons, following delivery of the Carve-Out Trigger Notice to the Debtors.

(d) Immediately upon the Carve-Out Trigger Date, and prior to the payment of any DIP Secured Party or Prepetition Secured Party on account of adequate protection, the Carve-Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve (the "Carve-Out Reserve") in an amount equal to the sum of the amounts set forth in paragraphs 8(a)(i) through 8(a)(v) above (but, for the avoidance of doubt, not including any amounts referenced in paragraph 8(a)(iv) that have been previously paid).

(e) The Carve-Out Reserve shall be held in a segregated non-interest bearing account in trust at the DIP Agent to pay allowed Professional Fees benefiting from the Carve-Out as provided herein, and the Carve-Out Reserve shall be available only to satisfy such allowed Professional Fees benefiting from the Carve-Out until such Professional Fees are paid in full.

(f) To the extent the Carve-Out Reserve has not been reduced to zero after the payment in full of such obligations, it shall be used to pay the DIP Agent for the benefit of the DIP Secured Parties until the DIP Obligations have been indefeasibly paid in full in cash and all

commitments under the DIP Facility have been terminated. Notwithstanding anything to the contrary herein, the Prepetition Agent and the DIP Agent, each on behalf of itself and the relevant secured parties, (y) shall not sweep or foreclose on the Carve-Out Reserve prior to satisfaction in full of all obligations benefitting from the Carve-Out as provided herein, and (z) shall have a security interest upon any residual interest in the Carve-Out Reserve, available following satisfaction in cash in full of all obligations benefitting from the Carve-Out as provided herein, and the priority of such liens on the residual interest shall be consistent with this Final Order. Further, notwithstanding anything to the contrary herein, (A) the failure of the Carve-Out Reserve to satisfy in full the Professional Fees shall not affect the priority of the Carve-Out and (B) in no way shall the Carve-Out, the Post-Trigger Date Carve-Out Amount, the Carve-Out Reserve, or any of the foregoing be construed as a cap or limitation on the amount of the Professional Fees due and payable by the Debtors.

(g) Notwithstanding anything to the contrary herein or in the DIP Loan Documents, the Carve-Out shall be senior to the DIP Obligations, the DIP Superpriority Claims, the DIP Liens, any adequate protection liens and claims, the Prepetition Liens, and all other liens and claims granted under this Final Order, the Interim Order, the DIP Loan Documents, or otherwise securing or in respect of the DIP Obligations or any adequate protection obligations.

(h) The DIP Secured Parties and the Prepetition Secured Parties reserve the right to review and object to any fee statement, interim application or monthly application issued or filed by the Professional Persons. Notwithstanding anything to the contrary herein or in the DIP Loan Documents, the payment of any allowed Professional Fees pursuant to the Carve-Out shall not, and shall not be deemed, to (i) reduce any Debtor's obligations owed to the DIP Agent, the other DIP Secured Parties, the Prepetition Agent or the other Prepetition Secured Parties

(whether under this Final Order or otherwise) or (ii) other than as necessary to permit the payment of such allowed Professional Fees (in each case, subject to the terms of and as expressly provided in this Final Order with respect to the Carve-Out), modify, alter or otherwise affect any of the liens and security interests of such parties (whether granted under the Interim Order or this Final Order or otherwise) in the Prepetition Collateral or the DIP Collateral (or their claims against the Debtors). Notwithstanding anything to the contrary herein or in the other DIP Loan Documents, none of the DIP Agent, the other DIP Secured Parties, the Prepetition Agent or the other Prepetition Secured Parties shall be responsible for the direct payment or reimbursement of any Professional Fees, or any fees or expenses of the U.S. Trustee or Clerk of the Court (or of any other entity) incurred in connection with the Cases or any Successor Case, and nothing in this Final Order, the Interim Order, or otherwise shall be construed to obligate such parties in any way to pay such compensation or to reimburse such expenses.

9. **Section 506(c) Claims.** As a further condition of the DIP Facility and the DIP Extensions of Credit under the DIP Credit Agreement and the other DIP Loan Documents, any obligation of the DIP Secured Parties to make DIP Extensions of Credit, and the Debtors' authorization to use the Cash Collateral, the Debtors (and any successors thereto or any representatives thereof, including any trustees appointed in the Cases or any Successor Case) shall be deemed to have waived any rights, benefits or causes of action under Section 506(c) of the Bankruptcy Code as they may relate to or be asserted against the DIP Secured Parties, the DIP Liens, the DIP Collateral, the Prepetition Secured Parties, the Prepetition Liens or the Prepetition Collateral. Except for the Carve-Out, nothing contained in the Interim Order, in this Final Order or in the other DIP Loan Documents shall be deemed a consent by the Prepetition Secured Parties or the DIP Secured Parties to any charge, lien, assessment or claim against, or in

respect of, the DIP Collateral or the Prepetition Collateral under Section 506(c) of the Bankruptcy Code or otherwise.

10. **Collateral Rights; Limitations in Respect of Subsequent Court Orders.** Unless the DIP Agent (at the direction of the Required Lenders) and the Prepetition Agent (at the direction of the requisite lenders under the Prepetition Loan Documents) have provided their prior written consent, or all DIP Obligations and Prepetition Obligations have been (or with the proceeds thereof shall be) indefeasibly paid and Fully Satisfied (as defined under the DIP Credit Agreement and the Prepetition Revolving Credit Agreement, as applicable), in accordance with the DIP Loan Documents and the Prepetition Loan Documents, as the case may be, and discharged (subject to paragraphs 4(i), 6 and 7 solely with respect to the DIP Roll-Up Loans and the Prepetition Obligations), it shall constitute an Event of Default if the Debtors shall seek in these Cases, or in any Successor Case, or there shall be entered in these Cases or in any Successor Case (or in each case any proceeding ancillary thereto), any order which authorizes any of the following: (i) except as and to the extent expressly permitted by the DIP Credit Agreement, the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral and/or entitled to priority administrative status which is superior to or *pari passu* with those granted pursuant to this Final Order or the Interim Order (other than any Receivables Superpriority Claim) to or for the benefit of the DIP Secured Parties or the Prepetition Secured Parties, or (ii) the use of proceeds of the DIP Facility or Cash Collateral for any purpose other than as permitted under the DIP Credit Agreement and in accordance with the DIP Budget (subject to any Permitted Variances).

11. **Proceeds of Subsequent Financing.** Without limiting the provisions and protections of paragraph 10 above, if at any time prior to the indefeasible repayment and Full Satisfaction (as defined in the DIP Credit Agreement) of all DIP Obligations in accordance with the DIP Loan Documents and this Final Order, as the case may be, and the termination of the DIP Secured Parties' obligations to make DIP Extensions of Credit, including subsequent to the confirmation of any Chapter 11 plan or plans with respect to the Debtors, the Debtors, the Debtors' estates, any trustee, any examiner with enlarged powers or any responsible officer subsequently appointed, shall obtain credit or incur debt in violation of this Final Order or the other DIP Loan Documents, then all of the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Agent for application in accordance with the DIP Loan Documents, the relevant Prepetition Loan Documents, and under applicable law (and solely with respect to payment of any Prepetition Obligations, subject to paragraphs 4(i), 6 and 7 hereof,).

12. **Cash Management.** It shall constitute a Default if the Debtors' cash management system shall not at all times be maintained in accordance with the terms of the DIP Loan Documents and the order of this Court approving the maintenance of the Debtors' cash management system. Other than the Collections Accounts (as defined in the Securitization Order), the DIP Agent shall be deemed to have "control" over all bank accounts for all purposes of perfection under the Uniform Commercial Code pursuant to this Final Order and, if required, pursuant to control agreements reasonably acceptable to the DIP Agent.

13. **Disposition of DIP Collateral.** It shall constitute an Event of Default if the Debtors shall sell (including, without limitation, any sale and leaseback transaction), transfer (including any assignment of rights), lease, encumber or otherwise dispose of any portion of the DIP Collateral, except as permitted by the DIP Credit Agreement (including with respect to the

Receivables Financing, in accordance with the Securitization Order and the Receivables Financing Documents).

14. **Events of Default; Rights and Remedies Upon Event of Default.**

(a) Any automatic stay otherwise applicable to the DIP Secured Parties is hereby modified so that, upon and after the occurrence of the Termination Date, the DIP Agent (or the other DIP Secured Parties, to the extent expressly permitted under the DIP Loan Documents) shall, subject to subparagraphs (b) and (c) of this paragraph 14 (including the Default Notice Period to the extent provided therein) and, solely in the case of a Termination Date resulting from an Event of Default, following (i) the delivery of a written notice to counsel to the Debtors, counsel for the Committee, and the U.S. Trustee (such notice, a "Default Notice") and (ii) the filing of an emergency motion on the Court's docket, during which period the Court shall hold an expedited hearing (at which hearing the burden shall be on any party opposing the exercise of remedies, and the DIP Secured Parties shall not be required to satisfy the applicable standard for relief from the automatic stay), be entitled to exercise all of their rights and remedies in respect of the DIP Collateral, in accordance with this Final Order and the other DIP Loan Documents. The term "Termination Date" shall mean (a) the Scheduled Maturity Date, (b) the effective date of any Chapter 11 plan with respect to the Debtors confirmed by the Court; (c) the date on which all or substantially all of the assets of the Debtors are sold in a sale under any Chapter 11 plan or pursuant to Section 363 of the Bankruptcy Code; (d) the occurrence of an Event of Default under and as defined in the DIP Credit Agreement, (e) the acceleration of the DIP Obligations and/or termination of the commitments under the DIP Revolving Facility, in accordance with the terms of the DIP Loan Documents, and (f) this Final Order ceasing to be in full force and effect for any reason, provided that, prior to the Challenge Termination Date, the

Challenge Period shall survive the occurrence of the Termination Date, and any funds repaid upon the acceleration of the DIP Roll-Up Loans may be subject to disgorgement based on a successful Challenge by the Committee or any party in interest with the requisite authority and standing in accordance with paragraph 6 hereof.

(b) Upon the delivery by the DIP Agent of a Default Notice: (i) all commitments of the DIP Lenders to provide any DIP Extensions of Credit shall immediately be suspended; (ii) the Debtors shall have no right to request any DIP Extensions of Credit, to use proceeds of any DIP Extensions of Credit or DIP Collateral, or to use Cash Collateral, other than to use such Cash Collateral and proceeds of DIP Extensions of Credit towards the satisfaction of the DIP Obligations and funding of the Carve-Out Reserve, as provided herein; provided, that, during the Default Notice Period (as defined below) the Debtors may, subject to the limitations set forth herein and in the other DIP Loan Documents, continue to use Cash Collateral and proceeds of DIP Extensions of Credit previously drawn or issued (and any other cash on hand or on deposit in any deposit account or other bank account of a Debtor) in the ordinary course of business, and in accordance with the DIP Budget, to pay for payroll or other expenditures incurred prior to the Termination Date which are critical to the Debtors' operations and the preservation of the DIP Collateral; and (iii) subject to the provisions of this paragraph 14 (and with respect to the DIP Roll-Up Loans, paragraph 4(i) hereof if applicable), the DIP Agent shall be permitted to apply such proceeds in accordance with the terms of this Final Order. The Debtors and the Committee shall be entitled to an emergency hearing before this Court within five (5) Business Days after the giving of written notice by the DIP Agent of the occurrence of an Event of Default (the "Default Notice Period"). If the Debtors or the Committee do not contest the occurrence of the Event of Default or the DIP Secured Parties' proposed exercise of

remedies within the Default Notice Period, or if the Debtors or the Committee do timely contest the occurrence of an Event of Default and the Court after notice and a hearing declines (or otherwise within the Default Notice Period fails) to stay the enforcement thereof, the Termination Date shall be deemed to have occurred for all purposes, and the automatic stay shall terminate as to the DIP Agent in all respects, as provided in this paragraph 14. Nothing herein shall preclude the DIP Agent from seeking an order from the Court upon written notice (electronically in a manner that generates a receipt for delivery, or via overnight mail) to the U.S. Trustee, counsel to the Debtors and counsel to the Committee, authorizing the DIP Agent to exercise any enforcement rights or remedies with respect to the DIP Collateral on less than five (5) Business Days' notice, or the Debtors' or the Committee's right to contest such relief.

(c) Upon the occurrence of the Termination Date (but subject, only in the case of the occurrence of the Termination Date resulting from an Event of Default, following the expedited hearing to be held in accordance with paragraph 14(a) hereof), the DIP Agent is authorized to exercise all remedies and proceed under or pursuant to the applicable DIP Loan Documents and the Prepetition Loan Documents, including, without limitation, to require the DIP Borrower to cash collateralize any DIP Letters of Credit in accordance with the DIP Loan Documents. All proceeds realized in connection with the exercise of the rights and remedies of the DIP Secured Parties, or the Prepetition Secured Parties (subject to obtaining the requisite relief from the automatic stay), shall be turned over and applied in accordance with the terms of this Final Order, the other DIP Loan Documents and the Prepetition Loan Documents.

(d) The automatic stay imposed under Section 362(a) of the Bankruptcy Code is hereby modified pursuant to the terms of the DIP Loan Documents as necessary to (i) permit the Debtors to grant any Adequate Protection Liens and the DIP Liens, to consummate the

Revolver Refinancing, and to incur all DIP Obligations and all liabilities and obligations to the DIP Secured Parties and the Prepetition Secured Parties hereunder and under the other DIP Loan Documents, as the case may be, and (ii) authorize the DIP Agent, the other DIP Secured Parties to retain and apply payments, and otherwise enforce their respective rights and remedies hereunder.

(e) Nothing included herein shall prejudice, impair, or otherwise affect the Prepetition Agent's or the DIP Agent's rights to seek (on behalf of the Prepetition Secured Parties and the DIP Secured Parties, respectively), subject to their relative rights and priorities herein, any other or supplemental relief in respect of the Debtors (including, as the case may be, other or additional adequate protection) nor the DIP Agent's or Prepetition Agent's rights to suspend or terminate the making of DIP Extensions of Credit or use of Cash Collateral in accordance with this Final Order and the other DIP Loan Documents, or the rights of the Debtors to oppose such relief. The delay or failure to exercise rights and remedies under this Final Order or any other DIP Loan Document or Prepetition Loan Document, as applicable, shall not constitute a waiver of the DIP Agent's, the DIP Secured Parties', the Prepetition Agent's or the Prepetition Secured Parties' respective rights hereunder, thereunder or otherwise, as applicable. The occurrence of an Event of Default or the Termination Date shall not affect the validity, priority or enforceability of any and all rights, remedies, benefits and protections provided (or that continue to be provided) to the DIP Agent, the DIP Secured Parties, the Prepetition Agent or the Prepetition Secured Parties under this Final Order, which rights, remedies, benefits and protections shall survive the Termination Date, as provided herein.

(f) Notwithstanding anything in this Final Order to the contrary, neither the Prepetition Agent (on behalf of itself or the other Prepetition Secured Parties) or the other

Prepetition Secured Parties shall be permitted to exercise any rights or remedies unless and until the DIP Obligations are indefeasibly paid and Fully Satisfied (as defined in the DIP Credit Agreement) in accordance with the DIP Loan Documents, and discharged.

15. **Applications of Proceeds of Collateral, Payments and Collections.** As a condition to the DIP Extensions of Credit and the authorization to use Cash Collateral, each Debtor has agreed that all Cash Collateral, all proceeds of any DIP Collateral or Prepetition Collateral (including proceeds realized from a sale or disposition thereof), any amounts held on account of the DIP Collateral or Prepetition Collateral, all payments and collections received by the Debtors with respect to all DIP Collateral and Prepetition Collateral, and all other amounts remitted by any non-Debtor affiliates to any Debtors in respect of, among other things, asset sales and certain other transactions in accordance with the DIP Credit Agreement shall only be used and applied in accordance with this Final Order, the DIP Credit Agreement, and the other DIP Loan Documents (including repayment and reduction of the DIP Obligations), and in accordance with the DIP Budget (subject to any Permitted Variances).

16. **Proofs of Claim, etc.** None of the DIP Secured Parties or the Prepetition Secured Parties shall be required to file proofs of claim in any of the Cases or any Successor Cases for any claim allowed herein, and the Debtors' Stipulations shall be deemed to constitute a timely filed proof of claim against each of the applicable Debtors in the Cases. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Cases or any Successor Cases to the contrary, the DIP Agent, on behalf of itself and the DIP Secured Parties, and the Prepetition Agent, on behalf of itself and the Prepetition Secured Parties, respectively, are hereby authorized and entitled, in each of their sole and absolute discretion, but not required, to file (and amend and/or supplement, as it sees fit) a master proof of claim and/or aggregate

proofs of claim in each of the Cases or any Successor Cases for any claim allowed herein; for avoidance of doubt, any such proof of claim may (but is not required to) be filed as one consolidated proof of claim against all of the Debtors, rather than as separate proofs of claim against each Debtor. Any proof of claim filed by the DIP Agent or the Prepetition Agent shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the respective DIP Secured Parties or Prepetition Secured Parties. Any order entered by the Court in relation to the establishment of a bar date for any claim (including, without limitation, administrative claims) in any of the Cases or any Successor Cases shall not apply to the DIP Agent, the other DIP Secured Parties, the Prepetition Agent or the other Prepetition Secured Parties.

17. **Other Rights and Obligations.**

(a) **Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Final Order.** Based on the findings set forth in this Final Order (and the Interim Order) and in accordance with Section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility as approved by this Final Order (and the Interim Order), in the event any or all of the provisions of this Final Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court, the DIP Secured Parties are entitled to the protections provided in Section 364(e) of the Bankruptcy Code, and no such appeal, modification, amendment or vacatur shall affect the validity and enforceability of any advances made hereunder or the liens or priority authorized or created hereby (subject, solely in the case of the DIP Roll-Up Loans, to paragraphs 4(i), 6 and 7). Notwithstanding any such modification, amendment or vacatur, any claim granted to the DIP Secured Parties hereunder arising prior to the effective date of such modification, amendment, vacatur or stay of any DIP Liens or of the

DIP Superpriority Claim granted to or for the benefit of the DIP Secured Parties shall be governed in all respects by the original provisions of this Final Order (and the Interim Order, as applicable), and the DIP Secured Parties shall be entitled to all of the rights, remedies, privileges and benefits, including the DIP Liens and the DIP Superpriority Claim granted herein (and in the Interim Order), with respect to any such claim. Because the DIP Extensions of Credit are (and were) made in reliance on this Final Order, the Interim Order, and the other DIP Loan Documents, the DIP Obligations incurred by the Debtors or owed to the DIP Secured Parties prior to the effective date of any stay, modification or vacatur of this Final Order (subject, solely in the case of the DIP Roll-Up Loans, to paragraphs 4(i), 6 and 7) shall not, as a result of any subsequent order in the Cases or in any Successor Cases, be subordinated, lose their lien priority or superpriority administrative expense claim status, or be deprived of the benefit of the status of the liens and claims granted to the DIP Secured Parties under this Final Order (and the Interim Order).

(b) **Expenses.** To the fullest extent provided in this Final Order and in the other DIP Loan Documents, the Debtors will pay all prepetition and post-petition fees and expenses incurred by the DIP Secured Parties (including, without limitation, the reasonable fees and disbursements of the DIP Lender Professionals, and any other local counsel or additional securitization counsel that any DIP Secured Party shall retain and any internal or third-party appraisers, consultants, financial, restructuring or other advisors and auditors advising any such counsel), including in connection with (i) the negotiation, preparation, execution, delivery, funding and administration of the DIP Loan Documents, including, without limitation, all due diligence fees and expenses incurred or sustained in connection with the DIP Loan Documents, (ii) the Cases or any Successor Cases, or (iii) enforcement of any rights or remedies under the

DIP Loan Documents. Payment of all such fees and expenses, and the fees and expenses of the Prepetition Secured Parties that are paid as adequate protection hereunder (or that were paid as adequate protection under the Interim Order), shall not be subject to allowance by the Court, and the Prepetition Secured Parties, the Prepetition Lender Professionals (as defined in the Interim Order), the DIP Secured Parties, and the DIP Lender Professionals (and any other professionals for the DIP Secured Parties), shall not be required to file an application seeking compensation for services or reimbursement of expenses with the Court or comply with the U.S. Trustee fee guidelines, but shall provide its fee and expense statements or invoices, in summary form, which shall not be required to contain time entries but shall include the number of hours billed by the applicable professional (except for financial advisors compensated on other than an hourly basis) and a summary statement of services provided and the expenses incurred and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client or other privilege, any information constituting attorney work product, or any other confidential or otherwise sensitive information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine) to the Debtors, with copies to be provided to the Office of the U.S. Trustee and counsel for the Committee contemporaneously with the delivery of such fee and expense statements or invoices to the Debtors. The Debtors shall pay in cash all such fees and expenses of any DIP Lender Professional, within ten (10) days of presentment of such statements or invoices, if no written objections to the reasonableness of the fees and expenses charged in any such statement or invoice (or portion thereof) is made. Any objection raised by the Debtors, the U.S. Trustee or the Committee with respect to such fee and expense statements or invoices (with notice of such objection provided to the DIP Agent and to the respective DIP Lender

Professional) may be made only on the basis of "reasonableness," and shall specify in writing the amount of the contested fees and expenses and the detailed basis for such objection. To the extent an objection only contests a portion of an invoice, the undisputed portion thereof shall be promptly paid. If any such objection to payment of an invoice (or any portion thereof) is not otherwise resolved between the Debtors, the Committee or the U.S. Trustee and the issuer of the invoice, either party may submit such dispute to the Court for a determination as to the reasonableness of the relevant disputed fees and expenses set forth in the invoice. This Court shall retain the jurisdiction to resolve any dispute as to the reasonableness of any fees and expenses. Such fees and expenses shall not be subject to the DIP Budget and shall not be subject to any offset, defense, claim, counterclaim or diminution of any type, kind or nature whatsoever. For the avoidance of doubt, and without limiting any of the forgoing or any other provision of this Final Order (or the Interim Order, as applicable), each of the fees specified in Section 2.12 of the DIP Credit Agreement (including, any commitment fees, upfront fees, administrative agent fees, arranger fees, exit fees, letter of credit participation fees, letter of credit fronting fees, and unused line fees), were, in each case, upon entry of the Interim Order, and continue to be, upon entry of this Final Order, and irrespective of any subsequent order approving or denying the DIP Facility or any other financing pursuant to Section 364 of the Bankruptcy Code, fully entitled to all protections of Section 364(e) of the Bankruptcy Code and are deemed fully earned, non-refundable, irrevocable, and non-avoidable as of the date of entry of the Interim Order.

(c) **Credit Bid.** The DIP Agent, with the consent of the Required Lenders shall have the right (on behalf of the DIP Lenders) to credit-bid the amount of the DIP Obligations (other than, prior to the Challenge Period Termination Date, the DIP Roll-Up Loans) in connection with any sale of all or substantially all of the Debtors' assets and property,

including, without limitation, any sale occurring pursuant to Section 363 of the Bankruptcy Code or included as part of any Chapter 11 plan subject to confirmation under Section 1129(b)(2)(A)(iii) of the Bankruptcy Code.

(d) **Binding Effect.** The provisions of this Final Order shall be binding upon and inure to the benefit of the DIP Secured Parties and the Prepetition Secured Parties, the Debtors, and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors) whether in the Cases, in any Successor Cases, or upon dismissal of any such Chapter 11 or Chapter 7 cases.

(e) **No Waiver.** The failure of the DIP Secured Parties or the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under the Interim Order, this Final Order, the other DIP Loan Documents or the Prepetition Loan Documents or otherwise, as applicable, shall not constitute a waiver of any of the DIP Secured Parties' or Prepetition Secured Parties' rights hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair any of the rights, claims, privileges, objections, defenses or remedies of the DIP Secured Parties or the Prepetition Secured Parties under the Bankruptcy Code or under non-bankruptcy law against any other person or entity in any court, including without limitation, the rights of the DIP Agent and the Prepetition Agent (i) to request conversion of the Cases to cases under Chapter 7, dismissal of the Cases, or the appointment of a trustee in the Cases, (ii) to propose, subject to the provisions of Section 1121 of the Bankruptcy Code, any Chapter 11 plan, or (iii) to exercise any of the rights, claims or

privileges (whether legal, equitable or otherwise) on behalf of the DIP Secured Parties or the Prepetition Secured Parties, as applicable.

(f) **No Third Party Rights.** Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, third party or incidental beneficiary.

(g) **Intercreditor Matters.** Nothing in this Final Order shall be construed to convey on any individual DIP Lender or Prepetition Revolving Lender any consent, voting or other rights beyond those (if any) set forth in the DIP Loan Documents and Prepetition Loan Documents, as applicable. Nothing in this Final Order shall be construed to impair, modify or otherwise affect (i) the Intercreditor Agreement or (ii) any other intercreditor, subordination or similar agreement or arrangement in respect of the Prepetition Obligations and the obligations under the Receivables Financing Documents, which in each case are enforceable to the fullest extent provided by section 510(a) of the Bankruptcy Code and applicable law.

(h) **No Marshaling.** Neither the DIP Secured Parties nor the Prepetition Secured Parties shall be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as applicable; *provided*, *however*, that the DIP Secured Parties and Prepetition Secured Parties, as applicable, shall use commercially reasonable efforts to first use all DIP Collateral other than any proceeds of Avoidance Actions to repay the DIP Superpriority Claim and any Adequate Protection Superpriority Claim, as applicable.

(i) **Section 552(b).** The DIP Secured Parties and the Prepetition Secured Parties shall each be entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under Section 552(b) of the Bankruptcy Code

shall not apply to the DIP Secured Parties or the Prepetition Secured Parties with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral or the DIP Collateral.

(j) **Limitation of Liability**. In determining to make any loan or other extension of credit under the DIP Credit Agreement, to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Final Order, the Interim Order, the DIP Loan Documents or the Prepetition Loan Documents, the DIP Secured Parties (and the Prepetition Secured Parties in respect of the use of Cash Collateral) shall not (a) be deemed to be in "control" of the operations of the Debtors, (b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates, or (c) be deemed to be acting as a "Responsible Person," "Owner," or "Operator" with respect to the operation or management of the Debtors, so long as the DIP Secured Parties' actions do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a vessel or facility owned or operated by a Debtor, or otherwise cause liability to arise to the federal or state government or the status of "responsible person" or "managing agent" to exist under applicable law (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute). Furthermore, nothing in this Final Order, the Interim Order, the other DIP Loan Documents, or the Prepetition Loan Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the DIP Loan Parties.

(k) **Amendment.** The Debtors and the DIP Agent (with the written consent of the requisite DIP Secured Parties as provided in and consistent with their respective rights

under the DIP Loan Documents) may amend, modify, supplement or waive any provision of the DIP Loan Documents without further notice to or approval of the Court (but upon two (2) business days' prior notice (to the extent reasonably practicable under the circumstances) having been given to Committee Counsel of any amendment or modification (provided, that such notice shall not be deemed to create any Committee approval rights)), unless such amendment, modification, supplement or waiver (x) increases the interest rate (other than as a result of the imposition of the default rate or changes to any base rate, LIBOR or similar component thereof) or fees (other than consent fees in connection with such amendment, modification, supplement or waiver) charged in connection with the DIP Facility, (y) increases the commitments of the DIP Lenders to make DIP Extensions of Credit under the DIP Loan Documents, or (z) changes the Termination Date to an earlier date. Except as otherwise provided herein, no waiver, modification, or amendment of any of the provisions hereof shall be effective unless set forth in writing, signed by, or on behalf of, all the Debtors and the DIP Agent (after having obtained the approval of the requisite DIP Secured Parties as provided in the DIP Loan Documents) and approved by the Court after notice to parties in interest.

(l) **Priority of Terms**. To the extent of any conflict between or among (a) the express terms or provisions of any of the other DIP Loan Documents, the Motion, any other order of this Court, or any other agreements, on the one hand, and (b) the terms and provisions of this Final Order, on the other hand, unless such term or provision herein is phrased in terms of "defined in" or "as set forth in" the DIP Credit Agreement, the terms and provisions of this Final Order shall govern.

(m) **Survival of Final Order.** The provisions of this Final Order and any actions taken pursuant hereto shall survive, and shall not be modified, impaired or discharged by,

any order which may be entered (i) confirming any Chapter 11 plan in the Cases, (ii) converting any of the Cases to a case under Chapter 7 of the Bankruptcy Code, (iii) dismissing any of the Cases, (iv) terminating the joint administration of these Cases, (v) withdrawing of the reference of any of the Cases from this Court or (vi) providing for abstention from handling or retaining of jurisdiction of any of the Cases in this Court. The terms and provisions of this Final Order (subject to paragraphs 4(i), 6 and 7, as and to the extent applicable), including the DIP Liens and DIP Superpriority Claim granted pursuant to this Final Order or the Interim Order, and any protections granted to or for the benefit of the Prepetition Secured Parties (including any adequate protection, if applicable), shall continue in full force and effect notwithstanding the entry of such order, or in the event any or all of the provisions of this Final Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court, and such DIP Liens and DIP Superpriority Claim and protections for the Prepetition Secured Parties (including any adequate protection, if applicable) shall maintain their priorities as provided by this Final Order, the other DIP Loan Documents and the Prepetition Loan Documents (as the case may be), including the Intercreditor Agreement and any other intercreditor arrangement or agreements in respect thereof, until all of the DIP Obligations (and any Prepetition Obligations) have been indefeasibly paid and Fully Satisfied (as defined in the DIP Credit Agreement and the Prepetition Revolving Credit Agreement, as applicable) in accordance with the DIP Loan Documents and the Prepetition Loan Documents, as the case may be, and discharged. The Court shall retain jurisdiction, notwithstanding any such dismissal, for the purpose of enforcing the claims, liens and security interests referred to in this paragraph 17(m).

(n) **Enforceability.** This Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.

(o) **Waiver of any Applicable Stay.** Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Final Order and this Final Order shall be immediately effective and enforceable upon its entry.

18. **Modification of DIP Credit Agreement**. Upon and following entry of this Final Order, section 5.14 of the DIP Credit Agreement shall be deemed amended so that it reads as set forth in Annex A to this Final Order.

19. **No Impact on Compliance with Laws**. Notwithstanding any provision to the contrary in this Final Order or any other DIP Loan Document, nothing in this Final Order or any other DIP Loan Document shall: (1) relieve the Debtors of any obligations under federal, state or local police or regulatory laws or under 28 U.S.C. § 959(b), provided that nothing herein shall limit or impair the Debtors' rights to assert defenses under applicable law and nothing herein shall create new defenses to obligations under police or regulatory laws or 28 U.S.C. § 959(b); or (2) impair or adversely affect the United States of America's rights, claims and defenses of set-off and recoupment, and all such rights, claims, and defenses shall be preserved in their entirety.

20. **Minnesota Statutory Trusts**. Notwithstanding anything to the contrary contained herein, nothing in this Final Order nor the DIP Loan Documents shall impair or impact any valid trust formed under Minn. Stat. § 27.138 or the rights of sellers (as defined in Minn. Stat. Ch. 27) in the assets in any such valid trust, in each case except to the extent that the Bankruptcy Code renders such trust ineffective, unenforceable, and/or invalid, and such claims may be paid by the Debtors in the ordinary course of business to the extent permissible pursuant

to applicable law, including as has been authorized pursuant to the *Final Order Authorizing the Debtors to Pay Prepetition Critical Vendor Claims in the Ordinary Course of Business* [ECF No. 121]; provided that all parties' rights are reserved with respect to any argument as to whether any such trust is impacted by the Bankruptcy Code.

21. **Texas Taxing Authorities**. Notwithstanding any other provisions included in the Interim Order or this Final Order, or any agreements approved hereby, any statutory liens (collectively, the "Tax Liens") of the Texas taxing authorities requested by Linebarger, Goggan, Blair & Sampson, LLP, McCreary, Veselka, Bragg & Allen, P.C., and Perdue, Brandon, Fielder, Collins & Mott, LLP, (the "Texas Taxing Authorities") shall not be primed by nor made subordinate to any liens granted pursuant to the Interim Order, this Final Order or the other DIP Loan Documents to the extent such Tax Liens are valid, perfected, enforceable, non-avoidable and senior to the Prepetition Liens. For the avoidance of doubt, all parties' rights to object to the priority, validity, amount, and extent of the claims and liens asserted by the Texas Taxing Authorities are fully preserved.

22. **Lineage Logistics**. Notwithstanding anything to the contrary in this Final Order, any warehousemen's liens of Lineage Logistics on new inventory of the Debtors that is delivered to Lineage Logistics following the Petition Date shall be Permitted Third Party Liens to the extent that such liens would be Permitted Third Party Liens with respect to inventory stored with Lineage Logistic as of the Petition Date irrespective of whether such liens constitute Permitted Encumbrances; provided that the foregoing is not intended to, and does not, modify any obligations of the Debtors, or any rights or remedies of the DIP Secured Parties, under the DIP Loan Documents, and does not constitute a waiver or modification of any Default or Event of Default under and as defined in the DIP Credit Agreement.

23. **Vehicle Lease Agreements.**

(a) Notwithstanding anything to the contrary in this Final Order or in the DIP Loan Documents, in respect of any leased motor vehicles (or other leased assets, the attachment or perfection of a lien on which is subject to a certificate of title) and all products and proceeds thereof and all accessions, substitutions and replacements of all of the foregoing, that are subject to or covered by any of the Third Party Leases (collectively, the "Lease Property") which would otherwise constitute DIP Collateral pursuant to the terms of this Final Order (without operation of this paragraph 23 and the other DIP Loan Documents, the DIP Liens and any Adequate Protection Liens shall only attach to such property to the extent it is property of the Debtors' estates within the scope of 11 U.S.C. § 541. Accordingly, with respect to Lease Property subject to a valid lease agreement, the DIP Liens and any Adequate Protection Liens shall only attach to the Debtors' interest in the applicable lease agreement (to the extent such interest constitutes DIP Collateral pursuant to the terms of this Final Order (without operation of this paragraph 23) and the other DIP Loan Documents) and not to the Lease Property itself. To the extent any Third Party Lease is determined by a court of competent jurisdiction to be a financing arrangement rather than a true lease (and the Lease Property is therefore considered secured financing collateral rather than leased property) the DIP Liens and any Adequate Protection Liens shall attach to the Debtors' interest in such property (to the extent such interest constitutes DIP Collateral pursuant to the terms of this Final Order (without operation of this paragraph 23) and the other DIP Loan Documents), but shall be junior to the liens of the Lessors in respect of such Lease Property to the extent that such liens are valid, enforceable, perfected and non-avoidable liens under applicable state law. Additionally, in respect of any other leased assets and all products and proceeds thereof and all accessions, substitutions and replacements of all of the

foregoing not constituting Lease Property that are subject to a valid lease agreement (collectively, "Other Lease Property") which would otherwise constitute DIP Collateral pursuant to the terms of this Final Order (without operation of this paragraph 23) and the other DIP Loan Documents, the DIP Liens and the Adequate Protection Liens (x) shall only attach to such property to the extent it is property of the Debtors' estates within the scope of 11 U.S.C. § 541 and (y) shall otherwise only attach to the Debtors' interest in the applicable lease agreement with respect to such Other Lease Property (but not the Other Lease Property itself).

(b) The "BofA Lease" means that certain Master Vehicle Lease Agreement dated November 5, 2013, by and between Banc of America Leasing & Capital, LLC and Dean Transportation, Inc., and all schedules, addenda and ancillary agreements thereto, and all existing and future modifications, amendments, renewals and extensions thereof.

(c) The "DTF Lease" means that certain Master Vehicle Lease Agreement dated April 3, 2007, by and between DaimlerChrysler Financial Services Americas LLC, a Michigan limited liability corporation (predecessor in interest to Mercedes-Benz Financial Services USA LLC dba Daimler Truck Financial) and Dean Transportation, Inc., and all schedules, addenda and ancillary agreements thereto, and all existing and future modifications, amendments, renewals and extensions thereof.

(d) The "Wells Fargo Leases" means the Master Vehicle Lease Agreement no. XX9162, dated as of June 30, 2005, and Master Vehicle Lease Agreement dated September 16, 2005, each by and between Wells Fargo Equipment Finance, Inc. (or its predecessor in interest General Electric Capital Corporation) and Dean Transportation, Inc., and all schedules, addenda and ancillary agreements thereto, and all existing and future modifications, amendments, renewals and extensions thereof.

(e) The "Citizens Leases" means: (i) the Master Vehicle Lease Agreement Equipment Lease No. 1, dated as of October 30, 2003; (ii) the Master Vehicle Lease Agreement Equipment Lease No. 1, dated as of June 1, 2005; and (iii) the Master Vehicle Lease Agreement Equipment Lease No. 1, dated as of February 1, 2006 each by and between Citizens Asset Finance, Inc. f/k/a RBS Asset Finance, Inc. and Dean Transportation, Inc., and all schedules, addenda and ancillary agreements thereto, and all existing and future modifications, amendments, renewals and extensions thereof.

(f) The "Signature Leases" means the Master Lease Agreement between Signature Financial LLC ("Signature") and Dean Transportation, Inc. dated August 14, 2014 (the "Master Lease"); all documents related thereto including, but not limited to, Schedule Nos. 001-017; and all similar lease and/or financing arrangements between Signature and any of the Debtors and/or their non-debtor affiliates.

(g) The "Ascentium Leases" mean the two Lease Agreements, Agreement No. 2380054 and Agreement No. 2376342, between Ascentium Capital, LLC, and Dean Transportation, Inc.; all documents related thereto including, but not limited to, any appendices, schedules, commencement agreements; all similar lease and/or financing arrangements between Ascentium Capital, LLC and any of the Debtors and/or their non-debtor affiliates; all of the foregoing to include, but not limited to, lease agreements concerning the vehicles, trailers, and their related equipment set forth on the exhibits and title documents thereto.

(h) The "Bridge Lease" means that certain Master Vehicle Lease Agreement dated September 14, 2015 between Bridge Funding Group f/k/a Bridge Capital Leasing as lessor and Dean Transportation, Inc., Lessee and all of the Schedules, as that term is defined in

the Master Vehicle Lease Agreement, as well as any addenda or ancillary agreements thereto and all existing and future modifications, amendments, renewals and extensions thereof.

(i) The "Regions Lease" means that certain Master Vehicle Lease Agreement dated September 14, 2012, by and between Regions Equipment Finance Corporation, an Alabama corporation, and Dean Transportation, Inc., an Ohio corporation, and all schedules, addenda and ancillary agreements thereto, and all existing and future modifications, amendments, renewals and extensions thereof.

(j) The "TIAA Lease" means that certain Master Vehicle Lease Agreement dated June 27, 2014, by and between TIAA Commercial Finance, Inc., as assignee of Fleet Advantage, LLC, and Dean Transportation, Inc., and all schedules, addenda and ancillary agreements thereto, and all existing and future modifications, amendments, renewals and extensions thereof.

(k) The "BB&T Equipment Leases" means the Master Lease Agreement between BB&T Equipment Finance Corporation ("BB&T Equipment") and Dean Transportation, Inc. dated June 7, 2010, (the "Master Lease"); all documents related thereto including, but not limited to, Schedule Nos. 17-21; 27-49; all similar lease and/or financing arrangements between BB&T Equipment and any of the Debtors and/or their non-debtor affiliates; all of the foregoing include, but are not limited to, lease agreements concerning the vehicles and their related equipment set forth on the exhibits thereto.

(l) The "Fifth Third Leases" means the Master Lease Agreements between Fifth Third Bank ("Fifth Third") and Dean Foods Company dated May 23, 2017; Dean Transportation, Inc., dated August 13, 2015; and Suiza Dairy Group, LLC, and Dean Dairy Holdings, LLC, dated May 3, 2018 (collectively, the "Master Leases"); all documents related

thereto including any and all schedules; any and all schedules which have been assigned to Farm Credit Mid-America, FLCA/PCA; all similar lease and/or financing arrangements between Fifth Third and any of the Debtors and/or their non-debtor affiliates; all of the foregoing include, but are not limited to, lease agreements concerning the vehicles and their related equipment set forth on the exhibits thereto.

(m) The "EWB Master Lease" means that certain Master Vehicle Lease Agreement, Equipment Lease No. 34200040, between East West Bank ("EWB") and Dean Transportation, Inc., dated February 18, 2016; all documents related thereto including, but not limited to, all schedules thereto; all similar lease and/or financing arrangements between EWB and any of the Debtors and/or their non-debtor affiliates; all of the foregoing include, but are not limited to, lease agreements concerning vehicles and related equipment set forth on the exhibits thereto.

(n) The "SFS Lease" means that certain Master Vehicle Lease Agreement dated as of July 21, 2011 by and between Siemens Financial Services, Inc. and Dean Transportation, Inc., and all schedules, addenda and ancillary agreements thereto, and all existing and future modifications, amendments, renewals and extensions thereof.

(o) The "BMO Leases" means that certain: (i) Master Vehicle Lease Agreement, dated as of September 12, 2006, by and between General Electric Capital Corporation and Dean Transportation, Inc., and all schedules, addenda, or ancillary agreements thereto and any and all existing and future assignments, amendments, modifications, renewals and extensions thereof; (ii) Master Vehicle Lease Agreement, dated as of May 30, 2008, by and between AIG Commercial Equipment Finance, Inc. and Dean Transportation, Inc., and all schedules, addenda, or ancillary agreements thereto and any and all existing and future

assignments, amendments, modifications, renewals and extensions thereof; (iii) Master Vehicle Lease Agreement, dated as of June 7, 2010, by and between BB&T Equipment Finance Corp. and Dean Transportation, Inc., and all schedules, addenda, or ancillary agreements thereto and any and all existing and future assignments, amendments, modifications, renewals and extensions thereof; (iv) Master Vehicle Lease Agreement, dated as of August 4, 2014, by and between BMO Harris Equipment Finance Co. and Dean Transportation, Inc., and all schedules, addenda, or ancillary agreements thereto and any and all existing and future assignments, amendments, modifications, renewals and extensions thereof; (v) Master Vehicle Lease Agreement dated as of June 25, 2019, by and between BMO Harris Bank N.A. and Dean Transportation, Inc., and all schedules, addenda, or ancillary agreements thereto and any and all existing and future assignments, amendments, modifications, renewals and extensions thereof; and (vi) all similar lease and/or financing arrangements between BMO Harris Bank N.A., Bank of Montreal, and BMO Harris Equipment Finance Co. on the one hand and any of the Debtors and/or their non-debtor affiliates on the other hand concerning vehicles, trailers, and their related equipment and accessories.

(p) The "STEFL Lease" means that certain Master Vehicle Lease Agreement (Equipment Lease No. 08819) dated November 6, 2012, by and between SunTrust Equipment Finance & Leasing Corp. and Dean Transportation, Inc., and all schedules, addenda and ancillary agreements thereto, and all existing and future modifications, amendments, renewals and extensions thereof.

(q) The BofA Lease, the DTF Lease, the Wells Fargo Leases, the Signature Leases, the Citizens Leases. Ascentium Leases, the Bridge Lease, the Regions Lease, the TIAA Lease, the BB&T Equipment Leases, the Fifth Third Leases, the EWB Master Lease, the SFS

Lease, the BMO Leases, and the STEFL Lease are collectively referred to herein as the "Third Party Leases" and, the lessors thereunder, the "Lessors."

24. **Chubb Reservation of Rights**. Notwithstanding anything in the DIP Credit Agreement, the Interim Order or this Final Order to the contrary, (i) to the extent ACE American Insurance Company, Federal Insurance Company, Westchester Fire Insurance Company, and/or any of their respective affiliates (collectively, and together with each of their successors, the "Chubb Companies") had valid and enforceable, perfected, and non-avoidable liens and/or security interests on property of the Debtors as of the Petition Date that were senior to the liens and/or security interests of the Prepetition Secured Parties on such property, such Chubb Company liens and or/security interests shall be senior to the liens on such property granted pursuant to the Interim Order and/or this Final Order; (ii) all rights of the Chubb Companies with respect to letters of credit securing obligations of the Debtors under any surety bonds, indemnity agreements, insurance policies and related agreements are not impaired under this Final Order and such letters of credit will remain in force in accordance with their stated terms; (iii) this Final Order does not grant the Debtors the right to use any property (or the proceeds thereof) held by the Chubb Companies as collateral to secure obligations under surety bonds, indemnity agreements, insurance policies and related agreements, provided that to the extent any such property reverts to the Debtors, such property shall be subject to the terms of this Final Order; (iv) the proceeds of any insurance policy issued by the Chubb Companies shall only be considered to be DIP Collateral to the extent such proceeds are payable to the Debtors (as opposed to a third party claimant) pursuant to the terms of any such applicable insurance policy; (v) except as expressly provided in paragraph 5 of the Interim Order and/or this Final Order regarding the DIP Agent as loss payee under the Debtors' insurance policies, nothing in the DIP

Credit Agreement, the Interim Order and/or this Final Order alters or modifies the terms and conditions of any insurance policies or related agreements issued by the Chubb Companies or rights or defenses of the Chubb Companies under any surety bonds issued for, or indemnity agreements executed by, any one or more of the Debtors.

25. **Realty Income Reservation of Rights**. Notwithstanding anything in this Final Order to the contrary, following the occurrence of the Termination Date resulting from an Event of Default, the DIP Secured Parties may enter upon leased premises only as provided by (i) any separate agreement by and between the applicable landlord and the DIP Secured Parties (the terms of which shall be reasonably acceptable to the parties thereto), (ii) applicable non-bankruptcy law, or (iii) an order from the Bankruptcy Court on no less than seven (7) days' notice to the applicable landlord.

26. **Retention of Jurisdiction.** The Court has and will retain jurisdiction to enforce this Final Order according to its terms.

Signed: December 23, 2019.

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Annex A to Final Order

Section 5.14 Milestones. The Loan Parties shall ensure that each of the milestones set forth below (collectively, the "Milestones") is achieved in accordance with the applicable timing referred to below (or by such later time as approved in writing by the Administrative Agent and the Required Lenders):

(a) on or before the date falling thirty (30) days after the Petition Date, the Debtors shall have delivered to the Administrative Agent a draft Sale Motion;

(b) within forty-five (45) days after the Petition Date, the Final Order shall have been entered by the Bankruptcy Court;

(c) on or before February 10, 2020, the Debtors shall have delivered to the Administrative Agent an election of whether it intends to pursue a Sale Process, a Plan Process or a combination of both;

(d) if a Sale Process is elected, on or before February 10, 2020, the Debtors shall have filed a Sale Motion;

(e) if a Plan Process is elected, on or before March 1, 2020, the Debtors shall have filed an Acceptable Plan and related disclosure statement (in each case, in form and substance acceptable to the Required Lenders) with respect to any Plan Process;

(f) if a Sale Process is elected, on or before March 11, 2019, the Bankruptcy Court shall have entered an order approving the Sale Motion;

(g) if a Sale Process is elected, on or before May 20, 2020, the Bankruptcy Court shall have entered an order approving each sale contemplated by any relevant Sale Process following completion of the process contemplated by the bid procedures described in the Sale Motion;

(h) if a Plan Process is elected, on or before May 20, 2020, the Bankruptcy Court shall have entered an order confirming an Acceptable Plan; and

if a Sale Process is elected, on or before July 9, 2020, the Bankruptcy Code shall have entered an order confirming an Acceptable Plan.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
SANCHEZ ENERGY CORPORATION, *et al.*,[1]	)	Case No. 19-34508 (MI)
Debtors.	)	(Jointly Administered)
	)	**Re: Docket Nos. 26, 144**

FINAL ORDER (I) AUTHORIZING DEBTORS (A) TO OBTAIN POSTPETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363(b), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) AND 364(e) AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363 AND (II) GRANTING ADEQUATE PROTECTION PURSUANT TO 11 U.S.C. §§ 361, 362, 363, 364 AND 507(b)

Upon the motion (the "**Motion**")[2] of Sanchez Energy Corporation (the "**Borrower**") and its affiliated debtors, each as a debtor and debtor-in-possession (collectively, the "**Debtors**") in the above captioned cases (the "**Cases**"), pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq*. (the "**Bankruptcy Code**"), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), the Local Bankruptcy Rules for the Southern District of Texas (the "**Local Bankruptcy Rules**"), and the Procedures for Complex Chapter 11 Bankruptcy Cases (the "**Complex Case Rules**") promulgated by the United States Bankruptcy Court for the Southern District of Texas (the "**Court**"), seeking, among other things:

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Sanchez Energy Corporation (0102); SN Palmetto, LLC (3696); SN Marquis LLC (0102); SN Cotulla Assets, LLC (0102); SN Operating, LLC (2143); SN TMS, LLC (0102); SN Catarina, LLC (0102); Rockin L Ranch Company, LLC (0102); SN EF Maverick, LLC (0102); SN Payables, LLC (0102); and SN UR Holdings, LLC (0102). The location of the Debtors' service address is 1000 Main Street, Suite 3000, Houston, Texas 77002.

[2] Capitalized terms used throughout have the meanings ascribed to them in the Motion [Docket No. 15].

A. authorization for the Borrower to obtain secured postpetition financing (the "**DIP Financing**") and for certain subsidiaries of the Borrower (each, a "**Guarantor**", and collectively, the "**Guarantors**"; the Guarantors collectively with the Borrower, the "**Loan Parties**") to unconditionally guarantee, on a joint and several basis, the Borrower's obligations in connection with the DIP Financing, consisting of a superpriority, priming, senior secured delayed-draw term loan credit facility (the "**DIP Facility**", and the loans thereunder, the "**DIP Loans**"), in an aggregate principal amount not to exceed $200,000,000, consisting of: (i) a new money facility in the aggregate principal amount of $150,000,000 (the "**New Money Facility**", and the loans thereunder, the "**New Money Loans**") in commitments from the DIP Lenders (the "**DIP Commitments**"), which the Borrower shall be permitted to draw subject to the terms set forth in the DIP Documents (as defined below), and (ii) upon entry of this final order (the "**Final Order**") and subject to paragraphs 23 and 24 of this Final Order, $50,000,000 (the "**Roll-Up Loans**") to roll up the principal Obligations (as defined in the Secured Notes Indenture (as defined below)) held by the Secured Noteholders (as defined below) that become DIP Lenders (as defined below), or held by funds or accounts managed or held by or under common management with such Secured Noteholders, under the Secured Notes Indenture (the holders of such Roll-Up Loans as identified in the DIP Credit Agreement, the "**Roll-Up DIP Lenders**"), pursuant to the terms and conditions set forth in this Final Order and the DIP Documents, and pursuant to which DIP Facility the Borrower is authorized, on a final basis, to borrow from the DIP Lenders, an aggregate principal amount not to exceed $100,000,000 of New Money Loans in two borrowings not to exceed $50,000,000 each (collectively, the "**Final DIP Draw**" or "**DIP Draws**") on or after the Final Facility Effective Date (as defined in the DIP Credit Agreement (as defined below)) in addition to

the $50,000,000 of New Money Loans borrowed in accordance with the Interim Order (as defined below);

B. authorization for the Loan Parties to execute and enter into the Amended and Restated Senior Secured Debtor-in-Possession Term Loan Credit Agreement among the Borrower, the lenders from time to time party thereto (collectively, the "**DIP Lenders**") and Wilmington Savings Fund Society, FSB as administrative agent and collateral agent (in such capacities, the "**DIP Agent**"; the DIP Agent together with the DIP Lenders, the "**DIP Secured Parties**"), substantially in the form attached to this Final Order as **Exhibit 1** (as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof, the "**DIP Credit Agreement**", and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments and/or amendments executed and delivered in connection therewith, each to be dated as of the Interim Facility Effective Date, the "**DIP Documents**") and to perform all such other and further acts as may be required in connection with the DIP Documents;

C. authorization for the Loan Parties to grant adequate protection to the Collateral Trustee under that certain Collateral Trust Agreement dated as of February 14, 2018, among Sanchez Energy Corporation, the Grantors and Guarantors from time to time party thereto, Royal Bank of Canada, as the First Out Representative, Delaware Trust Company as the First Lien Representative, the other Priority Lien Representatives from time to time party thereto and Royal Bank of Canada, as Collateral Trustee (as amended from time to time, the "**Collateral Trust Agreement**") for the benefit of the Prepetition Secured Parties (as defined below) including holders (the "**Secured Noteholders**") of the notes (the "**Secured Notes**") under or in connection with that certain Indenture for the issuance of 7.25% Senior Secured First Lien Notes, dated as of

February 14, 2018 (as amended, restated, supplemented, or otherwise modified from time to time, the "**Secured Notes Indenture**"), among the Borrower, the guarantors party thereto (the "**Prepetition Debtor Guarantors**"), Wilmington Savings Fund Society, FSB, as successor trustee to Delaware Trust Company (the "**Notes Trustee**"), and Royal Bank of Canada, as collateral trustee (together with any successor collateral trustee under the Collateral Trust Agreement, the "**Collateral Trustee**" and, together with Notes Trustee and their respective successors and assigns, the "**Trustees**," and together with the Secured Noteholders, the "**Secured Notes Parties**");

D. authorization for actions to be taken to effect a Discharge of First-Out Obligations as defined in the Collateral Trust Agreement (a "**Discharge of First-Out Obligations**"), including: (i) the Royal Bank of Canada terminating all commitments to extend loans, other debt financing or further financial accommodations that would constitute First-Out Obligations (as defined in the Collateral Trust Agreement, the "**First-Out Obligations**"); (ii) the Loan Parties using the proceeds of the $50,000,000 of New Money Loans borrowed in accordance with the Interim Order and other Cash Collateral to repay in full in cash all amounts due and owing that constitute First-Out Obligations under the First-Out Documents (as defined in the Collateral Trust Agreement, the "**First-Out Documents**"); and (iii) granting adequate protection to the Prepetition Secured Parties (as defined below), including protections to the Hedging Counterparties (as defined below) on account of the First-Out Hedging Obligations (as defined below);

E. subject to the restrictions set forth in the DIP Documents and this Final Order, authorization for the Loan Parties to continue to use Cash Collateral (as defined below) and all other collateral securing the Secured Notes Obligations, Credit Agreement Obligations (each as defined below), and First-Out Obligations (collectively, the "**Prepetition Collateral**") in which any of the Prepetition Secured Parties (as defined below) may have an interest, and the granting of

adequate protection to the Prepetition Secured Parties with respect to, *inter alia*, such use of any such Cash Collateral and the Prepetition Collateral;

F. approval of the Challenge Period (as defined below) with respect to the Credit Agreement Obligations, to the extent set forth in paragraph 23 of this Final Order, and the Secured Notes Obligations;

G. the grant of superpriority administrative claims pursuant to section 364(c)(1) of the Bankruptcy Code to the DIP Secured Parties;

H. the grant of liens pursuant to section 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code on, (i) with respect to the New Money Loans, all prepetition and postpetition property of the Loan Parties' estates and all proceeds thereof, except as expressly set forth otherwise in this Final Order and (ii) with respect to the Roll-Up Loans, the Prepetition Collateral, in each case subject only to the Carve-Out and valid, perfected, enforceable, and unavoidable Permitted Liens (as defined in the DIP Credit Agreement) that were senior to the Prepetition Liens (as defined below) as of the Petition Date and the First-Out Obligations;

I. the waiver of the Debtors' right to surcharge the Prepetition Collateral and the DIP Collateral (as defined below) pursuant to section 506(c) of the Bankruptcy Code;

J. modification of the automatic stay to the extent set forth herein and in the DIP Documents;

The interim hearing on the Motion (the "**Interim Hearing**") having been held by this Court on August 13, 2019 and the final hearing on the Motion having been held by this Court on January 22, 2020 (the "**Final Hearing**") pursuant to Bankruptcy Rules 2002, 4001(b)(2), and 4001(c)(2), and all applicable Local Rules; and an order approving the Motion on an interim basis [Docket

No. 144] (the "**Interim Order**") having been entered on August 15, 2019; due and appropriate notice of the Motion, entry of the Interim Order, and the Final Hearing having been provided; and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion and all evidence submitted and arguments made at the Interim Hearing and Final Hearing; and the relief requested in the Motion being in the best interests of the Debtors, their creditors and their estates and all other parties-in-interest in these Cases; and the Court having determined that the relief requested in the Motion is fair and reasonable and essential for the continued operation of the Debtors' businesses; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon the record made by the Debtors in the Motion, the declarations filed in support thereof, the First Day Declaration, and at the Interim Hearing and Final Hearing; and after due deliberation and sufficient cause appearing therefor;

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

1. *Disposition*. The relief requested in the Motion is granted on a final basis in accordance with the terms of this Final Order. The objections to the Motion, with respect to the entry of this Final Order that have not been withdrawn, waived, or settled, and all reservations of right included therein, are hereby denied and overruled on the merits. This Final Order shall become effective immediately upon its entry.

2. *Jurisdiction*. This Court has core jurisdiction over the Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334 and the *Order of Reference to Bankruptcy Judges*, General Order 2012-6 (S.D. Tex. May 24, 2012) (Hinojosa, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. *Notice*. Proper, timely, adequate, and sufficient notice of the Final Hearing and the relief requested in the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, and the Complex Case Rules, and no other or further notice of the relief requested in the Motion or the entry of this Final Order shall be required.

4. *The Debtors Prepetition Secured Indebtedness*.

(a) As of the Petition Date, the Borrower and the Debtors, other than Debtor SN UR Holdings, LLC ("**SN UR**"), pursuant to that certain Third Amended and Restated Credit Agreement dated as of February 14, 2018 (the "**Prepetition Credit Agreement**"), with Royal Bank of Canada, as administrative agent (in its capacity as such, the "**Administrative Agent**"), Royal Bank of Canada as collateral agent (in its capacity as such, the "**Collateral Agent**" and, in its capacity as the Administrative Agent and the Collateral Agent, the "**Credit Agreement Agent**") and the lenders party thereto (the "**Credit Agreement Lenders**" and together with the Credit Agreement Agent, the "**Credit Agreement Parties**" and, together with the Hedging Counterparties (as defined below), the Secured Notes Parties and Royal Bank of Canada, in any and all of Royal Bank of Canada's capacities under any of the First-Out Documents, the "**Prepetition Secured Parties**") have certain indebtedness defined in the Collateral Trust Agreement as the First-Out Obligations including, among other things, borrowings of approximately $7.9 million in principal amount and approximately $17.1 million of reimbursement obligations in connection with that certain letter of credit issued by Royal Bank of Canada, which was drawn by the beneficiary thereof following the Petition Date (the "**Prepetition L/C**"), (the obligations thereunder, the "**Credit Agreement Obligations**") pursuant to the Prepetition Credit Agreement and the Collateral Trust Agreement. The First-Out Obligations also include certain swap obligations as of the Petition Date pursuant to

swap agreements (each as defined in the Collateral Trust Agreement, and, hereinafter, the "**First-Out Hedging Obligations**") with certain hedging counterparties (the "**Hedging Counterparties**"), which are secured on a *pari passu* basis with the other Credit Agreement Obligations.

(b) Prior to the Petition Date, pursuant to the Secured Notes Indenture, the Borrower issued, and the Prepetition Debtor Guarantors guaranteed, $500,000,000 in principal amount of Secured Notes (together with any accrued and unpaid interest and fees, all other Obligations (as that term is defined in the Secured Notes Indenture) under the Secured Notes Indenture or any of the other Note Documents (as defined in the Secured Notes Indenture), the "**Secured Notes Obligations**"), all of which was outstanding as of the Petition Date.

(c) As of the Petition Date, the terms of the First-Out Documents, the Collateral Trust Agreement, the Secured Notes Indenture and the other Note Documents, and the Prepetition Credit Agreement, as applicable, provide that the Credit Agreement Obligations, the First-Out Hedging Obligations and the Secured Notes Obligations, as applicable, are secured by first-priority liens and security interests on the Prepetition Collateral (the "**Prepetition Liens**").

(d) the Prepetition Secured Parties contend that all cash proceeds of the Prepetition Collateral (including cash on deposit at the Debtors' depository institutions as of the Petition Date, securities or other property, whether subject to control agreements or otherwise, in each case that constitutes Prepetition Collateral, but excluding, for the avoidance of doubt, any cash held by SN UR on the Petition Date) are "cash collateral" of the Prepetition Secured Parties within the meaning of section 363(a) of the Bankruptcy Code (the "**Cash Collateral**").

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

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

(b) The Loan Parties have an immediate need to continue to use the Prepetition Collateral (including the Cash Collateral) to preserve their estates, including (i) for the orderly continuation of the operation of their businesses, (ii) to preserve business relationships with vendors, suppliers, employees, and customers, and (iii) to satisfy other working capital and operational needs. The Loan Parties have an immediate need to have available the DIP Facility in case the Prepetition Collateral (including Cash Collateral) is insufficient to meet their capital and liquidity needs. The access of the Loan Parties to sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition Collateral, incurrence of new indebtedness under the DIP Documents, and other financial accommodations provided under the DIP Documents are necessary and vital to the preservation and maintenance of the going concern values of the Loan Parties and to a successful reorganization of the Loan Parties.

(c) The Loan Parties have been and continue to be unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Loan Parties are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2), and 364(c)(3) of the Bankruptcy Code without the Loan Parties granting to the DIP Agent and the DIP Lenders, subject to the Carve-Out and First-Out Obligations, the DIP Liens and the DIP Superpriority Claims (each as defined below) and granting the Adequate Protection (as defined below), in each case, under the terms and conditions set forth in this Final Order and in the DIP Documents.

(d) The Roll-Up Loans as provided for under the DIP Facility and this Final Order are appropriate and the DIP Agent and the DIP Lenders would not be willing to provide the New Money Facility or extend credit to the Debtors thereunder without the inclusion of the Roll-Up Loans within the DIP Facility (subject to the terms of this Final Order, including paragraphs 23 and 24).

(e) Based on the Motion, the declarations filed in support of the Motion, and the record presented to the Court at the Interim Hearing and the Final Hearing, the terms of the DIP Financing, the terms of the Adequate Protection granted to the Prepetition Secured Parties, and the terms on which the Loan Parties may continue to use the Prepetition Collateral (including Cash Collateral) pursuant to this Final Order and the DIP Documents are fair and reasonable, reflect the Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties, and constitute reasonably equivalent value and fair consideration.

(f) Upon the terms and conditions set forth herein, the Prepetition Secured Parties have consented and/or are deemed to have consented to the use of Cash Collateral and the other Prepetition Collateral, the Debtors' entry into the DIP Documents and, as applicable the priming of the Prepetition Liens granted to the Secured Notes Parties pursuant to section 364(d)(1) of the Bankruptcy Code, except as specifically set forth herein.

(g) The DIP Financing, the use of Cash Collateral and the other Prepetition Collateral, and the terms of the Adequate Protection and the Adequate Protection Liens (each as defined below) have been negotiated in good faith and at arm's length among the Loan Parties, the Prepetition Secured Parties, the DIP Agent, and the DIP Lenders, and all of the Loan Parties' obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing and the DIP Documents, including, without limitation: (i) the DIP Loans

made to and guarantees issued by the Loan Parties pursuant to the DIP Documents and (ii) any Loan Obligations (as defined in the DIP Credit Agreement) of the Loan Parties owing to the DIP Agent, any DIP Lender or any of their respective affiliates, in accordance with the terms of the DIP Documents, including any obligations, to the extent provided for in the DIP Documents, to indemnify the DIP Agent or the DIP Lenders and to pay any fees, expenses (including any attorneys', accountants', appraisers' and financial advisors' fees that are chargeable or reimbursable under the DIP Documents), amounts, charges, costs, indemnities and other obligations that are chargeable or reimbursable under the Interim Order, this Final Order or the DIP Documents (the foregoing in clauses (i) and (ii) collectively, the "**DIP Obligations**") shall be deemed to have been extended by the DIP Agent and the DIP Lenders and their respective affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Agent and the DIP Lenders (and the successors and assigns thereof) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim Order, this Final Order, or any provision thereof or hereof is vacated, reversed or modified, on appeal or otherwise. The Prepetition Secured Parties have acted in good faith regarding the DIP Financing and the Loan Parties' continued use of the Prepetition Collateral (including the Cash Collateral) to fund the administration of the Loan Parties' estates and continued operation of their businesses (including the incurrence and payment of the Adequate Protection and the granting of the Adequate Protection Liens), in accordance with the terms hereof, and the Prepetition Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of section 363(m) of the Bankruptcy Code in the event

that the Interim Order, this Final Order, or any provision thereof or hereof is vacated, reversed or modified, on appeal or otherwise.

(h) The Prepetition Secured Parties are entitled to the Adequate Protection as and to the extent set forth herein pursuant to sections 361, 362, 363, and 364 of the Bankruptcy Code. Based on the Motion and on the record presented to the Court, the terms of the proposed adequate protection arrangements and of the use of the Prepetition Collateral (including any Cash Collateral) are fair and reasonable, reflect the Loan Parties' prudent exercise of business judgment, and constitute reasonably equivalent value and fair consideration for the use of the Prepetition Collateral (including Cash Collateral); *provided* that nothing in the Interim Order, this Final Order, or the other DIP Documents shall (x) be construed as the affirmative consent by any of Prepetition Secured Parties for the use of any Cash Collateral, other than on the terms set forth in this Final Order and in the context of the DIP Financing authorized by this Final Order, (y) be construed as a consent by any party to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior or junior) or (z) prejudice, limit or otherwise impair the rights of any of the Prepetition Secured Parties, subject to any applicable provisions of any applicable intercreditor agreements, including the Collateral Trust Agreement, and upon a change in circumstances, to seek new, different or additional adequate protection or assert the interests of any of the Prepetition Secured Parties.

(i) The Debtors have requested immediate entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Bankruptcy Rules. For the reasons set forth in the Motion and declarations filed in connection therewith, absent granting the relief set forth in this Final Order, the Loan Parties' estates would face (i) significant business disruptions in the event of the loss of, or limited, access to Cash Collateral, (ii) exposure to

significant liquidity uncertainty in the current commodities market, and (iii) loss of confidence regarding the Debtors' financial wherewithal by stakeholders. Consummation of the DIP Financing and the use of Prepetition Collateral, including any Cash Collateral, in accordance with this Final Order and the DIP Documents are therefore in the best interests of the Loan Parties' estates and consistent with the Loan Parties' exercise of their fiduciary duties.

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

(a) The Loan Parties are hereby authorized to execute, enter into, and perform all obligations under the DIP Documents. The Borrower is hereby authorized to forthwith borrow the New Money Loans pursuant to the DIP Credit Agreement, and the Guarantors are hereby authorized, to guaranty the Borrower's obligations with respect to such borrowings in an aggregate principal or face amount not to exceed $150,000,000 under the DIP Facility (plus interest, fees, expenses (including reasonable and documented professional fees and expenses) and other amounts, in each case, as provided for in the DIP Documents), subject to any limitations on borrowing under the DIP Documents. The Borrower is authorized, directed, and ordered to take all actions necessary to effect a Discharge of First-Out Obligations. The Loan Parties are also authorized to convert to DIP Obligations constituting Roll-Up Loans under the DIP Documents each Roll-Up DIP Lender's ratable share of $50,000,000 of Roll-Up Loans based on each Roll-Up DIP Lender's Roll-Up Loan Amount (as defined in the DIP Credit Agreement), and the Guarantors are hereby authorized to guaranty the Borrower's obligations with respect to the Roll-Up Loans, subject to any limitations on borrowing under the DIP Documents. The Borrower shall use the proceeds of the DIP Loans for all purposes permitted under the DIP Documents (and subject to the terms and conditions set forth herein and therein), including to effect a Discharge of First-Out Obligations, and for other general corporate

purposes and working capital purposes, including to (i) pay required debt service on the DIP Loans, (ii) pay the fees, costs, and expenses of the Credit Agreement Parties, DIP Agent and the DIP Lenders, (iii) pay the fees and expenses of professionals associated with the Cases, and (iv) provide Adequate Protection as provided in paragraph 19 of this Final Order.

(b) In furtherance of the foregoing and without further approval of this Court, each of the Debtors is authorized and directed to perform all acts, to make, execute and deliver all instruments and documents, including, without limitation, the execution or recordation of security agreements, mortgages, and financing statements, (to the extent such execution and delivery were authorized by the Interim Order and have already occurred, such execution and delivery are hereby ratified) and to pay all fees that may be reasonably required or necessary for the Loan Parties' performance of their obligations under or related to the DIP Financing, including, without limitation:

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

(ii) the execution and delivery of, and performance under, one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each case, in such form as the Loan Parties, the DIP Agent, and the Required Lenders (as defined in the DIP Credit Agreement) may agree, it being understood that no further approval of the Court shall be required for authorizations, amendments, waivers, consents or other modifications to and under the DIP Documents (and any fees and other expenses (including any attorneys', accountants', appraisers' and financial advisors' fees), amounts, charges, costs, indemnities and other obligations paid in connection therewith) that do not shorten the maturity

of the extensions of credit thereunder or increase the aggregate commitments or the rate of interest, fees or other amounts payable thereunder;

(iii) the non-refundable payment to the DIP Agent and the DIP Lenders, as the case may be, of all fees, including, without limitation, any commitment fee, Backstop Fee (as defined in the DIP Credit Agreement),[3] exit fee, or agency fee (which fees shall be, and shall be deemed to have been, approved upon entry of the Interim Order and upon payment thereof, shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise), and any amounts due (or that may become due) in respect of the indemnification obligations, in each case referred to in the DIP Credit Agreement or DIP Documents and the costs and expenses as may be due from time to time, including, without limitation, reasonable and documented fees and expenses of the professionals retained by any of the DIP Agent and the DIP Lenders (including, without limitation, the reasonable and documented fees and expenses of (a) Morrison & Foerster, LLP, as counsel to the DIP Lenders, (b) Foley & Lardner, LLP, as local counsel to the DIP Lenders, (c) Evercore Group L.L.C., as financial advisor to the DIP Lenders, (d) Opportune LLP, as G&A advisor to the DIP Lenders, (e) Arnold & Porter Kaye Scholer LLP, as primary counsel to the DIP Agent, and (f) Cole Schotz, P.C., as local counsel to the DIP Agent, in each case without the need to file retention

[3] The Backstop Fee referenced herein or any part thereof payable pursuant to the DIP Credit Agreement is fully-earned, shall not be refundable under any circumstances, will not be subject to counterclaim or setoff for, or be otherwise affected by, any claim or dispute the Borrower may have, and shall be paid free and clear of, and without deduction for, any and all present or future applicable taxes, levies, imposts, deductions, charges or withholdings and all liabilities with respect thereto.

motions or fee applications, but subject to the receipt of invoices and expiration of the review period as set forth in paragraph 19(e) of this Final Order;

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

(v) the payment as soon as practicable of up to $1,000,000 of fees and expenses of Quinn Emanuel Urquhart & Sullivan, LLP, as counsel to the Unsecured Ad Hoc Group (defined below), without the need to file retention motions or fee applications, but subject to the receipt of invoices and expiration of the review period as set forth in paragraph 19(e) of this Final Order; provided, however, that (x) such fees and expenses of Quinn Emanuel Urquhart & Sullivan, LLP, shall be payable solely from funds of SN UR in excess of any allowed or allowable claims against SN UR, its assets, or such funds at the time of such payment, (y) the Debtors are authorized and directed to pay such fees and expenses without regard to any analysis of the extent of such excess funds or allowed or allowable claims that has been conducted or that could be conducted by the Debtors or any other party in interest prior to making such payment, and (z) such payment shall not prejudice the rights of any party in interest to later challenge at any time the actual amount of excess funds available at the time when such payment was made, all of which rights are hereby reserved.

(c) Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid, binding and non-avoidable obligations of the Loan Parties, enforceable against each Loan Party in accordance with the terms of the DIP Documents and this Final Order. No obligation, payment, transfer or grant of security under the DIP Documents or this

Final Order to the DIP Agent or the DIP Lenders shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 548 or 549 of the Bankruptcy Code, any applicable Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or other similar state statute or common law), or subject to any defense, reduction, setoff, recoupment, recharacterization, subordination, disallowance, impairment, cross-claim, claim or counterclaim.

7. *Discharge of First-Out Obligations*. All commitments under the Prepetition Credit Agreement to extend loans, other debt financing or financial accommodations, and/or letters of credit that would constitute First-Out Obligations are terminated. The Debtors are authorized, directed, and ordered to use the proceeds of the DIP Draws and/or other Borrowings available under the DIP Credit Agreement to effect a Discharge of First-Out Obligations, including (i) repaying in full in cash all amounts due and owing as of the date of the Final Order that constitute First-Out Obligations and (ii) through this Final Order providing that, notwithstanding anything to the contrary in the DIP Documents, the Interim Order, and/or this Final Order, the First-Out Hedging Obligations shall remain as part of the First-Out Obligations, shall not be primed and shall be secured by the Prepetition Collateral under applicable non-bankruptcy law, and shall otherwise remain unaffected by this Final Order. The Discharge of First-Out Obligations shall occur as soon as reasonably practicable after entry of this Final Order, but no later than ten (10) business days after entry of this Final Order. Notwithstanding anything in the DIP Documents, the Interim Order, and/or this Final Order, (i) any and all security for any and all outstanding and/or continuing First-Out Obligations (including, but not limited to, the First-Out Hedging Obligations and indemnity obligations contained in the Collateral Trust Agreement and the First-Out Documents), shall maintain its priority under applicable non-bankruptcy law and

shall be unaffected by the rights and obligations granted to the DIP Lenders and the DIP Secured Parties and (ii) the priority and extent of the Prepetition Liens to the extent of the First-Out Hedging Obligations shall be unaffected by the DIP Facility or the rights and obligations granted to the DIP Lenders and DIP Secured Parties, and the First-Out Hedging Obligations shall be secured by the Prepetition Liens pursuant to this Final Order. Notwithstanding anything in the DIP Documents, the Interim Order, and/or this Final Order, no liens or security interests provided in the DIP Documents, the Interim Order, or this Final Order shall prime any valid, perfected lien or security interest securing a First-Out Obligation. Notwithstanding anything in the DIP Documents, the Interim Order, and/or this Final Order to the contrary, any provision or condition of this Final Order or the DIP Credit Agreement regarding payment or discharge of First Out Obligations may be waived, amended, terminated or otherwise deemed to have occurred in the sole and absolute discretion of the holder of the applicable First Out Obligation, or upon the mutual agreement of such holder and the other applicable Prepetition Secured Party in accordance with their respective rights under, this Final Order, the First-Out Documents, the Collateral Trust Agreement, the Secured Notes Indenture and the other Note Documents. Upon the occurrence of the Discharge of First-Out Obligations pursuant to this Final Order, (w) the Discharge of First-Out Obligations shall be deemed effective as of the entry of this Final Order, (x) the Controlling Priority Lien Representative (as defined in the Collateral Trust Agreement) shall be deemed to remove Royal Bank of Canada as Collateral Trustee and thereupon deemed to appoint Wilmington Trust N.A. as the Collateral Trustee under the Collateral Trust Agreement, (y) the Controlling Priority Lien Representative shall be deemed to have instructed the Collateral Trustee to consent to the entry of this Final Order, and (z) Royal Bank of Canada shall be the "predecessor Collateral Trustee" under the Collateral Trust Agreement and remain entitled to enforce all rights and privileges relating

thereto including the immunities granted to it in Article 5 and the provisions of Sections 7.8 and 7.9 of the Collateral Trust Agreement, as well as the provisions of the Interim Order and this Final Order. The Debtors are authorized to execute any documents or agreements, and pay any fees, required to effectuate the foregoing.

8. *Refinancing of Certain Secured Notes Obligations.*

(a) Each Roll-Up DIP Lender's Roll-Up Amount of the outstanding principal amount of the Secured Notes will be immediately, automatically, and irrevocably deemed to have been converted into Roll-Up DIP Obligations (as defined below) and, except as otherwise provided in this Final Order and the DIP Credit Agreement, shall be entitled to all the priorities, privileges, rights, and other benefits afforded to the other DIP Obligations under this Final Order and the DIP Documents (subject to the rights of the Debtors and other parties in interest pursuant to paragraphs 23 and 24 of this Final Order, which paragraphs apply in accordance with their terms to the fullest extent to Roll-Up DIP Loans, Roll-Up DIP Obligations, DIP Superpriority Claims with respect to such loans and obligations, and DIP Liens securing such loans and obligations notwithstanding anything else in this Final Order). The conversion of the Roll-Up DIP Obligations as described in this paragraph 8 shall be authorized as compensation for, in consideration for, as a necessary inducement for, and on account of the agreement of the Roll-Up DIP Lenders to fund amounts under the New Money Facility and not as payments under, adequate protection for, or otherwise on account of, any Secured Notes Obligations. As used herein, the term "**Roll-Up DIP Obligations**" shall mean the Roll-Up Loans and all interest accrued and accruing thereon after the conversion into Roll-Up DIP Obligations and all other amounts owing by the respective Debtors in respect thereof after the conversion into the Roll-Up DIP Obligations.

(b) For the avoidance of doubt, (i) all parties' rights are reserved with respect to whether any Make Whole Premium or other premium would be payable under the Secured Notes Indenture and applicable law, and whether any such premium should be an allowed claim against the Debtors, (ii) notwithstanding anything to the contrary herein, the right of the Debtors and other parties in interest to object to the assertion of the Make Whole Premium or other premium as part of any claim under the Secured Notes Indenture shall not be subject to the restrictions set forth in paragraphs 11(f), 23 and 24 of this Final Order, and (iii) any allowable Make Whole Premium or other allowable premium shall be treated for purposes of allowance and distribution as prepetition Secured Notes Obligations without the benefit of the DIP Superpriority Claims (as defined below) or the DIP Liens (as defined below).

9. *DIP Superpriority Claims*.

(a) Pursuant to section 364(c)(1) of the Bankruptcy Code, subject to the rights of the Debtors and other parties in interest pursuant to paragraphs 23 and 24 of this Final Order solely with respect to Roll-Up DIP Loans and Roll-Up DIP Obligations, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against the Loan Parties (without the need to file any proofs of claim) with priority over any and all claims against the Loan Parties, now existing or hereafter arising (except for the First-Out Obligations), of any kind whatsoever, including, without limitation, any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims (the "**DIP Superpriority Claims**") shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed

under section 503(b) of the Bankruptcy Code, and which DIP Superpriority Claims shall be payable from and have recourse to all pre- and postpetition property of the Loan Parties and all proceeds thereof; *provided*, *however*, that the DIP Superpriority Claims shall be subordinated and subject only to payment of the Carve-Out and First-Out Obligations; and *provided, further*, that the DIP Superpriority Claims with respect to Roll-Up DIP Obligations shall not be payable from any portion of the Available Avoidance Proceeds (defined below). The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim Order, this Final Order or any provision thereof or hereof is vacated, reversed or modified on appeal or otherwise.

(b) Notwithstanding anything in paragraph 9(a) to the contrary (but, for the avoidance of doubt, without limiting the payment priority of the First-Out Obligations), the DIP Superpriority Claims shall have no recourse to the Loan Parties' claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code, or any other avoidance actions (collectively, "**Avoidance Actions**") or the proceeds thereof, except that the DIP Superpriority Claims shall have recourse (subject to paragraph 14 and solely with respect to New Money Loans) to up to fifty percent (50%) of each dollar of the first $100 million of proceeds or property recovered or unencumbered by Avoidance Actions against parties other than the Prepetition Secured Parties (in their capacities as such) (such amount of proceeds or property, the "**Available Avoidance Proceeds**").

(c) Notwithstanding anything in this Final Order to the contrary, the Roll-Up Loans and the Roll-Up DIP Obligations shall not constitute DIP Superpriority Claims except to the extent that the underlying obligations were valid and unavoidable Secured Notes

Obligations as of the Petition Date and were secured by valid, perfected and unavoidable liens and security interests in Prepetition Collateral as of the Petition Date.

10. *DIP Liens*. As security for the DIP Obligations, effective and perfected as of the date of the Interim Order and without the necessity of the execution, recordation of filings by the Loan Parties of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, any notation of certificates of title for a titled good, or the possession or control by the DIP Agent of, or over, any DIP Collateral, the following security interests and liens are hereby granted to the DIP Agent for its own benefit and the benefit of the DIP Lenders (all property identified in clauses (a), (b) and (c) below being collectively referred to as the "**DIP Collateral**"), and subject to the payment of the Carve-Out and First-Out Obligations (all such liens and security interests granted to the DIP Agent, for its benefit and for the benefit of the DIP Lenders, pursuant to the Interim Order, this Final Order, and the DIP Documents, the "**DIP Liens**"):

(a) First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all tangible and intangible pre- and postpetition property of each Loan Party, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date, is not subject to either (x) valid, perfected and non-avoidable liens as of the Petition Date, or (y) valid and non-avoidable liens in existence at the time of the Petition Date that are perfected subsequent thereto as permitted by section 546(b) of the Bankruptcy Code (collectively, the "**Unencumbered Property**"), in each case other than the Avoidance Actions and proceeds thereof (except, with respect to New Money Loans, the Available Avoidance Proceeds).

(b) Lien Priming Certain Prepetition Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected senior priming security interest in and lien upon all tangible and intangible pre- and postpetition property of each Loan Party, whether existing on the Petition Date or thereafter acquired, that secure the obligations of the Loan Parties under the Secured Notes Indenture (the "**Primed Liens**"), *provided* that such DIP Liens shall be junior to (i) the First-Out Obligations, (ii) valid and perfected Permitted Liens that were senior to the Prepetition Liens as of the Petition Date, and (iii) valid and non-avoidable liens in existence at the time of the Petition Date that are perfected subsequent thereto as permitted by Section 546(b) of the Bankruptcy Code.

(c) Lien Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected security interest in and lien upon all tangible and intangible pre- and postpetition property of each Loan Party, other than the property described in clauses (a) and (b) of this paragraph 10 (as to which the liens and security interests in favor of the DIP Agent will be as described in such clauses (a) and (b)), whether now existing or hereafter acquired, that is subject to either (x) valid, perfected, and non-avoidable liens in existence immediately prior to the Petition Date (other than the Primed Liens) or (y) valid and non-avoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, in each case other than the Avoidance Actions and the proceeds thereof (except for, with respect to New Money Loans, the Available Avoidance Proceeds), which security interests in favor of the DIP Agent shall be junior and subordinate to such valid, perfected, and unavoidable liens, including liens perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, *provided* that except as to the First-Out

Obligations nothing in the foregoing clauses shall limit the rights of the DIP Secured Parties under the DIP Documents to the extent such liens are not permitted thereunder; and

(d) Lien Senior to Certain Other Liens. The DIP Liens and the Adequate Protection Liens (as defined below) shall not be (i) subject or subordinate to or made *pari passu* with (A) any lien or security interest that is avoided and preserved for the benefit of the Loan Parties and their estates under section 551 of the Bankruptcy Code, (B) unless otherwise provided for in the DIP Documents or in this Final Order, any liens or security interests arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit (including any regulatory body), commission, board or court for any liability of the Loan Parties, or (C) any intercompany liens or security interests of the Loan Parties against other Loan Parties; or (ii) subordinated to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code granted after the date hereof.

(e) Notwithstanding anything in this Final Order to the contrary, the Roll-Up Loans and the Roll-Up DIP Obligations shall not be granted a lien, mortgage or security interest pursuant to clause (a) of this paragraph in any Unencumbered Property, and the DIP Liens securing the Roll-Up Loans and the Roll-Up DIP Obligations shall only extend to Prepetition Collateral that is subject to valid, perfected and unavoidable liens and security interests securing the Secured Notes Obligations as of the Petition Date.

11. *Carve Out*

(a) As used in this Final Order, the "**Carve-Out**" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee (the "**U.S. Trustee**") under section 1930(a) of title 28 of the United States Code plus interest at the

statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to $100,000 incurred by any chapter 7 trustee under Bankruptcy Code section 726(b) (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, final order or otherwise, all paid and earned and accrued and unpaid fees and expenses (the "**Allowed Professional Fees**") incurred after the Petition Date by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "**Debtor Professionals**") or the Creditors' Committee (as defined below) pursuant to Bankruptcy Code section 328 or 1103 (the "**Committee Professionals**" and, together with the Debtor Professionals, the "**Professional Persons**") at any time before delivery by the DIP Agent or the Required Lenders of a Carve-Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed $5,000,000 incurred after the first business day following delivery by the DIP Agent or the Required Lenders of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, final order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "**Post-Carve-Out Trigger Notice Cap**"). For purposes of the foregoing, "**Carve-Out Trigger Notice**" shall mean a written notice delivered by email (or other electronic means) by the DIP Agent (acting at the direction of the Required Lenders) to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Creditors' Committee providing that a Termination Event (as defined below) has occurred and stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

(b) Carve-Out Reserves. On the day on which a Carve-Out Trigger Notice is given by the DIP Agent or the Required Lenders to the Debtors with a copy to counsel to the

Creditors' Committee (the "**Termination Declaration Date**"), the Carve-Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees. The Debtors shall deposit and hold such amounts in a segregated account at the DIP Agent in trust to pay such then unpaid Allowed Professional Fees (the "**Pre-Carve-Out Trigger Notice Reserve**") prior to the use of such reserve to pay any other claims. On the Termination Declaration Date, after funding the Pre-Carve-Out Trigger Notice Reserve, the Debtors shall utilize all remaining cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the Post-Carve-Out Trigger Notice Cap (the "**Post-Carve-Out Trigger Notice Reserve**" and, together with the Pre-Carve-Out Trigger Notice Reserve, the "**Carve-Out Reserves**") prior to the use of such reserve to pay any other claims. All funds in the Pre-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve-Out set forth above (the "**Pre-Carve-Out Amounts**"), but not, for the avoidance of doubt, the Post-Carve-Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve-Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent for the benefit of itself and the DIP Lenders. All funds in the Post-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve-Out set forth above (the "**Post-Carve-Out Amounts**"), and then, to the extent the Post-Carve-Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent for the benefit of itself and the DIP Lenders. Notwithstanding anything to the contrary in the DIP Documents, the Interim Order, or this Final Order, if either of the Carve-Out Reserves is not funded in full in the amounts set forth in this paragraph 11,

then, any excess funds in one of the Carve-Out Reserves following the payment of the Pre-Carve-Out Amounts and Post-Carve-Out Amounts, respectively, shall be used to fund the other Carve-Out Reserve, up to the applicable amount set forth in this paragraph 11, prior to making any payments to the DIP Agent. Notwithstanding anything to the contrary in the DIP Documents, the Interim Order, or this Final Order, following delivery of a Carve-Out Trigger Notice, the DIP Agent and the Secured Notes Parties shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve-Out Reserves have been fully funded following a reasonable period (which period shall be no less than 5 business days) for each Professional Person to notify the Debtors of its expected amount of Allowed Professional Fees, but shall have a valid and perfected security interest in any residual interest in the Carve-Out Reserves, with any excess paid to the DIP Agent for application in accordance with the DIP Documents and this Final Order. Further, notwithstanding anything to the contrary in the Interim Order or this Final Order, (i) disbursements by the Debtors from the Carve-Out Reserves shall not increase or reduce the DIP Obligations, or constitute additional DIP Loans (unless, for the avoidance of doubt, additional DIP Loans are used to fund the Carve-Out Reserves), (ii) the failure of the Carve-Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve-Out, and (iii) in no way shall the Approved Budget, Carve-Out, Post-Carve-Out Trigger Notice Cap or the Carve-Out Reserves, or any of the foregoing, be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors to the Debtor Professionals. For the avoidance of doubt and notwithstanding anything to the contrary in the Interim Order or this Final Order, the DIP Facility or in any Prepetition Credit Document, the Carve-Out shall be senior to all liens and claims securing the DIP Facility, the

Adequate Protection Liens, any 507(b) Claim, and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations or the Secured Notes Obligations.

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

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

(e) Payment of Carve-Out On or After the Termination Declaration Date. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve-Out on a dollar-for-dollar basis. Any funding of the Carve-Out shall be added to, and made a part of, the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under this Final Order, the DIP Documents, the Bankruptcy Code, and applicable law.

(f) Carve-Out Limits. Notwithstanding anything in this Final Order to the contrary, except for and solely to the extent as set forth in paragraph 24 below, the Carve-Out shall not include, apply to or be available for any fees or expenses incurred by any party in

connection with (a) the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation, or assertions of any defense or counterclaim, against any of the DIP Lenders, the DIP Agent, or the Prepetition Secured Parties, each in such capacity, and their respective agents, attorneys, advisors or representatives, including challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, the obligations and the liens, mortgages, and security interests granted in connection with the DIP Documents, the Prepetition Credit Agreement, the Collateral Trust Agreement, the First-Out Documents, or the Note Documents, including, in each case, without limitation, for lender liability or pursuant to sections 105, 506(c), 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; (b) attempts to modify any of the rights granted to the DIP Lenders, the DIP Agent or the Prepetition Secured Parties; or (c) attempts to prevent, hinder or otherwise delay any of the DIP Lenders' or the DIP Agent's assertion, enforcement or realization upon any DIP Collateral or Prepetition Collateral in accordance with the DIP Documents and the Final Order other than to seek a determination that an Event of Default (as defined in the DIP Credit Agreement) has not occurred or is not continuing. Further, notwithstanding anything to the contrary in this Final Order, the failure of the Carve-Out Account to satisfy in full the Professional Fees shall not affect the priority of the Carve-Out. For the avoidance of doubt, nothing in this paragraph shall be construed to impair (x) the right of the Professional Persons to seek payment of any fees and expenses incurred in connection with the foregoing as an administrative claim to the extent such fees and expenses are not payable from the Carve-Out or (y) the ability of any party to object to the allowance of fees, expenses, reimbursement or compensation of any Professional Persons on any other grounds.

12. *Protection of DIP Lenders' Rights.*

(a) Upon the occurrence of a Termination Event and following the giving of not less than five (5) business days' prior written notice (the "**Enforcement Notice**") via email to counsel to the Debtors, the U.S. Trustee, counsel to the Trustees, counsel to Royal Bank of Canada, and counsel to the Creditors' Committee, and the filing of such notice on the docket for these chapter 11 cases, which notice shall run concurrently with any notice required to be provided under the DIP Documents (the "**Notice Period**"), the DIP Agent (acting at the direction of the Required Lenders, as applicable) and the DIP Lenders may (i) terminate, reduce or restrict any further DIP Commitments to the extent any such DIP Commitments remains, (ii) declare all DIP Obligations to be immediately due and payable, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Loan Parties, (iii) withdraw consent to the Loan Parties' continued use of Cash Collateral, and (iv) exercise all other rights and remedies provided for in the DIP Documents and under applicable law. During the Notice Period, the Debtors, the DIP Agent and the DIP Lenders consent to a hearing on an expedited basis for the sole purpose of (x) contesting whether a Termination Event has occurred and is continuing and (y) arguing for continued imposition of the automatic stay; *provided*, that if a hearing to consider the foregoing is requested to be heard before the end of the Notice Period but is scheduled for a later date by the Court, the Notice Period shall be automatically extended to the date of the conclusion of such hearing. Notwithstanding anything in this paragraph to the contrary, during the Notice Period, the DIP Lenders shall have no obligation to provide and the Loan Parties shall have no right to request any New Money Loans.

** The DIP Lenders may not request, demand or otherwise discuss with the Debtors or their professionals the imposition of any fee for any extension of the maturity date of the DIP loan for the period between May 11, 2020 and June 30, 2020.

(b) Following the conclusion of the Notice Period (as may be extended as set forth above), unless prior to such time the Court determines that a Termination Event has not occurred and/or is not continuing or the Court orders otherwise, the DIP Agent is hereby granted relief from the automatic stay, without further notice, hearing, motion, order, or other action of any kind, to foreclose on, or otherwise realize on, its DIP Liens on all or any portion of the DIP Collateral.

(c) No rights, protections or remedies of the DIP Agent or the DIP Lenders granted by the provisions of this Final Order or the DIP Documents shall be limited, modified or impaired in any way by: (i) any actual or purported withdrawal of the consent of any party to the Loan Parties' authority to continue to use Cash Collateral; (ii) any actual or purported termination of the Loan Parties' authority to continue to use Cash Collateral; or (iii) the terms of any other order or stipulation (other than as any such order or stipulation relates to the First-Out Obligations) related to the Loan Parties' continued use of Cash Collateral or the provision of adequate protection to any party other than the Prepetition Secured Parties.

13. *Limitation on Charging Expenses Against Collateral.* Except to the extent of the Carve-Out and the payment of First-Out Obligations, no costs or expenses of administration of the Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Prepetition Collateral or the DIP Collateral (including Cash Collateral) pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent (acting at the direction of the Required Lenders), or the Prepetition Secured Parties, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties and nothing contained in this Final

Order shall be deemed to be a consent by the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties to any charge, lien, assessment or claim against the DIP Collateral or the Prepetition Collateral under section 506(c) of the Bankruptcy Code or otherwise.

14. *No Marshaling*. Except as provided in the immediately succeeding two sentences, in no event shall the DIP Agent, the DIP Lenders or the Prepetition Secured Parties be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral. The DIP Lenders may seek payment from the Available Avoidance Proceeds to the extent otherwise permitted in this Final Order (and subject to the payment of the First-Out Obligations) only after seeking payment from all other DIP Collateral and only with respect to the New Money Loans. Notwithstanding anything in this Final Order to the contrary, in the event that the Roll-Up Loans and up to $12.5 million of the DIP Loan the proceeds of which were used to satisfy First-Out Obligations are indefeasibly paid in full in cash or are otherwise satisfied with the consent of the holders of such obligations other than in cash, the determination of secured status of the Secured Notes Obligations pursuant to section 506 of the Bankruptcy Code shall be determined as if the cash or the value of such other consideration paying such Roll-Up Loans and up to $12.5 million of the DIP Loans the proceeds of which were used to satisfy First-Out Obligations was paid from the Prepetition Collateral prior to such determination.

15. *Section 552(b).* The Prepetition Secured Parties or the DIP Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code; *provided* that the "equities of the case" exception shall not be impaired by entry of this Final Order and the rights of all parties in interest are reserved with respect to the application of the "equities of the case" exception. Unless the DIP Agent (acting at the direction of the Required Lenders) or the Required Lenders, in their sole discretion, expressly consent in writing otherwise, expressly

referencing this provision, any and all of Debtors' payments of costs or expenses and investments with respect to Prepetition Collateral (including, as appropriate, general and administrative costs of the Debtors and their estates, Adequate Protection payments, and payments of DIP Obligations) shall be deemed solely for purposes of the Debtors' accounting to be made first with proceeds, products, offspring, or profits of and cash that, in each case, constitute Prepetition Collateral and thereafter with proceeds of DIP Loans, and thereafter, only to the extent funds are otherwise unavailable, with products, proceeds, and offspring of and cash that, in each case, constitute DIP Collateral that is not Prepetition Collateral.

16. *Payments Free and Clear*. Subject only to the Carve-Out, the First-Out Obligations, and the rights of the Debtors and other parties in interest pursuant to paragraphs 23 and 24 of this Final Order, any and all payments or proceeds remitted to the DIP Agent on behalf of the DIP Secured Parties pursuant to the provisions of the Interim Order, this Final Order, or the DIP Documents shall be received, except as to Roll-Up DIP Obligations that are subject to any Challenge filed in accordance with paragraph 23, free and clear of any claim, charge, assessment or other liability, including, without limitation, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) of the Bankruptcy Code, whether asserted or assessed by, through or on behalf of the Debtors

17. *Application of Proceeds*. The DIP Secured Parties and the Prepetition Secured Parties, as applicable, shall have the right, in their sole discretion (but in the case of (x) the Secured Notes Parties, subject to the rights of the DIP Secured Parties and payment of the First-Out Obligations and (y) the DIP Secured Parties, subject to the rights and obligations of the Collateral Trustee to pay the First-Out Obligations), to apply any and all payments or proceeds remitted to the DIP Agent on behalf of the DIP Secured Parties or the Collateral Trustee on behalf of the

Prepetition Secured Parties, pursuant to the provisions of this Final Order, or the DIP Documents (i) to the repayment of any portion of the obligations under the DIP Facility to or from any portion of the DIP Collateral securing such obligations and/or the DIP Superpriority Claims, and (ii) solely to the extent of any Adequate Protection Claims, to or from any portion of the 507(b) Claims and/or Adequate Protection Liens.

18. *Use of Cash Collateral*. The Loan Parties are hereby authorized, subject to the terms and conditions of this Final Order, to use Cash Collateral, *provided* that (i) the Prepetition Secured Parties are granted the Adequate Protection and (ii) except on the terms and conditions of this Final Order, the Loan Parties shall be enjoined and prohibited from at any times using the Cash Collateral absent further order of the Court. Unless otherwise ordered by the Court, the Loan Parties' right to use the Cash Collateral pursuant to this Final Order shall terminate without further notice or court proceeding at the end of the Notice Period (as may be extended pursuant to paragraph 12 of this Final Order) following the occurrence of a Termination Event. The Court hereby authorizes the use of Cash Collateral solely and exclusively for the disbursements set forth in the DIP Budget attached hereto as **Exhibit 2** and each subsequent Approved Budget (each as defined in the DIP Credit Agreement), including but not limited to, the use of Cash Collateral to effect a Discharge of First-Out Obligations as provided in this Final Order. The Loan Parties shall adhere to the DIP Budget and each Approved Budget, as applicable, in effect at such time pursuant to the terms of the DIP Credit Agreement, with respect to operating disbursements (excluding fees and expenses paid or payable to Professional Persons and fees and expenses paid or payable pursuant to paragraphs 6(iii), 7 and 19(e) hereof) subject to the Permitted Variances (as defined in the DIP Credit Agreement). The DIP Agent may (at the direction of the Required Lenders) agree in writing to the use of Cash Collateral in a manner or amount which does not conform to the DIP

Budget or any Approved Budget, and if such written agreement is provided by the DIP Agent, the Loan Parties shall be authorized pursuant to this Final Order to use Cash Collateral for such non-conforming use without further Court approval, and the DIP Lenders and Prepetition Secured Parties shall be entitled to all of the protections in this Final Order for use of such Cash Collateral.

19. *Adequate Protection of Prepetition Secured Parties*. Subject to the Carve-Out, the Prepetition Secured Parties are granted, pursuant to sections 361, 362, 363(e), 364(d)(1), and 507 of the Bankruptcy Code, adequate protection of their interests in all Prepetition Collateral, including the Cash Collateral, solely to the extent of the decrease, if any, in the value of the Prepetition Secured Parties' interests (within the meaning of section 361 of the Bankruptcy Code) in the Prepetition Collateral, including the Cash Collateral, from and after the Petition Date, for any reason provided for under the Bankruptcy Code, such as any decrease resulting from the sale, lease or use by the Loan Parties of the Prepetition Collateral and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (any such decrease, the "**Adequate Protection Claims**"). In consideration of the foregoing, the Prepetition Secured Parties are hereby granted, in each case effective as of the date of the Interim Order, the following (collectively, the "**Adequate Protection**"):

(a) Prepetition Secured Parties' Adequate Protection Liens. To secure any Adequate Protection Claims, the Collateral Trustee, for the benefit of the Prepetition Secured Parties, is hereby granted (effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), valid, perfected replacement security interests in and liens upon all of the DIP Collateral including, without limitation, Unencumbered Property, in each case subject and subordinate only to the DIP Liens, the

Carve-Out, the First-Out Obligations and liens and security interests securing same, and the Permitted Liens that were valid, perfected, enforceable, unavoidable, and senior to the Prepetition Liens as of the Petition Date and valid and non-avoidable liens in existence at the time of the Petition Date that are perfected subsequent thereto as permitted by Section 546(b) of the Bankruptcy Code (the "**Adequate Protection Liens**").

(b) Prepetition Secured Parties' 507(b) Claims. The Prepetition Secured Parties are hereby granted, effective as of the date of the Interim Order, subject to the Carve-Out, allowed superpriority administrative expense claims as provided for in section 507(b) of the Bankruptcy Code for and to the extent of any Adequate Protection Claims with, except as set forth in this Final Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code (the "**507(b) Claims**"), which 507(b) Claims shall have recourse to and be payable from all of the DIP Collateral, excluding Avoidance Actions and the proceeds thereof. The 507(b) Claims shall be subject and subordinate only to the First-Out Obligations, Carve-Out and the DIP Superpriority Claims.

(c) Interest. The Trustee under the Secured Notes Indenture, for the benefit of the Secured Noteholders, shall receive from the Debtors cash payment equal to the amount of all accrued and unpaid interest on the Secured Notes at the non-default rate provided for in the Secured Notes Indenture on each Interest Payment Date (as defined in the Secured Notes Indenture) or as soon as practicable thereafter if the applicable Interest Payment Date has passed, subject to the right of the Debtors or any other party in interest, through appropriate proceedings in these Cases, to seek to recharacterize such interest pursuant to 11 U.S.C. § 502(b) as payment of principal or seek other appropriate relief, including disgorgement. For

purposes of clarification, the accrued and unpaid interest as of the Petition Date with respect to Secured Notes to be converted into Roll-Up Loans will not be rolled into such Roll-Up Loans but shall be paid to the holders of such Secured Notes pursuant to this paragraph.

(d) First-Out Hedging Obligations. Without limiting the rights of the Hedging Counterparties, subject to the terms and conditions set forth in this Final Order, the Debtors are hereby permitted to use Cash Collateral and the proceeds of the DIP Financing to continue performing their obligations to the applicable Hedging Counterparties with respect to the First-Out Hedging Obligations in the ordinary course of business, including the authority, but not the direction, to repay any unwound First-Out Hedging Obligations; *provided* that the Hedging Counterparties rights to: (i) to liquidate, terminate, or accelerate any underlying swap agreements between such Hedging Counterparties and the Debtors; and (ii) to take such action as necessary to effect the liquidation, termination, or acceleration of such swap agreements in the ordinary course of business, shall be subject to and governed by Sections 555-557 and 559-562 of the Bankruptcy Code, as applicable.

(e) Fees and Expenses. The Debtors shall pay in full, in cash and in immediately available funds all reasonable and documented accrued and unpaid fees and expenses of: (i) Morrison & Foerster, LLP, as counsel to the ad hoc group of Secured Noteholders ("**Secured Ad Hoc Group**"), (ii) Foley & Lardner, LLP, as local counsel to the Secured Ad Hoc Group, (iii) Evercore Group LLC., as financial advisor to the Secured Ad Hoc Group, (iv) Opportune LLP, as G&A advisor to the Secured Ad Hoc Group, (v) the Notes Trustee, including Arnold & Porter Kaye Scholer LLP, as primary counsel to the Notes Trustee and Cole Schotz, P.C., as local counsel to the Notes Trustee, (vi) Thompson & Knight, LLP as counsel to Royal Bank of Canada, in its capacities under the Collateral Trust Agreement, and

as Collateral Agent, Administrative Agent, and Lender under the Prepetition Credit Agreement, and (vii) any designated successor Collateral Trustee under the Collateral Trust Agreement, including one primary and one local counsel without the need to file retention motions or fee applications.[4] The applicable professional shall serve copies of the invoices supporting such fees and expenses on counsel to the Debtors, the U.S. Trustee and Milbank LLP as counsel to the Creditors' Committee, and any such fees and expenses shall be subject to prior ten (10) day review by the Debtors, the U.S. Trustee and the Creditors' Committee, and in the event the Debtors, the U.S. Trustee or the Creditors' Committee shall file with this Court an objection to any such invoice, the portion of such invoice subject to such objection shall not be paid until resolution of such objection by this Court. If no objection is filed within such ten (10) day review period, such invoice shall be paid without further order of the Court and shall not be subject to any further review, challenge or disgorgement. The Debtors shall also pay the annual and other administrative fees of the Collateral Trustee and the Notes Trustee, including any successors thereto.

20. *Reservation of Rights of Prepetition Secured Parties*. Under the circumstances and given that the Adequate Protection is consistent with the Bankruptcy Code, including section 506(b) thereof, the Court finds that the Adequate Protection and other rights provided under this Final Order are reasonable and sufficient to protect the interests of the Prepetition Secured Parties and any other parties holding interests that are secured by Prepetition Liens;

[4] Subject to the receipt of invoices and expiration of the review period as set forth in paragraph 19(e), the Debtors shall also pay in full, in cash all reasonable and documented accrued and unpaid fees and expenses of Carl Marks Advisory Group, LLC ("**Carl Marks**"), as financial advisor to Royal Bank of Canada, for all services performed prior to the date of the entry of this Final Order. To the extent Royal Bank of Canada incurs fees and expenses to Carl Marks following the date of the entry of this Final Order, Carl Marks shall not be entitled to payment of such fees and expenses pursuant to paragraph 19(e), but Royal Bank of Canada shall maintain all rights relating to payment of such fees as First-Out Obligations.

provided that any of the Prepetition Secured Parties, upon a change in circumstances, may request further or different adequate protection. In addition, the Trustees and counsel for the Secured Ad Hoc Group will be entitled to copies of the reporting information provided to the DIP Agent or DIP Lenders under sections 5.01, 5.19-5.22 of the DIP Credit Agreement as and when it is delivered in accordance with the DIP Agreement. In the event that the Debtors are no longer bound by the reporting requirements set forth in the DIP Credit Agreement in accordance with the terms thereof, the Debtors will instead provide the Secured Notes Parties with the reports set forth in section 4.03(a)(iii) of the Secured Notes Indenture in accordance with the terms thereof.

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

(a) The DIP Agent and the Collateral Trustee are hereby authorized, but not required, to file or record (and to execute in the name of the Loan Parties, as their true and lawful attorneys, with full power of substitution, to the maximum extent permitted by law) financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over cash or securities, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Agent, for the benefit of the DIP Secured Parties, or the Collateral Trustee, for the benefit of the Prepetition Secured Parties shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over any cash or securities, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable, and not subject to challenge, dispute or subordination, at the time and on the date of entry of the Interim Order. Upon the reasonable request of the DIP Agent,

each of the Prepetition Secured Parties and the Loan Parties, without any further consent of any party, is authorized to take, execute, deliver, and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Agent to further validate, perfect, preserve, and enforce the DIP Liens, and such parties shall provide reasonable cooperation to the DIP Agent with respect to such matters. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(b) A certified copy of this Final Order may, in the discretion of the DIP Agent or the Collateral Trustee, as the case may be, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized and directed to accept such certified copy of this Final Order for filing and/or recording, as applicable. The automatic stay of section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit the DIP Agent or the Collateral Trustee, as the case may be, to take all actions, as applicable, referenced in this subparagraph (b) and the immediately preceding subparagraph (a).

22. *Preservation of Rights Granted Under This Final Order*.

(a) Other than the Carve-Out and other claims and liens expressly granted or permitted by this Final Order (including, for the avoidance of doubt, Permitted Liens that were valid, perfected, enforceable, unavoidable, and senior to the Prepetition Liens as of the Petition Date, and valid and non-avoidable liens in existence at the time of the Petition Date that are perfected subsequent thereto as permitted by Section 546(b) of the Bankruptcy Code, and the First-Out Obligations and the valid, perfected, liens and security interests securing same), no claim or lien having a priority superior to or *pari passu* with those granted by this Final Order to the DIP Agent and the DIP Lenders or the Prepetition Secured Parties shall be permitted

while any of the DIP Obligations or the Adequate Protection Claims remain outstanding, and, except with respect to Permitted Liens that were valid, perfected, enforceable, unavoidable, and senior to the Prepetition Liens as of the Petition Date, and valid and non-avoidable liens in existence at the time of the Petition Date that are perfected subsequent thereto as permitted by Section 546(b) of the Bankruptcy Code, or as otherwise expressly provided herein, the DIP Liens and the Adequate Protection Liens shall not be: (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Loan Parties' estates under section 551 of the Bankruptcy Code; (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise; (iii) subordinated to or made *pari passu* with any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the Loan Parties; or (iv) subject or junior to any intercompany liens or security interests of the Loan Parties against other Loan Parties.

(b) Unless waived in writing by the Required Lenders or the DIP Agent (at the direction of the Required Lenders), the occurrence of any "Event of Default" under the DIP Credit Agreement shall constitute a termination event under this Final Order (each, a "**Termination Event**").

(c) Notwithstanding any order that may be entered dismissing any of the Cases under section 1112 of the Bankruptcy Code or otherwise: (i) the DIP Superpriority Claims, the 507(b) Claims, the DIP Liens, and the Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities as provided in this Final Order until all DIP Obligations and Adequate Protection Claims shall have been indefeasibly paid in full in cash

(and such DIP Superpriority Claims, 507(b) Claims, DIP Liens and Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest); (ii) the other rights granted by this Final Order shall not be affected; and (iii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens, and security interests referred to in this paragraph and otherwise in this Final Order.

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

(e) Except as expressly provided in this Final Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, and the Adequate

Protection and all other rights and remedies of the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties granted by the provisions of the Interim Order, this Final Order, and the DIP Documents shall survive, and shall not be modified, impaired or discharged by: (i) the entry of an order converting any of the Cases to a case under chapter 7, dismissing any of the Cases, terminating the joint administration of the Cases or by any other act or omission; (ii) the entry of an order approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents); or (iii) the entry of an order confirming a chapter 11 plan in any of the Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Loan Parties have waived any discharge as to any remaining DIP Obligations or Adequate Protection. The terms and provisions of the Interim Order, this Final Order, and the DIP Documents shall continue in the Cases, in any successor cases if the Cases cease to be jointly administered and in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, and the Adequate Protection and all other rights and remedies of the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties granted by the provisions of the Interim Order, this Final Order, and the DIP Documents shall continue in full force and effect until the DIP Obligations and Adequate Protection Claims, as applicable, are indefeasibly paid in full in cash, as set forth herein and in the DIP Documents, and the DIP Commitments have been terminated.

23. *Challenge Period*.

(a) To the extent the Debtors, the official committee of unsecured creditors appointed in these Cases (the "**Creditors' Committee**") or any other party in interest, in each case, with requisite standing (subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so) (i) objects to or challenges the amount,

validity, perfection, enforceability, priority, allowance or extent of the Credit Agreement Obligations, the Secured Notes Obligations (including the Roll-Up DIP Obligations) or the Prepetition Liens or (ii) otherwise seeks to assert or prosecute any action for preferences, fraudulent transfers, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "**Challenges**") against the Prepetition Secured Parties or their respective subsidiaries and each of their former, current or future officers, partners, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals and the respective successors and assigns thereof, in each case in their respective capacity as such (each a "**Representative**" and, collectively, the "**Representatives**") in connection with matters related to the Credit Agreement Obligations, the Prepetition Credit Agreement, the Secured Notes Indenture, the Note Documents, the First-Out Documents, the Secured Notes Obligations, the Prepetition Liens, and/or the Prepetition Collateral, such Challenge must be commenced by a timely filed adversary proceeding or contested matter by (x) for the Creditors' Committee, the ad hoc group of unsecured noteholders represented by Quinn Emanuel Urquhart & Sullivan, LLP (the "**Unsecured Ad Hoc Group**"), and the respective indenture trustees under the 7.75% Senior Notes Indenture and the 6.125% Senior Notes Indenture (each as defined in the First Day Declaration), no later than thirty (30) days after entry of this Final Order, (y) for the Debtors, no later than (30) calendar days after entry of this Final Order, and (z) for all other parties in interest, no later than seventy-five (75) days after entry of the Interim Order (the "**Challenge Period**") (subject to the limitations contained herein, including, *inter alia*, in this paragraph 23); *provided*, *however*, that any pleadings filed in connection with any Challenge shall set forth with specificity the basis for such challenge

or claim and any challenges or claims not so specified prior to the expiration of the Challenge Period shall be deemed forever, waived, released, and barred; *provided, further*, that if prior to the termination of the Challenge Period, a party in interest files a motion seeking standing to pursue a Challenge that attaches a complaint that specifies the allegations of the Challenge, then the Challenge Period for such party shall be extended until the date that is two (2) business days after the Court rules on such request. For the avoidance of doubt, any payments made pursuant to this Final Order relating to the Discharge of First-Out Obligations shall not be subject to Challenges.

(b) To the extent no such Challenge is timely and properly filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such proceeding in a final non-appealable order, then, automatically and irrevocably, to the extent not subject to such Challenge:

(i) the obligations of the Loan Parties under the Prepetition Credit Agreement, the Collateral Trust Agreement, the Secured Notes Indenture, Note Documents, and the First-Out Documents, including the Credit Agreement Obligations and the Secured Notes Obligations (including but not limited to the Secured Notes issued in the aggregate principal amount outstanding as of the Petition Date of $500,000,000), in each case as in effect immediately prior to the Petition Date, shall constitute and be deemed legal, valid, and binding obligations of, and allowed claims against, the Borrower and the Prepetition Debtor Guarantors not subject to defense, claim, counterclaim, recharacterization, subordination, offset or avoidance, for all purposes, including but not limited to in the Cases and any subsequent chapter 7 case(s);

(ii) the Credit Agreement Obligations and the Secured Notes Obligations, as applicable, or any payments made, applied to, or paid on account of the obligations owing under the Prepetition Credit Agreement, Collateral Trust Agreement, or the Secured Notes Indenture, as applicable, prior to the Petition Date will not be subject to any contest, attack, rejection, recovery, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law;

(iii) the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, enforceable, and perfected security interests and liens, not subject to avoidance, recharacterization, subordination, recovery, attack, effect, counterclaim, defense or claim under the Bankruptcy Code or applicable non-bankruptcy law;

(iv) the Credit Agreement Obligations, the Secured Notes Obligations and the Prepetition Liens on the Prepetition Collateral shall not be subject to any other or further claim or challenge by any statutory or non-statutory committee appointed or formed in the Cases or any other party in interest acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors), and any defenses, claims, causes of action, counterclaims, and offsets by any statutory or non-statutory committee appointed or formed in the Cases, or any other party acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors), whether arising under the Bankruptcy Code or otherwise,

against any of the Credit Agreement Parties, Prepetition Secured Parties, the Secured Notes Parties and their Representatives arising out of or relating to the Prepetition Credit Agreement, the First-Out Documents, Collateral Trust Agreement, the Note Documents, and the Secured Notes Indenture, as applicable, shall be deemed forever waived, released, and barred;

(v) by virtue of any of the actions taken with respect to, in connection with, related to or arising from the Prepetition Credit Agreement, First-Out Documents, Collateral Trust Agreement, the Note Documents, or the Secured Notes Indenture, none of the Credit Agreement Parties, Prepetition Secured Parties, or the Secured Notes Parties shall be deemed to be in control of the Debtors or their properties or operations, have authority to determine the manner in which any Debtor's operations are conducted, or are control persons or insiders of the Debtors; and

(vi) the Debtors, for themselves and on behalf of their respective estates, will be deemed to absolutely and unconditionally release and forever discharge and acquit the Credit Agreement Parties, the Prepetition Secured Parties, the Secured Note Parties and their respective Representatives (collectively, the "**Released Parties**") from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened (collectively, the "**Released Claims**") including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description that exist on the date hereof relating to the Prepetition

Credit Agreement, the First-Out Documents, Collateral Trust Agreement, the Note Documents, or the Secured Notes Indenture, or the transactions contemplated thereunder, the negotiation thereof and of the deal reflected thereby, and the obligations and financial obligations made thereunder, in each case that the Debtors at any time had, now have or may have, or that their successors or assigns hereafter can or may have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of the Interim Order, whether such Released Claims are matured or unmatured or known or unknown.

(c) For the avoidance of doubt, the terms of this paragraph 23, including the Challenge Period, and any Challenges commenced pursuant to this paragraph 23, shall apply to the Roll-Up Loans and the Roll-Up DIP Obligations, in each case to the fullest extent that such loans and obligations were subject to Challenge as of the Petition Date as though the Roll-Up DIP Obligations had not been converted into Roll-Up Loans. If the amount of valid and unavoidable Secured Notes Obligations as of the Petition Date that were secured by valid, perfected and unavoidable liens in Prepetition Collateral as of the Petition Date is less than the amount of Roll-Up DIP Obligations, then the Roll-Up DIP Obligations converted into Roll-Up Loans shall be treated for purposes of allowance and distribution as if they had not been converted into Roll-Up Loans to the extent of such deficiency, and any interest, fees or other amounts paid with respect to such Roll-Up DIP Obligations or the corresponding Roll-Up Loans shall be recharacterized as principal payments on the Roll-Up DIP Obligations and subject to disgorgement.

(d) Nothing in this Final Order vests or confers on any Person (as defined in the Bankruptcy Code), including any statutory or non-statutory committee appointed or formed in

the Cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, Challenges with respect to the Prepetition Credit Agreement, the First-Out Documents, the Collateral Trust Agreement, the Secured Notes Indenture, the Note Documents, the Credit Agreement Obligations, the First-Out Obligations, the Secured Notes Obligations or the Prepetition Liens. For purposes of clarification, nothing in this Final Order is intended to or shall be deemed to release, discharge, or waive any claims, causes of action, or defenses, under law or equity, that the Secured Noteholders, Prepetition Secured Parties, or DIP Lenders have or may have arising under or relating to the Prepetition Credit Agreement, the Collateral Trust Agreement, the First-Out Documents, the Note Documents, the Prepetition Collateral, or the Prepetition Liens. Moreover, the rights of the Prepetition Secured Parties, the Secured Noteholders, and the Collateral Trustee vis-à-vis each other, under the Collateral Trust Agreement and otherwise applicable law, are expressly reserved and unaffected by the terms of this Final Order

24. *Limitation on Use of DIP Financing Proceeds and Collateral*.

(a) Notwithstanding any other provision of this Final Order or any other order entered by the Court, subject to the immediately succeeding sentence in this paragraph, no DIP Loans, DIP Collateral, Prepetition Collateral or any portion of the Carve-Out may be used directly or indirectly by any Debtor, any official committee appointed in the Cases, or any trustee appointed in the Cases or any successor case, including any chapter 7 case, or any other person, party or entity (i) in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (A) against any of the DIP Agent, the DIP Lenders, the Credit Agreement Parties, the Prepetition Secured Parties, or the Secured Notes Parties, or their respective predecessors-in-interest, agents, affiliates,

representatives, attorneys, or advisors, or any action purporting to do the foregoing in respect of the Credit Agreement Obligations, First-Out Obligations, the Secured Notes Obligations, liens on the Prepetition Collateral, the DIP Obligations, the DIP Liens, the DIP Superpriority Claims and/or the Adequate Protection, the Adequate Protection Liens, and superpriority administrative claims granted to the Secured Notes Parties under this Final Order, as applicable, or (B) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset with respect to, the Credit Agreement Obligations, the First-Out Obligations, the Secured Notes Obligations, the DIP Obligations, and/or the liens, claims, rights, or security interests granted under this Final Order, the Interim Order, the DIP Documents, the Prepetition Credit Agreement, the Collateral Trust Agreement, the First-Out Documents, or the Note Documents including, in each case, without limitation, for lender liability or pursuant to sections 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; (ii) to prevent, hinder, or otherwise delay the Credit Agreement Parties', the Prepetition Secured Parties', the DIP Agent's or the DIP Lenders', as applicable, enforcement or realization on the Credit Agreement Obligations, the First-Out Obligations, the Secured Notes Obligations, the Prepetition Collateral, the DIP Obligations, the DIP Collateral, and the liens, claims and rights granted to such parties under this Final Order, each in accordance with the DIP Documents, the Prepetition Credit Agreement, the First-Out Obligations, the Collateral Trust Agreement, the Note Documents or this Final Order; (iii) to seek to modify any of the rights and remedies granted to the Credit Agreement Parties, the Prepetition Secured Parties, the DIP Agent or the DIP Lenders under this Final Order, the Interim Order, the Prepetition Credit Agreement, the First-Out Documents, the Collateral Trust Agreement, the Note Documents, or the DIP

Documents, as applicable, without the consent of the applicable party; or (iv) to apply to the Court for authority to approve superpriority claims (subject to the Carve-Out) or grant liens (other than Permitted Liens) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, and the 507(b) Claims, unless all DIP Obligations, First-Out Obligations, Adequate Protection, and claims granted to the DIP Agent, the DIP Lenders or the Prepetition Secured Parties under this Final Order have been refinanced or paid in full in cash (including the cash collateralization of any letters of credit) or otherwise agreed to in writing by the DIP Lenders. Without limiting the generality of the foregoing, (x) up to $250,000 in the aggregate of proceeds of any Cash Collateral or any proceeds of the DIP Facility, the DIP Collateral, or the Prepetition Collateral may be used to pay any allowed fees of the Creditors' Committee, if any, or their respective professionals, to the extent incurred in connection with investigating and, if appropriate, prosecuting the foregoing matters described in the clauses (i) and (ii) of this paragraph (the "**Investigation Budget**") and (y) there shall be no cap on the amount of proceeds of any Cash Collateral or any proceeds of the DIP Facility, the DIP Collateral, or the Prepetition Collateral that may be used to pay the Allowed Professional Fees of the Debtor Professionals in connection with the investigation only of the foregoing matters described in such clauses.

(b) For the avoidance of doubt, nothing herein shall modify or limit the rights of the Loan Parties set forth in second paragraph of Section 7.02 of the DIP Credit Agreement or limit their use of the Carve-Out in connection with such rights.

25. *Loss or Damage to Collateral*. Nothing in this Final Order, the DIP Documents, or any other documents related to the transactions set forth in this Final Order shall in any way be

construed or interpreted to impose or allow the imposition upon the DIP Agent, any DIP Lender or any of the Credit Agreement Parties or Prepetition Secured Parties of any liability for any claims arising from the pre-petition or postpetition activities of the Debtors in the operation of their business, or in connection with their restructuring efforts. So long as the DIP Agent and the DIP Lenders comply with their obligations under the DIP Documents and their obligations, if any, under applicable law (including the Bankruptcy Code), (a) the DIP Agent and the DIP Lenders shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person, and (b) all risk of loss, damage or destruction of the DIP Collateral shall be borne by the Loan Parties.

26. *Additional Reporting*. The Debtors shall use their commercially reasonable efforts to provide the Secured Ad Hoc Group, the Creditors' Committee, and the Unsecured Ad Hoc Group (defined below) (through their respective counsel or other advisors) information and reports as each of them may from time to time reasonably request, including but not limited to information regarding (a) each material contract and other agreements of any of the Debtors; (b) the rates, fees, expenses, and other costs under each material contract and other agreements of the Debtors; (c) the rates, fees, expenses, and other costs paid by any or on behalf of any of the Debtors with respect to all goods and services provided by SOG to or on behalf of each of the Debtors, Sanchez Midstream Partners LP, SN EF UnSub, LP, Gavilan Resources, LLC, or other persons or entities; and (d) the potential costs of assuming or rejecting any material executory contract and/or unexpired lease.

27. *Final Order Governs*. In the event of any inconsistency between the provisions of this Final Order and the DIP Documents or any other order entered by this Court, the provisions of this Final Order shall govern. Notwithstanding anything to the contrary in any other order entered by this Court, any payment made pursuant to any authorization contained in any other order entered by this Court shall be consistent with and subject to the requirements set forth in this Final Order and the DIP Documents, including, without limitation, the Approved Budget.

28. *Binding Effect; Successors and Assigns*. The DIP Documents and the provisions of this Final Order, including all findings herein, shall be binding upon all parties in interest in the Cases, including, without limitation, the DIP Agent, the DIP Lenders, the Credit Agreement Parties, the Secured Notes Parties, any statutory or non-statutory committees appointed or formed in the Cases, the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Agent, the DIP Lenders, the Credit Agreement Parties, the Secured Notes Parties, and the Debtors and their respective successors and assigns, *provided* that the DIP Agent, the DIP Lenders, and the Credit Agreements Parties and the Prepetition Secured Parties shall have no obligation to permit the use of the Prepetition Collateral (including Cash Collateral) by, or to extend any financing to, any chapter 7 trustee, chapter 11 trustee or similar responsible person appointed for the estates of the Debtors.

29. *Limitation of Liability*. In determining to make any loan or other extension of credit under the DIP Credit Agreement, permit the use of Cash Collateral or exercise any rights or remedies as and when permitted pursuant to the Interim Order, this Final Order, or the DIP

Documents, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties shall not (a) be deemed to be in "control" of the operations of the Debtors; (b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates; and/or (c) be deemed to be acting as a "Responsible Person" or "Owner" or "Operator" with respect to the operation or management of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, et seq., as amended, or any similar federal or state statute).

30. *Master Proof of Claim.* The Trustees shall not be required to file proofs of claim in the Cases or any successor case in order to assert claims on behalf of itself and the Secured Noteholders for payment of the Secured Notes Obligations arising under the Secure Notes Indenture. However, in order to facilitate the processing of claims, to ease the burden upon the Court, and to reduce an unnecessary expense to the Debtors' estates, the Trustees are authorized to file in the Debtors' lead chapter 11 case *Sanchez Energy Corporation*, Case No. 19-34508, a single, master proof of claim on behalf of the relevant Secured Notes Parties on account of any and all of their respective claims arising under the Secured Notes Indenture and hereunder (each, a "**Master Proof of Claim**") against each of the Debtors party to the Secured Notes Indenture. Upon the filing of a Master Proof of Claim against each such Debtor, the Secured Notes Parties, and each of their respective successors and assigns, shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against each such Debtor of any type or nature whatsoever with respect to the Secured Notes Indenture, and the claim of each Secured Notes Party (and each of its respective successors and assigns) named in a Master Proof of Claim shall be treated as if such entity had filed a separate proof of claim in each of the Cases. The Master Proofs of Claim shall not be required to identify whether any Secured Notes

Party acquired its claim from another party and the identity of any such party or to be amended to reflect a change in the holders of the claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from the transfer of all or any portion of such claims. The provisions of this paragraph 30 and each Master Proof of Claim are intended solely for the purpose of administrative convenience and shall not affect the right of each Secured Notes Party (or its successors in interest) to vote separately on any chapter 11 plan proposed in the Cases. The Master Proofs of Claim shall not be required to attach any instruments, agreements or other documents evidencing the obligations owing by each of the Debtors to the applicable Secured Notes Party, which instruments, agreements or other documents will be provided upon written request to counsel to the Trustees, respectively.

31. *Insurance*. To the extent that the Trustees are listed as loss payee under the Borrower's or Guarantors' insurance policies, the DIP Agent is also deemed to be the loss payee for the Secured Notes Parties under such insurance policies and shall act in that capacity and distribute any proceeds recovered or received in respect of any such insurance policies, first, to the payment in full of the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted), and second, to the payment of the portion of the Secured Notes Obligations owed to the Secured Notes Parties.

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

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

34. *Credit Bidding*. Subject to paragraphs 23 and 24 of this Final Order, as applicable, and the inclusion of a cash component sufficient to fund the Carve-Out and the payment of First-Out Obligations, (a) the DIP Agent shall have the right to credit bid, in accordance with the DIP Documents, up to the full amount of the DIP Obligations in any sale of the DIP Collateral, and (b) subject to the rights of the DIP Agent, the Secured Notes Parties and/or the Collateral Trustee shall have the right to credit bid up to the full amount of (i) the Secured Notes Obligations under the Secured Notes Indenture in any sale of the Prepetition Collateral and (ii) the Adequate Protection Claims, including the 507(b) Claims, in any sale of the DIP Collateral, in each case to the fullest extent provided in section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing the same and whether any such sale is effectuated through section 363(b) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

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

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

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

38. *Reservation of Rights of Holders of Permitted and Other Liens*. Subject only to the Carve-Out, and the Discharge of First-Out Obligations, (i) nothing in this Final Order is intended to change or otherwise modify the prepetition priorities of creditors holding valid, perfected, enforceable, and unavoidable Permitted Liens as of the Petition Date, including (x) any operators or non-operators lien or recoupment rights to the extent their liens or rights are valid, enforceable, non-avoidable and perfected, and (y) without regard to the definition of "Permitted Liens," any claims of the Lienholders (as defined below) or any other mechanic or materialman or mineral state lien claimants to the extent their liens are valid, enforceable, non-avoidable and perfected as of the Petition Date or perfected subsequent thereto as permitted by Section 546(b) of the Bankruptcy Code, and (ii) nothing in this Final Order, including the granting of DIP Liens, DIP Superpriority Claims, adequate protection claims or adequate protection liens, shall be deemed to have changed or modified such prepetition priorities, all of which are hereby expressly preserved. Without limiting the foregoing, for purposes of this Final Order only, "Permitted Liens" shall include, without limitation, liens arising under Tex. Bus. & Com. Code § 9.343, the liens described in clauses (x) and (y) above and the valid, perfected, enforceable and unavoidable liens and security interests in any and all property of SN EF Maverick, LLC ("**SN Maverick**"), held by or otherwise granted to SN EF UnSub LP, as owner of working interests (the "**Maverick Working Interest Owner**") in and attributable to oil, gas, and other hydrocarbons produced from Maverick, Dimmit, Webb, and La Salle Counties, Texas (the "**Working Interest Hydrocarbons**"), including but not limited to all proceeds resulting from the resale of the Working Interest Hydrocarbons, and all accounts receivable on account of such Working Interest Hydrocarbons (the "**Maverick Working Interest Collateral**").

39. *Lienholders*.

(a) Notwithstanding anything in this Final Order to the contrary, to the extent that Archrock Partners Operating LLC, Archrock Services LP, the Maverick Working Interest Owner, and/or Tulsa Inspection Resources LLC (collectively, the "**Lienholders**" and individually, a "**Lienholder**") has a valid, perfected, enforceable and unavoidable prepetition lien or security interest on any tangible or intangible property of the Debtors as of the Petition Date including valid and non-avoidable liens in existence at the time of the Petition Date that are perfected subsequent thereto as permitted by Section 546(b) of the Bankruptcy Code (the "**Lienholder Collateral**"), such interest shall be entitled to adequate protection, solely to secure payment of an amount equal to the decrease, if any, in the value of such Lienholder's interests in such Lienholder Collateral, from and after the Petition Date, for any reason provided under the Bankruptcy Code, in each case as follows: (i) postpetition replacement liens against such Lienholder's Lienholder Collateral (and the proceeds thereof), and (ii) superpriority adequate protection claims (the "**Lienholder Adequate Protection Claims**") solely against the applicable Debtor that owns the assets upon which such Lienholder's prepetition lien attaches, subject in each case to (x) the Carve-Out, (y) the Discharge of First-Out Obligations, and (z) the relative priorities of all adequate protection liens and adequate protection claims among the Prepetition Secured Parties and each Lienholder shall be the same as the relative priorities among such parties that existed prior to the Petition Date. As additional adequate protection to any Lienholder that has a valid, enforceable, non-avoidable and perfected security interest or lien as of the Petition Date, including valid and non-avoidable liens in existence at the time of the Petition Date that are perfected subsequent thereto as permitted by Section 546(b) of the Bankruptcy Code, the Debtors shall pay in cash to such Lienholder the reasonable and documented professional fees, expenses and disbursements

solely to the extent such fees, expenses and disbursements are allowed by the Court under section 506(b) of the Bankruptcy Code. Notwithstanding anything in this Final Order to the contrary, each Lienholder reserves its rights to seek other adequate protection or relief in the future, and nothing in this Final Order shall preclude the exercise of such rights.

(b) Nothing contained herein or in the Interim Order shall (i) operate to expand, reduce, or alter any interests of the Debtors with respect to their Oil and Gas Properties (as defined in the DIP Credit Agreement), except with respect to the DIP Liens, or (ii) prime or otherwise alter any valid reversionary interests related to any of the Debtors' Oil and Gas Properties.

(c) Notwithstanding any other provisions included in the Interim Order or this Final Order, or any agreements approved thereby or hereby, any statutory liens on account of ad valorem property taxes (collectively, the "**Tax Liens**") of Atascosa County, Cameron County, City of Pleasanton, Cotulla Independent School District, Dewitt County, Dilley Independent School District, Duval County, Eagle Pass Independent School District, Freer Independent School District, Frio Hospital District, Goliad County, Goliad Independent School District, Gonzales County, Harris County, Hidalgo County, Jackson County, Jim Wells CAD, Kenedy County, La Salle County, Lasara Independent School District, Matagorda County, Pearsall Independent School District, Roma Independent School District, Smith County, Starr County, Willacy County, Zavala County, and other similarly situated taxing entities (the "**Texas Taxing Jurisdictions**"), shall not be primed by nor made subordinate to any liens granted to any party hereby to the extent such Tax Liens are valid, senior, perfected, and unavoidable, and all parties' rights to object to the priority, validity, amount and extent of the claims and liens asserted by the Texas Taxing Jurisdictions are fully preserved.

40. *Interim Order*. Except as specifically amended, supplemented, or otherwise modified hereby, all of the provisions of the Interim Order shall remain in effect and are hereby ratified by this Final Order. In the event of any inconsistency between the terms of this Final Order and the terms of the Interim Order, the terms of this Final Order shall govern.

41. *Successor CRO*. The Debtors shall, within 15 business days of any vacancy in the CRO position as a result of the termination of the retention of the CRO initially approved by the Bankruptcy Court, seek to appoint as successor CRO a person who is (i) reasonably acceptable to each of the Secured Ad Hoc Group, the Creditors' Committee, and the ad hoc group of unsecured noteholders represented by Quinn Emanuel Urquhart & Sullivan, LLP (the "**Unsecured Ad Hoc Group**" and, collectively with the Ad Hoc group and the Creditors' Committee, the "**Successor CRO Approval Parties**") and (ii) not related to Antonio R. Sanchez, Jr. (by consanguinity or affinity) and is not a current advisor, employee, officer, director, consultant, counsel, accountant, or other agent, in each case, of any Debtor or affiliate of any Debtor, *provided, however*, the Debtors may propose a current, third-party advisor or consultant as CRO with the consent of each of the Successor CRO Approval Parties.

Signed: January 22, 2020

Marvin Isgur
United States Bankruptcy Judge

Exhibit 1

Amended and Restated Senior Secured Debtor-in-Possession Term Loan Credit Agreement

AMENDED AND RESTATED

SENIOR SECURED DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT

Dated as of [•], 2020,

Among

SANCHEZ ENERGY CORPORATION,
a Debtor and Debtor-in-Possession under Chapter 11 of the Bankruptcy Code,
as Borrower,

The Several Lenders
from Time to Time Parties Hereto,

and

WILMINGTON SAVINGS FUND SOCIETY, FSB
as Administrative Agent and Collateral Agent

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AMENDED AND RESTATED SENIOR SECURED DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT (this "Agreement"), dated as of [•], 2020, among Sanchez Energy Corporation, a Delaware corporation and a debtor and debtor-in-possession under chapter 11 of the Bankruptcy Code (the "Borrower"), the Lenders from time to time party hereto and Wilmington Savings Fund Society, FSB ("WSFS"), as administrative agent and collateral agent for the Lenders.

WHEREAS, on August 11, 2019 (the "Petition Date"), the Borrower and certain of the Borrower's Subsidiaries (each, a "Debtor" and collectively, the "Debtors") filed voluntary petitions with the Bankruptcy Court initiating their respective cases that are pending under chapter 11 of the Bankruptcy Code (each case of the Borrower and each other Debtor, a "Case" and collectively, the "Cases") and have continued in the possession of their assets and the management of their business pursuant to Section 1107 and 1108 of the Bankruptcy Code;

WHEREAS, the Borrower, each of the other Credit Parties, certain of the Lenders, and the Administrative Agent are party to that certain Senior Secured Debtor-in-Possession Term Loan Credit Agreement, dated as of August 16, 2019 (the "Original DIP Agreement"), pursuant to which the Borrower requested that the Lenders provide the Borrower with a debtor-in-possession, superpriority, senior secured term loan credit facility (the "DIP Facility");

WHEREAS, the Borrower, each of the other Credit Parties, each of the Lenders party hereto, and the Administrative Agent have agreed to amend and restate the Original DIP Agreement in its entirety to provide for certain amendments to the Original DIP Agreement, including the amendment of the DIP Facility to provide for (a) a new money multiple draw term loan credit facility in an aggregate principal amount not to exceed $150,000,000 (the "New Money Facility"), which shall consist of (i) the Initial New Money Loans in an aggregate principal amount of $50,000,000, and (ii) the Final New Money Loans in an aggregate principal amount not to exceed $100,000,000, in each case, subject to the terms and conditions set forth herein, and (b) subject to, and upon the entry of, the Final Order, the Roll-Up Loans in an aggregate principal amount equal to $50,000,000 (the "Roll-Up Facility"), in each case to be afforded the Liens and priority set forth in the Orders and the other Loan Documents;

WHEREAS, by execution and delivery of this Agreement and the other Loan Documents, the Guarantors shall guarantee the Obligations and the Borrower and each Guarantor shall secure all of the Obligations by granting to the Collateral Agent, for the benefit of the Secured Parties, a Lien and security interest in respect of, and on, substantially all of such Credit Party's Property, in each case, on and subject to the terms and priorities set forth in the Interim Order, the Final Order, and the other Loan Documents;

WHEREAS, all of the claims and the Liens granted under the Orders and the Loan Documents to the Secured Parties in respect of the DIP Facility shall be subject to the Carve-Out; and

WHEREAS, the Borrower and the Guarantors are engaged in related businesses, and each Guarantor will derive substantial direct and indirect benefit from the making of the extensions of credit under this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree that the Original DIP Agreement is hereby amended and restated in its entirety as follows:

ARTICLE I

DEFINITIONS

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

"Acceptable Plan of Reorganization" means a plan of reorganization that provides for the (i) termination of the New Money Commitments and (ii) payment of all the Obligations (other than contingent indemnification obligations for which no claims have been made) indefeasibly in full in cash on or before the effective date of such plan.

"Acquisition" means any acquisition, or any series of related acquisitions, consummated on or after the date of this Agreement, by which any Credit Party or any of its Subsidiaries (a) acquires any business or all or substantially all of the assets of any Person, or business unit, line of business or division thereof, whether through purchase of assets, exchange, issuance of stock or other equity or debt securities, merger, reorganization, amalgamation, division or otherwise or (b) directly or indirectly acquires (in one (1) transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the securities of a corporation which have ordinary voting power for the election of members of the board of directors or the equivalent governing body (other than securities having such power only by reason of the happening of a contingency) or a majority (by percentage or voting power) of the outstanding ownership interests of a partnership or limited liability company.

"Adjusted LIBO Rate" means, for any Interest Period, an interest rate *per annum* (rounded upwards, if necessary, to the next 1/100 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"Administrative Agent" means WSFS, as the administrative agent for the Lenders under this Agreement and the other Loan Documents, or any successor administrative agent appointed in accordance with the provisions of Section 8.09.

"Administrative Questionnaire" shall have the meaning set forth in Section 9.06(b)(ii)(D).

"Affected Interest Period" shall have the meaning set forth in Section 2.08.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with such Person. A Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise. "Controlling", "controlling" and "controlled" shall have meanings correlative thereto.

"Agent Fee Letter" means the letter agreement between the Borrower and WSFS dated as of the Closing Date, as amended, restated, supplemented or otherwise modified from time to time.

"Agents" means the Administrative Agent and the Collateral Agent.

"Aggregate New Money Commitments" means, at any time, the sum of the aggregate amount of the New Money Commitments of all of the New Money Lenders at such time.

"Agreement" shall have the meaning set forth in the preamble to this Agreement, as amended, restated, supplemented or otherwise modified from time to time.

"Anti-Corruption Laws" shall have the meaning set forth in Section 3.15.

"Applicable Law" means, as to any Person, all applicable Laws binding upon such Person or to which such a Person is subject.

"Applicable Margin" means a *per annum* rate of eight percent (8.0%).

"Applicable Percentage" means, with respect to any Lender at any time, the percentage of the Aggregate New Money Commitments represented by such New Money Lender's New Money Commitment at such time; provided that, at any time a Defaulting Lender shall exist, "Applicable Percentage" shall mean the percentage of the Aggregate New Money Commitments (disregarding any Defaulting Lender's New Money Commitment at such time, but subject to Section 2.17) represented by such New Money Lender's New Money Commitment. If the Aggregate New Money Commitments have expired, the Applicable Percentages shall be determined based upon the Aggregate New Money Commitments most recent in effect, giving effect to any Assignments.

"Applicable Subsidiary" shall have the meaning set forth in Section 7.01(f).

"Approved Budget" shall have the meaning set forth in Section 5.01(g).

"Approved Fund" shall have the meaning set forth in Section 9.06(b).

"Assignee" shall have the meaning set forth in Section 9.06(b)(i).

"Assignment and Acceptance" means an assignment and acceptance entered into by a Lender and an Assignee, and accepted by the Administrative Agent, substantially in the form of Exhibit A or such other form as shall be approved by the Administrative Agent.

"Attributable Indebtedness" means with respect to a sale and leaseback transaction, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such sale and leaseback transaction including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP; provided that, if such sale and leaseback transaction results in a Capitalized Lease Obligation, the amount of Indebtedness represented

thereby will be determined in accordance with the definition of "Capitalized Lease Obligation." As used in the preceding sentence, the "net rental payments" under any lease for any period shall mean the sum of rental and other payments required to be paid with respect to such period by the lessee thereunder, excluding any amounts required to be paid by such lessee on account of maintenance and repairs, insurance, taxes, assessments, water rates or similar charges. In the case of any lease that is terminable by the lessee upon payment of penalty, such net rental payment shall also include the amount of such penalty, but no rent shall be considered as required to be paid under such lease subsequent to the first date upon which it may be so terminated.

"Authorized Officer" means as to any Person, (a) the President, (b) the Chief Executive Officer, (c) the Chief Financial Officer, (d) the Chief Operating Officer, (e) the Treasurer, (f) the Assistant or Vice Treasurer, (g) the Vice President-Finance, (h) the General Counsel, (i) the Chief Restructuring Officer, (j) any manager, managing member or general partner, in each case, of such Person, and (k) any other senior officer designated as such in writing to the Administrative Agent by such Person (the officers described in clauses (a) through (e), (h) and (i), the "Responsible Officers"). Any document delivered hereunder that is signed by an Authorized Officer shall be conclusively presumed to have been authorized by all necessary corporate, limited liability company, partnership and/or other action on the part of the Borrower or any other Credit Party and such Authorized Officer shall be conclusively presumed to have acted on behalf of such Person.

"Avoidance Action" means the Debtors' claims and causes of action under sections 502(d), 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code.

"Avoidance Proceeds" means any proceeds or property recovered, unencumbered or otherwise in connection with successful Avoidance Actions, whether by judgment, settlement or otherwise.

"Backstop Fee" shall have the meaning set forth in Section 2.11(c).

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

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

"Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532.

"Bankruptcy Court" means the United States Bankruptcy Court for the Southern District of Texas, or any appellate court having jurisdiction over the Cases from time to time.

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

"Board of Directors" means, as to any Person, the board of directors or other governing body of such Person, or if such Person is owned or managed by a single entity, the board of directors or other governing body of such entity.

"Borrower" shall have the meaning set forth in the preamble to this Agreement.

"Borrower Materials" shall have the meaning set forth in Section 9.17.

"Borrowing" means a group of New Money Loans made on a single date.

"Budget Variance Report" means a variance report setting forth in each case for the four-week period ended on the immediately preceding Friday prior to the delivery thereof (a "Test Period"), the variance (as compared to the Approved Budget) of the aggregate operating disbursements (excluding professional fees and expenses, and interest and fees accrued under the DIP Facility, and adequate protection payments) made by the Debtors, certified by an Authorized Officer of the Borrower. For purposes of determining variances, for weeks ending prior to the beginning of the Approved Budget then in effect, it shall be assumed that the budgeted amounts for the period prior to the period covered by the Approved Budget then in effect are the actual reported amounts for such period.

"Business Day" means any day excluding Saturday, Sunday and any other day on which banking institutions in New York City or Houston, Texas are authorized by law or other governmental actions to close; provided that, when used in the definition of "LIBO Rate," the term "Business Day" means any such day that is also a day on which dealings in U.S. Dollar deposits are conducted by and between banks in the London interbank market.

"Capital Stock" means:

(a) in the case of a corporation, corporate stock or shares;

(b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"Capitalized Lease Obligation" means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) in accordance with GAAP.

"Carve-Out" shall have the meaning set forth in (a) prior to the Final Order Entry Date, the Interim Order or (b) on or after the Final Order Entry Date, the Final Order, as applicable.

"Cases" shall have the meaning set forth in the recitals to this Agreement.

"Cash Collateral" shall have the meaning set forth in (a) prior to the Final Order Entry Date, the Interim Order or (b) on or after the Final Order Entry Date, the Final Order, as applicable.

"Cash Equivalents" means:

(a) United States dollars;

(b) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (provided that the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than one year from the date of acquisition;

(c) marketable general obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one (1) year from the date of acquisition thereof and, at the time of acquisition thereof, having a credit rating of "A" or better from either S&P or Moody's;

(d) certificates of deposit, demand deposits and eurodollar time deposits with maturities of one (1) year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one (1) year and overnight bank deposits, in each case, with any domestic commercial bank having capital and surplus in excess of $500,000,000;

(e) repurchase obligations with a term of not more than seven (7) days for underlying securities of the types described in clauses (b), (c) and (d) above entered into with any financial institution meeting the qualifications specified in clause (d) above;

(f) commercial paper having one of the two highest ratings obtainable from Moody's or S&P and, in each case, maturing within one (1) year after the date of acquisition;

(g) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (f) of this definition; and

(h) marketable short-term money market and similar securities having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively, and in each case maturing within twenty four (24) months after the date of the creation thereof.

"Cash Management Order" means one or more orders of the Bankruptcy Court, including any interim and/or final orders, entered in the Cases, together with all extensions, modifications and amendments thereto, in form and substance reasonably satisfactory to the Required Lenders and otherwise consistent with the Loan Documents, which, among other matters, authorizes the Debtors to maintain their existing cash management system.

"Cash Management Services" means any of the following to the extent not constituting a line of credit (other than an overnight overdraft facility that is not in default): ACH transactions, treasury and/or cash management services, including, without limitation, controlled disbursement services, overdraft facilities, foreign exchange facilities, deposit and other accounts and merchant services.

"Casualty Event" means, with respect to any Collateral, (a) any damage to, destruction of, or other casualty or loss involving, any property or asset or (b) any seizure, condemnation, confiscation or taking under the power of eminent domain of, or any requisition of title or use of, or relating to, or any similar event in respect of, any property or asset.

"Change in Law" means (a) the adoption of any law, treaty, order, policy, rule or regulation after the Interim Facility Effective Date, (b) any change in any law, treaty, order, policy, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Interim Facility Effective Date or (c) compliance by any Lender with any guideline, request, directive or order enacted or promulgated after the Interim Facility Effective Date by any central bank or other governmental or quasigovernmental authority (whether or not having the force of law); provided that notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) and all guidelines, requests, directives, orders, rules and regulations adopted, enacted or promulgated in connection therewith shall be deemed to have gone into effect after the Interim Facility Effective Date regardless of the date adopted, enacted or promulgated and shall be included as a Change in Law only to the extent a Lender is imposing applicable increased costs or costs in connection with capital adequacy requirements similar to those described in clauses (a)(i) and (b) of Section 2.09 generally on other borrowers of loans under United States credit facilities; provided that no Lender shall be required to disclose any confidential or proprietary information in connection therewith.

"Change of Control" means (a) any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder, but excluding any employee benefit plan of such Person or its Subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in rules 13d-3 and 13d-5 of the Securities Exchange Act of 1934) of fifty one percent (51%) or more of the equity securities of the Borrower entitled to vote for members of the Board of Directors of the Borrower or (b) any Restricted Subsidiary fails to be a Wholly Owned Subsidiary of the Borrower.

"Chief Restructuring Officer" means Mohsin Y. Meghji or any successor appointed consistent with the terms of the Final Order.

"Closing Date" means the date of this Agreement.

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

"Collateral" shall have the meaning provided for the term "DIP Collateral" in the Interim Order (and, if applicable, the Final Order) and shall include any and all assets securing or intended to secure any or all of the Obligations.

"Collateral Agent" means WSFS, as collateral agent for the benefit of the Secured Parties, or any successor collateral agent appointed in accordance with the provisions of Section 8.09.

"Commitment Fee Rate" means a *per annum* rate of one-half of one percent (0.5%).

"Confidential Information" shall have the meaning set forth in Section 9.13.

"Contractual Requirement" shall have the meaning set forth in Section 3.03.

"Credit Party" means each of the Borrower and the Guarantors.

"CRO Order" means that certain order of the Bankruptcy Court, dated December 9, 2019, appointing the Chief Restructuring Officer.

"Debtor" or "Debtors" shall have the meaning set forth in the recitals to this Agreement.

"Debtor Relief Laws" means the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States of America or other applicable jurisdictions from time to time in effect.

"Dedicated Cash Receipts" means all cash received by or on behalf of the Borrower or any Restricted Subsidiary with respect to the following: (a) any amounts payable under or in connection with any Oil and Gas Properties; (b) cash representing operating revenue earned by the Borrower or any Restricted Subsidiary; (c) proceeds from Loans; and (d) any other cash received by the Borrower or any Restricted Subsidiary from whatever source (including amounts received in respect of the Liquidation of any Hedge Agreement) other than (i) liability insurance proceeds required to be paid directly to third parties in the ordinary course of business and consistent with past practices, and (ii) payments made to the Borrower or any Restricted Subsidiary for the account of third parties in the ordinary course of business and consistent with past practices under or in connection with joint operating agreements or similar joint development agreements.

"Default" means any event which is, or after notice or passage of time or both would be, an Event of Default.

"Defaulting Lender" means at any time, (a) any New Money Lender that has failed for two (2) or more Business Days to comply with its obligations under this Agreement to make a New Money Loan (a "funding obligation"), unless such New Money Lender has notified the Administrative Agent and the Borrower in writing that such failure is the result of such New Money Lender's determination that one or more conditions precedent to funding has not been satisfied (which conditions precedent, together with the applicable default, if any, will be specifically identified in such writing), (b) any New Money Lender that has notified the Administrative Agent and the Borrower in writing, or has stated publicly, that it does not intend to comply with its funding obligations hereunder, unless such writing or statement states that such position is based on such New Money Lender's determination that one or more conditions precedent to funding cannot be satisfied (which conditions precedent, together with the applicable default, if any, will be specifically identified in such writing or public statement), and (c) any New Money Lender that has, for three (3) or more Business Days after written request of the Administrative Agent, failed to confirm in writing to the Administrative Agent that it will comply with its prospective funding obligations hereunder (provided that such New Money Lender will cease to be a Defaulting Lender pursuant to this clause (c) upon the Administrative Agent's and the Borrower's receipt of such written confirmation). Any determination by the Administrative

Agent that a New Money Lender is a Defaulting Lender under any of clauses (a) through (c) above will be conclusive and binding absent manifest error, and such New Money Lender will be deemed to be a Defaulting Lender upon notification by the Administrative Agent to the Borrower and the Lenders.

"Deposit Account" shall have the meaning assigned to such term in the UCC.

"DIP Budget" means (a) initially, the Initial DIP Budget and (b) thereafter, covering the period commencing on the first day of each four-week anniversary thereafter, a rolling 13-week cash flow in a form substantially consistent with the Initial DIP Budget, setting forth the Debtors' projected cash disbursements during such 13-week period.

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

"Disclosed Matters" shall have the meaning set forth in the definition of "Material Adverse Effect".

"Disposition" shall have the meaning set forth in Section 6.07.

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

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

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

"Environmental Claims" means any and all written actions, suits, orders, decrees, demands, demand letters, complaints, claims, liens, notices of noncompliance, restrictions on use, operations or transferability, violation or potential responsibility or investigation (other than internal reports prepared by or on behalf of the Borrower or any of the Subsidiaries (a) in the ordinary course of such Person's business or (b) as required in connection with a financing transaction or an acquisition or disposition of real estate) or proceedings arising under or based upon any Environmental Law or any Environmental Permit (hereinafter, "Claims"), including, without limitation, (i) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law or for plugging and abandonment or other decommissioning obligations and (ii) any and all Claims by any Person seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief regarding (a) the presence, release or threatened release of Hazardous Materials or (b) any alleged injury or threat of injury to health or safety (to the extent relating to human exposure to Hazardous Materials), or the

environment including, without limitation, ambient air, surface water, groundwater, land surface and subsurface strata and natural resources such as wetlands.

"Environmental Law" means any applicable Federal, state, foreign or local statute, law, rule, regulation, ordinance, code and rule of common law now or hereafter in effect and in each case as amended, and any binding judicial or administrative interpretation thereof, including any binding judicial or administrative order, consent decree or judgment, relating to the protection of the environment, including, without limitation, ambient air, surface water, groundwater, land surface and subsurface strata and natural resources such as wetlands, or human health or safety (to the extent relating to human exposure to Hazardous Materials).

"Environmental Permit" means any permit, approval, identification number, license or other authorization required under any Environmental Law.

"Equity Interests" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" means each trade or business (whether or not incorporated) that together with the Borrower would be deemed to be a "single employer" within the meaning of Section 414(b) or (c) of the Code (and Section 414(m) and (o) of the Code solely for purposes of Section 302 of ERISA and Section 412 of the Code).

"ERISA Event" means (a) a Reportable Event with respect to a Plan; (b) a withdrawal by the Borrower or any ERISA Affiliate from a Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or was treated as a substantial employer due to a substantial cessation of operations under Section 4062(e) of ERISA; (c) the failure of the Borrower or any ERISA Affiliate to make, by its due date, a required installment under Section 430(j) of the Internal Revenue Code with respect to any Plan; (d) a failure to satisfy the minimum funding standard under Section 412 of the Code or Section 302 of ERISA, or the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard, in each case with respect to a Plan, whether or not waived, or a failure to make any required contribution to a Multiemployer Plan pursuant to Section 431 or 432 of the Code; (e) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan within the meaning of Section 4203 or 4205 of ERISA or notification that a Multiemployer Plan is insolvent within the meaning of Title IV of ERISA or is in endangered or critical status, within the meaning of Section 305 of ERISA; (f) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or the treatment of a Multiemployer Plan amendment as a termination under 4041A of ERISA or the commencement of proceedings by the PBGC to terminate a Plan; (g) the appointment of a trustee to administer any Plan; (h) the imposition of any material liability under Title IV of ERISA, including the imposition of a lien under Section 412 or 430(k) of the Code or Section 303(k) or 4068 of ERISA on any property (or rights to property, whether real or personal) of the Borrower or any ERISA Affiliate, but excluding PBGC premiums

due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate; (i) a determination that any Plan is, or is expected to be, in "at-risk" status (within the meaning of Section 303(i)(4)(A) of ERISA or Section 430(i)(4)(A) of the Code); or (j) the occurrence of a non-exempt prohibited transaction with respect to any Plan maintained or contributed to by any Borrower (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could result in material liability to the Borrower or any of its Subsidiaries.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Event of Default" shall have the meaning set forth in Section 7.01.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Excluded Account" means (a) each account all of the deposits in which consist of amounts utilized to fund payroll, employee benefit or tax obligations of the Credit Parties, in each case, to the extent used solely for such purposes and funded for such purposes in the ordinary course of business and (b) fiduciary, trust or escrow accounts holding only amounts owned by third parties.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or New Money Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.13, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.13(g) and (d) any withholding Taxes imposed under FATCA.

"Existing ABL Agreement" means the Third Amended and Restated Credit Agreement, dated as of February 14, 2018, among Sanchez Energy Corporation, as borrower, Royal Bank of Canada, as administrative agent and collateral agent, RBC Capital Markets, as arranger, and the lenders party thereto, as amended and in effect on the Petition Date.

"Existing ABL Facility" means the financing facility evidenced by the Existing ABL Agreement.

"Existing First Lien Indenture" means the Indenture for the issuance of 7.25% Senior Secured First Lien Notes, dated as of February 14, 2018, among the Borrower, the

guarantors party thereto, Delaware Trust Company, as trustee, and Royal Bank of Canada, as collateral trustee, as amended and in effect on the Petition Date.

"Existing First Lien Notes" means promissory notes issued by the Borrower under the Existing First Lien Indenture.

"Existing Indenture Trustee" means the trustee designated in such capacity under the Existing First Lien Indenture and any successor thereto.

"Exit Fee" shall have the meaning set forth in Section 2.11(d).

"Fair Market Value" means, with respect to any asset or property, the price which could be negotiated in an arm's-length transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction.

"Farm-In Agreement" means an agreement whereby a Person agrees to pay all or a share of the drilling, completion or other expenses of one or more exploratory or development wells (which agreement may be subject to a maximum payment obligation, after which expenses are shared in accordance with the working or participation interests therein or in accordance with the agreement of the parties) or perform the drilling, completion or other operation on such well or wells as all or a part of the consideration provided in exchange for an ownership interest in an Oil and Gas Property (provided that the counterparties to such agreement shall not be an Affiliate of any Credit Party).

"Farm-Out Agreement" means a Farm-In Agreement, viewed from the standpoint of the party that transfers an ownership interest to another.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, and any agreements entered into pursuant to Section 1471(b)(1) of the Code (or any amended or successor version described above) and any intergovernmental agreements (or related legislation or official administrative rules or practices) implementing the foregoing.

"Federal Funds Rate" means, for any period, a fluctuating interest rate *per annum* equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day for such transactions received by the Administrative Agent from three major U.S. banking institutions of recognized standing selected by it.

"Final Facility Effective Date" shall have the meaning assigned to such term in Section 4.02.

"Final New Money Loans" shall have the meaning set forth in Section 2.01(c).

"Final Order" means an order of the Bankruptcy Court in substantially the form of the Interim Order (with only such modifications thereto as are reasonably necessary to convert the Interim Order to a final order and such other modifications as are reasonably satisfactory in form and substance to the Administrative Agent, the Borrower and the Required Lenders and otherwise consistent with the Loan Documents).

"Final Order Entry Date" means the date on which the Final Order is entered by the Bankruptcy Court.

"Financial Officer" of any Person means the Chief Financial Officer, principal accounting officer, Treasurer or Assistant Treasurer of such Person.

"Five-Year Strip Price" means, as of the date that is ten (10) days prior to delivery of a Reserve Report or other information and materials required to be delivered pursuant to the terms of this Agreement, (a) for the 60-month period commencing with the month in which such date occurs, as quoted on the New York Mercantile Exchange (the "NYMEX") and published in a nationally recognized publication for such pricing as selected by the Required Lenders (as such prices may be corrected or revised from time to time by the NYMEX in accordance with its rules and regulations), the corresponding monthly quoted futures contract price for months 0-60, and (b) for periods after such 60 month period, the average corresponding monthly quoted futures contract price for the months of the final year in the 60 month period, and in each instance of (a) and (b) shall reflect the price of the monthly future contract prices for each available Hydrocarbon category included in the Reserve Report for the volumes of each type of Hydrocarbon produced and delivered at a particular location, adjusted for the basis differential between the actual delivery location and the reference price delivery location, and adjusted for any price differentials between the actual product delivered and the reference product, in each case using methodology consistent with past practices and in good faith based on observable differentials (which utilized differentials shall be volume weighted on the basis of current and expected future arrangements for the sale of production, calculated by the average actual differentials for the last twelve months; provided, however, that (A) if the NYMEX no longer provides futures contract price quotes for sixty (60) month periods, the longest period of quotes of less than sixty (60) months shall be used and (B) if the NYMEX no longer provides such futures contract quotes or has ceased to operate, the Required Lenders shall, in their reasonable discretion, designate another nationally recognized commodities exchange to replace the NYMEX for purposes of the references to the NYMEX in this definition.

"Flood Insurance Laws" means, collectively, (i) the National Flood Insurance Act of 1968, as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973, as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994, as now or hereafter in effect or any successor statute thereto and (iv) the Flood Insurance Reform Act of 2004, as now or hereafter in effect or any successor statute thereto.

"Foreign Lender" means a Lender that is not a U.S. Person.

"GAAP" means generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the

Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect from time to time. For the purposes of this Agreement, the term "consolidated" with respect to any Person means such Person consolidated with its Restricted Subsidiaries. Notwithstanding the foregoing, for purposes of determination of, and other issues relating to, Capitalized Lease Obligations and operating leases, and the distinction between such types of obligations, under or in connection with the Loan Documents, "GAAP" shall refer to the Borrower's accounting treatment of capital leases and operating leases as was in effect on December 15, 2018.

"Governmental Authority" means the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"guarantee" means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including, without limitation, letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

"Guarantee" means any guarantee of the Obligations by any Guarantor, substantially in the form attached hereto as Exhibit G, with such changes as the Administrative Agent (or the Required Lenders) and the Borrower shall reasonably agree, as may be amended, restated, supplemented or otherwise modified from time to time in accordance with its terms and in accordance with this Agreement.

"Guarantee Obligations" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, or (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); provided, however, that the term "Guarantee Obligations" shall not include endorsements of instruments for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Interim Facility Effective Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee Obligation shall be deemed to be an amount equal to the stated or determinable amount of the Indebtedness in respect of which such Guarantee Obligation is made or, if not stated or determinable, the

maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith.

"Guarantors" means each Restricted Subsidiary of the Borrower.

"Hazardous Materials" means any substance regulated or as to which liability might arise under any applicable Environmental Law including: (a) any Hydrocarbons, petroleum or petroleum products, natural gas or natural gas liquids, radioactive materials, explosives, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, radon gas or infectious or medical wastes, (b) any chemicals, compounds, materials, by-products, wastes or substances defined as or included in the definition of "hazardous substances", "hazardous waste", "hazardous materials", "solid waste", "extremely hazardous waste", "restricted hazardous waste", "toxic substances", "toxic pollutants", "toxic waste", "contaminants", "pollutants", or words of similar import in each case, under any applicable Environmental Law and (c) any other chemical, compound, material, by-product, waste or substance, which is prohibited or limited or regulated by any Environmental Law.

"Hedge Agreements" means (a) any agreement (including each confirmation under any master agreements) with respect to any swap, cap, collar, put, call, floor, forward (including Physical Hedges), future or derivative transaction or option or similar agreement, whether exchange traded, "over the counter" or otherwise, involving, or settled by reference to, one or more interest rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions, (b) all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, future contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, total return swap, credit spread transaction, repurchase transaction, reserve repurchase transaction, securities lending transaction, weather index transaction, spot contracts, fixed-price physical delivery contracts, whether or not exchange traded, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (c) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement. Notwithstanding the foregoing, the following shall not be considered Hedge Agreements: (i) agreements or obligations to physically sell any commodity at any index-based price shall not be considered Hedge Agreements and (ii) phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or its Subsidiaries.

"Hedging Obligations" means, with respect to any Person, the obligations of such Person under Hedge Agreements.

"Hydrocarbon Interests" means all rights, titles, interests and estates now or hereafter acquired in and to oil and gas leases, oil, gas and mineral leases, or other liquid or gaseous hydrocarbon leases, mineral fee interests, overriding royalty and royalty interests, net profit interests and production payment interests, including any reserved or residual interests of whatever nature.

"Hydrocarbons" means oil, gas, casinghead gas, drip gasoline, natural gasoline, condensate, distillate, liquid hydrocarbons, gaseous hydrocarbons and all products refined or separated therefrom.

"Indebtedness" means, with respect to any Person:

(a) the principal and premium (if any) of any indebtedness of such Person, whether or not contingent, (i) in respect of borrowed money, (ii) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without duplication, reimbursement agreements in respect thereof), (iii) representing the deferred and unpaid purchase price of any property or services (except accounts payable and accrued expenses incurred from time to time in the ordinary course of business in connection with attaining goods or services not overdue by more than sixty (60) days after the date of invoice or that are being contested in good faith by appropriate proceedings and for which the applicable Credit Party maintains adequate reserves in accordance with GAAP), (iv) in respect of Capitalized Lease Obligations, (v) Attributable Indebtedness or (vi) representing any Hedging Obligations; and

(b) to the extent not otherwise included, any Guarantee Obligation of such Person to be liable for, or to pay, as obligor, guarantor or otherwise, the obligations referred to in clause (a) of another Person (other than by endorsement of negotiable instruments for collection in the ordinary course of business);

provided, however, that notwithstanding the foregoing or any other provision of this Agreement, Indebtedness shall be deemed not to include: (1) deferred or prepaid revenues; (2) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty, purchase price adjustment or other unperformed obligations of the respective seller, in each case incurred or assumed in connection with the disposition or acquisition of any business, assets or Capital Stock of a Subsidiary in a transaction permitted by this Agreement, other than guarantees of Indebtedness incurred or assumed by any Person acquiring all or any portion of such business, assets or Subsidiary for the purpose of financing such acquisition; (3) any obligation of a Person in respect of a Farm-In Agreement or similar arrangement whereby such Person agrees to pay all or a share of the drilling, completion or other expenses of an exploratory or development well (which agreement may be subject to a maximum payment obligation, after which expenses are shared in accordance with the working or participation interest therein or in accordance with the agreement of the parties) or perform the drilling, completion or other operation on such well in exchange for an ownership interest in an oil or gas property; (4) in-kind obligations relating to net oil, natural gas liquids or natural gas balancing positions arising in the ordinary course of business; (5) in the case of the Borrower and its Restricted Subsidiaries that are Guarantors and Debtors, intercompany liabilities; (6) any indebtedness that has been defeased in accordance with GAAP or defeased pursuant to the deposit of cash or Cash Equivalents (in an amount sufficient to satisfy all such indebtedness at maturity or redemption, as applicable, and all payments of interest and

premium, if any) in a trust or account created or pledged for the sole benefit of the holders of such indebtedness, and subject to no other Liens, and the other applicable terms of the instrument governing such indebtedness; (7) any obligations arising from agreements of a Person providing for indemnification, guarantees, adjustment of purchase price, holdbacks, contingent payment obligations based on a final financial statement or performance of acquired or disposed of assets or similar obligations (other than guarantees of Indebtedness), in each case incurred or assumed by such Person in connection with the acquisition or disposition of assets (including through mergers, consolidations or otherwise); (8) any unrealized losses or charges in respect of Hedging Obligations (including those resulting from application of Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 815); (9) all obligations under or in connection with contracts and other obligations, agreements, instruments or arrangements described in clauses (a), (b), (l), (o), (p), and (q) of the definition of "Permitted Liens"; (10) obligations arising with respect to Cash Management Services; (11) contingent obligations incurred in the ordinary course of business and not in respect of borrowed money; and (12) indebtedness, the proceeds of which are funded into an escrow or other trust arrangement pending the satisfaction of one or more conditions, unless and until such proceeds are released to the Borrower or any Restricted Subsidiary.

Notwithstanding anything in this Agreement to the contrary, Indebtedness shall not include, and shall be calculated without giving effect to, the effects of Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 815 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness; and any such amounts that would have constituted "Indebtedness" under this Agreement but for the application of this sentence shall be deemed not to be an incurrence of Indebtedness under this Agreement.

"Indemnified Liabilities" shall have the meaning set forth in Section 9.05(d).

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

"Industry Investment" means Investments made in the ordinary course of, or of a nature that is or shall have become customary in, the Oil and Gas Business, either generally or in the particular geographical location or industry segment in which such Investment is made, in each case as determined in good faith by the Company, including without limitation investments or expenditures for actively exploiting, exploring for, acquiring, developing, producing, processing, gathering, marketing or transporting Hydrocarbons (including with respect to plugging and abandonment) through agreements, transactions, interests or arrangements that permit one to share risk or costs, comply with regulatory requirements regarding local ownership or satisfy other objectives customarily achieved through the conduct of the Oil and Gas Business jointly with third parties who are not Affiliates of any Credit Party, including without limitation: (1) direct or indirect ownership interests in crude oil, natural gas, other Hydrocarbon properties or any interest therein, gathering, transportation, processing, storage or related systems, or ancillary real property interests and interests therein; and (2) the entry into and Investments and expenditures in the form of or pursuant to operating agreements, joint ventures, processing agreements, working interests, royalty

interests, mineral leases, Farm-In Agreements, Farm-Out Agreements, development agreements, production sharing agreements, production sales and marketing agreements, production payment agreements, area of mutual interest agreements, contracts for the sale, purchase, transportation, gathering, processing, marketing, storing or exchange of crude oil and natural gas and related Hydrocarbons and minerals, unitization agreements, pooling arrangements, joint bidding agreements, service contracts, joint venture agreements, partnership agreements (whether general or limited), incentive compensation programs on terms that are customary in the Oil and Gas Business for geologists, geophysicists and other providers of technical services to the Company or any Restricted Subsidiary (so long as such geologist, geophysicist or other provider is not an Affiliate of a Credit Party) or other similar or customary agreements with Persons who are not Affiliates of any Credit Party, transactions, properties, interests or arrangements, and Investments and expenditures in connection therewith or pursuant thereto, in each case made or entered into in the ordinary course of, or of a nature that is or shall have become customary in, the Oil and Gas Business.

"Information" shall have the meaning set forth in Section 3.08.

"Initial DIP Budget" means the DIP Budget delivered on or prior to the Interim Facility Effective Date, attached hereto as Exhibit J.

"Initial Lenders" means the Lenders party to this Agreement as of the Interim Facility Effective Date.

"Initial New Money Loans" shall have the meaning set forth in Section 2.01(b).

"Interest Payment Date" means (a) with respect to any Roll-Up Loan, the last Business Day of each calendar month and (b) with respect to any New Money Loan, the last day of the Interest Period applicable to such Borrowing.

"Interest Period" means with respect to any Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one (1) month thereafter; provided, that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (b) any Interest Period pertaining to a Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Interim Facility Cap" means, as of any date of determination, $50,000,000.

"Interim Facility Effective Date" shall have the meaning assigned to such term in Section 4.01.

"Interim Order" means an order of the Bankruptcy Court, in the form set forth in Exhibit C, authorizing on an interim basis, among other things, the Loans and the Transactions contemplated by this Agreement, with only such modifications as are reasonably satisfactory to the Administrative Agent and the Required Lenders and otherwise consistent with the Loan Documents.

"Interim Order Entry Date" means the date on which the Interim Order is entered by the Bankruptcy Court.

"Investments" with respect to any Person, means that such Person (a) purchases, owns, invests in or otherwise acquires (in one transaction or a series of transactions), by division or otherwise, directly or indirectly, any Equity Interests, interests in any partnership or joint venture (including the creation or capitalization of any Subsidiary), evidence of Indebtedness or other obligation or security, substantially all or a portion of the business or assets of any other Person or any other investment or interest whatsoever in any other Person, (b) makes any Acquisition or (c) makes or holds, directly or indirectly, any loans, advances or extensions of credit to, or any investment in cash or by delivery of Property in, any Person.

"IRS" shall have the meaning set forth in Section 2.13(e)(i).

"Lender" means each financial institution listed on Schedule 2.01, and any Person that becomes a "Lender" hereunder pursuant to Section 9.06, other than any such Person that has ceased to be a party hereto pursuant to an Assignment and Acceptance in accordance with Section 9.06.

"Lending Office" means, as to any Lender, the applicable branch, office, Affiliate or account (if appropriate) of such Lender designated by such Lender to make Loans to the Borrower.

"LIBO Rate" means with respect to for any Interest Period the greater of (a) two percent (2.00%) *per annum* and (b) the rate equal to the London interbank offered rate as administered by ICE Benchmark Administration Limited (or any other Person that takes over the administration of such rate) two (2) Business Days prior to the commencement of such Interest Period.

"Lien" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or similar encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the UCC (or equivalent statutes) of any jurisdiction).

"Liquidity" means, as of any date of determination, without duplication, the aggregate amount of unrestricted cash and Cash Equivalents of the Credit Parties properly classified as "unrestricted cash" on the consolidated balance sheet of the Borrower for purposes of GAAP as of such date (in each case, other than any restriction relating to the DIP Facility), which are subject to a perfected Lien and security interest in favor of the Collateral Agent pursuant to the Loan Documents or the Interim Order, and, once entered, the Final Order, as applicable.

"Loan Documents" means this Agreement, the Guarantee, the Agent Fee Letter and any promissory note issued by the Borrower under this Agreement.

"Loans" means, individually, any New Money Loan made or Roll-Up Loan deemed made by any Lender pursuant to this Agreement, and collectively, the New Money Loans made and Roll-Up Loans deemed made by the Lenders to the Borrower pursuant to this Agreement.

"Material Adverse Effect" means a material adverse change in, or material adverse effect on, (a) the business, operations, Property, or condition (financial or otherwise) of the Borrower and any of its Subsidiaries, taken as a whole, (b) the ability of any Credit Party to perform any of its obligations under any Loan Document (including, without limitation, payment and performance of the Obligations), (c) the validity or enforceability of any Loan Document or the Obligations, and (d) the rights and remedies, or benefits available to the Administrative Agent, the Collateral Agent, or any Lender under any Loan Document; provided that (i) nothing disclosed (x) in any SEC filings made by the Borrower or any of its Subsidiaries prior to the Petition Date, (y) in any disclosure schedule to any Loan Document or (z) in writing to the Administrative Agent or the Lenders prior to the Petition Date (clause (x), (y) and (z), collectively, the "Disclosed Matters"), in any such case, shall in and of itself constitute a Material Adverse Effect, (ii) effects resulting from any change, event or occurrence arising, individually or in the aggregate, from events that could reasonably be expected to result from the filing or commencement of the Cases or the commencement, continuation or prosecution of the Cases shall not in and of themselves constitute a Material Adverse Effect, (iii) the timely and successful exercise of any challenge rights with respect to any prepetition obligations in accordance with the Interim Order or the Final Order, as applicable, shall not in and of itself constitute a Material Adverse Effect, (iv) changes that generally affect the Oil and Gas Business shall not in and of themselves constitute a Material Adverse Effect, and (v) changes in financial markets, general economic conditions (including prevailing interest rates, exchange rates, and commodity prices) or political conditions shall not in and of themselves constitute a Material Adverse Effect.

"Material Indebtedness" means Indebtedness (other than the Obligations) of any one or more of the Borrower or any Restricted Subsidiary in an aggregate principal amount exceeding $10,000,000.

"Maturity Date" means May 11, 2020; provided, however, the Maturity Date shall be automatically extended to June 1, 2020, if a chapter 11 plan of reorganization or plan of liquidation, in each case, acceptable to the Required Lenders in their sole discretion, is filed with the Bankruptcy Court on or before March 9, 2020; and provided further, that such Maturity Date shall be further extended automatically to June 30, 2020, if the Bankruptcy Court has commenced and not terminated a hearing to consider confirmation of such plan of reorganization or plan of liquidation on or before June 1, 2020. Acceptance of any plan by the Required Lenders shall be evidenced in writing.

"Midstream Contracts" means contracts and/or leases for the gathering, distributing, marketing, treating, processing, transporting of, or storage, disposal, or other handling of, Hydrocarbons, water, sand, minerals, chemicals or other products or substances commonly created, used, recovered, produced or processed in the conduct of the oil and gas business, including compression, pumping, treatment and disposal facilities, gathering lines and systems, and other

assets commonly considered midstream assets or useful in connection with the conduct of midstream operations related to the transportation, gathering, processing, exchange and marketing of the Hydrocarbons of the Borrower and its Subsidiaries.

"Milestones" shall have the meaning set forth in Section 5.15.

"Moody's" means Moody's Investors Service, Inc. or any successor to the rating agency business thereof.

"Mortgaged Properties" means any real Property owned by the Borrower or any Guarantor that is subject to the Liens existing and that will exist under the Interim Order or the Final Order, as applicable.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which the Borrower or an ERISA Affiliate makes or is obligated to make contributions or during the preceding six plan years has made or been obligated to make contributions.

"Net Proceeds" means the aggregate cash proceeds and Cash Equivalents received by the Borrower or any of its Restricted Subsidiaries in respect of any Disposition of Property pursuant to Section 6.07(d) or any Casualty Event with respect to Property (including, without limitation, any cash or Cash Equivalents received upon the Disposition of any non- cash consideration received in any sale of Property), net of:

(a) the direct costs relating to such sale of Property or any Casualty Event, as applicable, including, without limitation, legal, accounting and investment banking fees, title and recording tax expenses and sales commissions, severance and associated costs, expenses and charges of personnel and any relocation expenses relating to the properties or assets subject to or incurred as a result of the sale of Property or such Casualty Event, as applicable;

(b) taxes paid or payable or required to be accrued as a liability under GAAP as a result of the sale of Property or any Casualty Event, in each case, after taking into account any available tax credits or deductions and any tax sharing arrangements;

(c) amounts required to be applied to the repayment of Indebtedness secured by a Lien on the properties or assets that were the subject of such sale of Property or as a result of such Casualty Event, as applicable;

(d) all distributions and other payments required to be made to minority interest holders in Restricted Subsidiaries or joint ventures as a result of such sale of Property or such Casualty Event, as applicable;

(e) any amounts to be set aside in any reserve established in accordance with GAAP or any amount placed in escrow, in either case for adjustment in respect of the sale price of such properties or assets or for liabilities associated with such sale of Property or such Casualty Event, as applicable, and retained by the Borrower or any of its Restricted

Subsidiaries (including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction) until such time as such reserve is reversed or such escrow arrangement is terminated, in which case Net Proceeds shall include only the amount of the reserve so reversed or the amount returned to the Borrower or its Restricted Subsidiaries from such escrow arrangement, as the case may be; and

(f) amounts paid in connection with the termination of related Hedging Agreements of the Borrower or any of its Restricted Subsidiaries.

"New Money Commitment" means, with respect to each New Money Lender, the commitment of such New Money Lender to make New Money Loans hereunder in an aggregate principal amount at one time outstanding not to exceed the amounts set forth opposite such New Money Lender's name on Schedule 2.01, as such commitment may be (a) modified from time to time pursuant to assignments by or to such New Money Lender pursuant to Section 9.06, or otherwise, or (b) terminated in accordance with the terms of this Agreement.

"New Money Lenders" means the Persons listed on Schedule 2.01 under the heading "New Money Lenders" and any Person that becomes a party hereto pursuant to an Assignment and Assumption (other than such Person that ceases to be a party hereto pursuant to an Assignment and Assumption) with respect to a New Money Loan or a New Money Commitment.

"New Money Loans" means, collectively, the Initial New Money Loans and the Final New Money Loans.

"Non-Bank Tax Certificate" shall have the meaning set forth in Section 2.13(e)(i).

"Note" means any promissory note issued to a Lender that evidences the Loans extended by such Lender to the Borrower.

"Notice of Borrowing" shall have the meaning set forth in Section 2.02.

"Obligations" means, in each case, whether now in existence or hereafter arising: (a) the principal of and interest on (including interest accruing after the filing of any bankruptcy or similar petition) the Loans, and (b) all other fees and commissions (including attorneys' fees), charges, indebtedness, loans, liabilities, financial accommodations, obligations, covenants and duties owing by the Credit Parties to the Lenders or the Agents, in each case under any Loan Document, with respect to any Loan of every kind, nature and description, direct or indirect, absolute or contingent, due or to become due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any note and including interest and fees that accrue after the commencement by or against any Credit Party of any proceeding under any Debtor Relief Laws, naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"OFAC" shall have the meaning set forth in Section 3.16(b).

"Officers' Certificate" means a certificate signed on behalf of the Borrower by two Authorized Officers of the Borrower, one of whom must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of the Borrower, which meets the requirements set forth in this Agreement.

"Oil and Gas Business" means:

(1) the acquisition, exploration, development, production, operation and disposition of interests in oil, gas, and other Hydrocarbon properties;

(2) the gathering, marketing, treating, processing, storage, distribution, selling and transporting of any production from such interests or properties;

(3) any business relating to exploration for or development, production, treatment, processing, storage, transportation or marketing of oil, gas, and other minerals and products produced in association therewith; and

(4) any activity that, as determined in good faith by the Borrower, arises from, relates to or is ancillary, complimentary or incidental to or necessary or appropriate for the activities described in clauses (1) through (3) of this definition.

"Oil and Gas Properties" means (a) Hydrocarbon Interests, (b) the properties now or hereafter pooled or unitized with Hydrocarbon Interests, (c) all presently existing or future unitization, pooling agreements and declarations of pooled units and the units created thereby (including all units created under orders, regulations and rules of any Governmental Authority) which may affect all or any portion of the Hydrocarbon Interests, (d) all operating agreements, contracts and other agreements, including production sharing contracts and agreements, which relate to any of the Hydrocarbon Interests or the production, sale, purchase, exchange or processing of Hydrocarbons from or attributable to such Hydrocarbon Interests, (e) all Hydrocarbons in and under and which may be produced and saved or attributable to the Hydrocarbon Interests, including all oil in tanks, and all rents, issues, profits, proceeds, products, revenues and other incomes from or attributable to the Hydrocarbon Interests, (f) all tenements, hereditaments, appurtenances and properties in any manner appertaining, belonging, affixed or incidental to the Hydrocarbon Interests and (g) all properties, rights, titles, interests and estates described or referred to above, as well as any and all property, real or personal, now owned or hereafter acquired and situated upon, used, held for use or useful in connection with the operating, working or development of any of such Hydrocarbon Interests or property (excluding drilling rigs, automotive equipment, rental equipment or other personal property which may be on such premises for the purpose of drilling a well or for other similar temporary uses) and including any and all oil wells, gas wells, injection wells or other wells, buildings and other structures, fuel separators, liquid extraction plants, plant compressors, pumps, pumping units, field gathering systems, gas processing plants and pipeline systems and any related infrastructure to any thereof, tanks and tank batteries, fixtures, valves, fittings, machinery and parts, engines, boilers, meters, apparatus, equipment, appliances, tools, implements, cables, wires, towers, casing, tubing and rods, surface leases, rights-of-way, easements and servitudes together with all additions, substitutions, replacements, accessions and attachments to any and all of the foregoing.

"Orders" means, collectively, the Interim Order and the Final Order.

"Original DIP Agreement" shall have the meaning set forth in the preamble to this Agreement.

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

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

"Participant" shall have the meaning set forth in Section 9.06(c)(i).

"Participant Register" shall have the meaning set forth in Section 9.06(c)(ii).

"PBGC" means the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

"Permitted Liens" means, with respect to any Person:

(a) pledges or deposits by such Person under workmen's compensation laws, unemployment insurance laws social security, pension, public liability or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases (including, without limitation, statutory and common law landlords' Liens thereunder) to which such Person is a party, government contracts, performance and return of money bond, trade contracts, or deposits to secure plugging and abandonment obligations or public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent (including Liens to secure guarantees, contingent reimbursement obligations or other contingent obligations with respect to letters of credit or bank guarantees functioning as or supporting or issued to assure payment or performance of any of the foregoing bonds or obligations), in each case incurred in the ordinary course of business and not to secure Indebtedness for borrowed money;

(b) Liens imposed by law, such as landlords', carriers', warehousemen's, mechanics', materialmen's, repairmen's, construction or other like Liens securing obligations that are not overdue by more than thirty (30) days or that are being contested in good faith by appropriate proceedings and for which the applicable Credit Party maintains adequate reserves in accordance with GAAP;

(c) Liens for taxes, assessments or (if foreclosure, distraint, sale or other similar proceedings shall not have been initiated or, if such proceedings have been initiated, such proceedings have been stayed by the Bankruptcy Court) other governmental charges not yet due or payable or that are being contested in good faith by appropriate proceedings;

(d) Liens in favor of issuers of performance and surety bonds or bid bonds or with respect to other regulatory requirements or letters of credit or bankers acceptances issued pursuant to the request of and for, or completion guarantees provided for, the account of such Person in the ordinary course of its business;

(e) minor survey exceptions, minor encumbrances, restrictive covenants, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Indebtedness and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(f) Liens securing the Obligations;

(g) Liens existing on the Interim Facility Effective Date listed on Schedule 6.03;

(h) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(i) Liens on the Collateral granted to provide adequate protection pursuant to the Interim Order (or the Final Order, if applicable);

(j) Liens (other than Liens securing Indebtedness for borrowed money) incurred to secure Cash Management Services or to implement cash pooling arrangements in the ordinary course of business;

(k) Liens arising by virtue of any statutory or common law provisions relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depository or financial institution arising in the ordinary course of business and burdening only deposit accounts or other funds maintained with a creditor depository institution; provided that no such deposit account is a dedicated cash collateral account or is subject to restrictions against access by the depositor in excess of those set forth by regulations and no such deposit account is intended by Borrower or any other Subsidiaries to provide collateral to the depository institution;

(l) Liens granted in the ordinary course of business in respect of Production Payments and Reserve Sales, to the extent such Liens only secure assets which are subject to such Production Payments and Reserve Sales;

(m) contractual Liens (other than Liens securing Indebtedness for borrowed money) which are customary in the oil and gas business arising under Farm-Out Agreements, Farm-In Agreements, division orders, contracts for the sale, purchase, exchange, transportation, gathering or processing of Hydrocarbons, unitizations and pooling designations, declarations, orders and agreements, development agreements, joint venture agreements, partnership agreements, operating agreements, royalties, royalty trusts, master limited partnerships, working interests, net profits interests, joint interest billing arrangements, participation agreements, production sales contracts, area of mutual interest agreements, gas balancing or deferred production agreements, injection, repressuring and recycling agreements, salt water or other disposal agreements, seismic or geophysical permits or agreements, and other agreements which are customary in the Oil and Gas Business; provided, however, that any such Lien referred to in this clause does not (i) materially impair the ordinary conduct of business of any Credit Party or materially impair the use of the Property covered by such Lien for the purposes for which such Property is held by any Credit Party or (ii) materially impair the value of such Property subject thereto;

(n) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business which do not secure any Indebtedness or other monetary obligations and which do not materially impair the use of such Property for the purposes of which such Property is held by any Credit Party or materially impair the value of such Property subject thereto;

(o) Liens (other than Liens securing Indebtedness for borrowed money) on pipelines or pipeline facilities that arise by operation of law;

(p) Liens (other than Liens securing Indebtedness for borrowed money) arising under operating agreements, joint venture agreements, partnership agreements, oil and natural gas leases or subleases, overriding royalty interests, Farm-Out Agreements, Farm-In Agreements, division orders, contracts for the sale, purchase, exchange, transportation, gathering or processing or exchange of crude oil and natural gas and related Hydrocarbons and minerals, unitization and pooling designations, declarations, orders and agreements, development agreements, royalties, working interests, net profits interests, joint interest billing arrangements, participation agreements, production sales contracts, production payment agreements, royalty trust agreements, incentive compensation programs for geologists, geophysicists and other providers of technical services to the Borrower or a Restricted Subsidiary (so long as such geologist, geophysicist or other provider is not a Credit Party or a Subsidiary or Affiliate of a Credit Party), area of mutual interest agreements, royalty agreements, overriding royalty agreements, marketing agreements, processing agreements, net profits agreements, development agreements, gas balancing or deferred production agreements, injection, repressuring and recycling agreements, salt water or other disposal agreements, seismic or other geophysical permits or agreements, licenses, sublicenses and other agreements arising in the ordinary course of business (including Liens to secure guarantees, contingent reimbursement obligations or other contingent obligations with respect to letters of credit or bank guarantees functioning as or supporting or issued to assure payment or performance of any of the foregoing bonds or obligations); provided that any such Lien referred to in this clause does not (i) materially impair the ordinary conduct of business of any Credit Party or materially

impair the use of the Property covered by such Lien for the purposes for which such Property is held by any Credit Party or (ii) materially impair the value of such Property subject thereto;

(q) Liens (other than Liens securing Indebtedness for borrowed money) on, or related to, properties and assets to secure all or part of the costs incurred in the ordinary course of business for the exploration, drilling, development, production, processing, gathering, transportation, marketing or storage, plugging, abandonment or operation thereof; provided that any such Lien referred to in this clause does not (i) materially impair the ordinary conduct of business of any Credit Party or materially impair the use of the Property covered by such Lien for the purposes for which such Property is held by any Credit Party or (ii) materially impair the value of such Property subject thereto; and

(r) Liens securing Hedging Obligations incurred pursuant to, or otherwise referred to in, Section 6.02(b)(vi), whether or not such Hedging Obligations constitute Indebtedness.

(s) Pledges or deposits of cash or Cash Equivalents to secure Indebtedness under Section 6.02(b)(vii).

"Permitted Refinancing Indebtedness" means any refinancings or renewals of any Indebtedness of the Borrower or its Restricted Subsidiaries, including refinancings or renewals by the Borrower of Indebtedness of a Restricted Subsidiary, which:

(a) is scheduled to mature either (i) no earlier than the Indebtedness being refunded, refinanced or extended or (ii) at least ninety (91) days after the maturity date of the Loans;

(b) has a weighted average life to maturity that is equal to or greater than the remaining weighted average life to maturity of the Indebtedness being refinanced or renewed;

(c) is in an aggregate principal amount that is less than or equal to the sum of (i) the aggregate principal or accreted amount (in the case of any Indebtedness issued with original issue discount, as such) then outstanding under the Indebtedness being refunded, refinanced, renewed, replaced or extended, (ii) the amount of accrued and unpaid interest, if any, and premiums owed, if any, not in excess of preexisting prepayment provisions on such Indebtedness being refunded, refinanced, renewed, replaced or extended and (iii) the amount of reasonable and customary fees, expenses and costs related to the incurrence of such Permitted Refinancing Indebtedness;

(d) is incurred by the same Person (or its successor) that initially incurred the Indebtedness being refinanced or renewed; and

(e) does not contain any requirement to grant any Lien or to give any guarantee that was not an existing requirement of the Indebtedness being refinanced or renewed.

"Permitted Variances" shall have the meaning set forth in Section 6.09.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

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

"Physical Hedge" means any fixed price physical off take agreement entered into by the Borrower or any Restricted Subsidiary.

"Plan" means any "employee benefit plan" as defined in Section 3(3) of ERISA and is subject to Title IV of ERISA (other than a Multiemployer Plan), that is or was within any of the preceding six plan years maintained or contributed to by (or to which there is or was an obligation to contribute or to make payments to) the Borrower or an ERISA Affiliate.

"Platform" shall have the meaning set forth in Section 9.17.

"Preferred Stock" means any Equity Interest with preferential right of payment of dividends or upon liquidation, dissolution, or winding up.

"Pre-Petition Credit Documents" means (i) the Existing ABL Agreement, (ii) the Existing First Lien Indenture, (iii) the Indenture for 7.75% Senior Notes Due 2021 dated as of June 13, 2013, among Sanchez Energy Corporation, the guarantors party thereto, and U.S. Bank, National Association, as trustee (as amended, supplemented, or amended and restated from time to time), and (iv) the Indenture for 6.125% Senior Notes due 2023 dated as of June 27, 2014, among Sanchez Energy Corporation, the guarantors party thereto, and U.S. Bank, National Association, as trustee (the "Pre-Petition Agent"; on behalf of the lenders therein (the "Pre-Petition Lenders") (as amended, supplemented, or amended and restated from time to time).

"Pre-Petition First-Priority Lien Obligations" means all Indebtedness in respect of the Existing ABL Facility, the Existing First Lien Indenture, and Hedging Obligations in existence on the Petition Date.

"Present Value" means, as of any date of determination, the discounted net present value, on a pre-income tax basis, of projected future cash flows from the production of the Borrower's and the Guarantors' Proved Reserves, which is:

(a) calculated in accordance with the SEC guidelines;

(b) discounted using an annual discount rate of 10%;

(c) as set forth in the Reserve Report mostly recently delivered under Section 4.03 herein;

(d) adjusted to give effect to any relevant Hedge Agreement not prohibited by this Agreement as in effect on the date of such determination; and

(e) in all cases, adjusted to give pro forma effect to all dispositions and acquisitions completed since the date of the applicable Reserve Report.

"Production Payments and Reserve Sales" means the grant or transfer, in ordinary course, by the Borrower or a Restricted Subsidiary to any third party that is not an Affiliate of a royalty, overriding royalty, net profits interest, production payment (whether volumetric or dollar-denominated), partnership or other interest in Oil and Gas Properties, reserves or the right to receive all or a portion of the production or the proceeds from the sale of production attributable to such properties where the holder of such interest has recourse solely to such production or proceeds of production, subject to the obligation of the grantor or transferor to operate and maintain, or cause the subject interests to be operated and maintained, in a reasonably prudent manner or other customary standard or subject to the obligation of the grantor or transferor to indemnify for environmental, title or other matters customary in the Oil and Gas Business, including any such grants or transfers pursuant to incentive compensation programs on terms that are reasonably customary in the Oil and Gas Business for geologists, geophysicists and other providers of technical services to the Borrower or a Subsidiary of the Borrower (so long as such geologist, geophysicist or other provider is not an Affiliate of a Credit Party).

"Property" means any interest in any kind of property or asset, whether real, personal, or mixed, or tangible or intangible, including, without limitation, cash, securities, accounts and contract rights.

"Proved Reserves" means "Proved Reserves" as defined in the Definitions for Oil and Gas Reserves (in this paragraph, the "Definitions") promulgated by the Society of Petroleum Engineers (or any generally recognized successor) as in effect at the time in question. "Proved Developed Producing Reserves" means Proved Reserves which are categorized as both "Developed" and "Producing" in the Definitions, "Proved Developed Nonproducing Reserves" means Proved Reserves which are categorized as both "Developed" and "Nonproducing" in the Definitions, "Proved Developed Reserves" means the sum of Proved Developed Producing Reserves and Proved Developed Nonproducing Reserves, and "Proved Undeveloped Reserves" means Proved Reserves which are categorized as "Undeveloped" in the Definitions.

"Ratable Share" means, as to any Lender, a fraction, the numerator of which is the amount of such Lender's Loans (and/or New Money Commitments or New Money Loans, as the context requires) and the denominator of which is the aggregate principal amount of all Loans (and/or New Money Commitments or New Money Loans, as the context requires) of all the Lenders at such time.

"Reasonably Anticipated Projected Production" means the projected production from total Proved Developed Producing Reserves attributable to Oil and Gas Properties of the Borrower and its Subsidiaries, determined by reference to the Reserve Report most recently delivered pursuant to Section 5.21.

"Recipient" means the Administrative Agent or any Lender, as applicable.

"Register" shall have the meaning set forth in Section 9.06(b)(iv).

"Regulation U" means Regulation U of the Board as from time to time in effect and any successor to all or any portion thereof establishing margin requirements.

"Regulation X" means Regulation X of the Board as from time to time in effect and any successor to all or any portion thereof establishing margin requirements.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the directors, officers, employees, agents and members of such Person or such Person's Affiliates and any Person that possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract or otherwise.

"Reorganization Plan" means a plan of reorganization or liquidation in any or all of the Cases.

"Reportable Event" means an event described in Section 4043(c) of ERISA and the regulations thereunder, other than any event as to which the thirty (30) day notice period has been waived.

"Required Lenders" means, at any time, Lenders having outstanding Loans and unused New Money Commitments that, taken together, represent more than 50% of the sum of all outstanding Loans and unused New Money Commitments at such time.

"Requirement of Law" means, as to any Person, any law, treaty, rule, regulation, statute, order, ordinance, decree, judgment, consent decree, writ, injunction, settlement agreement or governmental requirement enacted, promulgated or imposed or entered into or agreed by any Governmental Authority, in each case applicable to or binding upon such Person or any of its property or assets or to which such Person or any of its property or assets is subject.

"Reserve Report" means a report setting forth the Proved Reserves attributable to the Oil and Gas Properties of the Borrower and the Guarantors, together with a projection of the rate of production and future net income, taxes, operating expenses, Present Value of Proved Reserves and capital expenditures with respect thereto as of such date, setting forth results based separately on each of (a) the pricing assumptions consistent with SEC reporting at the time; and (b) the Five-Year Strip Price on such date of determination, and each Reserve Report shall include the underlying reserve database utilized to generate the Reserve Report and associated run instruction (with such database to include sufficient detail and instructions to allow for the interests of SN EF Maverick, LLC, SN EF UnSub, LP and other Subsidiaries of the Borrower to be disaggregated to the extent commercially reasonable), along with the associated lease operating statement, and related analysis, that supports the expense and differential estimates utilized in such Reserve Report.

"Reserve Report Certificate" shall have the meaning assigned to such term in Section 5.21(e).

"Responsible Officer" shall have the meaning assigned to such term in the definition of "Authorized Officer".

"Restricted Payments" means any dividend on, or the making of any payment or other distribution on account of, or the purchase, redemption, retirement or other acquisition (directly or indirectly) of, or the setting apart assets for a sinking or other analogous fund for the

purchase, redemption, retirement or other acquisition of, any class of Equity Interests of any Credit Party or any Subsidiary thereof or the making of any distribution of cash, Property to the holders of any Equity Interests of any Credit Party or any Subsidiary thereof on account of such Equity Interests.

"Restricted Subsidiary" means all Subsidiaries of the Borrower other than Unrestricted Subsidiaries; provided that no Restricted Subsidiary may be redesignated as an "Unrestricted Subsidiary".

"Roll-Forward Reserve Report" shall mean a report setting forth the previously delivered Reserve Report (utilizing solely the Five-Year Strip Price as of the applicable date of determination) "rolled forward" in a customary manner and adjusted for reserve category changes on a basis consistent with the methodology used in the creation of the previously delivered Reserve Report; provided that the Borrower shall not be required to reforecast any wells as of the date of determination (other than wells with material variances from the previously delivered Reserve Report), and each Roll-Forward Reserve Report shall be delivered with the underlying reserve database utilized to generate the Roll-Forward Reserve Report and associated run instructions (with such database to include sufficient detail and instructions to allow for the interests of SN EF Maverick, LLC, SN EF UnSub, LP and other Subsidiaries of the Borrower to be disaggregated to the extent commercially reasonable).

"Roll-Up Facility" shall have the meaning assigned to such term in the recitals hereto.

"Roll-Up Lenders" means the Persons listed on Schedule 2.01 (as updated by the Administrative Agent from time to time on or prior to the Final Order Entry Date in accordance with Section 2.01(a)) and any Person that becomes a party hereto pursuant to an Assignment and Assumption (other than any Person that ceases to be a party hereto pursuant to an Assignment and Assumption) with respect to a Roll-Up Loan, including their respective successors and assigns.

"Roll-Up Loan" shall have the meaning set forth in Section 2.01(a).

"Roll-Up Loan Amount" means, with respect to a Roll-Up Lender, the percentage of the Roll-Up Loans allocated to such Roll-Up Lender as set forth opposite such Roll-Up Lender's name on Schedule 2.01 under the heading "Roll-Up Loans" (as updated by the Administrative Agent on the Final Order Entry Date in accordance with Section 2.01(a)).

"S&P" means Standard & Poor's Ratings Group or any successor to the rating agency business thereof.

"Sanctions" shall have the meaning set forth in Section 3.16(b).

"SEC" means the Securities and Exchange Commission or any successor thereto.

"Secured Parties" means, collectively, the Agents and the Lenders.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Services Agreement" means the Services Agreement, dated December 19, 2011, between the Borrower and Sanchez Oil and Gas Corporation, as in effect on the date hereof.

"Specified Letter of Credit" means the letter of credit described on Schedule 2.18 that was issued under the Existing ABL Agreement and has been fully drawn by the beneficiaries thereof and is no longer outstanding.

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one (1) and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject for Eurocurrency funding (currently referred to as **"**Eurocurrency Liabilities**"** in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. The New Money Loans hereunder shall be deemed to constitute Eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subagent" shall have the meaning set forth in Section 8.02.

"Subsidiary" means, with respect to any Person, (a) any corporation more than 50% of whose Equity Interests of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time Equity Interests of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person directly or indirectly through Subsidiaries and (b) any limited liability company, partnership, association, joint venture or other entity of which such Person directly or indirectly through Subsidiaries has more than a 50% equity interest at the time. Unless otherwise expressly provided, all references herein to a "Subsidiary" shall mean a Subsidiary of the Borrower.

"Supermajority Lenders" means, at any time, Lenders having outstanding Loans and unused New Money Commitments that, taken together, represent more than 66 2/3% of the sum of all outstanding Loans and unused New Money Commitments at such time.

"Superpriority Claim" means any administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code in the case of any Credit Party having priority over any and all other administrative expenses, diminution claims and all other priority claims against the Debtors, subject only to the Carve-Out, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 365, 503(b), 506(c) (subject only to and effective upon entry of the Final Order), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code.

"Taxes" means any and all present or future taxes, duties, levies, imposts, assessments, deductions, withholdings or other similar charges imposed by any Governmental Authority and any interest, fines, penalties or additions to tax applicable thereto.

"Termination Date" means the earliest of (a) the Maturity Date, (b) the effective date of the Acceptable Plan of Reorganization or any other Reorganization Plan, (c) the consummation of a sale or other disposition of all or substantially all assets of the Debtors under section 363 of the Bankruptcy Code, (d) the date of acceleration of the Loans and the termination of the New Money Commitments with respect to the DIP Facility in accordance with the terms of this Agreement upon and during the continuance of an Event of Default and (e) the date that is forty (40) days after the Petition Date (or such later date as may be agreed by the Required Lenders), unless the Final Order has been entered by the Bankruptcy Court on or prior to such date.

"Test Period" shall have the meaning assigned to such term in the definition of "Budget Variance Report".

"Transaction Expenses" means any fees or expenses incurred or paid by the Borrower or any of its Subsidiaries or any of their Affiliates in connection with the Transactions.

"Transactions" means the execution and delivery of this Agreement and the transactions contemplated hereby and the payment of Transaction Expenses related thereto.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of Texas.

"U.S. Dollars" or "$" means the lawful money of the United States of America.

"U.S. Person" means a United States person within the meaning of Section 7701(a)(30) of the Code.

"Unrestricted Subsidiary" means: (a) any Subsidiary specified as such on the Petition Date and listed on Schedule 1.01(b); and (b) any Subsidiary of an Unrestricted Subsidiary.

"USA Patriot Act" means the U.S.A. Patriot Act, Title III of Pub. L. 107-56 (signed into law October 26, 2001).

"Wholly Owned Restricted Subsidiary" means any Wholly Owned Subsidiary that is a Restricted Subsidiary.

"Wholly Owned Subsidiary" of any Person means a Subsidiary of such Person 100% of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares or shares required pursuant to applicable law) shall at the time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person.

"Withholding Agent" means any Credit Party and the Administrative Agent.

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

"WSFS" shall have the meaning set forth in the preamble to this Agreement.

SECTION 1.02. Terms Generally. The definitions set forth or referred to in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Except as otherwise expressly provided herein, any reference in this Agreement to any Loan Document means such document as amended, restated, supplemented or otherwise modified from time to time. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP.

SECTION 1.03. Accounting Terms. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein; provided, however, that if the Borrower notifies the Administrative Agent and the Required Lenders that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Interim Facility Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. For the avoidance of doubt, no commitment fees, amendment fees, upfront fees or other fees shall be payable in connection with any amendments which are entered into solely to effect the provisions of this Section 1.03.

SECTION 1.04. Rounding. Any financial ratios required to be maintained or complied with by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

SECTION 1.05. Times of Day. Unless otherwise specified, all references herein to times of day shall be references to the times of day in Houston, Texas (daylight saving or standard, as applicable).

SECTION 1.06. Timing of Payment or Performance. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in Section 2.09) or performance shall extend to the immediately succeeding Business Day.

SECTION 1.07. Hedging Requirements Generally. For purposes of any determination with respect to Hedging Obligations or any other calculation under or requirement of this Agreement in respect of hedging shall be calculated on a "barrel of oil equivalent" basis.

ARTICLE II

THE CREDITS

SECTION 2.01. Commitments.

(a) Roll-Up Loans. Subject to the terms and conditions set forth herein and in the Orders, on the Final Order Entry Date, an aggregate principal amount of Existing First Lien Notes held by each Roll-Up Lender on the Final Order Entry Date equal to such Roll-Up Lender's Roll-Up Loan Amount as set forth opposite such Roll-Up Lender's name on Schedule 2.01 will be substituted and exchanged for (and prepaid by) and deemed to be loans hereunder held by (and owing by the Borrower to) such Roll-Up Lender in an aggregate principal amount for each such Roll-Up Lender equal to such Roll-Up Lender's Roll-Up Amount (the "Roll-Up Loans"); provided that, for the avoidance of doubt, such Roll-Up Loans shall be secured by a perfected lien and security interest on all assets of the Credit Parties subject to valid, perfected and unavoidable Liens securing the Existing First Lien Notes, subject to Permitted Liens and the priorities set forth in the Orders; and provided further that, for the avoidance of doubt, the Roll-Up Loans shall also continue to be guaranteed by the Guarantors under the Security Documents (as defined in the Existing First Lien Indenture) and secured by and entitled to the benefits of all Liens and security interests created and arising under Security Documents (as defined in the Existing First Lien Indenture), which Liens and security interests shall remain in full force and effect on a continuous basis, unimpaired, uninterrupted and undischarged, and having the same perfected status and priority, as if such Existing First Lien Notes had not been so substituted for and exchanged. Subject to the terms and conditions set forth herein and in the Orders, on the Final Order Entry Date, each Roll-Up Lender's Roll-Up Loans shall, from and after such date, be designated as such and administered hereunder. For the avoidance of doubt, each Roll-Up Lender acknowledges and agrees that by accepting the benefits of this Agreement, on the Final Order Entry Date each Existing Note Holder rolling up Existing First Lien Notes under this Agreement shall become a party to this Agreement as a Roll-Up Lender hereunder by executing and delivering a joinder to this Agreement. Amounts of Roll-Up Loans that are issued or deemed issued under this Section 2.01(a) that are repaid or prepaid may not be reborrowed. On the Final Order Entry Date, the Administrative Agent shall update Schedule 2.01 in accordance with the terms of the Final Order to reflect each Roll-Up Lender's Roll-Up Amount (which Roll-Up Amount shall be conclusive absent manifest error) and deliver such updated Schedule 2.01 to the Borrower and the Roll-Up Lenders, whereupon such updated Schedule 2.01 shall constitute Schedule 2.01 for all purposes hereunder. Notwithstanding anything in this Agreement, including Schedule 2.01 as in effect from time to time, or any other Loan Document to the contrary, (a) the aggregate principal amount of each Roll-Up Lender's Roll-Up Loans shall not exceed such Roll-Up Lender's Roll-Up Amount and (b) the aggregate principal amount of all Roll-Up Loans of all Roll-Up Lenders shall not exceed $50,000,000 at any time.

(b) Initial New Money Loans. Subject to the terms and conditions, and relying upon the representations and warranties, set forth in the Original DIP Agreement, certain New Money Lenders made new money loans (the "Initial New Money Loans") to the Borrower on

August 19, 2019 in an aggregate principal amount of $50,000,000. Amounts borrowed under this Section 2.01(b) and repaid or prepaid may not be reborrowed.

(c) Final New Money Loans. Subject to the terms and conditions, and relying upon the representations and warranties, set forth herein, each New Money Lender agrees to make new money loans (the "Final New Money Loans") to the Borrower in two draws on and after the Final Facility Effective Date in an aggregate principal amount requested by the Borrower that will not result in (a) such New Money Lender's New Money Loans made on any borrowing date exceeding such New Money Lender's New Money Commitment on such borrowing date (prior to giving effect to such Loan), (b) the aggregate principal amount of such New Money Loans made on any borrowing date exceeding $50,000,000, and (c) the aggregate principal amount of New Money Loans made on any borrowing date exceeding the Aggregate New Money Commitments on such borrowing date (prior to giving effect to such Loan). Amounts borrowed under this Section 2.01(c) and repaid or prepaid may not be reborrowed.

(d) The outstanding principal amount of the Loans, together with accrued and unpaid interest thereon and any other accrued amounts in respect thereof, shall be due and payable on the Termination Date.

(e) The New Money Commitment shall automatically terminate upon the extension of such New Money Loan in an amount equal to the amount of such New Money Loans extended.

SECTION 2.02. Notice of Borrowing. To request a borrowing of New Money Loans, the Borrower shall give the Administrative Agent (for distribution to the Lenders) a written notice prior to 1:00 p.m. (New York City time) at least three (3) Business Days (or such shorter time agreed to by the Administrative Agent) prior to the date of the proposed borrowing (such notice a "Notice of Borrowing"). Each Notice of Borrowing shall specify (i) the aggregate principal amount of the New Money Loans to be made, (ii) the proposed date of the New Money Loans (which shall be a Business Day), and (iii) remittance instructions for disbursement of the proceeds of the New Money Loans. Each Notice of Borrowing shall be in substantially the form of Exhibit F. The Administrative Agent shall promptly give each New Money Lender written notice (which may be given by email) of the proposed borrowing of New Money Loans, of such New Money Lender's Applicable Percentage thereof and of the other matters covered by the related Notice of Borrowing.

SECTION 2.03. Disbursement of Funds.

(a) Subject to Article IV, no later than 1:00 p.m. (New York City time) on the Interim Facility Effective Date or the Final Facility Effective Date, as applicable, each New Money Lender will make available its Applicable Percentage of the New Money Loans to be made on such date in the manner provided below.

(b) Each New Money Lender shall make available all amounts it is to fund to the Borrower in immediately available funds to the Administrative Agent at the account from time to time designated by the Administrative Agent to be the account of the Administrative Agent used

for such purpose, and, upon receipt of all requested funds, the Administrative Agent will make available to the Borrower the aggregate of the amounts so made available in U.S. Dollars.

SECTION 2.04. Repayment of Loans; Evidence of Debt.

(a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan of such Lender to the Borrower on the Termination Date, in U.S. Dollars.

(b) [Reserved]

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to the appropriate Lending Office of such Lender resulting from the Loan made by such Lending Office of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lending Office of such Lender from time to time under this Agreement.

(d) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain the Register pursuant to Section 9.06(b)(iv), and a subaccount for each Lender, in which the Register and subaccounts (taken together) shall be recorded (i) the amount of the Loans made hereunder and the Interest Period(s) applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof.

(e) The entries made in the Register and accounts and subaccounts maintained pursuant to paragraphs (c) and (d) of this Section 2.04 shall, to the extent permitted by applicable law, be *prima facie* evidence of the existence and amounts of the obligations of the Borrower therein recorded; provided, however, that the failure of any Lender or the Administrative Agent to maintain such account, such Register or such subaccount, as applicable, or any error therein, shall not in any manner affect the obligation of the Borrower to repay (with applicable interest) all Loans in accordance with the terms of this Agreement; provided further that in the event of any conflict between the accounts maintained by any Lender and those maintained by the Administrative Agent, the accounts maintained by the Administrative Agent shall control, absent manifest error.

(f) Any New Money Lender may request that New Money Loans made by it be evidenced by a Note. In such event, the Borrower shall prepare, execute and deliver to such New Money Lender a Note payable to such New Money Lender (or, if requested by such New Money Lender, to such New Money Lender and its registered assigns) and in the form attached hereto as Exhibit B.

SECTION 2.05. Mandatory Prepayments.

(a) Dispositions and Casualty Events.

(i) Subject to the Orders and Section 2.05(e), if the Borrower and its Restricted Subsidiaries have received cumulative Net Proceeds from one or more Dispositions under Section 6.07(d) or Casualty Events in an aggregate amount in excess of

$2,000,000, not later than the fifth (5th) Business Day following the date of receipt of any Net Proceeds in excess of such amount, an amount equal to 100% of the Net Proceeds then received in excess of such amount shall be applied as a mandatory prepayment of the New Money Loans in accordance with Section 2.05(a)(ii).

(ii) Each prepayment of the New Money Loans required by Section 2.05(a) shall be applied pro rata to all New Money Lenders, based upon the outstanding principal amounts owing to each such New Money Lender under all New Money Loans then outstanding.

(b) [Reserved]

(c) Limitations on Prepayments. Notwithstanding any other provisions of this Section 2.05, (i) no prepayment shall be required pursuant to this Section 2.05 to the extent that such prepayment would violate applicable Law, (ii) without duplication of the definition of "Net Proceeds," amounts actually applied toward prepayment of any Pre-Petition First-Priority Lien Obligations in respect of the Existing ABL Facility or Hedging Obligations that are secured on a senior basis to the Obligations shall on a dollar-for-dollar basis reduce the amount required to be applied toward prepayments of the Loans pursuant hereto and (iii) no prepayment shall be made from Net Proceeds from Casualty Events or Dispositions, in each case solely with respect to any pre-petition collateral, prior to the payment in full of the Existing ABL Facility and the discharge of all Hedging Obligations that are secured on a senior basis to the Obligations.

(d) Interest. All prepayments under this Section 2.05 shall be accompanied by all accrued interest thereon.

(e) Notice. The Borrower shall give the Administrative Agent (for distribution to the Lenders) a written notice of any prepayment pursuant to this Section 2.05 at least one (1) Business Day prior to such prepayment. Each such notice shall be signed by an Authorized Officer of the Borrower and shall specify the date and amount of such prepayment.

SECTION 2.06. Optional Prepayments. The Borrower shall have the right at any time and from time to time to prepay any Loan in whole or in part, with all accrued interest thereon, without premium or penalty, upon prior written notice to the Administrative Agent (for distribution to the Lenders), not less than three (3) Business Days prior to the date of prepayment. Notwithstanding the foregoing, no voluntary prepayment of Roll-Up Loans may be made until all New Money Loans and all other Obligations in respect thereof have been paid in full in cash and all New Money Commitments have been terminated. Each such notice shall be irrevocable and shall be signed by an Authorized Officer of the Borrower and shall specify the date and amount of such prepayment. The Administrative Agent will promptly notify each applicable Lender of its receipt of each such notice, and of the amount of such Lender's pro rata share of such prepayment. Each prepayment of Loans under this Section 2.06 shall be applied pro rata to all Lenders, based upon the outstanding principal amounts owing to each such Lender under all Loans then outstanding.

SECTION 2.07. Interest.

(a) The New Money Loans shall bear interest at the Adjusted LIBO Rate plus the Applicable Margin.

(b) Commencing on the Final Order Entry Date, subject to the terms and conditions set forth herein and in the Orders, the Roll-Up Loans shall bear interest at the rate of 7.25% per annum.

(c) If all or a portion of (i) the principal amount of any New Money Loan or (ii) any other amount payable under the Loan Documents in respect of the New Money Loans (including, without limitation, accrued and unpaid interest) shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate *per annum* that is the Applicable Margin plus 2.00% from and including the date of such non-payment to but excluding the date on which such amount is paid (or satisfied) in full (after as well as before judgment).

(d) If all or a portion of (i) the principal amount of any Roll-Up Loan or (ii) any other amount payable under the Loan Documents in respect of the Roll-Up Loans (including, without limitation, accrued and unpaid interest) shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at the rate of 8.25% *per annum* from and including the date of such non-payment to but excluding the date on which such amount is paid (or satisfied) in full (after as well as before judgment).

(e) Interest on each Loan shall accrue from and including the date on which such Loan is made to but excluding the date of any repayment thereof and shall be payable (i) on each Interest Payment Date, and (ii) on any prepayment (on the amount prepaid), at maturity (whether by acceleration or otherwise) and, after such maturity, on demand.

(f) All computations of interest hereunder shall be calculated on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

SECTION 2.08. Inability to Determine Rates. If, on or prior to the first day of any Interest Period (an "Affected Interest Period"):

(a) the Administrative Agent determines (which determination shall be conclusive and binding on the Borrower) that, by reason of circumstances affecting the London interbank eurodollar market, the "LIBO Rate" cannot be determined pursuant to the definition thereof, or

(b) the Required Lenders notify the Administrative Agent in writing in the event they determine that for any reason that (A) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period, or (B) the LIBO Rate for any requested Interest Period does not adequately and fairly reflect the cost to such Lenders of funding such Loan,

the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the LIBO Rate shall be the same as for the immediately preceding Interest Period until such time as the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice.

SECTION 2.09. Increased Costs, Illegality, etc.

(a) In the event that:

(i) a Change in Law occurring at any time after the Interim Facility Effective Date shall (A) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended by, any New Money Lender, (B) subject any New Money Lender to any Tax (other than (x) Indemnified Taxes or Other Taxes indemnifiable under Section 2.13 and (y) Excluded Taxes) on its loans, loan principal, commitments or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, or (C) impose on any New Money Lender any other condition, cost or expense affecting this Agreement, which, in the case of clause (A), (B) or (C), results in the cost to such New Money Lender of making or maintaining Loans increasing by an amount or the amounts received or receivable by such New Money Lender hereunder with respect to the foregoing shall be reduced;

then, and in any such event, such New Money Lender shall within a reasonable time thereafter give written notice to the Borrower and to the Administrative Agent of such determination (which notice the Administrative Agent shall promptly transmit to each of the other New Money Lenders). Thereafter, the Borrower shall pay to such New Money Lender, promptly (but no later than ten (10) days) after receipt of written demand therefor such additional amounts as shall be required to compensate such New Money Lender for such increased costs or reductions in amounts receivable hereunder (it being agreed that a written notice as to the additional amounts owed to such New Money Lender submitted to the Borrower by such New Money Lender shall, absent clearly demonstrable error, be final and conclusive and binding upon all parties hereto).

(b) If, after the Interim Facility Effective Date, any Change in Law relating to capital adequacy of any New Money Lender or compliance by any New Money Lender or its parent with any Change in Law relating to capital adequacy occurring after the Interim Facility Effective Date, has or would have the effect of reducing the rate of return on such New Money Lender's or its parent's capital or assets as a consequence of such New Money Lender's commitments or obligations hereunder with respect to Loans to a level below that which such New Money Lender or its parent could have achieved but for such Change in Law (taking into consideration such New Money Lender's or its parent's policies with respect to capital adequacy), then from time to time, promptly (but in any event no later than ten (10) days) after written demand by such New Money Lender (with a copy to the Administrative Agent), the Borrower shall pay to such New Money Lender such additional amount or amounts as will compensate such New Money Lender or its parent for such reduction. Each New Money Lender, upon determining in good faith that any additional amounts will be payable pursuant to this Section 2.09(b), will give prompt written notice thereof to the Borrower, although the failure to give any such notice shall not, subject to Section 2.13, release or diminish the Borrower's obligations to pay additional amounts pursuant to this Section 2.09(b) upon receipt of such notice.

(c) No Roll-Up Lender shall have any rights under this Section 2.09 in respect of Roll-Up Loans.

SECTION 2.10. No Discharge. Each of the Credit Parties agrees that to the extent that its obligations under the Loan Documents have not been satisfied in full in cash, (i) its obligations under the Loan Documents shall not be discharged by any Reorganization Plan or any order confirming a Reorganization Plan (and each of the Credit Parties, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) as to the Obligations and (ii) the Superpriority Claim granted to the Agents and the Lenders pursuant to the Orders and the Liens granted to the Agents and the Lenders pursuant to the Orders shall not be affected in any manner by any Reorganization Plan or any order confirming a Reorganization Plan.

SECTION 2.11. Other Fees.

(a) The Borrower shall pay to the Administrative Agent and Collateral Agent for its own account fees in the amounts and at the times specified in the Agent Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the Administrative Agent and Collateral Agent).

(b) The Borrower shall pay to the Administrative Agent for the account of each New Money Lender, ratably in accordance with its Applicable Percentage, a commitment fee, which shall accrue at the Commitment Fee Rate on the average daily amount of such Lender's New Money Commitment (after giving effect to Section 2.01(e)) during the period from and including the Final Facility Effective Date to but excluding the Termination Date. Accrued commitment fees shall be payable in arrears on the last Business Day of each month and on the Termination Date, commencing on the first such date to occur after the date hereof. All commitment fees shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) On the Interim Facility Effective Date, the Borrower shall pay to each Initial Lender a fully-earned and non-refundable one-time backstop fee (the "Backstop Fee") equal to the product of (i) 5.00% and (ii) each Initial Lender's respective New Money Commitment. Each Initial Lender shall fund its respective Interim New Money Loans net of its Backstop Fee. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Initial Lender).

(d) On the Termination Date, the Borrower shall pay to the Administrative Agent for the account of each New Money Lender that is not a Defaulting Lender, according to its Ratable Share, a nonrefundable exit fee in an amount equal to 1.00% of the aggregate amount of New Money Loans advanced by such New Money Lender (the "Exit Fee"). Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the Administrative Agent).

SECTION 2.12. Method and Place of Payment.

(a) Except as otherwise specifically provided herein, all payments under this Agreement shall be made by the Borrower, without set-off, counterclaim or deduction of any kind,

to the Administrative Agent for the ratable account of the Lenders entitled thereto not later than 12:00 p.m. on the date when due and shall be made in immediately available funds at the account of the Administrative Agent from time to time specified as the account for such purpose by written notice to the Borrower. All payments under each Loan Document (whether of principal, interest or otherwise) shall be made in U.S. Dollars. The Administrative Agent will thereafter cause to be promptly distributed like funds relating to the payment of principal or interest or fees ratably to the Lenders entitled thereto.

(b) Any payments under this Agreement that are made later than 12:00 p.m. may, in the Administrative Agent's sole discretion, be deemed to have been made on the next succeeding Business Day. Except as otherwise provided herein, whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest shall be payable during such extension at the applicable rate in effect immediately prior to such extension.

SECTION 2.13. Taxes.

(a) Defined Terms. For purposes of this Section, the term "Applicable Law" includes FATCA.

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by the Borrower. The Borrower shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, any Other Taxes.

(d) Indemnification by the Borrower. The Borrower shall indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.06 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) Status of Lenders. Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (ii)(A), (ii)(B) and (ii)(D) of this Section) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(i) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Borrower,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or about the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or about the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) executed copies of IRS Form W-8EXP;

(4) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit D-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 871(c)(3)(B) of the Code, or a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or

(5) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-2 or Exhibit D-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or about the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the

Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

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

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.13 (including by the payment of additional amounts pursuant to this Section 2.13), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.13 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 2.13(h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.13(h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.13(h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Survival. Each party's obligations under this Section shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the New Money Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

SECTION 2.14. Limit on Rate of Interest.

(a) No Payment Shall Exceed Lawful Rate. Notwithstanding any other term of this Agreement, the Borrower shall not be obliged to pay any interest or other amounts under or in connection with this Agreement in excess of the amount or rate permitted under or consistent with any applicable law, rule or regulation.

(b) Payment at Highest Lawful Rate. If the Borrower is not obliged to make a payment which it would otherwise be required to make, as a result of Section 2.14(a), the Borrower shall make such payment to the maximum extent permitted by or consistent with applicable laws, rules and regulations.

(c) Adjustment if Any Payment Exceeds Lawful Rate. If any provision of this Agreement or any of the other Loan Documents would obligate the Borrower to make any payment of interest or other amount payable to any Lender in an amount or calculated at a rate which would be prohibited by any applicable law, rule or regulation, then notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law, such adjustment to be effected, to the extent necessary, by reducing the amount or rate of interest required to be paid by the Borrower to the affected Lender under Section 2.07.

Notwithstanding the foregoing, and after giving effect to all adjustments contemplated thereby, if any Lender shall have received from the Borrower an amount in excess of the maximum permitted by any applicable law, rule or regulation, then the Borrower shall be entitled, by notice in writing to the Administrative Agent (for distribution to the Lenders) to obtain reimbursement from that Lender in an amount equal to such excess, and pending such reimbursement, such amount shall be deemed to be an amount payable by that Lender to the Borrower.

SECTION 2.15. Pro Rata Sharing. Except as expressly set forth herein, whenever any payment received by the Administrative Agent under this Agreement is insufficient to pay in full all amounts then due and payable to the Administrative Agent and the Lenders under this Agreement, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the following order: first, to the payment of fees and expenses due and payable to the Administrative Agent and the Collateral Agent and their Affiliates under and in connection with this Agreement; second, to the payment of all expenses due and payable under Section 9.05, ratably among the Lenders in accordance with the aggregate amount of such payments owed to each Lender; third, to the payment of interest and amounts under Sections 2.07 and 2.13, if any, then due and payable on the Loans ratably among the Lenders in accordance with the aggregate amount of interest owed to each Lender; and fourth, to the payment of the principal amount of the Loans that is then due and payable, ratably among the Lenders in accordance with the aggregate principal amount owed to each such Lender.

SECTION 2.16. Adjustments; Set-off.

(a) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans resulting in

such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender entitled to such payment, then the Lender receiving such greater proportion shall (i) notify the Administrative Agent in writing and (ii) purchase for cash at face value participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders entitled thereto ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph (a) shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the terms of this Agreement, or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant. The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(b) Subject to Section 7.02, after the occurrence and during the continuance of an Event of Default, in addition to any rights and remedies of the Lenders provided by law, each Lender shall have the right, without prior notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by the Orders and applicable law, upon any amount becoming due and payable by the Borrower hereunder (whether at the stated maturity, by acceleration or otherwise) to set-off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch or agency thereof to or for the credit or the account of the Borrower or any Credit Party. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such set-off and application made by such Lender; provided that the failure to give such notice shall not affect the validity of such set-off and application.

SECTION 2.17. Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, if any New Money Lender becomes a Defaulting Lender, then, until such time as such New Money Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(a) any amount paid by the Borrower or otherwise received by the Administrative Agent for the account of a Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity payments or other amounts) will not be paid or distributed to such Defaulting Lender, but will instead be retained by the Administrative Agent in a segregated non-interest bearing account until the termination of the Aggregate New Money Commitments and payment in full of all Obligations and will be applied by the Administrative Agent, to the fullest extent permitted by law, to the making of payments from time to time in the following order of priority: first to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent under this Agreement, second to the payment of post-default interest and then current interest due and payable to the Lenders hereunder other than Defaulting Lenders,

ratably among them in accordance with the amounts of such interest then due and payable to them, third to the payment of fees then due and payable to the Non-Defaulting Lenders hereunder, ratably among them in accordance with the amounts of such fees then due and payable to them, fourth to the ratable payment of other amounts then due and payable to the Non-Defaulting Lenders, and fifth after the termination of the New Money Commitments and payment in full of all obligations of the Borrower hereunder, to pay amounts owing under this Agreement to such Defaulting Lender or as the Bankruptcy Court or any other court of competent jurisdiction may otherwise direct.

(b) Fees. Anything to the contrary notwithstanding, during such period as a New Money Lender is a Defaulting Lender, such Defaulting Lender will not be entitled to any fees accruing during such period.

(c) Defaulting Lender Cure. If the holders of more than 50% of the Aggregate New Money Commitments or New Money Loans, as applicable, agree in writing in their discretion that a New Money Lender is no longer a Defaulting Lender, as the case may be, the Administrative Agent (at the direction of such holders) will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, such New Money Lender will, to the extent applicable, purchase at par such portion of outstanding New Money Loans of the other New Money Lenders and/or make such other adjustments as the Administrative Agent may determine to be necessary to cause the New Money Loans of the New Money Lenders to be on a pro rata basis in accordance with their respective Aggregate New Money Commitments, whereupon such New Money Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such New Money Lender was a Defaulting Lender.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

In order to induce the Lenders and the Agents to enter into this Agreement and to induce the Lenders to make the Loans, the Borrower makes, on the Interim Facility Effective Date and the Final Facility Effective Date, the following representations and warranties to the Agents and the Lenders:

SECTION 3.01. Corporate Status. Subject to any restrictions arising on account of the Borrower's or any Guarantor's status as a "debtor" under the Bankruptcy Code and entry of the Orders, each of the Borrower and Guarantors (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all the requisite power and authority, and has all material governmental licenses, authorizations, consents and approvals necessary to own its property and assets and to transact its business as now conducted and (b) has duly qualified and is authorized to do business and is in good standing (if applicable) in all jurisdictions where it is required to be so qualified, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and all such jurisdictions, as of the Closing Date, are set forth on Schedule 3.01.

SECTION 3.02. Corporate Power and Authority; Enforceability; Security Interests. Subject to any restrictions arising on account of the Borrower's or any Guarantor's status as a "debtor" under the Bankruptcy Code and entry of the Orders and the terms thereof, (x) each Credit Party has (or, in the case of each Guarantor, will have) the corporate or limited liability company or other organizational power and authority and, if required, member action (including, without limitation, any action required to be taken by any class of managers, directors or partners (as applicable) of the Borrower or any other Person, whether interest or disinterested, in order to ensure the due authorization of the Transactions) to execute, deliver and carry out the terms and provisions of the Loan Documents to which it is a party and has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and (y) each Credit Party has (or, in the case of each Guarantor, will have) duly executed and delivered each Loan Document to which it is a party and each such Loan Document constitutes (or, in the case of each Guarantor, will constitute) the legal, valid and binding obligation of such Credit Party enforceable in accordance with its terms, subject to the terms of the Orders, the Borrower's or any Guarantor's status as a "debtor" under the Bankruptcy Code.

SECTION 3.03. No Violation. None of the execution, delivery or performance by any Credit Party of the Loan Documents to which it is a party or the compliance with the terms and provisions thereof will (a) other than violations arising as a result of the commencement of the Cases and except as otherwise excused by the Bankruptcy Court, contravene any Requirement of Law, (b) other than violations arising as a result of the commencement of the Cases and except as otherwise excused by the Bankruptcy Court, result in any breach or violation of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien upon the Credit Party or any of the Subsidiaries or any of the property or assets of such (other than Liens created under the Loan Documents and Liens permitted hereunder) pursuant to the terms of any indenture, loan agreement, lease agreement, mortgage, deed of trust, agreement or other instrument to which such Credit Party or any of the Subsidiaries is a party or by which it or any of its property or assets is bound (any such term, covenant, condition or provision, a "Contractual Requirement") or (c) violate any provision of the certificate of incorporation, by-laws or other organizational documents of such Credit Party or any of the Subsidiaries.

SECTION 3.04. Litigation. Except for (i) the Cases and, with respect to any Debtor, any of the following that are effectively stayed as a result of the Cases, (x) the consequences that would normally result from the commencement, continuation and prosecution of the Cases and (y) any challenge rights in accordance with the Orders and any objections or pleadings that may have been filed in the Cases relating to authorization to enter into the Loan Documents and incur the Obligations, and (ii) Disclosed Matters (including Schedule 3.04), there are no actions, suits, investigations or proceedings (including Environmental Claims) pending or, to the knowledge of the Borrower, threatened in writing against or affecting the Borrower, or any of its Subsidiaries or any of their respective properties that would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, or that involve any Loan Document or other Transactions.

SECTION 3.05. Margin Regulations. Neither the making of any Loan hereunder nor the use of the proceeds thereof will violate the provisions of Regulation T, Regulation U or Regulation X of the Board.

SECTION 3.06. Consents and Approvals. Subject to the Orders and the terms thereof, the execution, delivery and performance of each Loan Document, the validity or enforcement thereof, and the consummation of the other Transactions do not (or, in the case of each Guarantor, will not) require any consent or approval of, registration or filing with, or other action by, any Governmental Authority or any other third Persons (including members or any class of managers, whether interested or disinterested, of the Borrower or any other Person), except for (a) such as have been or will be prior to the Closing Date obtained or made and are or will be prior to the Closing Date in full force and effect, (b) filings and recordings in respect of the Liens created pursuant to the Orders and (c) such third party consents, approvals, registrations, filings or actions the failure of which to obtain or make would not reasonably be expected to have a Material Adverse Effect.

SECTION 3.07. Investment Company Act. No Credit Party is required to be registered as an "investment company" or a company "controlled" by an "investment company" within the meaning of, and subject to the regulation under, the Investment Company Act of 1940, as amended.

SECTION 3.08. True and Complete Disclosure. (a) All written factual information (other than estimates and information of a general economic nature or general industry nature) (the "Information") concerning the Borrower, the Restricted Subsidiaries, the Transactions and any other transactions contemplated hereby prepared by or on behalf of the foregoing or their representatives and made available to any Lenders or the Agents in connection with the Transactions or the other transactions contemplated hereby, when taken as a whole, was true and correct in all material respects as of the date such Information was furnished to the Lenders and the Agents and as of the Closing Date and did not, taken as a whole, contain any untrue statement of a material fact as of any such date or omit to state a material fact necessary in order to make the statements contained therein, taken as a whole, not materially misleading in light of the circumstances under which such statements were made.

(b) The estimates and information of a general economic nature or general industry nature prepared by or on behalf of the Borrower or any of its representatives and that have been made available to any Lenders or the Administrative Agent in connection with the Transactions or the other transactions contemplated hereby (i) do not contain any material misstatement of fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided that, with respect to projected financial information, the Borrower represents only that such information has been prepared in good faith based upon assumptions believed by the Borrower to be reasonable as of the date thereof, as of the date such estimates were furnished to the Lenders and as of the Closing Date), and (ii) as of the Closing Date, have not been modified in any material respect by the Borrower.

(c) The Borrower has disclosed to the Agents and the Lenders all agreements, instruments, and corporate or other restrictions to which it or any of the other Subsidiaries is

subject, and all other matters known to it, that, individually or, in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(d) There is no fact peculiar to the Borrower or any other Restricted Subsidiary which could reasonably be expected to have a Material Adverse Effect or in the future is reasonably likely to have a Material Adverse Effect and which has not been set forth in this Agreement or the Loan Documents or the other documents, certificates and statements furnished to the Agents or the Lenders by or on behalf of the Borrower or any other Restricted Subsidiary prior to, or on, the date hereof in connection with the transactions contemplated hereby. There are no statements or conclusions in any Reserve Report which are based upon or include misleading information or fail to take into account material information regarding the matters reported therein, it being understood that projections concerning volumes attributable to the Oil and Gas Properties and production and cost estimates contained in each Reserve Report are necessarily based upon professional opinions, estimates and projections and that the Borrower and the other Subsidiaries do not warrant that such opinions, estimates and projections will ultimately prove to have been accurate.

SECTION 3.09. Tax Matters. Except as excused by the Bankruptcy Code or where the failure of which would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect, each of the Borrower and the Subsidiaries has filed all federal income Tax returns and all other Tax returns, domestic and foreign, required to be filed by it (including in its capacity as a withholding agent) and has paid all Taxes payable by it that have become due, other than those (i) not yet delinquent or (ii) being contested in good faith by appropriate proceedings and as to which adequate reserves have been provided to the extent required by and in accordance with GAAP.

SECTION 3.10. Compliance with ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than $1,000,000 the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than $1,000,000 the fair market value of the assets of all such underfunded Plans.

SECTION 3.11. Subsidiaries. Schedule 3.11 lists each Subsidiary of the Borrower (and the direct and indirect ownership interest of the Borrower therein) on the Petition Date. The Borrower has no Subsidiaries other than those set forth on Schedule 3.11.

SECTION 3.12. Intellectual Property. The Borrower and each of the Restricted Subsidiaries own or have obtained valid rights to use all intellectual property, free from any burdensome restrictions, that is necessary for the operation of their respective businesses as currently conducted and as proposed to be conducted, except where the failure to obtain any such rights would not reasonably be expected to have a Material Adverse Effect.

SECTION 3.13. Environmental Laws. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) the Borrower and each of the Restricted Subsidiaries are and have been in compliance with all Environmental Laws, which compliance includes obtaining, maintaining, filing and complying with all applicable Environmental Permits, which Environmental Permits are in full force and effect; (ii) neither the Borrower nor any Restricted Subsidiary has received written notice of any Environmental Claim; (iii) neither the Borrower nor any Restricted Subsidiary is conducting any investigation, removal, remedial or other corrective action pursuant to any Environmental Law at any location; (iv) no Hazardous Materials have been (in the past or currently) treated, stored, transported, released or disposed or arranged for disposal or transport for disposal of Hazardous Materials at, on, under or from any property in a manner that would reasonably be expected to give rise to liability of the Borrower or any Restricted Subsidiary under Environmental Law; (v) no Property of the Borrower or any Restricted Subsidiary nor the operations currently conducted thereon or by any prior owner or operator of such Property or operations in violation of or subject to any existing, pending or, to the knowledge of the Borrower threatened action, suit, investigation, inquiry or proceeding by or before any court or Governmental Authority or to any remedial obligations under Environmental Laws; (vi) all Hazardous Materials, solid waste and oil and gas waste, if any, generated at any and all Property of the Borrower or any Restricted Subsidiary have, in the past, been transported, treated and disposed of in accordance with Environmental Laws and so as not to pose an imminent and substantial endangerment to public health or welfare or the environment, and all such transport carriers and treatment and disposal facilities have been and are operating in compliance with Environmental Laws and so as not to pose an imminent and substantial endangerment to public health or welfare or the environment, and are not the subject of any existing, pending or threatened action, investigation or inquiry by any Governmental Authority in connection with any Environmental Laws; (vii) the Borrower has taken all steps reasonably necessary to determine and has determined that no oil, Hazardous Materials, solid waste or oil and gas waste have been disposed of or otherwise released and there has been no threatened Release of any oil, Hazardous Materials, solid waste or oil and gas waste on or to any Property of the Borrower or any Restricted Subsidiary, except in compliance with Environmental Laws and so as not to pose an imminent and substantial endangerment to public health or welfare or the environment; and (viii) neither the Borrower nor any Restricted Subsidiary has any known contingent liability or Remedial Work in connection with any release or threatened release of any oil, Hazardous Materials, solid waste or oil and gas waste into the environment.

SECTION 3.14. Properties.

(a) Each of the Borrower and its Subsidiaries has valid fee simple title to, or valid leasehold interests in, or easements or other limited property interests in, all its real properties and has good and defensible title to its personal property and assets, in each case, except for Liens permitted hereunder and except for minor defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes and except where the failure to have such title, interests or easements would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All such properties and assets are free and clear of Liens, other than Liens permitted hereunder.

(b) All leases and agreements necessary for the conduct of the business of the Borrower and the Restricted Subsidiaries are valid and subsisting, in full force and effect, and there exists no default or event or circumstance which, with the giving of notice or the passage of time, or both, would give rise to a material default under any such lease or agreement.

(c) The rights and properties presently owned, leased or licensed by the Credit Parties including all easements and rights of way, include all rights and properties necessary to permit the Credit Parties to conduct their respective businesses as currently conducted in all material aspects.

(d) All of the properties of the Borrower and the Subsidiaries that are reasonably necessary for the operation of their businesses are in good working condition and are maintained in accordance with prudent business standards.

(e) The Borrower and each other Restricted Subsidiary owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by the Borrower and such other Subsidiaries does not infringe upon the rights of any other Person in any material respect.

SECTION 3.15. Foreign Corrupt Practices Act. The Borrower, its Subsidiaries and their respective directors, officers and employees and, to the knowledge of the Borrower, the agents of the Borrower and its Subsidiaries, are in compliance with all applicable Sanctions and with the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA") and any other applicable anti-corruption law, in all material respects. The Borrower and its Subsidiaries have instituted and maintain policies and procedures designed to promote and achieve continued compliance with applicable Sanctions, the FCPA and any other applicable anti-corruption laws.

SECTION 3.16. USA Patriot Act; OFAC; Money Laundering.

(a) The Borrower and each of its Subsidiaries is in compliance in all material respects with the applicable provisions of the USA Patriot Act.

(b) None of the Borrower or any of its Subsidiaries nor, to the knowledge of Borrower, any director, officer, agent, employee or Affiliate of the Borrower or any of the Subsidiaries is or is owned or controlled by persons who are: (i) listed in any Sanctions-related list of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC") or the U.S. Department of State, or sanctions administered by the United Nations Security Council, Her Majesty's Treasury, the European Union or any European Union Member State (collectively, "Sanctions") or (ii) are organized or resident in a country or territory that is, or whose government is, the subject of Sanctions; and the Borrower will not directly or, to the knowledge of the Borrower, indirectly use the proceeds of the Loans or otherwise make available such proceeds to any person, for the purpose of financing activities or business of or with any person, or in any country or territory, that is the subject of Sanctions, or in any other manner that would result in the violation of Sanctions by any person.

(c) The operations of the Borrower and its Subsidiaries are and have been conducted at all times in material compliance with applicable financial recordkeeping and

reporting requirements of the money laundering laws, and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Borrower or any of its Subsidiaries with respect to the money laundering laws is pending or, to the knowledge of the Borrower, threatened.

SECTION 3.17. Gas Imbalances, Prepayments. On the Final Facility Effective Date, except as set forth on Schedule 3.17, on a net basis, there are no gas imbalances, take or pay or other prepayments that would require any Credit Party to deliver Hydrocarbons either generally or produced from their Oil and Gas Properties at some future time without then or thereafter receiving full payment therefor.

SECTION 3.18. Marketing of Production. On the Final Facility Effective Date, except as set forth on Schedule 3.18, no material agreements exist (which are not cancelable on sixty (60) days' notice or less without penalty or detriment) for the sale of production of the Credit Parties' Hydrocarbons at a fixed non-index price (including calls on, or other rights to purchase, production, whether or not the same are currently being exercised) that have a maturity or expiry date of longer than six (6) months from the Interim Facility Effective Date.

SECTION 3.19. Hedge Agreements. Schedule 3.19 sets forth, as of the Final Facility Effective Date, a true and complete list of all Hedge Agreements of each Credit Party, the material terms thereof relating to the type, term, effective date, termination date and notional amounts or volumes, the net mark to market value thereof (as of the last Business Day of the most recent fiscal quarter preceding the Closing Date and for which a mark to market value is reasonably available), all credit support agreements relating thereto (including any margin required or supplied) and the counterparty to each such agreement.

SECTION 3.20. Compliance with the Laws; No Defaults.

(a) Each of the Borrower and each other Restricted Subsidiary is in compliance in all material respects with all Requirements of Law applicable to it and/or its Property and all agreements and other instruments binding upon it and/or its Property, and, subject to any restrictions arising on account of the Borrower's or any other Subsidiaries' status as a "debtor" under the Bankruptcy Code, possesses all licenses, permits, franchises, exemptions, approvals and other governmental authorizations necessary for the ownership of the Parent's, the Borrower's or any other Subsidiaries' Property and/or the conduct of the Parent's, the Borrower's or any other Subsidiaries' business.

(b) Except to the extent subject to the automatic stay under the Cases, none of the Borrower or any other Restricted Subsidiary is in default nor has any event or circumstance occurred which, but for the expiration of any applicable grace period or the giving of notice, or both, would constitute a default or would require the Borrower or any other Restricted Subsidiary to redeem or make any offer to redeem under any indenture, note, credit agreement or instrument pursuant to which any Material Indebtedness is outstanding or by which the Borrower or any other Restricted Subsidiary or any of their Properties is bound.

(c) No Default or Event of Default has occurred and is continuing.

SECTION 3.21. Insurance. (a) Schedule 3.21 sets forth a true, complete and correct description of all insurance maintained by the Borrower for itself or for the Restricted Subsidiaries or by each Restricted Subsidiary for itself, as the case may be, as of the date hereof. The Borrower has, and has caused its Restricted Subsidiaries to, maintain (or is listed as additional insured on policies maintained), with financially sound and reputable insurance companies, insurance (subject to customary deductibles and retentions) in such amounts and against such risks as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations and has, within the timeframe specified in Section 5.07(a), caused the Borrower and the Guarantors to be listed as insured (or additional insured) and the Collateral Agent to be listed as loss payee on property and property casualty policies and as an additional insured on liability policies.

(b) If any improvements located on any Mortgaged Property are at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a Special Flood Hazard Area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then the Borrower has, or has caused the applicable Credit Party to (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) delivered to the Administrative Agent (for distribution to the Lenders) evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent (acting at the direction of the Required Lenders).

SECTION 3.22. Financial Condition.

(a) The Borrower has heretofore furnished to the Administrative Agent (for distribution to the Lenders) (i) the audited consolidated balance sheet and statements of operations, shareholders' equity and cash flows as of and for the fiscal year ended December 31, 2018 and (ii) the Borrower and Subsidiaries' unaudited consolidated balance sheet and statements of operations, shareholders' equity and cash flows as of and for the fiscal quarter ended June 30, 2019. Such financial statements present fairly, in all material respects, the consolidated financial condition and results of operations and cash flows of the Borrower and the Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to changes resulting from audit and normal year-end audit adjustments and the absence of footnotes.

(b) Since the Petition Date, (i) there has been no event, development or circumstance that has had a Material Adverse Effect and (ii) other than as is customary in the case of chapter 11 debtors, the business of the Borrower and the Restricted Subsidiaries has been conducted only in the ordinary course.

SECTION 3.23. Restriction on Liens. Subject to any restrictions arising on account of the Borrower's or any other Restricted Subsidiaries' status as a Debtor, neither the Borrower nor any of the other Restricted Subsidiaries is a party to any agreement or arrangement (other than the Pre-Petition Credit Documents), or, other than as a result of the Cases, subject to any order, judgment, writ or decree, which either restricts or purports to restrict any of the Borrower's or any of the other Restricted Subsidiaries' ability to grant Liens to the Collateral Agent for the benefit of the Lenders on, or in respect of any of their respective Properties to secure the Obligations.

SECTION 3.24. [Reserved].

SECTION 3.25. Maintenance of Properties. Subject to the prior rights and limitations of Borrower as an owner of non-operated working interests, the Oil and Gas Properties (and Properties unitized therewith) of the Borrower and the other Subsidiaries have been maintained, operated and developed in a good and workmanlike manner and in conformity with all Requirements of Law and in conformity with the provisions of all leases, subleases or other contracts comprising a part of the Hydrocarbon Interests and other contracts and agreements forming a part of the Oil and Gas Properties of the Borrower and the other Subsidiaries.

(a) No Oil and Gas Property of the Borrower or any other Restricted Subsidiary is subject to having allowable production reduced below the full and regular allowable (including the maximum permissible tolerance) because of any overproduction (whether or not the same was permissible at the time); and

(b) None of the wells comprising a part of the Oil and Gas Properties (or Properties unitized therewith) of the Borrower or any Restricted Subsidiary is deviated from the vertical more than the maximum permitted by the Requirements of Law (except with respect to horizontal wells permitted by Governmental Authority), and such wells are, in fact, bottomed under and are producing from, and the well bores are wholly within, the Oil and Gas Properties (or in the case of wells located on Properties unitized therewith, such unitized Properties) of the Borrower or such Restricted Subsidiary. Subject to any necessary order or authorization of the Bankruptcy Court, all pipelines, wells, gas processing plants, platforms and other material improvements, fixtures, equipment and all other Midstream Assets owned in whole or in part by the Borrower or any of the Subsidiaries that are necessary to conduct normal operations are being maintained in a state adequate to conduct normal operations, and with respect to such of the foregoing which are operated by the Borrower or any Restricted Subsidiaries in a manner consistent with the Borrower's or the Restricted Subsidiaries' past practices.

SECTION 3.26. Article 8 of UCC. No Equity Interest of any Restricted Subsidiary is evidenced by a certificate or other instrument. None of the Organizational Documents of Restricted Subsidiary provides that any Equity Interest in any Restricted Subsidiary is a security governed by Article 8 of the UCC.

SECTION 3.27. EEA Financial Institution. Neither the Borrower nor any other Restricted Subsidiary is an EEA Financial Institution.

SECTION 3.28. Accounts. Schedule 3.28 attached hereto sets forth as of the Interim Facility Effective Date a complete and accurate list of all deposit, checking and other bank accounts, all securities and other accounts maintained with any broker dealer and all other similar accounts maintained by each Credit Party, together with a reasonably detailed description thereof (including, without limitation, the bank or broker dealer at which such deposit or other account is maintained and the account number and purpose thereof.

SECTION 3.29. Secured Obligations; Priority.

(a) The Cases were commenced on the Petition Date in accordance with applicable law and proper notice thereof and the proper notice for (x) the motions seeking approval

of the Loan Documents and the DIP Facility and (y) the hearings for the approval of the Orders was given in each case. The Borrower has given, on a timely basis as specified in the Orders, all notices required to be given on or prior to the date of this representation to all parties specified in the Orders.

(b) The provisions of this Agreement and the Interim Order (with respect to the period prior to entry of the Final Order) or the Final Order (with respect to the period on and after entry of the Final Order), as the case may be, are effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, legal, valid and perfected Liens on and security interests in all right, title and interest in the Collateral (or, in the case of the Liens securing the Roll-Up Loans, only the portion of the Collateral subject to valid, perfected and non-avoidable Liens securing the Existing First Lien Notes), having the priority set forth in the Loan Documents, and the Orders, and enforceable against the Credit Parties.

(c) Pursuant to Section 364(c)(1) of the Bankruptcy Code and the Orders, all Obligations and all other obligations of the Credit Parties under the Loan Documents constituting Superpriority Claims shall be allowed by the Bankruptcy Court, and shall at all times be senior to all other administrative claims of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code against the estates of Credit Parties, and any successor trustee or estate representative in the Cases or any subsequent proceeding or case under the Bankruptcy Court, subject only to the Carve-Out in the Orders.

SECTION 3.30. Orders. The Orders and the transactions contemplated thereby and hereby, are in full force and effect and have not been vacated, reversed, modified, amended or stayed without the prior written consent of the Administrative Agent and the Required Lenders.

SECTION 3.31. Avoidance Actions. Effective upon entry of the Final Order, the Collateral shall include Avoidance Proceeds solely to the extent permitted under and subject to the terms set forth in the Final Order.

ARTICLE IV

CONDITIONS PRECEDENT

SECTION 4.01. Conditions Precedent to the Interim Facility Effective Date. The obligations of the Lenders to enter into and execute this Agreement, and the obligations of New Money Lenders to make the Initial New Money Loans hereunder, shall commence on the first Business Day (the "Interim Facility Effective Date") when each of the following conditions precedent shall have been satisfied, except as otherwise agreed or waived pursuant to Section 9.01:

(a) counsel for the Lenders and the Agents shall have received (i) duly executed and delivered counterparts (in such numbers as may be requested by counsel for the Lenders) of this Agreement and the other Loan Documents to be executed and delivered on or prior to such date, from each party hereto or thereto, as applicable, signed on behalf of such party and (ii) duly executed Notes payable to each New Money Lender that requests a Note in the principal amount equal to such New Money Lender's New Money Commitment;

(b) the Lenders and the Administrative Agent shall have received a certificate of a Responsible Officer of each Credit Party setting forth (i) resolutions of its Board of Directors with respect to the authorization of such Credit Party to execute and deliver the Loan Documents to which it is a party, (ii) the officers of such Credit Party (y) who are authorized to sign the Loan Documents to which such Credit Party is a party and (z) who will, until replaced by another officer or officers duly authorized for that purpose, act as its representative for the purposes of signing documents and giving notices and other communications in connection with this Agreement, (iii) specimen signatures of such authorized officers, (iv) the articles or certificate of incorporation and bylaws or other comparable organizational documents of such Credit Party, certified as being true and complete, and (v) a good standing certificate for each Credit Party, from its state of incorporation, formation, or organization, as applicable, dated as of a recent date. The Administrative Agent and the Lenders may conclusively rely on such certificate until the Administrative Agent receives notice in writing from the Borrower to the contrary;

(c) the Interim Facility Effective Date shall have occurred not later than five (5) calendar days following the Petition Date, and the Interim Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the prior written consent of the Required Lenders and the Administrative Agent;

(d) the Administrative Agent (for distribution to the Lenders) shall have received the Initial DIP Budget, in form and substance acceptable to the Required Lenders;

(e) all UCC or other applicable personal property and financing statements, reasonably requested by the Collateral Agent to be filed, registered or recorded to perfect the Liens intended to be created by the Orders and maintain, assign or perfect such Liens to the extent required by, and with the priority required by, the Loan Documents or the Orders, shall have been delivered to the Collateral Agent for filing, registration or recording, it being understood that none of the Collateral shall be subject to any other pledges, security interests or mortgages, except for Liens permitted under Section 6.03 to the extent not consistent with this Agreement or the Orders;

(f) all pre- and post-petition fees, charges and expenses (including, without limitation, the fees, charges and expenses of Morrison & Foerster LLP, as counsel to the Lenders, Arnold & Porter Kaye Scholer LLP, as counsel to the Administrative Agent and Collateral Agent, and for each respective counsel, one local counsel in each applicable jurisdiction), and all other amounts due and payable on or prior to the Interim Facility Effective Date, required to be paid to the Agents, the Lenders, and their counsel on or before in the Interim Facility Effective Date pursuant to the this Agreement and the Agent Fee Letter, shall have been paid;

(g) on the Interim Facility Effective Date, all representations and warranties made by any Credit Party contained herein or in the other Loan Documents shall be true and correct (with respect to representations and warranties that contain a materiality qualification), or true and correct in all material respects (with respect to representations and warranties that do not contain a materiality qualification) with the same effect as though such representations and warranties had been made on and as of such date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date);

(h) the Agents and the Lenders shall have received at least one (1) day prior to the Interim Facility Effective Date, all documentation and other information about the Guarantors and the Borrower required under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act;

(i) the Administrative Agent and the Lenders shall have received a completed IRS Form W-9, duly executed by the Borrower;

(j) no trustee under chapter 7 or chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in any of the Cases;

(k) all Obligations with respect to the New Money Loans shall be secured by a perfected lien and security interest on all assets of the Credit Parties pursuant to the Orders, and all Obligations with respect to the Roll-Up Loans shall be secured by a perfected lien and security interests on all assets of the Credit Parties subject to valid, perfected and non-avoidable Liens securing the Existing First Lien Notes or any obligations arising thereunder, and such Lien and security interests shall have the priorities set forth in, the Orders, subject only to the Carve-Out and the Liens permitted by Section 6.03 and all filing and recording fees and taxes with respect to such Liens and security interests that are due and payable as of the Interim Facility Effective Date shall have been duly paid;

(l) no Default or Event of Default shall have occurred and be continuing; and

(m) the Administrative Agent and the Lenders shall have received a Notice of Borrowing in accordance with Section 2.02 executed and delivered by the Borrower to the Administrative Agent (for distribution to the Lenders) regarding the Initial New Money Loans.

SECTION 4.02. Conditions Precedent to the Final Facility Effective Date. The obligations of each New Money Lender to make Final New Money Loans shall commence as of the Business Day (the "Final Facility Effective Date") when each of the following conditions precedent have been satisfied in a manner satisfactory to the Required Lenders, except as otherwise agreed or waived pursuant to Section 9.01:

(a) The Interim Facility Effective Date shall have occurred.

(b) At any time prior to the Final Order Entry Date, the Interim Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the prior written consent of the Required Lenders and the Administrative Agent.

(c) The Final Order Entry Date shall have occurred, and, with respect to the Final Order, such Final Order shall, without limitation, approve the Roll-Up Facility.

(d) The Final Order shall be in full force and effect, shall not have been vacated or reversed, and shall not be subject to any stay and shall not have been modified or amended other than as acceptable to the Required Lenders and the Administrative Agent.

(e) The Administrative Agent and the Lenders shall have received all DIP Budget updates and Budget Variance Reports with accompanying certificates as required by Section 5.01.

(f) (i) At the time of and immediately after giving effect to such Borrowing, no Default or Event of Default shall have occurred and be continuing and (ii) at the time of such Borrowing, Liquidity shall be less than $50,000,000; provided however, that no cash held at SN EF Maverick, LLC shall be counted in the calculation of "Liquidity" for purposes of satisfying this Section 4.02(f)(ii).

(g) No event, development or circumstance shall have occurred since the Petition Date that has resulted in a Material Adverse Effect.

(h) On the Final Facility Effective Date, all representations and warranties made by any Credit Party contained herein or in the other Loan Documents shall be true and correct (with respect to representations and warranties that contain a materiality qualification), or true and correct in all material respects (with respect to representations and warranties that do not contain a materiality qualification) with the same effect as though such representations and warranties had been made on and as of such date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date).

(i) Subject to the Final Order, all fees, charges and expenses (including, without limitation, the fees, charges and expenses of Morrison & Foerster LLP, as counsel to the Lenders, Arnold & Porter Kaye Scholer LLP, as counsel to the Administrative Agent and Collateral Agent, and for each respective counsel, one local counsel in each applicable jurisdiction), and all other amounts due and payable on or prior to the Final Facility Effective Date, required to be paid to the Agents, the Lenders, and their counsel on or before in the Final Facility Effective Date pursuant to the this Agreement and the Agent Fee Letter, shall have been paid.

(j) The Administrative Agent and the Lenders shall have received a Notice of Borrowing in accordance with Section 2.02 executed and delivered by the Borrower to the Administrative Agent regarding the Final New Money Loans.

ARTICLE V

AFFIRMATIVE COVENANTS

Until the New Money Commitments have expired or been terminated and the principal of and interest, if applicable, on each Loan and all fees payable hereunder and all other Obligations payable under the Loan Documents (other than contingent indemnification obligations for which no claims have been made) shall have been paid in full in cash, the Borrower covenants and agrees that:

SECTION 5.01. Information Covenants. The Borrower shall furnish to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(a) Annual Financial Statements. Within ninety (90) days after the end of each such fiscal year, the audited consolidated balance sheets of the Borrower and all Subsidiaries, and, if materially different, the Borrower and the Restricted Subsidiaries, in each case as at the end of such fiscal year, and the related consolidated statements of operations, shareholders' equity and cash flows for such fiscal year, and setting forth comparative consolidated figures for the preceding fiscal years prepared in accordance with GAAP, and, except with respect to such reconciliation, certified by independent certified public accountants of recognized national standing whose opinion shall not be materially qualified with a scope of audit qualification or exception. Notwithstanding the foregoing, the obligations in this Section 5.01(a) may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing the Borrower's filing of a Form 10-K with the SEC.

(b) Quarterly and Monthly Financial Statements.

(i) Quarterly Financial Statements. Within five (5) days after the date on which such financial statements are required to be filed with the SEC (after giving effect to any permitted extensions) with respect to each of the first three quarterly accounting periods in each fiscal year of the Borrower (or, if such financial statements are not required to be filed with the SEC, on or before the date that is sixty (60) days after the end of each such quarterly accounting period), the consolidated balance sheets of the Borrower and the Subsidiaries and, if materially different, the Borrower and the Restricted Subsidiaries, in each case as at the end of such quarterly period and the related consolidated statements of operations, shareholders' equity and cash flows for such quarterly accounting period and for the elapsed portion of the fiscal year ended with the last day of such quarterly period, and setting forth comparative consolidated figures for the related periods in the prior fiscal year or, in the case of such consolidated balance sheet, for the last day of the prior fiscal year (or, in lieu of such unaudited financial statements of the Borrower and the Restricted Subsidiaries, a reconciliation reflecting such financial information for the Borrower and the Restricted Subsidiaries, on the one hand, and the Borrower and the Subsidiaries, on the other hand, reflecting adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements), all of which shall be certified by a Financial Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows, of the Borrower and its consolidated Subsidiaries in accordance with GAAP, subject to changes resulting from audit and normal year-end audit adjustments and the absence of footnotes.

(ii) Monthly Financial Statements On or before the date that is thirty-five (35) days after the end of each calendar month with respect to the first two (2) months in any fiscal quarter of the Borrower (commencing with the month ended July 31, 2019), the consolidated balance sheets of the Borrower and the Subsidiaries and, if materially different, the Borrower and the Restricted Subsidiaries, as at the end of such monthly period and the related consolidated statements of operations, shareholders' equity and cash flows for such monthly accounting period and for the elapsed portion of the fiscal year ended with the last day of such monthly period, and setting forth comparative consolidated figures for the related periods in the prior fiscal year or, in the case of such consolidated balance sheet, for the last day of the prior fiscal year (or, in lieu of such unaudited financial statements of the Borrower and the Restricted Subsidiaries, a reconciliation reflecting such

financial information for the Borrower and the Restricted Subsidiaries, on the one hand, and the Borrower and the Subsidiaries, on the other hand, reflecting adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements), all of which shall be certified by a Financial Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows, of the Borrower and its consolidated Subsidiaries in accordance with GAAP, subject to changes resulting from audit and normal year-end audit adjustments and the absence of footnotes.

(c) Notice of Default; Litigation. Promptly after an Authorized Officer of the Borrower or any of the Restricted Subsidiaries obtains actual knowledge thereof, notice of (i) the occurrence of any Default or Event of Default, which notice shall specify the nature thereof, the period of existence thereof and what action the Borrower proposes to take with respect thereto, (ii) any litigation or governmental proceeding pending against the Borrower or any of the Subsidiaries that would reasonably be expected to be determined adversely and, if so determined, to result in a Material Adverse Effect and in the case of clause (ii), that would reasonably be expected to have a Material Adverse Effect.

(d) Environmental Matters. Promptly after obtaining actual knowledge of any one or more of the following environmental matters, unless such environmental matters would not, individually, or when aggregated with all other environmental matters, be reasonably expected to result in a Material Adverse Effect, notice of:

(i) any pending or threatened Environmental Claim against any Credit Party;

(ii) any adverse change to the expected magnitude of the asset retirement or decommissioning obligations of any Credit Party arising under Environmental Law; and

(iii) the actual or threatened release of any Hazardous Material on, at, under or from any facility owned, leased or operated by a Credit Party or the conduct of any investigation, removal, remedial or other corrective action in response to the actual or alleged presence, release or threatened release of any Hazardous Material on, at, under or from any facility owned, leased or operated by a Credit Party.

All such notices shall describe in reasonable detail the nature of the claim, investigation, removal or remedial action.

(e) Officer's Certificates. At the time of the delivery of the financial statements provided for in Section 5.01(a), Section 5.01(b)(i) and Section 5.01(b)(ii), a certificate of a Financial Officer of the Borrower to the effect that no Default or Event of Default exists or, if any Default or Event of Default does exist, specifying the nature and extent thereof, which certificate shall set forth a specification of any change in the identity of the Restricted Subsidiaries, Guarantors, and Unrestricted Subsidiaries as at the end of each fiscal year or period, as the case may be, from the Restricted Subsidiaries, Guarantors and Unrestricted Subsidiaries, respectively,

provided to the Administrative Agent (for distribution to the Lenders) on the Interim Facility Effective Date or the most recent fiscal year or period, as the case may be.

(f) Other Information. With reasonable promptness, such other information regarding the operations, business affairs and the financial condition of the Borrower or the Restricted Subsidiaries as the Administrative Agent on its own behalf or on behalf of any Lender (acting through the Administrative Agent) may reasonably request in writing from time to time.

(g) DIP Budgets. On the Interim Facility Effective Date and on the last Friday of every four-week anniversary (commencing with the fourth (4th) Friday following the Interim Facility Effective Date) (or, if any such Friday is not a Business Day, the next Business Day thereafter), a DIP Budget. Following the Interim Facility Effective Date, upon the earlier of (x) approval of a DIP Budget by Lenders constituting Required Lenders acting in their reasonable discretion and (y) unless earlier rejected by the Lenders constituting the Required Lenders acting in their reasonable discretion, the fourth (4th) Business Day following the delivery of a DIP Budget delivered pursuant to this Section 5.01(g), such DIP Budget shall constitute the "Approved Budget"; provided that (i) to the extent such DIP is not approved by the Required Lenders as set forth in this clause (g), the Borrower shall propose a new DIP Budget no later than the following Friday, and (ii) the Approved Budget that was in effect at such time shall continue to be the Approved Budget until a subsequent DIP Budget is approved as the Approved Budget in accordance with this clause (g).

Notwithstanding the foregoing, if SN EF Maverick, LLC shall cease to be the operator (or the operator of record) with respect to the Oil and Gas Properties subject to the Joint Development Agreement by and among Gavilan Resources, LLC, SN EF Maverick, LLC, SN EF UnSub, LP and the Borrower, then (i) the Borrower shall, within forty five (45) days of such cessation, propose a DIP Budget reflecting appropriate reductions to general and administrative expenses as result of such cessation, (ii) if such DIP Budget is not approved by Required Lenders pursuant to the procedures set forth in this clause (g), then the parties to this Agreement shall file a motion or other pleading with the Bankruptcy Court seeking, on an expedited basis, a determination as to whether such DIP Budget is reasonable, (iii) if such DIP Budget is determined by the Bankruptcy Court to be reasonable, then it shall constitute the Approved Budget, and (iv) if such DIP Budget is determined by the Bankruptcy Court not to be reasonable, the Borrower shall promptly propose a new DIP Budget, which shall be subject to approval pursuant to the procedures set forth in this sentence.

(h) Weekly Budget Variance Reports. Every Friday (commencing with August 23, 2019), the Borrower shall deliver a report showing actual receipts and disbursements through the prior week in the format of the Approved Budget then in effect, a Budget Variance Report for the applicable Test Period, and an explanation of any material variance to the Approved Budget then in effect. Each such report shall be certified by an Authorized Officer of the Borrower as being prepared in good faith and fairly presenting in all material respects the information set forth therein. At the request of the Required Lenders, the Borrower shall make its chief financial officer, its financial advisor or both available via teleconference to provide a reasonably detailed explanation of any material variances to the Administrative Agent and the Lenders, which shall be in each case, subject to Section 9.13 hereunder.

It is understood that documents required to be delivered pursuant to Sections 5.01(a) through (h) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which such documents are transmitted by electronic mail to the Administrative Agent (for distribution to the Lenders); provided that the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent, by electronic mail or through an electronic platform, electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents.

SECTION 5.02. End of Fiscal Years; Fiscal Quarters. The Borrower shall, for financial reporting purposes, cause each of its, and each of its Restricted Subsidiaries', fiscal years and fiscal quarters to end on dates consistent with past practice.

SECTION 5.03. Use of Proceeds. The Borrower shall use the proceeds of the New Money Loans for general corporate and working capital purposes, including to (i) pay required debt service on the Loans, (ii) pay all amounts required to fully discharge and satisfy its obligations under the Existing ABL Facility, (iii) pay the fees, costs and expenses of the Agents and the Initial Lenders, (iv) pay fees and expenses of professionals associated with the Cases, (iv) provide certain adequate protection payments permitted by the Orders, and (v) to pay all amounts required in connection with the unwinding, novation or termination of Hedging Obligations.

SECTION 5.04. Future Guarantors. The Borrower shall cause (a) each Wholly Owned Restricted Subsidiary that becomes a Debtor under the Cases and (b) each Wholly Owned Restricted Subsidiary that guarantees (x) the Existing ABL Facility or the Existing First Lien Indenture or (y) any Indebtedness of the Borrower or any of the Guarantors that is secured by the Collateral to promptly execute and deliver to the Administrative Agent a joinder agreement (in form and substantive reasonably satisfactory to the Required Lenders) to the Guarantee pursuant to which such Wholly Owned Restricted Subsidiary will guarantee payment of the Loans on the terms and conditions set forth in this Agreement, and to become subject to the Orders to the same extent as any of the other Guarantors. Each Guarantee shall be released in accordance with Section 9.19.

SECTION 5.05. Priority of Liens. The Borrower shall, and shall cause each Credit Party to, upon the execution of this Agreement, the other Loan Documents, and entry of the Interim Order (and when applicable, the Final Order), cause the Obligations of each Credit Party hereunder and under the Loan Documents to have the priority and liens set forth in the Interim Order or the Final Order, as applicable, in each case, subject to the Carve-Out and other liens described in the Interim Order or the Final Order, as applicable.

Subject to and effective only upon entry of the Final Order, except to the extent of the Carve-Out, no costs or expenses of administration of the Cases or any future proceeding that may result therefrom, including a case under chapter 7 of the Bankruptcy Code, shall be charged against or recovered from the Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, the enhancement of collateral provisions of section 552 of the Bankruptcy Code, or any other legal or equitable doctrine (including, without limitation, unjust enrichment) or any similar principle of law, without the prior written consent of the Required Lenders, as the case may be with respect to

their respective interests, and no consent shall be implied from any action, inaction or acquiescence by the Lenders. In no event shall the Administrative Agent, the Collateral Agent, the Lenders or the Prepetition Secured Parties (as defined in the applicable Order) be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral.

Except for the Carve-Out and as otherwise set forth in the applicable Order and herein, the Superpriority Claims shall at all times be senior to the rights of the Borrower, any chapter 11 trustee and, subject to section 726 of the Bankruptcy Code, any chapter 7 trustee, or any other creditor (including, without limitation, post-petition counterparties and other post-petition creditors) in the Cases or any subsequent proceedings under the Bankruptcy Code, including, without limitation, any chapter 7 cases (if any of the Cases are converted to cases under chapter 7 of the Bankruptcy Code).

SECTION 5.06. Existence; Business and Properties. The Borrower shall, and shall cause each Restricted Subsidiary to:

(a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence except, in the case of any Restricted Subsidiary, except as otherwise permitted by this Article V and Article VI.

(b) Except as could not reasonably be expected to have a Material Adverse Effect, (i) do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the permits, franchises, authorizations, intellectual property, licenses and rights with respect thereto necessary to the normal conduct of its business and (ii) at all times maintain and preserve all material property necessary to the normal conduct of its business and keep such property in good repair, working order and condition and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith, if any, may be properly conducted at all times (in each case except as permitted by this Agreement).

SECTION 5.07. Maintenance of Insurance.

(a) The Borrower shall, and shall cause its Restricted Subsidiaries to, maintain (or is listed as additional insured on policies maintained), with financially sound and reputable insurance companies, insurance (subject to customary deductibles and retentions) in such amounts and against such risks as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations and cause the Borrower and the Guarantors to be listed as insured (or additional insured) and within three (3) Business Days after the Interim Facility Effective Date (or such longer time as reasonably approved by the Collateral Agent at the direction of the Required Lenders), the Collateral Agent to be listed as co-loss payee on property and property casualty policies and as an additional insured on liability policies.

(b) If any improvements located on any Mortgaged Property are at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a Special Flood Hazard Area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or

successor act thereto), then the Borrower shall, or shall cause the applicable Credit Party to (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) deliver to the Collateral Agent (for distribution to the Lenders) evidence of such compliance in form and substance reasonably acceptable to the Lenders.

(c) In connection with the covenants set forth in this Section 5.07, it is understood and agreed that:

(i) none of the Agents, the Lenders and their respective agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 5.07, it being understood that (A) the Credit Parties shall look solely to their insurance companies or any other parties other than the aforesaid parties for the recovery of such loss or damage and (B) such insurance companies shall have no rights of subrogation against the Agents, the Lenders or their agents or employees. If, however, the insurance policies, as a matter of the internal policy of such insurer, do not provide waiver of subrogation rights against such parties, as required above, then the Borrower, on behalf of itself and on behalf of each of its Subsidiaries, hereby agrees, to the extent permitted by law, to waive, and further agrees to cause each of its Subsidiaries to waive, its right of recovery, if any, against the Agents, the Lenders and their agents and employees; and

(ii) the designation of any form, type or amount of insurance coverage by the Lenders under this Section 5.07 shall in no event be deemed a representation, warranty or advice by the Lenders that such insurance is adequate for the purposes of the business of the Borrower and the Restricted Subsidiaries or the protection of their properties.

SECTION 5.08. Payment of Taxes, etc. In accordance with the Bankruptcy Code and subject to any required approval by the Bankruptcy Court (it being understood that no Debtor shall be obligated to make any payments hereunder that may, in its reasonable judgment, result in a violation of any applicable law, including the Bankruptcy Code, without an order of the Bankruptcy Court authorizing such payments), the Borrower shall, and shall cause each Subsidiary to, pay, discharge or otherwise satisfy its obligations in respect of all US federal and material state and local Tax liabilities, assessments and governmental charges, before the same shall become delinquent or in default, except where the amount or validity thereof is being contested in good faith by appropriate proceedings and the Borrower or a Subsidiary thereof has set aside on its books adequate reserves therefor in accordance with GAAP.

SECTION 5.09. Compliance with Laws. Except as otherwise excused or prohibited by the Bankruptcy Code, and subject to any required approval by the Bankruptcy Court, the Borrower shall, and shall cause each Subsidiary to, comply in all material respects with all laws, rules, regulations and judgments, writs, injunctions, decrees and orders of any Governmental Authority, whether now in effect or hereafter enacted, applicable to it or its property (including without limitation the USA Patriot Act and any Environmental Law).

SECTION 5.10. After-Acquired Property. Upon the acquisition by the Borrower or any Guarantor of any after-acquired property, or upon any additional Restricted Subsidiary becoming a Guarantor that has after-acquired property, the Borrower or such Guarantor shall take such actions, if any, as shall be necessary to vest in the Collateral Agent a perfected security interest, subject only to Permitted Liens, in such after-acquired property and to have such after-acquired property (but subject to the limitations described in Article IX, the Loan Documents and the Orders and limitations under applicable local law) added to the Collateral, and thereupon all provisions of this Agreement relating to the Collateral shall be deemed to relate to such after-acquired property to the same extent and with the same force and effect.

In connection therewith, the Borrower shall provide title and environmental information (including customary title opinions or reports or other documents) consistent with usual and customary standards for the geographic regions in which such Oil and Gas Properties are located, taking into account the size, scope and number of leases and wells of the Borrower and its Restricted Subsidiaries.

SECTION 5.11. Further Instruments and Acts. Upon the request of an Agent or the Required Lenders, the Borrower shall, and shall cause the other Credit Parties to, execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Agreement.

Notwithstanding the foregoing provisions of this Section 5.11 or anything in this Agreement or any other Loan Document to the contrary, Liens required to be granted from time to time shall be subject to exceptions and limitations set forth in the Interim Order (and, if applicable, the Final Order) and the Loan Documents and, to the extent appropriate in any applicable jurisdictions, as agreed between the Collateral Agent and the Borrower.

SECTION 5.12. ERISA.

(a) Promptly after the Borrower knows or has reason to know of the occurrence of an ERISA Event that, individually or in the aggregate, would be reasonably likely to have a Material Adverse Effect, the Borrower will deliver to the Administrative Agent (for distribution to the Lenders) a certificate of an Authorized Officer or any other senior officer of the Borrower or ERISA Affiliate setting forth details as to such occurrence and the action, if any, that the Borrower or such ERISA Affiliate is required or proposes to take, together with any notices (required, proposed or otherwise) given to or filed with or by the Borrower, such ERISA Affiliate, the PBGC, a Plan participant (other than notices relating to an individual participant's benefits) or the Plan administrator with respect thereto.

Promptly following any request therefor, the Borrower will deliver to the Administrative Agent (for distribution to the Lenders) copies of (i) any documents described in Section 101(k) of ERISA that the Borrower and any of its Subsidiaries may request with respect to any Multiemployer Plan and (ii) any notices described in Section 101(l) of ERISA that the Borrower and any of its Subsidiaries may request with respect to any Multiemployer Plan; provided that if the Borrower or any of its Subsidiaries has not requested such documents or notices from the administrator or sponsor of the applicable Multiemployer Plan, the Borrower or the applicable Subsidiaries shall promptly make a request for such documents or notices from such

administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof.

SECTION 5.13. Conference Calls. The Borrower shall participate and cause the Chief Restructuring Officer to participate, upon the request of the Administrative Agent or the Required Lenders, on a date following the end of each calendar month, in an informal Q&A conference call with the Administrative Agent and the Lenders, and all information disclosed during such conference call shall be subject to Section 9.13 hereunder to the extent such call includes non-public information, as determined by the Borrower in its sole discretion. For the avoidance of doubt, there shall be no requirement to disclose information subject to any attorney-client privilege or similar privileges and immunities.

SECTION 5.14. Books, Records and Inspections.

(a) The Borrower shall, and shall cause each Restricted Subsidiary to, permit officers and designated representatives of the Administrative Agent, Collateral Agent or any Lender, to visit and inspect any of the Property of the Borrower or such Restricted Subsidiary in whomsoever's possession to the extent that it is within such party's control to permit such inspection (and shall use commercially reasonable efforts to cause such inspection to be permitted to the extent that it is not within such party's control to permit such inspection), and to examine the financial records of the Borrower and any such Restricted Subsidiary and discuss the affairs, finances, accounts and condition of the Borrower or any such Restricted Subsidiary with its and their officers and independent accountants therefor, in each case of the foregoing upon reasonable advance notice to the Borrower, all at such reasonable times and intervals during normal business hours and to such reasonable extent as the Administrative Agent, the Collateral Agent or the Required Lenders may desire (and subject, in the case of any such meetings or advice from such independent accountants, to such accountants' customary policies and procedures). The Administrative Agent and the Required Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants.

(b) The Borrower shall, and shall cause each of the Restricted Subsidiaries to, maintain financial records in accordance with GAAP.

SECTION 5.15. Milestones. The Borrower shall ensure the satisfaction of the following milestones (collectively, the "Milestones" and each a "Milestone") on or before the following dates (or any later date approved by the Required Lenders in their sole discretion):

(a) no later than five (5) days after the Petition Date, entry of the Interim Order;

(b) no later than January 23, 2020, entry of the Final Order;

(c) no later than March 09, 2020, filing of a proposed Acceptable Plan of Reorganization and related disclosure statement; and

(d) no later than April 13, 2020, entry of an order approving the disclosure statement.

SECTION 5.16. Bankruptcy Related Matters. The Borrower shall and shall cause each of the Subsidiaries to:

(a) comply in all material respects with the Orders;

(b) comply in all material respects with each order entered in connection with the Cases (other than the Orders);

(c) provide the Administrative Agent and the Lenders with reasonable access during normal business hours to Responsible Officers upon prior written notice regarding strategic planning, cash and liquidity management, operational and restructuring activities, in each case subject to Section 9.13 herein. For the avoidance of doubt, there shall be no requirement to disclose information subject to any attorney- client privilege or similar privileges and immunities.

SECTION 5.17. Lists of Purchasers. Promptly following the written request of the Administrative Agent (at the direction of the Required Lenders), the Borrower shall provide a list of all Persons, as of a specified date for a specified period, purchasing Hydrocarbons (a) constituting more than 10% of all sales of Hydrocarbons from the Borrower or any Restricted Subsidiary or (b) who are Affiliates of any Credit Party.

SECTION 5.18. Notice of Sales of Oil and Gas Properties and Liquidation of Hedge Agreements. In the event the Borrower or any Subsidiary intends to dispose of, liquidate, sell, assign, farm-out, convey, lease, license or otherwise transfer any Property of any Oil or Gas Properties or any Equity Interests in any Subsidiary (other than sales of Hydrocarbons in the ordinary course of business), the Borrower shall deliver to the Administrative Agent and the Lenders prior written notice of such disposition, the price thereof and the anticipated date of closing and any other details thereof reasonably requested by the Administrative Agent or the Required Lenders. If the Borrower or any Subsidiary receives any notice of early termination of any Hedge Agreement to which it is a party from any of its counterparties, or any Hedge Agreement to which the Borrower or any Subsidiary is a party is Liquidated, the Borrower will deliver to the Administrative Agent (for distribution to the Lenders) prompt written notice of the receipt of such early termination notice or such Liquidation, as the case may be, together with a reasonably detailed description or explanation thereof and any other details thereof requested by the Administrative Agent or the Required Lenders.

SECTION 5.19. Production Report and Lease Operating Statements. Within thirty (30) days after the end of each calendar month, the Borrower shall deliver to the Administrative Agent (for distribution to the Lenders) a report setting forth in all material respects, for each calendar month during the then elapsed portion of the fiscal year, the volume of production and sales attributable to production (and the prices at which such sales were made and the revenues derived from such sales) for each such calendar month from the Oil and Gas Properties of the Borrower and the Subsidiaries, and setting forth the related ad valorem, severance and production taxes and lease operating expenses attributable thereto and incurred for each such calendar month.

SECTION 5.20. Operation and Maintenance of Properties. The Borrower shall, and shall cause each Subsidiary to:

(a) operate its Oil and Gas Properties and other material properties or cause such Oil and Gas Properties and other material properties to be operated in accordance with the customary practices of the industry and in compliance with all applicable contracts and agreements and in material compliance with all applicable laws, rules, and regulations of every Governmental Authority, including applicable pro ration requirements and Environmental Laws, from time to time constituted to regulate the development and operation of its Oil and Gas Properties and the production and sale of Hydrocarbons and other minerals therefrom.

(b) keep and maintain all property and assets material to the conduct of its business in good working order and condition, including all equipment, machinery and facilities, ordinary wear and tear excepted.

(c) promptly pay and discharge, or make reasonable and customary efforts to cause to be paid and discharged, all material delay rentals, royalties, expenses and indebtedness accruing under the leases or other agreements affecting or pertaining to its Oil and Gas Properties and do all other things necessary to keep unimpaired their rights with respect thereto and prevent any forfeiture thereof or default thereunder, except where (i) the validity or amount thereof is being contested in good faith by appropriate actions and (ii) it has set aside adequate reserves with respect thereto in accordance with GAAP.

(d) promptly perform or make reasonable and customary efforts to cause to be performed, in accordance with industry standards, the material obligations required by each and all of the assignments, deeds, leases, sub-leases, contracts and agreements affecting its interests in its Oil and Gas Properties and other material properties, except where (i) the validity or amount thereof is being contested in good faith by appropriate actions, and (ii) it has set aside adequate reserves with respect thereto in accordance with GAAP.

(e) to the extent the Borrower is not the operator of any Oil and Gas Properties, the Borrower shall use reasonable efforts to cause the operator to comply with this Section 5.20.

SECTION 5.21. Reserve Reports.

(a) Within (i) five (5) Business Days following the date hereof, (ii) sixty (60) days following the end of each fiscal year of the Borrower (commencing with the fiscal year ending December 31, 2019) and (iii) thirty (30) days after the end of the second fiscal quarter of the Borrower (commencing with the fiscal quarter ended June 30, 2020), in each case, the Borrower shall furnish to the Administrative Agent (for distribution to the Lenders) a Reserve Report evaluating, as of the immediately preceding December 31 (or January 1) or June 30, as applicable, the Proved Reserves of the Borrower and Guarantors, which Reserve Report in the case of each December 31 (or January 1) report shall be prepared or audited by the Borrower's independent reserve engineers and each other Reserve Report shall be prepared internally by or under the supervision of the chief engineer of the Borrower who shall certify such Reserve Report to be true and accurate in all material respects and to have been prepared in accordance with the procedures used in the immediately preceding December 31 (or January 1) Reserve Report (or if such December 31 (or January 1) Reserve Report has not yet been provided hereunder, the immediately prior Reserve Report), and at the request of the Administrative Agent (at the direction of the

Required Lenders), accompanied by supporting documentation evidencing the production and cost estimates utilized in such Reserve Report.

(b) Within thirty (30) days after (i) the Petition Date and (ii) the written request (which request shall set forth the applicable date of determination) by the Administrative Agent (at the direction of the Required Lenders), the Borrower shall furnish to the Administrative Agent (for distribution to the Lenders) a Roll Forward Reserve Report evaluating, as of (x) August 1, 2019 in the case of the Roll-Forward Reserve Report delivered pursuant to clause (i) above, or (y) the date of determination specified in the case of the Roll-Forward Reserve Report delivered pursuant to clause (ii) above, the Proved Reserves of the Borrower and Guarantors which Roll-Forward Reserve Report shall be prepared by or under the supervision of the chief engineer of the Borrower who shall certify such Roll-Forward Reserve Report to be true and accurate in all material respects; provided that, the Administrative Agent may not request a Roll-Forward Reserve Report pursuant to clause (ii) above more than one (1) time during the term of this Agreement.

(c) With the delivery of each Reserve Report, the Borrower shall provide to the Administrative Agent (for distribution to the Lenders) a Reserve Report Certificate substantially in the form of Exhibit I (each, a "Reserve Report Certificate") from a Responsible Officer certifying that in all material respects: (i) the factual information contained in the Reserve Report and any other information delivered in connection therewith is true and correct, and (ii) none of the Proved Reserves included in such Reserve Report have been transferred, assigned or otherwise disposed of since the date of such Reserve Report except for those Oil and Gas Properties described in such certificate as having been disposed of.

SECTION 5.22. Title Information.

(a) On or before the delivery to the Administrative Agent of each Reserve Report required by Section 5.21(a), the Borrower shall deliver to the Administrative Agent (for distribution to the Lenders) title information in form and substance reasonably acceptable to the Administrative Agent (acting at the direction of the Required Lenders) covering the Oil and Gas Properties evaluated by such Reserve Report that were not included in the immediately preceding Reserve Report, so that the Administrative Agent and the Lenders shall have received together with title information previously delivered to the Administrative Agent and the Lenders, reasonably satisfactory (as reasonably determined by the Required Lenders) title information on the entirety of the total value of the Oil and Gas Properties evaluated by such Reserve Report.

(b) If the Borrower has provided title information for additional Properties under Section 5.21(a), within thirty (30) days of notice from the Administrative Agent (acting at the direction of the Required Lenders) that title defects or exceptions exist with respect to such additional Properties (other than, of a nature or type that constitutes a permitted Lien pursuant to Section 6.03), the Borrower shall cure any such title defects or exceptions (including defects or exceptions as to priority) which are not permitted by Section 6.03.

SECTION 5.23. Deposit Accounts.

(a) At all times, the Borrower shall, and shall cause each of the Restricted Subsidiaries to, deposit, or cause to be deposited directly, all Dedicated Cash Receipts into one or

more Deposit Accounts in which the Collateral Agent has been granted a Lien pursuant to the Interim Order or Final DIP Order, as applicable.

(b) Upon the request of the Administrative Agent (acting at the direction of the Required Lenders) the Borrower shall provide to the Administrative Agent, within two (2) Business Days of any such request (or such longer period the Administrative Agent (acting at the direction of the Required Lenders) may agree), balance statements, in a form reasonably acceptable to the Administrative Agent (acting at the direction of the Required Lenders), for each Deposit Account of the Borrower and each Subsidiary.

ARTICLE VI

NEGATIVE COVENANTS

Until the New Money Commitments have expired or been terminated and the principal of and interest, if applicable, on each Loan and all fees payable hereunder and all other Obligations payable under the Loan Documents (other than contingent indemnification obligations for which no claim has been made) shall have been paid in full in cash, the Borrower covenants and agrees that:

SECTION 6.01. Minimum Liquidity. The Borrower shall not permit Liquidity to be less than $15,000,000 at any time during the period commencing on the Interim Facility Effective Date, provided, however, that no cash held at SN EF Maverick, LLC shall be counted in the calculation of "Liquidity" for purposes of satisfying this Section 6.01. For purposes of this Section 6.01, Liquidity shall be measured on Friday of each week (commencing with the delivery of the first Budget Variance Report).

SECTION 6.02. Indebtedness.

(a) The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to create, incur, assume or suffer to exist, any Indebtedness.

(b) The limitations set forth in Section 6.02(a) shall not apply to:

(i) the Obligations pursuant to this Agreement and under the Orders;

(ii) Endorsements of negotiable instruments for collection in the ordinary course of business;

(iii) Indebtedness outstanding on the Petition Date and set forth on Schedule 6.02, including all Permitted Refinancing Indebtedness to extend, refinance, renew, replace, defease, discharge, refund or otherwise retire for value, in whole or in part, any Indebtedness incurred pursuant to this clause (iii);

(iv) the incurrence by the Borrower or any of its Restricted Subsidiaries of Indebtedness represented by Capitalized Lease Obligations, mortgage financings or purchase money obligations or other Indebtedness, in each case incurred for the purpose of financing all or any part of the purchase price, other acquisition cost or cost of design,

construction, installation, development, repair or improvement of property, plant or equipment used in the business of the Borrower such Restricted Subsidiary (together with improvements, additions, accessions and contractual rights relating primarily thereto) and related financing costs, including all Permitted Refinancing Indebtedness to extend, refinance, renew, replace, defease, discharge, refund or otherwise retire for value, in whole or in part, any Indebtedness incurred pursuant to this clause (iv); provided that after giving effect to any such incurrence, the aggregate principal amount of all Indebtedness incurred pursuant to this clause (iv) then outstanding does not exceed $1,000,000 at any time;

(v) the incurrence by the Borrower or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds in the ordinary course of business;

(vi) to the extent constituting Indebtedness, Hedging Obligations consistent with the order of the Bankruptcy Court, which order shall be acceptable in form and substance to the Required Lenders (for the avoidance of doubt any Hedging Obligations under Hedging Agreements in effect on the Petition Date shall be deemed to be approved by the Required Lenders and consistent with the order of the Bankruptcy Court);

(vii) Indebtedness of the Borrower or any Restricted Subsidiary in the form of reimbursement obligations in respect of the Specified Letter of Credit;

(viii) the incurrence by the Borrower or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds in the ordinary course of business; and (b) obligations constituting, or arising in connection with, the Cash Management Services;

(ix) Indebtedness, if any, incurred in connection with that certain Purchase and Sale Agreement, dated as of October 6, 2016, by and among the Borrower, SN Midstream, LLC and Sanchez Midstream Partners LP (f/k/a Sanchez Production Partners LP) as in effect on the date hereof;

(x) other unsecured Indebtedness in an aggregate principal amount not to exceed $1,000,000 at any one time outstanding, the net cash proceeds of which are used in accordance with the Approved Budget then in effect (subject to Permitted Variance); and

(xi) the guarantee by any Credit Party of Indebtedness of any other Credit Party that is permitted to be incurred by another provision of this Section 6.02.

SECTION 6.03. Liens. The Borrower shall not, and shall not permit any Restricted Subsidiary to create, incur, assume or suffer to exist any Lien on any Property of the Borrower or such Restricted Subsidiary, other than Permitted Liens.

SECTION 6.04. Restricted Payments. The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except that any Subsidiary may make Restricted Payments to the Borrower or any Guarantor.

SECTION 6.05. Investments. The Borrower shall not, and shall not permit any Restricted Subsidiary to, make or permit to remain outstanding any Investments in or to any Person, except that the foregoing restriction shall not apply to:

(a) Investments existing on the Effective Date;

(b) Investments of the Borrower and its Subsidiaries in the form of accounts receivable or similar extensions of credit arising from the grant of trade credit arising in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(c) Investments in Cash or Cash Equivalents;

(d) Investments (i) made by the Borrower in or to the Guarantors, or (ii) made by any Subsidiary in or to the Borrower or any Guarantor;

(e) cash and non-cash Industry Investments entered into in the ordinary course of business in consultation with the Lenders; provided that, the aggregate amount of Industry Investments made pursuant to this clause (e) shall not exceed $1,000,000 at any one time outstanding (with the value of any such non-cash Industry Investment deemed to be the higher of the values reflected in (x) the most recent Reserve Report delivered to the Administrative Agent and (y) an appraisal completed by an independent third party appraiser selected by the Administrative Agent at the direction of the Required Lenders);

(f) Hedging Obligations not prohibited by Section 6.02 and consistent with the Orders;

(g) guarantees of Indebtedness permitted under Section 6.02.

(h) Investments in any Person to the extent such Investments consist of prepaid expenses, negotiable instruments held for collection or pledges or deposits (or guarantees or other contingent obligations) described in clauses (a) and (b) of the definition of "Permitted Liens" made by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business.

(i) Investments to the extent constituting Permitted Liens;

(j) guarantees of performance or other obligations (other than Indebtedness for borrowed money) arising in the ordinary course of business, including obligations under oil and natural gas exploration, development, joint operating and related agreements and licenses or concessions related to the Oil and Gas Business;

(k) to the extent constituting an Investment, any payments or advances made pursuant to the Services Agreement; and

(l) other Investments not to exceed $1,000,000 in the aggregate at any one time outstanding.

SECTION 6.06. Nature of Business. The Borrower shall not, and shall not permit any Restricted Subsidiary to, allow any material change to be made in the character of its business as an independent oil and gas exploration company and business activities incidental thereto.

SECTION 6.07. Sale of Property. The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, dispose of, liquidate, sell, assign, farm-out, convey, lease, license or otherwise transfer (each, a "Disposition" of) any Property, including without limitation, Equity Interests of any of Restricted Subsidiaries, except for:

(a) the sale of Hydrocarbons of the Borrower and its Subsidiaries in the ordinary course of business;

(b) Farm-Out Agreements with respect to undeveloped acreage of the Borrower and its Subsidiaries and assignments in connection with such Farm-Out Agreement and reassignments of Oil and Gas Property to a counterparty of such Farm-Out Agreement upon expiration or termination of a Farm-Out Agreement, in each case, in the ordinary course of business on customary industry terms; provided that no such Farm-Out Agreement or assignment shall be permitted under this Section 6.07(b) (i) if the respective Credit Party counterparty or counterparties is or are required to make an upfront commitment of cash payments or (ii) to the extent any such Farm-Out Agreement or assignment pertains to Oil and Gas Properties with an aggregate fair market value (which shall be deemed to be the higher of the PV-10 values reflected in (x) the most recent Reserve Report delivered to the Administrative Agent and (y) an appraisal completed by an independent third party appraiser selected by the Administrative Agent at the direction of the Required Lenders) for all such Farm-Out Agreements and assignments, in excess of $4,000,000 in the aggregate;

(c) the Disposition of equipment of the Borrower and its Subsidiaries in the ordinary course of business that is no longer necessary for the business of the Borrower or such Subsidiary or is replaced by equipment of at least comparable value and use;

(d) Dispositions for fair market value of any Property of the Borrower and its Subsidiaries not otherwise permitted by this Section 6.07; provided that (i) no Default or Event of Default shall have occurred and be continuing result therefrom, (ii) the aggregate fair market value of such Dispositions shall not exceed $5,000,000 and (iii) not less than ninety-five percent 95% of the consideration received in respect of such Property shall be in cash;

(e) a transfer or other Disposition of assets between or among any of the Borrower and any Guarantor so long as the Liens granted on such assets pursuant to this Agreement and the Orders remain perfected and the same in priority;

(f) an issuance or sale or other Disposition of Equity Interests by a Restricted Subsidiary to the Borrower or a Guarantor;

(g) any sale or other Disposition of surplus, damaged, worn-out or obsolete assets other than equipment (including the abandonment or other Disposition of licenses and sublicenses of software, intellectual property or other general intangibles that are, as determined in good faith by the Borrower, no longer economically practicable to maintain or useful in the conduct of the business of the Borrower and its Restricted Subsidiaries taken as whole);

(h) a Disposition of properties or assets that constitutes (or results in by virtue of the consideration received for such Disposition) either a Restricted Payment that does not violate Section 6.04 or an Investment that does not violate Section 6.05;

(i) the creation or perfection of a Permitted Lien and Dispositions in connection with Permitted Liens and the exercise by any Person in whose favor a Permitted Lien is granted of any of its rights in respect of that Permitted Lien;

(j) the grant in the ordinary course of business of any non-exclusive license or sublicense of patents, trademarks, registrations therefor and other similar intellectual property, including without limitation licenses of seismic data;

(k) [reserved]; and

(l) any Production Payments and Reserve Sales; provided that any such Production Payments and Reserve Sales, other than incentive compensation programs on terms that are customary in the Oil and Gas Business for geologist, geophysicists and other provider of technical services to the Borrower or a Restricted Subsidiary (so long as such geologist, geophysicist or other provider is not an Affiliate of a Credit Party), shall have been created, incurred, issued, assumed or guaranteed in connection with the financing of, and within sixty (60) days after the acquisition of, the property that is subject thereto.

SECTION 6.08. Transactions with Affiliates. The Borrower shall not, and shall not permit any Restricted Subsidiary to, enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property or the rendering of any service, with any Affiliate, other than (i) transactions or payments among the Credit Parties not prohibited by the Loan Documents, (ii) transactions or payments pursuant to agreements or arrangements in place as of the Petition Date, (iii) approved by the Bankruptcy Court pursuant to an order in form and substance reasonably satisfactory to the Required Lenders, (iv) transactions (other than purchases or sales of assets) effected in accordance with the terms of the Services Agreement as in effect on the Petition Date (as may be amended pursuant to Section 6.15 herein), (v) whether or not in the ordinary course of business, transaction of any kind with any Affiliate, on the one hand, and the Borrower or a Restricted Subsidiary, on the other hand, in each case, on terms at least as favorable to the Borrower and its Restricted Subsidiaries at the time as an comparable arm's length transaction with a Person other than an Affiliate, (vi) any payments authorized by one or more "first day" orders, the Interim Order or the Final Order, as applicable and (vii) any transaction with an Affiliate in the ordinary course of business and consistent with past practices in which the sum of the consideration paid in connection with such all such transactions does not exceed in the aggregate $1,000,000 at any time outstanding.

SECTION 6.09. Variance Covenant. The Borrower shall not, as of the last day of each Test Period and measured on a rolling four (4) week basis, permit the variance (as compared to the Approved Budget) of the aggregate operating disbursements (excluding professional fees and expenses, interest and fees accrued under the DIP Facility, and adequate protection payments) made by the Debtors to exceed fifteen percent (15%) (or, solely in the case of the operating disbursements related to the line item titled "midstream", twenty five percent (25%) for the first Test Period following the Petition Date) of the aggregate operating disbursements set forth in the Approved Budget for such testing period (the variances described in the foregoing, the "Permitted Variances").

SECTION 6.10. SNMP Contract. The Borrower shall not, and shall not permit any of its Subsidiaries to, assume or reject any Midstream Contract with Sanchez Midstream Partners LP (or any of its Subsidiaries, including Catarina Midstream, LLC) as in effect on the Interim Facility Effective Date pursuant to section 365 of the Bankruptcy Code without the prior written consent of the Required Lenders (not to be unreasonably withheld, delayed or conditioned).

SECTION 6.11. Gas Imbalances, Take-or-Pay or Other Prepayments or Minimum Volume Contracts. The Borrower shall not, and shall not permit any Restricted Subsidiary to, (a) allow gas imbalances, take or pay or other prepayments with respect to the Oil and Gas Properties of the Borrower or any Subsidiary that would require the Borrower or such Subsidiary to deliver Hydrocarbons at some future time without then or thereafter receiving full payment therefor to exceed one bcf of gas (on an mcf equivalent basis) in the aggregate (including any of the foregoing that constitute or arise from Production Payments or Reserve Sales) or (b) enter into additional minimum volume contracts for gathering, processing or transportation of production that require the payment of a fee in the event such minimum volumes are not met which are in areas where such contracts are already in place or for production where such contracts are already in place covering more than the sum of (x) Reasonably Anticipated Projected Production and (y) that production which the Borrower reasonably expects will result from budgeted oil and gas capital expenditures expected to occur within the twelve (12) month period from the date of measurement (including any of the foregoing that constitute or arise from Production Payments or Reserve Sales).

SECTION 6.12. Hedge Agreements. No Credit Party shall enter into any Hedge Agreement other than (i) Hedge Agreements existing on the date hereof and (ii) Hedge Agreements permitted under Section 6.02(b)(vi).

SECTION 6.13. New Deposit Accounts. The Borrower shall not, and shall not permit any Restricted Subsidiary to, open or otherwise establish, or deposit or otherwise transfer Dedicated Cash Receipts into, any Deposit Account other than (x) Excluded Accounts and (y) Deposit Accounts in which the Collateral Agent has been granted a Lien pursuant to the Interim Order or Final DIP Order, as applicable.

SECTION 6.14. Superpriority Claims. The Borrower shall not, and shall not permit any Restricted Subsidiary to, incur, create, assume, suffer to exist or permit any other Superpriority Claim pari passu with or senior to the claims of the Secured Parties against the Debtors except with respect to the Carve Out.

SECTION 6.15. Services Agreement. The Borrower shall not consent to any amendment, replacement, supplement or other modification of the Services Agreement without the prior written consent of the Required Lenders (not to be unreasonably withheld, delayed or conditioned).

SECTION 6.16. Mergers, Asset Transfers, Etc.

(a) The Borrower and each Restricted Subsidiary shall not, directly or indirectly, consolidate, amalgamate, divide or merge with or into or wind up or convert into (whether or not the Borrower is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions, to any Person, or liquidate, dissolve or divide, except as permitted pursuant to an order of the Bankruptcy Court.

(b) Subject to the provisions of Section 9.19, no Guarantor will, and the Borrower will not permit any Guarantor to, consolidate, amalgamate or merge with or into or wind up into (whether or not such Guarantor is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to any Person, or liquidate, dissolve or divide, except as permitted under the terms of an Acceptable Plan of Reorganization or pursuant to an order of the Bankruptcy Court.

SECTION 6.17. Bankruptcy Orders. No Debtor will (a) obtain or seek to obtain any stay from the Bankruptcy Court on the exercise of the Agent's or any Lender's remedies hereunder or under any other Loan Document, except as specifically provided in the Orders, (b) seek to change or otherwise modify any Orders or other order in the Bankruptcy Court with respect to the DIP Facility or (c) without the consent of the Required Lenders, propose, file, consent, solicit votes with respect to or support any chapter 11 plan or debtor in possession financing unless (i) such plan or financing would, on the date of effectiveness, indefeasibly pay in full in cash all Obligations or (ii) such plan is an Acceptable Plan of Reorganization.

ARTICLE VII

EVENTS OF DEFAULT

SECTION 7.01. Events of Default.

One or more of the following events shall constitute an "Event of Default":

(a) the Borrower shall (i) fail to pay any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof, by acceleration or otherwise, or (ii) fail to pay any interest on any Loan or any fee or any other amounts (other than any amount referred to in clause (i) above), payable under this Agreement or any other Loan Document when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof, by acceleration or otherwise and such failure with respect to an amount referred to in this clause (ii) shall continue unremedied for a period of three (3) or more Business Days;

(b) any representation, warranty or statement made or deemed made by any Credit Party herein or in any other Loan Document or any amendment or modification of any Loan Document or waiver under such Loan Document, or any report, certificate, financial statement or other document delivered or required to be delivered pursuant hereto or thereto or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect (or, in the case of any such representation or warranty under this Agreement or any other Loan Document already qualified by materiality, such representation or warranty shall prove to have been incorrect) on the date as of which made or deemed made;

(c) any Credit Party shall (i) default in the due performance or observance by it of any term, covenant or agreement contained in 5.01(a), (b), (c), (f), (g), (h), 5.03, 5.04, 5.15, 5.18, 5.22 or Article VI or (ii) default in the due performance or observance by it of any other term, covenant or agreement (other than those referred to in Section 7.01(a) or (b) or clause (i) of this Section 7.01(c)) contained in this Agreement and such default shall continue unremedied for a period of at least five (5) Business Days after the date a Responsible Officer has knowledge of such default or received a written notice thereof from the Administrative Agent (acting at the direction of the Required Lenders) or the Required Lenders;

(d) the Borrower or any Restricted Subsidiary shall fail to make any payment of principal or interest (regardless of amount) in respect of any Material Indebtedness; provided that this clause (d) shall not apply to any Material Indebtedness of any Debtor that was incurred prior to the Petition Date unless such Material Indebtedness has been accelerated and the enforcement of remedies with respect to such Indebtedness shall not have been stayed by the commencement of the Cases;

(e) the Borrower or any Restricted Subsidiary shall fail to observe or perform any other agreement or condition relating to any Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders or beneficiary or beneficiaries of such Material Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Material Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Material Indebtedness to be made, prior to its stated maturity; provided that this clause (e) shall not apply to secured Material Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Material Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Material Indebtedness and such Material Indebtedness is repaid when required under the documents providing for such documents; provided that this clause (e) shall not apply to any Material Indebtedness of any Debtor that was incurred prior to the Petition Date unless such Material Indebtedness has been accelerated and the enforcement of remedies with respect to such Indebtedness shall not have been stayed by the commencement of the Cases;

(f) any Restricted Subsidiary that is not a Debtor (any such Restricted Subsidiary, an "Applicable Subsidiary") shall commence a voluntary case, proceeding or action concerning itself under Title 11 of the United States Code entitled "Bankruptcy" or any other applicable insolvency, debtor relief, or debt adjustment law and such Applicable Subsidiary shall fail to become a Guarantor pursuant to Section 5.10 within ten (10) Business Days; or an

involuntary case, proceeding or action is commenced against any Applicable Subsidiary and the petition is not dismissed or stayed within sixty (60) days after commencement of the case, proceeding or action, such Applicable Subsidiary consents to the institution of such case, proceeding or action prior to such sixty (60) day period, or any order of relief or other order approving any such case, proceeding or action is entered; or a custodian (as defined in the Bankruptcy Code), receiver, receiver manager, trustee, conservator, liquidator, examiner, rehabilitator, administrator, or similar person is appointed for, or takes charge of, the Applicable Subsidiary or all or any substantial portion of the property or business thereof; or any Applicable Subsidiary suffers any appointment of any custodian, receiver, receiver manager, trustee, conservator, liquidator, examiner, rehabilitator, administrator, or the like for it or any substantial part of its property or business to continue undischarged or unstayed for a period of sixty (60) days; or any Applicable Subsidiary makes a general assignment for the benefit of creditors;

(g) an ERISA Event shall have occurred that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect;

(h) the Guarantee or any material provision thereof shall cease to be in full force or effect (other than pursuant to the terms hereof and thereof) or any Guarantor or any other Credit Party shall assert in writing that any such Guarantor's obligations under the Guarantee are not to be in effect or are not to be legal, valid and binding obligations (other than pursuant to the terms hereof or thereof);

(i) the entry of the Final Order has not occurred prior to or on January 23, 2020 (or any later date consented to by the Required Lenders);

(j) the Interim Order (or the Final Order, if applicable) shall cease to be in full force or effect and to create valid and perfected Liens on the Collateral (other than pursuant to the terms hereof or thereof) or any grantor thereunder or any other Credit Party shall assert in writing that any grantor's obligations under the Interim Order (or the Final Order, if applicable) are not in effect or not legal, valid and binding obligations or the Orders are not effective to create valid and perfected Liens on the Collateral (other than pursuant to the terms hereof or thereof);

(k) (i) one or more monetary judgments or decrees shall be entered against the Borrower or any Restricted Subsidiary involving a liability of $10,000,000 or more (which, in the case of the Debtors only, arose after the Petition Date) in the aggregate for all such judgments and decrees for the Borrower and the Restricted Subsidiaries (to the extent not paid or covered by insurance provided by a carrier not disputing coverage), which judgments are not discharged or effectively waived or stayed for a period of thirty (30) consecutive days or (ii) one or more judgments or orders shall have been rendered against the Borrower or any Restricted Subsidiary (which, in the case of the Debtors only, arose following the Petition Date), and such judgment or order shall not have been stayed (including as a result of the automatic stay of the Cases), and which shall cause or could reasonably be expected to cause a Material Adverse Effect, and in each case, such action shall not be effectively stayed (including as a result of the automatic stay under the Cases);

(l) a Change of Control shall have occurred;

(m) any Loan Document, at any time after its execution and delivery, ceases to be in full force and effect in any material respect for any reason other than as expressly permitted hereunder or under the Orders, or any Credit Party or any Subsidiary contests in writing in any manner the validity or enforceability of any Loan Document, or any Credit Party denies in writing that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document;

(n)

(i) Any of the Cases of the Credit Parties shall be dismissed or converted to a case under chapter 7 of the Bankruptcy Code;

(ii) a trustee or an examiner having expanded powers (beyond those set forth under sections 1106(a)(3) and (4) of the Bankruptcy Code) (other than a fee examiner) is appointed or elected in the any of the Cases, or the Bankruptcy Court shall have entered an order providing for such appointment;

(iii) an order of the Bankruptcy Court shall be entered denying or terminating use of Cash Collateral by the Credit Parties and the Credit Parties shall have not obtained use of Cash Collateral pursuant to an order consented to by, and in form and substance reasonably acceptable to, the Required Lenders; or

(iv) any Credit Party shall file a motion or other pleading seeking, or otherwise consenting to, any of the matters set forth in clauses (i) through (iii) above or the granting of any other relief that if granted would give rise to an Event of Default except to the extent that such motion, proceeding or consent shall have been withdrawn;

(o) the existence of any claims or charges, or the entry of any order of the Bankruptcy Court authorizing (i) any claims or charges, other than in respect of the DIP Facility, in favor of hedge counterparties in connection with Hedging Obligations and the Carve-Out or as otherwise permitted under the applicable Loan Documents or the Orders, entitled to superpriority administrative expense claim status in any chapter 11 case pursuant to Section 364(c)(1) of the Bankruptcy Code that are *pari passu* with or senior to the claims of any Agent and the Lenders under the DIP Facility, or there shall arise or be granted by the Bankruptcy Court any claim having priority over any or all administrative expenses of the kind specified in Section 503(b) or Section 507(b) of the Bankruptcy Code (other than the Carve-Out), or (ii) any Lien on the Collateral having a priority senior to or *pari passu* with the Liens and security interests granted under the Orders, except, in each case, as expressly provided in the Loan Documents or in the Orders then in effect;

(p) the Bankruptcy Court shall enter an order or orders granting relief from any stay of proceeding (including, the automatic stay applicable under Section 362 of the Bankruptcy Code to the holder or holders of any security interest) to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of any of the Credit Parties which have a value in excess of $5,000,000 in the aggregate;

(q) (i) an order of the Bankruptcy Court shall be entered reversing, amending, supplementing, staying, vacating or otherwise amending, supplementing or modifying the Interim Order or the Final Order, without the prior written consent of the Required Lenders, or a Credit

Party shall apply for the authority to do so except to the extent such application shall have been withdrawn;

(ii) the Interim Order (prior to the Final Order Entry Date) or the Final Order (on and after the Final Order Entry Date) shall cease to create a valid and perfected Lien on the Collateral or to be in full force and effect, shall have been reversed, modified, amended, stayed, vacated, or subject to stay pending appeal, in the case of modification or amendment, without prior written consent of the Required Lenders (or the Administrative Agent acting at the direction of the Required Lenders);

(iii) an order shall have been entered by the Bankruptcy Court avoiding or requiring disgorgement by any Agent or any of the Lenders of any amounts received in respect of the Obligations, other than as a result of a successful Challenge (as defined in the Orders);

(iv) any of the Credit Parties shall fail to comply in any material respect with any provision of the Interim Order (prior to the Final Order Entry Date) or the Final Order (on and after the Final Order Entry Date); or

(v) an order in the Cases shall be entered charging any of the Collateral under Section 506(c) of the Bankruptcy Code against the Lenders or the commencement of other actions that is materially adverse to any Agent, the Lenders or their respective rights and remedies under the DIP Facility in any of the Cases or inconsistent with any of the Loan Documents, other than (x) to challenge the occurrence of a Default or an Event of Default or (y) to exercise any rights as otherwise permitted by the Orders;

(r) a Reorganization Plan that is not an Acceptable Plan of Reorganization shall be confirmed in any of the Cases of the Credit Parties, or any order shall be entered which dismisses any of the Cases of the Credit Parties and which order does not provide for payment in full in cash of the Obligations (other than contingent indemnification obligations not yet due and payable);

(s) failure to satisfy any of the Milestones in accordance with the terms relating to such Milestone (unless waived or extended with the consent of the Required Lenders);

(t) any Credit Party or any Subsidiary thereof shall take any action in support of any matter set forth in clauses (n) through (r) (inclusive) of this Section 7.01;

(u) any Credit Party or any Subsidiary thereof shall obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding seeking, or otherwise consenting to (i) the invalidation, subordination or other challenging of the Superpriority Claims and Liens granted to secure the Obligations or any other rights granted to any Agent and the Lenders in the Orders or this Agreement, or (ii) any relief under section 506(c) of the Bankruptcy Code with respect to any Collateral or the termination or modification of the exclusivity periods set forth in section 1121 of the Bankruptcy Code;

(v) except as otherwise permitted in the Orders, any Credit Party shall file a pleading in support of a challenge of any payments made to any Agent or any Lender with respect

to the Obligations or any lender under any Pre-Petition Credit Document with respect to the obligations thereunder, other than to challenge the occurrence of a Default or Event of Default;

(w) except with respect to the exercise of any rights as permitted by the Orders, any Credit Party or any of its Subsidiaries, or any person claiming by or through any Credit Party or any of its Subsidiaries with any Credit Party's or any Subsidiary's affirmative consent, shall obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding against (A) the Administrative Agent or any of the Lenders relating to the DIP Facility or (B) any noteholder relating to the Existing First Lien Indenture;

(x) without the consent of the Required Lenders, the filing of any motion by the Credit Parties seeking approval of (or the entry of an order by the Bankruptcy Court approving) adequate protection to any pre-petition agent or lender that is inconsistent with the Interim Order (prior to the Final Order Entry Date) or the Final Order (on and after the Final Order Entry Date);

(y) without the Required Lenders' consent, the entry of any order by the Bankruptcy Court granting, or the filing by any Credit Party or any of its Subsidiaries of any motion or other request with the Bankruptcy Court (in each case, other than the Orders and motions seeking entry thereof or permitted amendments or modifications thereto) seeking, authority to use any cash proceeds of any of the Collateral without the Administrative Agent's and the Required Lenders' consent or to obtain any financing under section 364 of the Bankruptcy Code other than the facility hereunder unless such motion or order contemplates payment in full in cash of the Obligations immediately upon consummation of the transactions contemplated thereby;

(z) if any Credit Party or any of its Subsidiaries is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any part of the business affairs of the Credit Parties and their Subsidiaries, taken as a whole, which could reasonably be expected to have a Material Adverse Effect; provided, that the Credit Parties shall have thirty (30) Business Days after the entry of such an order to obtain a court order vacating, staying or otherwise obtaining relief from the Bankruptcy Court or another court to address any such court order;

(aa) any Credit Party shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any pre-petition Indebtedness or payables other than payments in respect of any Pre-Petition Credit Document or as otherwise not prohibited under this Agreement, or to the extent authorized by one or more "first day" orders, the Interim Order or the Final Order and consistent with the Approved Budget (subject in the case of operating disbursements, to Permitted Variances);

(bb) if, unless otherwise approved by the Administrative Agent and the Required Lenders, an order of the Bankruptcy Court shall be entered providing for a change in venue with respect to the Cases and such order shall not be reversed or vacated within ten (10) days;

(cc) without the Required Lenders' consent, any Credit Party or any Subsidiary thereof shall file any motion or other request with the Bankruptcy Court seeking (i) to grant or impose, under section 364 of the Bankruptcy Code or otherwise, liens or security interests in any Collateral, whether senior, equal or subordinate to the Collateral Agent's Liens and security

interests except to the extent permitted by this Agreement; (ii) to use, or seek to use, Cash Collateral (as defined in the Orders); or (iii) to modify or affect any of the rights of the Agents, or the Lenders under the Orders or the Loan Documents, by any Reorganization Plan confirmed in the Cases or subsequent order entered in the Cases;

(dd) any Credit Party seeks to obtain Bankruptcy Court approval of any Disposition of all or a material portion of the Collateral securing the Loans pursuant to section 363 of the Bankruptcy Code if such Disposition does not contemplate satisfying the Obligations in full in cash, and other than as permitted by the Orders or the Approved Plan of Reorganization (or pursuant to a transaction that is permitted hereunder), or any Credit Party proposes, supports, or fails to contest in good faith the entry of such an order;

(ee) the entry of an order or filing authorizing, approving, granting or seeking additional postpetition financing not otherwise permitted hereunder, or any Liens on the Collateral not otherwise permitted hereunder, other than pursuant to the Carve-Out in the Orders;

(ff) the payment by any Credit Party of any prepetition claim other than as authorized by one or more orders of the Bankruptcy Court and in compliance with the Approved Budget (subject in the case of operating disbursements, to Permitted Variances); or

(gg) the Chief Restructuring Officer fails to have the scope and authority set forth in the CRO Order.

The foregoing shall constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

SECTION 7.02. Remedies. At any time, if any Event of Default shall be continuing, the Administrative Agent may and, upon the written request of the Required Lenders, shall, by written notice to the Borrower and subject to any applicable notice period in the Orders, take any or all of the following actions, without prejudice to the rights of any Agent or any Lender to enforce its claims against the Borrower or any other Credit Party, except as otherwise specifically provided for in this Agreement: (i) terminate the New Money Commitments and thereupon the New Money Commitments shall be terminated and of no further force and effect, (ii) declare the principal of and any accrued interest and fees in respect of any or all Loans and any or all Obligations owing hereunder and thereunder to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower or (iii) exercise rights and remedies in respect of the Collateral in accordance with the Orders. In addition, after the occurrence and during the continuance of an Event of Default, the Agents and the Lenders will have all other rights and remedies available at law and equity.

Notwithstanding anything to the contrary herein, subject to the provisions of the Interim Order (or, if applicable, the Final Order), (x) with respect to enforcement of Liens or remedies with respect to Collateral, the Collateral Agent and the Administrative Agent shall provide the Borrower five (5) Business Days' notice prior to taking such action (the "Remedies Notice Period"), and (y) after expiration of the Remedies Notice Period, the Administrative Agent and the

Collateral Agent shall, at the request of, or may, with the consent of, the Required Lenders, (i) terminate the consensual use of Cash Collateral and (ii) exercise all other rights and remedies provided for in this Agreement, the Orders and under applicable law. Solely during the Remedies Notice Period, the Debtors may continue to use Cash Collateral in the ordinary course of business, consistent with past practices, including for the purpose of funding the Carve-Out. During the Remedies Notice Period, any party in interest shall be entitled to seek an emergency hearing with the Bankruptcy Court seeking to stay the Administrative Agent's exercise of any rights and remedies and cash collateral may be used for this purpose during the Remedies Notice Period.

Subject to the provisions of the Interim Order (or, if applicable, the Final Order) and inclusion of a cash component sufficient to fund the Carve-Out and the payment of the "First-Out Obligations" (as defined in the Final Order) and to being so instructed pursuant to Section 7.04, the Administrative Agent shall have the right to credit bid, including with respect to adequate protection claims, consistent with Bankruptcy Code section 363(k) and applicable law.

SECTION 7.03. Application of Proceeds. Any amount received by the Administrative Agent or the Collateral Agent from any Credit Party (or from proceeds of any Collateral) following any acceleration of the Obligations under this Agreement shall, subject to the terms of the Orders, be applied:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, disbursements and other charges of counsel payable under Section 8.07 and amounts payable under Article II) payable to the Administrative Agent and/or Collateral Agent in such Person's capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including fees, disbursements and other charges of counsel payable under Section 8.07) arising under the Loan Documents and amounts payable under Article II, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause held by them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause held by them;

Fifth, to the payment of all other Obligations of the Credit Parties owing under or in respect of the Loan Documents that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been paid (or satisfied in accordance with Section 2.05(e)) in full, to the Borrower or as otherwise required by Requirements of Law.

SECTION 7.04. Control by Majority; Credit Bid. Subject to the penultimate paragraph of Section 7.02, the Required Lenders may direct the time, method and place of conducting any proceeding for any remedy available to any Agent or of exercising any trust or power conferred on any Agent. However, any Agent may refuse to follow any direction that conflicts with law or this Agreement or, subject to Article VIII, that such Agent determines is unduly prejudicial to the rights of any other Lender or that would involve such Agent in personal liability or expenses for which it is not adequately indemnified; provided, however, that any Agent may take any other action deemed proper by such Agent that is not inconsistent with such direction. Without limiting the foregoing, and for the avoidance of doubt, each Lender hereby acknowledges and agrees that the Required Lenders, in their sole discretion, may instruct the Administrative Agent to credit bid all or any portion of the Loans, and the consent of no other Lender shall be required for the Administrative Agent to credit bid all or any portion of the Loans. Each Lender also hereby acknowledges and agrees that the collateral trustee under the Existing First Lien Indenture may credit bid all or a portion of the Existing First Lien Notes upon the direction of the holders of a majority in aggregate principal amount of Existing First Lien Notes then outstanding.

ARTICLE VIII

THE AGENTS

SECTION 8.01. Appointment.

(a) Each Lender hereby irrevocably designates and appoints the Administrative Agent as the agent of such Lender under this Agreement and the other Loan Documents and irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein and in the other Loan Documents, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent. In performing its functions and duties hereunder, the Administrative Agent shall act solely as an agent of the Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for the Borrower or any of its Subsidiaries or Affiliates.

(b) The Administrative Agent and each Lender hereby irrevocably designate and appoint the Collateral Agent as the agent with respect to the Collateral, and each of the Administrative Agent and each Lender irrevocably authorizes the Collateral Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Collateral Agent shall not have any duties or responsibilities except those expressly set forth herein and in the other Loan Documents, or any

fiduciary relationship with any of the Administrative Agent or the Lenders, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Collateral Agent.

SECTION 8.02. Delegation of Duties. The Administrative Agent and the Collateral Agent may each execute any of its duties under this Agreement and the other Loan Documents by or through agents, sub-agents, employees or attorneys-in-fact (each, a "Subagent") and shall be entitled to advice of counsel concerning all matters pertaining to such duties; provided, however, that no such Subagent shall be authorized to take any action with respect to any Collateral unless and except to the extent expressly authorized in writing by the Administrative Agent. If any Subagent, or successor thereto, shall die, become incapable of acting, resign or be removed, all rights, powers, privileges and duties of such Subagent, to the extent permitted by law, shall automatically vest in and be exercised by the Administrative Agent until the appointment of a new Subagent. Neither the Administrative Agent nor the Collateral Agent shall be responsible for the negligence or misconduct of any Subagents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent or Collateral Agent, as applicable, acted with gross negligence or willful misconduct in the selection of such Subagents.

SECTION 8.03. Exculpatory Provisions. The Agents shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and their duties hereunder shall be administrative in nature.

(a) Without limiting the generality of the foregoing, the Agents:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent or the Collateral Agent is required to exercise as directed in writing by the Required Lenders; provided that the Agents shall not be required to take any action that, in its opinion or the opinion of their counsel, may expose the Agents to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law;

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Persons serving as the Agents or any of their Affiliates in any capacity; and

(iv) shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently

determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

(b) The Agents shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances), or (ii) in the absence of their own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment; provided that no action taken in accordance with the directions of the Required Lenders (or such other number or percentage of the Lenders as shall be required by the Loan Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 8.03. Neither the Administrative Agent nor the Collateral Agent shall be deemed to have knowledge of any Default unless and until notice describing such Default is given to such Agent in writing by the Borrower or a Lender.

(c) The Agents shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or Collateral Agent, as applicable.

SECTION 8.04. Reliance by Agents. The Administrative Agent and the Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent and the Collateral Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a New Money Loan that by its terms must be fulfilled to the satisfaction of a New Money Lender, the Administrative Agent may presume that such condition is satisfactory to such New Money Lender the Administrative Agent shall have received notice to the contrary from such New Money Lender prior to the making of such New Money Loan. The Agents may consult with legal counsel, independent accountants and other experts selected by them, and shall not be liable for any action taken or not taken in accordance with the advice of any such counsel, accountants or experts; provided that the Administrative Agent and Collateral Agent shall not be required to take any action that, in its opinion or in the opinion of its counsel, may expose it to liability or that is contrary to any Loan Document or applicable Requirements of Law. If any Agent so requests, it shall first be indemnified to its reasonable satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action.

Any Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders.

SECTION 8.05. Notice of Default. Neither the Administrative Agent nor the Collateral Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless the Administrative Agent or Collateral Agent, as applicable, has received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Administrative Agent receives such a notice, it shall give notice thereof to the Lenders and the Collateral Agent. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders; provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders except to the extent that this Agreement requires that such action be taken only with the approval of the Required Lenders or each individual Lender, as applicable.

SECTION 8.06. Non-Reliance on Administrative Agent, Collateral Agent and Other Lenders. Each Lender expressly acknowledges that neither the Administrative Agent nor the Collateral Agent nor any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representations or warranties to it and that no act by the Administrative Agent or Collateral Agent hereafter taken, including any review of the affairs of the Borrower or any other Credit Party, shall be deemed to constitute any representation or warranty by the Administrative Agent or Collateral Agent to any Lender. Each Lender represents to the Administrative Agent and the Collateral Agent that it has, independently and without reliance upon the Administrative Agent, Collateral Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Borrower and each other Credit Party and made its own decision to make its New Money Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent, Collateral Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Borrower and any other Credit Party. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, neither the Administrative Agent nor the Collateral Agent shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, assets, operations, properties, financial condition, prospects or creditworthiness of the Borrower or any other Credit Party that may come into the possession of the Administrative Agent or Collateral Agent or any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates. The Administrative Agent and the Collateral Agent shall not have any duty or responsibility, either initially or on a continuing basis, to make any investigation or any appraisal on behalf of Lenders or to provide any Lender with any credit

or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and the Administrative Agent and the Collateral Agent shall not have any responsibility with respect to the accuracy of or the completeness of any information provided to the Lenders. Each Lender acknowledges that none of the Administrative Agent, the Collateral Agent nor any of their respective Affiliates has made any representation or warranty to it. Each Lender, by delivering its signature page to this Agreement or an Assignment and Assumption, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by the Administrative Agent, the Required Lenders or the Lenders, as applicable, on the Closing Date.

SECTION 8.07. Indemnification. The Lenders agree to indemnify and hold harmless the Administrative Agent and the Collateral Agent (each in its capacity as such) and their respective Related Parties (acting in their capacity as Related Parties to the Administrative Agent or the Collateral Agent acting in their capacity as such) (to the extent not reimbursed by the Credit Parties and without limiting the obligation of the Credit Parties to do so), ratably according to their respective portions of the New Money Commitments or Loans, as applicable, outstanding in effect on the date on which indemnification is sought (or, if indemnification is sought after the date upon which the New Money Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with their respective portions of the Loans in effect immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (including at any time following the payment of the Loans) occur, be imposed on, incurred by or asserted against the Administrative Agent or the Collateral Agent in any way relating to or arising out of the New Money Commitments, the Loans, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Administrative Agent or the Collateral Agent under or in connection with any of the foregoing; provided that no Lender shall be liable to the Administrative Agent or the Collateral Agent or any of their Related Parties for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's or Related Party's, as applicable, gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction; provided, further, that no action taken in accordance with the directions of the Required Lenders (or such other number or percentage of the Lenders as shall be required by the Loan Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 8.07. In the case of any investigation, litigation or proceeding giving rise to any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time occur (including at any time following the payment of the Loans), this Section 8.07 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent and the Collateral Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including attorneys' fees) incurred by such Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice rendered in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that such Agent is not reimbursed for such expenses by or on behalf of the Borrower; provided that such reimbursement by the Lenders shall not affect the Borrower's

continuing reimbursement obligations with respect thereto. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, that in no event shall this sentence require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's pro rata portion thereof; and provided further, that this sentence shall not be deemed to require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement resulting from such Agent's gross negligence, bad faith or willful misconduct, as determined in the final judgment of a court of competent jurisdiction; provided further, that no action taken in accordance with the directions of the Required Lenders (or such other number or percentage of the Lenders as shall be required by the Loan Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 8.07. The agreements in this Section 8.07 shall survive the payment of the Loans and all other amounts payable hereunder.

SECTION 8.08. Agents in Their Individual Capacity. Each Agent and its Affiliates may make generally engage in any kind of business with the Borrower and any other Credit Party as though such Agent were not an Agent hereunder and under the other Loan Documents.

SECTION 8.09. Successor Agents. Each of the Administrative Agent and Collateral Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right to appoint a successor. If, in the case of a resignation of a retiring Agent, no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent; provided that if no such successor Agent has been appointed by the thirtieth (30^{th}) day after the retiring Agent's notice of resignation, the retiring Agent's resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except in the case of the Collateral Agent holding collateral security on behalf of any Secured Parties, the retiring Collateral Agent shall continue to hold such collateral security as nominee until such time as a successor Collateral Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through such Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this Section 8.09. Upon the acceptance of a successor's appointment as the Administrative Agent or Collateral Agent, as the case may be, hereunder, and upon the execution and filing or recording of such financing statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as the Required Lenders may request, in order to continue the perfection of the Liens granted or purported to be granted by the Orders, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower (following the effectiveness of such appointment) to such Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this

Article VIII shall continue in effect for the benefit of such retiring Agent, its Subagents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as an Agent.

SECTION 8.10. Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, the Collateral Agent or any Lender, or the Administrative Agent, the Collateral Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the Collateral Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under the Bankruptcy Code or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred and (b) each Lender severally agrees to pay to the Administrative Agent or the Collateral Agent, as applicable, upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent or the Collateral Agent, as applicable. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

SECTION 8.11. Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under the Bankruptcy Code or any other Debtor Relief Law, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Administrative Agent and the Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Administrative Agent, and the Collateral Agent and their respective agents and counsel and all other amounts due the Lenders, the Administrative Agent, and the Collateral Agent under Section 8.07) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 8.07.

SECTION 8.12. Collateral Matters.

(a) The Lenders irrevocably authorize the Collateral Agent, at its option and in its discretion, to release any Lien on any property granted to or held by the Collateral Agent under any Loan Document or the Orders (i) upon payment in full of all Obligations (other than contingent indemnification obligations and expense reimbursement claims to the extent no claim therefor has been made), (ii) if approved, authorized or ratified in writing in accordance with Section 8.01, or (iii) pursuant to the Orders. Upon request by the Collateral Agent at any time, the Required Lenders will confirm in writing the Collateral Agent's authority to release its interest in particular types or items of property in accordance with this Section.

(b) Each Secured Party hereby further authorizes the Administrative Agent or Collateral Agent, as applicable, on behalf of and for the benefit of Secured Parties, to be the agent for and representative of the Secured Parties with respect to the Collateral and the Liens thereon created pursuant to the Orders or any Loan Document. Subject to Section 8.01, without further written consent or authorization from any Secured Party, the Administrative Agent or Collateral Agent, as applicable, may (a) execute any documents or instruments necessary in connection with a Disposition of assets to a Person that is not the Borrower or any Restricted Subsidiary and permitted by this Agreement, (b) release any Lien encumbering any item of Collateral that is the subject of such Disposition of assets to a Person that is not the Borrower or any Restricted Subsidiary or with respect to which Required Lenders (or such other Lenders as may be required to give such consent under Section 8.01) have otherwise consented or (c) release any Guarantor from the Guarantee with respect to which Required Lenders (or such other Lenders as may be required to give such consent under Section 8.01) have otherwise consented.

ARTICLE IX

MISCELLANEOUS

SECTION 9.01. Amendments and Waivers.

(a) Without Consent of the Lenders.

The Administrative Agent may (at the direction of the Required Lenders) amend this Agreement and the other Loan Documents without notice to or consent of any Lender:

(i) to cure any ambiguity, omission, mistake, defect or inconsistency;

(ii) to add a Guarantor with respect to the Loans or Collateral to secure the Loans; and

(iii) to release Collateral or a Guarantee as permitted by this Agreement, the other Loan Documents and the Orders.

Each Lender hereunder (x) consents to the amendment of any Loan Document in the manner and for the purposes set forth in this Section 9.01(a), (y) agrees that it will be bound by and will take no actions contrary to the provisions of any amendment to any Loan Document

pursuant to Section 9.01(a) and (z) authorizes and instructs the Administrative Agent to enter into any amendment to any Loan Document pursuant to this Section 9.01(a) on behalf of such Lender.

(b) With Consent of the Lenders. The Administrative Agent may amend this Agreement and the other Loan Documents with the written consent of the Required Lenders, and any past default or noncompliance with any provisions may be waived with the consent of the Required Lenders (except that the Agent Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto (without the need for the consent of any other party hereto). Notwithstanding the foregoing, without the consent of the Supermajority Lenders, no amendment may:

(i) reduce the principal amount of such Loans whose Lenders must consent to an amendment,

(ii) reduce the rate of, or extend the time for payment of interest on, any Loan,

(iii) reduce the principal of or change the stated maturity of any Loan,

(iv) reduce the premium payable (if any) upon prepayment of any Loan or change the time at which any such premium must be paid;

(v) make any Loan payable in money other than that stated in this Agreement,

(vi) expressly subordinate the Loans (or Liens securing the Loans) or any related Guarantee to any other Indebtedness (or Lien, as the case may be) of the Borrower or any Guarantor or, except as provided by operation of law and otherwise permitted hereunder, amend or modify (or consent to the amendment or modification of) the Superpriority Claims status of the Loans as set forth in Section 6.05 or under any Loan Document,

(vii) impair the right of any Lender to receive payment of principal of or premium, if any, and interest on such Lender's Loans on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Lender's Loans (other than as a result of waiving the applicability of any post-default increase in interest rates),

(viii) make any change in the second sentence of this Section 9.01(b) or the definition of the term "Required Lenders," or any other provision hereof expressly specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or under any other Loan Document,

(ix) release all or substantially all of the value of the Guarantees or release all or substantially all of the Collateral, in each case, whether in one or more transactions, or

(x) make any change in the provisions dealing with the application of proceeds of Collateral in the Orders or this Agreement that would adversely affect the Lenders;

provided further that no amendment, waiver or other modification of any provision of any Loan Document in a manner that directly and adversely affects the Administrative Agent or the Collateral Agent shall be effective without the written consent of the then-current Administrative Agent and Collateral Agent, as applicable, or any other former or current Agent to whom Article VIII then applies.

(c) Solely with respect to Sections 5.15, 7.01(i) and 7.01(s), and notwithstanding anything to the contrary in this Agreement or any other Loan Document, (i) the approval of the Required Lenders in their sole discretion of any amendment to, waiver of, or consent under, such Sections of this Agreement may be conclusively evidenced by an electronic mail from the Required Lenders or their counsel to or copying jsavin@akingump.com and jonathan.levine@arnoldporter.com, and (ii) the approval of the Borrower of any amendment to, waiver of, or consent under, such Sections of this Agreement may be conclusively evidenced by an electronic mail from the Borrower or its counsel to or copying djenkins@mofo.com and jonathan.levine@arnoldporter.com.

SECTION 9.02. Notices. Except as otherwise set forth herein, all notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by facsimile or electronic mail), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three (3) days after being deposited in the mail, postage prepaid, or, in the case of telecopy or electronic mail notice, when received, addressed as follows in the case of the Borrower and the Administrative Agent, and as set forth on Schedule 2.01 in the case of the other parties hereto, or to such other address as may be hereafter notified by the respective parties hereto:

The Borrower:	Sanchez Energy Corporation 1000 Main Street, Suite 3000 Houston, TX 77002 Attention: Gregory B. Kopel Email: gkopel@sanchezog.com
With a copy to (which copy shall not constitute notice):	Akin Gump Strauss Hauer & Feld LLP 1111 Louisiana Street Houston, TX 77002-5200 Attn: David P. Elder James Savin Email: delder@akingump.com jsavin@akingump.com Telecopy: (713) 236 - 0822 (202) 887 - 4288

The Administrative Agent or the Collateral Agent:	Wilmington Savings Fund Society, FSB 500 Delaware Avenue Wilmington, DE 19801 Attn: Patrick J. Healy Email: phealy@wsfsbank.com
With a copy to (which copy shall not constitute notice):	Arnold & Porter Kaye Scholer LLP 250 West 55th Street New York, New York 10019-9710 Attn: Jonathan Levine Email: jonathan.levine@arnoldporter.com
and to:	Morrison & Foerster LLP John Hancock Tower 200 Clarendon Street, Floor 20 Boston, MA 02116 Attn: Dennis Jenkins Email: djenkins@mofo.com
Any other Lender:	At the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire
With a copy to (which copy shall not constitute notice):	Morrison & Foerster LLP John Hancock Tower 200 Clarendon Street, Floor 20 Boston, MA 02116 Attn: Dennis Jenkins Email: djenkins@mofo.com

provided that any notice, request or demand to or upon the Administrative Agent, the Collateral Agent or the Lenders pursuant to Section 2.02 shall not be effective until received.

Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including email and Internet or intranet websites) pursuant to procedures approved in writing by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent in writing that it is incapable of receiving notices under such Article by electronic communication.

Documents required to be delivered pursuant to Section 5.01 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically (including as set forth in Section 9.18) and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet, or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative

Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that (A) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender, and (B) the Borrower shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents.

SECTION 9.03. No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Administrative Agent, the Collateral Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

SECTION 9.04. Survival of Representations and Warranties. All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the New Money Loans hereunder.

SECTION 9.05. Payment of Expenses; Indemnification. The Borrower agrees (a) to pay or reimburse the Agents (and solely with respect to the legal expenses of its counsel and financial advisor set forth below, the Lenders) for all their reasonable and documented out-of-pocket costs and expenses incurred in connection with the preparation and execution and delivery of, and any amendment, waiver, supplement or modification to, this Agreement and the other Loan Documents and any other documents prepared in connection herewith or therewith, and the consummation and administration of the transactions contemplated hereby and thereby, including the reasonable fees, disbursements and other charges of Morrison & Foerster LLP in their capacity as counsel to the Lenders and Arnold & Porter Kaye Scholer LLP in their capacity as counsel to the Administrative Agent and Collateral Agent and one counsel in each appropriate local jurisdiction, the reasonable fees, disbursements and other charges of Evercore as financial advisor to the Lenders, and the reasonable fees, disbursements and other charges of Opportune LLP, as G&A advisor to the Lenders, (b) to pay or reimburse each Agent and the Lenders for all its reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement or preservation of any rights under this Agreement, the other Loan Documents and any such other documents, including the reasonable fees, disbursements and other charges of one counsel to the Administrative Agent and the Collateral Agent (unless there is an actual or perceived conflict of interest in which case each such Person may, with the Borrower's consent (not to be unreasonably withheld or delayed), retain its own counsel), (c) to pay, indemnify, and hold harmless each Agent from, any and all recording and filing fees and (d) to pay, indemnify, and hold harmless each Lender and Agent and their respective Related Parties from and against any and all other liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements to the extent relating to any proceeding relating to this Agreement, any other Loan Document, the Transactions or any related transactions, whether or not such proceedings are brought by the Borrower, any of its Related Parties or any other third Person, including reasonable and documented fees, disbursements and other charges of one

primary counsel for the Agents and their Related Parties (taken as a whole), and one primary counsel for the Lenders and their Related Parties (taken as a whole), and, if necessary, by a single firm of local counsel in each appropriate jurisdiction for the Agents and their Related Parties (taken as a whole) and a single firm of local counsel in each appropriate jurisdiction for the Lenders and their Related Parties (taken as a whole) (unless there is an actual or perceived conflict of interest in which case each such Person may, with the consent of the Borrower (not to be unreasonably withheld or delayed), retain its own counsel to the extent necessary to avoid such conflict), with respect to the (i) execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents and any such other documents or (ii) any violation of, noncompliance with or liability under any Environmental Law other than any such liability, violation or noncompliance by such indemnified person or any of its Related Parties or to any actual or alleged presence, release or threatened release of Hazardous Materials involving or attributable to the Borrower, any of its Subsidiaries or any of the Oil and Gas Properties (all the foregoing in this clause (d), collectively, the "Indemnified Liabilities"). No Person entitled to indemnification under clause (d) of this Section 9.05 shall be liable for any damages arising from the use by others of any information or other materials obtained through internet, electronic, telecommunications or other information transmission systems (including IntraLinks or SyndTrak Online) in connection with this Agreement or any other Loan Document, except to the extent that such damages have resulted from the gross negligence or willful misconduct of the party to be indemnified or any of its Related Parties (as determined by a court of competent jurisdiction in a final and non-appealable decision), nor shall any such Person have any liability for any special, punitive, indirect or consequential damages (including, without limitation, any loss of profits, business or anticipated savings) relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Interim Facility Effective Date). The agreements in this Section 9.05 shall survive repayment of the Loans and all other amounts payable hereunder. This Section 9.05 shall not apply with respect to any Taxes other than Taxes that represent liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever resulting from a non-Tax claim. The Credit Parties agree, jointly and severally, that, without the prior written consent of the Administrative Agent and any affected Lender, which consent(s) will not be unreasonably withheld, the Credit Parties will not enter into any settlement of a claim in respect of the subject matter of this Section 9.05 unless such settlement includes an explicit and unconditional release from the party bringing such claim of all Related Parties.

SECTION 9.06. Successors and Assigns; Participations and Assignments.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.06. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section 9.06), and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents and the

Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement or the other Loan Documents.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below and the limitations on assignments set forth in paragraphs (e) and (g) below, any Lender may assign to one or more assignees (each, an "Assignee") all or a portion of its rights and obligations under this Agreement (including all or a portion of its New Money Commitments and the Loans (which may either be New Money Loans or Roll-Up Loans, or any combination thereof) at the time owing to it) by:

(A) providing written notice to the Borrower; and

(B) obtaining the consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed); provided that no consent of the Administrative Agent shall be required for an assignment of any Loan to a Lender, an Affiliate of a Lender or an Approved Fund.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning New Money Lender's New Money Commitments or Loans under the DIP Facility, the amount of the New Money Commitments or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than (x) $1,000,000 (and shall be in an amount of an integral multiple thereof)), unless the Administrative Agent otherwise consents (which consent shall not be unreasonably withheld or delayed); provided that contemporaneous assignments to a single assignee made by Affiliates of Lenders and related Approved Funds shall be aggregated for purposes of meeting the minimum assignment amount requirements stated above;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and shall pay to the Administrative Agent a processing and recordation fee of $3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent); provided that, in the case of contemporaneous assignments by any Lender to one or more Approved Funds, only a single processing and recordation fee shall be payable for all such assignments; and

(D) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an administrative questionnaire in a form approved by the Administrative Agent (the "Administrative Questionnaire") and applicable tax forms (including those described in Sections 2.13(d), (e), (h) and (i), as applicable).

For the purposes of this Section 9.06(b), the term "Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(v) of this Section 9.06, from and after the effective date specified in each Assignment and Acceptance, the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.13 and 9.05). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.06 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section 9.06.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at the Administrative Agent's office a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the New Money Commitments of, and principal and stated interest amounts of the Loans (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an Assignee, the Assignee's completed Administrative Questionnaire (unless the Assignee shall already be a Lender hereunder), all applicable tax forms, the processing and recordation fee referred to in paragraph (b) of this Section 9.06 and any written consent to such assignment required by paragraph (i)(A) and/or (i)(B) of this Section 9.06, the Administrative Agent shall promptly accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment, whether or not evidenced by a promissory note, shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) (i) Any Lender may, without the consent of, or notice to, the Administrative Agent or the Borrower, sell participations to one or more banks or other entities (each, a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its New Money Commitments and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B)

such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and the other Loan Documents; provided that (x) such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in clause (ii) or (iii) of the second sentence of Section 9.01(b) that directly affects such Participant and (y) no other agreement with respect to amendment, modification or waiver may exist between such Lender and such Participant. Subject to paragraph (c)(ii) of this Section 9.06, the Borrower agrees that each Participant shall be entitled to the benefits of Section 2.13 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 9.06.

(ii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal and stated interest amounts of each Participant's interest in the Loans held by it (the "Participant Register"). The entries in the Participant Register shall be conclusive absent manifest error, and each party hereto shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement and the other Loan Documents, notwithstanding notice to the contrary. No Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any New Money Commitments, Loans or other Obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such New Money Commitment, Loan or other Obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations.

(iii) A Participant shall not be entitled to receive any greater payment under Section 2.13 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent (which consent shall not be unreasonably withheld).

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section 9.06 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto. In order to facilitate such pledge or assignment, the Borrower hereby agrees that, upon request of any Lender at any time and from time to time, the Borrower shall provide to such Lender, at the Borrower's own expense, a Note, substantially in the form of Exhibit B.

(e) Notwithstanding anything to the contrary contained herein, no Lender may, at any time, assign all or a portion of its rights and obligations under this Agreement to the Borrower.

SECTION 9.07. Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by facsimile or other electronic transmission), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

SECTION 9.08. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 9.09. GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

SECTION 9.10. Submission to Jurisdiction; Consent to Service; Waivers.

(a) The parties hereto hereby irrevocably and unconditionally:

(i) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the Bankruptcy Court and, if the Bankruptcy Court does not have, or abstains from, jurisdiction, the courts of the County and State of New York, the courts of the United States of America for the Southern District of New York and appellate courts from any thereof;

(ii) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(iii) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Borrower at its respective address set forth in Section 9.02 or at such other address of which the Administrative Agent shall have been notified pursuant thereto;

(iv) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(v) without limitation of Sections 8.07 and 9.05, waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section 9.10 any special, exemplary, punitive or consequential damages.

(b) Each of the parties hereto, to the extent that it has or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from setoff or any legal process (whether service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) with respect to itself or any of its property or assets, hereby waives and agrees not to plead or claim such immunity in respect of its obligations under this Agreement and the other Loan Documents (it being understood that the waivers contained in this paragraph (c) shall have the fullest extent permitted under the Foreign Sovereign Immunities Act of 1976, as amended, and are intended to be irrevocable and not subject to withdrawal for the purposes of such Act).

SECTION 9.11. Acknowledgments. The parties hereto hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) none of the Administrative Agent, the Collateral Agent nor any Lender has any fiduciary relationship with or duty to the Borrower arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between Administrative Agent, the Collateral Agent and Lenders, on one hand, and the Borrower, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Borrower and the Lenders.

SECTION 9.12. WAIVERS OF JURY TRIAL. THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

SECTION 9.13. Confidentiality. Each Agent and each Lender shall hold all information relating to the Borrower or any Subsidiary furnished by or on behalf of the Borrower in connection with such Lender's evaluation of whether to become a Lender hereunder or obtained by such Lender or Agent pursuant to the requirements of this Agreement (other than information that (a) has become available to the public other than as a result of a disclosure by such party in breach of this Section 9.13, (b) has been independently developed by such Lender or such Agent without violating this Section 9.13 or (c) was or becomes available to such Lender or such Agent from a third party which, to such person's knowledge, had not breached an obligation of confidentiality to the Borrower or any other Credit Party) ("Confidential Information"), confidential in accordance with its customary procedure for handling confidential information of this nature and in any event may make disclosure (a) as required or requested by any governmental agency or representative thereof or any securities exchange on which securities of the disclosing

party or any Affiliate of the disclosing party are listed or traded or pursuant to legal process or to such Lender's or Agent's attorneys, professional advisors or independent auditors or Affiliates, (b) as part of normal reporting or review procedures to, or examinations by, Governmental Authorities or self-regulatory authorities, including the National Association of Insurance Commissioners or the National Association of Securities Dealers, Inc., (c) in order to enforce its rights under any Loan Document in a legal proceeding, (d) to any pledgee under Section 9.06 or any other prospective assignee of, or prospective Participant in, any of its rights under this Agreement (so long as such person shall agree to keep the same confidential in accordance with this Section 9.13 or terms substantially similar to this Section 9.13) and (e) to any direct or indirect contractual counterparty in swap agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 9.13 or terms substantially similar to this Section 9.13); provided that in no event shall any Lender or the Administrative Agent be obligated or required to return any materials furnished by the Borrower or any Subsidiary of the Borrower.

SECTION 9.14. No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby, the Borrower acknowledges and agrees, and acknowledge its Affiliates' understanding, that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Borrower, and its Affiliates, on the one hand, and the Administrative Agent and the other Agents, on the other hand, and the Borrower is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, the Administrative Agent and each other Agent each is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrower, or any of its Affiliates, stockholders, creditors or employees or any other Person; (iii) neither the Administrative Agent nor any other Agent has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrower with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether the Administrative Agent or any other Agent has advised or is currently advising the Borrower or any of their respective Affiliates on other matters) and neither the Administrative Agent nor any other Agent has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Administrative Agent and the other Agents and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent nor any other Agent has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Administrative Agent and the other Agents have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. The Borrower hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against the Administrative Agent and the other Agents with respect to any breach or alleged breach of agency or fiduciary duty.

SECTION 9.15. USA PATRIOT Act. Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies the Credit Parties, which information includes the name and address of the Credit Parties and other information that will allow such Lender to identify the Credit Parties in accordance with the USA Patriot Act. In addition, if any Agent is required by law or regulation or internal policies to do so, it shall have the right to periodically conduct (a) Patriot Act searches, OFAC/PEP searches, and customary individual background checks for the Credit Parties and (b) OFAC/PEP searches and customary individual background checks for the Credit Parties' senior management and key principals, and Borrower agrees to cooperate in respect of the conduct of such searches and further agrees to pay the reasonable expenses for such searches.

SECTION 9.16. [Reserved]

SECTION 9.17. Platform; Borrower Materials. The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform"), and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "Public Lender"). The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Material that may be distributed to the Public Lenders and that (i) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, means that the word "PUBLIC" shall appear prominently on the first page thereof, (ii) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as either publicly available information or not material information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws, (iii) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor" and (iv) the Administrative Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

SECTION 9.18. Release of Liens.

(a) Notwithstanding anything to the contrary in the Loan Documents, Collateral may be released from the Lien and security interest created by the Orders or any Loan Documents to secure the Loans and obligations under this Agreement at any time or from time to time in accordance with the provisions of the Orders or as provided hereby. The applicable property and assets included in the Collateral shall be automatically released from the Liens securing the Obligations, and the applicable Guarantor shall be automatically released from its obligations under this Agreement and the Orders or any Loan Documents as provided in the Orders or the Loan Documents.

(b) In connection with any termination or release pursuant to this Section 9.18 or a release of a Guarantee pursuant to Section 9.19, the Collateral Agent shall execute and deliver to any Credit Party, at such Credit Party's expense, all documents that such Credit Party shall reasonably request to evidence such termination or release (including, without limitation, UCC

termination statements), and will duly assign and transfer to such Credit Party, such of the pledged collateral that may be in the possession of the Collateral Agent and has not theretofore been sold or otherwise applied or released pursuant to this Agreement or the Orders or any Loan Documents. Any execution and delivery of documents pursuant to this Section 9.18 shall be without recourse to or warranty by the Collateral Agent. In connection with any release pursuant to this Section 9.18 or Section 9.19, the Credit Party shall be permitted to take any action in connection therewith consistent with such release including, without limitation, the filing of UCC termination statements. Upon the receipt of any necessary or proper instruments of termination, satisfaction or release prepared by the Borrower, the Collateral Agent shall, at the Borrower's expense, execute, deliver or acknowledge such instruments or releases to evidence the release of any Collateral permitted to be released pursuant to this Agreement or the Loan Documents or the Orders.

The security interests in all Collateral securing the Loans also will be released upon payment in full of the principal of, together with accrued and unpaid interest on, the Loans and all other Obligations under this Agreement and the Loan Documents that are due and payable at or prior to the time such principal, together with accrued and unpaid interest, are paid.

SECTION 9.19. Release of Guarantee. Each Guarantor's Guarantee shall be automatically released upon:

(1) any Disposition of all or substantially all of the properties or assets of such Guarantor (including by way of merger or consolidation or otherwise) to a Person that is not (either before or after giving effect to such transaction) the Borrower or a Restricted Subsidiary, if the Disposition does not violate this Agreement; or

(2) any Disposition of the Capital Stock of such Guarantor or such Guarantor's direct or indirect parent, to a Person that is not (either before or after giving effect to such transaction) the Borrower or a Restricted Subsidiary, if the Disposition does not violate this Agreement and such Guarantor no longer qualifies as a Subsidiary of the Borrower as a result of such Disposition.

SECTION 9.20. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

SECTION 9.21. Effect of the Amendment and Restatement of the Original DIP Agreement.

(a) On the date hereof, the Original DIP Agreement shall be amended, restated and superseded in its entirety as set forth herein. The parties hereto acknowledge and agree that (i) this Agreement and the other documents entered into in connection herewith do not constitute a novation, payment and reborrowing, or termination of the "Loans" under the Original DIP Agreement, as in effect prior to the date hereof, and (ii) such "Loans" and all "Obligations" set forth in the Original DIP Agreement are in all respects continuing (as amended and restated hereby) as indebtedness and obligations outstanding under this Agreement.

(b) Except to the extent that the Original DIP Agreement is being amended and restated hereby, each Loan Document shall continue to be in full force and effect and is hereby ratified and confirmed in all respects, except that, from and after the date hereof, each reference in any such Loan Document to this Agreement, "thereunder", "thereof" or words of like import shall be deemed to mean references to this Amended and Restated Senior Secured Debtor-in-Possession Term Loan Credit Agreement. Each Credit Party hereby (i) reaffirms its commitments, obligations, and guarantees in any such Loan Document except to the extent amended and restated hereby and (ii) reaffirms each pledge and grant of a security interest made in favor of the Administrative Agent under or in connection with the Original DIP Agreement and any Loan Documents entered into in connection therewith and agrees that notwithstanding the amendment and restatement of the Original DIP Agreement such pledges and grants in favor of the Administrative Agent shall continue in full force and effect.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first written above.

SANCHEZ ENERGY CORPORATION, as the Borrower

By: _____
Name:
Title:

WILMINGTON SAVINGS FUND SOCIETY, FSB
as Administrative Agent and Collateral Agent

By: _____
Name:
Title:

[LENDERS]
as a Lender,

By: _____
Name:
Title:

Exhibit 2

DIP Budget

Sanchez Energy Corporation, et al.

13 Week Cash Flow

($ in 000s)	Jan 24 '20 1 Forecast	Jan 31 '20 2 Forecast	Feb 7 '20 3 Forecast	Feb 14 '20 4 Forecast	Feb 21 '20 5 Forecast	Feb 28 '20 6 Forecast	Mar 6 '20 7 Forecast	Mar 13 '20 8 Forecast	Mar 20 '20 9 Forecast	Mar 27 '20 10 Forecast	Apr 3 '20 11 Forecast	Apr 10 '20 12 Forecast	Apr 17 '20 13 Forecast	Total Weeks 1 - 13
Cash & Cash Equivalents - Beginning	$ 121,616	$ 185,603	$ 59,917	$ 124,298	$ 104,931	$ 196,391	$ 96,929	$ 99,112	$ 87,702	$ 179,279	$ 99,338	$ 89,722	$ 72,410	$ 121,616
Cash Receipts														
Gross Production Receipts	104,376	45,371	-	-	105,154	34,715	-	-	104,245	35,436	-	-	-	429,298
JIB Receipts & Cash Calls	12,064	6,081	28,327	13,311	12,566	-	20,442	400	10,288	-	18,004	400	9,118	131,001
Total Cash Receipts	$ 116,440	$ 51,452	$ 28,327	$ 13,311	$ 117,720	$ 34,715	$ 20,442	$ 400	$ 114,534	$ 35,436	$ 18,004	$ 400	$ 9,118	$ 560,299
Cash Disbursements														
Capex	(10,517)	(10,517)	(9,831)	(9,831)	(9,831)	(9,831)	(7,343)	(7,343)	(7,343)	(7,343)	(7,343)	(9,185)	(9,185)	(115,445)
Lease Operating Expense	(2,960)	(2,960)	(2,631)	(2,631)	(2,631)	(2,631)	(2,246)	(2,246)	(2,246)	(2,246)	(2,246)	(2,770)	(2,770)	(33,214)
Gathering, Marketing, Transportation	(1,508)	(13,180)	-	-	(6,017)	(7,970)	(5,421)	-	(5,812)	(1,600)	(11,377)	-	(4,322)	(57,207)
Royalties & Working Interest Payments	(29,862)	(83,070)	(955)	-	-	(105,891)	(931)	-	-	(96,892)	(5,726)	-	-	(323,327)
Production & Ad Valorem Tax	(6,167)	(9,483)	-	-	(5,931)	-	-	-	(5,703)	-	-	-	-	(27,284)
G&A / Other	(668)	(4,212)	(429)	(2,125)	(429)	(2,603)	(2,219)	(2,046)	(350)	(2,046)	(828)	(1,997)	(429)	(20,380)
Operating Cash Disbursements	$ (51,683)	$ (123,422)	$ (13,846)	$ (14,587)	$ (24,838)	$ (128,926)	$ (18,159)	$ (11,635)	$ (21,455)	$ (110,128)	$ (27,520)	$ (13,953)	$ (16,706)	$ (576,857)
Total Operating Cash Flow	**$ 64,757**	**$ (71,970)**	**$ 14,481**	**$ (1,276)**	**$ 92,882**	**$ (94,212)**	**$ 2,283**	**$ (11,235)**	**$ 93,079**	**$ (74,691)**	**$ (9,516)**	**$ (13,553)**	**$ (7,588)**	**$ (16,558)**
Financing and Restructuring Related Disbursements														
Interest & Fees	(370)	(18,718)	-	(17,916)	(1,022)	-	-	-	(1,102)	-	-	-	-	(39,128)
Draw (Repayment) of Principal	-	(25,000)	-	-	-	-	-	-	-	-	-	-	-	(25,000)
Restructuring Costs	(400)	(9,998)	(100)	(175)	(400)	(5,250)	(100)	(175)	(400)	(5,250)	(100)	(3,759)	(400)	(26,508)
Net Cash Flow Prior to DIP Financing	**$ 63,987**	**$ (125,686)**	**$ 14,381**	**$ (19,367)**	**$ 91,459**	**$ (99,462)**	**$ 2,183**	**$ (11,410)**	**$ 91,577**	**$ (79,941)**	**$ (9,616)**	**$ (17,312)**	**$ (7,988)**	**$ (107,194)**
Debt														
Draw (Repayment) of DIP	-	-	50,000	-	-	-	-	-	-	-	-	-	50,000	100,000
Total Net Cash Flow	$ 63,987	$ (125,686)	$ 64,381	$ (19,367)	$ 91,459	$ (99,462)	$ 2,183	$ (11,410)	$ 91,577	$ (79,941)	$ (9,616)	$ (17,312)	$ 42,012	$ (7,194)
Ending Consolidated Cash Balance	**$ 185,603**	**$ 59,917**	**$ 124,298**	**$ 104,931**	**$ 196,391**	**$ 96,929**	**$ 99,112**	**$ 87,702**	**$ 179,279**	**$ 99,338**	**$ 89,722**	**$ 72,410**	**$ 114,422**	**$ 114,422**
DIP Availability	-	100,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	-	-
Ending Consolidated Liquidity	**$ 185,603**	**$ 159,917**	**$ 174,298**	**$ 154,931**	**$ 246,391**	**$ 146,929**	**$ 149,112**	**$ 137,702**	**$ 229,279**	**$ 149,338**	**$ 139,722**	**$ 122,410**	**$ 114,422**	**$ 114,422**
Memo: Cash Excluding SNEFM														
Total Operating Cash	$ 185,603	$ 59,917	$ 124,298	$ 104,931	$ 196,391	$ 96,929	$ 99,112	$ 87,702	$ 179,279	$ 99,338	$ 89,722	$ 72,410	$ 114,422	$ 114,422
SN EF Maverick Cash Balance	78,799	8,369	25,968	28,151	102,919	18,244	26,369	19,473	95,940	30,890	26,169	18,558	14,661	14,661
Liquidity less SN EF Maverick Cash	**$ 106,804**	**$ 51,548**	**$ 98,330**	**$ 76,780**	**$ 93,471**	**$ 78,685**	**$ 72,743**	**$ 68,229**	**$ 83,339**	**$ 68,447**	**$ 63,552**	**$ 53,852**	**$ 99,760**	**$ 99,760**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
RENTPATH HOLDINGS, INC., *et al.*,	:	Case No. 20–10312 (BLS)
Debtors.[1]	:	(Jointly Administered) Re: Docket No. 20

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

Upon the motion, dated February 12, 2020 (the "Motion")[2] of RentPath Holdings, Inc. ("Holdings") and its affiliated debtors in the above-captioned chapter 11 cases (collectively, the "Chapter 11 Cases"), as debtors and debtors in possession (collectively, the "Debtors"), seeking entry of an order (this "Interim Order") pursuant to sections 105, 361, 362, 363, 364(c)(l), 364(c)(2), 364(c)(3), 364(d), 364(e), and 507 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 4001-2 of the Local Rules of

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1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: RentPath Holdings, Inc. (1735); RentPath, LLC (7573); Consumer Source Holdings LLC (8150); Discover Home Network, LLC (4311); Easy Media, LLC (5455); Electronic Lead Management, Inc. (4986); Electronic Lead Management MA, Inc. (3113); Electronic Lead Management VA, Inc. (7698); Live Response Solutions Holdings, LLC (0462); Live Response Solutions, LLC (5120); Viva Group Brokerage, Inc. (7156); and Viva Group, LLC (0789). The Debtors' mailing address is 950 East Paces Ferry Road NE, Suite 2600, Atlanta, Georgia 30326.

2 Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") *inter alia*:

(i) authorizing the Debtors to obtain senior secured postpetition financing on a superpriority basis in the aggregate principal amount of $74,074,074.07 (the "DIP Facility" and, all amounts extended under the DIP Facility, the "DIP Loans"), pursuant to the terms and conditions of that certain *Debtor-in-Possession Credit Agreement* (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the "DIP Credit Agreement" and, together with any exhibits attached thereto and other agreements related thereto, including, without limitation, all notices, guarantees, security agreements, ancillary documents and agreements, and any mortgages contemplated thereby, the "DIP Documents"), by and among RentPath, LLC, a Delaware limited liability company (in such capacity, the "Borrower"), each of the other Debtors as guarantors, Royal Bank of Canada as administrative agent and collateral agent (in such capacities, the "DIP Agent"), and the lenders party thereto (the "DIP Lenders" and, together with the DIP Agent, the "DIP Secured Parties"), substantially in the form attached hereto as **Exhibit A**;

(ii) authorizing the Debtors to execute and enter into the DIP Documents and to perform such other acts as may be necessary or appropriate in connection with the same;

(iii) authorizing the Debtors to borrow $27,000,000 million under the DIP Facility (the "Interim Amount") upon entry of this Interim Order to avoid immediate and irreparable harm;

(iv) granting all obligations under the DIP Facility and under, or secured by, the DIP Documents (collectively, and including all "Obligations" as defined in the DIP Credit Agreement, the "DIP Obligations") the status of allowed superpriority administrative expense claims in each of the Chapter 11 Cases;

(v) granting to the DIP Agent, for the benefit of the DIP Secured Parties, to secure the DIP Obligations, automatically perfected security interests in and liens on all of the DIP Collateral (as defined below), including, without limitation, all property constituting "cash collateral" as defined in section 363(a) of the Bankruptcy Code ("Cash Collateral"), which liens shall have the priorities set forth herein and shall be subject to the Carve-Out (as defined below);

(vi) authorizing and directing the Debtors to pay the principal, interest, premiums, fees, expenses, and other amounts payable under the DIP Documents as such become due and payable;

(vii) authorizing the Debtors to use the Prepetition Collateral (as defined below) of the Prepetition Secured Parties (as defined below) and providing adequate protection to the Prepetition Secured Parties solely to the extent of any diminution in value of their respective interests in the Prepetition Collateral, including the Cash Collateral ("Diminution in Value"), resulting from the imposition of the automatic stay, the Debtors' postpetition use, sale, or lease of the Prepetition Collateral, including Cash Collateral, or the priming of the Prepetition Secured Parties' liens on the Prepetition Collateral (including by the Carve-Out (as defined below));

(viii) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and this Interim Order; and

(ix) scheduling a final hearing (the "Final Hearing") within forty (40) days of the Petition Date to consider the relief requested in the Motion on a final basis and approving the form of notice with respect to the Final Hearing.

The Court having considered the Motion, the exhibits attached thereto, the *Declaration of Zul Jamal in Support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Lenders, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief*, the Martin Declaration, and the evidence submitted and arguments made at the interim hearing held on February 13, 2020 (the "Interim Hearing"); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Rules; and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, and all parties-in-interest, and is essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Credit Agreement and the other DIP Documents is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[3]

[3] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To

A. **Petition Date**. On February 12, 2020 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court.

B. **Debtors in Possession**. The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. **Jurisdiction and Venue**. This Court has jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue for the Chapter 11 Cases and proceedings with respect to the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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

E. **Notice**. Notice of the Motion and the Interim Hearing has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice of the Motion with respect to the relief requested at the Interim Hearing or the entry of this Interim Order shall be required.

F. **Debtors' Stipulations**. After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties in interest, including any Committee, as set

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the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

forth in paragraph 40 herein, each Debtor admits, stipulates, acknowledges, and agrees as follows (paragraphs F(i) through F(vii) below are referred to herein, collectively, as the "Debtors' Stipulations"):

(i) *Prepetition First Lien Facility*. Pursuant to that certain First Lien Credit Agreement, dated as of December 17, 2014 (as amended, restated, supplemented, or otherwise modified from time to time, the "First Lien Credit Agreement" and, collectively with the Loan Documents (as defined in the First Lien Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as amended, restated, supplemented, waived, or otherwise modified from time to time, the "Prepetition First Lien Documents"), among (a) RentPath, LLC (in such capacity, the "Prepetition Borrower"), (b) Holdings, (c) Royal Bank of Canada, as administrative agent and collateral agent (in such capacities, the "Prepetition First Lien Agent"), (d) the guarantors thereunder (in such capacities, the "Prepetition First Lien Guarantors" and, together with the Prepetition Borrower, the "Prepetition First Lien Obligors"), and (e) the lenders party thereto from time to time (the "Prepetition First Lien Lenders" and, collectively with the Prepetition First Lien Agent, the "Prepetition First Lien Secured Parties"), the Term Lenders (as defined in the First Lien Credit Agreement) provided term loans to the Prepetition Borrower, and the Revolving Credit Lenders (as defined in the First Lien Credit Agreement) provided revolving loans to the Prepetition Borrower (collectively, the "Prepetition First Lien Facility").

(ii) *Prepetition First Lien Obligations*. As of the Petition Date, the Prepetition First Lien Obligors were indebted to the Prepetition First Lien Secured Parties, without defense, counterclaim, or offset of any kind, in respect of the loans incurred under the Prepetition

First Lien Facility (collectively, the "Prepetition First Lien Loans"), in an aggregate principal amount, as of the Petition Date, not less than $517.70 million (collectively, together with accrued and unpaid interest, fees, expenses, and disbursements (including, without limitation, any accrued and unpaid attorneys' fees, accountants' fees, appraisers' fees, and financial advisors' fees and related expenses and disbursements), indemnification obligations, and other charges, amounts, and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition First Lien Obligors' obligations pursuant to the Prepetition First Lien Documents, including all "Obligations" as defined in the First Lien Credit Agreement, in each case, as of the Petition Date, and all interest, fees, costs, and other charges allowable under Section 506(b) of the Bankruptcy Code (the "Prepetition First Lien Obligations").

(iii) *Prepetition Second Lien Facility*. Pursuant to that certain Second Lien Credit Agreement, dated as of December 17, 2014 (as amended, restated, supplemented, or otherwise modified from time to time, the "Second Lien Credit Agreement" and, collectively with the Loan Documents (as defined in the Second Lien Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as amended, restated, supplemented, waived, or otherwise modified from time to time, the "Prepetition Second Lien Documents" and, collectively with the Prepetition First Lien Documents, the "Prepetition Documents"), among (a) the Prepetition Borrower, (b) Holdings, (c) Wilmington Savings Fund Society, FSB, as successor administrative agent and collateral agent, (in such capacities, the "Prepetition Second Lien Agent" and, together with the Prepetition First Lien Agent, the "Prepetition Agents"), (d) the guarantors thereunder (the "Prepetition Second Lien Guarantors"

and, together with the Prepetition Borrower, the "Prepetition Second Lien Obligors" and, together with the Prepetition First Lien Obligors, the "Prepetition Obligors"), and (e) the lenders party thereto (the "Prepetition Second Lien Lenders" and, collectively with the Prepetition Second Lien Agent, the "Prepetition Second Lien Secured Parties" and, together with the Prepetition First Lien Secured Parties, the "Prepetition Secured Parties"), the Prepetition Second Lien Lenders provided term loans to the Prepetition Borrower (the "Prepetition Second Lien Facility" and, together with the Prepetition First Lien Facility, the "Prepetition Secured Facilities").

(iv) *Prepetition Second Lien Obligations*. As of the Petition Date, the Prepetition Second Lien Obligors were indebted to the Prepetition Second Lien Secured Parties, without defense, counterclaim, or offset of any kind, in respect of the loans incurred under the Prepetition Second Lien Facility (collectively, the "Prepetition Second Lien Loans"), in an aggregate principal amount, as of the Petition Date, not less than $170.00 million (collectively, together with accrued and unpaid interest, fees, expenses, and disbursements (including, without limitation, any accrued and unpaid attorneys' fees, accountants' fees, appraisers' fees, and financial advisors' fees and related expenses and disbursements), indemnification obligations, and other charges, amounts, and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition Second Lien Obligors' obligations pursuant to the Prepetition Second Lien Documents, including all "Obligations" as defined in the Second Lien Credit Agreement, in each case, as of the Petition Date, and all interest, fees, costs, and other charges allowable under Section 506(b) of the Bankruptcy Code (the "Prepetition Second Lien Obligations" and, together with the Prepetition First Lien Obligations, the "Prepetition Secured Obligations").

(v) *Prepetition Liens and Prepetition Collateral.* As more fully set forth in the Prepetition First Lien Documents, prior to the Petition Date, the Prepetition First Lien Obligors granted to the Prepetition First Lien Agent, for the benefit of the Prepetition First Lien Secured Parties, a first-priority security interest in and continuing lien (the "Prepetition Senior Liens") on "Collateral," as such term is defined in the First Lien Credit Agreement (the "Prepetition First Lien Collateral"), which includes all accounts, chattel paper, commercial tort claims, deposit accounts, documents, equipment, fixtures, general intangibles (including all intellectual property, patents, and trademarks), goods, instruments, inventory, investment property, all books and records pertaining to the "Collateral," all proceeds and products of any and all of the foregoing and all supporting obligations, collateral security and guarantees given by any person with respect to any of the foregoing, as well as pledged debt and equity interests. As more fully set forth in the Prepetition Second Lien Documents, prior to the Petition Date, the Prepetition Second Lien Obligors granted to the Prepetition Second Lien Agent, for the benefit of the Prepetition Second Lien Secured Parties, a second-priority security interest in and continuing lien (the "Prepetition Junior Liens" and, together with the Prepetition Senior Liens, the "Prepetition Liens"), subject and subordinate to the Prepetition Senior Liens, on "Collateral," as such term is defined in the Second Lien Credit Agreement (the "Prepetition Second Lien Collateral" and, together with the Prepetition First Lien Collateral, the "Prepetition Collateral").

(vi) *Validity, Perfection, and Priority of Prepetition Liens and Prepetition Secured Obligations.* The Debtors acknowledge and agree that, as of the Petition Date, (a) the Prepetition Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Secured

Parties for fair consideration and reasonably equivalent value; (b) the Prepetition Senior Liens were senior in priority over any and all other liens on the Prepetition Collateral, including the Prepetition Junior Liens, subject only to certain liens permitted by the Prepetition Documents (in each case, to the extent that such existing liens were valid, properly perfected, non-avoidable, and senior in priority to the Prepetition Senior Liens as of the Petition Date or were valid non-avoidable senior liens that are perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code, the "Permitted Liens");[4] (c) the Prepetition Secured Obligations constitute legal, valid, binding, and non-avoidable obligations of the Prepetition Obligors, enforceable in accordance with the terms of the applicable Prepetition Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Secured Obligations exist, and no portion of the Prepetition Liens or Prepetition Secured Obligations is subject to any challenge or defense, including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including, without limitation, avoidance claims under chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement against any of the Prepetition Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, or employees, arising out of, based upon, or related to the

[4] Nothing herein shall constitute a finding or ruling by this Court that any such Permitted Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing shall prejudice the rights of any party in interest, including, but not limited to, the Debtors, the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, or a Committee (if appointed), to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Permitted Lien. The right of a seller of goods to reclaim such goods under Section 546(c) of the Bankruptcy Code is not a Permitted Lien and is expressly subject to the Prepetition Liens and DIP Liens.

Prepetition Secured Facilities; (f) the Debtors have waived, discharged, and released any right to challenge any of the Prepetition Secured Obligations, the priority of the Debtors' obligations thereunder, or the validity, extent, or priority of the Prepetition Liens; and (g) the Prepetition Secured Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(vii) *Releases*. The Debtors hereby stipulate and agree that they forever and irrevocably release, discharge, and acquit the DIP Agent, the Prepetition Secured Parties, all current and future DIP Lenders, and each of their respective successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, attorneys, and agents, past, present, and future, and their respective heirs, predecessors, successors, and assigns, each solely in their capacities as such (collectively, the "Releasees"), of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including, without limitation, reasonable attorneys' fees), debts, liens, actions, and causes of action of any and every nature whatsoever relating to, as applicable, the DIP Facility, the DIP Documents, the Prepetition Secured Facilities, the Prepetition Documents, and/or the transactions contemplated hereunder or thereunder including, without limitation, (x) any so-called "lender liability" or equitable subordination or recharacterization claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with respect to the validity, priority, perfection, or avoidability of the liens or claims of the Prepetition Secured Parties, the DIP Agent, or the DIP Lenders. The Debtors further waive and release any defense, right of counterclaim, right of set-off, or deduction to the payment of the Prepetition Secured Obligations or the DIP Obligations that the Debtors may now have or may claim to have against

the Releasees arising out of, connected with, or relating to any and all acts, omissions, or events occurring prior to the Court's entry of this Interim Order.

G. **Cash Collateral**. All of the Debtors' cash, including any cash in their deposit accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitutes Cash Collateral of the Prepetition Secured Parties.

H. **Intercreditor Agreement**. Pursuant to section 510 of the Bankruptcy Code, that certain Intercreditor Agreement, dated as of December 17, 2014 (as amended, restated, supplemented, or otherwise modified in accordance with its terms, the "Intercreditor Agreement"), among the Prepetition First Lien Agent and the Prepetition Second Lien Agent, and any other applicable intercreditor or subordination provisions contained in any of the other Prepetition Documents, (i) shall remain in full force and effect, (ii) shall continue to govern the relative priorities, rights, and remedies of the Prepetition Secured Parties (including the relative priorities, rights, and remedies of such parties with respect to the replacement liens, administrative expense claims, and superpriority administrative expense claims granted or the amounts payable by the Debtors under this Interim Order or otherwise), and (iii) shall not be deemed to be amended, altered, or modified by the terms of this Interim Order or the DIP Documents, unless expressly set forth herein or therein.

I. **Findings Regarding Postpetition Financing and Use of Cash Collateral**.

(i) *Request for Postpetition Financing and Use of Cash Collateral.* The Debtors seek authority to (a) enter into the DIP Facility and incur the DIP Obligations on the terms described herein and in the DIP Documents and (b) use Cash Collateral on the terms described herein, in each case, to administer their Chapter 11 Cases and fund their operations. At the Final

Hearing, the Debtors will seek final approval of the DIP Facility and use of Cash Collateral pursuant to a proposed final order (the "Final Order"), which shall be in form and substance acceptable to the DIP Agent at the direction of the Required Lenders (as defined in the DIP Credit Agreement, the "Required Lenders"). Notice of the Final Hearing and the proposed Final Order will be provided in accordance with this Interim Order.

(ii) *Priming of the Prepetition Liens.* The priming of the Prepetition Liens under section 364(d) of the Bankruptcy Code, as contemplated by the DIP Documents and as provided herein, will enable the Debtors to obtain the DIP Facility and to continue to operate their business during the pendency of the Chapter 11 Cases, to the benefit of their estates and creditors. The Prepetition Secured Parties are entitled to receive adequate protection as set forth in this Interim Order pursuant to sections 361, 363, and 364 of the Bankruptcy Code, solely to the extent of any Diminution in Value of their respective interests in the Prepetition Collateral (including Cash Collateral).

(iii) *Need for Postpetition Financing and Use of Cash Collateral.* The Debtors have demonstrated an immediate need to use Cash Collateral on an interim basis and to obtain credit in an amount equal to the Interim Amount pursuant to the DIP Facility in order to, among other things, continue their ordinary course operations, administer these Chapter 11 Cases, and preserve the going-concern value of their estates. The ability of the Debtors to maintain business relationships with their vendors, suppliers, and customers, to pay their employees, to pay for certain costs and expenses related to the Chapter 11 Cases, and to otherwise finance their operations until entry of the Final Order requires the availability of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of which would immediately and

irreparably harm the Debtors, their estates, and parties in interest. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or maintain their properties in the ordinary course of business until the Final Order is entered without the authorization to use Cash Collateral and to borrow the Interim Amount.

(iv) *No Credit Available on More Favorable Terms*. The DIP Facility is the best source of debtor-in-possession financing available to the Debtors. Given their current financial condition, financing arrangements, and capital structure, the Debtors have been and continue to be unable to obtain financing from sources other than the DIP Lenders on terms more favorable than the DIP Facility. The Debtors are unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors have also been unable to obtain (a) unsecured credit having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a), and 507(b) of the Bankruptcy Code; (b) credit secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) credit secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Financing on a postpetition basis on better terms is not available without granting the DIP Agent, for the benefit of itself and the DIP Lenders, (1) perfected security interests in and liens on (each as provided herein) the DIP Collateral, with the priorities set forth herein; (2) superpriority claims; and (3) the other protections set forth in this Interim Order.

(v) *Use of Cash Collateral and Proceeds of the DIP Facility*. As a condition to entry into the DIP Credit Agreement, the extension of credit under the DIP Facility and the authorization to use the Prepetition Collateral, including Cash Collateral, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties require, and the Debtors have agreed, that

proceeds of the DIP Facility and the Prepetition Secured Parties' Cash Collateral shall be used in a manner consistent with the terms and conditions of this Interim Order and the DIP Documents and in accordance with the budget (as the same may be modified from time to time consistent with the terms of the DIP Documents and subject to such variances as permitted in the DIP Documents, and as set forth in paragraphs 16-17 hereof, the "Budget"),[5] solely for the purposes set forth in the DIP Credit Agreement and this Interim Order, including (a) ongoing working capital and other general corporate purposes of the Debtors; (b) permitted payment of costs of administration of the Chapter 11 Cases, including restructuring charges arising on account of the Chapter 11 Cases, including statutory fees of the U.S. Trustee and allowed professional fees and expenses of the Debtors' professionals and professionals retained by a Committee (if any), subject to the Investigation Budget Amount; (c) payment of such prepetition expenses as consented to by the DIP Agent, acting at the direction of the Required Lenders; (d) payment of interest, premiums, fees, expenses, and other amounts (including, without limitation, legal and other professionals' fees and expenses of the DIP Agent and the DIP Lenders) owed under the DIP Documents, including those incurred in connection with the preparation, negotiation, documentation, and Court approval of the DIP Facility; (e) payment of certain adequate protection amounts to the Prepetition Secured Parties, as set forth in paragraphs 12-13 hereof; and (f) payment of obligations arising from or related to the Carve-Out (as defined below), and making disbursements therefrom, including by funding the Professional Fees Account (as defined below).

(vi) *Application of Proceeds of DIP Collateral*. As a condition to entry into the DIP Credit Agreement, the extension of credit under the DIP Facility, and authorization

[5] A copy of the initial Budget is attached hereto as **Schedule 1**.

to use Cash Collateral, the Debtors, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties have agreed that as of and commencing on the date of the Interim Hearing, the Debtors shall apply the proceeds of the DIP Collateral in accordance with this Interim Order.

(vii) *DIP Election Procedures.* The procedures to govern the participation of the Prepetition First Lien Lenders and, if applicable, the Prepetition Second Lien Lenders in the DIP Facility (the "DIP Election Procedures"), as set forth in the DIP Credit Agreement, are fair and reasonable.

J. **Adequate Protection**. The Prepetition First Lien Agent, for the benefit of the Prepetition First Lien Secured Parties, and the Prepetition Second Lien Agent, for the benefit of the Prepetition Second Lien Secured Parties, are entitled to receive adequate protection solely to the extent of any Diminution in Value of their respective interests in the Prepetition Collateral, including, without limitation, the Cash Collateral. Pursuant to sections 361, 363 and 507(b) of the Bankruptcy Code, as adequate protection, subject in all respects to the Carve-Out (as defined below) and subject to paragraph 40 of this Interim Order, the Prepetition Secured Parties will receive (i) solely to the extent of any Diminution of Value of their interests in the Prepetition Collateral, Adequate Protection Liens (as defined below) and 507(b) Claims (as defined below); (ii) solely with respect to the Prepetition First Lien Secured Parties and the Prepetition Second Lien Agent, current payment of reasonable and documented fees and expenses and other disbursements as set forth in paragraphs 12-13 herein; and (iii) financial and other reporting, in each case, as set forth in paragraphs 12-13 herein.

K. **Sections 506(c) and 552(b).** In light of (i) the DIP Agent's and the DIP Lenders' agreement that their liens and superpriority claims shall be subject to the Carve-Out (as

defined below); (ii) the Prepetition Secured Parties' agreement that their respective liens and claims, including any adequate protection liens and claims, shall be subject to the Carve-Out (as defined below) and subordinate to the DIP Liens (as defined below); and (iii) the DIP Agent's, the DIP Lenders', and the Prepetition Secured Parties' agreement to the payment (in accordance with the Budget (subject to the Permitted Variance (as defined below)) and subject to the terms and conditions of this Interim Order and the DIP Documents) of certain expenses of administration of these Chapter 11 Cases, including certain critical trade claims, (a) subject to entry of the Final Order, the Prepetition Secured Parties are entitled to a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code and (b) subject to entry of the Final Order, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties are each entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code.

L. **Good Faith of the DIP Agent and DIP Lenders and the Prepetition Secured Parties**.

(i) Based upon the pleadings and proceedings of record in the Chapter 11 Cases, (i) the extensions of credit under the DIP Facility are fair and reasonable, are appropriate for secured financing to debtors in possession, are the best available to the Debtors under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration; (ii) the terms and conditions of the DIP Facility and the use of the Cash Collateral have been negotiated in good faith and at arm's length among the Debtors, the DIP Secured Parties, and the Prepetition Secured Parties, with the assistance and counsel of their respective advisors; (iii) the use of Cash Collateral, including, without limitation, pursuant to this Interim Order, has been allowed in "good

faith" within the meaning of section 364(e) of the Bankruptcy Code; (iv) any credit to be extended, loans to be made, and other financial accommodations to be extended to the Debtors by the DIP Secured Parties and the Prepetition Secured Parties, including, without limitation, pursuant to this Interim Order, have been allowed, advanced, extended, issued, or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code by the DIP Parties and the Prepetition Secured Parties in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code; and (v) the DIP Facility, the DIP Liens (as defined below), the DIP Superpriority Claims (as defined below), the Adequate Protection Liens, and the 507(b) Claims (as defined below) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise.

(ii) Absent an order of this Court and the provision of Adequate Protection, consent of the Prepetition Secured Parties is required for the Debtors' use of Cash Collateral and other Prepetition Collateral. The Prepetition Secured Parties have consented, or are deemed pursuant to the Prepetition Documents to have consented, or have not objected, to the Debtors' use of Cash Collateral and other Prepetition Collateral or to the Debtors' entry into the DIP Documents in accordance with and subject to the terms and conditions in this Interim Order and the DIP Documents.

M. **Immediate Entry**. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2).

N. **Interim Hearing**. Notice of the Interim Hearing and the relief requested in the Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight

courier, or hand delivery to certain parties in interest, including the Notice Parties. The Debtors have made reasonable efforts to afford the best notice possible under the circumstances, and no other notice is required in connection with the relief set forth in this Interim Order.

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

IT IS HEREBY ORDERED THAT:

1. DIP Facility Approved on Interim Basis. The Motion is granted on an interim basis as set forth herein. The DIP Facility, in an amount equal to the Interim Amount, is hereby authorized and approved to the extent set forth herein, and the use of Cash Collateral on an interim basis is authorized, in each case subject to the terms and conditions set forth in the DIP Documents and this Interim Order. All objections to this Interim Order, to the extent not withdrawn, waived, settled, or resolved, are hereby denied and overruled. This Interim Order shall become effective immediately upon its entry.

2. Authorization of the DIP Facility. The DIP Facility is hereby approved to the extent set forth herein. The Debtors are expressly and immediately authorized and empowered to execute and deliver the DIP Documents and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Documents and to deliver all instruments, certificates, agreements, and documents that may be required or necessary for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens (as defined below). The Debtors are hereby authorized and directed to pay, in accordance with this Interim Order, the principal, interest, premiums, fees, payments, expenses,

and other amounts described in the DIP Documents as such amounts become due and payable, without need to obtain further Court approval, whether or not such fees arose before or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, to implement all applicable reserves, and to take any other actions that may be necessary or appropriate, all to the extent provided in this Interim Order or the DIP Documents. All collections and proceeds, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnations, or otherwise, will be deposited and applied as required by this Interim Order and the DIP Documents. Upon execution and delivery, the DIP Documents shall represent valid and binding obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms. Upon the Closing Date (as defined in the DIP Credit Agreement, the "Closing Date"), the Upfront Discount (as defined in the Motion), the Backstop Premium set forth in the Backstop Commitment Letter (as defined in the DIP Credit Agreement), and the Redemption Premium (as defined in the Motion) shall be fully earned and non-refundable and shall be payable in accordance with and at the times specified in the DIP Documents.

3. Authorization to Borrow. To prevent immediate and irreparable harm to the Debtors' estates, from the entry of this Interim Order through and including the earliest to occur of (i) entry of the Final Order or (ii) the DIP Termination Date (as defined below), and subject to the terms, conditions, limitations on availability, and reserves (as applicable) set forth in the DIP Documents and this Interim Order, the Debtors are hereby authorized to request extensions of credit (in the form of DIP Loans) under the DIP Facility in an amount equal to the aggregate outstanding principal Interim Amount of $27,000,000.

4. Amendment of the DIP Documents. The DIP Documents may from time to time be amended, modified, or supplemented by the parties thereto without further order of the Court if the amendment, modification, or supplement is (a) non-material and (b) in accordance with the DIP Documents. In the case of a material amendment, modification, or supplement to the DIP Documents, the Debtors shall (i) provide notice (which may be provided through electronic mail or facsimile) to counsel to any Committee (if appointed), the U.S. Trustee, the DIP Agent, and the Prepetition Agents; (ii) provide notice to the Court; and (iii) obtain approval of the Court.

5. DIP Obligations. The DIP Documents and this Interim Order shall constitute and evidence the validity and binding effect of the DIP Obligations, which shall be enforceable against the Debtors, their estates and any successors thereto, including, without limitation, any trustee appointed in the Chapter 11 Cases or in any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Cases"). Upon entry of this Interim Order, the DIP Obligations will include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP Agent or any of the DIP Lenders, in each case, under the DIP Documents or this Interim Order or secured by the DIP Liens (as defined below), including, without limitation, all principal, accrued and unpaid interest, costs, fees, expenses, and other amounts owing under the DIP Documents. The Debtors shall be jointly and severally liable for the DIP Obligations. The DIP Obligations shall be due and payable, and the use of Cash Collateral shall automatically cease, in each case, without notice or demand on the DIP Termination Date (as defined herein), except as provided in paragraph 26 herein and subject to the requirements of the Carve-Out (as

defined below). No obligation, payment, transfer, or grant of collateral security hereunder or under the DIP Documents (including any DIP Obligation or DIP Liens (as defined below) but excluding any adequate protection provided to the Prepetition Secured Parties hereunder) shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under chapter 5 of the Bankruptcy Code, section 724(a) of the Bankruptcy Code, or any other provision with respect to avoidance actions under the Bankruptcy Code or applicable state law equivalents) or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

6. DIP Liens. Subject and subordinate solely to the Carve-Out (as defined below) as set forth in this Interim Order and effective immediately upon entry of this Interim Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP Agent, for the benefit of itself and the DIP Lenders, is hereby granted, in order to secure the DIP Obligations, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on (collectively, the "DIP Liens") all real and personal property, whether now existing or hereafter arising and wherever located, tangible or intangible, of each of the Debtors (the "DIP Collateral"), including, without limitation (a) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables (including credit card receivables), chattel paper, contract rights, inventory (wherever located), instruments, documents, securities (whether or not marketable) and investment property (including, without limitation, all of the issued and outstanding capital stock of each of Holdings'

subsidiaries), hedge agreements, furniture, fixtures, equipment (including documents of title), goods, franchise rights, trade names, trademarks, servicemarks, copyrights, patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment intangibles), rights to the payment of money (including, without limitation, tax refunds and any other extraordinary payments), supporting obligations, guarantees, letter of credit rights, commercial tort claims, causes of action, and all substitutions, indemnification rights, all present and future intercompany debt, fee interests in real property owned by the Debtors, books and records related to the foregoing, and accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds; (b) all owned real property interests and all proceeds of leased real property; (c) actions brought under section 549 of the Bankruptcy Code to recover any post-petition transfer of DIP Collateral; (d) subject to entry of a Final Order, the proceeds of any avoidance actions (such actions, "Avoidance Actions") brought pursuant to chapter 5 of the Bankruptcy Code or section 724(a) of the Bankruptcy Code or any other avoidance actions under the Bankruptcy Code or applicable state law equivalents (the "Avoidance Action Proceeds"); *provided*, that no liens shall attach to Avoidance Actions; (e) subject to entry of the Final Order, the proceeds of any exercise of the Debtors' rights under section 506(c) and 550 of the Bankruptcy Code; and (f) all DIP Collateral that was not otherwise subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date. Notwithstanding the foregoing, the DIP Collateral shall not include (and the DIP Liens shall not extend to) amounts deposited in the Professional Fees Account (as defined below) in accordance with this Interim Order, including with respect to the Carve-Out (as defined below), and any "Excluded Assets" (as defined in the DIP Documents).

7. DIP Lien Priority. The DIP Liens shall have the following priority:

(a) pursuant to Section 364(c) of the Bankruptcy Code, the DIP Liens shall be first priority liens on all of the Debtors' unencumbered assets (now or hereafter acquired and all proceeds thereof) other than "Excluded Assets," as defined in the DIP Documents;

(b) pursuant to Section 364(c)(3) of the Bankruptcy Code, the DIP Liens shall be immediately junior to any liens on the Debtors' encumbered assets (now or hereafter acquired and all proceeds thereof) that are subject to valid, perfected, and unavoidable liens in existence immediately prior to the Petition Date or to valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, in each case other than as set forth in clause (c) immediately below (collectively, the "Non-Primed Liens");

(c) pursuant to Section 364(d) of the Bankruptcy Code, the DIP Liens shall be priming first-priority liens on all of the Debtors' assets (now or hereafter acquired and all proceeds thereof) that serve as "Collateral" under the Prepetition Secured Facilities (the "Existing Primed Secured Facilities"), senior to the Prepetition Liens and the Adequate Protection Liens.

(d) Other than as set forth herein (including with respect to the Carve-Out (as defined below)) or in the DIP Documents, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases and shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 Cases to any Successor Case, and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The DIP Liens shall not be subject to any of sections 510, 549 or 550 of the Bankruptcy Code (subject in all respects to the Challenge Deadline and related provisions set forth in paragraph

40 herein). No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

8. Superpriority Claims. Subject and subordinate to the Carve-Out (as defined below), upon entry of this Interim Order, the DIP Agent, on behalf of itself and the DIP Lenders, is hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, allowed superpriority administrative expense claims in each of the Chapter 11 Cases and any Successor Cases (collectively, the "DIP Superpriority Claims") for all DIP Obligations (a) with priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of the Chapter 11 Cases or any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, or 1114 of the Bankruptcy Code or any other provision of the Bankruptcy Code and (b) which shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative to the extent permitted by law.

9. No Obligation to Extend Credit. Except as required to fund the Carve-Out (as defined below) as set forth in this Interim Order, the DIP Lenders shall have no obligation to make any loan or advance or to issue, amend, renew, or extend any letters of credit or bankers' acceptance under the DIP Documents unless (and subject to the occurrence of the Closing Date) all of the conditions precedent to the making of such extension of credit or the issuance, amendment, renewal, or extension of such letter of credit or bankers' acceptance under the DIP Documents and this Interim Order have been satisfied in full or waived by the DIP Agent in accordance with the terms of the DIP Credit Agreement.

10. Use of Proceeds of DIP Facility.

(a) From and after the Petition Date, the Debtors shall use proceeds of borrowings under the DIP Facility only for the purposes specifically set forth in this Interim Order and the DIP Documents, and, in each case, in compliance with the Budget (subject to such the Permitted Variance (as defined in the DIP Credit Agreement, the "Permitted Variance") and the terms and conditions in this Interim Order and the DIP Documents.

(b) The Debtors shall be authorized to cash collateralize outstanding letters of credit issued under, and in accordance with, the First Lien Credit Agreement, in each case, in compliance with the Budget (subject to Permitted Variances).

11. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Interim Order and the DIP Documents, and in accordance with the Budget (subject to the Permitted Variance), the Debtors are authorized to use Cash Collateral until the DIP Termination Date (as defined below); *provided, however*, that during the Remedies Notice Period (as defined below), the Debtors may use Cash Collateral solely to meet payroll obligations and pay expenses necessary to avoid immediate and irreparable harm to the Debtors' estates, in accordance with the Budget (subject to the Permitted Variance), and as otherwise agreed by the DIP Agent at the direction of the Required Lenders. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Interim Order (including with respect to the Carve-Out (as defined below)), the DIP Facility, the DIP Documents, or by an order of the Court, and in accordance with the Budget (subject to the Permitted Variance).

12. Adequate Protection for the Prepetition First Lien Secured Parties. Subject to the Investigation (as defined below), the Prepetition First Lien Secured Parties are entitled, pursuant to sections 361, 362, 363(c)(2), 363(e), and 507 of the Bankruptcy Code, to adequate protection of their interests in the Prepetition Collateral, including the Cash Collateral, solely to the extent of any Diminution in Value of their interests in the Prepetition Collateral (the "First Lien Adequate Protection Obligations"); *provided*, that, for the avoidance of doubt, the First Lien Adequate Protection Obligations shall not have recourse to the amounts deposited in the Professional Fees Account (as defined below) in accordance with this Interim Order, including with respect to the Carve-Out (as defined below). As adequate protection, the Prepetition First Lien Secured Parties are hereby granted the following:

(a) First Lien Adequate Protection Liens. As security for the payment of the First Lien Adequate Protection Obligations, the Prepetition First Lien Agent (for itself and for the benefit of the Prepetition First Lien Lenders) is hereby granted (effective and perfected upon the date of this Interim Order and without the necessity of the execution by the Debtors of security agreements, pledge agreements, mortgages, financing statements, or other agreements) a valid, perfected replacement security interest in and lien on all of the DIP Collateral, including, subject to entry of the Final Order, Avoidance Action Proceeds (the "First Lien Adequate Protection Liens"), subject and subordinate only to (i) the Carve-Out (as defined below), (ii) the DIP Liens, and (iii) the Non-Primed Liens, subject to the terms of the Intercreditor Agreement.

(b) First Lien Section 507(b) Claims. The First Lien Adequate Protection Obligations shall constitute superpriority claims as provided in section 507(b) of the Bankruptcy Code (the "First Lien 507(b) Claims"), with priority in payment over any and all

administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, without limitation, sections 105, 326, 328, 330, 331, 503(a), 503(b), 507(a), 506(c) (subject to entry of the Final Order), 507(b), 546(c), 546(d), 726, 1113, or 1114 of the Bankruptcy Code, subject and subordinate only to (i) the Carve-Out (as defined below) and (ii) the DIP Superpriority Claims granted in respect of the DIP Obligations. Except to the extent expressly set forth in this Interim Order, the Prepetition First Lien Secured Parties shall not receive or retain any payments, property, or other amounts in respect of the First Lien 507(b) Claims unless and until the Carve-Out (as defined below) is funded and all DIP Obligations shall have indefeasibly been paid in full in cash. Notwithstanding their status as First Lien 507(b) Claims, the First Lien Adequate Protection Obligations may be satisfied in a plan of reorganization confirmed in the Chapter 11 Cases in any manner set forth in such plan if holders of more than 66-2/3% in amount of the First Lien Adequate Protection Obligations consent to such treatment; *provided*, *however*, that nothing in this Interim Order shall be construed as establishing that the confirmation requirements for a chapter 11 plan have been satisfied, predetermining any provision of a chapter 11 plan, or predetermining how any vote by any insider is counted with respect to a chapter 11 plan.

(c) Fees and Expenses. The Debtors are authorized and directed to pay, as adequate protection, to the Prepetition First Lien Secured Parties all accrued and unpaid fees and reasonable and documented disbursements incurred by the Prepetition First Lien Secured Parties, whether accrued before, on, or after the Petition Date, including, without limitation, the reasonable and documented fees and expenses of Milbank LLP and Morris, Nichols, Arsht & Tunnell LLP, as counsel to the Ad Hoc Committee of Crossholder Lenders, and Houlihan Lokey

Capital, Inc., as financial advisor to the Ad Hoc Committee of Crossholder Lenders (excluding success or transaction fees); *provided*, that such payments shall be without prejudice to whether any such payments should be recharacterized or reallocated pursuant to section 506(b) of the Bankruptcy Code as payments of principal, interest, or otherwise. Professionals of the Prepetition First Lien Secured Parties shall not be required to comply with the U.S. Trustee fee guidelines; however, any time that such professionals seek payment of fees and expenses from the Debtors, each professional shall provide summary copies of its fee and expense statements or invoices (which shall not be required to contain time entries and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work-product doctrine) to the U.S. Trustee and counsel to the Committee (if appointed), contemporaneously with the delivery of such fee and expense statements to the Debtors. After delivery of a fee and expense statement or invoice, the Debtors, the U.S. Trustee, and the Committee (if appointed) shall have ten (10) days to raise an objection thereto. If an objection is timely raised, such objection shall be subject to resolution by the Court. Pending such resolution, the undisputed portion of any such fee and expense statement or invoice shall be paid promptly by the Debtors. Notwithstanding the foregoing, the Debtors are authorized and directed to pay on the Closing Date all reasonable and documented fees, costs, and out-of-pocket expenses of the Prepetition First Lien Secured Parties incurred on or prior to such date without the need for any professional engaged by the Prepetition First Lien Secured Parties to first deliver a copy of its invoice as provided for herein. No attorney or advisor to the Prepetition First Lien Secured Parties

shall be required to file an interim or final application seeking compensation for services or reimbursement of expenses with the Court.

(d) Information. The Debtors shall concurrently deliver to the Prepetition First Lien Agent and the legal and financial advisors to the Ad Hoc Committee of Crossholder Lenders, all information, reports, documents, and other materials that the Debtors provide to the DIP Secured Parties pursuant to the DIP Documents, this Interim Order, and the Final Order, subject to the confidentiality provisions contained in the First Lien Credit Agreement.

13. Adequate Protection for the Prepetition Second Lien Secured Parties. Subject to the Investigation, the Prepetition Second Lien Secured Parties are entitled, pursuant to sections 361, 362, 363(c)(2), 363(e), and 507 of the Bankruptcy Code, to adequate protection of their interests in the Prepetition Collateral, including the Cash Collateral, solely to the extent of any Diminution in Value of their interests in the Prepetition Collateral (the "Second Lien Adequate Protection Obligations" and, together with the First Lien Adequate Protection Obligations, the "Adequate Protection Obligations"); *provided*, that, for the avoidance of doubt, the Second Lien Adequate Protection Obligations shall not have recourse to the amounts deposited in the Professional Fees Account (as defined below) in accordance with this Interim Order, including with respect to the Carve-Out (as defined below). As adequate protection, the Prepetition Second Lien Secured Parties are hereby granted the following:

(a) Second Lien Adequate Protection Liens. As security for the payment of the Second Lien Adequate Protection Obligations, the Prepetition Second Lien Agent (for itself and for the benefit of the Prepetition Second Lien Lenders) is hereby granted (effective and perfected upon the date of this Interim Order and without the necessity of the execution by the

Debtors of security agreements, pledge agreements, mortgages, financing statements, or other agreements) a valid, perfected replacement security interest in and lien on all of the DIP Collateral, including, subject to entry of the Final Order, Avoidance Action Proceeds (the "Second Lien Adequate Protection Liens" and, together with the First Lien Adequate Protection Liens, the "Adequate Protection Liens"), subject and subordinate only to (i) the Carve-Out (as defined below), (ii) the DIP Liens, (iii) the First Lien Adequate Protection Liens, (iv) the Prepetition Senior Liens, and (v) the Non-Primed Liens, in each case, subject to the terms of the Intercreditor Agreement.

(b) Second Lien Section 507(b) Claims. The Second Lien Adequate Protection Obligations shall constitute superpriority claims as provided in section 507(b) of the Bankruptcy Code (the "Second Lien 507(b) Claims" and, together with the First Lien 507(b) Claims, the "507(b) Claims"), with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including without limitation, sections 105, 326, 328, 330, 331, 503(a), 503(b), 507(a), 506(c) (subject to entry of the Final Order), 507(b), 546(c), 546(d), 726, 1113, or 1114 of the Bankruptcy Code, subject and subordinate only to (i) the Carve-Out (as defined below), (ii) the DIP Superpriority Claims granted in respect of the DIP Obligations, and (iii) the First Lien 507(b) Claims. Except to the extent expressly set forth in this Interim Order, the Prepetition Second Lien Secured Parties shall not receive or retain any payments, property, or other amounts in respect of the Second Lien 507(b) Claims unless and until the Carve-Out (as defined below) is funded and all DIP Obligations, First Lien Adequate Protection Obligations, and Prepetition First Lien Obligations shall have indefeasibly been paid in full in cash. Notwithstanding their status as Second Lien 507(b) Claims,

the Second Lien Adequate Protection Obligations may be satisfied in a plan of reorganization confirmed in the Chapter 11 Cases in any manner set forth in such plan if holders of more than 66-2/3% in amount of the Second Lien Adequate Protection Obligations consent to such treatment; *provided*, *however*, that nothing in this Interim Order shall be construed as establishing that the confirmation requirements for a chapter 11 plan have been satisfied, predetermining any provision of a chapter 11 plan, or predetermining how any vote by any insider is counted with respect to a chapter 11 plan.

(c) Fees and Expenses. The Debtors are authorized and directed to pay, as adequate protection, to the Prepetition Second Lien Agent and the Prepetition Second Lien Lenders that are members of the Ad Hoc Second Lien Committee all accrued and unpaid fees and reasonable and documented disbursements incurred by the Prepetition Second Lien Agent (subject to an aggregate cap of $100,000) and Akin Gump Strauss Hauer & Feld LLP, as counsel to the Ad Hoc Second Lien Committee (subject to an aggregate cap of $100,000), whether accrued before, on, or after the Petition Date; *provided*, that such payments shall be without prejudice to whether any such payments should be recharacterized or reallocated pursuant to section 506(b) of the Bankruptcy Code as payments of principal, interest, or otherwise. Professionals of the Prepetition Second Lien Agent shall not be required to comply with the U.S. Trustee fee guidelines; however, any time that such professionals seek payment of fees and expenses from the Debtors, each professional shall provide summary copies of its fee and expense statements or invoices (which shall not be required to contain time entries and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of

such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work-product doctrine) to the U.S. Trustee and counsel to the Committee (if appointed), contemporaneously with the delivery of such fee and expense statements to the Debtors. After delivery of a fee and expense statement or invoice, the Debtors, the U.S. Trustee, and the Committee (if appointed) shall have ten (10) days to raise an objection thereto. If an objection is timely raised, such objection shall be subject to resolution by the Court. Pending such resolution, the undisputed portion of any such fee and expense statement or invoice shall be paid promptly by the Debtors. Notwithstanding the foregoing, the Debtors are authorized and directed to pay on the Closing Date all reasonable and documented fees, costs, and out-of-pocket expenses of the Prepetition Second Lien Agent incurred on or prior to such date without the need for any professional engaged by the Prepetition Second Lien Agent to first deliver a copy of its invoice as provided for herein. No attorney or advisor to the Prepetition Second Lien Agent shall be required to file an interim or final application seeking compensation for services or reimbursement of expenses with the Court.

(d) Information. The Debtors shall concurrently deliver to the Prepetition Second Lien Agent and the legal advisors to the Ad Hoc Second Lien Committee all information, reports, documents, and other material that the Debtors provide to the DIP Secured Parties pursuant to the DIP Documents, this Interim Order, and the Final Order, subject to the confidentiality provisions contained in the Second Lien Credit Agreement.

14. Adequate Protection Reservation. Subject to the Carve-Out (as defined below), nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Secured Parties

hereunder is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral during the Chapter 11 Cases or any Successor Cases. The receipt by the Prepetition Secured Parties of the adequate protection provided herein shall not be deemed an admission that the interests of the Prepetition Secured Parties are adequately protected. Further, this Interim Order shall not prejudice or limit the rights of the Prepetition Secured Parties to seek additional relief with respect to the use of Cash Collateral or for additional adequate protection, subject in all respects to the terms and limitations of the Intercreditor Agreement.

15. Effect of Order on Adequate Protection. In the event that it is determined by a final order, which order shall not be subject to any appeal, stay, reversal, or vacatur, that (a) no Diminution in Value of any Prepetition Secured Party's respective interests in the Prepetition Collateral has occurred or (b) such Prepetition Secured Party is determined to be undersecured, then a party in interest shall have the right to assert that payments of Adequate Protection shall be applied toward repayment of the principal amount due under the Prepetition Secured Facilities as is owing to such Prepetition Secured Party.

16. Budget Maintenance. The Debtors shall use the proceeds of all borrowings under the DIP Facility and Cash Collateral in accordance with the Budget, subject in all respects to the Permitted Variance. The Budget annexed hereto as Schedule 1 shall constitute the initial Budget. On the first Thursday that is four (4) full weeks after the Petition Date, and on the Thursday of each fourth week thereafter, the Debtors shall provide to the DIP Agent and the legal and financial advisors of the Ad Hoc Committee of Crossholder Lenders with (a) an updated 13-week statement of the Debtors' anticipated cash receipts and disbursements for the subsequent 13-week period (a "Proposed Budget"), which Proposed Budget shall modify and supersede any prior

Budget upon the approval of the Required Lenders in their reasonable discretion (such approval not to be unreasonably withheld), and (b) a report setting forth total organic and paid visitors, unique visits, and leads to core for such four-week period, in addition to a report setting forth the beginning and ending property period, as well as a breakdown of gross new, dropped, and adjusted properties for such four-week period. Until the Required Lenders approve the Proposed Budget in their reasonable discretion (such approval not to be unreasonably withheld), the then-current Budget shall remain the Budget, and the DIP Lenders shall have no obligation to fund such Proposed Budget. Each Budget delivered to the DIP Agent and the legal and financial advisors to the Ad Hoc Committee of Crossholder Lenders shall be accompanied by such supporting documentation as reasonably requested by such legal and financial advisors, and each Budget shall be prepared in good faith based upon assumptions the Debtors believe to be reasonable. A copy of the Budget shall be delivered to the legal and financial advisors to the Committee (if appointed) and the U.S. Trustee following such Budget's approval.

17. Budget and Reporting Compliance. The Debtors shall at all times comply with the Budget, subject to the Permitted Variance, and the Debtors shall provide all reports and other information as required in the DIP Credit Agreement (subject to the grace periods provided therein). The Debtors' failure to comply with the Budget (subject to the Permitted Variance) or to provide the reports and other information required in the DIP Credit Agreement shall constitute an Event of Default, following the expiration of any applicable grace period set forth in the DIP Credit Agreement.

18. Incremental Performance Marketing Expenditures.

(a) Beginning on the second to last business day before the last full

week in February, and continuing on a monthly basis thereafter on the second to last business day before the last full week of each month, the Debtors shall provide the DIP Agent and the legal and financial advisors to the Ad Hoc Committee of Crossover Lenders with a proposal for the incremental performance marketing expenditures for the subsequent month (a "Monthly Incremental Marketing Proposal") and host a pre-scheduled conference call with the DIP Lenders to discuss such proposal. The DIP Lenders shall have forty-eight (48) hours after the conclusion of the pre-scheduled conference call to respond to such proposal, and if such forty-eight (48) hour period lapses without any such response, the Required Lenders will be deemed to have approved the Monthly Incremental Marketing Proposal. The total cash disbursements on account of incremental performance marketing expenditures for the duration of the Chapter 11 Cases shall not exceed the Incremental Performance Marketing Cap, as defined in the Performance Marketing Schedule (as defined in the DIP Credit Agreement). Following delivery of a Monthly Incremental Marketing Proposal, the Debtors may request approval of additional incremental performance marketing expenditures, the approval of which shall be within the Required Lenders' sole discretion. Notwithstanding anything to the contrary contained herein, the Debtors may timely pay all obligations arising from incremental performance marketing expenditures incurred by the Debtors prior to the Petition Date.

(b) Notwithstanding anything to the contrary contained herein, the Debtors shall be permitted to incur the Pre-Approved Incremental Marketing Spend (as defined in the DIP Credit Agreement) that were set forth on the Performance Marketing Schedule (as defined in the DIP Credit Agreement) previously delivered to the DIP Lenders, including Pre-Approved Incremental Marketing Spend for the month of February, without any further approval of the

Required Lenders.

19. Modification of Automatic Stay. The automatic stay imposed under section 362(a)(2) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to (a) permit the Debtors to grant the DIP Liens, Adequate Protection Liens, DIP Superpriority Claims, and 507(b) Claims; (b) permit the Debtors to perform such acts as the DIP Agent, the Prepetition First Lien Agent, and the Prepetition Second Lien Agent each may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Agent, DIP Lenders, and Prepetition Secured Parties under the DIP Documents, the DIP Facility, and this Interim Order, as applicable; (d) authorize the Debtors to pay, and the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties to retain and apply, payments made in accordance with the terms of this Interim Order; and (e) permit the First Lien Letter of Credit Issuer (as defined in the Motion) to cash collateralize the First Lien Letter of Credit (as defined in the Motion), in accordance with the terms of the First Lien Credit Agreement.

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

Prepetition Secured Parties to the priorities granted herein. Notwithstanding the foregoing, each of the DIP Agent, Prepetition First Lien Agent, and Prepetition Second Lien Agent is authorized to file or record, as it in its sole discretion deems necessary or advisable, such financing statements, security agreements, mortgages, notices of liens, and other similar documents to perfect its respective liens in accordance with applicable non-bankruptcy law, and all such financing statements, mortgages, notices, and other documents shall be deemed to have been filed or recorded as of the Petition Date; *provided, however*, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens or the Adequate Protection Liens. The Debtors are authorized and directed to execute and deliver, promptly upon demand to the DIP Agent, Prepetition First Lien Agent, and Prepetition Second Lien Agent, all such financing statements, mortgages, notices, and other documents as the DIP Agent, Prepetition First Lien Agent, or Prepetition Second Lien Agent, as applicable, may reasonably request. Each of the DIP Agent, Prepetition First Lien Agent, and Prepetition Second Lien Agent, in its discretion, may file a photocopy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien, or similar instrument, and all applicable officials are hereby directed to accept a photocopy of this Interim Order for filing or recordation for such purpose. To the extent the Prepetition First Lien Agent or Prepetition Second Lien Agent is the secured party under any security agreement, mortgage, leasehold mortgage, landlord waiver, credit card processor notices or agreements, bailee letters, custom broker agreements, financing statement, account control agreements, or any other Prepetition Documents or is listed as loss payee or additional insured under any of the Debtors' insurance policies, the DIP Agent shall also be deemed to be the secured

party or the loss payee or additional insured, as applicable, under such documents. The Prepetition First Lien Agent and Prepetition Second Lien Agent, as applicable, shall serve as agents for the DIP Agent for purposes of perfecting the DIP Liens on all DIP Collateral that is of a type such that, without giving effect to the Bankruptcy Code and this Interim Order, perfection of a lien thereon may be accomplished only by possession or control by a secured party.

21. Protections of Rights of DIP Agent, DIP Lenders and Prepetition Secured Parties.

(a) Unless the DIP Agent, the Prepetition First Lien Agent, and the Prepetition Second Lien Agent shall have provided their prior written consent, or all DIP Obligations and all Prepetition Secured Obligations (excluding contingent indemnification obligations for which no claim has been asserted) have been indefeasibly paid in full in cash and the lending commitments under the DIP Facility have terminated, there shall not be entered in any of these Chapter 11 Cases or any Successor Cases any order (including any order confirming any plan of reorganization or liquidation) that authorizes any of the following (unless such order provides for the simultaneous satisfaction of such obligations): (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral or the Prepetition Collateral or that is entitled to administrative priority status, in each case that is superior to or *pari passu* with the DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Adequate Protection Liens, or the 507(b) Claims, except as expressly set forth in this Interim Order or the DIP Documents; (ii) the use of Cash Collateral for any purpose other than as permitted in the Budget, the DIP Documents, and this Interim Order; or (iii) any modification of any of the DIP Agent's, any DIP Lender's, or any

Prepetition Secured Party's rights under this Interim Order, the DIP Documents, or the Prepetition Documents with respect any DIP Obligations or Prepetition Secured Obligations.

(b) The Debtors (and/or their legal and financial advisors in the case of clauses (ii) through (iv) below) will, whether or not the DIP Obligations (excluding contingent indemnification obligations for which no claim has been asserted) have been indefeasibly paid in full in cash, (i) maintain books, records, and accounts to the extent and as required by the DIP Documents and the Prepetition Documents (and subject to the applicable grace periods set forth therein); (ii) reasonably cooperate with, consult with, and provide to the DIP Agent and the Prepetition Agents all such information and documents that any or all of the Debtors are obligated (including upon reasonable request by any of the DIP Agent or the Prepetition Agents) to provide under the DIP Documents, the Prepetition Documents, or the provisions of this Interim Order; (iii) authorize their independent certified public accountants, financial advisors, investment bankers and consultants, including Berkeley Research Group LLC and Moelis & Company to cooperate and consult with the DIP Agent (and, so long as an Event of Default has occurred and is continuing, each DIP Lender) and the Prepetition Agents; (iv) upon reasonable advance notice, permit the DIP Agent, the DIP Lenders, and the Prepetition Agents to visit and inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of their respective books and records, to tour the Debtors' business premises and other properties, and to discuss their respective affairs, finances, properties, business operations, and accounts with their respective officers, employees, independent public accountants, and other professional advisors (other than legal counsel) as and to the extent required by the DIP Documents and/or the Prepetition Documents; (v) permit the DIP Agent and the Prepetition Agents to consult with the Debtors'

management and advisors on matters concerning the Debtors' businesses, financial condition, operations, and assets; and (vi) upon reasonable advance notice, permit the DIP Agent and the Prepetition Agents to conduct, at their discretion and at the Debtors' cost and expense, field audits, collateral examinations, and liquidation valuations at reasonable times in respect of any or all of the DIP Collateral or the Prepetition Collateral, in accordance with the DIP Documents and the Prepetition Documents.

22. Credit Bidding. In connection with any sale process authorized by the Court, whether effectuated through sections 363, 725, or 1123 of the Bankruptcy Code, the DIP Agent, DIP Lenders, and Prepetition Secured Parties may credit bid up to the full amount of the outstanding DIP Obligations or the relevant Prepetition Obligations, as applicable, in each case including any accrued and unpaid interest, expenses, fees, and other obligations for their respective priority collateral (each such bid, a "Credit Bid") pursuant to section 363(k) of the Bankruptcy Code, subject in each case to the Intercreditor Agreement; *provided*, that any Credit Bid includes cash consideration sufficient to pay in full any obligations with senior liens on the collateral that is subject to the Credit Bid.

23. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in these Cases or any Successor Cases shall obtain credit or incur debt pursuant to sections 364(b), 364(c), 364(d) of the Bankruptcy Code in violation of the DIP Documents or this Interim Order at any time prior to the indefeasible repayment in full of all DIP Obligations and the termination of the DIP Agent's and DIP Lenders' obligation to extend credit under the DIP Facility, including subsequent to the confirmation of any plan with respect to any or all of the Debtors (if applicable), then all the cash

proceeds derived from such credit or debt shall immediately be turned over to the DIP Agent to be applied in accordance with this Interim Order and the DIP Documents.

24. Maintenance of DIP Collateral. Until the indefeasible payment in full of all DIP Obligations, all Prepetition Secured Obligations, and the termination of the DIP Agent's and the DIP Lenders' obligation to extend credit under the DIP Facility, the Debtors shall (a) insure the DIP Collateral as required under the DIP Facility or the Prepetition Documents, as applicable; (b) maintain the cash management system in effect as of the Petition Date, as modified by any order entered by the Court; and (c)(i) maintain accurate records of all transfers (including intercompany transactions) within the cash management system so that all postpetition transfers and transactions shall be adequately and promptly documented in, and readily ascertainable from, their books and records, to the same extent maintained by the Debtors before the Petition Date, and (ii) provide reasonable access to such records to the DIP Agent and the legal and financial advisors to the Ad Hoc Committee of Crossholder Lenders.

25. Disposition of DIP Collateral. The Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral other than in the ordinary course of business without the prior written consent of the DIP Agent and the Prepetition Agents (and no such consent shall be implied, from any other action, inaction, or acquiescence by the DIP Agent, DIP Lenders, or the Prepetition Secured Parties), except as otherwise provided for in the DIP Documents or the Restructuring Support Agreement or as ordered by the Court, and subject in all respects to the Intercreditor Agreement.

26. DIP Termination Date. On the DIP Termination Date (as defined below), subject to the Carve-Out (as defined below), (a) all DIP Obligations shall be immediately due and

payable, all commitments to extend credit under the DIP Facility will terminate, other than as required in paragraph 36 with respect to the Carve-Out (as defined below); (b) all authority to use Cash Collateral shall cease, *provided, however*, that during the Remedies Notice Period (as defined below), the Debtors may use Cash Collateral solely to meet payroll obligations and pay expenses necessary to avoid immediate and irreparable harm to the Debtors' estates, in accordance with the Budget (subject to the Permitted Variance), and as otherwise agreed by the DIP Agent at the direction of the Required Lenders; and (c) otherwise exercise rights and remedies under the DIP Documents in accordance with this Interim Order. For the purposes of this Interim Order, the "DIP Termination Date" (as defined below) shall mean the "Termination Date" as defined in the DIP Credit Agreement.

27. Events of Default. The occurrence of any of the following events, unless waived by the Required Lenders in writing and in accordance with the terms of the DIP Credit Agreement, shall constitute an event of default (collectively, the "Events of Default") under this Interim Order: (a) the failure of the Debtors to perform, in any respect, any of the terms, provisions, conditions, covenants, or obligations under this Interim Order), subject to a three-day cure period (if such failure is capable of being cured); or (b) the occurrence of an "Event of Default" as defined in the DIP Credit Agreement. Upon the indefeasible payment in full in cash of the DIP Obligations (a "DIP Repayment"), the foregoing events of default may be waived by the Prepetition Agents.

28. Milestones. As a condition to the DIP Facility and the use of Cash Collateral, the Debtors shall comply with the following "Milestones," the failure of the Debtors to comply with any of which shall constitute an Event of Default under each of the DIP Credit Agreement and this Interim Order and, subject to the expiration of the Remedies Notice Period,

result in the automatic termination of the Debtors' authority to use Cash Collateral under this Interim Order, and permit the DIP Agent, subject to the terms of paragraph 30, to exercise the rights and remedies provided for in this Interim Order and the DIP Documents:

(a) As soon as practicable, but in no event later than the date that is forty (40) calendar days after the Petition Date, the Bankruptcy Court shall have entered the Final Order;

(b) As soon as practicable, but in no event later than the date that is sixty-five (65) calendar days after the Petition Date, the Bankruptcy Court shall have entered an order approving a disclosure statement for a chapter 11 plan (the "**Disclosure Statement Order**"); and

(c) As soon as practicable, but in no event later than the date that is sixty-five (65) calendar days after entry of the Disclosure Statement Order, the Bankruptcy Court shall have entered an order confirming a chapter 11 plan.

29. [Reserved].

30. Rights and Remedies Upon Event of Default. Immediately upon the occurrence and during the continuation of an Event of Default, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order of the Court, but subject to the terms of this Interim Order, (a) the DIP Agent may declare (i) all outstanding DIP Obligations to be immediately due and payable, (ii) the termination of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the DIP Facility, (iii) termination of the DIP Facility and the DIP Documents as to any future liability or obligation of the DIP Agent and the DIP Lenders, without affecting any of the DIP Liens or the DIP Obligations, and (iv) that the application of the Carve-Out (as defined below) has

occurred through the delivery of the Carve-Out Trigger Notice (as defined below) to the Debtors; and (b) the Prepetition Agents may declare the termination of the Debtors' ability to use Cash Collateral (any such declaration shall be referred to as a "DIP Termination Declaration" and the date on which a Termination Declaration is delivered shall be referred to as the "DIP Termination Date"). A Termination Declaration shall be given by electronic mail (or other electronic means) to counsel to the Debtors, counsel to a Committee (if appointed), counsel to the DIP Agent (if made by the Prepetition Agents) or counsel to each of the Prepetition Agents (if made by the DIP Agent), and the U.S. Trustee. The automatic stay is hereby modified so that five (5) business days after the date a Termination Declaration is delivered (such five-day period, the "Remedies Notice Period"), the DIP Agent and the DIP Lenders shall be entitled to exercise their rights and remedies in accordance with the DIP Documents and this Interim Order, subject in all respects to the Carve-Out (as defined below). During the Remedies Notice Period, the Debtors and/or a Committee (if appointed) shall be entitled to seek an emergency hearing from the Court, and upon and after delivery of the Termination Notice, the DIP Agent is deemed to have consented to such emergency hearing. The Debtors hereby waive their right to and shall not be entitled to seek relief, including under section 105 of the Bankruptcy Code or otherwise, to the extent that such relief would in any way impair or restrict the express rights and remedies granted to the DIP Agent and the DIP Lenders under this paragraph 30. Unless the Court orders otherwise, the automatic stay shall automatically be terminated at the end of the Remedies Notice Period without further notice or order as to the DIP Agent and the DIP Lenders, subject to the Carve-Out (as defined below). Upon the occurrence and during the continuation of an Event of Default, the DIP Agent and any liquidator or other professional will have the right to access and utilize, at no cost or expense, any

trade names, trademarks, copyrights, or other intellectual property of the Debtors to the extent necessary or appropriate in order to sell, lease, or otherwise dispose of any of the DIP Collateral, including pursuant to any Court-approved sale process.

31. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Interim Order are hereafter modified, amended, or vacated by a subsequent order of this Court or any other court of competent jurisdiction, the DIP Agent, the DIP Lenders, and Prepetition Secured Parties are entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such modification, amendment, or vacatur shall not affect the validity and enforceability of any advances previously made or made hereunder, or lien, claim, or priority authorized or created hereby, unless such authorization and the incurring of such debt, or the granting of such priority or lien, is stayed pending appeal.

32. Payment of Fees and Expenses. The Debtors are authorized and directed to pay all reasonable and documented prepetition and postpetition fees and out-of-pocket expenses of the DIP Agent and DIP Lenders in connection with the DIP Facility, as provided in the DIP Documents, and the transactions contemplated thereby, including attorneys' fees, monitoring and appraisal fees, financial advisory fees, fees and expenses of other consultants, and indemnification and reimbursement of fees and expenses. Any time that Professionals of the DIP Agent and the DIP Lenders seek payment of fees and expenses from the Debtors, each professional shall provide summary copies of its fee and expense statements or invoices (which shall not be required to contain time entries and which may be redacted or modified to the extent necessary to delete any

information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work-product doctrine) to the U.S. Trustee and counsel to the Committee (if appointed) contemporaneously with the delivery of such fee and expense statements to the Debtors. After delivery of a fee and expense statement or invoice, the Debtors, the U.S. Trustee, and the Committee (if appointed) shall have ten (10) days to raise an objection thereto. If an objection is timely raised, such objection shall be subject to resolution by the Court. Pending such resolution, the undisputed portion of any such fee and expense statement or invoice shall be paid promptly by the Debtors. Notwithstanding the foregoing, the Debtors are authorized and directed to pay on the Closing Date all reasonable and documented fees, costs, and out-of-pocket expenses of the DIP Agent and the DIP Lenders incurred on or prior to such date without the need for any professional engaged by the DIP Agent or the DIP Lenders to first deliver a copy of its invoice as provided for herein. No attorney or advisor to the DIP Agent or the DIP Lenders shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. Any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors to the (i) DIP Agent or DIP Lenders in connection with the DIP Facility and (ii) Prepetition Secured Parties in connection with the Chapter 11 Cases, are hereby approved in full.

33. Indemnification. The Debtors shall indemnify and hold harmless the DIP Agent and the DIP Lenders in accordance with the terms and conditions of the DIP Credit Agreement.

34. Proofs of Claim. The DIP Agent, the DIP Lenders, and the Prepetition

Secured Parties will not be required to file proofs of claim in any of the Chapter 11 Cases or Successor Cases for any claim allowed herein. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Chapter 11 Cases or Successor Cases to the contrary, each of the Prepetition First Lien Agent and the Prepetition Second Lien Agent is hereby authorized and entitled, in its sole discretion, to file a master proof of claim on behalf of the Prepetition First Lien Secured Parties and the Prepetition Second Lien Secured Parties, as applicable, in each of the Chapter 11 Cases or Successor Cases. Any proof of claim filed by the Prepetition First Lien Agent or the Prepetition Second Lien Agent shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the Prepetition First Lien Secured Parties or the Prepetition Second Lien Secured Parties, respectively. The provisions of this paragraph 34 and each master proof of claim are intended solely for the purpose of administrative convenience and shall not affect the right of each Prepetition Secured Party (or its successors in interest) to vote separately on any plan proposed in these Chapter 11 Cases or to assert that the amount of its claim is different from that set forth on the applicable master proof of claim. The master proofs of claim shall not be required to attach any instruments, agreements or other documents evidencing the obligations owing by each of the Debtors to the applicable Prepetition Secured Parties, which instruments, agreements or other documents will be provided upon written request to counsel to the applicable Prepetition Secured Party.

35. Professional Fees Account.

(a) Contemporaneously with the initial funding of the DIP Loans, the Debtors shall (i) transfer in an amount equal to the total budgeted weekly fees and expenses incurred by persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the

Bankruptcy Code (such persons or firms, the "Debtor Professionals") and any persons or firms retained by any Committee (the "Committee Professionals" and, together with the Debtor Professionals, the "Professional Persons" and, such fees and expenses of the Professional Persons, the "Professional Fees") for the first two weekly periods set forth in the Budget and (ii) thereafter, on a weekly basis, transfer cash proceeds from the DIP Facility or cash on hand in an amount equal to the aggregate unpaid amount of Estimated Fees and Expenses (as defined below) included in all Weekly Statements (as defined below) timely received by the Debtors, which shall be reported to the DIP Agent (or, in the event of a DIP Repayment, the Prepetition Agents), or if an estimate is not provided, the total budgeted weekly fees of Professional Persons for the prior week set forth in the Budget, in each case, into a segregated account not subject to the control, liens, security interests, or claims of the DIP Agent, any DIP Lender, or any Prepetition Secured Party (the "Professional Fees Account").

(b) Starting with the third full calendar week following the Petition Date, each Professional Person shall deliver to the Debtors a statement (each such statement, a "Weekly Statement") setting forth a good-faith estimate of the amount of unpaid fees and expenses incurred during the preceding week by such Professional Person (the "Estimated Fees and Expenses"). No later than one business day after the delivery of a Carve-Out Trigger Notice (as defined below) (the "Carve-Out Statement Date"), each Professional Person shall deliver one additional statement to the Debtors setting forth a good-faith estimate of the amount of Estimated Fees and Expenses incurred on and during the period prior to the Carve-Out Statement Date to the extent not otherwise paid or included in a previous Weekly Statement, and the Debtors shall transfer such amounts to the Professional Fees Account.

(c) The Debtors shall be authorized to use funds held in the Professional Fees Account to pay Professional Fees as they become allowed and payable pursuant to any interim or final order of the Bankruptcy Court or otherwise; provided, that when all allowed Professional Fees have been paid in full (regardless of when such Professional Fees are allowed by the Bankruptcy Court) and the Carve-Out (as defined below) is funded, any funds remaining in the Professional Fees Account shall revert to the DIP Funding Account for use in a manner not inconsistent with this Interim Order; provided, further, that the Debtors' obligations to pay allowed Professional Fees shall in no way be limited or deemed limited to funds held in the Professional Fees Account.

(d) Notwithstanding anything herein to the contrary, (i) funds transferred to the Professional Fees Account shall be held in trust exclusively for the Professional Persons, including with respect to obligations arising out of the Carve-Out (as defined below) and (ii) funds transferred to the Professional Fees Account shall not be subject to any liens or claims granted to the DIP Lenders herein or any liens or claims granted to the Prepetition Secured Parties as adequate protection, and shall not constitute DIP Collateral, Prepetition Collateral, or Cash Collateral; provided, that the DIP Collateral and the Prepetition Collateral shall include a reversionary interest in funds held in the Professional Fees Account, if any, after all allowed Professional Fees have been paid in full (regardless of when such Professional Fees are allowed by the Bankruptcy Court) and the Carve-Out (as defined below) is funded.

(e) Notwithstanding anything herein to the contrary, (i) the Court has jurisdiction over the Professional Fees Account, (ii) all payments from the Professional Fees Account are subject to allowance by the Court, (iii) the beneficiary professionals will indemnify

the estate for any losses to the account, and (iv) the Debtors shall report all disbursements from the account in the monthly operating reports submitted to the Court.

36. Carve-Out.

(a) As used in this Interim Order, the term "Carve-Out" means the sum of: (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under 28 U.S.C. § 1930(a) plus interest at the statutory rate (without regard to the notice set forth in clause (iv) below); (ii) fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in clause (iv) below); (iii) to the extent allowed at any time, whether by interim or final compensation order, all professional fees of Professional Persons (collectively, the "Allowed Professional Fees") incurred at any time before or on the first business day after delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below), whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice (as defined below) and without regard to whether such fees and expenses are provided for in the Budget; and (iv) Allowed Professional Fees incurred after the first Business Day following delivery by the DIP Agent of the Carve-Out Trigger Notice (as defined below) (including transaction fees or success fees earned or payable to a Professional Person) in an aggregate amount not to exceed $1,500,000 with respect to Professional Persons (the amount set forth in this clause (iv) being the "Post-Carve-Out Trigger Notice Cap").

(b) For purposes of the foregoing, "Carve-Out Trigger Notice" shall mean a written notice delivered by email (or other electronic means) by the DIP Agent (or, following a DIP Repayment, the Prepetition Agents) to the Debtors, their lead restructuring counsel (Weil, Gotshal & Manges LLP), the U.S. Trustee, and lead counsel to the Committee (if

any), which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the obligations under the DIP Facility (or, following a DIP Repayment, any occurrence that would constitute an Event of Default hereunder) or the occurrence of the Maturity Date (as defined in the DIP Credit Agreement), stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

(c) On the day on which a Carve-Out Trigger Notice is received by the Loan Parties, the Carve-Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand (including cash contained in the DIP Funding Account) to transfer to the Professional Fees Account cash in an amount equal to all obligations benefitting from the Carve-Out; *provided, however*, that all amounts referenced in paragraph 36(a)(i) and (ii) of this Interim Order (or Final Order, as applicable) shall be paid directly to the intended beneficiaries.

(d) For the avoidance of doubt, to the extent that professional fees and expenses of the Professional Persons have been incurred by the Debtors at any time before or on the first business day after delivery by the DIP Agent (or, following a DIP Repayment, the Prepetition Agents) of a Carve-Out Trigger Notice but have not yet been allowed by the Bankruptcy Court on the date that the DIP Agent (or, following a DIP Repayment, the Prepetition Agents) delivers a Carve-Out Trigger Notice, such professional fees and expenses of the Professional Persons shall constitute Allowed Professional Fees benefiting from the Carve-Out upon their allowance by the Bankruptcy Court, whether by interim or final compensation order and whether before or after delivery of the Carve-Out Trigger Notice, and the Debtors shall fund the Professional Fees Account in the amount of such professional fees and expenses.

(e) Following delivery of a Carve-Out Trigger Notice, the DIP Agent

shall deposit into the Professional Fees Account any cash swept or foreclosed upon (including cash received as a result of the sale or other disposition of any assets) until the Professional Fees Account has been fully funded in an amount equal to all obligations benefiting from the Carve-Out. Notwithstanding anything to the contrary herein or in the DIP Documents, following delivery of a Carve-Out Trigger Notice, the DIP Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Professional Fees Account has been fully funded in an amount equal to all obligations benefiting from the Carve-Out. Further, notwithstanding anything to the contrary herein, (i) disbursements by the Debtors from the Professional Fees Account shall not constitute DIP Loans, (ii) the failure of the Professional Fees Account to satisfy in full the Professional Fees shall not affect the priority of the Carve-Out, and (iii) in no way shall the Carve-Out, Professional Fees Account, a Budget, the Permitted Variance, Weekly Statements, Estimated Fees and Expenses, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors or that may be allowed by the Bankruptcy Court at any time (whether by interim order, final order, or otherwise).

(f) Proceeds from the DIP Facility not to exceed the Investigation Budget Amount may be used on account of professional fees and expenses of Committee Professionals in connection with the Investigation, which obligations will benefit from the Carve-Out in an amount not to exceed the Investigation Budget Amount to the extent unpaid as of the delivery of a Carve-Out Trigger Notice.

(g) Notwithstanding anything to the contrary contained herein or in the DIP Documents, no Conversion Prepayment (as defined in the DIP Credit Agreement) shall occur

unless and until the Carve-Out is funded.

(h) For the avoidance of doubt and notwithstanding anything to the contrary herein or in the DIP Documents, the Carve-Out shall be senior to all liens securing and all claims on account of the DIP Facility, any adequate protection liens, and superpriority claims (whether granted on account of the DIP Facility, as adequate protection, or otherwise), and any and all other liens and claims. For the avoidance of doubt, if a DIP Repayment occurs or the DIP Facility is otherwise terminated, the DIP Order shall remain in full force and effect, including with respect to the Debtors' use of Cash Collateral, the Carve-Out, the Professional Fees Account, and all related provisions in respect thereof, and the Prepetition Agents shall assume any rights and obligations that the DIP Agent previously had with respect to the Carve-Out and the Professional Fees Account.

37. No Direct Responsibility for Fees or Disbursements. Subject to any of the DIP Agent's, DIP Lenders', or Prepetition Secured Parties' obligations with respect to the Carve-Out and the Professional Fees Account, none of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties shall be (i) responsible for the direct payment or reimbursement of any fees or disbursements of any Professional Persons incurred in connection with the Chapter 11 Cases or any Successor Cases, or (ii) obligated in any way to compensate, or to reimburse expenses of, any Professional Persons or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

38. Limitations on Use of DIP Proceeds, Cash Collateral, and Carve-Out. No proceeds of the DIP Facility, the DIP Collateral, or the Prepetition Collateral, in each case, including Cash Collateral, and no portion of the Carve-Out or Professional Fees Account may be

used in connection with (a) except to contest the occurrence of an Event of Default, preventing, hindering, or delaying any of the DIP Agent's or the DIP Lenders' realization upon any of the DIP Collateral or enforcement of any of their respective rights thereto in accordance with paragraph 30; (b) for any purpose that is prohibited under this Interim Order, the Final Order (when entered), the DIP Documents, or the Bankruptcy Code; (c) to finance in any way: (i) any adversary action, suit, arbitration, proceeding, application, motion, or other litigation of any type adverse to the interests of any or all of the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, or employees, or their respective rights and remedies under DIP Loan Documents, the Interim Order, the Final Order (when entered), or the Prepetition Documents, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, section 724(a) of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code or applicable state law equivalents, or (ii) any other action, which with the giving of notice or passing of time, would result in an Event of Default under the DIP Loan Documents; (d) for the payment of fees, expenses, interest, or principal under the Prepetition Documents (in each case, other than payments on account of the Adequate Protection Obligations); (e) unless the Exit Conversion occurs, to make any distribution under a plan of reorganization in the Chapter 11 Cases that does not provide for the indefeasible payment of the DIP Loans in full and in cash (including, subject to entry of the Final Order, the Redemption Premium); (f) except as permitted by the Budget (including Permitted Variances) to make any payment in settlement of any claim, action, or proceeding in excess of $500,000 in the aggregate without the prior written consent of the DIP Agent, acting at the direction of the Required Lenders; (g) selling or otherwise disposing of the DIP Collateral without the consent of the DIP Agent; (h)

incurring Indebtedness (as defined in the DIP Credit Agreement), except to the extent permitted under the DIP Credit Agreement; (i) seeking to amend or modify any of the rights granted to the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties under this Interim Order, the DIP Documents, or the Prepetition Documents; or (j) seeking to subordinate, recharacterize, disallow, or avoid the DIP Obligations or the Prepetition Secured Obligations; *provided, however*, that the Cash Collateral and/or proceeds of the DIP Facility may be used, subject to entry of the Final Order, for allowed fees and expenses, in an amount not to exceed $50,000 in the aggregate (the "Investigation Budget Amount"), incurred solely by a Committee (if appointed), in investigating (but not prosecuting or challenging) the validity, enforceability, perfection, priority, or extent of the Prepetition Liens (the "Investigation") before the Challenge Deadline (as defined below).

39. Payment of Compensation. So long as an unwaived Event of Default has not occurred, the Debtors shall be permitted to pay fees and expenses allowed and payable by final order (that has not been vacated or stayed, unless the stay has been vacated) under sections 328, 330, 331, and 363 of the Bankruptcy Code, as the same may be due and payable, in accordance with the DIP Documents.

40. Effect of Stipulations on Third Parties.

(a) *Generally*. The admissions, stipulations, agreements, releases, and waivers set forth in this Interim Order (collectively, the "Stipulations") shall be binding on the Debtors, any trustee, or any other estate representative appointed in the Chapter 11Cases or any Successor Cases. The Stipulations shall also be binding on all creditors and other parties in interest and all of their respective successors and assigns, including, without limitation, a Committee (if appointed), unless, and solely to the extent that, a party in interest with standing and requisite

authority (i) has timely commenced an appropriate proceeding or contested matter required under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this paragraph 40) challenging any of the Stipulations (each such proceeding or contested matter, a "Challenge") by no later than (a) for a Committee (if appointed), 60 days from its formation or (b) for all other parties in interest (excluding the Debtors), 75 days following the entry of the Interim Order (the "Challenge Deadline"), as such deadline may be extended in writing from time to time in the sole discretion of the Prepetition First Lien Agent (with respect to the Prepetition First Liens and Obligations or the adequate protection afforded to the Prepetition First Lien Secured Parties) and the Prepetition Second Lien Agent (with respect to the Prepetition Second Lien Liens and Obligations or the adequate protection afforded to the Prepetition Second Lien Secured Parties) or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline, and (ii) this Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge and any such judgment has become a final judgment that is not subject to any further review or appeal, and then only to the extent of any such final judgment.

(b) *Binding Effect.* To the extent no Challenge is timely and properly commenced by the Challenge Deadline, or to the extent such Challenge does not result in a final and non-appealable judgment or order that is inconsistent with any of the Stipulations, then, without further notice, motion, or application to, order of, or hearing before, this Court and without the need or requirement to file any proof of claim, the Stipulations shall, pursuant to this Interim Order, become irrevocably binding on any person, entity, or party in interest in the Chapter 11

Cases, as well as their successors and assigns, and in any Successor Case for all purposes and shall not be subject to further challenge or objection. Notwithstanding anything to the contrary herein, if any Challenge is properly and timely commenced by a party in interest, the Stipulations shall nonetheless remain binding on all other parties in interest. To the extent any Challenge is timely and properly commenced and is unsuccessful, the Prepetition Secured Parties shall be entitled to, as adequate protection, payment of the related costs and expenses, including, but not limited to, reasonable and documented attorneys' fees, incurred in defending themselves against any unsuccessful Challenge.

41. <u>No Third-Party Rights</u>. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

42. <u>Section 506(c) Claims</u>. Subject to entry of the Final Order, except to the extent of the Carve-Out, no costs or expenses of administration that have been or may be incurred in the Chapter 11 Cases at any time shall be charged against the DIP Agent, the DIP Lenders, the Prepetition First Lien Agent, the Prepetition First Lien Lenders, the Prepetition Second Lien Agent, or the Prepetition Second Lien Lenders, the DIP Collateral, or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Agent, the Prepetition First Lien Agent, or the Prepetition Second Lien Agent, as applicable, and no such consent shall be implied from any action, inaction, or acquiescence by any party.

43. <u>No Marshaling/Applications of Proceeds</u>. Subject to entry of the Final Order, the DIP Agent, the DIP Lenders, the Prepetition First Lien Agent, the Prepetition First Lien

Lenders, the Prepetition Second Lien Agent, and the Prepetition Second Lien Lenders shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral.

44. Section 552(b). Subject to entry of the Final Order, the Prepetition First Lien Agent, the Prepetition First Lien Lenders, the Prepetition Second Lien Agent, and the Prepetition Second Lien Lenders shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception thereunder shall not apply to any of them.

45. Limits on Lender Liability. Subject to entry of the Final Order, nothing in this Interim Order, any of the DIP Documents, the Prepetition Documents, or any other documents related thereto, shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of these Chapter 11 Cases or any Successor Cases. The DIP Agent, the DIP Lenders, and the Prepetition Secured Parties shall not, solely by reason of having made loans under the DIP Facility or authorizing the use of Cash Collateral, be deemed in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or state statute). Nothing in this Interim Order or the DIP Documents, shall in any way be construed or interpreted to impose or allow the imposition

upon the DIP Agent, the DIP Lenders, or any of the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors.

46. Insurance Proceeds and Policies. Upon entry of this Interim Order and to the fullest extent provided by applicable law, the DIP Agent (on behalf of the DIP Lenders), the Prepetition First Lien Agent (on behalf of the Prepetition First Lien Lenders), and the Prepetition Second Lien Agent (on behalf of the Prepetition Second Lien Lenders), shall be, and shall be deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral.

47. Joint and Several Liability. Nothing in this Interim Order shall be construed to constitute a substantive consolidation of any of the Debtors' estates, it being understood, however, that the Debtors shall be jointly and severally liable for the obligations hereunder and all DIP Obligations in accordance with the terms hereof and of the DIP Documents.

48. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, subject to the Prepetition Documents and the Intercreditor Agreement: (a) the DIP Agent's, DIP Lenders', and Prepetition Secured Parties' rights to seek any other or supplemental relief; (b) any of the rights of any of the DIP Agent, DIP Lenders, and/or the Prepetition Secured Parties under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay imposed by section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Chapter 11 Cases or Successor Cases, conversion of any of the Chapter 11 Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of section

1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (c) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties. Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the Debtors', a Committee's (if appointed), or any party in interest's right to oppose any of the relief requested in accordance with the immediately preceding sentence except as expressly set forth in this Interim Order. Entry of this Interim Order is without prejudice to any and all rights of any party in interest with respect to the terms and approval of the Final Order and any other position which any party in interest deems appropriate to raise in these Chapter 11 Cases or any Successor Cases.

49. No Waiver by Failure to Seek Relief. The failure of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order, the DIP Documents, the Prepetition Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties.

50. Binding Effect of Interim Order. Immediately upon entry on the docket of this Court, the terms and provisions of this Interim Order shall become binding upon the Debtors, the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, all other creditors of any of the Debtors, any Committee, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Chapter 11 Cases, any Successor Cases, or upon dismissal of any Case or Successor Case.

51. No Modification of Interim Order. Until and unless the DIP Obligations

and the Prepetition Secured Obligations (other than contingent obligations with respect to then unasserted claims) have been indefeasibly paid in full in cash (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms), and all commitments to extend credit under the DIP Facility have been terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly, any modification, stay, vacatur, or amendment to this Interim Order without the prior written consent of the DIP Agent, the Prepetition First Lien Agent, and the Prepetition Second Lien Agent, and no such consent shall be implied by any action or inaction of the DIP Agent or the Prepetition Agents.

52. Continuing Effect of Intercreditor Agreement. The Debtors, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties each shall be bound by, and in all respects of the DIP Facility shall be governed by, and be subject to all the terms, provisions, and restrictions of the Intercreditor Agreement.

53. Interim Order Controls. In the event of any inconsistency between the terms and conditions of the DIP Documents and this Interim Order, the provisions of this Interim Order shall control.

54. Discharge. The DIP Obligations and the obligations of the Debtors with respect to the adequate protection provided herein shall not be discharged by the entry of an order confirming any plan of reorganization in any of the Chapter 11 Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted), on or before the effective date of such plan of reorganization, or each of

the DIP Agent, the DIP Lenders, the Prepetition First Lien Agent, and the Prepetition Second Lien Agent, as applicable, has otherwise agreed in writing; *provided*, that the DIP Loans shall automatically and mandatorily convert into the Exit Term Loan A (including the Redemption Premium, as defined in the DIP Credit Agreement) upon the occurrence of the Exit Conversion (as defined in the DIP Credit Agreement, the "Exit Conversion") in accordance with the DIP Credit Agreement. None of the Debtors shall propose or support any plan of reorganization or sale of all or substantially all of the Debtors' assets, or order confirming such plan or approving such sale, that is not conditioned upon the indefeasible payment in full in cash of the DIP Obligations (other than contingent indemnification obligations for which no claim has been asserted), and the payment of the Debtors' obligations with respect to the adequate protection provided for herein, in full in cash within a commercially reasonable period of time (and in no event later than the effective date of such plan of reorganization or sale) or on such other terms as are set forth in the Restructuring Support Agreement (a "Prohibited Plan or Sale"), without the written consent of each of the DIP Agent, DIP Lenders, the Prepetition First Lien Agent, and Prepetition Second Lien Agent, as applicable. For the avoidance of doubt, the Debtors' proposal or support of a Prohibited Plan or Sale, or the entry of an order with respect thereto, shall constitute an Event of Default hereunder and under the DIP Documents.

55. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Chapter 11 Cases; (b) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Chapter 11 Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Chapter 11

Cases or any Successor Cases. The terms and provisions of this Interim Order shall continue in the Chapter 11 Cases, in any Successor Cases, or following dismissal of the Chapter 11 Cases or any Successor Cases notwithstanding the entry of any orders described in clauses (a)-(d) above, and all claims, liens, security interests, and other protections granted to the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties pursuant to this Interim Order and/or the DIP Documents shall maintain their validity and priority as provided by this Interim Order until: (i) in respect of the DIP Facility, all the DIP Obligations have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted); and (ii) in respect of the Prepetition First Lien Facility, all of the Prepetition First Lien Obligations have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted); and (iii) in respect of the Prepetition Second Lien Facility, all of the Prepetition Second Lien Obligations have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted). The terms and provisions concerning the indemnification of the DIP Agent and the DIP Lenders shall continue in the Chapter 11 Cases, in any Successor Cases, following dismissal of the Chapter 11 Cases or any Successor Cases, following termination of the DIP Documents, and/or the indefeasible repayment of the DIP Obligations.

56. Payments Held in Trust. Except as expressly permitted in this Interim Order or the DIP Credit Agreement, and subject to the Carve-Out, in the event that any person or entity receives any payment on account of a security interest in DIP Collateral, receives any DIP Collateral or any proceeds of DIP Collateral, or receives any other payment with respect thereto from any other source prior to all DIP Obligations in accordance with the DIP Credit Agreement,

such person or entity shall be deemed to have received, and shall hold, any such payment or proceeds of DIP Collateral in trust for the benefit of the DIP Agent and the DIP Lenders and shall immediately turn over such proceeds to the DIP Agent, or as otherwise instructed by this Court, for application in accordance with the DIP Credit Agreement and this Interim Order.

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

58. Final Hearing. The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility is scheduled for **March 12, 2020 at 10:00 a.m. (ET)** before the Honorable Brendan L. Shannon, United States Bankruptcy Judge at the United States Bankruptcy Court for the District of Delaware. On or before February 17, 2020, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice"), together with copies of this Interim Order and the Motion, on: (a) the parties having been given notice of the Interim Hearing; (b) any party which has filed prior to such date a request for notices with this Court; (c) counsel for a Committee (if appointed); (d) the Securities and Exchange Commission; and (e) the Internal Revenue Service. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of the Court no later than on **March 5, 2020 at 4:00 p.m. (ET)**, which objections shall be served so as to be received on or before such date by: (i) counsel to the Debtors, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (attn: Ray C. Schrock, P.C. (ray.schrock@weil.com), David Griffiths (david.griffiths@weil.com), and Andriana Georgallas (andriana.georgallas@weil.com); (ii) counsel to the Ad Hoc Committee of Crossholder Lenders, Milbank LLP, 55 Hudson Yards, New

York, NY 10001 (attn: Evan R. Fleck (efleck@milbank.com) and Nelly Almeida (naleida@milbank.com)), and Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347 (attn: Robert J. Dehney (rdehney@mnat.com) and Joseph C. Barsalona II (jbarsalona@mnat.com)); (iii) counsel to the DIP Agent and the Prepetition First Lien Agent, Paul Hastings LLP, 200 Park Avenue, New York, New York 10166 (Attn: Michael Baker, Esq. (michaelbaker@paulhastings.com) and Shekhar Kumar, Esq. (shekharkumar@paulhastings.com)); (v) counsel to the Prepetition Second Lien Agent, Pryor Cashman LLP, 7 Times Square, New York, New York 10036 (Attn: Seth Lieberman, Esq. (slieberman@pryorcashman.com)), as counsel to the successor Second Lien Agent; (vi) counsel to the Ad Hoc Second Lien Committee, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036 (Attn: Philip Dublin, Esq. (pdublin@akingump.com)); and (vii) counsel to the Committee (if appointed).

59. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce the terms of, any and all matters arising from or related to the DIP Facility, and/or this Interim Order.

60. DIP Election Procedures. The DIP Election Procedures are hereby approved. The DIP Agent may, in connection with allocations of the commitments under the DIP Facility or any other allocations contemplated to be made pursuant to the DIP Credit Agreement, conclusively rely on, and shall have no liability whatsoever with respect to, ownership information with respect to the Prepetition Secured Obligations as set forth on the Register (as defined in the First Lien Credit Agreement or Second Lien Credit Agreement, as applicable) as of the Election Deadline (as defined in the DIP Credit Agreement).

SO ORDERED by the Court this 13th day of February 2020.

THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

DIP Credit Agreement

Substantially Final Draft

DEBTOR-IN-POSSESSION CREDIT AGREEMENT

Dated as of February [ ], 2020

among
RENTPATH, LLC,
as Borrower,

RENTPATH HOLDINGS, INC.,
as Holdings,

THE FINANCIAL INSTITUTIONS PARTY HERETO,
as Lenders,

ROYAL BANK OF CANADA,
as Administrative Agent

and

RBC CAPITAL MARKETS*,
as Lead Arranger and Bookrunner

SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION FACILITY

*RBC Capital Markets is a brand name for the capital markets business of Royal Bank of Canada and its affiliates.

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DEBTOR-IN-POSSESSION CREDIT AGREEMENT

DEBTOR-IN-POSSESSION CREDIT AGREEMENT, dated as of February [ ], 2020 (this "**Agreement**"), by and among RentPath, LLC, a Delaware limited liability company, as debtor and debtor-in-possession ("**RentPath**," or the "**Borrower**"), RentPath Holdings, Inc., a Delaware corporation, as debtor and debtor-in-possession ("**Holdings**"), and certain of its subsidiaries party hereto from time to time, each as debtor and debtor-in-possession (together with Holdings, the "**Guarantors**"), the Lenders from time to time party hereto, Royal Bank of Canada, as administrative agent and collateral agent for the Lenders (in its capacities as administrative and collateral agent, together with any successor administrative and collateral agent, the "**Administrative Agent**") and RBC Capital Markets as lead arranger and bookrunner (in such capacities, the "**Lead Arranger**") .

PRELIMINARY STATEMENTS

WHEREAS, the Loan Parties have commenced voluntary cases (the "**Chapter 11 Cases**") under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), and the Loan Parties continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, the Borrower has requested that the Lenders extend post-petition loans and advances to the Borrower in the form of term loans in an aggregate principal amount of $74,074,074.07 million. The Lenders have severally, and not jointly, agreed to extend such credit to the Borrower subject to the terms and conditions hereinafter set forth; and

WHEREAS, to provide security for the repayment of the Loans, and the payment of the other Obligations of the Loan Parties hereunder and under the other Loan Documents, the Loan Parties will grant to the Administrative Agent, for its benefit and the benefit of the Lenders, certain security interests, liens, and other rights and protections pursuant to the terms hereof and pursuant to Sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, and super-priority administrative expense claims pursuant to Section 364(c)(1) of the Bankruptcy Code, all as more fully described herein.

The Lenders are willing to extend such credit to the Borrower on the terms and subject to the conditions set forth herein. Accordingly, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE 1
DEFINITIONS AND ACCOUNTING TERMS

Section 1.01. *Defined Terms*. As used in this Agreement, the following terms shall have the meanings set forth below:

"**Act**" has the meaning specified in Section 10.21.

"**Ad Hoc Committee**" means the ad hoc committee of Consenting First Lien Creditors (as defined in the Restructuring Support Agreement) represented by Milbank LLP.

"**Administrative Agent**" has the meaning specified in the introductory paragraph to this Agreement.

"**Administrative Agent's Office**" means the Administrative Agent's address and account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

"**Administrative Questionnaire**" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"**Affiliate**" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto. For the avoidance of doubt, (i) no Person shall be an "Affiliate" solely because it is an unrelated portfolio company of the Sponsors and (ii) none of the Lead Arranger, Agent or its lending affiliates shall be deemed to be an Affiliate of Holdings, the Borrower or any of their respective Subsidiaries.

"**Affiliated Lender**" means, at any time, any Lender that is a Sponsor or an Affiliate of a Sponsor (other than any natural person) at such time.

"**Affiliated Lender Register**" has the meaning specified in Section 10.07(n).

"**Affiliate Transaction**" has the meaning specified in Section 7.08.

"**Agent**" means the Administrative Agent.

"**Agent Parties**" has the meaning specified in Section 10.02(e).

"**Agent-Related Persons**" means the Administrative Agent and Lead Arranger, together with their Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

"**Aggregate Commitments**" means the Commitments of all Lenders. The Aggregate Commitments as of the date hereof (without giving effect to the Loans made on the Closing Date) is $74,074,074.07 million.

"**Agreement**" has the meaning specified in the introductory paragraph of this Agreement.

"**Agreement Currency**" has the meaning specified in Section 10.19.

"**Annual Financial Statements**" means the audited consolidated balance sheet of Holdings as of December 31, 2018 and the related audited consolidated statements of operations, stockholders' equity and cash flows for Holdings and its Subsidiaries for the fiscal year ended December 31, 2018.

"**Applicable Rate**" means a percentage per annum equal to 7.0%.

"**Approved Fund**" means, with respect to any Lender, any Fund that is administered, advised or managed by (a) such Lender, (b) an Affiliate of such Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages such Lender.

"**Approved Plan of Reorganization**" means a plan of reorganization in form and substance satisfactory to the Required Lenders.

"**Assignees**" has the meaning specified in Section 10.07(b).

"**Assignment and Assumption**" means an Assignment and Assumption substantially in the form of Exhibit E or any other form approved by the Administrative Agent and the Borrower.

"**Attorney Costs**" means all reasonable fees, expenses and disbursements of external legal counsel.

"**Attributable Indebtedness**" means, on any date, in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

"**Avoidance Actions**" means all causes of action arising under Chapter 5 of the Bankruptcy Code and similar statutes of the relevant states.

"**Backstop Commitment Letter**" means the DIP and Exit Backstop Commitment Letter dated [ ], 2020 among the Borrower, each of the other debtors party thereto and the commitment parties party thereto.

"**Backstop Lender"** means each Lender who is party to this Agreement on the date hereof and is designated as a "Backstop Lender" on Schedule 2.01B.

"**Bankruptcy Code**" means Title 11 of the United States Code, as amended from time to time.

"**Bankruptcy Court**" has the meaning specified in the recitals hereto.

"**Bankruptcy Court DIP Order**" means the Interim DIP Order or the Final DIP Order, as applicable.

"**Borrower**" has the meaning specified in the introductory paragraph to this Agreement.

"**Borrower Materials**" has the meaning specified in Section 6.02.

"**Budget"** means the 13-week statement of the Loan Parties' anticipated cash receipts and disbursements for the first 13 weeks of the Chapter 11 Cases, set forth on a weekly basis, including the anticipated uses of the proceeds from the Facility for such period and attached hereto as Exhibit B.

"**Budget Event**" means the actual amount of aggregate cumulative operating disbursements (excluding (x) Professional Fees and restructuring charges arising on account of the Chapter 11 Cases (including U.S. Trustee fees and professional fees and expenses incurred by any official committee appointed in the Chapter 11 Cases or the Administrative Agent and/or Lenders or paid by the Loan Parties as adequate protection) and (y) disbursements made on account of prepetition claims pursuant to any order of the Bankruptcy Court for the Budget Testing Period) during any Budget Testing Period shall exceed the projected cumulative operating disbursements (on a cumulative basis) in the Budget for such Budget Testing Period by more than a Permitted Variance.

"**Budget Testing Date**" means, with respect to the Budget, February 27, 2020 and each Thursday thereafter.

"**Budget Testing Period**" means, with respect to the initial Budget Testing Date, the period beginning on the Petition Date and ending on the Friday immediately preceding the initial Budget Testing Date and, for each Budget Testing Date thereafter, the two-week period ending on the Friday immediately preceding such Budget Testing Date.

"**Business Day**" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, New York City and if such day relates to any interest rate settings as to a Eurodollar Rate Loan, any fundings, disbursements, settlements and payments in respect of any such Eurodollar Rate Loan, or any other dealings to be carried out pursuant to this Agreement in respect of any such Eurodollar Rate Loan, means any such day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market.

"**Capital Expenditures**" means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capitalized Leases) by Holdings, the Borrower and the Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on the consolidated statement of cash flows of Holdings, the Borrower and the Subsidiaries. Any change to lease accounting rules from those in effect on the date hereof pursuant to Financial Accounting Standards Board Accounting Standards Codification 840 (Leases) and other related lease accounting guidance in effect on the date hereof shall not result in a Capital Expenditure.

"**Capitalized Lease Obligation**" means, at the time any determination thereof is to be made, the amount of the liability in respect of a Capitalized Lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP. Any change to lease accounting rules from those in effect on the date hereof pursuant to Financial Accounting Standards Board Accounting Standards Codification 840 (Leases) and other related lease accounting guidance in effect on the date hereof shall not result in a Capital Lease Obligation.

"**Capitalized Leases**" means all leases that have been or are required to be, in accordance with GAAP, recorded as capitalized leases; *provided* that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP. Notwithstanding anything to the contrary in this Agreement, any change to lease accounting rules from those in effect on the date hereof pursuant to Financial Accounting

Standards Board Accounting Standards Codification 840 (Leases) and other related lease accounting guidance in effect on the date hereof shall not result in a Capitalized Lease.

"**Carve Out**" has the meaning specified in the Bankruptcy Court DIP Order.

"**Cash Equivalents**" means any of the following types of Investments, to the extent owned by Holdings, the Borrower or any Subsidiary:

(1) securities issued or directly and fully and unconditionally guaranteed or insured by the United States government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 24 months or less from the date of acquisition;

(2) certificates of deposit, demand deposits, time deposits and eurodollar time deposits with maturities of two years or less from the date of acquisition, bankers' acceptances with maturities not exceeding two years and overnight bank deposits, in each case with any domestic or foreign commercial bank having capital and surplus of not less than $500,000,000 in the case of U.S. banks and $100,000,000 (or the Dollar equivalent as of the date of determination) in the case of non-U.S. banks;

(3) repurchase obligations for underlying securities of the types described in clauses (1), (2) and (5) entered into with any financial institution meeting the qualifications specified in clause (2) above;

(4) commercial paper rated at least P-2 by Moody's or at least A-2 by S&P (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Borrower) and in each case maturing within 24 months after the date of creation thereof and Indebtedness or preferred stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's with maturities of 24 months or less from the date of acquisition;

(5) marketable short-term money market and similar funds having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Borrower);

(6) readily marketable direct obligations issued by any state, commonwealth or territory of the United States or any political subdivision or taxing authority thereof having an Investment Grade Rating from either Moody's or S&P (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Borrower) with maturities of 24 months or less from the date of acquisition;

(7) readily marketable direct obligations issued by any foreign government or any political subdivision or public instrumentality thereof, in each case having an Investment Grade Rating from either Moody's or S&P with maturities of 24 months or less from the date of acquisition (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Borrower);

(8) Investments with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Borrower); and

(9) investment funds investing at least 90% of their assets in securities of the types described in clauses (1) through (8) above.

"**Cash Management Bank**" means any Person that is a Lender or an Affiliate of a Lender on the Closing Date or at the time it provides any Cash Management Services, whether or not such Person subsequently ceases to be a Lender or an Affiliate of a Lender.

"**Cash Management Obligations**" means obligations owed by the Borrower or any Subsidiary Guarantor to any Cash Management Bank in respect of or in connection with any Cash Management Services and designated by the Borrower in writing to the Administrative Agent as "Cash Management Obligations".

"**Cash Management Orders**" has the meaning specified in Section 4.01(l).

"**Cash Management Services**" means any agreement or arrangement to provide facilities or services related to cash management, including treasury, depository, overdraft, credit or debit card, purchase card, electronic funds transfer and other cash management arrangements.

"**Casualty Event**" means any event that gives rise to the receipt by Holdings, the Borrower or any Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

"**Change of Control**" means the earliest to occur of:

(a) the Permitted Holders ceasing to own, in the aggregate, directly or indirectly, beneficially and of record, at least thirty five percent (35%) of the then outstanding voting power of the Voting Stock of Holdings unless, one or more Permitted Holders have, at such time, the right or the ability by voting power, contract or otherwise to elect or designate for election at least a majority of the board of directors of Holdings; or

(b) subject to Section 7.04(a), the Borrower ceases to be a direct wholly owned Subsidiary of Holdings.

"**Chapter 11 Cases**" has the meaning specified in the recitals hereto.

"**Closing Date**" means the first date all the conditions in Section 4.01 have been satisfied or waived which shall not be later than three Business Days after the Interim DIP Order Entry Date.

"**Code**" means the U.S. Internal Revenue Code of 1986, as amended from time to time, and the regulations thereunder.

"**Collateral**" means all the "Collateral" (or equivalent term) as defined in any Collateral Documents and the "DIP Collateral" as defined in the Bankruptcy Court DIP Orders and shall include the Mortgaged Properties.

"**Collateral Documents**" means, collectively, the Security Agreement, the Intellectual Property Security Agreements, the Bankruptcy Court DIP Order, collateral assignments, Security Agreement Supplements, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent and the Lenders in connection with this Agreement, any intercreditor agreement, and the Guaranty.

"**Commitment**" means, with respect to each Lender, its obligation to make a Loan to the Borrower pursuant to Section 2.01(a) in an aggregate amount not to exceed the amount set forth opposite such Lender's name on Schedule 2.01B under the caption "Term Commitment" or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"**Confirmation Order**" means an order of the Bankruptcy Court, in form and substance reasonably acceptable to the Required Lenders, confirming the Approved Plan of Reorganization.

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

"**Control**" has the meaning specified in the definition of "Affiliate."

"**Conversion Prepayment**" means a mandatory prepayment in an amount equal to (x) the Borrower's projected pro forma cash balance immediately following the Exit Conversion, solely to the extent that the Borrower, as reorganized, or RentPath NewCo (as defined in the Restructuring Support Agreement), as applicable, is projected to have, at the time immediately following the Exit Conversion, a pro forma cash balance in excess of $100 million (after giving effect to any transfer of amounts remaining in the DIP Funding Account to the Borrower, as reorganized, or RentPath NewCo, as applicable, and the receipt (including on account of Sale Fees) of cash proceeds from the Exit Term Loan Facility, as well as cash payments required to be made under the Plan of Reorganization, payment of any transaction or exit fees and costs, including, among other things, the payment of any incentive or retention payments, and funding of the Professional Fee Account (including with respect to the Carve-Out) and (y) $100 million.

"**Credit Extension**" means a borrowing of Loans.

"**Debt Fund Affiliate**" means any Affiliate of a Sponsor (other than Holdings, the Borrower or any of their respective Subsidiaries and other than any natural person) that is primarily engaged in, or advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course and with one or more bona fide investors to whom its managers owe fiduciary duties independent of their fiduciary duties to such Sponsor.

"**Debtor Relief Laws**" means the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership,

insolvency, reorganization, or analogous Laws or similar debtor relief Laws of the United States or of other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"**Default**" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"**Default Rate**" means (a) with respect to overdue principal or interest, a rate that is 2% per annum in excess of the interest rate otherwise payable hereunder with respect to such payment obligation and (b) with respect to overdue fees, a rate equal to the Applicable Rate *plus* 2.0% per annum; in each case, to the fullest extent permitted by applicable Laws.

"**Defaulting Lender**" means, subject to Section 2.16, any Lender that (a) has failed to fund any portion of the Loans required to be funded by it hereunder within two (2) Business Days of the date required to be funded by it hereunder, unless the subject of a good faith dispute (or a good faith dispute that is subsequently cured), (b) has otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, unless the subject of a good faith dispute (or a good faith dispute that is subsequently cured), (c) has been deemed insolvent or become the subject of a bankruptcy or insolvency proceeding or (d) has notified the Borrower and/or the Administrative Agent in writing of any of the foregoing (including any written certification or public statement of its intent not to comply with its obligations under Article 2, unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied); *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority.

"**DIP Funding Account**" means the account in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent in which the proceeds of the Loans (and any Sale Fees) shall be deposited and held.

"**DIP Superpriority Claim**" means allowed superpriority expense claims pursuant to Bankruptcy Code Sections 364(c)(1), 503 and 507 granted by the Bankruptcy Court DIP Order.

"**Disposition**" or "**Dispose**" means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any sale or issuance of Equity Interests of the Borrower or a Subsidiary) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith but excluding Equity Interests in Holdings.

"**Disqualified Equity Interests**" means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable (other than solely

for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the then Latest Maturity Date; *provided* that (A) if such Equity Interests are issued pursuant to a plan for the benefit of directors, officers, employees, members of management, managers or consultants of Holdings, the Borrower or the Subsidiaries or by any such plan to such directors, officers, employees, members of management, managers or consultants, in each case in the ordinary course of business of Holdings, the Borrower or any Subsidiary, such Equity Interests shall not constitute Disqualified Equity Interests solely because it may be required to be repurchased by Holdings, the Borrower or the Subsidiaries in order to satisfy applicable statutory or regulatory obligations, and (B) no Equity Interests held by any future, present or former employee, director, officer, manager, member of management or consultant (or their respective Affiliates or Immediate Family Members) of the Borrower (or any parent company or any subsidiary) shall be considered Disqualified Equity Interests because such stock is redeemable or subject to repurchase pursuant to any management equity subscription agreement, stock option, stock appreciation right or other stock award agreement, stock ownership plan, put agreement, stockholder agreement or similar agreement that may be in effect from time to time.

"**Dollar**" and "**$**" mean lawful money of the United States.

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

"**EEA Member Country**" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Electing DIP Lender**" has the meaning specified in Section 2.01(c).

"**Election Deadline**" shall mean 5:00 pm eastern time on the date that is five (5) Business Days following the entry of the Interim DIP Order.

"**Eligible Assignee**" means any Assignee permitted by and, to the extent applicable, consented to in accordance with Section 10.07(b).

"**Environmental Claim**" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations (other than internal reports prepared by any Loan Party or any of its Subsidiaries (a) in the ordinary course of such Person's business or (b) as required in connection with a financing transaction or an acquisition or disposition of real estate) or proceedings with respect to any Environmental Liability (hereinafter "**Claims**"), including (i) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any Environmental Law and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief pursuant to any Environmental Law.

"**Environmental Laws**" means any and all Laws relating to the protection of the environment or, to the extent relating to exposure to Hazardous Materials, human health.

"**Environmental Liability**" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) of any Loan Party or any of its Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"**Environmental Permit**" means any permit, approval, identification number, license or other authorization required under any Environmental Law.

"**Equity Interests**" means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities).

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"**ERISA Affiliate**" means any trade or business (whether or not incorporated) that is under common control with Holdings or the Borrower and is treated as a single employer within the meaning of Section 414(b) or (c) of the Code or, solely for the purposes of Section 4001302 of ERISA and Sections 412 and 430 of the Code, is treated as a single employer under Section 414(m) or 414(o) of the Code.

"**ERISA Event**" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by Holdings or the Borrower or any of their respective ERISA Affiliates from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as a termination under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by Holdings or the Borrower or any of their respective ERISA Affiliates from a Multiemployer Plan, notification of Holdings or

the Borrower or any of their respective ERISA Affiliates concerning the imposition of Withdrawal Liability or notification that a Multiemployer Plan is insolvent within the meaning of Title IV of ERISA; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan under Section 4042 of ERISA, (f) the imposition of liability pursuant to Sections 4069 or 4212(c) of ERISA upon Holdings or the Borrower or any of their respective ERISA Affiliates or (g) the incurrence of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, by Holdings or the Borrower or any of their respective ERISA Affiliates.

"**Eurodollar Rate**" means (i) the Statutory Reserve Rate (which shall not be less than zero) multiplied by (ii):

(a) the per annum rate of interest determined by the Administrative Agent, based on a 360 day year (rounded up to the nearest 0.01%) as the average of the offered quotations appearing on the page of the Reuters LIBOR01 Screen (or any successor thereto as may be selected by the Administrative Agent) that displays the Intercontinental Exchange Benchmark Administration Interest Settlement Rate for deposits in Dollars with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period, or

(b) if the rates referenced in the preceding clause (a) are not available, the rate per annum (rounded up to the nearest 0.01%) determined by the Administrative Agent as the rate of interest, expressed based upon a 360 day year, at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Rate Loan being made, continued or converted by the Administrative Agent and with a term and amount comparable to such Interest Period and principal amount of such Eurodollar Rate Loan as would be offered by the Administrative Agent's London Branch to major banks in the offshore Dollar market at their request at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period. If any such rate is below zero, the Eurodollar Rate will be deemed to be zero;

provided that the Eurodollar Rate with respect to Loans shall not be less than 1.00% per annum and *provided further* that, with respect to the first Interest Period only, the Eurodollar Rate will be [ ].

"**Eurodollar Rate Loan**" means a Loan that bears interest at a rate based on the applicable Eurodollar Rate.

"**Event of Default**" has the meaning specified in Section 8.01.

"**Excluded Subsidiary**" means any Subsidiary that is listed on Schedule 1.01B hereto.

"**Exit Conversion**" has the meaning specified in Section 2.17(a).

"**Exit Term Loan Facility Credit Agreement**" has the meaning specified in Section 2.17(b).

"**Exit Term Loans**" means the loans under the Exit Term Loan Facility Credit Agreement.

"**Exit Term Loan Facility Term Sheet**" means the Term Sheet attached hereto as Exhibit D.

"**Extended Maturity Date**" means (i) the First Extended Maturity Date, provided that the Borrower, by written notice, notifies the Administrative Agent of the request to extend the Maturity Date at least ten (10) Business Days before the Initial Maturity Date and the Required Lenders consent to such Extended Maturity Date or (ii) the Second Extended Maturity, provided that the Borrower complies with clause (i) above and, by written notice, notifies the Administrative Agent of the request to further extend the Maturity Date at least ten (10) Business Days before the First Extended Maturity Date and the Required Lenders consent to such Extended Maturity Date.

"**Facility**" means the Loans and Commitments made available to the Borrower under this Agreement.

"**Fair Value**" means, with respect to any asset or liability, the fair value of such asset or liability as determined by the Borrower in good faith.

"**FATCA**" means Section 1471 through 1474 of the Code, as in effect on the date hereof, any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations promulgated thereunder or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code.

"**Federal Funds Rate**" means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"**Fee Letter**" means that certain Fee Letter, dated as of February [ ], 2020, by and among the Borrower and the Administrative Agent.

"**First Extended Maturity Date**" means November 30, 2020.

"**Final DIP Order**" means the final order of the Bankruptcy Court, approving the Facility on a final basis, in form and substance satisfactory to the Required Lenders, as the same may be amended, modified or supplemented from time to time with the express written consent of the Required Lenders (and with respect to amendments, modifications or supplements that adversely affect the rights or duties of the Administrative Agent, the Administrative Agent).

"**Final DIP Order Entry Date**" means the date on which the Final DIP Order is entered on the docket of the Bankruptcy Court.

"**Final Loan**" means the Loan made on or after the Final DIP Order Entry Date.

"**Foreign Lender**" has the meaning specified in Section 3.01(b).

"**FRB**" means the Board of Governors of the Federal Reserve System of the United States.

"**Fund**" means any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

"**GAAP**" means generally accepted accounting principles in the United States, as in effect from time to time; *provided, however*, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

"**Governmental Authority**" means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"**Granting Lender**" has the meaning specified in Section 10.07(h).

"**Guarantee**" means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the "**primary obligor**") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term "Guarantee" shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed

to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"**Guarantors**" has the meaning specified in the introductory paragraph of this Agreement.

"**Guaranty**" means (a) the guarantee made by the Guarantors in favor of the Administrative Agent for the benefit of the Secured Parties substantially in the form of Exhibit F and (b) each other guarantee and guarantee supplement delivered pursuant to Section 6.11.

"**Hazardous Materials**" means all explosive or radioactive substances or wastes, all hazardous or toxic substances, and all wastes or pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas and infectious or medical wastes regulated pursuant to any Environmental Law.

"**Holdings**" has the meaning specified in the introductory paragraph of this Agreement.

"**Immediate Family Member**" means with respect to any individual, such individual's child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including adoptive relationships) and any trust, partnership or other bona fide estate planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor advised fund of which any such individual is the donor.

"**Incremental Performance Marketing Cap**" has the meaning set forth in the Performance Marketing Schedule.

"**Indebtedness**" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all reimbursement or similar obligations, whether or not contingent, of such Person as an account party in respect of letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds, performance bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts and accrued expenses payable in the ordinary course of business and (ii) any earn-out obligation until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and if not paid after becoming due and payable);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other

title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness;

(g) all obligations of such Person in respect of Disqualified Equity Interests; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall (A) include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer and (B) exclude, in the case of Holdings, the Borrower and the Subsidiaries, all intercompany Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extension of terms) and made in the ordinary course of business. [The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.] The amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair value of the property encumbered thereby as determined by such Person in good faith.

"**Indemnified Liabilities**" has the meaning specified in Section 10.05.

"**Indemnitees**" has the meaning specified in Section 10.05.

"**Information**" has the meaning specified in Section 10.08.

"**Initial Maturity Date**" means August 31, 2020.

"**Intellectual Property Security Agreements**" has the meaning specified in the Security Agreement.

"**Interest Payment Date**" shall mean the last day of each Interest Period applicable to any Loan and the Maturity Date of the Facility.

"**Interest Period**" means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed as a Eurodollar Rate Loan and ending on the date one month thereafter; *provided* that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date of the Facility under which such Loan was made.

"**Interim DIP Order**" means the order of the Bankruptcy Court, approving the Facility on an interim basis, substantially in the form of Exhibit H hereto.

"**Interim DIP Order Entry Date**" means the date on which the Interim DIP Order is entered on the docket of the Bankruptcy Court.

"**Investment**" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or debt or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person (excluding, in the case of Holdings, the Borrower and the Subsidiaries, all intercompany Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extension of terms) and made in the ordinary course of business) or (c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. For purposes of covenant compliance, the amount of any Investment at any time shall be the amount actually invested (measured at the time made), without adjustment for subsequent changes in the value of such Investment, net of any return representing a return of capital with respect to such Investment.

"**Investment Grade Rating**" means a rating equal to or higher than Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by S&P, or an equivalent rating by any other nationally recognized statistical rating agency selected by the Borrower.

"**Investment Grade Securities**" means (a) securities issued or directly and fully guaranteed or insured by the government of the United States or any agency or instrumentality thereof (other than Cash Equivalents), (b) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among Holdings, the Borrower and the Subsidiaries, (c) investments in any fund that invests exclusively in investments of the type described in clauses (a) and (b), which fund may also hold immaterial amounts of cash pending investment or distribution and (d) corresponding instruments in countries other than the United States customarily utilized for high quality investments, in each case, consistent with the Borrower's cash management and investment practices.

"**IP Rights**" has the meaning specified in Section 5.15.

"**Judgment Currency**" has the meaning specified in Section 10.19.

"**Latest Maturity Date**" means, at any date of determination, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time.

"**Laws**" means, collectively, all international, foreign, federal, state, provincial and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities and executive orders, including the interpretation or administration thereof by any

Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

"**Lead Arranger**" has the meaning assigned to such term in the preamble to this Agreement

"**Lender**" has the meaning specified in the introductory paragraph to this Agreement and their respective successors and assigns as permitted hereunder.

"**Lending Office**" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

"**Lien**" means any mortgage, pledge, hypothec, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any Capitalized Lease having substantially the same economic effect as any of the foregoing); *provided* that in no event shall an operating lease be deemed a Lien.

"**Liquidity**" shall mean, at any time of determination, the unrestricted cash of the Loan Parties.

"**Loan**" means an extension of credit by a Lender to the Borrower under Article 2.

"**Loan Documents**" means, collectively, (i) this Agreement, (ii) the Notes, (iii) the Guaranty, (iv) the Collateral Documents, (v) the Fee Letter,(vi) the Prepetition Intercreditor Agreement and (vii) any other agreement, instrument, report and other document evidencing or securing any Obligation.

"**Loan Parties**" means, collectively, (i) the Borrower and (ii) the Guarantors.

"**Management Stockholders**" means the members of management of Holdings or any of its Subsidiaries who are investors in Holdings or any direct or indirect parent thereof.

"**Margin Stock**" has the meaning specified in Regulation U.

"**Master Agreement**" has the meaning specified in the definition of "Swap Contract."

"**Material Adverse Effect**" means a material adverse effect on (a) the business, financial condition or results of operations of Holdings, the Borrower and the Subsidiaries, taken as a whole, other than as a result of (i) the Chapter 11 Cases and/or the events and conditions related and/or leading up to or following the commencement of the Chapter 11 Cases or (ii) any defaults under agreements as a result of the Chapter 11 Cases that are stayed under the Bankruptcy Code, (b) the ability of the Borrower and the Guarantors (taken as a whole) to perform their payment obligations under the Loan Documents or (c) the rights and remedies (taken as a whole) of the Administrative Agent or any Lender under the Loan Documents.

"**Material Real Property**" means any real property owned by any Loan Party with a Fair Value in excess of $1,000,000.

"**Maturity Date**" means the earliest to occur of (a) the Initial Maturity Date or the Extended Maturity Date, as applicable, (b) the earlier of the effective date and the date of the substantial consummation (as defined in Section 1101(2) of the Bankruptcy Code), in each case, of the Approved Plan of Reorganization that has been confirmed by the Confirmation Order, *provided* that if the Exit Conversion occurs, the Loans shall not be paid in cash and shall convert in accordance with the terms and conditions set forth herein; *provided* that if any such day is not a Business Day, the Maturity Date shall be the Business Day immediately preceding such day. When used with respect to any facility, "Maturity Date" means the Maturity Date with respect to the commitments or loans under such facility.

"**Maximum Rate**" has the meaning specified in Section 10.10.

"**Moody's**" means Moody's Investors Service, Inc. and any successor thereto.

"**Monthly Incremental Marketing Proposal**" means a proposal for the incremental performance marketing expenditures for the subsequent month.

"**Mortgages**" means collectively, the deeds of trust, trust deeds and mortgages made by the Loan Parties in favor or for the benefit of the Administrative Agent on behalf of the Lenders in form and substance reasonably satisfactory to the Administrative Agent, and any other mortgages executed and delivered pursuant to Section 6.11.

"**Mortgaged Properties**" has the meaning specified in Section 6.13(b)(v).

"**Multiemployer Plan**" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA, to which Holdings, the Borrower or any of their respective ERISA Affiliates makes or is obligated to make contributions, or during the past six years, has made or been obligated to make contributions.

"**Net Cash Proceeds**" means with respect to the Disposition of any asset by Holdings, the Borrower or any of the Subsidiaries or any Casualty Event, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such Disposition or Casualty Event (including any cash and Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received and, with respect to any Casualty Event, any insurance proceeds or condemnation awards in respect of such Casualty Event actually received by or paid to or for the account of Holdings, the Borrower or any of the Subsidiaries) over (ii) the sum of (A) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness that is secured by the asset subject to such Disposition or Casualty Event and that is required to be repaid in connection with such Disposition or Casualty Event (other than Indebtedness under the Loan Documents and any Credit Agreement Refinancing Indebtedness), (B) the out-of-pocket fees and expenses (including attorneys' fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees) actually incurred by Holdings, the Borrower or any of the

Subsidiaries in connection with such Disposition or Casualty Event, (C) taxes or distributions made pursuant to Section 7.06(g)(i) or 7.06(g)(iii) paid or estimated to be payable by Holdings, the Borrower or any of its Subsidiaries in connection therewith (including withholding taxes imposed on the repatriation of any such Net Cash Proceeds), (D) in the case of any Disposition or Casualty Event by a non-wholly owned Subsidiary, the pro rata portion of the Net Cash Proceeds thereof attributable to minority interests and not available for distribution to or for the account of Holdings, the Borrower or a wholly owned Subsidiary as a result thereof, and (E) any reserve for adjustment in respect of (x) the sale price of such asset or assets established in accordance with GAAP and (y) any liabilities associated with such asset or assets and retained by Holdings, the Borrower or any Subsidiary after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction, it being understood that "Net Cash Proceeds" shall include the amount of any reversal (without the satisfaction of any applicable liabilities in cash in a corresponding amount) of any reserve described in this clause (E).

"**NFIP**" has the meaning specified in Section 6.07(b).

"**Non-Consenting Lender**" has the meaning specified in Section 3.07(d).

"**Non-Debt Fund Affiliated Lender**" means an Affiliated Lender that is not a Debt Fund Affiliate.

"**Non-Defaulting Lender**" means any Lender that is not a Defaulting Lender.

"**Non-Loan Party**" means any Subsidiary of the Borrower that is not a Loan Party.

"**Note**" means a promissory note of the Borrower payable to any Lender or its registered assigns, in substantially the form of Exhibit C hereto, evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from the Loans made by such Lender to the Borrower.

"**Notice of Withdrawal**" shall mean a request by the Borrower in accordance with the terms of Section 2.02 and substantially in the form of Exhibit J, or such other form as shall be approved by the Administrative Agent.

"**Obligations**" means all (x) advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; and (y) Cash Management Obligations. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and any of their Subsidiaries to the extent they have obligations under the Loan Documents) include the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document.

"**OID**" means original issue discount.

"**Operating Account**" means the deposit account established by the Borrower for the purpose of receipt of the Withdrawals and proceeds of Priority Collateral.

"**Organization Documents**" means (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"**Other Taxes**" has the meaning specified in Section 3.01(f).

"**Outstanding Amount**" means the principal amount thereof outstanding after giving effect to any Credit Extensions and prepayments or repayments of Loans occurring on such date.

"**Overnight Rate**" means, for any day, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

"**Participant**" has the meaning specified in Section 10.07(e).

"**Participant Register**" has the meaning specified in Section 10.07(e).

"**PBGC**" means the Pension Benefit Guaranty Corporation.

"**Pension Plan**" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by Holdings, the Borrower or any of their respective ERISA Affiliates or to which Holdings, the Borrower or any of their respective ERISA Affiliates contributes or has an obligation to contribute, or during the past six years, has contributed or has had an obligation to contribute.

"**Performance Marketing Schedule**" means the schedule delivered by counsel to the Loan Parties to counsel to the Lenders on February 11, 2020, which set forth (i) forecasted monthly incremental performance marketing expenditures for the duration of the Chapter 11 Cases; (ii) the Pre-Approved Incremental Marketing Spend; and (iii) the dates on which the Debtors will provide each Monthly Incremental Marketing Proposal.

"**Permitted Holders**" means each of (i) the Sponsors and (ii) the Management Stockholders.

"**Permitted Variance**" means, for purposes of testing whether a Budget Event has occurred, a variance of 10% .

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

"**Petition Date**" means February [12], 2020.

"**Plan**" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established by Holdings, the Borrower or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any of their respective ERISA Affiliates.

"**Platform**" has the meaning specified in Section 6.02.

"**Pre-Approved Incremental Marketing Spend**" means the amounts set forth on the Performance Marketing Schedule in the line item entitled "Pre-Approved Incremental Marketing Spend," which the Loan Parties may incur on account of incremental performance marketing without any further approval of the Lenders.

"**Prepetition Agents**" means the Prepetition First Lien Agent and the Prepetition Second Lien Agent.

"**Prepetition First Lien Collateral Agreement**" means the First Lien Pledge and Security Agreement dated as of December 17, 2014 (as amended and supplemented from time to time) by and among the Loan Parties and the Prepetition First Lien Agent.

"**Prepetition First Lien Collateral Documents**" means, collectively, the Prepetition First Lien Collateral Agreement, each of the mortgages, collateral assignments, supplements to all of the foregoing, security agreements, pledge agreements, control agreements or other similar agreements delivered to the Prepetition First Lien Agent in connection with the Prepetition First Lien Credit Agreement, and each of the other agreements, instruments or documents (including, without limitation, patent, trademark or copyright filings) that creates or purports to create a Lien in favor of the Prepetition First Lien Agent for the benefit of the Prepetition First Lien Lenders.

"**Prepetition First Lien Credit Agreement**" means that certain First Lien Credit Agreement, dated as of December 17, 2014, by and among the Borrower, the Guarantors party thereto, the Prepetition First Lien Agent, and the Prepetition First Lien Lenders, as amended, restated, supplemented or otherwise modified from time to time.

"**Prepetition First Lien Documents**" means the Prepetition Credit Agreement, the Prepetition First Lien Collateral Documents, the Prepetition Intercreditor Agreement and each of the other agreements, instruments or documents executed pursuant thereto.

"**Prepetition First Lien Agent**" means (i) Royal Bank of Canada in its capacity as administrative agent under any of the Prepetition First Lien Documents, or (ii) any successor administrative agent.

"**Prepetition First Lien Lenders**" means the lenders party to the Prepetition First Lien Credit Agreement, from time to time.

"**Prepetition First Lien Indebtedness**" shall mean Indebtedness of Holdings, the Borrower or any Guarantor outstanding, or secured, under the Prepetition First Lien Documents.

"**Prepetition First Lien Indebtedness Holders**" means, collectively, the Prepetition First Lien Agent, the Prepetition First Lien Lenders and any holders of Other Liabilities (as defined in the

Prepetition First Lien Credit Agreement) and obligations under Secured Hedge Agreements (as defined in the Prepetition First Lien Credit Agreement).

"**Prepetition First Lien Loans**" means the "Loans" under and as defined in the Prepetition First Lien Credit Agreement.

"**Prepetition First Lien Obligations**" means "Obligations" (as defined in the Prepetition First Lien Credit Agreement) of the Borrower and Guarantors to the Prepetition First Lien Indebtedness Holders incurred prior to the Petition Date.

"**Prepetition Intercreditor Agreement**" means that certain Intercreditor Agreement dated as of December 17, 2014, by and among the "First Lien Representative" and the "Second Lien Representative" (each, as defined therein), as amended, supplemented or otherwise modified prior to the date hereof.

"**Prepetition Lenders**" means the Prepetition First Lien Lenders and the Prepetition Second Lien Lenders.

"**Prepetition Second Lien Agent**" means (i) Wilmington Savings Fund Society, FSB as successor to Royal Bank of Canada in its capacity as administrative agent under any of the Prepetition Second Lien Documents, or (ii) any successor administrative agent.

"**Prepetition Second Lien Credit Agreement**" means the Second Lien Credit Agreement, dated December 17, 2014, by and among the Borrower, the Guarantors party thereto, the Prepetition Second Lien Agent and the Prepetition Second Lien Lenders, as amended, restated, supplemented or otherwise modified from time to time.

"**Prepetition Second Lien Collateral Agreement**" means the Second Lien Pledge and Security Agreement dated as of December 17, 2014 (as amended and supplemented from time to time) by and among the Borrower, the Guarantors and the Prepetition Second Lien Agent.

"**Prepetition Second Lien Collateral Documents**" means, collectively, the Prepetition First Lien Collateral Agreement, each of the mortgages, collateral assignments, supplements to all of the foregoing, security agreements, pledge agreements, control agreements or other similar agreements delivered to the Prepetition First Lien Agent in connection with the Prepetition First Lien Credit Agreement, and each of the other agreements, instruments or documents (including, without limitation, patent, trademark or copyright filings) that creates or purports to create a Lien in favor of the Prepetition First Lien Agent for the benefit of the Prepetition First Lien Lenders.

"**Prepetition Second Lien Documents**" means the Prepetition Second Lien Credit Agreement, the Prepetition Second Lien Collateral Documents and each of the other agreements, instruments or documents executed pursuant thereto.

"**Prepetition Second Lien Facility**" means the credit facility governed by the Second Lien Credit Agreement and one or more debt facilities or other financing arrangements (including indentures) providing for loans or other long-term indebtedness that replace or refinance such credit facility, including any such replacement or refinancing facility or indenture that increases or decreases the amount permitted to be borrowed thereunder or alters the maturity thereof and whether by the same

or any other agent, lender or group of lenders, and any amendments, supplements, modifications, extensions, renewals, restatements, amendments and restatements or refundings thereof or any such indentures or credit facilities that replace or refinance such credit facility (or any subsequent replacement thereof.

"**Prepetition Second Lien Indebtedness**" shall mean Indebtedness of Holdings, the Borrower or any Guarantor outstanding, or secured, under the Prepetition Second Lien Documents.

"**Prepetition Second Lien Indebtedness Holders**" means, collectively the Prepetition Second Lien Agent, the Prepetition Second Lien Lenders and any holders of Other Liabilities (as defined in the Prepetition Second Lien Credit Agreement).

"**Prepetition Second Lien Lenders**" means the lenders party to the Prepetition Second Lien Credit Agreement, from time to time.

"**Priming Liens**" has the meaning specified in Section 11.05(a)(v).

"**Priority Collateral**" shall have the meaning assigned to such term in the Bankruptcy Court DIP Order.

"**Professional Fees**" means, to the extent allowed at any time, whether by interim or final compensation order, all unpaid fees and expenses incurred by persons or firms retained by the Loan Parties pursuant to sections 327, 328, or 363 of the Bankruptcy Code.

"**Professional Fees Account**" has the meaning specified in the Bankruptcy Court DIP Order.

"**Pro Rata Share**" means, with respect to each Lender at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Aggregate Commitments and, if applicable and without duplication, Loans of such Lender under the applicable Facility at such time and the denominator of which is the amount of the Aggregate Commitments and, if applicable and without duplication, Loans under the applicable Facility at such time.

"**Public Lender**" has the meaning specified in Section 6.02.

"**Qualified Equity Interests**" means any Equity Interests that are not Disqualified Equity Interests.

"**Quarterly Financial Statements**" means the unaudited condensed consolidated balance sheet of Holdings and its Subsidiaries and related unaudited condensed consolidated statements of operations and cash flows of Holdings and its Subsidiaries for the most recent fiscal quarter ended at least forty-five (45) days before the Closing Date.

"**Redemption Premium**" means the payment, which the Borrower shall pay to the Administrative Agent for the account of each Lender in the amount of 19.6% on the outstanding principal amount of the Loans, which shall be (i) added to the principal amount of the Facility in the event that the Exit Conversion occurs under an Approved Plan of Reorganization or (ii) otherwise paid in full in cash on the Maturity Date; *provided* that in the event of a Conversion Prepayment or a Disposition

of a material portion of the assets of Loan Parties, or of the equity interests of one or more Loan Parties, to a third-party purchaser un-affiliated with the Prepetition First Lien Lenders, (i) if such Conversion Prepayment or Disposition occurs on or prior to 90 days of the Petition Date, the Redemption Premium shall be in the amount of 3.5% of the principal amount of the Loans, (ii) if such Conversion Prepayment or Disposition occurs on or after 90 days from the Petition Date but prior to 180 days from the Petition Date, the Redemption Premium shall be in the amount of 7.5% of the principal amount of the Loans, (iii) if such Conversion Prepayment or Disposition occurs on or after 180 days from the Petition Date, but prior to 360 days from the Petition Date, the Redemption Premium shall be in the amount of 15.0% of the principal amount of the Loans, and (iv) if such Conversion Prepayment or Disposition occurs on or after 360 days from the Petition Date, the Redemption Premium shall be in the amount of 19.6%.

"**Register**" has the meaning specified in Section 10.07(d).

"**Regulation U**" means Regulation U of the FRB as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"**Related Indemnified Person**" has the meaning specified in Section 10.05.

"**Reportable Event**" means, with respect to any Plan, any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty (30) day notice period has been waived.

"**Request for Credit Extension**" means a notice of a Credit Extension, which, if in writing, shall be substantially in the form of Exhibit A-1.

"**Required Lenders**" means, as of any date of determination, two or more un-Affiliated (with respect to any other Lenders) Lenders having more than 50% of the sum of the (a) Total Outstandings and (b) aggregate unused Commitments ; *provided* that the unused Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

"**Responsible Officer**" means the chief executive officer, president, vice president, chief financial officer, treasurer or assistant treasurer or other similar officer or Person performing similar functions of a Loan Party and, as to any document delivered on the Closing Date, any secretary or assistant secretary of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. Unless otherwise specified, all references herein to a "Responsible Officer" shall refer to a Responsible Officer of the Borrower.

"**Restricted Payment**" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of Holdings, the Borrower or any of the Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of

capital to the stockholders, partners or members (or the equivalent Persons thereof) of Holdings, the Borrower or any of the Subsidiaries.

"**Restructuring Support Agreement**" means that Restructuring Support Agreement dated as of February [11], 2020 among Holdings, the Borrower, certain Subsidiaries of the Borrower, the Consenting Sponsors (as defined therein) and the Consenting First Lien Creditors (as defined therein), which Consenting First Lien Creditors consist of certain Prepetition First Lien Lenders and certain Prepetition Second Lien Lenders.

"**S&P**" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

"**Sale Fee**" means break fees or extension fees received by the Loan Parties in connection with a purchase agreement.

"**Same Day Funds**" means immediately available funds in the place of disbursement or payment.

"**Sanctions**" has the meaning specified in Section 5.16.

"**SEC**" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"**Second Extended Maturity Date**" means February 28, 2021.

"**Secured Parties**" has the meaning specified in the Security Agreement.

"**Security Agreement**" means the Pledge and Security Agreement executed by the Borrower and each Guarantor, substantially in the form of Exhibit G.

"**Security Agreement Supplement**" has the meaning specified in the Security Agreement.

"**SPC**" has the meaning specified in Section 10.07(h).

"**Sponsors**" means Pittsburgh Holdings, L.P., Regal Holdco LP, and their respective Affiliates and funds or partnerships managed by any of them or any of their respective Affiliates, but not including, however, any of their respective portfolio companies.

"**Statutory Reserve Rate**" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the FRB to which the Administrative Agent is subject with respect to the Eurodollar Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the FRB). Such reserve percentage shall include those imposed pursuant to such Regulation D. Eurodollar Rate Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“**Subsidiary**” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity (excluding, for the avoidance of doubt, charitable foundations) of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“**Subsidiary Guarantor**” means each of the Guarantors other than Holdings.

“**Supplemental Administrative Agent**” has the meaning specified in Section 9.13 and “Supplemental Administrative Agents” shall have the corresponding meaning.

“**Swap Contract**” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement.

“**Swap Termination Value**” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“**Taxes**” has the meaning specified in Section 3.01(a).

“**Threshold Amount**” means $1,000,000.

“**Total Outstandings**” means the aggregate Outstanding Amount of all Loans.

“**Transaction Expenses**” means any fees, premiums, or expenses and other transaction costs (including OID or upfront fees) payable or otherwise borne by Holdings and its Subsidiaries in connection with the Transactions and the transactions contemplated thereby.

"**Transactions**" means collectively, (a) the execution, delivery and performance by the Loan Parties of the Loan Documents to which they are a party and the Credit Extensions hereunder and (b) the payment of the Transaction Expenses.

"**Uniform Commercial Code**" means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code or any successor provision thereof (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

"**United States**" and "**U.S.**" mean the United States of America.

"**Updated Performance Marketing Schedule**" has the meaning specified in Section 11.01(c).

"**USA PATRIOT Act**" means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

"**U.S. Lender**" has the meaning specified in Section 3.01(d).

"**Variance Report**" has the meaning specified in Section 6.01(c).

"**Voting Stock**" means, with respect to any Person, any class or classes of Equity Interests pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the board of directors of such Person.

"**wholly owned**" means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) director's qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

"**Withdrawal**" means a disbursement of funds from the DIP Funding Account, "Withdraw" and "Withdrawn" shall have correlative meanings thereto.

"**Withdrawal Amount**" means the amount set forth in the Budget in the line item entitled "Withdrawal" for such week, which amount is available to be Withdrawn from the DIP Funding Account. Such amount, shall be calculated as an amount projected to be necessary to be Withdrawn during such week in order for the Loan Parties to maintain Liquidity of at least $5,000,000.

"**Withdrawal Date**" means the date of a Withdrawal.

"**Withdrawal Liability**" means the liability of a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"**Withdrawal Weekly Cap**" means, for any week, an amount equal to 110% of the Withdrawal Amount.

Section 1.02. *Other Interpretive Provisions.* With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) (i) The words "herein," "hereto," "hereof" and "hereunder" and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(ii) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.

(iii) The term "including" is by way of example and not limitation.

(iv) The term "documents" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(c) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(d) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

Section 1.03. *Accounting Terms.* All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations derived from information in Holdings' accounting records) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein; *provided*, *however*, that notwithstanding the foregoing, the financial definitions set forth in the Loan Documents and any financial ratio or other financial calculations required by the Loan Documents shall be determined without giving effect to any change to lease accounting rules from those in effect on the date hereof pursuant to Financial Accounting Standards Board Accounting Standards Codification 840 (Leases) and other related lease accounting guidance in effect on the date hereof. Notwithstanding anything to the contrary contained in the preceding sentence or in the definitions of "Capital Expenditures," "Capitalized Lease Obligations," or "Capitalized Leases," in the event of an accounting change requiring all leases to be capitalized, only those leases (assuming for purposes hereof that such leases were in existence on the date hereof) that would constitute Capitalized Leases in conformity with GAAP on the date hereof shall be considered Capitalized Leases, and all calculations and deliverables under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith (*provided* that together with all financial statements delivered to the Administrative Agent in accordance with the terms of this Agreement after the date of any such accounting change, the Borrower shall deliver a schedule showing the adjustments necessary to

reconcile such financial statements with GAAP as in effect immediately prior to such accounting change).

Section 1.04. *[Reserved].*

Section 1.05. *References to Agreements, Laws, Etc.* Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted by any Loan Document; (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law; and (c) references to any Person shall include the successors and permitted assigns of such Person.

Section 1.06. *Times of Day.* Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

ARTICLE 2
THE COMMITMENTS AND CREDIT EXTENSIONS

Section 2.01. *The Loans.*

(a) *The Credit Extensions.* Subject to the terms and conditions set forth herein and in the Bankruptcy Court DIP Order, each Lender severally agrees to make loans to the Borrower denominated in Dollars on the applicable borrowing date in an amount equal to such Lender's Commitment. The Borrower may make only two (2) borrowings on the Commitments, the first of which will occur on the Closing Date in an aggregate principal amount of $27,000,000.00 and in the case of the Final Loan the borrowing will occur following the Final DIP Order Entry Date in an aggregate principal amount of $47,074,074.07. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Proceeds of the Loans shall be deposited in the DIP Funding Account and used as permitted herein.

(b) *[Reserved]*.

(c) Each Lender as of the Closing Date, hereby acknowledges and agrees that each Prepetition Lender that is or becomes a party to the Restructuring Support Agreement (in such capacity, an "**Electing DIP Lender**") may participate in providing the Loans in an amount equal to: (i) with respect to the Prepetition First Lien lenders, its pro rata share (determined on the basis of the principal amount of Prepetition First Lien Loans held by such Lender as compared to the principal amount of Prepetition First Lien Loans held by all Lenders under the Prepetition First Lien Loan Agreement on the Election Date) of 80% of the Loans hereunder and (ii) with respect to the Prepetition Second Lien Lenders, its pro rata share (determined on the basis of the principal amount of Prepetition Second Lien Loans held by such Lender as compared to the principal amount of Prepetition Second Lien Loan Documents on the Election Date) of 20% of the Loans hereunder by executing an election joinder in the form of Exhibit L no later than the Election Deadline. Thereafter, (x) each such Person shall become a Lender on the day after the Election Deadline and (y) each existing Lender's Commitment shall be reduced proportionally on such date. Each Prepetition Lender shall be entitled to transfer its pro rata share of the Loans to any other

Prepetition Lender (i) that is party to the Restructuring Support Agreement and (ii) commits to participate in this Facility on the same terms; *provided,* that in the event the Restructuring Support Agreement has not been executed prior to the Petition Date, by Prepetition Second Lien Lenders (or investment managers or advisers to such lenders) holding at least 66$^{2/3}$% in aggregate principal amount of the loans outstanding under the Prepetition Second Lien Documents, participation in this Facility will be offered solely to the Prepetition First Lien Lenders (on a pro rata basis in proportion to the amount of each Prepetition First Lien Lender's outstanding loans and commitments under the First Lien Credit Agreement on the Election Date) and the Prepetition Second Lien Lenders shall not be entitled to participate in this Facility.

(d) All Loans and all other Obligations (including the Redemption Premium) owing hereunder with respect to the Loans shall be paid in full or converted pursuant to the Exit Conversion not later than the Maturity Date.

Section 2.02. *Credit Extensions.* (a) Each Credit Extension shall be made upon the Borrower's irrevocable notice to the Administrative Agent. In order to request a Credit Extension, the Borrower shall notify the Administrative Agent of such request by telephone, not later than 5:00 p.m., New York City time, one Business Day before a proposed Credit Extension. Each such telephonic Request for Credit Extension shall be confirmed promptly by hand delivery or fax to the Administrative Agent of a written Request for Credit Extension and shall specify the following information: (i) the date of such Credit Extension (which shall be a Business Day) and (ii) the amount of such Credit Extension.

(b) Following receipt of a Request for Credit Extension by the Administrative Agent and subject to the satisfaction or waiver of the conditions set forth in Sections 4.01 and 4.02, the Administrative Agent shall promptly advise the applicable Lenders thereof, and of each Lender's portion of the requested Credit Extension, and each Lender shall make each Loan to be made by it hereunder (net of OID pursuant to Section 2.09(a)) by wire transfer of immediately available funds to such account in New York City as the Administrative Agent may designate not later than 1:00 p.m., New York City time, on the Business Day specified in the applicable Request for Credit Extension.

(c) Unless the Required Lenders determine that any applicable condition specified in Article 4 has not been satisfied or waived, the amount so received by the Administrative Agent shall be deposited by the Administrative Agent in the DIP Funding Account.

(d) Subject to Article 4 and the other terms and conditions set forth herein, the Borrower may request disbursements from the DIP Funding Account by delivering to the Administrative Agent a Notice of Withdrawal, not later than 12:00 p.m., New York City time, one Business Day before (or such shorter time as agreed by the Administrative Agent) the proposed date of the applicable Withdrawal and no more frequently than one Withdrawal per week; *provided* that the amount that may be Withdrawn during any calendar week shall not exceed the Withdrawal Weekly Cap for such week without the consent of the Required Lenders. Promptly upon the receipt of a Notice of Withdrawal and the satisfaction or waiver of the conditions set forth in Sections 4.02, the Administrative Agent shall disburse funds from the DIP Funding Account in an aggregate principal amount equal to the amount specified in such Notice of Withdrawal to the Operating Account. All proceeds of the Loans shall be held in the DIP Funding Account at all times until such proceeds

are disbursed in accordance with this Section 2.02(d) for purposes permitted under Section 5.17 or applied in accordance with Section 2.12 or Section 11.05(d).

With respect to any disbursement, withdrawal, transfer, or application of funds from the DIP Funding Account hereunder, the Administrative Agent shall be entitled to conclusively rely upon, and shall be fully protected in relying upon, (i) any Notice of Withdrawal submitted by the Borrower and (ii) any instructions from the Required Lenders. Notwithstanding anything herein to the contrary, the Administrative Agent shall have no obligation to fund any amount in excess of the amounts then held in the DIP Funding Account.

(e) The failure of any Lender to make the Loan to be made by it as part of any Credit Extension shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Credit Extension, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Credit Extension.

Section 2.03. *[Reserved].*

Section 2.04. *[Reserved].*

Section 2.05. *Prepayments.*

(a) *Optional.* (i) The Borrower may, upon notice to the Administrative Agent in substantially the form attached hereto as Exhibit A-2, at any time or from time to time voluntarily prepay Loans owing by it in whole but not in part subject to payment of the Redemption Premium and without any premium or penalty; *provided* that such notice must be received by the Administrative Agent not later than 12:00 noon three (3) Business Days prior to any date of prepayment. Each such notice shall specify the date and amount of such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Pro Rata Share of such prepayment. Any prepayment of a Loan shall be accompanied by all accrued interest thereon together with the Redemption Premium. Each prepayment of the Loans pursuant to this Section 2.05(a)(i) shall be paid to the Lenders in accordance with their respective Pro Rata Shares.

(ii) [*Reserved*].

(iii) Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind any notice of prepayment under Section 2.05(a)(i) if such prepayment would have resulted from a refinancing of all of the Facilities, which refinancing shall not be consummated or shall otherwise be delayed.

(b) *Mandatory.*

(i)

(A) If (x) Holdings, the Borrower or any of the Subsidiaries Disposes of any property or assets (other than any Disposition of any property or assets permitted by Section 7.05(a), (b), (c), (d) (to the extent constituting a Disposition by a Subsidiary that is a Non-Loan Party or a Disposition to

the Borrower or a Subsidiary that is a Guarantor), (e), (g), (h), (l), (o), or (p)) having a Fair Value in excess of $[1,000,000], or (y) any Casualty Event in excess of $[1,000,000] occurs, which results in the realization or receipt by Holdings, the Borrower shall prepay on or prior to the date which is ten (10) Business Days after the date of the realization or receipt of such Net Cash Proceeds an aggregate principal amount of Loans (on a pro rata basis) equal to 100% of all Net Cash Proceeds realized or received.

(B) *[Reserved]*.

(ii) If Holdings, the Borrower or any Subsidiary incurs or issues any Indebtedness not expressly permitted to be incurred or issued pursuant to Section 7.03, the Borrower shall prepay an aggregate principal amount of Loans (on a pro rata basis) equal to 100% of all proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt of such proceeds.

(c) *Conversion Prepayment.* Upon the occurrence of the Exit Conversion, the Borrower shall make a Conversion Prepayment. The Conversion Prepayment shall be subject to the payment of the Redemption Premium.

(d) *Interest, Funding Losses, Etc.* All prepayments under this Section 2.05 shall be accompanied by all accrued interest thereon and the Redemption Premium.

Section 2.06. *[Reserved]*.

Section 2.07. *[Reserved]*.

Section 2.08. *Interest.* (a) Subject to the provisions of Section 2.08(b), each Loan shall bear interest on the outstanding principal amount thereof at a rate per annum equal to the Eurodollar Rate for such Interest Period *plus* the Applicable Rate.

(b) In the case of any Event of Default, the Borrower shall pay interest on all amounts owing by it hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable by the Borrower of such Loan in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

Section 2.09. *Discount and Fees.*

(a) *Original Issue Discount*. The Borrower and each Lender agrees that on the date of each Credit Extension the Borrower shall receive proceeds from the Loans based on a purchase price of 98% of the principal amount thereof.

(b) *Backstop.* The Borrower shall pay to the Backstop Lenders the amounts and at the times agreed in the Backstop Commitment Letter.

(c) *Other Fees*. The Borrower shall pay to the Agent such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Agent).

Section 2.10. *Computation of Interest and Fees.* All computations of interest for Loans shall be made on the basis of a year of 365 days or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360 day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.11. *Evidence of Indebtedness.* (a) The Credit Extensions made by each Lender to the Borrower shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c), as agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note payable to such Lender, which shall evidence such Lender's Loans to the Borrower in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(c) Entries made in good faith by the Administrative Agent in the Register pursuant to Sections 2.11(a) and (b), and by each Lender in its account or accounts pursuant to Sections 2.11(a) and (b), shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; *provided* that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall

not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

Section 2.12. *Payments Generally.* (a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Same Day Funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(c) Unless the Borrower has notified the Administrative Agent, prior to the date any payment is required to be made by it to the Administrative Agent hereunder for the account of any Lender, that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to such Lender. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then such Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in Same Day Funds at the applicable Overnight Rate from time to time in effect.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.12(c) shall be conclusive, absent manifest error.

(d) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article 2, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article 4 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) The obligations of the Lenders hereunder to make Loans are several and not joint. The failure of any Lender to make any Loan or to fund any such participation on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or purchase its participation.

(f) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(g) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 4.02 of the Security Agreement (assuming for such purposes that the amounts owed to the Administrative Agent and the Lenders are the only Obligations thereunder).

Section 2.13. *Sharing of Payments.* If, other than as expressly provided elsewhere herein, any Lender shall obtain, on account of the Loans made by it to the Borrower, any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Loans made by them, in respect of the Borrower as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such Loans or such participations, as the case may be, pro rata with each of them; *provided* that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.09) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.13 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.13 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

Section 2.14. *[Reserved].*

Section 2.15. *[Reserved].*

Section 2.16. *Defaulting Lenders.*

(a) *Adjustments*. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) *Waivers and Amendments*. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01.

(ii) *Reallocation of Payments*. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 8 or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 10.09), shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; *second*, as the Borrower may request (so long as no Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *third*, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of that Defaulting Lender, until such time as all Loans are held by the Lenders pro rata in accordance with the Commitments. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this Section 2.16(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) *Certain Fees*. That Defaulting Lender shall not be entitled to receive any commitment fee pursuant to Section 2.09(a) or (b) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(b) *[Reserved]*.

(c) *Defaulting Lender Cure*. If the Borrower and Administrative Agent agree in writing that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase

that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans to be held on a pro rata basis by the Lenders in accordance with their Pro Rata Shares, whereupon that Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided, further,* that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

Section 2.17. *Conversion of Loans.*

(a) Upon the consummation of an Approved Plan of Reorganization, subject to the satisfaction, or waiver, of the conditions set forth in the Exit Term Loan Facility Term Sheet and otherwise substantially in accordance with the terms and conditions set forth in the Exit Term Loan Facility Credit Agreement (as defined below), the Borrower may exercise an option to continue or convert the Loans into an exit term facility financing (the "**Exit Conversion**").

(b) If the Borrower elects to exercise the Exit Conversion, subject to the satisfaction or waiver by the Required Lenders of the conditions contained in the Exit Term Loan Facility Term Sheet and the Exit Term Loan Facility Credit Agreement (as defined below):

(i) each Lender, severally and not jointly, hereby agrees to continue its Loans hereunder outstanding on the effective date of the Approved Plan of Reorganization as loans under, and subject entirely and exclusively to the terms and provisions of, the definitive documentation to be mutually agreed (including a credit agreement governing the continuation and conversion of the Loans, the "**Exit Term Loan Facility Credit Agreement**") and related documentation to the extent that such documentation is substantially consistent with the Exit Term Loan Facility Term Sheet and contains substantially the terms set forth in the Exit Term Loan Facility Term Sheet and is otherwise in form and substance reasonably satisfactory to the Required Lenders; and

(ii) subject to Section 2.17(a), the Administrative Agent, the Lenders and the Loan Parties agree that, upon the effectiveness of the Exit Term Loan Facility Credit Agreement:

(A) the Borrower, in its capacity as reorganized Borrower, and each Guarantor, in its capacity as a reorganized Guarantor, shall assume all the Obligations hereunder with respect to the Loans and all other obligations in respect thereof in the manner set forth in the Exit Term Loan Facility Credit Agreement and related loan documents;

(B) the Loans hereunder shall be continued or converted, as the case may be, as loans under the Exit Term Loan Facility Credit Agreement with the applicable Redemption Premium;

(C) each Lender hereunder shall be a lender under the Exit Term Loan Facility Credit Agreement in respect of its Loans continued or converted as the case may be;

(D) each Lender hereunder agrees to provide its proportionate share of New Money Exit Term Loans B (as defined and set forth in the Exit Term Loan Facility Term Sheet);

(E) the Administrative Agent hereunder shall be the administrative agent and collateral agent under the Exit Term Loan Facility Credit Agreement (provided that the Exit Term Loan Facility Credit Agreement and related documentation is in form and substance reasonably satisfactory to the Administrative Agent); and

(F) with respect to the Loans, this Agreement and all Obligations hereunder with respect thereto shall terminate and be superseded and replaced by the Exit Term Loan Facility Credit Agreement.

(c) Upon the occurrence of the Exit Conversion, the Agent shall transfer any amounts remaining in the DIP Funding Account to the Borrower.

ARTICLE 3
TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY

Section 3.01. *Taxes.* (a) Except as required by law, any and all payments by the Borrower or any Guarantor to or for the account of any Agent or any Lender under any Loan Document shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges, and all liabilities (including additions to tax, penalties and interest) with respect thereto, excluding, in the case of each Agent and each Lender, (i) taxes imposed on or measured by its net income (including branch profits) imposed by reason of any present or former connection between it and any jurisdiction other than by executing or entering into any Loan Document, receiving payments thereunder or having been a party to, performed its obligations under, or enforced, any Loan Documents, (ii) franchise (and similar) taxes imposed on it in lieu of net income taxes imposed by reason of any present or former connection between it and any jurisdiction other than by executing or entering into any Loan Document, receiving payments thereunder or having been a party to, performed its obligations under, or enforced, any Loan Documents, (iii) any U.S. federal withholding taxes imposed in respect of an Assignee (pursuant to an assignment under Section 10.07) on the date it becomes an Assignee to the extent such tax is in excess of the tax that would have been applicable had such assigning Lender not assigned its interest arising under any Loan Document (unless such assignment is at the express written request of the Borrower) and (iv) any U.S. federal withholding taxes imposed as a result of the failure of any Agent or Lender to comply with either the provisions of Sections 3.01(b) or (c) (in the case of any Foreign Lender, as defined below) or the provisions of Section 3.01(d) (in the case of any U.S. Lender, as defined below) and (v) any U.S. federal withholding taxes that have been imposed under FATCA (all such non-excluded taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges and all liabilities with respect thereto being hereinafter referred to as "**Taxes**"). If the Borrower or a Guarantor is required to deduct any Taxes or Other Taxes (as defined in Section 3.01(f) below) from or in respect of any sum payable under any Loan Document to any Agent or any Lender, (i) the sum payable shall be increased as necessary so that after making all required deductions (including

deductions applicable to additional sums payable under this Section 3.01(a)), each of such Agent and such Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower or Guarantor shall make such deductions, (iii) the Borrower or Guarantor shall pay the full amount deducted to the relevant taxing authority in accordance with applicable law, and (iv) within thirty (30) days after the date of such payment (or, if receipts or evidence are not available within thirty (30) days, as soon as practicable thereafter), the Borrower or Guarantor shall furnish to such Agent or Lender (as the case may be) the original or a facsimile copy of a receipt evidencing payment thereof to the extent such a receipt has been made available to the Borrower or Guarantor or shall furnish to such Agent or Lender (as the case may be) other evidence that is reasonably satisfactory to such Agent or Lender to prove payment thereof. If the Borrower or Guarantor fails to pay any Taxes or Other Taxes when due to the appropriate taxing authority or fails to remit to any Agent or any Lender the required receipts or other required documentary evidence that has been made available to the Borrower or Guarantor, the Borrower or Guarantor shall indemnify such Agent and such Lender for any incremental Taxes or Other Taxes (including Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) that are paid or may become payable by such Agent or such Lender arising out of such failure.

(b) To the extent it is legally able to do so, each Agent or Lender (including an Assignee to which a Lender assigns its interest in accordance with Section 10.07) that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code (each a "**Foreign Lender**") agrees to complete and deliver to the Borrower and the Administrative Agent prior to the Closing Date (or on or prior to the date it becomes a party to this Agreement), an accurate and complete signed copy of whichever of the following is applicable: (i) Internal Revenue Service Form W-8BEN or Internal Revenue Service Form W-8BEN-E certifying that it is entitled to benefits under an income tax treaty to which the United States is a party that reduces the rate of U.S. federal withholding tax on payments of interest to zero; (ii) Internal Revenue Service Form W-8ECI certifying that the income receivable pursuant to any Loan Document is effectively connected with the conduct of a trade or business in the United States; or (iii) if the Foreign Lender is not (A) a bank described in Section 881(c)(3)(A) of the Code, (B) a 10-percent shareholder described in Section 871(h)(3)(B) of the Code, or (C) a controlled foreign corporation related to the Borrower within the meaning of Section 864(d) of the Code, a certificate to that effect in substantially the form attached hereto as Exhibit I and an Internal Revenue Service Form W-8BEN or Internal Revenue Service Form W-8BEN-E, certifying that the Foreign Lender is not a United States person.

(c) Thereafter and from time to time, each such Foreign Lender shall, to the extent it is legally entitled to do so, (i) promptly submit to the Borrower and the Administrative Agent such additional duly completed and signed copies of one or more of such forms or certificates (or such successor forms or certificates as shall be adopted from time to time by the relevant United States taxing authorities) as may then be available to secure an exemption from or reduction in the rate of U.S. federal withholding tax, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made (A) on or before the date that any such form, certificate or other evidence expires or becomes obsolete, (B) after the occurrence of a change in the Foreign Lender's circumstances requiring a change in the most recent form, certificate or evidence previously delivered by it to the Borrower and the Administrative Agent, and (C) from time to time thereafter if reasonably requested by the Borrower or the Administrative Agent and (ii) promptly notify the

Borrower and the Administrative Agent of any change in the Foreign Lender's circumstances which would modify or render invalid any claimed exemption or reduction. Without limiting or duplicating the foregoing, if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding taxes imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA, to the extent it is legally entitled to do so, such Lender shall promptly deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation as shall be prescribed by applicable law, if any, or as otherwise reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to (x) comply with their obligations under FATCA, (y) determine that such Lender has complied with such Lender's obligations under FATCA or (z) determine the amount to deduct and withhold from such payment.

Each Foreign Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(d) Each Agent or Lender (including an Assignee to which a Lender assigns its interest in accordance with Section 10.07) that is a "United States person" (within the meaning of Section 7701(a)(30) of the Code) (each a "**U.S. Lender**") agrees to complete and deliver to the Borrower and the Administrative Agent an accurate and complete signed Internal Revenue Service Form W-9 or successor form certifying that such Agent or Lender is not subject to United States backup withholding tax (i) on or prior to the Closing Date (or on or prior to the date it becomes a party to this Agreement), (ii) on or before the date that such form expires or becomes obsolete, (iii) after the occurrence of a change in the Agent's or Lender's circumstances requiring a change in the most recent form previously delivered by it to the Borrower and the Administrative Agent, and (iv) from time to time thereafter if reasonably requested by the Borrower or the Administrative Agent.

Each U.S. Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(e) Notwithstanding anything else herein to the contrary, if a Foreign Lender is subject to U.S. federal withholding tax at a rate in excess of zero percent pursuant to a Law in effect at the time such Lender or such Agent first becomes a party to this Agreement, such U.S. federal withholding tax (including additions to tax, penalties and interest imposed with respect to such U.S. federal withholding tax) shall be considered excluded from Taxes except to the extent such Foreign Lender is an Assignee and such Foreign Lender's assignor was entitled to additional amounts or indemnity payments prior to the assignment. Further, the Borrower shall not be required pursuant to this Section 3.01 to pay any additional amount to, or to indemnify, any Lender or Agent, as the case may be, to the extent that such Lender or such Agent becomes subject to Taxes subsequent to the Closing Date (or, if later, the date such Lender or Agent becomes a party to this Agreement) solely as a result of a change in the place of organization or place of doing business of such Lender or Agent or a change in the Lending Office of such Lender (other than at the written request of the Borrower to change such Lending Office).

(f) The Borrower agrees to pay any and all present or future stamp, court or documentary taxes and any other excise, property, intangible, filings or mortgage recording taxes or charges or similar levies which arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or (to the extent required by law) registration of, receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document (including additions to tax, penalties and interest related thereto) excluding, in each case, such amounts that result from an Assignment and Assumption, grant of a participation, transfer or assignment to or designation of a new applicable Lending Office or other office for receiving payments under any Loan Document, except to the extent that any such change is requested or required in writing by the Borrower (all such non-excluded taxes described in this Section 3.01(f) being hereinafter referred to as "**Other Taxes**").

(g) If any Taxes or Other Taxes are directly asserted against any Agent or Lender, such Agent or Lender may pay such Taxes or Other Taxes and the Borrower will promptly pay such additional amounts so that each of such Agent and such Lender receives an amount equal to the sum it would have received had no such Taxes or Other Taxes been asserted, as well as an amount for any reasonable documented out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted. Payments under this Section 3.01(g) shall be made within thirty five (35) days after the date Borrower receives written demand for payment from such Agent or Lender.

(h) A Participant shall not be entitled to receive any greater payment under Section 3.01 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant.

(i) If any Lender or Agent determines, in its sole discretion exercised in good faith, that it is entitled to receive a refund in respect of any Taxes or Other Taxes as to which indemnification or additional amounts have been paid to it by the Borrower pursuant to this Section 3.01, it shall use its reasonable best efforts to receive such refund and upon receipt of any such refund shall promptly remit such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 3.01 with respect to the Taxes or Other Taxes giving rise to such refund *plus* any interest included in such refund by the relevant taxing authority attributable thereto) to the Borrower, net of all reasonable out of pocket expenses (including any taxes imposed on such refund or interest) of the Lender or Agent, as the case may be, and without interest (other than any interest paid by the relevant taxing authority with respect to such refund); *provided* that the Borrower, upon the request of the Lender or Agent, as the case may be, agrees promptly to return such refund (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such party in the event such party is required to repay such refund to the relevant taxing authority. Such Lender or Agent, as the case may be, shall provide the Borrower with a copy of any notice of assessment or other evidence of the requirement to repay such refund received from the relevant taxing authority (*provided* that such Lender or Agent may delete any information therein that such Lender or Agent deems confidential in its reasonable discretion). Nothing herein contained shall interfere with the right of a Lender or Agent to arrange its tax affairs in whatever manner it thinks fit nor oblige any Lender or Agent to claim any tax refund or make available its tax returns or any other information it reasonably deems confidential or require any Lender to do anything that would prejudice its ability to benefit from any other refunds, credits, reliefs, remission or repayments to which it may be entitled.

(j) Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 3.01(a) or (g) with respect to such Lender it will, if requested by the Borrower, use commercially reasonable efforts (subject to legal and regulatory restrictions) to mitigate the effect of any such event, including by designating another Lending Office for any Loan affected by such event and by completing and delivering or filing any tax related forms which would reduce or eliminate any amount of Taxes or Other Taxes required to be deducted or withheld or paid by the Borrower; *provided* that such efforts are made at the Borrower's expense and on terms that, in the reasonable judgment of such Lender, cause such Lender and its Lending Office(s) to suffer no material economic, legal or regulatory disadvantage, and *provided further* that nothing in this Section 3.01(j) shall affect or postpone any of the Obligations of the Borrower or the rights of such Lender pursuant to Section 3.01(a) or (f).

Section 3.02. *Illegality.* If any Lender reasonably determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund any Eurodollar Rate Loans, or to determine or charge interest rates based upon the applicable Eurodollar Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue any affected Eurodollar Rate Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower may revoke any pending request for a Credit Extension of, conversion to or continuation of Eurodollar Rate Loans and shall upon demand from such Lender (with a copy to the Administrative Agent), prepay all then outstanding affected Eurodollar Rate Loans of such Lender to the Borrower, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or promptly, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid and all amounts due, if any. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

Section 3.03. *[Reserved.]*

Section 3.04. *Increased Cost and Reduced Return; Capital Adequacy.* (a) If any Lender reasonably determines that as a result of the introduction of or any change in or in the interpretation of any Law, in each case after the Closing Date, there shall be any increase in the cost to such Lender of agreeing to make or making, funding or maintaining Loans, or a reduction in the amount of any sum received or receivable by such Lender hereunder (excluding for purposes of this Section 3.04(a) any such increased costs or reduction in amount resulting from (i) Taxes or Other Taxes covered by Section 3.01, or which would have been so covered but for an exclusion included therein and (ii) the imposition of, or any change in the rate of, any taxes payable by such Lender with respect to the Lender's gross or net income, profits or revenue (including value-added or similar taxes) then from time to time within five (5) days after demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent given in accordance with Section 3.06), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction. At any time when any Eurodollar Rate Loan is affected by the circumstances described in this Section 3.04(a), the Borrower may cancel such Borrowing by giving the Administrative Agent telephonic

notice (confirmed promptly in writing) thereof on the same date that the Borrower receives any such demand from such Lender.

(b) If any Lender determines that the introduction of any Law regarding capital adequacy or liquidity or any change therein or in the interpretation thereof, in each case after the Closing Date, or compliance by such Lender (or its Lending Office) therewith, has the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of such Lender's obligations hereunder (taking into consideration its policies with respect to capital adequacy or liquidity), then from time to time upon demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent given in accordance with Section 3.06), the Borrower shall promptly pay to such Lender such additional amounts as will compensate such Lender for such reduction relating to the Loans to the Borrower after receipt of such demand.

(c) [*Reserved*].

(d) If any Lender requests compensation under this Section 3.04, then such Lender will, if requested by the Borrower, use commercially reasonable efforts to designate another Lending Office for any Loan affected by such event; *provided* that such efforts are made on terms that, in the reasonable judgment of such Lender, cause such Lender and its Lending Office(s) to suffer no material economic, legal or regulatory disadvantage; and *provided further* that nothing in this Section 3.04(d) shall affect or postpone any of the Obligations of the Borrower or the rights of such Lender pursuant to this Section 3.04.

(e) Notwithstanding anything in this Agreement to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change after the Closing Date in a requirement or interpretation of law or governmental rule, regulation or order, regardless of the date enacted, adopted, issued or implemented for all purposes under or in connection with this Agreement (including this Section 3.04).

Section 3.05. *[Reserved].*

Section 3.06. *Matters Applicable to All Requests for Compensation.* (a) Any Agent or Lender claiming compensation under this Article 3 shall deliver a certificate to the Borrower setting forth the additional amount or amounts to be paid to it hereunder which shall be conclusive in the absence of manifest error. In determining such amount, such Agent or Lender may use any reasonable averaging and attribution methods.

(b) With respect to any Lender's claim for compensation under Section 3.01or 3.04, the Borrower shall not be required to compensate such Lender for any amount incurred more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event that gives rise to such claim; *provided* that, if the circumstance giving rise to such claim is retroactive, then such 180-day period shall be extended to include the period of retroactive effect

thereof; and *provided*, further, for the avoidance of doubt, that, in the case of (i) an indemnification due to a failure of the Borrower or Guarantor pursuant to the last sentence of Section 3.01(a), or (ii) a reimbursement pursuant to Section 3.01(g) or (iii) a repayment of a refund pursuant to 3.01(i), such 180-day period shall commence on the earlier of the date on which the Lender (A) is notified by the relevant taxing authority or (B) makes a payment or files a tax return with respect to the amount claimed.

(c) [*Reserved*].

(d) Notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act, and all requests, rules, guidelines and directives promulgated thereunder, shall be deemed to have been adopted after the Closing Date, regardless of the date enacted or adopted.

(e) Notwithstanding anything in this Agreement to the contrary, with respect to any Lender's claim for compensation under Section 3.01 or 3.04, the Borrower shall only be required to compensate such Lender for any amount to the extent the applicable Lender is generally requiring reimbursement therefor from similarly situated borrowers under comparable syndicated credit facilities.

Section 3.07. *Replacement of Lenders under Certain Circumstances.* (a) If at any time (i) any Lender requests reimbursement for amounts owing pursuant to Section 3.01 or Section 3.04 as a result of any condition described in such Sections or (ii) any Lender becomes a Defaulting Lender or (iii) any Lender becomes a Non-Consenting Lender, then the Borrower may, on ten (10) Business Days' prior written notice to the Administrative Agent and such Lender, replace such Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to and in accordance with Section 10.07(b) (with the assignment fee to be paid by the Borrower, in the case of clauses (i) and (iii) only) all of its rights and obligations under this Agreement (or, with respect to clause (iii) above, all of its rights and obligations with respect to the Loans or Commitments that is the subject of the related consent, waiver or amendment) to one or more Eligible Assignees; *provided* that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender or other such Person; and *provided further* that in the case of any such assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable Eligible Assignees shall have agreed to the applicable departure, waiver or amendment of the Loan Documents and *provided further* that such assignment does not conflict with applicable Laws. No such replacement shall be deemed to be a waiver of any rights that the Borrower, the Administrative Agent or any other Lender shall have against the replaced Lender.

(b) Any Lender being replaced pursuant to Section 3.07(a) above shall (i) execute and deliver an Assignment and Assumption with respect to such Lender's Commitment and outstanding Loans, and (ii) deliver any Notes evidencing such Loans to the Borrower or Administrative Agent (or a lost or destroyed note indemnity in lieu thereof). Pursuant to such Assignment and Assumption, (A) the assignee Lender shall acquire all or a portion, as the case may be, of the assigning Lender's Commitment and outstanding Loans, (B) the assignee Lender shall purchase, at par, all Loans, accrued interest, accrued fees and other amounts owing to the assigning Lender as of the date of replacement and (C) upon such payment (regardless of whether such replaced Lender has executed an Assignment and Assumption or delivered its Notes to the Borrower or the

Administrative Agent), the assignee Lender shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender.

(c) [*Reserved*].

(d) In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of all affected Lenders in accordance with the terms of Section 10.01 or all the Lenders with respect to a certain Class of the Loans and (iii) the Required Lenders have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a "**Non-Consenting Lender**".

Section 3.08. *Survival.* All of the Borrower's obligations under this Article 3 shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

ARTICLE 4
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

Section 4.01. *Conditions to Closing Date and Availability of the Initial Credit Extension.* The obligation of each Lender to make the initial Credit Extension under the Facility on the Closing Date is subject to satisfaction of the following conditions precedent (unless waived in accordance with Section 10.01):

(a) *Credit Agreement and Loan Documents.* The Administrative Agent (or its counsel) shall have received from each Loan Party (i) a counterpart signed by each such Loan Party (or written evidence satisfactory to the Administrative Agent (which may include a copy transmitted by facsimile or other electronic method) that such party has signed a counterpart) of (A) this Agreement, (B) the Security Agreement, (C) the Guaranty, and (D) any Note requested by a Lender at least three Business Days prior to the Closing Date and (ii) a Request for Credit Extension as required by Section 2.02;

(b) *[Reserved].*

(c) *Financial Statements and Pro Forma Financial Statements.* The Administrative Agent shall have received (a) an audited consolidated balance sheet and audited consolidated statements of income, stockholders' equity and cash flows of Holdings and its Subsidiaries as of and for the fiscal year ended on or about December 31, 2018 and (b) unaudited consolidated balance sheets and related statements of income and cash flows of Holdings and its Subsidiaries for each fiscal quarter ending March 31, 2019, June 30, 2019 and September 30, 2019.

(d) *Closing Certificates; Certified Charters; Good Standing Certificates.* The Administrative Agent shall have received (i) a certificate of each Loan Party, dated the Closing Date and executed by a secretary, assistant secretary or other senior officer (as the case may be) thereof, which shall (A) certify that attached thereto is a true and complete copy of the resolutions or written consents of its shareholders, board of directors, board of managers, members or other governing body

authorizing the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions or written consents have not been modified, rescinded or amended and are in full force and effect, (B) identify by name and title and bear the signatures of the officers, managers, directors or authorized signatories of such Loan Party authorized to sign the Loan Documents to which it is a party on the Closing Date and (C) certify (x) that attached thereto is a true and complete copy of the certificate or articles of incorporation or organization (or memorandum of association or other equivalent thereof) of such Loan Party certified by the relevant authority of the jurisdiction of organization of such Loan Party and a true and correct copy of its by-laws or operating, management, partnership or similar agreement and (y) that such documents or agreements have not been amended (except as otherwise attached to such certificate and certified therein as being the only amendments thereto as of such date) and (ii) a good standing (or equivalent) certificate as of a recent date for such Loan Party from its jurisdiction of organization.

(e) *Fees*. Prior to or substantially concurrently with the funding of the initial Credit Extension hereunder, the Administrative Agent shall have received (i) all fees required to be paid by the Borrower on the Closing Date pursuant to the Fee Letter and Section 2.09 hereto and (ii) all expenses required to be paid by the Borrower for which invoices have been presented at least three Business Days prior to the Closing Date or such later date to which the Borrower may agree (including the reasonable fees and expenses of legal counsel), in each case on or before the Closing Date, which amounts may be offset against the proceeds of the Loans.

(f) *Information*. The Administrative Agent and the Lenders shall have received, at least three Business Days prior to the Closing Date, all material documentation and other material information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act, that has been reasonably requested by the Administrative Agent or the Lenders at least ten days in advance of the Closing Date.

(g) *[Reserved]*.

(h) *Filings Registrations and Recordings*. Subject to the final paragraph of this Section 4.01, each document (including any UCC (or similar) financing statement) required by any Collateral Document or under law to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral required to be delivered pursuant to such Collateral Document, prior and superior in right to any other Person (other than with respect to Liens permitted under Section 7.01), shall be in proper form for filing, registration or recordation.

(i) *Budget*. The Administrative Agent shall have received the Budget.

(j) *Commencement of Chapter 11 Cases*. The Chapter 11 Cases shall have been commenced and all of the pleadings related to the "first day orders" shall be in form and substance reasonably satisfactory to the Required Lenders.

(k) *Interim DIP Order*. The Interim DIP Order, substantially in the form of Exhibit H hereto, shall have been entered by the Bankruptcy Court within five (5) days after the Petition Date and

the Administrative Agent shall have received a true and complete copy of such order, and such order shall be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated absent prior written consent of the Administrative Agent and the Required Lenders.

(l) *Cash Management Orders.* All orders entered by the Bankruptcy Court pertaining to the Loan Parties' cash management ("**Cash Management Orders**") and all motions and other documents filed, and submitted to, the Bankruptcy Court in connection therewith shall be in form and substance reasonably satisfactory to the Required Lenders (and with respect to any provisions that adversely affect the rights or duties of the Administrative Agent, the Administrative Agent).

(m) *No Appointment of Trustee.* No trustee, receiver or examiner with expanded powers shall have been appointed in any of the Chapter 11 Cases, and no motion shall be pending in the Bankruptcy Court seeking any such relief or seeking any other relief to exercise control over any Collateral.

(n) *Adequate Protection.* The Prepetition Agent and the Prepetition Lenders shall have each received adequate protection in respect of the Liens securing their respective Prepetition Obligations pursuant to the Interim DIP Order.

(o) *Searches.* The Administrative Agent shall have received UCC, tax and judgment lien searches and other appropriate evidence in form and substance reasonably satisfactory to the Administrative Agent.

(p) *DIP Financing Protections.* The Administrative Agent, for its benefit and the benefit of each Lender, shall have been granted a perfected, valid, enforceable and non-avoidable Lien on, and security interest in, the Collateral, in addition to the DIP Superpriority Claim, on the terms and conditions set forth herein, in the Interim DIP Order and in the other Loan Documents.

For purposes of determining whether the conditions specified in this Section 4.01 have been satisfied on the Closing Date, by funding the Loans hereunder, the Administrative Agent and each Lender that has executed this Agreement (or an Assignment and Assumption on or before the Closing Date) shall be deemed to have consented to, approved or accepted, or to be satisfied with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to the Administrative Agent or such Lender, as the case may be.

Section 4.02. *Conditions to Each Credit Extension and each Withdrawal Date.* The obligation of each Lender to honor any Request for Credit Extension and the Borrower's right to make a Withdrawal on each Withdrawal Date is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower and each other Loan Party contained in Article 5 of this Agreement or any other Loan Document shall be true and correct in all material respects on and as of the date of such Credit Extension or Withdrawal Date, as applicable; *provided* that, to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; *provided, further* that, any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(b) No Default or Event of Default shall exist, or would result from such proposed Credit Extension or Withdrawal or from the application of the proceeds therefrom.

(c) The Administrative Agent shall have received a Request for Credit Extension or a Notice of Withdrawal, as applicable, in accordance with the requirements hereof.

(d) The Loan Parties shall be in compliance with each Bankruptcy Court DIP Order and any Cash Management Orders.

(e) (i) The Administrative Agent and advisors to the Ad Hoc Committee shall have received all periodic updates required under the Budget and any Variance Reports, and (ii) the Loan Parties shall be in compliance with the Budget (subject to Permitted Variance).

(f) Since September 30, 2019, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

(g) With respect to the Final Loans and any Withdrawal Date that is on or after the date which is 40 days following the Petition Date, the Final DIP Order shall have been signed and entered by the Bankruptcy Court, and (i) the Administrative Agent shall have received a true and complete copy of such order, (ii) such order shall be in form and substance satisfactory to the Required Lenders (and with respect to any provisions that materially adversely affect the rights or duties of the Administrative Agent, the Administrative Agent) in their sole discretion and (iii) such order shall be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated in a manner inconsistent with the terms of this Agreement absent the prior written consent of the Required Lenders (and with respect to amendments, modifications or supplements that materially adversely affect the rights or duties of the Administrative Agent, the Administrative Agent).

Each Request for Credit Extension and each Notice of Withdrawal submitted by the Borrower shall be deemed to be a representation and warranty that the applicable conditions specified in Section 4.02 have been satisfied on and as of the date of the applicable Credit Extension or Withdrawal Date, as applicable.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

Each of Holdings and the Borrower represents and warrants to the Administrative Agent and the Lenders on the Closing Date, on the date of each Credit Extension and each Withdrawal Date that:

Section 5.01. *Existence, Qualification and Power; Compliance with Laws.* Each Loan Party and each of its Subsidiaries (a)(i) is a Person duly organized or formed, validly existing and (ii) in good standing under the Laws of the jurisdiction of its incorporation or organization (to the extent such concept exists in such jurisdiction), (b) subject to the entry and terms of the Bankruptcy Court DIP Order and other orders of the Bankruptcy Court, as applicable, has all corporate or other organizational power and authority to (i) own its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and in good standing (to the extent such concept exists) under the Laws of each

jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification; (d) except as set forth on Schedule 5.01(d) and unless stayed by the Chapter 11 Cases, is in compliance with all applicable Laws, writs, injunctions and orders and (e) unless stayed by the Chapter 11 Cases, has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted; except in each case referred to in this Section 5.01 (other than clause (a)(i) with respect to the Borrower and clause (b) with respect to the Loan Parties) where the failure to do so would not reasonably be expected to have a Material Adverse Effect. Neither the Borrower nor any other Loan Party is an EEA Financial Institution.

Section 5.02. *Authorization; No Contravention.* Subject to the entry and terms of the Bankruptcy Court DIP Order:

(a) The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party have been duly authorized by all necessary corporate or other organizational action.

(b) Neither the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party nor the consummation of the Transactions will (i) contravene the terms of any of such Person's Organization Documents, (ii) result in any breach or contravention of, or the creation of any Lien upon any of the property or assets of such Person or any of the Subsidiaries (other than as permitted by Section 7.01) under (x) any post-petition material Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject or (iii) violate any applicable material Law; except with respect to any breach, contravention or violation (but not creation of Liens) referred to in clauses (ii) and (iii), to the extent that such breach, contravention or violation would not reasonably be expected to have a Material Adverse Effect.

Section 5.03. *Governmental Authorization; Third-Party Consent.* Other than the Bankruptcy Court DIP Order, no material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other third party is necessary or required in connection with the execution, delivery or performance by any Loan Party of this Agreement or any other Loan Document, except for (a) filings necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties, (b) the approvals, consents, exemptions, authorizations, actions, notices and filings that have been duly obtained, taken, given or made and are in full force and effect and (c) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make would not reasonably be expected to have a Material Adverse Effect.

Section 5.04. *Binding Effect.* This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party thereto. Subject to the entry and the terms of the Bankruptcy Court DIP Orders, this Agreement and each other Loan Document constitutes a legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party that is party thereto in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity and principles of good faith and fair dealing.

Section 5.05. *Financial Statements; No Material Adverse Effect.* (i) The Annual Financial Statements and the Quarterly Financial Statements fairly present in all material respects the financial condition of Holdings and its Subsidiaries, on a consolidated basis as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, (A) except as otherwise expressly noted therein and (B) subject, in the case of the Quarterly Financial Statements, to changes resulting from audit, normal year end audit adjustments and the absence of footnotes.

(a) Since September 30, 2019, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

Section 5.06. *Litigation.* Except as set forth on Schedule 5.06 and the Chapter 11 Cases, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, overtly threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against Holdings, the Borrower or any of the Subsidiaries that would reasonably be expected to have a Material Adverse Effect.

Section 5.07. *Labor Matters.* Except as, in the aggregate, would not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against any of Holdings, the Borrower or its Subsidiaries pending or, to the knowledge of the Borrower, threatened; (b) hours worked by and payment made based on hours worked to employees of each of Holdings, the Borrower or the Subsidiaries have not been in violation of the Fair Labor Standards Act to the extent applicable or any other applicable Laws dealing with wage and hour matters; (c) except as set forth on Schedule 5.07, all payments due from any of Holdings, the Borrower or the Subsidiaries on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant party; and (d) except as set forth on Schedule 5.07, as of the Closing Date there are no collective bargaining agreements covering the employees of Holdings, the Borrower or any of the Subsidiaries.

Section 5.08. *Ownership of Property; Liens.* Each Loan Party and each of its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, or easements or other limited property interests in, all real property necessary in the ordinary conduct of its business, free and clear of all Liens except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and Liens permitted by Section 7.01 and except where the failure to have such title or other interest would not reasonably be expected to have a Material Adverse Effect.

Section 5.09. *Environmental Matters.* (a) Except as could not reasonably be expected to have a Material Adverse Effect, (i) each Loan Party and each of its Subsidiaries is in compliance with all Environmental Laws in all jurisdictions in which each Loan Party and each of its Subsidiaries, as the case may be, is currently doing business (including having obtained all Environmental Permits) unless stayed by the Chapter 11 Cases and (ii) none of the Loan Parties or any of their respective Subsidiaries has become subject to any pending, or to the knowledge of the Borrower, threatened Environmental Claim or any other Environmental Liability.

(b) None of the Loan Parties or any of their respective Subsidiaries has treated, stored, transported or disposed of Hazardous Materials at or from any currently or formerly operated real

estate or facility relating to its business in a manner that would reasonably be expected to have a Material Adverse Effect.

Section 5.10. *Taxes.* Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, Holdings, the Borrower and the Subsidiaries have timely filed all federal and state and foreign tax returns and reports required to be filed, and have timely paid all federal and state and other taxes, assessments, fees and other governmental charges (including satisfying its withholding tax obligations) levied or imposed on their properties, income or assets or otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP or the payment of which are stayed by the Chapter 11 Cases. There is no proposed tax assessment against the Borrower or any Subsidiary that would, if made, have a Material Adverse Effect.

Section 5.11. *ERISA Compliance.* (a) Except as set forth in Schedule 5.11(a) or as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal or state Laws.

(b) (i) No ERISA Event has occurred or is reasonably likely to occur, except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.12. *Subsidiaries.* As of the Closing Date, neither Holdings nor any other Loan Party has any Subsidiaries other than those specifically disclosed in Schedule 5.12, and all of the outstanding Equity Interests in the Borrower and the Subsidiaries have been validly issued and are fully paid and nonassessable, and all Equity Interests owned by Holdings or any other Loan Party are owned free and clear of all security interests of any Person except (a) those created under the Collateral Documents, the Prepetition Loan Documents and (b) any nonconsensual Lien that is permitted under Section 7.01. As of the Closing Date, Schedule 5.12, (i) sets forth the name and jurisdiction of each Subsidiary, (ii) sets forth the ownership interest of the Borrower and any other Subsidiary in each Subsidiary, including the percentage of such ownership and (iii) identifies each Subsidiary whose Equity Interests are required to be pledged on the Closing Date.

Section 5.13. *Margin Regulations; Investment Company Act.* (a) No Loan Party is engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying margin stock, and no proceeds of any Credit Extensions will be used for any purpose that violates Regulation U.

(b) Neither the Borrower nor any Guarantor is, or is required to register as, an "investment company" under the Investment Company Act of 1940.

Section 5.14. *Disclosure.* As of the Closing Date, none of the factual information and data heretofore or contemporaneously furnished in writing by or on behalf of any Loan Party to any Agent or any Lender in connection with the Transactions and that was included in the Information Memorandum or otherwise prepared by or on behalf of the foregoing or the Sponsors or their respective representatives and made available to any Lender or the Administrative Agent in connection with the Transactions on or before the Closing Date (as modified or supplemented by

other information so furnished), when taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make such factual information and data (taken as a whole), in the light of the circumstances under which it was delivered, not materially misleading; it being understood that for purposes of this Section 5.14, such factual information and data shall not include projections and pro forma financial information or information of a general economic or general industry nature.

Section 5.15. *Intellectual Property; Licenses, Etc.* The Borrower and the Subsidiaries have good and marketable title to, or a valid license or right to use, all patents, patent rights, trademarks, servicemarks, trade names, copyrights, software, know-how database rights, rights of privacy and publicity and other intellectual property rights (collectively, "**IP Rights**") that are necessary for the operation of their respective businesses as currently conducted and as proposed to be conducted, except where the failure to have any such rights, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the operation of the respective businesses of the Borrower or any of the Subsidiaries as currently conducted does not infringe upon, misuse, misappropriate or violate any IP Rights held by any Person except for such infringements, misuses, misappropriations or violations individually or in the aggregate, that would not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any IP Rights is pending or, to the knowledge of the Borrower, threatened against any Loan Party or Subsidiary, that, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

Section 5.16. *USA PATRIOT Act, Etc.* To the extent applicable, each of Holdings, the Borrower and the Subsidiaries is in compliance in all material respects with (i) sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Controls, the U.S. Department of State, the European Union, the United Nations and Switzerland ("**Sanctions**") and any other enabling legislation or executive order relating thereto and (ii) the USA PATRIOT Act. No part of the proceeds of the Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, or to any other party, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, or in violation of any Sanctions.

Section 5.17. *Purpose of Loans.* The proceeds of the Loans will be used in accordance in all material respects with the terms of the Bankruptcy Court DIP Order, the Loan Documents and the Budget (subject to the Permitted Variance), including, without limitation: (i) to pay amounts due to Lenders and the Administrative Agent hereunder and professional fees and expenses (including legal, financial advisor, appraisal and valuation-related fees and expenses) incurred by Lenders and the Administrative Agent, including those incurred in connection with the preparation, negotiation, documentation and court approval of the transactions contemplated hereby and (ii) to provide working capital, and for other general corporate purposes of the Loan Parties, and to pay administration costs of the Chapter 11 Cases and claims or amounts approved by the Bankruptcy Court.

Section 5.18. *Collateral Documents.* The provisions of the Interim DIP Order and Final DIP Order, as applicable, are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable) security interest (subject, in the case of any

Collateral, to Liens permitted by Section 7.01) on all right, title and interest of the respective Loan Parties in the Collateral described therein (with such priority as provided for in the Bankruptcy Court DIP Order). Except for filings contemplated hereby and by the Interim DIP Order and Final DIP Order, as applicable, no filing or other action will be necessary to perfect the Liens on any Collateral under the Laws of the United States of America.

Section 5.19. *Budget and Financial Plan.* The Budget was prepared in good faith based on assumptions believed by the Loan Parties to be reasonable at the time made and upon information believed by the management of the Borrower to have been accurate based upon the information available to the management of the Borrower at the time such Budget was furnished. On and after the delivery of any Variance Report in accordance with this Agreement, such Variance Report shall be complete and correct and fairly represent in all respects the results of operations of Holdings and its Subsidiaries for the period covered thereby and in the detail to be covered thereby.

Section 5.20. *Prepetition Obligations.* Except for the Prepetition Obligations, and as disclosed on Schedule 7.03(b), the Loan Parties do not have any other material Indebtedness for borrowed money outstanding on the date hereof.

ARTICLE 6
AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any principal of any Loan or any other Obligation hereunder that is accrued and payable shall remain unpaid or unsatisfied, each of Holdings and the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02 and 6.03) cause each of the Subsidiaries to:

Section 6.01. *Financial Statements, Budget.* Deliver to the Administrative Agent for prompt further distribution to each Lender and shall take the following actions:

(a) as soon as available, but in any event within ninety (90) days after the end of each fiscal year of Holdings commencing with the fiscal year ending December 31, 2019, a consolidated balance sheet of Holdings and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of comprehensive income or operations, changes in stockholders' equity and cash flows of Holdings for such fiscal year, setting forth in each case in comparative form the amounts for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, and unaudited.

(b) as soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of Holdings commencing with the fiscal quarter ending March 31, 2020, a consolidated balance sheet of Holdings and its Subsidiaries as at the end of such fiscal quarter, and the related (i) consolidated statements of comprehensive income or operations for such fiscal quarter and for the portion of the fiscal year then ended and (ii) consolidated statement of cash flows for the portion of the fiscal year then ended, setting forth in each case in comparative form the amounts for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of Holdings as fairly presenting in all material respects the financial condition, results of operations and cash flows of Holdings and its Subsidiaries in

accordance with GAAP, subject only to changes resulting from audit, normal year-end adjustments and the absence of footnotes, together with a management's discussion and analysis describing the results of operations;

(c) on each Budget Testing Date (prior to 11:59 p.m.), the Loan Parties shall deliver to the Administrative Agent (x) a report (each, a "**Variance Report**") describing in reasonable detail the Borrower's aggregate cash receipts and aggregate cash disbursements during the relevant Budget Testing Period as compared to the projected, aggregate cash receipts and disbursements provided by the then-current Budget for the same period and (y) an analysis, certified by a Responsible Officer of Holdings, demonstrating that a Budget Event shall not have occurred for such Budget Testing Period.

(d) to the extent requested by the Administrative Agent, weekly, at a time mutually agreed with the Administrative Agent that is promptly after the delivery of the information required pursuant to clause (a), (b) and (c) above, participate in a conference call for Lenders to discuss the financial condition and results of operations of Holdings, the Borrower and its Subsidiaries and the Budget and Variance Report.

Notwithstanding the foregoing, the obligations in paragraph (a) of this Section 6.01 may be satisfied with respect to financial information of Holdings and its Subsidiaries by furnishing Holdings' or a direct or indirect parent's Form 10-K or 10-Q, as applicable, filed with the SEC; *provided* that, to the extent such information is in lieu of information required to be provided under Section 6.01(a), such materials are accompanied by a report and opinion of Deloitte & Touche LLP or any other independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards.

Section 6.02. *Certificates; Other Information.* Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) no later than five (5) days after the delivery of the financial statements referred to in Section 6.01(a) and (b), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower;

(b) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports and registration statements which Holdings or the Borrower files with the SEC or with any Governmental Authority (except as may be required for licensing purposes in the ordinary course of business) that may be substituted therefor (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8) and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any other clause of this Section 6.02;

(c) together with each Compliance Certificate delivered pursuant to Section 6.02(a), a description of any event, condition or circumstance during the last fiscal quarter covered by such Compliance Certificate requiring a mandatory prepayment under Section 2.05(b);

(d) promptly, such additional information regarding the business, legal, financial or corporate affairs of any Loan Party, or compliance with the terms of the Loan Documents, as the Administrative Agent may from time to time reasonably request;

(e) promptly after the same are available and to the extent feasible not later than three (3) days prior to the filing thereof (other than in exigent circumstances in which case as soon as practicable), all pleadings, motions, applications and any other documents to be filed by or on behalf of the Loan Parties;

(f) no later than the first Thursday that is four (4) full weeks after the Petition Date, and no later than the Thursday of each fourth week thereafter, the Loan Parties shall provide to the Administrative Agent with (i) an updated 13-week statement for the subsequent 13-week period (a "Proposed Budget"), which Proposed Budget shall modify and supersede any prior Budget upon the approval of the Required Lenders in their reasonable discretion (such approval not to be unreasonably withheld), and (ii) a report setting forth total organic and paid visitors, unique visits and leads to core for such four week period in addition to a report setting forth the beginning and ending property period, as well as a breakdown of gross new, dropped and adjusted properties for such four week period;

(g) as soon as internally available, but no later than the date that is 15 days following the calendar month-end following the Closing Date, an unaudited consolidated statement of comprehensive income or operations of Holdings and its Subsidiaries for such calendar month.

Documents required to be delivered pursuant to Section 6.01(a), or 6.02(a) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that: (i) upon written request by the Administrative Agent or a Lender, Holdings shall deliver paper copies of such documents to the Administrative Agent (or to the Administrative Agent for further distribution to such Lender) until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by Holdings or the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Each of Holdings and the Borrower hereby acknowledges that (a) the Administrative Agent and/or the Lead Arranger will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "**Platform**") and (b)

certain of the Lenders (each, a "**Public Lender**") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Each of Holdings and the Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," each of Holdings and the Borrower shall be deemed to have authorized the Administrative Agent, the Lead Arranger and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to Holdings, the Borrower or their respective securities for purposes of United States Federal and state securities laws (*provided*, *however*, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.08); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Administrative Agent and the Lead Arranger shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

Section 6.03. *Notices.* Promptly after a Responsible Officer of the Borrower obtains actual knowledge thereof, notify the Administrative Agent:

(a) of the occurrence of any Default; and

(b) of (i) any dispute, litigation, investigation or proceeding between any Loan Party and any Governmental Authority (other than the Chapter 11 Cases), (ii) the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Subsidiary, including pursuant to any applicable Environmental Laws or in respect of IP Rights, the occurrence of any noncompliance by any Loan Party or any of its Subsidiaries with, or liability under, any Environmental Law or Environmental Permit, or (iii) the occurrence of any ERISA Event that, in any such case, has resulted or would reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a written statement of a Responsible Officer of the Borrower (x) that such notice is being delivered pursuant to Section 6.03(a) or (b) (as applicable) and (y) setting forth details of the occurrence referred to therein and stating what action Holdings or the Borrower has taken and proposes to take with respect thereto.

Section 6.04. *Payment of Taxes, Etc.* Timely pay, discharge or otherwise satisfy, as the same shall become due and payable, all of its obligations and liabilities in respect of taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (a) any such tax, assessment, charge or levy is being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP or (b) the failure to pay or discharge the same would not reasonably be expected to have a Material Adverse Effect.

Section 6.05. *Preservation of Existence, Etc.* (a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization (except to the extent

expressly permitted by Section 7.04) and (b) take all reasonable action to maintain all corporate rights and privileges (including its good standing), and all other licenses permits, privileges, franchises, patents, copyrights, trademarks and trade names material to its business except, in the case of clause (a) (other than with respect to the preservation of the existence of Holdings and the Borrower) or (b), to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect or pursuant to a transaction permitted by Article 7.

Section 6.06. *Maintenance of Properties.* Except if the failure to do so would not reasonably be expected to have a Material Adverse Effect, maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and fire, casualty and condemnation excepted and consistent with past practice.

Section 6.07. *Maintenance of Insurance.* (a) Maintain with insurance companies that the Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Subsidiaries) as are customarily carried under similar circumstances by such other Persons; *provided* that, notwithstanding the foregoing, in no event shall the Borrower or any Subsidiary be required to obtain or maintain insurance that is more restrictive than its normal course of practice. Not later than 30 days after the Closing Date (or such later date as the Administrative Agent shall agree in its reasonable discretion), the Borrower shall have delivered to the Administrative Agent evidence that umbrella (for the Borrower and Subsidiaries), property and liability insurance has been obtained and is in effect and shall cause (i) the Administrative Agent to be named as a loss payee on property and casualty policies covering loss or damage to Collateral and (ii) the Administrative Agent to be named as an additional insured on liability policies as to which the Administrative Agent shall have reasonably requested to be so named.

(b) With respect to each Material Real Property subject to a Mortgage, if at any time the area in which the buildings and other improvements (as described in the applicable Mortgage) are located is designated a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), obtain and maintain in effect flood insurance in such amounts as shall ensure compliance with the National Flood Insurance Program as set forth in the National Flood Insurance Reform Act of 1994 (the "**NFIP**") and related legislation (including the regulations of the FRB).

Section 6.08. *Compliance with Laws.* Comply in all material respects with the requirements of (i) all Laws and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it or to its business or property, except if the failure to comply therewith would not reasonably be expected to have a Material Adverse Effect or such compliance is stayed by the Chapter 11 Cases and (ii) the Bankruptcy Court DIP Orders in all respects.

Section 6.09. *Books and Records.* Maintain proper books of record and account, in which entries that are full, true and correct in all material respects and are maintained in a manner that permits Holdings to issue consolidated financial statements in conformity with GAAP consistently applied

for all material financial transactions and matters involving the assets and business of Holdings, the Borrower and the Subsidiaries.

Section 6.10. *Inspection Rights.* Permit representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom (other than the records of the board of directors of such Loan Party or such Subsidiary) and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to the policies of the independent public accounting firm pertaining to such discussions and provided that the Borrower (or any of its Subsidiaries) may, if it so chooses, be present at or participate in any such discussion) subject to customary access agreements), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; *provided* that when an Event of Default exists, the Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent and the Lenders shall give the Borrower the opportunity to participate in any discussions between the Administrative Agent, any Lender and Holdings' independent public accountants, which will be subject to the policies of the independent public accounting firm pertaining to such discussions. Notwithstanding anything to the contrary in this Section 6.10, none of Holdings, the Borrower or any of the Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (a) constitutes non-financial trade secrets or non-financial proprietary information, (b) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or any binding agreement or (c) is subject to attorney-client or similar privilege or constitutes attorney work product.

Section 6.11. *Covenant to Guarantee Obligations and Give Security.* After the Closing Date, at the Borrower's expense, subject to any applicable limitation in any Collateral Document, take all action necessary or reasonably requested by the Administrative Agent or the Required Lenders to ensure that:

(a) upon the formation or acquisition of any new direct or indirect wholly owned Subsidiary by any Loan Party:

(i) within fifteen (15) days after such formation, acquisition or designation or such longer period as the Administrative Agent may agree in its reasonable discretion:

(A) cause each such Subsidiary to furnish to the Administrative Agent a description of each Material Real Property owned by such Subsidiary in detail reasonably satisfactory to the Administrative Agent;

(B) cause each such Subsidiary to duly execute and deliver to the Administrative Agent Mortgages with respect to any Material Real Property, Guaranties, Security Agreement Supplements (or new Collateral Documents, as applicable), Intellectual Property Security Agreements and other security agreements and documents, as reasonably requested by and in form and substance reasonably satisfactory to the Administrative Agent;

(C) cause each such Subsidiary to deliver any and all certificates representing Equity Interests (to the extent certificated), accompanied by undated stock powers or other appropriate instruments of transfer executed in blank (or any other documents customary under local law) and instruments evidencing the intercompany Indebtedness held by such Subsidiary and required to be pledged pursuant to the Collateral Documents, indorsed in blank to the Administrative Agent; and

(D) take and cause such Subsidiary and each direct or indirect parent of such Subsidiary to take whatever action (including the recording of Mortgages, the filing of Uniform Commercial Code financing statements or the equivalent in the applicable jurisdiction and delivery of stock and membership interest certificates to the extent certificated) may be necessary in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid Liens, enforceable against all third parties in accordance with their terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity (regardless of whether enforcement is sought in equity or at law),

(ii) within fifteen (15) days after the request therefor by the Administrative Agent (or such longer period as the Administrative Agent may agree in its reasonable discretion), deliver to the Administrative Agent a signed copy of a customary opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for such Subsidiaries as the Administrative Agent may reasonably request, and

(iii) as promptly as practicable after the request therefor by the Administrative Agent, deliver to the Administrative Agent with respect to each Material Real Property owned by each such Subsidiary, any existing title reports, surveys or environmental assessment reports in the possession of any Loan Party; *provided*, *however*, that there shall be no obligation to deliver to the Administrative Agent any environmental assessment report whose disclosure to the Administrative Agent would require the consent of a Person other than Holdings, the Borrower or one of its Subsidiaries, where, despite the commercially reasonable efforts of Holdings or the Borrower to obtain such consent, such consent cannot be obtained; and

(b) (i) [*Reserved*].

(ii) After the Closing Date, promptly after the acquisition of any Material Real Property by any Loan Party, and such Material Real Property shall not already be subject to a perfected Lien, Holdings or the Borrower shall give notice thereof to the Administrative Agent and within fifteen (15) days thereafter or such longer period as the Administrative Agent may agree in its reasonable discretion shall cause such Material Real Property to be subjected to a Lien to the extent required by the Collateral Documents and will take, or cause the relevant Loan Party to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect or record such Lien, including, as applicable, the actions referred to in Section 6.13(b).

(c) the Borrower may, in its sole discretion, cause any Excluded Subsidiary that is not otherwise required to be a Guarantor to Guarantee the Obligations by causing such Excluded Subsidiary to execute appropriate guarantee and security agreement supplements in form and substance reasonably satisfactory to the Administrative Agent, and any such Excluded Subsidiary shall be a Guarantor hereunder for all purposes; *provided* that the Equity Interests of such Excluded

Subsidiary that is a joint venture or a non-wholly owned Subsidiary shall not be required to be pledged to the extent prohibited by the applicable joint venture agreement, organizational document, shareholders' agreement or similar document or agreement.

Section 6.12. *Compliance with Environmental Laws.* Except, in each case, to the extent that the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or is otherwise stayed by the Chapter 11 Cases, (a) comply, and take all reasonable actions to cause any lessees and other Persons operating or occupying its properties to comply with all applicable Environmental Laws and Environmental Permits; (b) obtain and renew all Environmental Permits necessary for its operations and properties; and (c) in each case to the extent required by applicable Environmental Laws, conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all applicable Environmental Laws.

Section 6.13. *Further Assurances and Post-Closing Conditions.* Subject to any applicable limitations in any Collateral Document, promptly upon reasonable request by the Administrative Agent, (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Collateral Documents.

Section 6.14. *Maintenance of Ratings.* Prior to the entry of the Final DIP Order, the Loan Parties shall have obtained a public corporate credit rating from either S&P or Moody's in respect of this Facility; provided, that if a Lender provides the Loan Parties written notice at least two (2) weeks prior to the Final DIP Order Entry Date that it requests a public corporate credit rating from each of S&P and Moody's in respect of the DIP Facility in order to fund its Commitment, then, prior to entry of the Final DIP Order, the Loan Parties shall have obtained a public corporate credit rating from each of S&P and Moody's in respect of this Facility.

Section 6.15. *Collateral Proceeds.* All proceeds resulting from any Disposition of, or Casualty Event relating to, any property or assets constituting Collateral shall be deposited into the Operating Account in accordance with the Bankruptcy Court DIP Order.

Section 6.16. *Post-Closing.* Each Loan Party shall comply with each covenant in Schedule 6.16 on or before the time periods specified therein.

Section 6.17. *Conference Calls.* The Loan Parties shall schedule weekly teleconferences between their financial advisors and the financial advisors of the Ad Hoc Committee.

Section 6.18. *Sale Fees.* Within two (2) Business Days of receipt of Sale Fees, the Borrower shall deposit such Sale Fees in the DIP Funding Account, and such amounts shall be subject to this Agreement, as if such proceeds were a loan hereunder including without limitation, the withdrawal funding mechanics set forth in Section 2.02(d) and the Conversion Prepayment set forth in Section 2.05(c).

ARTICLE 7
NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder which is accrued and payable shall remain unpaid or unsatisfied, neither Holdings nor the Borrower shall, nor shall they permit any Subsidiary to, directly or indirectly:

Section 7.01. *Liens.* Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) (i) Liens pursuant to any Prepetition Loan Document, (ii) Liens pursuant to any Loan Document, (iii) the Carve Out, and (iv) the Professional Fees Account;

(b) Liens existing on the Petition Date and set forth on Schedule 7.01(b);

(c) Liens for taxes, assessments or governmental charges that are not required to be paid pursuant to Section 6.04;

(d) statutory or common law Liens of landlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens, so long as, in each case, such Liens arise in the ordinary course of business;

(e) subject to the Bankruptcy Court DIP Order, (i) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to Holdings, the Borrower or any of the Subsidiaries;

(f) deposits to secure the performance of bids, trade contracts, governmental contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions and other similar encumbrances and minor title defects affecting real property that, in the aggregate, do not in any case materially interfere with the ordinary conduct of the business of Holdings, the Borrower and its Subsidiaries, taken as a whole, and any exception on the title policies issued in connection with the Mortgaged Property;

(h) Liens arising from judgments or orders for the payment of money not constituting an Event of Default under Section 8.01(e);

(i) [Liens securing Indebtedness permitted under Section 7.03(e) with respect to Capitalized Leases, such Liens do not at any time extend to or cover any assets (except for additions and accessions to such assets, replacements and proceeds and products thereof and customary security

deposits) other than the assets subject to such Capitalized Leases (*provided* that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender);][1]

(j) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business which do not (i) interfere in any material respect with the business of Holdings, the Borrower and its Subsidiaries, taken as a whole, or (ii) secure any Indebtedness;

(k) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(l) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on the items in the course of collection and (ii) in favor of a banking or other financial institution arising as a matter of law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of set off) and that are within the general parameters customary in the banking industry;

(m) Liens consisting of an agreement to Dispose of any property in a Disposition permitted under Section 7.05, solely to the extent such Disposition would have been permitted on the date of the creation of such Lien;

(n) [*Reserved*];

(o) [*Reserved*];

(p) [*Reserved*];

(q) any interest or title of a lessor, sublessor, licensor or sublicensor or security for a lessor's, sublessor's, licensor's or sublicensor's interest under leases or licenses entered into by the Borrower or any of the Subsidiaries in the ordinary course of business and consistent with the Budget;

(r) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any of the Subsidiaries in the ordinary course of business;

(s) [*Reserved*].

(t) Liens that are contractual rights of setoff (i) relating to the establishment of depository relations with banks or other financial institutions not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of Holdings, the Borrower or any of the Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of Holdings, the Borrower and the Subsidiaries or (iii) relating to purchase

[1] Company to confirm if any.

orders and other agreements entered into with customers of Holdings, the Borrower or any of the Subsidiaries in the ordinary course of business;

(u) [*Reserved*].

(v) [*Reserved*].

(w) ground leases in respect of real property on which facilities owned or leased by Holdings, the Borrower or any of its Subsidiaries are located;

(x) Liens arising from precautionary Uniform Commercial Code financing statement or similar filings;

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

(z) [*Reserved*];

(aa) [*Reserved*];

(bb) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of Holdings, the Borrower and its Subsidiaries, taken as a whole;

(cc) Liens on specific items of inventory or other goods and the proceeds thereof securing such Person's obligations in respect of documentary letters of credit or banker's acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods;

(dd) Liens in favor of the Prepetition First Lien Indebtedness Holders and the Prepetition Second Lien Indebtedness as adequate protection granted pursuant to the Bankruptcy Court DIP Orders.

Section 7.02. *Investments.* Make or hold any Investments, except:

(a) Investments by Holdings, the Borrower or any of the Subsidiaries in assets that were Cash Equivalents or Investment Grade Securities when such Investment was made;

(b) loans or advances to officers, directors and employees of Holdings (or any direct or indirect parent thereof), the Borrower or any Subsidiaries for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes;

(c) asset purchases (including purchases of inventory, supplies and materials) and the licensing or contribution of intellectual property pursuant to joint marketing arrangements with other Persons, in each case in the ordinary course of business;

(d) [*Reserved*];

(e) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers in the ordinary course of business;

(f) Investments consisting of Liens, Indebtedness, fundamental changes, Dispositions, Restricted Payments and prepayments, redemptions, purchases, defeasances or other satisfactions of Indebtedness permitted under Sections 7.01, 7.03 (other than Section 7.03(d)), 7.04, 7.05 (other than Section 7.05(e)) and 7.06, respectively;

(g) Investments existing on the Petition Date and set forth on Schedule 7.02(g);

(h) Investments in Swap Contracts permitted under Section 7.03;

(i) Investments expressly contemplated by the Budget;

(j) [*Reserved*].

(k) [*Reserved*];

(l) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Article 4 customary trade arrangements with customers consistent with past practices or the equivalent thereto in the applicable jurisdiction;

(m) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers arising in the ordinary course of business or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(n) [*Reserved*];

(o) [*Reserved*];

(p) [*Reserved*];

(q) advances of payroll payments to employees in the ordinary course of business;

(r) [*Reserved*];

(s) [*Reserved*];

(t) Guarantees by the Borrower or its Subsidiaries of leases (other than Capitalized Leases) or of other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business;

(u) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business; and

(v) Investments made in the ordinary course of business in connection with obtaining, maintaining or renewing client contracts and loans or advances made to distributors in the ordinary course.

Section 7.03. *Indebtedness.* Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of the Loan Parties under (w) the Loan Documents, (x) the Prepetition Loan Documents in effect on the Petition Date, (y) the Carve Out, and (z) the Professional Fees Account;

(b) Indebtedness existing on the Petition Date and set forth on Schedule 7.03(b).

(c) Guarantees by Holdings, the Borrower or any of the Subsidiaries in respect of Indebtedness of the Borrower or any of the Subsidiaries otherwise permitted hereunder.

(d) Unsecured Indebtedness of the Borrower or any of the Subsidiaries owing to the Borrower or any other Subsidiary to the extent expressly contemplated in the Budget and constituting an Investment permitted by Section 7.02; *provided* that, all such Indebtedness of any Loan Party owed to any Person that is a Non-Loan Party shall be subject to the subordination terms set forth in the Security Agreement pursuant to an express written agreement by such Person for the benefit of the Administrative Agent and the Collateral Agent;

(e) [*Reserved*];

(f) Indebtedness in respect of Swap Contracts designed to hedge against interest rates, foreign exchange rates or commodities pricing risks entered into in the ordinary course of business and not for speculative purposes and Guarantees thereof;

(g) [*Reserved*];

(h) [*Reserved*];

(i) [*Reserved*];

(j) Indebtedness representing deferred compensation to employees of Holdings, the Borrower or any of its Subsidiaries incurred in the ordinary course of business;

(k) [*Reserved*];

(l) [*Reserved*];

(m) [*Reserved*];

(n) Cash Management Obligations and other Indebtedness in respect of netting services, automatic clearinghouse arrangements, overdraft protection, employee credit card programs and other cash management and similar arrangements in the ordinary course of business and consistent with past practice and any Guarantees thereof;

(o) [*Reserved*].

(p) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(q) Indebtedness incurred by the Borrower or any Subsidiary in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business or consistent with past practice, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims, *provided* that such Indebtedness shall not exceed $[ ] in the aggregate at any time outstanding;

(r) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of the Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice;

(s) [*Reserved*].

(t) all premiums (if any), interest (excluding post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through (r) above and (u) through (x) below;

(u) Guarantees incurred in the ordinary course of business in respect of obligations to suppliers, customers, franchisees, lessors and licensees;

(v) Indebtedness incurred in the ordinary course of business in respect of obligations of the Borrower or any Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services;

(w) [*Reserved*]; and

(x) Indebtedness expressly permitted by the Budget (including Permitted Variances).

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt; *provided* that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, plus the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses incurred in connection with such refinancing.

For purposes of determining compliance with this Section 7.03, in the event that an item of Indebtedness meets the criteria of more than one of the categories of Indebtedness described in clauses (b) through (x), the Borrower shall, in its sole discretion, classify and reclassify or later divide, classify or reclassify such item of Indebtedness (or any portion thereof) and will only be required to include the amount and type of such Indebtedness in one or more of the above clauses; *provided* that all Indebtedness outstanding under the Loan Documents will be deemed to have been incurred in reliance only on the exception in clause (a) of Section 7.03.

The accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 7.03. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a consolidated balance sheet of Holdings dated such date prepared in accordance with GAAP.

Notwithstanding anything to the contrary in this Agreement, any change to lease accounting rules from those in effect on the date hereof pursuant to Financial Accounting Standards Board Accounting Standards Codification 840 (Leases) and other related lease accounting guidance in effect on the date hereof shall not result in an incurrence of Indebtedness.

Section 7.04. *Fundamental Changes.* Merge, dissolve, liquidate or consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that so long as no approval of the Bankruptcy Court is required (or such approval is required and shall have been received):

(a) any Subsidiary may merge or consolidate with the Borrower and Holdings may merge or consolidate with the Borrower (in each case including a merger the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided* that (x) the Borrower shall be the continuing or surviving Person, (y) such merger or consolidation does not result in the Borrower ceasing to be incorporated under the Laws of any state of the United States or the District of Columbia and (z) in the case of a merger or consolidation of Holdings with and into the Borrower, after giving effect to such merger or consolidation, the direct parent of the Borrower shall expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents to which Holdings is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent;

(b) (i) any Subsidiary that is a Non-Loan Party may merge, amalgamate or consolidate with or into any other Subsidiary that is a Non-Loan Party and (ii) any Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interests of the Borrower and its Subsidiaries and if not materially disadvantageous to the Lenders; and

(c) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or another Subsidiary; *provided* that if the transferor in such a transaction is a Loan Party, then the transferee must be a Loan Party.

For the avoidance of doubt, so long as such conversion, reorganization or reconstitution is not adverse to the interests of the Secured Parties, nothing in this Agreement shall prevent Holdings, the Borrower, or any Subsidiary of the Borrower from being converted into, or reorganized or reconstituted as a limited liability company, limited partnership or corporation (or any each such similar form under a foreign jurisdiction in which such Subsidiary is organized at the time of such conversion, reorganization or reconstitution).

Section 7.05. *Dispositions.* Make any Disposition or enter into any agreement to make any Disposition, except:

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

(b) Dispositions of inventory, goods held for sale in the ordinary course of business and immaterial assets (including allowing any registrations or any applications for registration of any IP Rights to lapse or go abandoned in the ordinary course of business);

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are applied to the purchase price of such replacement property (which replacement property is actually promptly purchased);

(d) Dispositions of property to the Borrower or a Subsidiary; *provided* that if the transferor of such property is a Loan Party (i) the transferee thereof must be a Loan Party or (ii) to the extent such transaction constitutes an Investment, such transaction is permitted under Section 7.02;

(e) Dispositions permitted by Sections 7.02, 7.04, and 7.06 and Liens permitted by Section 7.01;

(f) Dispositions of property pursuant to sale-leaseback transactions;

(g) Dispositions of cash, Cash Equivalents and Investment Grade Securities;

(h) leases, subleases, licenses or sublicenses (including the provision of software under an open source license), in each case in the ordinary course of business and which do not materially interfere with the business of the Borrower and the Subsidiaries, taken as a whole;

(i) transfers of property subject to Casualty Events upon receipt of the Net Cash Proceeds of such Casualty Event;

(j) [*Reserved*].

(k) [*Reserved*].

(l) Dispositions of accounts receivable in connection with the collection or compromise thereof (and not in connection with any factoring or similar arrangements);

(m) [*Reserved*].

(n) [*Reserved*].

(o) the termination or unwinding of any Swap Contract; and

(p) sales of Margin Stock for fair value as determined in good faith by the board of directors of the Borrower;

provided that any Disposition of any property pursuant to this Section 7.05 (except pursuant to Section 7.05(d), Section 7.05(e), Section 7.05(i), Section 7.05(l) and Section 7.05(o)), and except for Dispositions from a Loan Party to a Loan Party), shall be for no less than the Fair Value of such property at the time of such Disposition. To the extent any Collateral is Disposed of as expressly permitted by this Section 7.05 to any Person other than a Loan Party, such Collateral shall be sold free and clear of the Liens created by the Loan Documents, and, if requested by the Administrative Agent, upon the certification by the Borrower that such Disposition is permitted by this Agreement, the Administrative Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing.

Section 7.06. *Restricted Payments.* Declare or make, directly or indirectly, any Restricted Payment, except:

(a) each Subsidiary may make Restricted Payments to the Borrower or to any other Subsidiary (and, in the case of a Restricted Payment by a non-wholly owned Subsidiary, to the Borrower and any of its other Subsidiaries and to each other owner of Equity Interests of such Subsidiary based on their relative ownership interests of the relevant class of Equity Interests);

(b) [*Reserved*].

(c) [*Reserved*].

(d) to the extent constituting Restricted Payments, Holdings, the Borrower and the Subsidiaries may enter into and consummate transactions expressly permitted by any provision of Section 7.02, 7.04 or 7.08 (other than Section 7.08(a));

(e) [*Reserved*].

(f) [*Reserved*].

(g) to the extent provided for in the Budget the Borrower may make Restricted Payments to Holdings:

(i) without duplication of any other amounts described in clause (g), the proceeds of which will be used by Holdings to pay the tax liability of Holdings or any of its Subsidiaries;

(ii) the proceeds of which shall be used to pay (or make Restricted Payments to allow any direct or indirect parent thereof to pay) its operating costs and expenses incurred in the ordinary course of business and other overhead costs and expenses (including administrative, legal,

accounting and similar expenses provided by third parties), which are reasonable and customary and incurred in the ordinary course of business, attributable to the ownership or operations of the Borrower and its Subsidiaries in an aggregate amount in lieu of Restricted Payments permitted by this clause (ii), not to exceed $1,000,000 in any fiscal year plus any reasonable and customary indemnification claims made by directors or officers of Holdings (or any parent thereof) attributable to the ownership or operations of Holdings, the Borrower and the Subsidiaries;

(iii) the proceeds of which shall be used to pay (or make Restricted Payments to allow any direct or indirect parent thereof to pay) franchise taxes and other fees, taxes and expenses required to maintain its (or any of its direct or indirect parents') corporate existence;

(iv) [*Reserved*]; and

(v) the proceeds of which shall be used to pay customary salary, bonus and other benefits payable to officers and employees of Holdings or any direct or indirect parent company of Holdings to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Borrower and the Subsidiaries.

Section 7.07. *Change in Nature of Business.* In the case of the Borrower and the Subsidiaries, engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Subsidiaries on the Closing Date or any business reasonably related or ancillary thereto.

Section 7.08. *Transactions with Affiliates.* Enter into any transaction of any kind with any Affiliate, whether or not in the ordinary course of business (an "**Affiliate Transaction**"), other than:

(a) Transactions among the Borrower and the other Loan Parties (other than Holdings), and

(b) The transactions set forth on Schedule 7.08.

Section 7.09. *Burdensome Agreements.* Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that limits the ability of (a) any Subsidiary that is a Non-Loan Party to make Restricted Payments to any Loan Party or (b) any Loan Party to create, incur, assume or suffer to exist Liens on property of such Person for the benefit of the Lenders with respect to the Facilities and the Obligations or under the Loan Documents; *provided* that the foregoing clauses (a) and (b) shall not apply to Contractual Obligations that:

(i) (x) exist on the date hereof and (to the extent not otherwise permitted by this Section 7.09) are listed on Schedule 7.09 hereto,

(ii) are binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary, so long as such Contractual Obligations were not entered into in contemplation of such Person becoming a Subsidiary; *provided further* that this clause (ii) shall not apply to Contractual Obligations that are binding on a Person that becomes a Subsidiary pursuant to Section 6.14,

(iii) represent Indebtedness of a Subsidiary that is a Non-Loan Party that is permitted by Section 7.03,

(iv) arise in connection with any Disposition permitted by Section 7.05,

(v) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 7.02 and applicable solely to such joint venture entered into in the ordinary course of business,

(vi) [Reserved],

(vii) are customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the assets subject thereto,

(viii) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of any Subsidiary,

(ix) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business,

(x) are restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business, or

(xi) arise in connection with cash or other deposits permitted under Section 7.01.

Section 7.10. *Use of Proceeds.* No portion of the proceeds of the Facility, the Collateral, the Carve Out, or the Professional Fees Account may be used:

(a) for any purpose that is prohibited under the Bankruptcy Code or the Bankruptcy Court DIP Order;

(b) to finance in any way: (i) any contested matter, adversary proceeding, suit, arbitration, application, motion or other litigation of any type adverse to the interests of any or all of the Administrative Agent, the Lenders, the Prepetition Agents or the Prepetition Lenders or their respective rights and remedies under Loan Documents, the Bankruptcy Court DIP Order or the Prepetition Documents or (ii) any other action which with the giving of notice or passing of time would result in an Event of Default under the Loan Documents;

(c) for the payment of fees, expenses, interest or principal under the Prepetition Documents (other than permitted adequate protection payments);

(d) [*Reserved*]

(e) unless the Exit Conversion occurs, to make any distribution under a plan of reorganization confirmed in the Chapter 11 Cases that does not provide for the indefeasible payment of the Loans in full and in cash (including the Redemption Premium) on the effective date of such plan; and

(f) to make any payment in excess of $500,000 in the aggregate in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body without the prior written consent of the Administrative Agent acting at the direction of the Required Lenders;

provided that, advisors to the official unsecured creditors' committee, if one is appointed, may investigate the liens granted pursuant to, or any claims under or causes of action with respect to, the Prepetition Facilities at an aggregate expense for such investigation not to exceed $50,000, provided that no portion of such amount may be used to prosecute any claims.

Nothing herein shall in any way prejudice or prevent the Administrative Agent or the Lenders from objecting, for any reason, to any requests, motions, or applications made in the Bankruptcy Court, including any application of final allowances of compensation for services rendered or reimbursement of expenses incurred under Sections 105(a), 330 or 331 of the Bankruptcy Code, by any party in interest.

Section 7.11. *Accounting Changes.* Make any change in fiscal year except upon written notice to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

Section 7.12. *Prepayments of Indebtedness.* (a) Make any payment of principal or interest or otherwise on account of any Prepetition Obligations or payables under the Prepetition Loan Documents, other than (i) payments made in compliance in all material respects with the Budget (subject to Permitted Variances), (ii) payments agreed to in writing by the Required Lenders, and (iii) payments approved by the Bankruptcy Court DIP Order and, if necessary, authorized by the Bankruptcy Court; or (b) amend or modify the terms of the Prepetition Loan Documents (other than amendments or modifications materially adverse to the Agent or the Lenders or their rights and remedies under the Loan Documents or which would have any material and adverse impact on the Collateral) consented to in writing by the Administrative Agent.

Section 7.13. *Exclusivity Periods.* Absent the Required Lenders' consent, consent to termination or reduction of the "Exclusivity Period" or fail to object to any motion seeking to terminate or reduce the "Exclusivity Period."

Section 7.14. *Holdings.* In the case of Holdings, conduct, transact or otherwise engage in any business or operations other than the following (and activities incidental thereto): (a) its ownership of the Equity Interests of the Borrower (and Holdings shall own no Equity Interests other than those of the Borrower), (b) the maintenance of its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance), (c) the performance of its obligations with respect to the Loan Documents, the Prepetition First Lien Documents and the Prepetition Second Lien Documents, (d) financing activities, including the issuance of securities, incurrence of debt, payment of dividends, making contributions to the capital of its Subsidiaries and guaranteeing the obligations of its Subsidiaries to the extent such financing activities are otherwise permitted hereunder, (f) participating in tax, accounting and other administrative matters as a member of the consolidated group of Holdings and the Borrower, (g) holding any cash or property received in connection with Restricted Payments made by the Borrower in accordance with Section 7.06 pending application thereof by Holdings, (h) providing indemnification to officers and directors

and (i) conducting, transacting or otherwise engaging in any business or operations of the type it conducts, transacts or engages in on the Closing Date.

Section 7.15. *Chapter 11 Modifications*. Except as permitted pursuant to the terms of this Agreement and the Bankruptcy Court DIP Order or otherwise consented to by the Required Lenders:

(a) Make or permit to be made any change, amendment or modification, or any application or motion for any change, amendment or modification, to the Bankruptcy Court DIP Orders.

(b) Incur, create, assume or suffer to exist or permit any other superpriority claim which is pari passu with or senior to the DIP Superpriority Claims of the Administrative Agent and the Lenders hereunder, except for the Carve Out and the Professional Fees Account.

Section 7.16. *Operating Account.* Create, incur, assume or suffer to exist (i) any Lien upon the DIP Funding Account other than the first priority Lien created in favor of the Agent under the Loan Documents or (ii) any Lien upon the Operating Account other than the first priority Lien created in favor of the Administrative Agent under the Loan Documents.

Section 7.17. *Right of Subrogation.* Assert any right of subrogation or contribution against any other Loan Party until all amounts under this Facility are paid in full as provided herein (including the Redemption Premium) and the Commitments are terminated.

ARTICLE 8
EVENTS OF DEFAULT AND REMEDIES

Section 8.01. *Events of Default.* Each of the events referred to in clauses (a) through (l) of this Section 8.01 shall constitute an "**Event of Default**":

(a) *Non-Payment.* The Borrower fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within three (3) Business Days after the same becomes due, any interest on any Loan or any other amount payable hereunder or with respect to any other Loan Document; or

(b) *Specific Covenants.* Holdings or the Borrower (i) fails to perform or observe any term, covenant or agreement contained in any of Sections 6.01(c), 6.03(a) or 6.05(a), 6.18 or Article 7 or (ii) fails to perform or observe any material term of any Bankruptcy Court DIP Order; or

(c) *Other Defaults.* Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or 8.01(b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for fifteen (15) days after receipt by the Borrower of written notice thereof from the Administrative Agent; or

(d) *Representations and Warranties.* Any representation, warranty, certification or statement of fact made or deemed made by any Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be untrue in any material respect when made or deemed made; or

(e) *Judgments*. There is entered against any Loan Party or any Subsidiary a final judgment or order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer does not deny coverage) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of [sixty (60)] consecutive days; or

(f) *ERISA*. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or would reasonably be expected to result in liability of Holdings, the Borrower or their respective ERISA Affiliates under Title IV of ERISA in an aggregate amount which would reasonably be expected to result in a Material Adverse Effect or (ii) Holdings, the Borrower or any of their respective ERISA Affiliates fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its Withdrawal Liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount which would reasonably be expected to result in a Material Adverse Effect; or

(g) *Invalidity of Loan Documents*. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or as a result of acts or omissions by the Administrative Agent or any Lender or the satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of any provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document (other than as a result of satisfaction in full of the Obligations), or purports in writing to revoke or rescind any Loan Document; or

(h) *Collateral Documents*. The Interim DIP Order and the Final DIP Order, as applicable, together with the Loan Documents shall cease to create a valid and perfected Lien with such priority required by this Agreement; or

(i) *Subordination*. (i) Any of the Obligations of the Loan Parties under the Loan Documents for any reason shall cease to be "Senior Indebtedness" (or any comparable term) or "Senior Secured Financing" (or any comparable term) under, and as defined in the documentation governing, any junior financing with an aggregate principal amount of not less than the Threshold Amount or (ii) the subordination provisions set forth in the documentation governing any junior financing with an aggregate principal amount of not less than the Threshold Amount shall, in whole or in part, cease to be effective or cease to be legally valid, binding and enforceable against the holders of any such Indebtedness; or

(j) *Budget*. The proceeds of any Loan shall have been expended or withdrawn from the DIP Funding Account in a manner which is not in accordance in all material respects (including with respect to incremental performance marketing) with the Budget (subject to Permitted Variances), absent the consent of the Required Lenders; or

(k) *Budget Event*. There occurs any Budget Event; or

(l) *Change of Control*. There occurs any Change of Control; or

(m) *Entry of Order.* The Final DIP Order Entry Date shall not have occurred within 40 days after the Interim DIP Order Entry Date; or

(n) *[Reserved].*

(o) *Alternate Financing.* Any Loan Party shall file a motion in the Chapter 11 Cases without the express written consent of Required Lenders, to obtain additional financing from a party other than Lenders under Section 364(d) of the Bankruptcy Code that does not provide for the payment of the Obligations in full and in cash including the Redemption Premium upon the incurrence of such additional financing; or

(p) *Prepetition Claims.* Any Loan Party shall file a motion seeking, or the Bankruptcy Court shall enter, an order (i) approving payment of any prepetition claim in excess of $500,000 in the aggregate other than (x) as provided for in the "first day" or "second day" orders, (y) contemplated by the Budget (including Permitted Variances), or (z) otherwise consented to by the Required Lenders in writing, (ii) granting relief from the automatic stay under Section 362 of the Bankruptcy Code to any holder of any security interest to permit foreclosure on any assets having a book value in excess of $500,000 in the aggregate, or (iii) except with respect to the Prepetition Obligations as provided in the Bankruptcy Court DIP Orders, approving any settlement or other stipulation in excess of $500,000 in the aggregate not approved by the Required Lenders and not included in the Budget with any secured creditor of any Loan Party providing for payments as adequate protection or otherwise to such secured creditor; or

(q) *Appointment of Trustee or Examiner.* An order is entered in any of the Chapter 11 Cases appointing, or any Loan Party, or any Subsidiary of a Loan Party or any Permitted Holder shall file an application for an order seeking the appointment of, (i) a trustee under Section 1104, or (ii) an examiner with enlarged powers relating to the operation of the Loan Parties' business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code; or

(r) *Dismissal or Conversion of Chapter 11 Cases.* An order shall be entered by the Bankruptcy Court dismissing any of the Chapter 11 Cases or converting any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code, in each case, which does not contain a provision for termination of the Commitments, and payment in full in cash of all Obligations (including the Redemption Premium) (other than contingent Obligations not due and owing) of the Loan Parties hereunder and under the other Loan Documents upon entry thereof; or

(s) *Bankruptcy Court DIP Orders.* An order is entered by the Bankruptcy Court in any of the Chapter 11 Cases without the express prior written consent of the Required Lenders (and with respect to any provisions that materially adversely affect the rights or duties of the Administrative Agent, the Administrative Agent), (i) to revoke, reverse, stay, modify, supplement or amend the Bankruptcy Court DIP Order in a manner that is inconsistent with this Agreement that is not otherwise consented to by the Required Lenders (and with respect to amendments, modifications, or supplements that affect the rights or duties of the Administrative Agent, the Administrative Agent), (ii) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority as to the Loan Parties equal or superior to the priority of the DIP Superpriority Claim shall be entered by the Bankruptcy Court

without the express prior written consent of the Lenders in respect of the Obligations (and with respect to any provisions that adversely affect the Administrative Agent, the Administrative Agent) or (iii) to grant or permit the grant of a Lien on the Collateral (other than Liens permitted under Section 7.01); or

(t) *Application for Order By Third Party.* An application for any of the orders described in clauses 8.01(p), (q), (r), (s) and (u) shall be made by a Person other than the Loan Parties and such application is not contested by the Loan Parties in good faith or any Person obtains a final order under § 506(c) of the Bankruptcy Code against the Administrative Agent or obtains a final order adverse to the Administrative Agent or the Lenders or any of their respective rights and remedies under the Loan Documents or in the Collateral; or

(u) *Right to File Chapter 11 Plan.* The entry of an order by the Bankruptcy Court terminating or modifying the exclusive right of any Loan Party to file a Chapter 11 plan pursuant to Section 1121 of the Bankruptcy Code, without the prior written consent of the Required Lenders; or

(v) *Liens.* (i) Any Loan Party shall attempt to invalidate, reduce or otherwise impair the Liens or security interests of the Administrative Agent and/or the Lenders, claims or rights against such Person or to subject any Collateral to assessment pursuant to Section 506(c) of the Bankruptcy Code, (ii) the Lien or security interest created by Collateral Documents or the Bankruptcy Court DIP Orders with respect to the Collateral shall, for any reason, cease to be valid or (iii) any action is commenced by the Loan Parties which contests the validity, perfection or enforceability of any of the Liens and security interests of the Administrative Agent and/or the Lenders created by any of the Bankruptcy Court DIP Order, this Agreement, or any Collateral Document; or

(w) *Invalidation of Claims.* Any Loan Party shall seek to, or shall support (in any such case by way of any motion or other pleading filed with the Bankruptcy Court or any other writing to another party-in-interest executed by or on behalf of such Loan Party) any other Person's motion to, disallow in whole or in part the Lenders' claim in respect of the Obligations or contest any material provision of any Loan Document or any material provision of any Loan Document shall cease to be effective (other than in accordance with its terms); or

(x) *Modifications or Withdrawal of Approved Plan of Reorganization.* The Approved Plan of Reorganization or the Confirmation Order is withdrawn, amended, supplemented or otherwise modified in a manner that materially adversely affects the rights and duties of the Lenders and/or the Administrative Agent without the prior written consent of the Required Lenders (and with respect to amendments, modifications or supplements that materially adversely affect the rights or duties of the Administrative Agent, the Administrative Agent); or

(y) *Failure to Have Reorganization Plan Confirmed.* The Bankruptcy Court denying confirmation of the Approved Plan of Reorganization, *provided*, that if the Loan Parties subsequently obtain an order of the Bankruptcy Court approving a plan of reorganization that is in form and substance substantially similar to the Approved Plan of Reorganization or otherwise approved by the Required Lenders, an Event of Default shall not occur; or

(z) *Termination of the Restructuring Support Agreement.* The termination of the Restructuring Support Agreement in accordance with its term due to the action or omission, as applicable, of the Loan Parties.

Section 8.02. *Remedies upon Event of Default.* Subject to the Bankruptcy Court DIP Order, if any Event of Default occurs and is continuing, the Administrative Agent may and, at the request of the Required Lenders, shall take any or all of the following actions:

(a) declare Commitments of each Lender to be terminated, whereupon such Commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and

(c) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law.

Section 8.03. *Application of Funds.* After the exercise of remedies provided for in Section 8.02, any amounts received on account of the Obligations and such other proceeds remaining in the (i) DIP Funding Account shall be applied in accordance with Section 2.11 hereof, subject to the obligation of the Administrative Agent to fund the Professional Fees Account on account of obligations benefitting from the Carve Out in accordance with the Bankruptcy Court DIP Order, and (ii) the Operating Account shall be applied by the Administrative Agent in accordance with the Bankruptcy Court DIP Order.

ARTICLE 9
ADMINISTRATIVE AGENT AND OTHER AGENTS

Section 9.01. *Appointment and Authorization of the Administrative Agent.* (a) Each Lender hereby irrevocably appoints, designates and authorizes the Administrative Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, the Administrative Agent is hereby expressly authorized to (i) execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents. The provisions of this Article 9 (other than Sections 9.09 and 9.11) are solely for the benefit of the Administrative Agent and the Lenders, and the Borrower shall not have rights as third party beneficiary of any such provision. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Loan Document, the Administrative Agent shall have no duties or responsibilities, except those expressly set forth herein, nor shall the Administrative Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent. Without limiting the

generality of the foregoing sentence, the use of the term "agent" herein and in the other Loan Documents with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) The Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of (and to hold any security interest created by the Collateral Documents for and on behalf of or on trust for) such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent" (and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.02 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article 9 (including Section 9.07, as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Administrative Agent to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders.

Section 9.02. *Delegation of Duties.* The Administrative Agent may execute any of its duties under this Agreement or any other Loan Document (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents or of exercising any rights and remedies thereunder) by or through agents, employees or attorneys-in-fact, such sub-agents as shall be deemed necessary by the Administrative Agent and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent or sub-agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct (as determined in the final judgment of a court of competent jurisdiction).

Section 9.03. *Liability of Agents.* No Agent-Related Person shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct, as determined by the final judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein), or (b) be responsible in any manner to any Lender or participant for any recital, statement, representation or warranty made by any Loan Party or any officer thereof, contained herein or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or the perfection or priority of any Lien or security interest created or purported to be created under the Collateral Documents, or for any failure of any Loan Party or any other party to

any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender or participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or any Affiliate thereof.

Section 9.04. *Reliance by the Administrative Agent.* (a) The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Loan Party), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders (or such greater number of Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders; *provided* that the Administrative Agent shall not be required to take any action that, in its opinion or in the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Law.

(b) For purposes of determining compliance with the conditions specified in Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 9.05. *Notice of Default.* The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to the Administrative Agent for the account of the Lenders, unless the Administrative Agent shall have received written notice from a Lender or the Borrower referring to this Agreement, describing such Default and stating that such notice is a "notice of default." The Administrative Agent will notify the Lenders of its receipt of any such notice. The Administrative Agent shall take such action with respect to any Event of Default as may be directed by the Required Lenders in accordance with Article 8; *provided* that unless and until the Administrative Agent has received any such direction, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default as it shall deem advisable or in the best interest of the Lenders.

Section 9.06. *Credit Decision; Disclosure of Information by Agents.* Each Lender acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by any

Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender represents to each Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their respective Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower and the other Loan Parties hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower and the other Loan Parties. Except for notices, reports and other documents expressly required to be furnished to the Lenders by any Agent herein, such Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their respective Affiliates which may come into the possession of any Agent-Related Person.

Section 9.07. *Indemnification of Agents.* Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand the Administrative Agent and each other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) (to the extent not reimbursed by or on behalf of any Loan Party and without limiting the obligation of any Loan Party to do so), pro rata, and hold harmless the Administrative Agent and each other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) from and against any and all Indemnified Liabilities incurred by it; *provided* that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting from such Agent-Related Person's own gross negligence or willful misconduct, as determined by the final judgment of a court of competent jurisdiction; *provided* that no action taken in accordance with the directions of the Required Lenders (or such other number or percentage of the Lenders as shall be required by the Loan Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 9.07. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 9.07 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of the Borrower; *provided* that such reimbursement by the Lenders shall not affect the Borrower's continuing reimbursement obligations with respect thereto.

The undertaking in this Section 9.07 shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation of the Administrative Agent.

Section 9.08. *Agents in Their Individual Capacities.* Each Agent and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire Equity Interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with each of the Loan Parties and their respective Affiliates as though such Agent were not an Agent hereunder and without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that no Agent shall be under any obligation to provide such information to them. With respect to its Loans, each Agent shall have the same rights and powers under this Agreement as any other Lender and may exercise such rights and powers as though it were not an Agent, and the terms "Lender" and "Lenders" include each Agent in its individual capacity.

Section 9.09. *Successor Administrative Agent.* The Administrative Agent may resign as the Administrative Agent upon thirty (30) days' notice to the Lenders and the Borrower. If the Administrative Agent resigns under this Agreement, the Required Lenders shall appoint a successor agent for the Lenders, which successor agent shall be consented to by the Borrower at all times other than during the existence of an Event of Default under Section 8.01(f) (which consent of the Borrower shall not be unreasonably withheld or delayed). If no successor agent is appointed prior to the effective date of the resignation of the Administrative Agent, the Administrative Agent may appoint, after consulting with the Lenders and the Borrower, a successor agent. Upon the acceptance of its appointment as successor agent hereunder, the Person acting as such successor agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent, and the term "Administrative Agent" shall mean such successor administrative agent and/or supplemental administrative agent, as the case may be, and the retiring Administrative Agent's appointment, powers and duties as the Administrative Agent shall be terminated. After the retiring Administrative Agent's resignation hereunder as the Administrative Agent, the provisions of this Article 9 and Sections 10.04 and 10.05 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent under this Agreement. If no successor agent has accepted appointment as the Administrative Agent by the date which is thirty (30) days following the retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. Upon the acceptance of any appointment as the Administrative Agent hereunder by a successor and upon the execution and filing or recording of such financing statements, or amendments thereto, and such amendments or supplements to the Mortgages, and such other instruments or notices, as may be necessary or desirable, or as the Required Lenders may request, in order to (a) continue the perfection of the Liens granted or purported to be granted by the Collateral Documents, the Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, discretion, privileges, and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents (if not already discharged therefrom as provided above in this Section 9.09). After the retiring Administrative Agent's resignation hereunder as the Administrative Agent, the provisions

of this Article 9 and Sections 10.04 and 10.05 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Administrative Agent.

Section 9.10. *Administrative Agent May File Proofs of Claim.* In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its respective agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 9.11. *Collateral and Guaranty Matters*. The Lenders irrevocably agree:

(a) that any Lien on any property granted to or held by the Administrative Agent under any Loan Document shall be automatically released (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (x) Cash Management Obligations not yet due and payable and (y) contingent indemnification obligations not yet accrued and payable), and any other obligation (including a guarantee that is contingent in nature), (ii) at the time the property subject to such Lien is transferred or to be transferred as part of or in connection with any transfer permitted hereunder or under any other Loan Document to any Person other than the Borrower or any of its Subsidiaries or any other Guarantor, (iii) subject to Section 10.01, if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders, or (iv) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guaranty pursuant to clause (c) below; and

(b) to release or subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(i)

(c) Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.11. In each case as specified in this Section 9.11, the Administrative Agent will promptly (and each Lender irrevocably authorizes the Administrative Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release or subordination of such item of Collateral from the assignment and security interest granted under the Collateral Documents, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.11.

(d) The Loan Parties hereby irrevocably authorize the Administrative Agent, based upon the instruction of the Required Lenders, to credit bid up to the full amount of the Obligations outstanding under the Facility.

Section 9.12. *Other Agents; Lead Arrangers and Managers*. Except as expressly provided herein, none of the Lenders or other Persons identified on the facing page or signature pages of this Agreement as a "syndication agent," "documentation agent," "bookrunner" or "lead arranger" shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such. Without limiting the foregoing, none of the Lenders or other Persons so identified shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

Section 9.13. *Appointment of Supplemental Administrative Agents.* (a) It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any Law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case the Administrative Agent deems that by reason of any present or future Law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, the Administrative Agent is hereby authorized to appoint an additional individual or institution selected by the Administrative Agent in its sole discretion as a separate trustee, co-trustee, administrative agent, collateral agent, administrative sub-agent or administrative co-agent (any such additional individual or institution being referred to herein individually as a "**Supplemental Administrative Agent**" and collectively as "**Supplemental Administrative Agents**").

(b) In the event that the Administrative Agent appoints a Supplemental Administrative Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or

conveyed to the Administrative Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Administrative Agent to the extent, and only to the extent, necessary to enable such Supplemental Administrative Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by such Supplemental Administrative Agent shall run to and be enforceable by either the Administrative Agent or such Supplemental Administrative Agent, and (ii) the provisions of this Article 9 and of Sections 10.04 and 10.05 that refer to the Administrative Agent shall inure to the benefit of such Supplemental Administrative Agent and all references therein to the Administrative Agent shall be deemed to be references to the Administrative Agent and/or such Supplemental Administrative Agent, as the context may require.

(c) Should any instrument in writing from any Loan Party be required by any Supplemental Administrative Agent so appointed by the Administrative Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, the Borrower or Holdings, as applicable, shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments promptly upon request by the Administrative Agent. In case any Supplemental Administrative Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Administrative Agent, to the extent permitted by Law, shall vest in and be exercised by the Administrative Agent until the appointment of a new Supplemental Administrative Agent.

ARTICLE 10
MISCELLANEOUS

Section 10.01. *Amendments, Etc.* Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the Loan Party, as the case may be only to the extent required pursuant to the terms thereof), and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided* that, no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender without the written consent of each Lender directly affected thereby (it being understood that a waiver of any condition precedent set forth in Section 4.02 or the waiver of any Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender);

(b) postpone any date scheduled for, or reduce the amount of, any payment of principal or interest under Section 2.07 or 2.08 without the written consent of each Lender directly affected thereby, it being understood that the waiver of (or amendment to the terms of) any mandatory prepayment of the Loans shall not constitute a postponement of any date scheduled for the payment of principal or interest;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan, or (subject to clause (iii) of the second proviso to this Section 10.01) any fees or other amounts payable

hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby, *provided* that, only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate;

(d) change any provision of this Section 10.01, the definition of "Required Lenders" (or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or modify any rights hereunder or make any determination or grant any consent hereunder or any similar defined term), "Pro Rata Share" or any provision of Section 2.05, 2.13 or 8.03 or Section 4.02 of the Security Agreement without the written consent of each Lender affected thereby;

(e) other than in a transaction permitted under Section 7.04 or Section 7.05, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender; or

(f) other than in a transaction permitted under Section 7.04 or Section 7.05, release all or substantially all of the aggregate value of the Guaranty, without the written consent of each Lender; or

(g) postpone any date scheduled for, or reduce the amount of the fee under Section 2.09;

and *provided, further*, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document and (ii) Section 10.07(h) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification.

Notwithstanding anything to the contrary contained in Section 10.01, guarantees, collateral security documents and related documents executed by Subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents.

Section 10.02. *Notices and Other Communications; Facsimile Copies; Etc.* (a) *General.* Unless otherwise expressly provided herein, all notices and other communications provided for hereunder or under any other Loan Document shall be in writing (including by facsimile transmission). All such written notices shall be mailed, faxed or delivered to the applicable address, facsimile number or electronic mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02 or to such other

address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the Borrower and the Administrative Agent.

All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt by the relevant party hereto and (ii) (A) if delivered by hand or by courier, when signed for by or on behalf of the relevant party hereto; (B) if delivered by mail, four (4) Business Days after deposit in the mails, postage prepaid; (C) if delivered by facsimile, when sent and receipt has been confirmed by telephone; and (D) if delivered by electronic mail (which form of delivery is subject to the provisions of Section 10.02(d)), when delivered; *provided* that notices and other communications to the Administrative Agent pursuant to Article 2 shall not be effective until actually received by such Person. In no event shall a voice mail message be effective as a notice, communication or confirmation hereunder.

(b) *Effectiveness of Facsimile Documents and Signatures*. Loan Documents may be transmitted and/or signed by facsimile or other electronic communication. The effectiveness of any such documents and signatures shall, subject to applicable Law, have the same force and effect as manually signed originals and shall be binding on all Loan Parties, the Agent and the Lenders.

(c) *Electronic Communications*. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including email and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article 2 if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(d) *Reliance by Agent and Lenders*. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Request for Credit Extension) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified

herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify each Agent-Related Person and each Lender from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower in the absence of gross negligence or willful misconduct. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

(e) *The Platform.* THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Agent-Related Persons (collectively, the "**Agent Parties**") have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to the Borrower, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

Section 10.03. *No Waiver; Cumulative Remedies.* No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Section 10.04. *Attorney Costs and Expenses.* The Borrower agrees (a) if the Closing Date occurs, to pay or reimburse the Administrative Agent, the Ad Hoc Committee and the Lenders for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents and any amendment, waiver, consent or other modification of the provisions hereof or thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs of Paul Hastings LLP, Milbank LLP, one local counsel for the Ad Hoc Committee and one local counsel in each relevant material jurisdiction for the Administrative Agent and special counsel to the extent deemed reasonably necessary by the Administrative Agent, and (b) to pay or reimburse the Administrative Agent and the Lenders for all reasonable and

documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all Attorney Costs of one counsel to the Administrative Agent and the Lenders taken as a whole and, if necessary, one local counsel in each applicable jurisdiction and, in the event of any actual conflict of interest, one additional counsel to the affected parties). The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under clause (a) of this Section 10.04 shall be paid within 30 days after written demand therefor and all amounts due under clause (b) of this Section 10.04 shall be paid within 20 Business Days after written demand therefor (in each case together with backup documentation supporting such reimbursement request). If any Loan Party fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of such Loan Party by the Administrative Agent in its sole discretion.

Section 10.05. *Indemnification by the Borrower.* The Borrower shall indemnify and hold harmless the Agent and the Lenders (and, in addition to the Lenders, where a Lender is an investment manager or advisor for the beneficial holder of the Loans, such beneficial holders) and their respective Affiliates and controlling Persons and the respective directors, officers, employees, agents, advisors and other representatives of each of the foregoing and their successors and permitted assigns (collectively the "**Indemnitees**") from and against any and all losses, claims, damages and liabilities (including Attorney Costs which shall be limited to Attorney Costs of one counsel to such Indemnitees taken as a whole, one local counsel in each relevant jurisdiction and special counsel to the extent deemed reasonably necessary by the Administrative Agent and, solely in the case of a conflict of interest, one additional counsel to the affected Indemnitees taken as a whole) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (b) any Commitment or Loan or (c) any actual or alleged presence or release of Hazardous Materials on or from any property currently or formerly owned or operated by the Borrower, any Subsidiary or any other Loan Party, or any Environmental Liability arising out of the activities or operations of the Borrower, any Subsidiary or any other Loan Party, or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the "**Indemnified Liabilities**"); *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or of any of its Related Indemnified Persons (as determined by a court of competent jurisdiction in a final and non-appealable decision), (y) a material breach of its obligations under the Loan Documents by such Indemnitee or of any of its Related Indemnified Persons (as defined below) as determined by a court of competent jurisdiction in a final and non-appealable decision or (z) any dispute solely among the Indemnitees, other than any claims against an Indemnitee in its capacity or in fulfilling its role as Administrative Agent or Lead Arranger or any similar role under the Loan Documents and not arising out of any act or

omission of the Borrower, Holdings, the Sponsor or any of its Affiliates. To the extent that the undertakings to indemnify and hold harmless set forth in this Section 10.05 may be unenforceable in whole or in part because they are violative of any applicable law or public policy, the Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement, nor shall any Indemnitee or any Loan Party have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date). In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated. This Section 10.05 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages or liability arising from any non-Tax claim. All amounts due under this Section 10.05 shall be paid within 20 Business Days after written demand therefor (together with backup documentation supporting such reimbursement request). The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

For purposes of this Section 10.05, a "**Related Indemnified Person**" of an Indemnitee means (1) any Subsidiary of such Indemnitee, (2) the respective directors, officers, or employees of such Indemnitee or any of its Subsidiaries and (3) the respective agents of such Indemnitee or any of its Subsidiaries, in the case of this clause (3), acting at the instructions of such Indemnitee or Subsidiary; *provided* that each reference to a Subsidiary in this sentence pertains to a Subsidiary involved in the negotiation of the Loan Documents or the syndication of credit facilities provided for herein.

Section 10.06. *Payments Set Aside.* To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

Section 10.07. *Successors and Assigns.* (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Loan Party may, except as permitted by Section 7.04, assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee, (ii) by way of participation in accordance with the provisions of Section 10.07(e), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Sections 10.07(g) and 10.07(i), (iv) to an SPC in accordance with the provisions of Section 10.07(h) or (v) to a successor pursuant to a merger, consolidation or similar transaction (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.07(e) and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (ii) below, any Lender may assign to one or more assignees ("**Assignees**") all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed), it being understood that the Borrower shall have the right to delay or withhold its consent if, in order for such assignment to comply with applicable Law, the Borrower would be required to obtain the consent of, or make a filing or registration with, a Governmental Authority) of:

(A) the Borrower; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within fifteen (15) Business Days after having received notice thereof; provided further that no consent of the Borrower shall be required (i) for an assignment under the Facility to a Lender, an Affiliate of a Lender or an Approved Fund of a Lender, or (ii) for any assignment if an Event of Default has occurred and is continuing;

(B) the Administrative Agent; *provided* that no consent of the Administrative Agent shall be required for an assignment under the Facility to a Lender, an Affiliate of a Lender or an Approved Fund of a Lender;

(ii) assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than $1,000,000 (in the case of the Facility) unless each of the Borrower and the Administrative Agent otherwise consents; provided that (1) no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds, if any;

(B) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500; *provided* that the Administrative Agent may, in its sole discretion, elect to waive or reduce such processing and recordation fee in the case of any assignment;

(C) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire;

(D) the Assignee shall comply with Section 3.01(b), Section 3.01(c) or Section 3.01(d), as applicable;

(E) no assignment may be made to any of the Sponsors, the Borrower or their respective Affiliates or officers, except as expressly contemplated by Section 10.07(k);

(F) no assignment shall be made to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (F);

(G) no assignment shall be made to a natural person; and

(H) in connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans in accordance with its Pro Rata Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

This paragraph (b) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis.

(c) Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 10.07(d), from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and

obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, and the surrender to the Borrower by the assigning Lender of its Note, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this clause (c) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(e).

(d) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders (including for purposes of this Section 10.07(e) an SPC (as defined in Section 10.07(i) below), to the extent applicable), and the Commitments of, and principal amounts (and related interest amounts) of the Loans owing to each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower, any Agent and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(e) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or a Defaulting Lender) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Loan Documents; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 (other than clause (g) thereof) that directly affects such Participant. Subject to Section 10.07(f), the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01 (and for the avoidance of doubt, shall have no direct rights against the Borrower) (subject to the requirements of Section 3.01(b), (c) or (d), as applicable, it being understood that the documentation required under such Sections shall be delivered to the participating Lender), 3.04 (through the applicable Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.07(c). To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.09 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters

the name and address of each Participant and the principal amounts of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. No Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) except to the extent that such disclosure (x) is required pursuant to Section 3.01(h) or 10.07(f) or (y) is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Section 1.163-5(b) of the proposed United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(f) A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant.

(g) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Notes, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(h) Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an "**SPC**") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof and (iii) each SPC and the applicable Loan or any applicable part thereof shall be appropriately reflected in the Register. Each party hereto hereby agrees that (x) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement (including its obligations under Section 3.01 or 3.04), (y) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (z) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder. Other than as expressly provided in this Section 10.07(h), (A) such Granting Lender's obligations under this Agreement shall remain unchanged, (B) such Granting Lender shall remain solely responsibly to the other parties hereto for the performance of such obligations and (C) the Borrower, the Agent and the other Lenders shall continue to deal solely

and directly with such Granting Lender in connection with such Granting Lender's rights and obligations under this Agreement. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of $3,500, assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(i) Notwithstanding anything to the contrary contained herein, (i) any Lender may in accordance with applicable Law create a security interest in all or any portion of the Loans owing to it and the Notes, if any, held by it and (ii) any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Notes, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; *provided* that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (A) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (B) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

(j) [*Reserved*].

(k) Any Lender may, at any time, assign all or a portion of its Loans under this Agreement to any Person who is or will become, after such assignment, an Affiliated Lender through (A) any open market transactions or (B) "dutch auctions" open to all applicable Lenders on a pro rata basis in accordance with customary procedures to be agreed between the Borrower and the Administrative Agent (or other applicable agent managing such auction, in each case subject to the provisions of Sections 10.07(l) and 10.07(m)); *provided* that:

(i) Affiliated Lenders will not be entitled to receive, and will not receive, information provided solely to Lenders by the Administrative Agent or any Lender and will not be permitted to attend or participate in, and will not attend or participate in, meetings or conference calls attended solely by the Lenders and the Administrative Agent, other than the right to receives notices of Credit Extensions, notices or prepayments and other administrative notices in respect of its Loans or Commitments required to be delivered to Lenders pursuant to Article 2;

(ii) no Affiliated Lender that purchases any Loans pursuant to this Section 10.07(k) shall be required to represent to the seller (and no Affiliated Lender that assigns any Loans shall be required to make a representation to the buyer) that it does not possess material non-public information with respect to Holdings and its Subsidiaries or the securities of any of them;

(iii) the aggregate principal amount of Loans held at any one time by Non-Debt Fund Affiliated Lenders may not exceed 25% of the principal amount of all Loans outstanding at such time (after giving effect to any substantially simultaneous cancellations thereof);

(iv) any Loans acquired by Holdings, the Borrower or any of its Subsidiaries shall be retired and cancelled immediately upon the acquisition thereof; provided that upon any such retirement and cancellation, the aggregate outstanding principal amount of the Loans shall be deemed reduced by the full par value of the aggregate principal amount of the Loans so retired and cancelled; and

(v) any Loans acquired by any Non-Debt Fund Affiliated Lender may (but shall not be required to) be contributed to the Borrower or any of its Subsidiaries for purposes of cancelling such Indebtedness (it being understood that any such Loans shall be retired and cancelled immediately upon such contribution); provided that upon any such cancellation, the aggregate outstanding principal amount of the Loans shall be deemed reduced, as of the date of such contribution, by the full par value of the aggregate principal amount of the Loans so contributed and cancelled, shall be reduced in direct order of maturity by the full par value of the aggregate principal amount of Loans so contributed and cancelled.

(l) Notwithstanding anything in Section 10.01 or the definition of "Required Lenders" to the contrary, for purposes of determining whether the Required Lenders have (i) consented (or not consented) to (A) any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom or (B) subject to Section 10.07(m), any plan of reorganization pursuant to the Bankruptcy Code, (ii) otherwise acted on any matter related to any Loan Document, or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, no Non-Debt Fund Affiliated Lender shall have any right to consent (or not consent), otherwise act or direct or require the Administrative Agent or any Lender to take (or refrain from taking) any such action and:

(1) by its acquisition of Loans, each relevant Non-Debt Fund Affiliated Lender shall be deemed to have acknowledged and agreed that the Loans held by such Non-Debt Fund Affiliated Lender shall be disregarded in both the numerator and denominator in the calculation of any Required Lender or other Lender vote (and the Loans held by such Non-Debt Fund Affiliated Lender shall be deemed to be voted pro rata along with the other Lenders that are not Non-Debt Fund Affiliated Lenders); *provided* that (x) such Non-Debt Fund Affiliated Lender shall have the right to vote (and the Loans held by such Non-Debt Fund Affiliated Lender shall not be so disregarded) with respect to any amendment, modification, waiver, consent or other action that requires the vote of all Lenders or, if applicable to such Non-Debt Fund Affiliated Lender, all Lenders directly and adversely affected thereby, as the case may be, and (y) no amendment, modification, waiver, consent or other action shall (1) disproportionately affect such Non-Debt Fund Affiliated Lender in its capacity as a Lender as compared to other Lenders of the same Class that are not Non-Debt Fund Affiliated Lenders or (2) deprive any Non-Debt Fund Affiliated Lender of its share of any payments which the Lenders are entitled to share on a pro rata basis hereunder, in each case without the consent of such Non-Debt Fund Affiliated Lender; and

(2) all Loans held by Debt Fund Affiliates shall be deemed to be not outstanding to the extent such Loans would account for more than 49.9% of the amount of Loans and Commitments included in determining whether the Required Lenders have taken or consented to any action (it being understood that such excess amount of Loans and Commitments shall be deemed not to be outstanding on a pro rata basis among all Debt Fund Affiliates in accordance with the respective amounts of such Loans and Commitments held by them).

(m) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, to the fullest extent permitted by applicable Law, (i) each Non-Debt Fund Affiliated Lender hereby agrees that, if a proceeding under any Debtor Relief Law shall be commenced by or against the Borrower or any other Loan Party at a time when such Lender is an Affiliated Lender, such Affiliated Lender irrevocably (but subject to the immediately following proviso) authorizes and empowers the Administrative Agent to vote, on behalf of such Affiliated Lender, the Loans held by such Affiliated Lender in the same proportion as Lenders that are not Affiliated Lenders shall have voted on such matter (unless the Administrative Agent instructs such Affiliated Lender to vote such Loans in such manner, in which case such Affiliated Lender shall vote such Loan in such manner); *provided* that such Affiliated Lender shall be entitled to vote in accordance with its sole discretion in connection with any plan of reorganization to the extent any such plan of reorganization proposes to treat any Obligations held by such Affiliated Lender in a manner that is less favorable in any material respect to such Affiliated Lender than the proposed treatment of similar Obligations held by Lenders that are not Affiliates of the Borrower, and (ii) no Non-Debt Fund Affiliated Lender may make or bring (or participate in, other than as a passive participant in) any claim, in its capacity as a Lender, against any Agent hereunder.

(n) The Borrower shall maintain at its offices a copy of each Assignment and Assumption delivered to it by any Affiliated Lender and each other notification from an Affiliated Lender referred to below (the "**Affiliated Lender Register**"). Each Affiliated Lender shall advise the Borrower and the Administrative Agent in writing of (i) any proposed acquisition or disposition of Loans by such Affiliated Lender and (ii) whether such Lender is a Debt Fund Affiliate. The Borrower shall advise the Administrative Agent (in the same manner specified by Schedule 10.02 for non-borrowing notices) in writing of any proposed assignment to any Affiliated Lender at least three Business Days prior to the time such assignment is scheduled to occur unless the Administrative Agent shall have been notified thereof by the Affiliated Lender. Additionally, if any Lender becomes an Affiliated Lender at a time that such Lender holds any Loans, such Lender shall promptly advise the Borrower and the Administrative Agent that such Lender is an Affiliated Lender. Copies of the Affiliated Lender Register shall be provided to the Administrative Agent and the Affiliated Lenders upon request. Notwithstanding the foregoing if at any time (if applicable, after giving effect to any proposed assignment to an Affiliated Lender), all Non-Debt Fund Affiliated Lenders own or would own, in the aggregate, more than 25% of the principal amount of all then outstanding Loans (i) any proposed pending assignment to a Non-Debt Fund Affiliated Lender that would cause such threshold to be exceeded shall not become effective or be recorded in the Affiliated Lender Register, (ii) in the event that a Non-Debt Fund Affiliated Lender has acquired any Loans pursuant to an assignment which was not recorded in the Affiliated Lender Register, the assignment of such Loans shall be null and void *ab initio* and (iii) if such threshold is exceeded solely as a result of a Lender becoming an Affiliated Lender after it has acquired Loans, such Affiliated Lender shall assign sufficient Loans so that Non-Debt Fund Affiliated Lenders in the aggregate own less than 25% of the aggregate principal amount of Loans then outstanding. The Administrative Agent may conclusively rely upon the Affiliated Lender Register in connection with any amendment or waiver hereunder and shall not have any responsibility for monitoring any acquisition or disposition of Loans by any Affiliated Lender or for any losses suffered by any Person as a result of any purported assignment to or from an Affiliated Lender.

(o) Any Affiliated Lender may (but is not required to) contribute any Loans acquired by it to Holdings or any of its Subsidiaries, and any such Loans so contributed shall be automatically and permanently cancelled.

Section 10.08. *Confidentiality.* Each of the Agent and the Lenders agrees to maintain the confidentiality of the Information and to not use or disclose such information, except that Information may be disclosed (a) to its Affiliates and to its and their respective partners, directors, officers, employees, trustees, investment advisors and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made shall be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent requested by any Governmental Authority; (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process; (d) to any other party to this Agreement; (e) subject to an agreement containing provisions substantially the same as those of this Section 10.08 (or as may otherwise be reasonably acceptable to the Borrower), to any pledgee referred to in Section 10.07(g), counterparty to a Swap Contract, Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Agreement; (f) with the written consent of the Borrower; (g) to the extent such Information becomes publicly available other than as a result of a breach of this Section 10.08; (h) to any Governmental Authority, examiner or self-regulatory authority (including the National Association of Insurance Commissioners or any other similar organization) regulating any Lender; (i) to any rating agency when required by it (it being understood that, prior to any such disclosure, such rating agency shall undertake to preserve the confidentiality of any Information relating to the Loan Parties received by it from such Lender); or (j) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder. In addition, the Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to the Agent and the Lenders in connection with the administration and management of this Agreement, the other Loan Documents, the Commitments, and the Credit Extensions. For the purposes of this Section 10.08, "**Information**" means all information received from any Loan Party or its Affiliates or its Affiliates' directors, officers, partners, employees, trustees, investment advisors or agents, relating to Holdings, the Borrower or any of their Subsidiaries or its business, other than any such information that is publicly available to any Agent or any Lender prior to disclosure by any Loan Party other than as a result of a breach of this Section 10.08; *provided* that, in the case of information received from a Loan Party after the Closing Date, such information is clearly identified at the time of delivery as confidential or is delivered pursuant to Sections 6.01, 6.02 or 6.03 hereof.

Section 10.09. *Setoff.* In addition to any rights and remedies of the Lenders provided by Law, but subject to the terms of the Bankruptcy Court DIP Order and the Carve Out, upon the occurrence and during the continuance of any Event of Default, each Lender and its Affiliates is authorized at any time and from time to time, without prior notice to the Borrower or any other Loan Party, any such notice being waived by each of Holdings and the Borrower (on its own behalf and on behalf of each Loan Party and its Subsidiaries) to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other Indebtedness at any time owing by, such Lender and its Affiliates, as the case may be, to or for the credit or the account of the respective Loan Parties and their Subsidiaries

against any and all Obligations owing to such Lender and its Affiliates hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Agent or such Lender or Affiliate shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Notwithstanding anything to the contrary contained herein, no Lender or its Affiliates shall have a right to set off and apply any deposits held or other Indebtedness owing by such Lender or its Affiliates, as the case may be, to or for the credit or the account of any Subsidiary of a Loan Party which is not a "United States person" within the meaning of Section 7701(a)(30) of the Code unless such Subsidiary (i) is not a direct or indirect subsidiary of Holdings or (ii) is a Loan Party. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such set off and application made by such Lender; *provided* that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Administrative Agent, each Lender under this Section 10.09 are in addition to other rights and remedies (including other rights of setoff) that the Administrative Agent, such Lender may have at Law but subject to the terms of the Bankruptcy Court DIP Order and the Carve Out.

Section 10.10. *Interest Rate Limitation.* Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "**Maximum Rate**"). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 10.11. *Counterparts.* This Agreement and each other Loan Document may be executed in one or more counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which together shall constitute a single contract. Delivery by facsimile or electronic transmission of an executed counterpart of a signature page to this Agreement and each other Loan Document shall be effective as delivery of an original executed counterpart of this Agreement and such other Loan Document. The Agent may also require that any such documents and signatures delivered by facsimile or electronic transmission be confirmed by a manually signed original thereof; *provided* that the failure to request or deliver the same shall not limit the effectiveness of any document or signature delivered by facsimile or electronic transmission.

Section 10.12. *Integration.* This Agreement, together with the other Loan Documents and the Fee Letter, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control.

Section 10.13. *Survival of Representations and Warranties.* All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation (other than obligations under Cash Management Obligations and other contingent Obligations that are not accrued and payable) hereunder shall remain unpaid or unsatisfied.

Section 10.14. *Severability.* If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.14, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

Section 10.15. *GOVERNING LAW.* (a) EXCEPT TO THE EXTENT SUPERSEDED BY THE BANKRUPTCY CODE, THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN THE BANKRUPTCY COURT, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE BANKRUPTCY COURT. EACH LOAN PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF THE BANKRUPTCY COURT AND IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE BORROWER AGENT AT ITS ADDRESS FOR NOTICES AS SET FORTH HEREIN. THE LOAN PARTIES AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING HEREIN SHALL AFFECT THE

RIGHT OF THE ADMINISTRATIVE AGENT AND THE LENDERS TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY LOAN PARTY IN ANY OTHER JURISDICTION. EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN SUCH COURT AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY LOAN PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH LOAN PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.*WAIVER OF VENUE.* EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(c) *SERVICE OF PROCESS.* EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 10.16. *WAIVER OF RIGHT TO TRIAL BY JURY.* EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.17. *Binding Effect.* This Agreement shall become effective when it shall have been executed by the Borrower, Holdings and the Administrative Agent and the Administrative Agent

shall have been notified by each Lender, that each such Lender, has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, Holdings, each Agent and each Lender and their respective successors and permitted assigns.

Section 10.18. *Electronic Execution Of Assignments And Certain Other Documents.* The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10.19. *Judgment Currency.* If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or the Lenders hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "**Judgment Currency**") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "**Agreement Currency**"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable Law).

Section 10.20. *Lender Action.* Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party under any of the Loan Documents, or agreements governing Cash Management Obligations (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, without the prior written consent of the Administrative Agent (which shall not be withheld in contravention of Section 9.04(a)). The provision of this Section 10.20 are for the sole benefit of the Lenders and shall not afford any right to, or constitute a defense available to, any Loan Party.

Section 10.21. *USA PATRIOT Act.* Each Lender that is subject to the USA PATRIOT Act (the "**Act**") and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the Act, it is required to obtain, verify and record

information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower in accordance with the Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act.

Section 10.22. *No Advisory or Fiduciary Responsibility.* In connection with all aspects of each transaction contemplated hereby, each of Holdings and the Borrower acknowledge and agree, and acknowledge their Affiliates' understanding, that (a) the Facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Borrower and its Affiliates, on the one hand, and the Agent and the Lenders, on the other hand, and the Borrower is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (b) in connection with the process leading to such transaction, each of the Agent and the Lenders is and has been acting solely as a principal and is not an advisor, agent or fiduciary for the Borrower or any of its Affiliates, stockholders, creditors or employees or any other Person; (c) none of the Agent or the Lenders has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrower with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any Agent or Lender has advised or is currently advising the Borrower or any of its Affiliates on other matters) and none of the Agent or the Lenders has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (d) the Agent and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and none of the Agent or the Lenders has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (e) the Agent and the Lenders have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and Holdings and the Borrower have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate. Each of Holdings and the Borrower hereby waives and releases, to the fullest extent permitted by applicable Law, any claims that it may have against the Agent and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty.

Section 10.23. *Conflicts*. If any provision in this Agreement or any other Loan Document expressly conflicts with any provision in the Interim DIP Order or Final DIP Order, the provisions in the Bankruptcy Court DIP Order shall govern and control.

ARTICLE 11
SECURITY AND PRIORITY

Section 11.01. *Incremental Performance Marketing.*

(a) Beginning on the second to last business day before the last full week in February, and continuing on a monthly basis thereafter on the second to last business day before the last full week of each month, the Loan Parties shall provide the Administrative Agent and the financial advisors of the Ad Hoc Committee with a Monthly Incremental Marketing Proposal and host a pre-scheduled conference call with the Lenders to discuss such proposal. The Required Lenders shall have forty-eight (48) hours after the conclusion of the pre-scheduled conference call to respond, and if such 48-hour period lapses, the Required Lenders will be deemed to have approved the Monthly Incremental Marketing Proposal.

(b) Following delivery of a Monthly Incremental Marketing Proposal, the Company may request approval of additional incremental performance marketing expenditures. Approval of such requests shall be made in the Required Lenders' sole discretion.

(c) In the event of an extension of the Maturity Date, the Loan Parties shall deliver an updated Performance Marketing Schedule ("**Updated Performance Marketing Schedule**") on the second to last business day before the last full week of the month during which the Maturity Date would have occurred, which Updated Performance Marketing Schedule shall be subject to the approval of the Required Lenders in their reasonable discretion.

(d) The Loan Parties may timely pay all obligations arising from incremental performance marketing expenditures incurred by the Loan Parties prior to the Petition Date and all Pre-Approved Incremental Marketing Spend incurred during the month of February.

(e) Notwithstanding anything to the contrary contained herein, the Loan Parties shall be permitted to incur the Pre-Approved Incremental Marketing Spend without any further approval of the Required Lenders.

(f) Notwithstanding anything to the contrary contained herein, total cash disbursements on account of incremental performance marketing expenditures for the duration of the Chapter 11 Cases shall not exceed the Incremental Performance Marketing Cap in the aggregate, absent the consent of the Required Lenders, which may be provided pursuant to Section 11.04(b) hereof.

Section 11.02. *Collateral; Grant of Lien and Security Interest.*

(a) Pursuant to, and otherwise subject to the terms of, the Bankruptcy Court DIP Order and in accordance with the terms thereof and subject to the Carve Out and the Professional Fees Account, as security for the full and timely payment and performance of all of the Obligations, the Loan Parties hereby, pledge and grant to the Secured Parties, a security interest in and to and, subject to Section 11.05, a Lien on all of the Collateral.

(b) Notwithstanding anything herein to the contrary (i) all proceeds received by the Administrative Agent and the Lenders from the Collateral subject to the Liens granted in this 11.04 and in each other Loan Document and by the Bankruptcy Court DIP Order shall be subject in all

respects to the Carve Out and the funds in the Professional Fees Account, and (ii) no Person entitled to amounts in respect of the Carve Out shall be entitled to sell or otherwise dispose, or seek or object to the sale or other disposition, of any Collateral.

Section 11.03. *Priority and Liens Applicable to Loan Parties.*

(a) Upon entry of the Interim DIP Order or Final DIP Order and subject to the terms thereof, as the case may be, the Obligations, Liens and security interests in favor of the Administrative Agent shall, subject in all respects to the Carve Out and the Professional Fees Account, at all times:

(i) pursuant to Bankruptcy Code Sections 364(c)(1), 503 and 507, all of the Obligations shall constitute allowed superpriority administrative expense claims ("**DIP Superpriority Claims**"), which DIP Superpriority Claims in respect of the Loans shall rank pari passu with each other and superior to all other claims;

(ii) pursuant to Bankruptcy Code Section 364(c)(2) with respect to all other "DIP Collateral" (as defined in the Bankruptcy Court DIP Order) that was not otherwise subject to valid, perfected, enforceability and unavoidable liens on the Petition Date;

(iii) pursuant to Bankruptcy Code Section 364(c)(2),a junior Lien on and security interest in the proceeds of real property leases and proceeds of Avoidance Actions;

(iv) pursuant to Bankruptcy Code Section 364(c)(2), a first priority Lien on the Operating Account, the funds maintained in such account and all proceeds thereof;

(v) pursuant to Bankruptcy Code Section 364(d), a first priority priming Lien on and security interest in (the "**Priming Liens**") all assets of the Loan Parties encumbered by a first priority lien under the Prepetition First Lien Documents not otherwise described in clauses (i) through (v) above (now or hereafter acquired and all proceeds thereof) that were subject to a lien as of the Petition Date;

(b) The Priming Liens shall prime all of the Liens securing the Prepetition First Lien Indebtedness with respect to the Loan Documents, but the Liens so created as described in clauses (a)(ii), (a)(v), and (a)(vi) above shall be subject to "Permitted Liens" (as such term is defined under the Prepetition First Lien Credit Agreement), the Carve Out, and the Professional Fees Account in all respects.

(c) The Liens to be granted by the Bankruptcy Court shall cover all property of the Loan Parties (now or hereafter acquired and all proceeds thereof), including property or assets that do not secure the Prepetition First Lien Indebtedness and as expressly excluded under the Security Agreement, *provided,* that, subject to the entry of the Final DIP Order, the Liens shall not cover proceeds of the Avoidance Actions.

(d) All of the liens described herein with respect to the assets of the Loan Parties shall be effective and perfected as of the Interim DIP Order Entry Date and without the necessity of the execution or filing of mortgages, security agreements, pledge agreements, financing statements or other agreements.

Section 11.04. *Grants, Rights and Remedies*. The Liens and security interests granted pursuant to Section 11.04(a) hereof and the administrative priority and lien priority granted pursuant to Section 11.05 hereof may be independently granted by the Loan Documents and by other Loan Documents hereafter entered into. This Agreement, the Bankruptcy Court DIP Order and such other Loan Documents supplement each other, and the grants, priorities, rights and remedies of the Administrative Agent and the Lenders hereunder and thereunder are cumulative; provided that to the extent of conflict the Bankruptcy Court DIP Order controls.

Section 11.05. *No Filings Required*. The Liens and security interests referred to herein shall be deemed valid and perfected by entry of the Interim DIP Order or the Final DIP Order, as the case may be, and entry of the Interim DIP Order shall have occurred on or before the date of the Credit Extension. The Administrative Agent shall not be required to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office, take possession or control of any Collateral, or take any other action in order to validate or perfect the Lien and security interest granted by or pursuant to this Agreement, the Interim DIP Order or the Final DIP Order, as the case may be, or any other Loan Document.

Section 11.06. *Survival*. The Liens, lien priority, administrative priorities and other rights and remedies granted to the Administrative Agent and the Lenders pursuant to this Agreement, the Bankruptcy Court DIP Orders and the other Loan Documents (specifically including, but not limited to, the existence, perfection and priority of the Liens and security interests provided herein and therein, and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of Indebtedness by the Borrower (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of any of the Chapter 11 Cases, or by any other act or omission whatsoever. Without limitation, notwithstanding any such order, financing, extension, incurrence, dismissal, conversion, act or omission:

(a) except with respect to the Carve Out and the Professional Fees Account, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases or any conversion of the same or in any other proceedings related thereto, and no priority claims, are or will be prior to or on parity with any claim of the Administrative Agent and the Lenders against the Borrower in respect of any Obligation;

(b) the Liens in favor of the Administrative Agent and the Lenders set forth in Section 11.04(a) hereof shall constitute valid and perfected Liens and security interests, and shall be prior to all other Liens and security interests, now existing or hereafter arising, in favor of any other creditor or any other Person whatsoever (subject to Section 11.05); and

(c) the Liens in favor of the Administrative Agent and the Lenders set forth herein, in the Interim DIP Order and in the other Loan Documents shall continue to be valid and perfected without the necessity that the Administrative Agent file financing statements or mortgages, take possession or control of any Collateral, or otherwise perfect its Lien under applicable non-bankruptcy law.

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Schedule 1

Initial DIP Budget

Project Rushmore
Weekly DIP Budget
($ in 000s)

		Interim Order					Final Order								
	Actual/Fcst Week Ending	Fcst 1 14 Feb	Fcst 2 21 Feb	Fcst 3 28 Feb	Fcst 4 6 Mar	Fcst 5 13 Mar	Fcst 6 20 Mar	Fcst 7 27 Mar	Fcst 8 3 Apr	Fcst 9 10 Apr	Fcst 10 17 Apr	Fcst 11 24 Apr	Fcst 12 1 May	Fcst 13 8 May	Fcst 13 Week Total
I.	**Cash Flow**														
1)	Operating Receipts	1,587	4,109	5,356	3,279	3,548	4,442	5,874	4,076	2,426	3,240	4,899	5,027	2,942	50,806
2)	Operating Disbursements	(2,326)	(4,367)	(3,256)	(4,323)	(791)	(5,751)	(859)	(11,426)	(803)	(3,983)	(656)	(17,167)	(674)	(56,381)
3)	Non-Operating Disbursements	(350)	(209)	(131)	(87)	(266)	(452)	(79)	(138)	(30)	(1,092)	(77)	(94)	(85)	(3,090)
	Restructuring Related Disbursements														
4)	Critical Vendor, Foreign Vendor, & 503(b)(9) Motion	(4,028)	(755)	(165)	(4,250)	-	(281)	-	(768)	-	-	-	-	-	(10,247)
5)	Other Restructuring Related Payments	(800)	(1,023)	(125)	-	-	(3,910)	-	-	-	-	-	-	-	(5,859)
6)	Professional Fees	(3,305)	-	-	(1,456)	(827)	(831)	(779)	(1,247)	(729)	(433)	(416)	(416)	(1,079)	(11,517)
7)	US Trustee Fees	-	-	-	-	-	-	-	-	-	-	-	(250)	-	(250)
8)	Total Restructuring Related Disbursements	(8,133)	(1,778)	(290)	(5,706)	(827)	(5,022)	(779)	(2,015)	(729)	(433)	(416)	(666)	(1,079)	(27,872)
9)	**Total Disbursements**	(10,809)	(6,354)	(3,677)	(10,116)	(1,884)	(11,225)	(1,717)	(13,578)	(1,562)	(5,507)	(1,148)	(17,927)	(1,838)	(87,343)
10)	**Net Cash Flow**	(9,222)	(2,245)	1,679	(6,837)	1,664	(6,783)	4,157	(9,502)	864	(2,268)	3,751	(12,900)	1,103	(36,537)
11)	*Cumulative Net Cash Flow*	(9,222)	(11,467)	(9,788)	(16,625)	(14,960)	(21,743)	(17,587)	(27,089)	(26,225)	(28,492)	(24,741)	(37,641)	(36,537)	(36,537)
II.	**Financing**														
A.	**Cash**														
12)	Beginning Book Cash	1,646	5,000	5,000	6,560	5,000	6,664	5,000	9,157	5,000	5,864	5,000	8,751	5,000	1,646
13)	Net Cash Flow	(9,222)	(2,245)	1,679	(6,837)	1,664	(6,783)	4,157	(9,502)	864	(2,268)	3,751	(12,900)	1,103	(36,537)
14)	DIP Withdrawal/(Paydown)	12,575	2,245	-	5,276	-	5,119	-	5,495	-	1,403	-	9,305	-	41,418
15)	Other Borrowing/(Paydown)	-	-	(119)	-	-	-	-	(149)	-	-	-	(156)	-	(424)
16)	Ending Book Cash	5,000	5,000	6,560	5,000	6,664	5,000	9,157	5,000	5,864	5,000	8,751	5,000	6,103	6,103
17)	Ending Outstanding Checks	-	-	-	-	-	-	-	-	-	-	-	-	-	-
18)	Ending Bank Cash	5,000	5,000	6,560	5,000	6,664	5,000	9,157	5,000	5,864	5,000	8,751	5,000	6,103	6,103
B.	**DIP**														
19)	Beginning Balance	-	15,709	17,954	17,954	23,230	23,230	29,291	29,291	34,786	34,786	36,189	36,189	45,494	-
20)	Withdrawal	12,575	2,245	-	5,276	-	5,119	-	5,495	-	1,403	-	9,305	-	41,418
21)	Paydown	-	-	-	-	-	-	-	-	-	-	-	-	-	-
22)	Upfront Disct & Backstop Fee	3,134	-	-	-	-	942	-	-	-	-	-	-	-	4,076
23)	Ending Balance	15,709	17,954	17,954	23,230	23,230	29,291	29,291	34,786	34,786	36,189	36,189	45,494	45,494	45,494
24)	Net Availability	27,000	27,000	27,000	27,000	27,000	74,100	74,100	74,100	74,100	74,100	74,100	74,100	74,100	74,100
25)	DIP Availability	11,291	9,046	9,046	3,770	3,770	44,809	44,809	39,314	39,314	37,911	37,911	28,606	28,606	28,606
26)	Total Liquidity	16,291	14,046	15,606	8,770	10,434	49,809	53,966	44,314	45,179	42,911	46,662	33,606	34,710	34,710

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	**Chapter 11**
RENTPATH HOLDINGS, INC., *et al.*,	:	**Case No. 20–10312 (BLS)**
Debtors.[1]	:	**(Jointly Administered)**
	:	**Re: Docket Nos. 20 & 80**

FINAL ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (IV) GRANTING ADEQUATE PROTECTION TO PREPETITION LENDERS, (V) MODIFYING AUTOMATIC STAY, AND (VI) GRANTING RELATED RELIEF

Upon the motion, dated February 12, 2020 (the "Motion")[2] of RentPath Holdings, Inc. ("Holdings") and its affiliated debtors in the above-captioned chapter 11 cases (collectively, the "Chapter 11 Cases"), as debtors and debtors in possession (collectively, the "Debtors"), seeking entry of an order (this "Final Order") pursuant to sections 105, 361, 362, 363, 364(c)(l), 364(c)(2), 364(c)(3), 364(d), 364(e), and 507 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of

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[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: RentPath Holdings, Inc. (1735); RentPath, LLC (7573); Consumer Source Holdings LLC (8150); Discover Home Network, LLC (4311); Easy Media, LLC (5455); Electronic Lead Management, Inc. (4986); Electronic Lead Management MA, Inc. (3113); Electronic Lead Management VA, Inc. (7698); Live Response Solutions Holdings, LLC (0462); Live Response Solutions, LLC (5120); Viva Group Brokerage, Inc. (7156); and Viva Group, LLC (0789). The Debtors' mailing address is 950 East Paces Ferry Road NE, Suite 2600, Atlanta, Georgia 30326.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Delaware (the "Local Rules") *inter alia*:

(i) authorizing the Debtors, on a final basis, to continue borrowing under the senior secured postpetition financing facility on a superpriority basis in the aggregate principal amount of $74,074,074.07 (the "DIP Facility" and, all amounts extended under the DIP Facility, the "DIP Loans"), pursuant to the terms and conditions of that certain *Debtor-in-Possession Credit Agreement* (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the "DIP Credit Agreement" and, together with any exhibits attached thereto and other agreements related thereto, including, without limitation, all notices, guarantees, security agreements, ancillary documents and agreements, and any mortgages contemplated thereby, the "DIP Documents"), by and among RentPath, LLC, a Delaware limited liability company (in such capacity, the "Borrower"), each of the other Debtors as guarantors, Royal Bank of Canada as administrative agent and collateral agent (in such capacities, the "DIP Agent"), and the lenders party thereto (the "DIP Lenders" and, together with the DIP Agent, the "DIP Secured Parties"), substantially in the form attached as **Exhibit A** to the Interim Order (as defined below);

(ii) approving, on a final basis, the Debtors' entry into the DIP Documents and their performance of such other acts as may be necessary or appropriate in connection with the same;

(iii) approving, on a final basis, the grant under the Interim Order conferring all obligations under the DIP Facility and under, or secured by, the DIP Documents (collectively, and including all "Obligations" as defined in the DIP Credit Agreement, the "DIP Obligations") the status of allowed superpriority administrative expense claims in each of the Chapter 11 Cases;

(iv) approving, on a final basis, the grant to the DIP Agent, for the benefit of the DIP Secured Parties, to secure the DIP Obligations, of automatically perfected security interests in and liens on all of the DIP Collateral (as defined below), including, without limitation, all property constituting "cash collateral" as defined in section 363(a) of the Bankruptcy Code ("Cash Collateral"), which liens shall have the priorities set forth in the Interim Order (as defined below) and herein and shall be subject to the Carve-Out (as defined below);

(v) authorizing and directing, on a final basis, the Debtors to pay the principal, interest, premiums, fees, expenses, and other amounts payable under the DIP Documents as such become due and payable;

(vi) authorizing, on a final basis, the Debtors to use the Prepetition Collateral (as defined below) of the Prepetition Secured Parties (as defined below) and providing adequate protection to the Prepetition Secured Parties solely to the extent of any diminution in value of their respective interests in the Prepetition Collateral, including the Cash Collateral ("Diminution in Value"), resulting from the imposition of the automatic stay, the Debtors' postpetition use, sale, or lease of the Prepetition Collateral, including Cash Collateral, or the priming of the Prepetition Secured Parties' liens on the Prepetition Collateral (including by the Carve-Out (as defined below)); and

(vii) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and this Final Order.

The Court having considered the Motion, the exhibits attached thereto, the *Declaration of Zul Jamal in Support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use*

Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Lenders, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief, the Martin Declaration, and the evidence submitted and arguments made at the interim hearing held on February 13, 2020 (the "Interim Hearing") and the final hearing (the "Final Hearing"), if any; and the Court having entered the *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection to Prepetition Lenders, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [ECF No. 80] (the "Interim Order"); and notice of the Interim Hearing and the Final Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Rules; and the Interim Hearing and the Final Hearing, if any, having been held and concluded; and all objections, if any, to the final relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and it appearing that approval of the final relief requested in the Motion is fair and reasonable and in the best interests of the Debtors, their estates, and all parties-in-interest, and is essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Credit Agreement and the other DIP Documents is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING AND THE FINAL HEARING, IF ANY, THE COURT MAKES THE FOLLOWING FINDINGS

OF FACT AND CONCLUSIONS OF LAW:[3]

A. **Petition Date**. On February 12, 2020 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court.

B. **Debtors in Possession**. The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. **Jurisdiction and Venue**. This Court has jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue for the Chapter 11 Cases and proceedings with respect to the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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

E. **Notice**. Notice of the Motion and the Final Hearing has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice of the Motion with respect to the relief requested therein or the entry of this Final Order shall be required.

F. **Debtors' Stipulations**. After consultation with their attorneys and

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

financial advisors, and without prejudice to the rights of parties in interest, including any Committee, as set forth in paragraph 40 herein, each Debtor admits, stipulates, acknowledges, and agrees (or, with respect to paragraphs F(i) through F(ii) and F(iv) through F(viii), has admitted, stipulated, acknowledged, and agreed (effective as of the Court's entry of the Interim Order and as ratified by this Final Order)) as follows (paragraphs F(i) through F(viii) below are referred to herein, collectively, as the "Debtors' Stipulations"):

(i) *Prepetition First Lien Facility*. Pursuant to that certain First Lien Credit Agreement, dated as of December 17, 2014 (as amended, restated, supplemented, or otherwise modified from time to time, the "First Lien Credit Agreement" and, collectively with the Loan Documents (as defined in the First Lien Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as amended, restated, supplemented, waived, or otherwise modified from time to time, the "Prepetition First Lien Facility Documents"), among (a) RentPath, LLC (in such capacity, the "Prepetition Borrower"), (b) Holdings, (c) Royal Bank of Canada, as administrative agent and collateral agent (in such capacities, the "Prepetition First Lien Agent"), (d) the guarantors thereunder (in such capacities, the "Prepetition First Lien Guarantors" and, together with the Prepetition Borrower, the "Prepetition First Lien Facility Obligors"), and (e) the lenders party thereto from time to time (the "Prepetition First Lien Lenders" and, collectively with the Prepetition First Lien Agent, the "Prepetition First Lien Facility Secured Parties"), the Term Lenders (as defined in the First Lien Credit Agreement) provided term loans to the Prepetition Borrower, and the Revolving Credit Lenders (as defined in the First Lien Credit Agreement) provided revolving loans to the Prepetition Borrower (collectively, the "Prepetition First Lien Facility").

(ii) *Prepetition First Lien Obligations*. As of the Petition Date, the

Prepetition First Lien Obligors were indebted to the Prepetition First Lien Facility Secured Parties, without defense, counterclaim, or offset of any kind, in respect of the loans incurred under the Prepetition First Lien Facility (collectively, the "Prepetition First Lien Loans"), in an aggregate principal amount, as of the Petition Date, not less than $517.70 million (collectively, together with accrued and unpaid interest, fees, expenses, and disbursements (including, without limitation, any accrued and unpaid attorneys' fees, accountants' fees, appraisers' fees, and financial advisors' fees and related expenses and disbursements), indemnification obligations, and other charges, amounts, and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition First Lien Facility Obligors' obligations pursuant to the Prepetition First Lien Facility Documents, including all "Obligations" as defined in the First Lien Credit Agreement, in each case, as of the Petition Date, and all interest, fees, costs, and other charges allowable under Section 506(b) of the Bankruptcy Code (the "Prepetition First Lien Facility Obligations").

(iii) *Prepetition First Lien Hedging Obligations*. RentPath, LLC (in such capacity, the "Prepetition Hedge Party" and, together with the Prepetition First Lien Facility Obligors, the "Prepetition First Lien Obligors") was party to an interest rate hedging agreement with Royal Bank of Canada (or any successors or permitted assigns thereto under such agreement, in such capacity, the "RBC Hedge Counterparty"), pursuant to that certain ISDA 2002 Master Agreement, dated as of April 4, 2017 (the "RBC Hedging Agreement"), and an interest rate hedging agreement with Nomura Global Financial Products Inc. (or any successors or permitted assigns thereto under such agreement, in such capacity, the "Nomura Hedge Counterparty" and, together with the RBC Hedge Counterparty, the "Prepetition First Lien Hedge Counterparties" and, together with the Prepetition First Lien Facility Secured Parties, the

"Prepetition First Lien Secured Parties"), pursuant to that certain ISDA 2002 Master Agreement, dated as of April 10, 2017 (the "Nomura Hedging Agreement" and, together with the RBC Hedging Agreement, the "Prepetition Hedging Agreements" and, together with the Prepetition First Lien Facility Documents, the "Prepetition First Lien Documents"). As of the Petition Date, the Prepetition Hedge Party was indebted to the RBC Hedge Counterparty and the Nomura Hedge Counterparty, without defense, counterclaim, or offset of any kind, in respect of the interest rate swaps under the Prepetition Hedging Agreements (collectively, the "Prepetition First Lien Hedges"), in amounts equal to $2,391,133 (with respect to the RBC Hedge Counterparty) and $2,381,109 (with respect to the Nomura Hedge Counterparty), respectively (collectively, the "Prepetition First Lien Hedging Obligations" and, together with the Prepetition First Lien Facility Obligations, the "Prepetition First Lien Obligations"). For purposes of the Debtors' plan of reorganization, the Prepetition First Lien Hedging Obligations shall constitute allowed First Lien Claims (as defined in the Restructuring Support Agreement) in the amounts specified in this Final Order and shall receive the same treatment provided for other allowed First Lien Claims under such plan in full and final satisfaction, compromise, settlement, release, and discharge of and in exchange for such Prepetition First Lien Hedging Obligations.

(iv) *Prepetition Second Lien Facility*. Pursuant to that certain Second Lien Credit Agreement, dated as of December 17, 2014 (as amended, restated, supplemented, or otherwise modified from time to time, the "Second Lien Credit Agreement" and, collectively with the Loan Documents (as defined in the Second Lien Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as amended, restated, supplemented, waived, or otherwise modified from time to time, the "Prepetition Second Lien Documents" and, collectively with the Prepetition First Lien Documents, the

"Prepetition Documents"), among (a) the Prepetition Borrower, (b) Holdings, (c) Wilmington Savings Fund Society, FSB, as successor administrative agent and collateral agent, (in such capacities, the "Prepetition Second Lien Agent" and, together with the Prepetition First Lien Agent, the "Prepetition Agents"), (d) the guarantors thereunder (the "Prepetition Second Lien Guarantors" and, together with the Prepetition Borrower, the "Prepetition Second Lien Obligors" and, together with the Prepetition First Lien Obligors, the "Prepetition Obligors"), and (e) the lenders party thereto (the "Prepetition Second Lien Lenders" and, collectively with the Prepetition Second Lien Agent, the "Prepetition Second Lien Secured Parties" and, together with the Prepetition First Lien Secured Parties, the "Prepetition Secured Parties"), the Prepetition Second Lien Lenders provided term loans to the Prepetition Borrower (the "Prepetition Second Lien Facility" and, together with the Prepetition First Lien Facility and the Prepetition First Lien Hedges, the "Prepetition Secured Facilities").

(v) *Prepetition Second Lien Obligations*. As of the Petition Date, the Prepetition Second Lien Obligors were indebted to the Prepetition Second Lien Secured Parties, without defense, counterclaim, or offset of any kind, in respect of the loans incurred under the Prepetition Second Lien Facility (collectively, the "Prepetition Second Lien Loans"), in an aggregate principal amount, as of the Petition Date, not less than $170.00 million (collectively, together with accrued and unpaid interest, fees, expenses, and disbursements (including, without limitation, any accrued and unpaid attorneys' fees, accountants' fees, appraisers' fees, and financial advisors' fees and related expenses and disbursements), indemnification obligations, and other charges, amounts, and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition Second Lien Obligors' obligations pursuant to the Prepetition Second Lien

Documents, including all "Obligations" as defined in the Second Lien Credit Agreement, in each case, as of the Petition Date, and all interest, fees, costs, and other charges allowable under Section 506(b) of the Bankruptcy Code (the "Prepetition Second Lien Obligations" and, together with the Prepetition First Lien Obligations, the "Prepetition Secured Obligations").

(vi) *Prepetition Liens and Prepetition Collateral*. As more fully set forth in the Prepetition First Lien Documents, prior to the Petition Date, the Prepetition First Lien Obligors granted to the Prepetition First Lien Agent, for the benefit of the Prepetition First Lien Secured Parties, a first-priority security interest in and continuing lien (the "Prepetition Senior Liens") on "Collateral," as such term is defined in the First Lien Credit Agreement (the "Prepetition First Lien Collateral"), which includes all accounts, chattel paper, commercial tort claims, deposit accounts, documents, equipment, fixtures, general intangibles (including all intellectual property, patents, and trademarks), goods, instruments, inventory, investment property, all books and records pertaining to the "Collateral," all proceeds and products of any and all of the foregoing and all supporting obligations, collateral security and guarantees given by any person with respect to any of the foregoing, as well as pledged debt and equity interests. As more fully set forth in the Prepetition Second Lien Documents, prior to the Petition Date, the Prepetition Second Lien Obligors granted to the Prepetition Second Lien Agent, for the benefit of the Prepetition Second Lien Secured Parties, a second-priority security interest in and continuing lien (the "Prepetition Junior Liens" and, together with the Prepetition Senior Liens, the "Prepetition Liens"), subject and subordinate to the Prepetition Senior Liens, on "Collateral," as such term is defined in the Second Lien Credit Agreement (the "Prepetition Second Lien Collateral" and, together with the Prepetition First Lien Collateral, the "Prepetition Collateral").

(vii) *Validity, Perfection, and Priority of Prepetition Liens and*

Prepetition Secured Obligations. The Debtors acknowledge and agree that, as of the Petition Date, (a) the Prepetition Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Secured Parties for fair consideration and reasonably equivalent value; (b) the Prepetition Senior Liens were senior in priority over any and all other liens on the Prepetition Collateral, including the Prepetition Junior Liens, subject only to certain liens permitted by the Prepetition Documents (in each case, to the extent that such existing liens were valid, properly perfected, non-avoidable, and senior in priority to the Prepetition Senior Liens as of the Petition Date or were valid non-avoidable senior liens that are perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code, the "Permitted Liens");[4] (c) the Prepetition Secured Obligations constitute legal, valid, binding, and non-avoidable obligations of the Prepetition Obligors, enforceable in accordance with the terms of the applicable Prepetition Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Secured Obligations exist, and no portion of the Prepetition Liens or Prepetition Secured Obligations is subject to any challenge or defense, including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including, without limitation, avoidance claims under chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or

[4] Nothing herein shall constitute a finding or ruling by this Court that any such Permitted Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing shall prejudice the rights of any party in interest, including, but not limited to, the Debtors, the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, or a Committee (if appointed), to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Permitted Lien. The right of a seller of goods to reclaim such goods under Section 546(c) of the Bankruptcy Code is not a Permitted Lien and is expressly subject to the Prepetition Liens and DIP Liens.

disgorgement against any of the Prepetition Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, or employees, arising out of, based upon, or related to the Prepetition Secured Facilities; (f) the Debtors have waived, discharged, and released any right to challenge any of the Prepetition Secured Obligations, the priority of the Debtors' obligations thereunder, or the validity, extent, or priority of the Prepetition Liens; and (g) the Prepetition Secured Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(viii) *Releases*. The Debtors hereby stipulate and agree that they forever and irrevocably release, discharge, and acquit the DIP Agent, the Prepetition Secured Parties, all current and future DIP Lenders, and each of their respective successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, attorneys, and agents, past, present, and future, and their respective heirs, predecessors, successors, and assigns, each solely in their capacities as such (collectively, the "Releasees"), of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including, without limitation, reasonable attorneys' fees), debts, liens, actions, and causes of action of any and every nature whatsoever relating to, as applicable, the DIP Facility, the DIP Documents, the Prepetition Secured Facilities, the Prepetition Documents, and/or the transactions contemplated hereunder or thereunder arising before the Court's entry of this Final Order, including, without limitation, (x) any so-called "lender liability" or equitable subordination or recharacterization claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with respect to the validity, priority, perfection, or avoidability of the liens or claims of the Prepetition Secured Parties, the DIP Agent, or the DIP Lenders. The Debtors further waive and release any defense, right of counterclaim, right of set-

off, or deduction to the payment of the Prepetition Secured Obligations or the DIP Obligations that the Debtors may now have or may claim to have against the Releasees arising out of, connected with, or relating to any and all acts, omissions, or events occurring prior to the Court's entry of this Final Order.

G. **Cash Collateral**. All of the Debtors' cash, including any cash in their deposit accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitutes Cash Collateral of the Prepetition Secured Parties.

H. **Intercreditor Agreement**. Pursuant to section 510 of the Bankruptcy Code, that certain Intercreditor Agreement, dated as of December 17, 2014 (as amended, restated, supplemented, or otherwise modified in accordance with its terms, the "Intercreditor Agreement"), among the Prepetition First Lien Agent and the Prepetition Second Lien Agent, and any other applicable intercreditor or subordination provisions contained in any of the other Prepetition Documents, (i) shall remain in full force and effect, (ii) shall continue to govern the relative priorities, rights, and remedies of the Prepetition Secured Parties (including the relative priorities, rights, and remedies of such parties with respect to the replacement liens, administrative expense claims, and superpriority administrative expense claims granted or the amounts payable by the Debtors under the Interim Order, this Final Order, or otherwise), and (iii) shall not be deemed to be amended, altered, or modified by the terms of the Interim Order, this Final Order, or the DIP Documents, unless expressly set forth herein or therein.

I. **Findings Regarding Postpetition Financing and Use of Cash Collateral**.

(i) *Request for Postpetition Financing and Use of Cash Collateral*. The Debtors seek authority on a final basis to continue (a) borrowing under the DIP Facility and

incur the DIP Obligations on the terms described herein and in the DIP Documents and (b) using Cash Collateral on the terms described herein, in each case, to administer their Chapter 11 Cases and fund their operations.

(ii) *Priming of the Prepetition Liens*. The priming of the Prepetition Liens under section 364(d) of the Bankruptcy Code, as contemplated by the DIP Documents and as provided herein, enabled the Debtors to obtain the DIP Facility, will enable the Debtors to continue to have access to the borrowings under the DIP Facility, and will enable the Debtors to continue to operate their business during the pendency of the Chapter 11 Cases, to the benefit of their estates and creditors. The Prepetition Secured Parties are entitled to receive adequate protection as set forth in this Final Order pursuant to sections 361, 363, and 364 of the Bankruptcy Code, solely to the extent of any Diminution in Value of their respective interests in the Prepetition Collateral (including Cash Collateral).

(iii) *Need for Postpetition Financing and Use of Cash Collateral*. The Debtors have demonstrated a need to use Cash Collateral on a final basis and to obtain credit pursuant to the DIP Facility in order to, among other things, continue their ordinary course operations, administer these Chapter 11 Cases, and preserve the going-concern value of their estates. The ability of the Debtors to maintain business relationships with their vendors, suppliers, and customers, to pay their employees, to pay for certain costs and expenses related to the Chapter 11 Cases, and to otherwise finance their operations requires the availability of working capital from the DIP Facility and the use of Cash Collateral. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or maintain their properties in the ordinary course of business during the Chapter 11 Cases without the authorization to use Cash Collateral and to borrow under the DIP Facility.

(iv) *No Credit Available on More Favorable Terms.* The DIP Facility is the best source of debtor-in-possession financing available to the Debtors. Given their current financial condition, financing arrangements, and capital structure, the Debtors have been and continue to be unable to obtain financing from sources other than the DIP Lenders on terms more favorable than the DIP Facility. The Debtors are unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors have also been unable to obtain (a) unsecured credit having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a), and 507(b) of the Bankruptcy Code; (b) credit secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) credit secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Financing on a postpetition basis on better terms is not available without granting the DIP Agent, for the benefit of itself and the DIP Lenders, (1) perfected security interests in and liens on (each as provided herein) the DIP Collateral, with the priorities set forth herein; (2) superpriority claims; and (3) the other protections set forth in this Final Order.

(v) *Use of Cash Collateral and Proceeds of the DIP Facility.* As a condition to entry into the DIP Credit Agreement, the extension of credit under the DIP Facility and the authorization to use the Prepetition Collateral, including Cash Collateral, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties require, and the Debtors have agreed, that proceeds of the DIP Facility and the Prepetition Secured Parties' Cash Collateral shall be used in a manner consistent with the terms and conditions of this Final Order and the DIP Documents and in accordance with the budget (as the same may be modified from time to time consistent with the terms of the DIP Documents and subject to such variances as permitted in the DIP

Documents, and as set forth in paragraphs 16-17 hereof, the "Budget"),[5] solely for the purposes set forth in the DIP Credit Agreement and this Final Order, including (a) ongoing working capital and other general corporate purposes of the Debtors; (b) permitted payment of costs of administration of the Chapter 11 Cases, including restructuring charges arising on account of the Chapter 11 Cases, including statutory fees of the U.S. Trustee and allowed professional fees and expenses of the Debtors' professionals and professionals retained by a Committee (if any), subject to the Investigation Budget Amount; (c) payment of such prepetition expenses as consented to by the DIP Agent, acting at the direction of the Required Lenders (as defined in the DIP Credit Agreement, the "Required Lenders"); (d) payment of interest, premiums, fees, expenses, and other amounts (including, without limitation, legal and other professionals' fees and expenses of the DIP Agent and the DIP Lenders) owed under the DIP Documents, including those incurred in connection with the preparation, negotiation, documentation, and Court approval of the DIP Facility; (e) payment of certain adequate protection amounts to the Prepetition Secured Parties, as set forth in paragraphs 12-13 hereof; and (f) payment of obligations arising from or related to the Carve-Out (as defined below), and making disbursements therefrom, including by funding the Professional Fees Account (as defined below).

(vi) *Application of Proceeds of DIP Collateral*. As a condition to entry into the DIP Credit Agreement, the extension of credit under the DIP Facility, and authorization to use Cash Collateral, the Debtors, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties have agreed that: (a) as of and commencing on the date of the Interim Hearing until the Court's entry of this Final Order, the Debtors shall apply the proceeds of the DIP Collateral in

[5] A copy of the initial Budget is attached hereto as **Schedule 1**.

accordance with the Interim Order; and (b) commencing on the Court's entry of this Final Order, the Debtors shall apply the proceeds of the DIP Collateral in accordance with this Final Order.

(vii) *DIP Election Procedures.* The procedures governing the participation of the Prepetition First Lien Lenders and, if applicable, the Prepetition Second Lien Lenders in the DIP Facility (the "DIP Election Procedures"), as set forth in the DIP Credit Agreement, have been approved and are fair and reasonable.

J. **Adequate Protection**. The Prepetition First Lien Agent, for the benefit of the Prepetition First Lien Secured Parties, and the Prepetition Second Lien Agent, for the benefit of the Prepetition Second Lien Secured Parties, are entitled to receive adequate protection solely to the extent of any Diminution in Value of their respective interests in the Prepetition Collateral, including, without limitation, the Cash Collateral. Pursuant to sections 361, 363 and 507(b) of the Bankruptcy Code, as adequate protection, subject in all respects to the Carve-Out (as defined below) and subject to paragraph 40 of this Final Order, the Prepetition Secured Parties have received and will continue to receive (i) solely to the extent of any Diminution of Value of their interests in the Prepetition Collateral, Adequate Protection Liens (as defined below) and 507(b) Claims (as defined below); (ii) solely with respect to the Prepetition First Lien Secured Parties, the Prepetition Second Lien Agent, and the Prepetition Second Lien Lenders that are members of the Ad Hoc Second Lien Committee, current payment of reasonable and documented fees and expenses and other disbursements as set forth in paragraphs 12-13 herein; and (iii) financial and other reporting, in each case, as set forth in paragraphs 12-13 herein.

K. **Sections 506(c) and 552(b).** In light of (i) the DIP Agent's and the DIP Lenders' agreement that their liens and superpriority claims shall be subject to the Carve-Out (as defined below); (ii) the Prepetition Secured Parties' agreement that their respective liens and

claims, including any adequate protection liens and claims, shall be subject to the Carve-Out (as defined below) and subordinate to the DIP Liens (as defined below); and (iii) the DIP Agent's, the DIP Lenders', and the Prepetition Secured Parties' agreement to the payment (in accordance with the Budget (subject to the Permitted Variance (as defined below)) and subject to the terms and conditions of this Final Order and the DIP Documents) of certain expenses of administration of these Chapter 11 Cases, including certain critical trade claims, (a) the Prepetition Secured Parties are entitled to a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code and (b) the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties are each entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code.

L. **Good Faith of the DIP Agent and DIP Lenders and the Prepetition Secured Parties**.

(i) Based upon the pleadings and proceedings of record in the Chapter 11 Cases, (i) the extensions of credit under the DIP Facility are fair and reasonable, are appropriate for secured financing to debtors in possession, are the best available to the Debtors under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration; (ii) the terms and conditions of the DIP Facility and the use of the Cash Collateral have been negotiated in good faith and at arm's length among the Debtors, the DIP Secured Parties, and the Prepetition Secured Parties, with the assistance and counsel of their respective advisors; (iii) the use of Cash Collateral, including, without limitation, pursuant to the Interim Order and this Final Order, has been allowed in "good faith" within the meaning of section 364(e) of the Bankruptcy Code; (iv) any credit to be extended, loans to be made, and other financial accommodations to be extended to the Debtors by the DIP Secured Parties and the

Prepetition Secured Parties, including, without limitation, pursuant to the Interim Order and this Final Order, have been allowed, advanced, extended, issued, or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code by the DIP Parties and the Prepetition Secured Parties in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code; and (v) the DIP Facility, the DIP Liens (as defined below), the DIP Superpriority Claims (as defined below), the Adequate Protection Liens, and the 507(b) Claims (as defined below) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim Order, this Final Order, or any provision hereof or thereof is vacated, reversed, or modified, on appeal or otherwise.

(ii) Absent an order of this Court and the provision of Adequate Protection, consent of the Prepetition Secured Parties is required for the Debtors' use of Cash Collateral and other Prepetition Collateral. The Prepetition Secured Parties have consented, or are deemed pursuant to the Prepetition Documents to have consented, or have not objected, to the Debtors' use of Cash Collateral and other Prepetition Collateral or to the Debtors' entry into the DIP Documents in accordance with and subject to the terms and conditions in this Final Order and the DIP Documents.

M. **Immediate Entry**. Sufficient cause exists for immediate entry of this Final Order pursuant to Bankruptcy Rule 4001(c)(2).

N. **Final Hearing**. Notice of the Final Hearing and the relief requested in the Motion has been provided by the Debtors, whether by facsimile, electronic mail, first-class mail, overnight courier, or hand delivery to certain parties in interest, including the Notice Parties. The Debtors have made reasonable efforts to afford the best notice possible under the circumstances, and no other notice is required in connection with the relief set forth in this Final

Order.

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

IT IS HEREBY ORDERED THAT:

1. DIP Facility Approved on Final Basis. The Motion is granted on a final basis as set forth herein. The DIP Facility is hereby authorized and approved on a final basis to the extent set forth herein, and the use of Cash Collateral on a final basis is authorized, in each case subject to the terms and conditions set forth in the DIP Documents and this Final Order. All objections to this Final Order, to the extent not withdrawn, waived, settled, or resolved, are hereby denied and overruled. This Final Order shall become effective immediately upon its entry.

2. Authorization of the DIP Facility. In addition to the authority granted in the Interim Order, the Debtors are expressly and immediately authorized and empowered to execute and deliver the DIP Documents and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Final Order and the DIP Documents and to deliver all instruments, certificates, agreements, and documents that may be required or necessary for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens (as defined below) (and to the extent such execution, delivery, or other acts were authorized by the Interim Order and have already occurred, such acts are hereby ratified). The Debtors are hereby authorized and directed to continue to pay, in accordance with this Final Order, the principal, interest, premiums, fees, payments, expenses, and other amounts described in the DIP Documents as such amounts become due and payable, without need to

obtain further Court approval, whether or not such fees arose before or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, to implement all applicable reserves, and to take any other actions that may be necessary or appropriate, all to the extent provided in this Final Order or the DIP Documents. All collections and proceeds, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnations, or otherwise, will be deposited and applied as required by this Final Order and the DIP Documents. Upon execution and delivery, the DIP Documents shall represent valid and binding obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms. Pursuant to the Interim Order and as ratified by this Final Order, upon the Closing Date (as defined in the DIP Credit Agreement, the "Closing Date"), the Upfront Discount (as defined in the Motion), the Backstop Premium set forth in the Backstop Commitment Letter (as defined in the DIP Credit Agreement), and the Redemption Premium (as defined in the Motion) became fully earned, non-refundable, and payable in accordance with and at the times specified in the DIP Documents.

3. Authorization to Borrow. From the entry of this Final Order through and including the DIP Termination Date (as defined below), and subject to the terms, conditions, limitations on availability, and reserves (as applicable) set forth in the DIP Documents and this Final Order, the Debtors are hereby authorized to request extensions of credit (in the form of DIP Loans) under the DIP Facility in an amount equal to $74,074,074.07, in accordance with the DIP Documents.

4. Amendment of the DIP Documents. The DIP Documents may from time to time be amended, modified, or supplemented by the parties thereto without further order of the Court if the amendment, modification, or supplement is (a) non-material and (b) in accordance

with the DIP Documents. In the case of a material amendment, modification, or supplement to the DIP Documents, the Debtors shall (i) provide notice (which may be provided through electronic mail or facsimile) to counsel to any Committee (if appointed), the U.S. Trustee, the DIP Agent, and the Prepetition Agents; (ii) provide notice to the Court; and (iii) obtain approval of the Court.

5. DIP Obligations. The DIP Documents, the Interim Order, and this Final Order shall constitute and evidence the validity and binding effect of the DIP Obligations, which shall be enforceable against the Debtors, their estates and any successors thereto, including, without limitation, any trustee appointed in the Chapter 11 Cases or in any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Cases"). As of the Court's entry of the Interim Order, the DIP Obligations include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP Agent or any of the DIP Lenders, in each case, under the DIP Documents, the Interim Order, or this Final Order, or secured by the DIP Liens (as defined below), including, without limitation, all principal, accrued and unpaid interest, costs, fees, expenses, and other amounts owing under the DIP Documents. The Debtors shall be jointly and severally liable for the DIP Obligations. The DIP Obligations shall be due and payable, and the use of Cash Collateral shall automatically cease, in each case, without notice or demand on the DIP Termination Date (as defined herein), except as provided in paragraph 26 herein and subject to the requirements of the Carve-Out (as defined below). No obligation, payment, transfer, or grant of collateral security hereunder or under the DIP Documents (including any DIP Obligation or DIP Liens (as defined below) but excluding any adequate protection provided to the

Prepetition Secured Parties hereunder) shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under chapter 5 of the Bankruptcy Code, section 724(a) of the Bankruptcy Code, or any other provision with respect to avoidance actions under the Bankruptcy Code or applicable state law equivalents) or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

6. DIP Liens. Subject and subordinate solely to the Carve-Out (as defined below) as set forth in this Final Order and effective upon entry of the Interim Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP Agent, for the benefit of itself and the DIP Lenders, was granted, in order to secure the DIP Obligations, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on (collectively, the "DIP Liens") all real and personal property, whether now existing or hereafter arising and wherever located, tangible or intangible, of each of the Debtors (the "DIP Collateral"), including, without limitation (a) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables (including credit card receivables), chattel paper, contract rights, inventory (wherever located), instruments, documents, securities (whether or not marketable) and investment property (including, without limitation, all of the issued and outstanding capital stock of each of Holdings' subsidiaries), hedge agreements, furniture, fixtures, equipment (including documents of title), goods, franchise rights, trade names, trademarks, servicemarks, copyrights, patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment intangibles), rights

to the payment of money (including, without limitation, tax refunds and any other extraordinary payments), supporting obligations, guarantees, letter of credit rights, commercial tort claims, causes of action, and all substitutions, indemnification rights, all present and future intercompany debt, fee interests in real property owned by the Debtors, books and records related to the foregoing, and accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds; (b) all owned real property interests and all proceeds of leased real property; (c) actions brought under section 549 of the Bankruptcy Code to recover any post-petition transfer of DIP Collateral; (d) the proceeds of any avoidance actions (such actions, "Avoidance Actions") brought pursuant to chapter 5 of the Bankruptcy Code or section 724(a) of the Bankruptcy Code or any other avoidance actions under the Bankruptcy Code or applicable state law equivalents (the "Avoidance Action Proceeds"); *provided*, that no liens shall attach to Avoidance Actions; (e) the proceeds of any exercise of the Debtors' rights under section 506(c) and 550 of the Bankruptcy Code; and (f) all DIP Collateral that was not otherwise subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date. Notwithstanding the foregoing, the DIP Collateral shall not include (and the DIP Liens shall not extend to) amounts deposited in the Professional Fees Account (as defined below) in accordance with the Interim Order and this Final Order, including with respect to the Carve-Out (as defined below), and any "Excluded Assets" (as defined in the DIP Documents).

7. DIP Lien Priority. Effective as of the Court's entry of the Interim Order and as ratified by this Final Order, the DIP Liens shall have the following priority:

(a) pursuant to Section 364(c) of the Bankruptcy Code, the DIP Liens shall be first priority liens on all of the Debtors' unencumbered assets (now or hereafter acquired and all proceeds thereof) other than "Excluded Assets," as defined in the DIP Documents;

(b) pursuant to Section 364(c)(3) of the Bankruptcy Code, the DIP Liens shall be immediately junior to any liens on the Debtors' encumbered assets (now or hereafter acquired and all proceeds thereof) that are subject to valid, perfected, and unavoidable liens in existence immediately prior to the Petition Date or to valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, in each case other than as set forth in clause (c) immediately below (collectively, the "Non-Primed Liens");

(c) pursuant to Section 364(d) of the Bankruptcy Code, the DIP Liens shall be priming first-priority liens on all of the Debtors' assets (now or hereafter acquired and all proceeds thereof) that serve as "Collateral" under the Prepetition Secured Facilities (the "Existing Primed Secured Facilities"), senior to the Prepetition Liens and the Adequate Protection Liens.

(d) Other than as set forth herein (including with respect to the Carve-Out (as defined below)) or in the DIP Documents, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases and shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 Cases to any Successor Case, and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The DIP Liens shall not be subject to any of sections 510, 549 or 550 of the Bankruptcy Code (subject in all respects to the Challenge Deadline and related provisions set forth in paragraph 40 herein). No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

8. Superpriority Claims. Subject and subordinate to the Carve-Out (as defined below), effective upon entry of the Interim Order and as ratified by this Final Order, the DIP Agent, on behalf of itself and the DIP Lenders, is hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, allowed superpriority administrative expense claims in each of the Chapter 11 Cases and any Successor Cases (collectively, the "DIP Superpriority Claims") for all DIP Obligations (a) with priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of the Chapter 11 Cases or any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, or 1114 of the Bankruptcy Code or any other provision of the Bankruptcy Code and (b) which shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative to the extent permitted by law.

9. No Obligation to Extend Credit. Except as required to fund the Carve-Out (as defined below) as set forth in this Final Order, the DIP Lenders shall have no obligation to make any loan or advance or to issue, amend, renew, or extend any letters of credit or bankers' acceptance under the DIP Documents unless (and subject to the occurrence of the Closing Date) all of the conditions precedent to the making of such extension of credit or the issuance, amendment, renewal, or extension of such letter of credit or bankers' acceptance under the DIP Documents and this Final Order have been satisfied in full or waived by the DIP Agent in accordance with the terms of the DIP Credit Agreement.

10. Use of Proceeds of DIP Facility.

(a) From and after the Petition Date, the Debtors shall use proceeds of

borrowings under the DIP Facility only for the purposes specifically set forth in the Interim Order, this Final Order, and the DIP Documents, and, in each case, in compliance with the Budget (subject to such the Permitted Variance (as defined in the DIP Credit Agreement, the "Permitted Variance") and the terms and conditions in the Interim Order, this Final Order, and the DIP Documents.

(b) The Debtors shall be authorized to cash collateralize outstanding letters of credit issued under, and in accordance with, the First Lien Credit Agreement, in each case, in compliance with the Budget (subject to Permitted Variances).

11. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Final Order and the DIP Documents, and in accordance with the Budget (subject to the Permitted Variance), the Debtors are authorized to use Cash Collateral until the DIP Termination Date (as defined below); *provided, however*, that during the Remedies Notice Period (as defined below), the Debtors may use Cash Collateral solely to meet payroll obligations and pay expenses necessary to avoid immediate and irreparable harm to the Debtors' estates, in accordance with the Budget (subject to the Permitted Variance), and as otherwise agreed by the DIP Agent at the direction of the Required Lenders. Nothing in the Interim Order or this Final Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Final Order (including with respect to the Carve-Out (as defined below)), the DIP Facility, the DIP Documents, or by an order of the Court, and in accordance with the Budget (subject to the Permitted Variance).

12. Adequate Protection for the Prepetition First Lien Secured Parties. Subject to the Investigation (as defined below), the Prepetition First Lien Secured Parties are

entitled, pursuant to sections 361, 362, 363(c)(2), 363(e), and 507 of the Bankruptcy Code, to adequate protection of their interests in the Prepetition Collateral, including the Cash Collateral, solely to the extent of any Diminution in Value of their interests in the Prepetition Collateral (the "First Lien Adequate Protection Obligations"); *provided*, that, for the avoidance of doubt, the First Lien Adequate Protection Obligations shall not have recourse to the amounts deposited in the Professional Fees Account (as defined below) in accordance with this Final Order, including with respect to the Carve-Out (as defined below). As adequate protection, the Prepetition First Lien Secured Parties are hereby granted the following:

(a) First Lien Adequate Protection Liens. As security for the payment of the First Lien Adequate Protection Obligations, the Prepetition First Lien Agent (for itself and for the benefit of the Prepetition First Lien Lenders and the Prepetition First Lien Hedge Counterparties) is hereby granted (effective and perfected upon the date of the Interim Order and without the necessity of the execution by the Debtors of security agreements, pledge agreements, mortgages, financing statements, or other agreements) a valid, perfected replacement security interest in and lien on all of the DIP Collateral, including Avoidance Action Proceeds (the "First Lien Adequate Protection Liens"), subject and subordinate only to (i) the Carve-Out (as defined below), (ii) the DIP Liens, and (iii) the Non-Primed Liens, subject to the terms of the Intercreditor Agreement.

(b) First Lien Section 507(b) Claims. Effective as of the Court's entry of the Interim Order and as ratified by this Final Order, the First Lien Adequate Protection Obligations shall constitute superpriority claims as provided in section 507(b) of the Bankruptcy Code (the "First Lien 507(b) Claims"), with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code,

including, without limitation, sections 105, 326, 328, 330, 331, 503(a), 503(b), 507(a), 506(c), 507(b), 546(c), 546(d), 726, 1113, or 1114 of the Bankruptcy Code, subject and subordinate only to (i) the Carve-Out (as defined below) and (ii) the DIP Superpriority Claims granted in respect of the DIP Obligations. Except to the extent expressly set forth in this Final Order, the Prepetition First Lien Secured Parties shall not receive or retain any payments, property, or other amounts in respect of the First Lien 507(b) Claims unless and until the Carve-Out (as defined below) is funded and all DIP Obligations shall have indefeasibly been paid in full in cash. Notwithstanding their status as First Lien 507(b) Claims, the First Lien Adequate Protection Obligations may be satisfied in a plan of reorganization confirmed in the Chapter 11 Cases in any manner set forth in such plan if holders of more than 66-2/3% in amount of the First Lien Adequate Protection Obligations consent to such treatment; *provided*, *however*, that nothing in this Final Order shall be construed as establishing that the confirmation requirements for a chapter 11 plan have been satisfied, predetermining any provision of a chapter 11 plan, or predetermining how any vote by any insider is counted with respect to a chapter 11 plan.

(c) Fees and Expenses. Effective as of the Court's entry of the Interim Order and as ratified by this Final Order, the Debtors are authorized and directed to pay, as adequate protection, to the Prepetition First Lien Secured Parties all accrued and unpaid fees and reasonable and documented disbursements incurred by the Prepetition First Lien Secured Parties, whether accrued before, on, or after the Petition Date, including, without limitation, the reasonable and documented fees and expenses of Milbank LLP and Morris, Nichols, Arsht & Tunnell LLP, as counsel to the Ad Hoc Committee of Crossholder Lenders, and Houlihan Lokey Capital, Inc., as financial advisor to the Ad Hoc Committee of Crossholder Lenders (excluding success or transaction fees); *provided*, that such payments shall be without prejudice to whether

any such payments should be recharacterized or reallocated pursuant to section 506(b) of the Bankruptcy Code as payments of principal, interest, or otherwise. Professionals of the Prepetition First Lien Secured Parties shall not be required to comply with the U.S. Trustee fee guidelines; however, any time that such professionals seek payment of fees and expenses from the Debtors, each professional shall provide summary copies of its fee and expense statements or invoices (which shall not be required to contain time entries and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work-product doctrine) to the U.S. Trustee and counsel to the Committee (if appointed), contemporaneously with the delivery of such fee and expense statements to the Debtors. After delivery of a fee and expense statement or invoice, the Debtors, the U.S. Trustee, and the Committee (if appointed) shall have ten (10) days to raise an objection thereto. If an objection is timely raised, such objection shall be subject to resolution by the Court. Pending such resolution, the undisputed portion of any such fee and expense statement or invoice shall be paid promptly by the Debtors. Notwithstanding the foregoing, the Debtors are authorized and directed to pay on the Closing Date all reasonable and documented fees, costs, and out-of-pocket expenses of the Prepetition First Lien Secured Parties incurred on or prior to such date without the need for any professional engaged by the Prepetition First Lien Secured Parties to first deliver a copy of its invoice as provided for herein. No attorney or advisor to the Prepetition First Lien Secured Parties shall be required to file an interim or final application seeking compensation for services or reimbursement of expenses with the Court.

(d) Information. The Debtors shall concurrently deliver to the

Prepetition First Lien Agent and the legal and financial advisors to the Ad Hoc Committee of Crossholder Lenders, all information, reports, documents, and other materials that the Debtors provide to the DIP Secured Parties pursuant to the DIP Documents and this Final Order, subject to the confidentiality provisions contained in the First Lien Credit Agreement.

13. Adequate Protection for the Prepetition Second Lien Secured Parties. Subject to the Investigation, the Prepetition Second Lien Secured Parties are entitled, pursuant to sections 361, 362, 363(c)(2), 363(e), and 507 of the Bankruptcy Code, to adequate protection of their interests in the Prepetition Collateral, including the Cash Collateral, solely to the extent of any Diminution in Value of their interests in the Prepetition Collateral (the "Second Lien Adequate Protection Obligations" and, together with the First Lien Adequate Protection Obligations, the "Adequate Protection Obligations"); *provided*, that, for the avoidance of doubt, the Second Lien Adequate Protection Obligations shall not have recourse to the amounts deposited in the Professional Fees Account (as defined below) in accordance with this Final Order, including with respect to the Carve-Out (as defined below). As adequate protection, the Prepetition Second Lien Secured Parties are hereby granted the following:

(a) Second Lien Adequate Protection Liens. As security for the payment of the Second Lien Adequate Protection Obligations, the Prepetition Second Lien Agent (for itself and for the benefit of the Prepetition Second Lien Lenders) is hereby granted (effective and perfected upon the date of the Interim Order and without the necessity of the execution by the Debtors of security agreements, pledge agreements, mortgages, financing statements, or other agreements) a valid, perfected replacement security interest in and lien on all of the DIP Collateral, including Avoidance Action Proceeds (the "Second Lien Adequate Protection Liens" and, together with the First Lien Adequate Protection Liens, the "Adequate Protection Liens"),

subject and subordinate only to (i) the Carve-Out (as defined below), (ii) the DIP Liens, (iii) the First Lien Adequate Protection Liens, (iv) the Prepetition Senior Liens, and (v) the Non-Primed Liens, in each case, subject to the terms of the Intercreditor Agreement.

(b) Second Lien Section 507(b) Claims. Effective as of the Court's entry of the Interim Order and as ratified by this Final Order, the Second Lien Adequate Protection Obligations shall constitute superpriority claims as provided in section 507(b) of the Bankruptcy Code (the "Second Lien 507(b) Claims" and, together with the First Lien 507(b) Claims, the "507(b) Claims"), with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including without limitation, sections 105, 326, 328, 330, 331, 503(a), 503(b), 507(a), 506(c), 507(b), 546(c), 546(d), 726, 1113, or 1114 of the Bankruptcy Code, subject and subordinate only to (i) the Carve-Out (as defined below), (ii) the DIP Superpriority Claims granted in respect of the DIP Obligations, and (iii) the First Lien 507(b) Claims. Except to the extent expressly set forth in this Final Order, the Prepetition Second Lien Secured Parties shall not receive or retain any payments, property, or other amounts in respect of the Second Lien 507(b) Claims unless and until the Carve-Out (as defined below) is funded and all DIP Obligations, First Lien Adequate Protection Obligations, and Prepetition First Lien Obligations shall have indefeasibly been paid in full in cash. Notwithstanding their status as Second Lien 507(b) Claims, the Second Lien Adequate Protection Obligations may be satisfied in a plan of reorganization confirmed in the Chapter 11 Cases in any manner set forth in such plan if holders of more than 66-2/3% in amount of the Second Lien Adequate Protection Obligations consent to such treatment; *provided, however*, that nothing in this Final Order shall be construed as establishing that the confirmation requirements for a chapter 11 plan have been satisfied, predetermining any provision of a chapter

11 plan, or predetermining how any vote by any insider is counted with respect to a chapter 11 plan.

(c) Fees and Expenses. Effective as of the Court's entry of the Interim Order and as ratified by this Final Order, the Debtors are authorized and directed to pay, as adequate protection, to the Prepetition Second Lien Agent and the Prepetition Second Lien Lenders that are members of the Ad Hoc Second Lien Committee all accrued and unpaid fees and reasonable and documented disbursements incurred by the Prepetition Second Lien Agent (subject to an aggregate cap of $100,000) and Akin Gump Strauss Hauer & Feld LLP, as counsel to the Ad Hoc Second Lien Committee (subject to an aggregate cap of $100,000), whether accrued before, on, or after the Petition Date; *provided*, that such payments shall be without prejudice to whether any such payments should be recharacterized or reallocated pursuant to section 506(b) of the Bankruptcy Code as payments of principal, interest, or otherwise. Professionals of the Prepetition Second Lien Agent shall not be required to comply with the U.S. Trustee fee guidelines; however, any time that such professionals seek payment of fees and expenses from the Debtors, each professional shall provide summary copies of its fee and expense statements or invoices (which shall not be required to contain time entries and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work-product doctrine) to the U.S. Trustee and counsel to the Committee (if appointed), contemporaneously with the delivery of such fee and expense statements to the Debtors. After delivery of a fee and expense statement or invoice, the Debtors, the U.S. Trustee, and the Committee (if appointed) shall have ten (10) days

to raise an objection thereto. If an objection is timely raised, such objection shall be subject to resolution by the Court. Pending such resolution, the undisputed portion of any such fee and expense statement or invoice shall be paid promptly by the Debtors. Notwithstanding the foregoing, the Debtors are authorized and directed to pay on the Closing Date all reasonable and documented fees, costs, and out-of-pocket expenses of the Prepetition Second Lien Agent incurred on or prior to such date without the need for any professional engaged by the Prepetition Second Lien Agent to first deliver a copy of its invoice as provided for herein. No attorney or advisor to the Prepetition Second Lien Agent shall be required to file an interim or final application seeking compensation for services or reimbursement of expenses with the Court.

(d) Information. The Debtors shall concurrently deliver to the Prepetition Second Lien Agent and the legal advisors to the Ad Hoc Second Lien Committee all information, reports, documents, and other material that the Debtors provide to the DIP Secured Parties pursuant to the DIP Documents and this Final Order, subject to the confidentiality provisions contained in the Second Lien Credit Agreement.

14. Adequate Protection Reservation. Subject to the Carve-Out (as defined below), nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Secured Parties hereunder is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral during the Chapter 11 Cases or any Successor Cases. The receipt by the Prepetition Secured Parties of the adequate protection provided herein shall not be deemed an admission that the interests of the Prepetition Secured Parties are adequately protected. Further, this Final Order shall not prejudice or limit the rights of the Prepetition Secured Parties to seek additional relief with respect to the use of Cash Collateral or for

additional adequate protection, subject in all respects to the terms and limitations of the Intercreditor Agreement.

15. Effect of Order on Adequate Protection. In the event that it is determined by a final order, which order shall not be subject to any appeal, stay, reversal, or vacatur, that (a) no Diminution in Value of any Prepetition Secured Party's respective interests in the Prepetition Collateral has occurred or (b) such Prepetition Secured Party is determined to be undersecured, then a party in interest shall have the right to assert that payments of Adequate Protection shall be applied toward repayment of the principal amount due under the Prepetition Secured Facilities as is owing to such Prepetition Secured Party.

16. Budget Maintenance. The Debtors shall use the proceeds of all borrowings under the DIP Facility and Cash Collateral in accordance with the Budget, subject in all respects to the Permitted Variance. The Budget annexed hereto as Schedule 1 shall constitute the initial Budget. On the first Thursday that is four (4) full weeks after the Petition Date, and on the Thursday of each fourth week thereafter, the Debtors shall provide to the DIP Agent and the legal and financial advisors of the Ad Hoc Committee of Crossholder Lenders with (a) an updated 13-week statement of the Debtors' anticipated cash receipts and disbursements for the subsequent 13-week period (a "Proposed Budget"), which Proposed Budget shall modify and supersede any prior Budget upon the approval of the Required Lenders in their reasonable discretion (such approval not to be unreasonably withheld), and (b) a report setting forth total organic and paid visitors, unique visits, and leads to core for such four-week period, in addition to a report setting forth the beginning and ending property period, as well as a breakdown of gross new, dropped, and adjusted properties for such four-week period. Until the Required Lenders approve the Proposed Budget in their reasonable discretion (such approval not to be

unreasonably withheld), the then-current Budget shall remain the Budget, and the DIP Lenders shall have no obligation to fund such Proposed Budget. Each Budget delivered to the DIP Agent and the legal and financial advisors to the Ad Hoc Committee of Crossholder Lenders shall be accompanied by such supporting documentation as reasonably requested by such legal and financial advisors, and each Budget shall be prepared in good faith based upon assumptions the Debtors believe to be reasonable. A copy of the Budget shall be delivered to the legal and financial advisors to the Committee (if appointed) and the U.S. Trustee following such Budget's approval.

17. Budget and Reporting Compliance. The Debtors shall at all times comply with the Budget, subject to the Permitted Variance, and the Debtors shall provide all reports and other information as required in the DIP Credit Agreement (subject to the grace periods provided therein). The Debtors' failure to comply with the Budget (subject to the Permitted Variance) or to provide the reports and other information required in the DIP Credit Agreement shall constitute an Event of Default, following the expiration of any applicable grace period set forth in the DIP Credit Agreement.

18. Incremental Performance Marketing Expenditures.

(a) Beginning on the second to last business day before the last full week in February, and continuing on a monthly basis thereafter on the second to last business day before the last full week of each month, the Debtors shall provide the DIP Agent and the legal and financial advisors to the Ad Hoc Committee of Crossover Lenders with a proposal for the incremental performance marketing expenditures for the subsequent month (a "Monthly Incremental Marketing Proposal") and host a pre-scheduled conference call with the DIP Lenders to discuss such proposal. The DIP Lenders shall have forty-eight (48) hours after the

conclusion of the pre-scheduled conference call to respond to such proposal, and if such forty-eight (48) hour period lapses without any such response, the Required Lenders will be deemed to have approved the Monthly Incremental Marketing Proposal. The total cash disbursements on account of incremental performance marketing expenditures for the duration of the Chapter 11 Cases shall not exceed the Incremental Performance Marketing Cap, as defined in the Performance Marketing Schedule (as defined in the DIP Credit Agreement). Following delivery of a Monthly Incremental Marketing Proposal, the Debtors may request approval of additional incremental performance marketing expenditures, the approval of which shall be within the Required Lenders' sole discretion. Notwithstanding anything to the contrary contained herein, the Debtors may timely pay all obligations arising from incremental performance marketing expenditures incurred by the Debtors prior to the Petition Date.

(b) Notwithstanding anything to the contrary contained herein, the Debtors shall be permitted to incur the Pre-Approved Incremental Marketing Spend (as defined in the DIP Credit Agreement) that were set forth on the Performance Marketing Schedule (as defined in the DIP Credit Agreement) previously delivered to the DIP Lenders, including Pre-Approved Incremental Marketing Spend for the month of February, without any further approval of the Required Lenders.

19. Modification of Automatic Stay. The automatic stay imposed under section 362(a)(2) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Final Order, including, without limitation, to (a) permit the Debtors to grant the DIP Liens, Adequate Protection Liens, DIP Superpriority Claims, and 507(b) Claims; (b) permit the Debtors to perform such acts as the DIP Agent, the Prepetition First Lien Agent, and the Prepetition Second Lien Agent each may reasonably request to assure the

perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Agent, DIP Lenders, and Prepetition Secured Parties under the DIP Documents, the DIP Facility, the Interim Order, and this Final Order, as applicable; (d) authorize the Debtors to pay, and the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties to retain and apply, payments made in accordance with the terms of the Interim Order and this Final Order; and (e) permit the First Lien Letter of Credit Issuer (as defined in the Motion) to cash collateralize the First Lien Letter of Credit (as defined in the Motion), in accordance with the terms of the First Lien Credit Agreement.

20. Perfection of DIP Liens and Adequate Protection Liens. The Interim Order and this Final Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted in the Interim Order and herein, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens or the Adequate Protection Liens or to entitle the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties to the priorities granted herein. Notwithstanding the foregoing, each of the DIP Agent, Prepetition First Lien Agent, and Prepetition Second Lien Agent is authorized to file or record, as it in its sole discretion deems necessary or advisable, such financing statements, security agreements, mortgages, notices of liens, and other similar documents to perfect its respective liens in accordance with applicable non-bankruptcy law, and all such financing statements, mortgages, notices, and other documents shall be deemed to have been filed or

recorded as of the Petition Date; *provided, however*, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens or the Adequate Protection Liens. The Debtors are authorized and directed to execute and deliver, promptly upon demand to the DIP Agent, Prepetition First Lien Agent, and Prepetition Second Lien Agent, all such financing statements, mortgages, notices, and other documents as the DIP Agent, Prepetition First Lien Agent, or Prepetition Second Lien Agent, as applicable, may reasonably request. Each of the DIP Agent, Prepetition First Lien Agent, and Prepetition Second Lien Agent, in its discretion, may file a photocopy of the Interim Order and/or this Final Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien, or similar instrument, and all applicable officials are hereby directed to accept a photocopy of the Interim Order and/or this Final Order for filing or recordation for such purpose. To the extent the Prepetition First Lien Agent or Prepetition Second Lien Agent is the secured party under any security agreement, mortgage, leasehold mortgage, landlord waiver, credit card processor notices or agreements, bailee letters, custom broker agreements, financing statement, account control agreements, or any other Prepetition Documents or is listed as loss payee or additional insured under any of the Debtors' insurance policies, the DIP Agent shall also be deemed to be the secured party or the loss payee or additional insured, as applicable, under such documents. The Prepetition First Lien Agent and Prepetition Second Lien Agent, as applicable, shall serve as agents for the DIP Agent for purposes of perfecting the DIP Liens on all DIP Collateral that is of a type such that, without giving effect to the Bankruptcy Code and this Final Order, perfection of a lien thereon may be accomplished only by possession or control by a secured party.

21. Protections of Rights of DIP Agent, DIP Lenders and Prepetition Secured Parties.

(a) Unless the DIP Agent, the Prepetition First Lien Agent, and the Prepetition Second Lien Agent shall have provided their prior written consent, or all DIP Obligations and all Prepetition Secured Obligations (excluding contingent indemnification obligations for which no claim has been asserted) have been indefeasibly paid in full in cash and the lending commitments under the DIP Facility have terminated, there shall not be entered in any of these Chapter 11 Cases or any Successor Cases any order (including any order confirming any plan of reorganization or liquidation) that authorizes any of the following (unless such order provides for the simultaneous satisfaction of such obligations): (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral or the Prepetition Collateral or that is entitled to administrative priority status, in each case that is superior to or *pari passu* with the DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Adequate Protection Liens, or the 507(b) Claims, except as expressly set forth in this Final Order or the DIP Documents; (ii) the use of Cash Collateral for any purpose other than as permitted in the Budget, the DIP Documents, and this Final Order; or (iii) any modification of any of the DIP Agent's, any DIP Lender's, or any Prepetition Secured Party's rights under the Interim Order, this Final Order, the DIP Documents, or the Prepetition Documents with respect any DIP Obligations or Prepetition Secured Obligations.

(b) The Debtors (and/or their legal and financial advisors in the case of clauses (ii) through (iv) below) will, whether or not the DIP Obligations (excluding contingent indemnification obligations for which no claim has been asserted) have been indefeasibly paid in

full in cash, (i) maintain books, records, and accounts to the extent and as required by the DIP Documents and the Prepetition Documents (and subject to the applicable grace periods set forth therein); (ii) reasonably cooperate with, consult with, and provide to the DIP Agent and the Prepetition Agents all such information and documents that any or all of the Debtors are obligated (including upon reasonable request by any of the DIP Agent or the Prepetition Agents) to provide under the DIP Documents, the Prepetition Documents, or the provisions of this Final Order; (iii) authorize their independent certified public accountants, financial advisors, investment bankers and consultants, including Berkeley Research Group LLC and Moelis & Company to cooperate and consult with the DIP Agent (and, so long as an Event of Default has occurred and is continuing, each DIP Lender) and the Prepetition Agents; (iv) upon reasonable advance notice, permit the DIP Agent, the DIP Lenders, and the Prepetition Agents to visit and inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of their respective books and records, to tour the Debtors' business premises and other properties, and to discuss their respective affairs, finances, properties, business operations, and accounts with their respective officers, employees, independent public accountants, and other professional advisors (other than legal counsel) as and to the extent required by the DIP Documents and/or the Prepetition Documents; (v) permit the DIP Agent and the Prepetition Agents to consult with the Debtors' management and advisors on matters concerning the Debtors' businesses, financial condition, operations, and assets; and (vi) upon reasonable advance notice, permit the DIP Agent and the Prepetition Agents to conduct, at their discretion and at the Debtors' cost and expense, field audits, collateral examinations, and liquidation valuations at reasonable times in respect of any or all of the DIP Collateral or the Prepetition Collateral, in accordance with the DIP Documents and the Prepetition Documents.

22. Credit Bidding. In connection with any sale process authorized by the Court, whether effectuated through sections 363, 725, or 1123 of the Bankruptcy Code, the DIP Agent, DIP Lenders, and Prepetition Secured Parties may credit bid up to the full amount of the outstanding DIP Obligations or the relevant Prepetition Obligations, as applicable, in each case including any accrued and unpaid interest, expenses, fees, and other obligations for their respective priority collateral (each such bid, a "Credit Bid") pursuant to section 363(k) of the Bankruptcy Code, subject in each case to the Intercreditor Agreement; *provided*, that any Credit Bid includes cash consideration sufficient to pay in full any obligations with senior liens on the collateral that is subject to the Credit Bid.

23. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in these Cases or any Successor Cases shall obtain credit or incur debt pursuant to sections 364(b), 364(c), 364(d) of the Bankruptcy Code in violation of the DIP Documents or this Final Order at any time prior to the indefeasible repayment in full of all DIP Obligations and the termination of the DIP Agent's and DIP Lenders' obligation to extend credit under the DIP Facility, including subsequent to the confirmation of any plan with respect to any or all of the Debtors (if applicable), then all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Agent to be applied in accordance with this Final Order and the DIP Documents.

24. Maintenance of DIP Collateral. Until the indefeasible payment in full of all DIP Obligations, all Prepetition Secured Obligations, and the termination of the DIP Agent's and the DIP Lenders' obligation to extend credit under the DIP Facility, the Debtors shall (a) insure the DIP Collateral as required under the DIP Facility or the Prepetition Documents, as

applicable; (b) maintain the cash management system in effect as of the Petition Date, as modified by any order entered by the Court; and (c)(i) maintain accurate records of all transfers (including intercompany transactions) within the cash management system so that all postpetition transfers and transactions shall be adequately and promptly documented in, and readily ascertainable from, their books and records, to the same extent maintained by the Debtors before the Petition Date, and (ii) provide reasonable access to such records to the DIP Agent and the legal and financial advisors to the Ad Hoc Committee of Crossholder Lenders.

25. Disposition of DIP Collateral. The Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral other than in the ordinary course of business without the prior written consent of the DIP Agent and the Prepetition Agents (and no such consent shall be implied, from any other action, inaction, or acquiescence by the DIP Agent, DIP Lenders, or the Prepetition Secured Parties), except as otherwise provided for in the DIP Documents or the Restructuring Support Agreement or as ordered by the Court, and subject in all respects to the Intercreditor Agreement.

26. DIP Termination Date. On the DIP Termination Date (as defined below), subject to the Carve-Out (as defined below), (a) all DIP Obligations shall be immediately due and payable, all commitments to extend credit under the DIP Facility will terminate, other than as required in paragraph 36 with respect to the Carve-Out (as defined below); (b) all authority to use Cash Collateral shall cease, *provided, however*, that during the Remedies Notice Period (as defined below), the Debtors may use Cash Collateral solely to meet payroll obligations and pay expenses necessary to avoid immediate and irreparable harm to the Debtors' estates, in accordance with the Budget (subject to the Permitted Variance), and as otherwise agreed by the DIP Agent at the direction of the Required Lenders; and (c) otherwise exercise rights and

remedies under the DIP Documents in accordance with this Final Order. For the purposes of this Final Order, the "DIP Termination Date" (as defined below) shall mean the "Termination Date" as defined in the DIP Credit Agreement.

27. Events of Default. The occurrence of any of the following events, unless waived by the Required Lenders in writing and in accordance with the terms of the DIP Credit Agreement, shall constitute an event of default (collectively, the "Events of Default") under this Final Order: (a) the failure of the Debtors to perform, in any respect, any of the terms, provisions, conditions, covenants, or obligations under this Final Order, subject to a three-day cure period (if such failure is capable of being cured); or (b) the occurrence of an "Event of Default" as defined in the DIP Credit Agreement. Upon the indefeasible payment in full in cash of the DIP Obligations (a "DIP Repayment"), the foregoing events of default may be waived by the Prepetition Agents.

28. Milestones. As a condition to the DIP Facility and the use of Cash Collateral, the Debtors shall comply with the following "Milestones," the failure of the Debtors to comply with any of which shall constitute an Event of Default under each of the DIP Credit Agreement and this Final Order and, subject to the expiration of the Remedies Notice Period, result in the automatic termination of the Debtors' authority to use Cash Collateral under this Final Order, and permit the DIP Agent, subject to the terms of paragraph 30, to exercise the rights and remedies provided for in this Final Order and the DIP Documents:

(a) As soon as practicable, but in no event later than the date that is sixty-five (65) calendar days after the Petition Date, the Bankruptcy Court shall have entered an order approving a disclosure statement for a chapter 11 plan (the "**Disclosure Statement Order**"); and

(b) As soon as practicable, but in no event later than the date that is sixty-five (65) calendar days after entry of the Disclosure Statement Order, the Bankruptcy Court shall have entered an order confirming a chapter 11 plan.

29. [Reserved].

30. Rights and Remedies Upon Event of Default. Immediately upon the occurrence and during the continuation of an Event of Default, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order of the Court, but subject to the terms of this Final Order, (a) the DIP Agent may declare (i) all outstanding DIP Obligations to be immediately due and payable, (ii) the termination of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the DIP Facility, (iii) termination of the DIP Facility and the DIP Documents as to any future liability or obligation of the DIP Agent and the DIP Lenders, without affecting any of the DIP Liens or the DIP Obligations, and (iv) that the application of the Carve-Out (as defined below) has occurred through the delivery of the Carve-Out Trigger Notice (as defined below) to the Debtors; and (b) the Prepetition Agents may declare the termination of the Debtors' ability to use Cash Collateral (any such declaration shall be referred to as a "DIP Termination Declaration" and the date on which a Termination Declaration is delivered shall be referred to as the "DIP Termination Date"). A Termination Declaration shall be given by electronic mail (or other electronic means) to counsel to the Debtors, counsel to a Committee (if appointed), counsel to the DIP Agent (if made by the Prepetition Agents) or counsel to each of the Prepetition Agents (if made by the DIP Agent), and the U.S. Trustee. The automatic stay is hereby modified so that five (5) business days after the date a Termination Declaration is delivered (such five-day period, the "Remedies Notice Period"), the DIP Agent and the DIP

Lenders shall be entitled to exercise their rights and remedies in accordance with the DIP Documents and this Final Order, subject in all respects to the Carve-Out (as defined below). During the Remedies Notice Period, the Debtors and/or a Committee (if appointed) shall be entitled to seek an emergency hearing from the Court, and upon and after delivery of the Termination Notice, the DIP Agent is deemed to have consented to such emergency hearing. The Debtors hereby waive their right to and shall not be entitled to seek relief, including under section 105 of the Bankruptcy Code or otherwise, to the extent that such relief would in any way impair or restrict the express rights and remedies granted to the DIP Agent and the DIP Lenders under this paragraph 30. Unless the Court orders otherwise, the automatic stay shall automatically be terminated at the end of the Remedies Notice Period without further notice or order as to the DIP Agent and the DIP Lenders, subject to the Carve-Out (as defined below). Upon the occurrence and during the continuation of an Event of Default, the DIP Agent and any liquidator or other professional will have the right to access and utilize, at no cost or expense, any trade names, trademarks, copyrights, or other intellectual property of the Debtors to the extent necessary or appropriate in order to sell, lease, or otherwise dispose of any of the DIP Collateral, including pursuant to any Court-approved sale process.

31. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Final Order. Based on the findings set forth in the Interim Order and this Final Order and the record made during the Interim Hearing and the Final Hearing, if any, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Final Order are hereafter modified, amended, or vacated by a subsequent order of this Court or any other court of competent jurisdiction, the DIP Agent, the DIP Lenders, and Prepetition Secured Parties are entitled to the protections provided in section 364(e) of the

Bankruptcy Code. Any such modification, amendment, or vacatur shall not affect the validity and enforceability of any advances previously made or made hereunder, or lien, claim, or priority authorized or created hereby, unless such authorization and the incurring of such debt, or the granting of such priority or lien, is stayed pending appeal.

32. Payment of Fees and Expenses. The Debtors are authorized and directed to pay all reasonable and documented prepetition and postpetition fees and out-of-pocket expenses of the DIP Agent and DIP Lenders in connection with the DIP Facility, as provided in the DIP Documents, and the transactions contemplated thereby, including attorneys' fees, monitoring and appraisal fees, financial advisory fees, fees and expenses of other consultants, and indemnification and reimbursement of fees and expenses. Any time that Professionals of the DIP Agent and the DIP Lenders seek payment of fees and expenses from the Debtors, each professional shall provide summary copies of its fee and expense statements or invoices (which shall not be required to contain time entries and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work-product doctrine) to the U.S. Trustee and counsel to the Committee (if appointed) contemporaneously with the delivery of such fee and expense statements to the Debtors. After delivery of a fee and expense statement or invoice, the Debtors, the U.S. Trustee, and the Committee (if appointed) shall have ten (10) days to raise an objection thereto. If an objection is timely raised, such objection shall be subject to resolution by the Court. Pending such resolution, the undisputed portion of any such fee and expense statement or invoice shall be paid promptly by the Debtors. Notwithstanding the foregoing, the Debtors are authorized and

directed to pay on the Closing Date all reasonable and documented fees, costs, and out-of-pocket expenses of the DIP Agent and the DIP Lenders incurred on or prior to such date without the need for any professional engaged by the DIP Agent or the DIP Lenders to first deliver a copy of its invoice as provided for herein. No attorney or advisor to the DIP Agent or the DIP Lenders shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. Any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors to the (i) DIP Agent or DIP Lenders in connection with the DIP Facility and (ii) Prepetition Secured Parties in connection with the Chapter 11 Cases, are hereby approved in full.

33. Indemnification. Effective as of the Court's entry of the Interim Order and as ratified by this Final Order, the Debtors shall indemnify and hold harmless the DIP Agent and the DIP Lenders in accordance with the terms and conditions of the DIP Credit Agreement.

34. Proofs of Claim. The DIP Agent, the DIP Lenders, and the Prepetition Secured Parties will not be required to file proofs of claim in any of the Chapter 11 Cases or Successor Cases for any claim allowed herein. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Chapter 11 Cases or Successor Cases to the contrary, each of the Prepetition First Lien Agent and the Prepetition Second Lien Agent is hereby authorized and entitled, in its sole discretion, to file a master proof of claim on behalf of the Prepetition First Lien Secured Parties and the Prepetition Second Lien Secured Parties, as applicable, in each of the Chapter 11 Cases or Successor Cases. Any proof of claim filed by the Prepetition First Lien Agent or the Prepetition Second Lien Agent shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the Prepetition First Lien Secured Parties or the Prepetition Second Lien Secured Parties, respectively. The

provisions of this paragraph 34 and each master proof of claim are intended solely for the purpose of administrative convenience and shall not affect the right of each Prepetition Secured Party (or its successors in interest) to vote separately on any plan proposed in these Chapter 11 Cases or to assert that the amount of its claim is different from that set forth on the applicable master proof of claim. The master proofs of claim shall not be required to attach any instruments, agreements or other documents evidencing the obligations owing by each of the Debtors to the applicable Prepetition Secured Parties, which instruments, agreements or other documents will be provided upon written request to counsel to the applicable Prepetition Secured Party.

35. Professional Fees Account.

(a) Contemporaneously with the initial funding of the DIP Loans, the Debtors shall (i) transfer in an amount equal to the total budgeted weekly fees and expenses incurred by persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (such persons or firms, the "Debtor Professionals") and any persons or firms retained by any Committee (the "Committee Professionals" and, together with the Debtor Professionals, the "Professional Persons" and, such fees and expenses of the Professional Persons, the "Professional Fees") for the first two weekly periods set forth in the Budget and (ii) thereafter, on a weekly basis, transfer cash proceeds from the DIP Facility or cash on hand in an amount equal to the aggregate unpaid amount of Estimated Fees and Expenses (as defined below) included in all Weekly Statements (as defined below) timely received by the Debtors, which shall be reported to the DIP Agent (or, in the event of a DIP Repayment, the Prepetition Agents), or if an estimate is not provided, the total budgeted weekly fees of Professional Persons for the prior week set forth in the Budget, in each case, into a segregated account not subject to the control, liens, security interests, or claims of the DIP Agent, any DIP Lender, or any

Prepetition Secured Party (the "Professional Fees Account").

(b) Starting with the third full calendar week following the Petition Date, each Professional Person shall deliver to the Debtors a statement (each such statement, a "Weekly Statement") setting forth a good-faith estimate of the amount of unpaid fees and expenses incurred during the preceding week by such Professional Person (the "Estimated Fees and Expenses"). No later than one business day after the delivery of a Carve-Out Trigger Notice (as defined below) (the "Carve-Out Statement Date"), each Professional Person shall deliver one additional statement to the Debtors setting forth a good-faith estimate of the amount of Estimated Fees and Expenses incurred on and during the period prior to the Carve-Out Statement Date to the extent not otherwise paid or included in a previous Weekly Statement, and the Debtors shall transfer such amounts to the Professional Fees Account.

(c) The Debtors shall be authorized to use funds held in the Professional Fees Account to pay Professional Fees as they become allowed and payable pursuant to any interim or final order of the Bankruptcy Court or otherwise; provided, that when all allowed Professional Fees have been paid in full (regardless of when such Professional Fees are allowed by the Bankruptcy Court) and the Carve-Out (as defined below) is funded, any funds remaining in the Professional Fees Account shall revert to the DIP Funding Account for use in a manner not inconsistent with this Final Order; provided, further, that the Debtors' obligations to pay allowed Professional Fees shall in no way be limited or deemed limited to funds held in the Professional Fees Account.

(d) Notwithstanding anything herein to the contrary, (i) funds transferred to the Professional Fees Account shall be held in trust exclusively for the Professional Persons, including with respect to obligations arising out of the Carve-Out (as defined below)

and (ii) funds transferred to the Professional Fees Account shall not be subject to any liens or claims granted to the DIP Lenders herein or any liens or claims granted to the Prepetition Secured Parties as adequate protection, and shall not constitute DIP Collateral, Prepetition Collateral, or Cash Collateral; provided, that the DIP Collateral and the Prepetition Collateral shall include a reversionary interest in funds held in the Professional Fees Account, if any, after all allowed Professional Fees have been paid in full (regardless of when such Professional Fees are allowed by the Bankruptcy Court) and the Carve-Out (as defined below) is funded.

(e) Notwithstanding anything herein to the contrary, (i) the Court has jurisdiction over the Professional Fees Account, (ii) all payments from the Professional Fees Account are subject to allowance by the Court, (iii) the beneficiary professionals will indemnify the estate for any losses to the account, and (iv) the Debtors shall report all disbursements from the account in the monthly operating reports submitted to the Court.

36. Carve-Out.

(a) As used in this Final Order, the term "Carve-Out" means the sum of: (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under 28 U.S.C. § 1930(a) plus interest at the statutory rate (without regard to the notice set forth in clause (iv) below); (ii) fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in clause (iv) below); (iii) to the extent allowed at any time, whether by interim or final compensation order, all professional fees of Professional Persons (collectively, the "Allowed Professional Fees") incurred at any time before or on the first business day after delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below), whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice (as defined below) and without regard to whether such fees and expenses are

provided for in the Budget; and (iv) Allowed Professional Fees incurred after the first Business Day following delivery by the DIP Agent of the Carve-Out Trigger Notice (as defined below) (including transaction fees or success fees earned or payable to a Professional Person) in an aggregate amount not to exceed $1,500,000 with respect to Professional Persons (the amount set forth in this clause (iv) being the "Post-Carve-Out Trigger Notice Cap").

(b) For purposes of the foregoing, "Carve-Out Trigger Notice" shall mean a written notice delivered by email (or other electronic means) by the DIP Agent (or, following a DIP Repayment, the Prepetition Agents) to the Debtors, their lead restructuring counsel (Weil, Gotshal & Manges LLP), the U.S. Trustee, and lead counsel to the Committee (if any), which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the obligations under the DIP Facility (or, following a DIP Repayment, any occurrence that would constitute an Event of Default hereunder) or the occurrence of the Maturity Date (as defined in the DIP Credit Agreement), stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

(c) On the day on which a Carve-Out Trigger Notice is received by the Loan Parties, the Carve-Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand (including cash contained in the DIP Funding Account) to transfer to the Professional Fees Account cash in an amount equal to all obligations benefitting from the Carve-Out; *provided*, *however*, that all amounts referenced in paragraph 36(a)(i) and (ii) of this Final Order shall be paid directly to the intended beneficiaries.

(d) For the avoidance of doubt, to the extent that professional fees and expenses of the Professional Persons have been incurred by the Debtors at any time before or on the first business day after delivery by the DIP Agent (or, following a DIP Repayment, the

Prepetition Agents) of a Carve-Out Trigger Notice but have not yet been allowed by the Bankruptcy Court on the date that the DIP Agent (or, following a DIP Repayment, the Prepetition Agents) delivers a Carve-Out Trigger Notice, such professional fees and expenses of the Professional Persons shall constitute Allowed Professional Fees benefiting from the Carve-Out upon their allowance by the Bankruptcy Court, whether by interim or final compensation order and whether before or after delivery of the Carve-Out Trigger Notice, and the Debtors shall fund the Professional Fees Account in the amount of such professional fees and expenses.

(e) Following delivery of a Carve-Out Trigger Notice, the DIP Agent shall deposit into the Professional Fees Account any cash swept or foreclosed upon (including cash received as a result of the sale or other disposition of any assets) until the Professional Fees Account has been fully funded in an amount equal to all obligations benefiting from the Carve-Out. Notwithstanding anything to the contrary herein or in the DIP Documents, following delivery of a Carve-Out Trigger Notice, the DIP Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Professional Fees Account has been fully funded in an amount equal to all obligations benefiting from the Carve-Out. Further, notwithstanding anything to the contrary herein, (i) disbursements by the Debtors from the Professional Fees Account shall not constitute DIP Loans, (ii) the failure of the Professional Fees Account to satisfy in full the Professional Fees shall not affect the priority of the Carve-Out, and (iii) in no way shall the Carve-Out, Professional Fees Account, a Budget, the Permitted Variance, Weekly Statements, Estimated Fees and Expenses, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors or that may be allowed by the Bankruptcy Court at any time (whether by interim order, final order, or otherwise).

(f) Proceeds from the DIP Facility not to exceed the Investigation Budget Amount may be used on account of professional fees and expenses of Committee Professionals in connection with the Investigation, which obligations will benefit from the Carve-Out in an amount not to exceed the Investigation Budget Amount to the extent unpaid as of the delivery of a Carve-Out Trigger Notice.

(g) Notwithstanding anything to the contrary contained herein or in the DIP Documents, no Conversion Prepayment (as defined in the DIP Credit Agreement) shall occur unless and until the Carve-Out is funded.

(h) For the avoidance of doubt and notwithstanding anything to the contrary herein or in the DIP Documents, the Carve-Out shall be senior to all liens securing and all claims on account of the DIP Facility, any adequate protection liens, and superpriority claims (whether granted on account of the DIP Facility, as adequate protection, or otherwise), and any and all other liens and claims. For the avoidance of doubt, if a DIP Repayment occurs or the DIP Facility is otherwise terminated, this Final Order shall remain in full force and effect, including with respect to the Debtors' use of Cash Collateral, the Carve-Out, the Professional Fees Account, and all related provisions in respect thereof, and the Prepetition Agents shall assume any rights and obligations that the DIP Agent previously had with respect to the Carve-Out and the Professional Fees Account.

37. No Direct Responsibility for Fees or Disbursements. Subject to any of the DIP Agent's, DIP Lenders', or Prepetition Secured Parties' obligations with respect to the Carve-Out and the Professional Fees Account, none of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties shall be (i) responsible for the direct payment or reimbursement of any fees or disbursements of any Professional Persons incurred in connection with the Chapter

11 Cases or any Successor Cases, or (ii) obligated in any way to compensate, or to reimburse expenses of, any Professional Persons or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

38. Limitations on Use of DIP Proceeds, Cash Collateral, and Carve-Out. No proceeds of the DIP Facility, the DIP Collateral, or the Prepetition Collateral, in each case, including Cash Collateral, and no portion of the Carve-Out or Professional Fees Account may be used in connection with (a) except to contest the occurrence of an Event of Default, preventing, hindering, or delaying any of the DIP Agent's or the DIP Lenders' realization upon any of the DIP Collateral or enforcement of any of their respective rights thereto in accordance with paragraph 30; (b) for any purpose that is prohibited under the Interim Order, this Final Order, the DIP Documents, or the Bankruptcy Code; (c) to finance in any way: (i) any adversary action, suit, arbitration, proceeding, application, motion, or other litigation of any type adverse to the interests of any or all of the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, or employees, or their respective rights and remedies under DIP Loan Documents, the Interim Order, this Final Order, or the Prepetition Documents, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, section 724(a) of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code or applicable state law equivalents, or (ii) any other action, which with the giving of notice or passing of time, would result in an Event of Default under the DIP Loan Documents; (d) for the payment of fees, expenses, interest, or principal under the Prepetition Documents (in each case, other than payments on account of the Adequate Protection Obligations); (e) unless the Exit Conversion occurs, to make any distribution under a plan of reorganization in the Chapter 11 Cases that does not provide for the

indefeasible payment of the DIP Loans in full and in cash (including the Redemption Premium); (f) except as permitted by the Budget (including Permitted Variances) to make any payment in settlement of any claim, action, or proceeding in excess of $500,000 in the aggregate without the prior written consent of the DIP Agent, acting at the direction of the Required Lenders; (g) selling or otherwise disposing of the DIP Collateral without the consent of the DIP Agent; (h) incurring Indebtedness (as defined in the DIP Credit Agreement), except to the extent permitted under the DIP Credit Agreement; (i) seeking to amend or modify any of the rights granted to the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties under the Interim Order, this Final Order, the DIP Documents, or the Prepetition Documents; or (j) seeking to subordinate, recharacterize, disallow, or avoid the DIP Obligations or the Prepetition Secured Obligations; *provided*, *however*, that the Cash Collateral and/or proceeds of the DIP Facility may be used for allowed fees and expenses, in an amount not to exceed $50,000 in the aggregate (the "Investigation Budget Amount"), incurred solely by a Committee (if appointed), in investigating (but not prosecuting or challenging) the validity, enforceability, perfection, priority, or extent of the Prepetition Liens (the "Investigation") before the Challenge Deadline (as defined below).

39. Payment of Compensation. So long as an unwaived Event of Default has not occurred, the Debtors shall be permitted to pay fees and expenses allowed and payable by final order (that has not been vacated or stayed, unless the stay has been vacated) under sections 328, 330, 331, and 363 of the Bankruptcy Code, as the same may be due and payable, in accordance with the DIP Documents.

40. Effect of Stipulations on Third Parties.

(a) *Generally*. The admissions, stipulations, agreements, releases, and waivers set forth in the Interim Order and this Final Order (collectively, the "Stipulations") shall

be binding on the Debtors, any trustee, or any other estate representative appointed in the Chapter 11 Cases or any Successor Cases. The Stipulations shall also be binding on all creditors and other parties in interest and all of their respective successors and assigns, including, without limitation, a Committee (if appointed), unless, and solely to the extent that, a party in interest with standing and requisite authority (i) has timely commenced an appropriate proceeding or contested matter required under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this paragraph 40) challenging any of the Stipulations (each such proceeding or contested matter, a "Challenge") by no later than (a) for a Committee (if appointed), 60 days from its formation or (b) for all other parties in interest (excluding the Debtors), 75 days following the entry of the Interim Order (the "Challenge Deadline"), as such deadline may be extended in writing from time to time in the sole discretion of the Prepetition First Lien Agent (with respect to the Prepetition Senior Liens and Prepetition First Lien Obligations or the adequate protection afforded to the Prepetition First Lien Secured Parties) and the Prepetition Second Lien Agent (with respect to the Prepetition Junior Liens and the Prepetition Second Lien Obligations or the adequate protection afforded to the Prepetition Second Lien Secured Parties) or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline, and (ii) this Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge and any such judgment has become a final judgment that is not subject to any further review or appeal, and then only to the extent of any such final judgment.

(b) *Binding Effect.* To the extent no Challenge is timely and properly commenced by the Challenge Deadline, or to the extent such Challenge does not result in a final

and non-appealable judgment or order that is inconsistent with any of the Stipulations, then, without further notice, motion, or application to, order of, or hearing before, this Court and without the need or requirement to file any proof of claim, the Stipulations shall, pursuant to this Final Order, become irrevocably binding on any person, entity, or party in interest in the Chapter 11 Cases, as well as their successors and assigns, and in any Successor Case for all purposes and shall not be subject to further challenge or objection. Notwithstanding anything to the contrary herein, if any Challenge is properly and timely commenced by a party in interest, the Stipulations shall nonetheless remain binding on all other parties in interest. To the extent any Challenge is timely and properly commenced and is unsuccessful, the Prepetition Secured Parties shall be entitled to, as adequate protection, payment of the related costs and expenses, including, but not limited to, reasonable and documented attorneys' fees, incurred in defending themselves against any unsuccessful Challenge.

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

42. Section 506(c) Claims. Except to the extent of the Carve-Out, no costs or expenses of administration that have been or may be incurred in the Chapter 11 Cases at any time shall be charged against the DIP Agent, the DIP Lenders, the Prepetition First Lien Agent, the Prepetition First Lien Lenders, the Prepetition First Lien Hedge Counterparties, the Prepetition Second Lien Agent, or the Prepetition Second Lien Lenders, the DIP Collateral, or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Agent, the Prepetition First Lien Agent, or the Prepetition Second Lien Agent, as applicable, and no such consent shall be implied from

any action, inaction, or acquiescence by any party.

43. No Marshaling/Applications of Proceeds. The DIP Agent, the DIP Lenders, the Prepetition First Lien Agent, the Prepetition First Lien Lenders, the Prepetition First Lien Hedge Counterparties, the Prepetition Second Lien Agent, and the Prepetition Second Lien Lenders shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral.

44. Section 552(b). The Prepetition First Lien Agent, the Prepetition First Lien Lenders, the Prepetition First Lien Hedge Counterparties, the Prepetition Second Lien Agent, and the Prepetition Second Lien Lenders shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception thereunder shall not apply to any of them.

45. Limits on Lender Liability. Nothing in this Final Order, any of the DIP Documents, the Prepetition Documents, or any other documents related thereto, shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of these Chapter 11 Cases or any Successor Cases. The DIP Agent, the DIP Lenders, and the Prepetition Secured Parties shall not, solely by reason of having made loans under the DIP Facility or authorizing the use of Cash Collateral, be deemed in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or state statute). Nothing in

this Final Order or the DIP Documents, shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or any of the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors.

46. Insurance Proceeds and Policies. Effective as of the Court's entry of the Interim Order and as ratified by this Final Order, and to the fullest extent provided by applicable law, the DIP Agent (on behalf of the DIP Lenders), the Prepetition First Lien Agent (on behalf of the Prepetition First Lien Lenders and the Prepetition First Lien Hedge Counterparties), and the Prepetition Second Lien Agent (on behalf of the Prepetition Second Lien Lenders), shall be, and shall be deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral.

47. Joint and Several Liability. Nothing in this Final Order shall be construed to constitute a substantive consolidation of any of the Debtors' estates, it being understood, however, that the Debtors shall be jointly and severally liable for the obligations hereunder and all DIP Obligations in accordance with the terms hereof and of the DIP Documents.

48. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, subject to the Prepetition Documents and the Intercreditor Agreement: (a) the DIP Agent's, DIP Lenders', and Prepetition Secured Parties' rights to seek any other or supplemental relief; (b) any of the rights of any of the DIP Agent, DIP Lenders, and/or the Prepetition Secured Parties under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay imposed by section 362 of

the Bankruptcy Code, (ii) request dismissal of any of the Chapter 11 Cases or Successor Cases, conversion of any of the Chapter 11 Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (c) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties. Notwithstanding anything herein to the contrary, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the Debtors', a Committee's (if appointed), or any party in interest's right to oppose any of the relief requested in accordance with the immediately preceding sentence except as expressly set forth in this Final Order. Entry of this Final Order is without prejudice to any and all rights of any party in interest with respect to any other position which any party in interest deems appropriate to raise in these Chapter 11 Cases or any Successor Cases.

49. No Waiver by Failure to Seek Relief. The failure of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under the Interim Order, this Final Order, the DIP Documents, the Prepetition Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties.

50. Binding Effect of Final Order. Immediately upon entry on the docket of this Court, the terms and provisions of this Final Order shall become binding upon the Debtors, the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, all other creditors of any of the Debtors, any Committee, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Chapter 11

Cases, any Successor Cases, or upon dismissal of any Case or Successor Case.

51. No Modification of Final Order. Until and unless the DIP Obligations and the Prepetition Secured Obligations (other than contingent obligations with respect to then unasserted claims) have been indefeasibly paid in full in cash (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms), and all commitments to extend credit under the DIP Facility have been terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly, any modification, stay, vacatur, or amendment to this Final Order without the prior written consent of the DIP Agent, the Prepetition First Lien Agent, and the Prepetition Second Lien Agent, and no such consent shall be implied by any action or inaction of the DIP Agent or the Prepetition Agents.

52. Continuing Effect of Intercreditor Agreement. The Debtors, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties each shall be bound by, and in all respects of the DIP Facility shall be governed by, and be subject to all the terms, provisions, and restrictions of the Intercreditor Agreement.

53. Final Order Controls. In the event of any inconsistency between the terms and conditions of the DIP Documents, the Interim Order, and this Final Order, the provisions of this Final Order shall control.

54. Discharge. The DIP Obligations and the obligations of the Debtors with respect to the adequate protection provided herein shall not be discharged by the entry of an order confirming any plan of reorganization in any of the Chapter 11 Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no

claim has been asserted), on or before the effective date of such plan of reorganization, or each of the DIP Agent, the DIP Lenders, the Prepetition First Lien Agent, and the Prepetition Second Lien Agent, as applicable, has otherwise agreed in writing; *provided*, that the DIP Loans shall automatically and mandatorily convert into the Exit Term Loan A (including the Redemption Premium, as defined in the DIP Credit Agreement) upon the occurrence of the Exit Conversion (as defined in the DIP Credit Agreement, the "Exit Conversion") in accordance with the DIP Credit Agreement. None of the Debtors shall propose or support any plan of reorganization or sale of all or substantially all of the Debtors' assets, or order confirming such plan or approving such sale, that is not conditioned upon the indefeasible payment in full in cash of the DIP Obligations (other than contingent indemnification obligations for which no claim has been asserted), and the payment of the Debtors' obligations with respect to the adequate protection provided for herein, in full in cash within a commercially reasonable period of time (and in no event later than the effective date of such plan of reorganization or sale) or on such other terms as are set forth in the Restructuring Support Agreement (a "Prohibited Plan or Sale"), without the written consent of each of the DIP Agent, DIP Lenders, the Prepetition First Lien Agent, and Prepetition Second Lien Agent, as applicable. For the avoidance of doubt, the Debtors' proposal or support of a Prohibited Plan or Sale, or the entry of an order with respect thereto, shall constitute an Event of Default hereunder and under the DIP Documents.

55. Survival. The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Chapter 11 Cases; (b) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Chapter 11 Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Chapter 11

Cases or any Successor Cases. The terms and provisions of this Final Order shall continue in the Chapter 11 Cases, in any Successor Cases, or following dismissal of the Chapter 11 Cases or any Successor Cases notwithstanding the entry of any orders described in clauses (a)-(d) above, and all claims, liens, security interests, and other protections granted to the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties pursuant to the Interim Order, this Final Order, and/or the DIP Documents shall maintain their validity and priority as provided by this Final Order until: (i) in respect of the DIP Facility, all the DIP Obligations have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted); and (ii) in respect of the Prepetition First Lien Facility, all of the Prepetition First Lien Obligations have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted); and (iii) in respect of the Prepetition Second Lien Facility, all of the Prepetition Second Lien Obligations have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted). The terms and provisions concerning the indemnification of the DIP Agent and the DIP Lenders shall continue in the Chapter 11 Cases, in any Successor Cases, following dismissal of the Chapter 11 Cases or any Successor Cases, following termination of the DIP Documents, and/or the indefeasible repayment of the DIP Obligations.

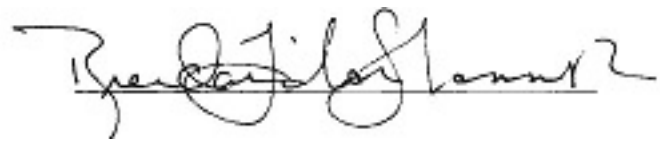
56. Payments Held in Trust. Except as expressly permitted in this Final Order or the DIP Credit Agreement, and subject to the Carve-Out, in the event that any person or entity receives any payment on account of a security interest in DIP Collateral, receives any DIP Collateral or any proceeds of DIP Collateral, or receives any other payment with respect thereto from any other source prior to all DIP Obligations in accordance with the DIP Credit Agreement, such person or entity shall be deemed to have received, and shall hold, any such payment or

proceeds of DIP Collateral in trust for the benefit of the DIP Agent and the DIP Lenders and shall immediately turn over such proceeds to the DIP Agent, or as otherwise instructed by this Court, for application in accordance with the DIP Credit Agreement and this Final Order.

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

58. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce the terms of, any and all matters arising from or related to the DIP Facility, and/or this Final Order.

59. DIP Election Procedures. Upon the Court's entry of the Interim Order, the DIP Election Procedures were approved and became binding. The DIP Agent may, in connection with allocations of the commitments under the DIP Facility or any other allocations contemplated to be made pursuant to the DIP Credit Agreement, conclusively rely on, and shall have no liability whatsoever with respect to, ownership information with respect to the Prepetition Secured Obligations as set forth on the Register (as defined in the First Lien Credit Agreement or Second Lien Credit Agreement, as applicable) as of the Election Deadline (as defined in the DIP Credit Agreement).



Dated: March 10th, 2020 Wilmington, Delaware

BRENDAN L. SHANNON UNITED STATES BANKRUPTCY JUDGE

Schedule 1

Initial DIP Budget

Project Rushmore
Weekly DIP Budget
($ in 000s)

		Interim Order					Final Order								
	Act./Fcst.	*Fcst.*	*Fcst.*	*Fcst.*	*Fcst.*	*Fcst.*	*Fcst.*	*Fcst.*	*Fcst.*	*Fcst.*	*Fcst.*	*Fcst.*	*Fcst.*	*Fcst.*	*Fcst.*
		1	2	3	4	5	6	7	8	9	10	11	12	13	13 Week
	Week Ending	14-Feb	21-Feb	28-Feb	6-Mar	13-Mar	20-Mar	27-Mar	3-Apr	10-Apr	17-Apr	24-Apr	1-May	8-May	Total
	I. Cash Flow														
1)	Operating Receipts	1,587	4,109	5,356	3,279	3,548	4,442	5,874	4,076	2,426	3,240	4,899	5,027	2,942	50,806
2)	Operating Disbursements	(2,326)	(4,367)	(3,256)	(4,323)	(791)	(5,751)	(859)	(11,426)	(803)	(3,983)	(656)	(17,167)	(674)	(56,381)
3)	Non-Operating Disbursements	(350)	(209)	(131)	(87)	(266)	(452)	(79)	(138)	(30)	(1,092)	(77)	(94)	(85)	(3,090)
	Restructuring Related Disbursements														
4)	Critical Vendor, Foreign Vendor, & 503(b)(9) Motion	(4,028)	(755)	(165)	(4,250)	-	(281)	-	(768)	-	-	-	-	-	(10,247)
5)	Other Restructuring Related Payments	(800)	(1,023)	(125)	-	-	(3,910)	-	-	-	-	-	-	-	(5,859)
6)	Professional Fees	(3,305)	-	-	(1,456)	(827)	(831)	(779)	(1,247)	(729)	(433)	(416)	(416)	(1,079)	(11,517)
7)	US Trustee Fees	-	-	-	-	-	-	-	-	-	-	-	(250)	-	(250)
8)	Total Restructuring Related Disbursements	(8,133)	(1,778)	(290)	(5,706)	(827)	(5,022)	(779)	(2,015)	(729)	(433)	(416)	(666)	(1,079)	(27,872)
9)	**Total Disbursements**	(10,809)	(6,354)	(3,677)	(10,116)	(1,884)	(11,225)	(1,717)	(13,578)	(1,562)	(5,507)	(1,148)	(17,927)	(1,838)	(87,343)
10)	**Net Cash Flow**	(9,222)	(2,245)	1,679	(6,837)	1,664	(6,783)	4,157	(9,502)	864	(2,268)	3,751	(12,900)	1,103	(36,537)
11)	*Cumulative Net Cash Flow*	(9,222)	(11,467)	(9,788)	(16,625)	(14,960)	(21,743)	(17,587)	(27,089)	(26,225)	(28,492)	(24,741)	(37,641)	(36,537)	(36,537)
	II. Financing														
	A. Cash														
12)	Beginning Book Cash	1,646	5,000	5,000	6,560	5,000	6,664	5,000	9,157	5,000	5,864	5,000	8,751	5,000	1,646
13)	Net Cash Flow	(9,222)	(2,245)	1,679	(6,837)	1,664	(6,783)	4,157	(9,502)	864	(2,268)	3,751	(12,900)	1,103	(36,537)
14)	DIP Withdrawal/(Paydown)	12,575	2,245	-	5,276	-	5,119	-	5,495	-	1,403	-	9,305	-	41,418
15)	Other Borrowing/(Paydown)	-	-	(119)	-	-	-	-	(149)	-	-	-	(156)	-	(424)
16)	Ending Book Cash	5,000	5,000	6,560	5,000	6,664	5,000	9,157	5,000	5,864	5,000	8,751	5,000	6,103	6,103
17)	Ending Outstanding Checks	-	-	-	-	-	-	-	-	-	-	-	-	-	-
18)	Ending Bank Cash	5,000	5,000	6,560	5,000	6,664	5,000	9,157	5,000	5,864	5,000	8,751	5,000	6,103	6,103
	B. DIP														
19)	Beginning Balance	-	15,709	17,954	17,954	23,230	23,230	29,291	29,291	34,786	34,786	36,189	36,189	45,494	-
20)	Withdrawal	12,575	2,245	-	5,276	-	5,119	-	5,495	-	1,403	-	9,305	-	41,418
21)	Paydown	-	-	-	-	-	-	-	-	-	-	-	-	-	-
22)	Upfront Disct & Backstop Fee	3,134	-	-	-	-	942	-	-	-	-	-	-	-	4,076
23)	Ending Balance	15,709	17,954	17,954	23,230	23,230	29,291	29,291	34,786	34,786	36,189	36,189	45,494	45,494	45,494
24)	Net Availability	27,000	27,000	27,000	27,000	27,000	74,100	74,100	74,100	74,100	74,100	74,100	74,100	74,100	74,100
25)	DIP Availability	11,291	9,046	9,046	3,770	3,770	44,809	44,809	39,314	39,314	37,911	37,911	28,606	28,606	28,606
26)	Total Liquidity	16,291	14,046	15,606	8,770	10,434	49,809	53,966	44,314	45,179	42,911	46,662	33,606	34,710	34,710

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:	)	Chapter 11
	)	
FORESIGHT ENERGY LP, *et al.*,	)	Case No. 20-41308-659
	)	
Debtors.	)	Jointly Administered
	)	
	)	Related Docket Nos.: 29 (re: 74)

FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POST-PETITION FINANCING, (B) GRANT SENIOR SECURED PRIMING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, AND (C) UTILIZE CASH COLLATERAL; (II) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES; (III) MODIFYING THE AUTOMATIC STAY; AND (IV) GRANTING RELATED RELIEF

Upon the motion, dated March 10, 2020 (the "Motion") [Docket No. 29], of Foresight Energy L.P. ("FELP") and its affiliated debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Cases") commenced on March 10, 2020 (the "Petition Date") for entry of an interim and final order (this "Final Order") under sections 105, 361, 362, 363, 364, 503, 506(c) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq*. (as amended, the "Bankruptcy Code"), Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules"), and the Local Rules of Bankruptcy Procedure (the "Local Rules") for the United States Bankruptcy Court for the Eastern District of Missouri (this "Court") seeking, among other things,

(a) authorization for Foresight Energy LLC, in its capacity as borrower (the "Borrower"), to obtain postpetition financing and other financial accommodations, and for each of the other Debtors (the "Guarantors") to guarantee unconditionally, on a joint and several basis, the Borrower's obligations in connection with a debtor-in-possession financing and other financial accommodations, comprising, among other things, a superpriority senior secured multiple-draw term loan facility in an aggregate principal amount of up to $175,000,000.00 (the "DIP Facility"), which consists of, (i) new money multi-draw term loan facility in an aggregate principal amount of $100,000,000.00 (the commitments thereunder, the "New Money DIP Commitments" and the loans advanced thereunder, the "New Money DIP Loans")

to be funded by certain Prepetition First Lien Lenders (as defined herein) and Prepetition Second Lien Noteholders (as defined herein), of which a single draw up to an aggregate principal amount not to exceed $55,000,000 in New Money DIP Loans (the "Initial DIP Term Loans") was authorized and approved on an interim basis pursuant to the *Interim Order (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing, (B) Grant Senior Secured Priming Liens and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to the Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief* [Docket No. 74] (the "Interim Order"), (ii) a term loan facility in an aggregate principal amount of $75,000,000.00, which shall (A) roll-up the Prepetition First Lien Debt (as defined herein), as further described in the DIP Facility and the Restructuring Support Agreement (as defined below), held by the participating Prepetition First Lien Lenders (or one or more of their respective affiliates or any investment advisory client managed or advised by such participating Prepetition First Lien Lenders), with $1.00 of Prepetition First Lien Debt, in an amount not to exceed $75,000,000.00 in the aggregate, being rolled-up into the DIP Facility for each $1.00 of New Money DIP Loans actually funded, including New Money DIP Loans funded into escrow, and on a *pro rata* basis based on each such participating Prepetition First Lien Lender's New Money DIP Commitments (such rolled-up debt, the "Roll-Up Loans" and, together with the New Money DIP Loans, the "DIP Loans"), (B) be issued under the DIP Facility on a *pari passu* basis with the New Money DIP Loans, and (C) be approved in its entirety upon entry of and pursuant to this Final Order, and (iii) the designation of each of (A) Javelin Global Commodities Holdings LLP and its wholly-owned subsidiaries (including, without limitation, Javelin Global Commodities (UK) Ltd ("Javelin")) and their successors and (B) Uniper Global Commodities UK Limited and its wholly-owned subsidiaries and their successors as a "Secured Designated Coal Contract Counterparty" under the DIP Documents in connection with certain obligations incurred or arising on and after the Petition Date, including obligations arising out of the post-petition performance of certain prepetition arrangements to the extent provided for under, and as provided in, the Javelin Agreements (as defined herein) (such obligations, the "DIP Secured Designated Coal Contract Obligations");

(b) authorization for the Debtors to (x) enter into that certain *Senior Secured Superpriority Debtor-In-Possession Credit and Guaranty Agreement* by and among the Borrower, the Guarantors, the lenders from time to time party thereto (collectively, the "DIP Lenders"), each of the Secured Designated Coal Contract Counterparties (collectively in such capacity, the "DIP Secured Designated Coal Contract Counterparties") and Cortland Capital Market Services LLC, as administrative agent and collateral agent (in such capacities, the "DIP Agent" and, together with the DIP Lenders and the DIP Secured Designated Coal Contract Counterparties, the "DIP Parties") (as amended, restated or otherwise modified from time to time in accordance with the terms thereof, the "DIP Credit Agreement," together with all agreements, documents, and instruments delivered or executed in connection therewith, including, without limitation, that certain Restructuring Support Agreement, dated as of March 10, 2020 (the "Restructuring

Support Agreement"), as it relates to the commitments of the Backstop Parties (as defined herein) to fund the New Money DIP Commitments, the "DIP Documents"), a form of which DIP Credit Agreement was filed as Exhibit 2 to the Interim Order and as proposed to be amended in substantially the form attached as Exhibit 1 to this Final Order, and (y) to perform their respective obligations thereunder and all such other and further acts as may be necessary, appropriate, or desirable in connection with the DIP Documents;

(c) authorization for the Debtors (x) to use the proceeds of the New Money DIP Loans and the Prepetition Collateral (as defined herein), including Cash Collateral (as defined herein), in accordance with the terms hereof, including pursuant to the Cash Flow Forecast (as defined herein) as further described herein, to pay fees and interest under the DIP Facility, to cash collateralize certain letters of credit issued and outstanding under the Prepetition First Lien Credit Documents (as defined herein) to provide working capital for, and for other general corporate purposes of, the Debtors, including for payment of any Adequate Protection Obligations (as defined herein), and (y) to effectuate the Roll-Up Loans;

(d) the granting of adequate protection to (x) the term lenders (the "Prepetition First Lien Term Loan Lenders") and revolving lenders (the "Prepetition First Lien Revolving Lenders" and, collectively with the Prepetition First Lien Term Loan Lenders, the "Prepetition First Lien Lenders") under the Credit and Guaranty Agreement, dated as of March 28, 2017 (as amended, restated, waived, supplemented, or otherwise modified, the "Prepetition First Lien Credit Agreement" and, all security, pledge and guaranty agreements and all other documentation executed in connection with the foregoing, each as amended, restated, supplemented or otherwise modified, the "Prepetition First Lien Credit Documents"), by and among Foresight Energy LLC, as borrower, the guarantors party thereto (collectively with the borrower, the "Obligors"), The Huntington National Bank, as facilities administrative agent (in such capacity, the "Prepetition First Lien Administrative Agent"), Lord Securities Corporation, as term administrative agent (in such capacity, the "Prepetition First Lien Term Loan Agent," and together with Lord Securities Corporation in its capacity as collateral trustee under the Collateral Trust Agreement (as defined below), the "Prepetition Collateral Trustee" and the Prepetition First Lien Administrative Agent, the "Prepetition First Lien Agents"; and the Prepetition First Lien Agents, together with the Prepetition First Lien Lenders, the "Prepetition First Lien Parties"), and the Prepetition First Lien Lenders and (y) the noteholders (collectively, the "Prepetition Second Lien Noteholders") under the Indenture, dated as of March 28, 2017 (as amended, restated, supplemented or otherwise modified, the "Prepetition Second Lien Indenture" and, together with all security, pledge and guaranty agreements and all other documentation executed in connection with the foregoing, each as amended, supplemented or otherwise modified, the "Prepetition Second Lien Documents" and, together with the First Lien Credit Documents, the "Prepetition Credit Documents") by and among Foresight Energy LLC and Foresight Energy Finance Corporation, as co-issuers, the guarantors party thereto and Wilmington Trust, National Association as trustee for the Prepetition Second Lien Noteholders

(together with the collateral agent for the Prepetition Second Lien Noteholders, the "Prepetition Second Lien Indenture Trustee" and together with the Prepetition Second Lien Noteholders, the "Prepetition Second Lien Parties," and the Prepetition Second Lien Indenture Trustee, together with the Prepetition First Lien Agents, the "Prepetition Agents"; and the Prepetition Agents collectively with the Prepetition First Lien Lenders, and the Prepetition Second Lien Noteholders, the "Prepetition Secured Parties");

(e) granting of adequate protection to the Prepetition Secured Parties with respect to, among other things, the use of their Cash Collateral and the Prepetition Collateral (as defined below);

(f) authorization for the Debtors to pay, on a final and irrevocable basis, the principal, interest, fees, expenses, and other amounts payable under the DIP Documents as such become earned, due and payable, including, without limitation, the Upfront Fee (as defined herein), the Put Option Premium (as defined herein), the Exit Premium (as defined herein), the Delayed Draw Term Loan Commitment Fee (as defined herein), letter of credit fees, agency fees, audit fees, appraisal fees, valuation fees, administrative and collateral agents' fees, and the reasonable fees and disbursements of the DIP Agents' and DIP Lenders' attorneys, advisors, accountants, appraisers, bankers and other consultants, all to the extent provided in, and in accordance with, the DIP Documents;

(g) the granting of valid, enforceable, non-avoidable and fully perfected first priority liens on and senior security interests in all of the property, assets and other interests in property and assets of the Debtors that is not subject to a valid and perfected lien on the Petition Date (such property and assets, the "Unencumbered Assets"), except as otherwise specifically provided herein, whether such property is presently owned or after-acquired, and all other "property of the estate" (within the meaning of the Bankruptcy Code) of the Debtors, of any kind or nature whatsoever, real or personal, tangible, intangible or mixed, now existing or hereafter acquired or created, whether existing prior to or arising after the Petition Date, including the proceeds of Avoidance Actions (as defined herein), subject only to the Carve Out (as defined herein) and, if any, the Permitted Liens (as defined herein) on the terms and conditions set forth herein and in the DIP Documents;

(h) the granting of valid, enforceable, non-avoidable and fully perfected first priority priming liens on and senior security interests in all of the property, assets and other interests in property and assets of the Debtors, except as otherwise specifically provided herein, whether such property is presently owned or after-acquired, and all other "property of the estate" (within the meaning of the Bankruptcy Code) of the Debtors, of any kind or nature whatsoever, real or personal, tangible, intangible or mixed, now existing or hereafter acquired or created, whether existing prior to or arising after the Petition Date, subject only to the Carve Out and, if any, the Permitted Liens on the terms and conditions set forth herein and in the DIP Documents;

(i) the granting of valid, enforceable, non-avoidable and fully perfected liens on and junior security interests in all of the property, assets and other interests in property and assets of the Debtors, except as otherwise specifically provided herein, whether such property is presently owned or after-acquired, and all other "property of the estate" (within the meaning of the Bankruptcy Code) of the Debtors, of any kind or nature whatsoever, real or personal, tangible, intangible or mixed, now existing or hereafter acquired or created, whether existing prior to or arising after the Petition Date, that is subject to valid and perfected security interests in and liens on such property in favor of third parties existing on the Petition Date, excluding the Prepetition Liens, subject only to the Carve Out and, if any, the Permitted Liens on the terms and conditions set forth herein and in the DIP Documents;

(j) the granting of superpriority administrative expense claims against each of the Debtors' estates to the DIP Agent, the DIP Lenders and the DIP Secured Designated Coal Contract Counterparties, with respect to the DIP Obligations (as defined herein) with priority over any and all administrative expenses of any kind or nature subject and subordinate only to the Carve Out on the terms and conditions set forth herein and in the DIP Documents;

(k) the waiver of the Debtors' and the estates' right to surcharge against the Prepetition Collateral pursuant to Bankruptcy Code section 506(c), effective as of the Petition Date;

(l) authorization for the DIP Agent and the DIP Parties to exercise remedies under the DIP Documents on the terms described herein upon the occurrence and during the continuance of a Termination Event (as defined herein);

(m) authorization for the Debtors to designate Javelin and Uniper with respect to the Javelin Agreements as DIP Secured Designated Coal Contract Counterparties under the DIP Credit Agreement and to perform their respective obligations as contemplated herein and therein, provided that none of the Javelin Agreements are being assumed hereunder.;

(n) the modification of the automatic stay imposed pursuant to Bankruptcy Code section 362 to the extent necessary to implement and effectuate the terms of this Final Order;

(o) pursuant to Bankruptcy Rule 4001, that an interim hearing (the "Interim Hearing") on the Motion be held before this Court to consider entry of the Interim Order, among other things, (1) authorizing the Borrower, on an interim basis, to borrow from the DIP Lenders under the DIP Documents the Initial DIP Term Loans (subject to any limitations of borrowing under the DIP Documents); (2) upon entry of this Final Order, authorizing the Borrower to borrow from the DIP Lenders under the DIP Documents (x) in a single draw New Money DIP Loans, in an aggregate principal amount, not to exceed $100,000,000.00 (less the Initial DIP Term Loans) (the "Delayed Draw DIP Term Loans"), and (y) the Roll-Up Loans for a total aggregate principal amount not to exceed $175,000,000.00; (3) authorizing the

Guarantors to guaranty the DIP Obligation; (4) authorizing the Debtors' use of Cash Collateral; and (5) granting the adequate protection described in the Interim Order and this Final Order; and

(p) that this Court schedule a final hearing (the "Final Hearing") to consider entry of this Final Order authorizing and approving, on a final basis, among other things, the Borrower's borrowing from the DIP Lenders under the DIP Documents up to an aggregate principal amount of $100,000,000.00 in New Money DIP Loans, the Roll-Up Loans and the continued use of Cash Collateral and granting adequate protection, in each case, as described in the Motion and set forth in the DIP Documents.

The Court having considered the Motion, the Herman Declaration[1] and the arguments of counsel made at the Interim Hearing and the Final Hearing; and proper and sufficient notice of the Motion and the Final Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and 9014; and the Interim Hearing to consider the relief requested in the Motion having been held and concluded on March 11, 2020; and the Interim Order having been approved and entered by this Court on March 11, 2020; and the Final Hearing to consider the relief requested in the Motion having been held and concluded on April 8, 2020; and all objections, if any, to the relief requested in the Motion and to the entry of this Final Order having been withdrawn, resolved, or overruled by the Court; and it appearing to the Court that granting the relief requested is fair and reasonable and in the best interests of the Debtors, their estates, creditors and parties in interest; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

[1] Declaration of Seth Herman in Support of Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing, (B) Grant Senior Secured Priming Liens and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to the Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief [Docket No. 29-3] (the "Herman Declaration").

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:[2]

1. *Disposition*. The Motion is **GRANTED** on a final basis in accordance with the terms of this Final Order. Any objections to the Motion with respect to the entry of this Final Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby denied and overruled.

2. *Jurisdiction*. This Court has core jurisdiction over the Cases commenced on Petition Date, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. *Notice*. Under the circumstances, the notice given by the Debtors of, and as described in, the Motion, the relief requested therein, and the Final Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 4001(b) and (c) and the Local Rules, and no further notice of the relief sought at the Final Hearing and the relief granted herein is necessary or required.

4. *Debtors' Stipulations*. Without prejudice to the rights of any other party, but subject to the limitations thereon contained in paragraphs 29 and 30 of this Final Order, the Debtors represent, admit, stipulate, and agree as follows:

(a) Prepetition First Lien Obligations. As of the Petition Date, the Obligors, without defense, counterclaim, or offset of any kind, were jointly and severally indebted and liable to the Prepetition First Lien Parties under the Prepetition First Lien Credit Documents in the aggregate amount of not less than $900,285,564.62, which consists of (x) approximately $157,000,000.00 in principal amount of revolving loans and $743,285,564.62 in principal amounts of term loans

[2] Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact.

advanced under the Prepetition First Lien Credit Agreement, *plus* (y) no less than approximately $18,644,570.84 on account of accrued and unpaid interest thereon as of the Petition Date ((x) and (y) together, the "Prepetition First Lien Obligations Amount"), plus all other fees, costs, expenses, indemnification obligations, reimbursement obligations (including on account of issued and undrawn letters of credit), charges, premiums, if any, additional interest, any other "Obligations" (as defined on the Prepetition First Lien Credit Agreement) and all other obligations of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable under the Prepetition First Lien Credit Documents (collectively, including the Prepetition First Lien Obligations Amount, the "Prepetition First Lien Obligations"). The Prepetition First Lien Obligations constitute legal, valid, binding and non-avoidable obligations against each of the Obligors and are not subject to any avoidance, recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action or other challenge of any kind under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise. No payments or transfers made to or for the benefit of (or obligations incurred to or for the benefit of) the Prepetition First Lien Agents or Prepetition First Lien Parties by or on behalf of any of the Debtors prior to the Petition Date under or in connection with any of the Petition First Lien Credit Documents is subject to avoidance, recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise.

(b) Prepetition First Liens. Pursuant to the Prepetition First Lien Credit Documents, the Prepetition First Lien Obligations are secured by valid, binding, perfected and enforceable first priority liens on and security interests in (the "Prepetition First Liens") the "Collateral" (as defined in the Prepetition First Lien Credit Documents) (the "Prepetition Collateral"), subject only to

certain Permitted Liens as permitted under the Prepetition First Lien Credit Documents. The Prepetition First Liens (i) are valid, binding, perfected, and enforceable first priority liens and security interests in the Prepetition Collateral, (ii) are not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or "claim" (as defined in the Bankruptcy Code) of any kind, (iii) as of the Petition Date are subject and/or subordinate only to certain Permitted Liens (if any) as permitted by the terms of the Prepetition First Lien Credit Documents and (iv) constitute the legal, valid, and binding obligation of the Loan Parties (as defined in the Prepetition First Lien Credit Documents), enforceable in accordance with the terms of the applicable Prepetition First Lien Credit Documents.

(c) Prepetition Second Lien Obligations. As of the Petition Date, the Obligors, without defense, counterclaim, or offset of any kind, were jointly and severally indebted and liable to the Prepetition Second Lien Parties under the Prepetition Second Lien Documents in the aggregate amount of not less than approximately $472,121,609.38, which consists of (x) $425,000,000.00 in principal amount outstanding under the Prepetition Second Lien Indenture, *plus* (y) no less than approximately $47,121,609.38 on account of accrued and unpaid interest thereon as of the Petition Date ((x) and (y) together, the "Prepetition Second Lien Obligations Amount"), plus all other fees, costs, expenses, indemnification obligations, charges, premiums, if any, additional interest, any other "Obligations" as defined in the Prepetition Second Lien Indenture and all other obligations of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable under the Prepetition Second Lien Documents (collectively, including the Prepetition Second Lien Obligations Amount, the "Prepetition Second Lien Obligations" and, together with the Prepetition First Lien Obligations, the "Prepetition Secured Obligations"). The

Prepetition Second Lien Obligations constitute legal, valid, binding and non-avoidable obligations against each of the Obligors and are not subject to any avoidance, recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action or other challenge of any kind under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise. No payments or transfers made to or for the benefit of (or obligations incurred to or for the benefit of) the Prepetition Second Lien Indenture Trustee or Prepetition Second Lien Parties by or on behalf of any of the Debtors prior to the Petition Date under or in connection with any of the Prepetition Second Lien Documents is subject to avoidance, recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise.

(d) Prepetition Second Liens. Pursuant to the Prepetition Second Lien Documents, the Prepetition Second Lien Obligations are secured by valid, binding, perfected and enforceable second priority liens on and security interests in the Prepetition Collateral (the "Prepetition Second Liens" and, together with the Prepetition First Liens, the "Prepetition Liens"), which Prepetition Second Liens are subject and subordinate only to the Prepetition First Liens and certain Permitted Liens. The Prepetition Second Liens (i) are valid, binding, perfected, and enforceable second priority liens and security interests in the Prepetition Collateral, (ii) are not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or "claim" (as defined in the Bankruptcy Code) of any kind, (iii) as of the Petition Date are subject and/or subordinate only to the Prepetition First Liens and certain Permitted Liens (if any) as permitted by the terms of the Prepetition Second Lien Documents and (iv) constitute the legal, valid, and binding obligation of the Grantors (as

defined in the Prepetition Second Lien Documents), enforceable in accordance with the terms of the applicable Prepetition Second Lien Documents.

(e) Collateral Trust Agreement. As of the Petition Date, the Borrower was party to that certain Collateral Trust Agreement, dated as of March 28, 2017 (as amended, supplemented, amended and restated or otherwise modified from time to time prior to the date of this Final Order, the "Collateral Trust Agreement") among the Prepetition First Lien Administrative Agent, the Prepetition Collateral Trustee and the Prepetition Second Lien Indenture Trustee. The Collateral Trust Agreement governs the respective rights, interests, obligations, priority, and positions of the Prepetition Secured Parties with respect to the Prepetition Collateral. The Obligors have acknowledged and agreed to, and are bound by, the Collateral Trust Agreement.

(f) Cash Collateral. Any and all of the Obligors' cash, including cash and other amounts on deposit or maintained in any account or accounts by Foresight Receivables[3] or the Obligors, and any amounts generated by the collection of accounts receivable or other disposition of the Prepetition Collateral (as defined herein) existing as of the Petition Date or from time to time, and the proceeds of any of the foregoing, is the Prepetition Secured Parties' cash collateral within the meaning of Bankruptcy Code section 363(a) (the "Cash Collateral").

(g) Javelin Agreements.

(i) As of the Petition Date, the Debtors are parties to that certain *Coal Marketing Agreement* by and among Javelin, Murray Energy Corporation ("MEC"), and The American Coal

[3] As noted in the *Debtors' Motion for Entry of Interim and Final Orders (A) Authorizing Continued Use of the Debtors' Existing Cash Management System; (B) Authorizing Use of Existing Bank Accounts and Business Forms; (C) Granting A Limited Waiver of Requirements of Section 345(b) of the Bankruptcy Code; (D) Authorizing Continuation of Ordinary Course Intercompany Transactions; (E) Granting Administrative Expense Priority Status to Postpetition Intercompany Claims; and (F) Granting Related Relief* [Docket No. 4] (the "Cash Management Motion"), the Debtors receive coal sale proceeds into an account maintained by Foresight Receivable LLC with the Prepetition First Lien Administrative Agent, which proceeds are then swept into a concentration account on a daily basis.

Sales Company ("ACSC"), dated June 13, 2015 (the "Original Javelin-MEC Coal Marketing Agreement"), as modified by the *Assumption and Assignment Agreement* between ACSC and Murray Global Commodities, Inc. ("MGC"), pursuant to which ACSC assigned to MGC all of its rights and obligations under the Original Javelin-MEC Marketing Agreement, dated September 15, 2015 (as amended, restated, or otherwise modified form time to time, the "Javelin Coal Marketing Agreement"). Prior to the Petition Date, the Debtors, as "Foresight Entities" (as defined in the Javelin Coal Marketing Agreement) and direct and indirect subsidiaries to MEC, utilized Javelin's services for international marketing and exporting of the Debtors' coal.

(ii) FELP, Foresight Coal Sales LLC, Javelin, and Uniper Global Commodities UK Limited ("Uniper"), are parties to that certain *Amended and Restated Master Coal Purchase and Sale Agreement*, dated January 1, 2019 (as amended, restated, or otherwise modified from time to time, including pursuant to any confirmation entered into thereunder, the "Javelin Coal Sales Agreement"). In addition, FELP executed a Parent Company Guarantee, dated January 1, 2019 (as amended, restated, or otherwise modified from time to time, the "Uniper Coal Sales Guaranty"; the Uniper Coal Sales Guaranty, together with the Javelin Coal Sales Agreement, collectively, the "Prepetition Javelin Coal Sales Documents"), in favor of Uniper with regard to certain obligations of Foresight Coal Sales LLC arising under the Javelin Coal Sales Agreement.

(iii) Following arm's-length, good faith negotiations and in connection with final approval of the Coal Sales Motion,[4] the Debtors and Javelin have agreed to (A) amend and restate the Javelin Coal Sales Agreement (as so amended and restated, together with all applicable

[4] *Debtors' Motion for Entry of Interim and Final Orders (A) Authorizing the Debtors to (I) Perform Under Existing Coal Sale Contracts in the Ordinary Course of Business and (II) Enter Into and Perform Under New Coal Sale Contracts in the Ordinary Course of Business and (B) Granting Related Relief* [Docket No. 8] (the "Coal Sales Motion").

prepetition and postpetition confirmations, agreements and other documents entered into in connection therewith or incorporated by reference thereunder and as hereinafter amended and in effect from time to time, the "Postpetition Javelin Coal Sales Agreement") and (B) enter into a new Coal Marketing Agreement (as so amended and in effect from time to time, the "Postpetition Marketing Agreement," and together with the Postpetition Javelin Coal Sales Agreement, the "Javelin Agreements").

(iv) As described in the Javelin 9019 Motion,[5] the Debtors and Javelin have also executed, among other agreements, that certain Settlement Agreement pursuant to which the parties have agreed to, among other things, fix the net payable by Javelin to the Debtors as of the Petition Date (the "Settlement Agreement"). The aforementioned agreements are part of a global settlement and arrangement of which approval of this Final Order and the designation of Javelin and Uniper as DIP Secured Designated Coal Contract Counterparties under the DIP Documents as contemplated herein is a part.

5. *Findings Regarding the DIP Facility, Use of Cash Collateral and the Javelin Agreements.*

(a) Good cause has been shown for the entry of this Final Order.

(b) As set forth in the Herman Declaration, the Debtors have an ongoing and immediate need to continue obtaining credit pursuant to the DIP Facility, to perform under the Javelin Agreements, and to use the Cash Collateral in order to, among other things: (i) permit the orderly continuation of their respective businesses; (ii) maintain business relationships with their vendors, suppliers, customers, and other parties; (iii) make payroll; (iv) make capital expenditures; (v) make adequate protection payments; and (vi) pay the costs of the administration of the Cases and satisfy

[5] Pursuant to *Debtors' Motion for an Order (A) Approving Agreement Between Debtors and Javelin Global Commodities (UK) Ltd. and (B) Granting Related Relief* (the "Javelin 9019 Motion") [Docket No. 251].

other working capital and general corporate purposes of the Debtors. The Debtors require immediate access to sufficient working capital and liquidity through the incurrence of the new indebtedness for borrowed money and other financial accommodations to avoid irreparable harm by, among other things, preserving and maintaining the going concern value of the Debtors' business. The Debtors will not have sufficient sources of working capital and financing to operate their business or maintain their properties in the ordinary course of business throughout the Cases without the DIP Facility and authorized use of Cash Collateral. The Debtors require the services of Javelin to continue to market its coal in the international market and to provide hedging services. Subject to final approval of the Coal Sales Motion and the Javelin Agreements in connection herewith, Javelin has agreed to continue to provide such services and to purchase coal from the Debtors for re-sale in the international markets so long as Javelin and Uniper are designated as DIP Secured Designated Coal Contract Counterparties under this Final Order and the DIP Credit Agreement, as contemplated herein and therein.

(c) As set forth in the Herman Declaration, the Debtors are unable to obtain financing and other financial accommodations on more favorable terms from sources other than from the DIP Parties under the DIP Documents and are unable to obtain adequate unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. Other than with respect to the Unencumbered Assets, the Debtors are also unable to obtain secured credit allowable under Bankruptcy Code sections 364(c)(1), 364(c)(2), and 364(c)(3) for the purposes set forth in the DIP Documents without the Debtors granting to the DIP Agent, for the benefit of itself and the DIP Parties, subject to the Carve Out as provided for herein and the Permitted Liens (if any), the DIP Liens (as defined herein) and the DIP Superpriority Claims (as defined herein) and, subject to the Carve Out, incurring the Adequate Protection Obligations (as defined herein), in each case,

under the terms and conditions set forth in this Final Order and the DIP Documents. For the avoidance of doubt, subject to the Carve Out, the DIP Liens include liens on and security interests in the Unencumbered Assets pursuant to Bankruptcy Code section 364(c)(2).

(d) The terms of the DIP Facility, the DIP Documents, the granting of DIP Secured Designated Coal Contract Counterparty status under the DIP Credit Agreement, as contemplated herein and therein, to Javelin and Uniper, and the use of Cash Collateral are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(e) The DIP Facility has been negotiated in good faith and at arm's length among the Debtors, the DIP Agent, the DIP Lenders (including the Backstop Parties (as defined herein)) and the DIP Secured Designated Coal Contract Counterparties, and all of the Debtors' obligations and indebtedness arising under, in respect of, or in connection with the DIP Facility, the DIP Documents and the Javelin Agreements, as incorporated by reference into the DIP Documents, including, without limitation, all loans (including the Roll-Up Loans) made to and guarantees issued by the Debtors pursuant to the DIP Documents and the Javelin Agreements, as incorporated by reference into the DIP Documents, and all other Obligations (as defined in the DIP Credit Agreement) (collectively, the "DIP Obligations") shall be deemed to have been extended by the DIP Agent, the DIP Lenders, and the DIP Secured Designated Coal Contract Counterparties, as applicable, in good faith as that term is used in Bankruptcy Code section 364(e) and in express reliance upon the protections offered by Bankruptcy Code section 364(e). The DIP Obligations, the DIP Liens and the DIP Superpriority Claims shall be entitled to the full protection of Bankruptcy Code section 364(e) in the event that this Final Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise and any liens or claims granted to the DIP

Agent, the DIP Lenders, or the DIP Secured Designated Coal Contract Counterparties hereunder arising prior to the effective date of any such vacatur, reversal or modification of this Final Order shall be governed in all respects by the original provisions of this Final Order, including entitlement to all rights, remedies, privileges and benefits granted herein.

(f) The Roll-Up Loans as provided for under the DIP Facility are appropriate and the DIP Lenders would not be willing to provide the New Money DIP Loans or extend credit to the Debtors thereunder without the inclusion of the Roll-Up Loans within the DIP Facility.

(g) The treatment of the Javelin Agreements as contemplated hereunder and under the DIP Documents was negotiated in good faith and at arm's length, and is fair, reasonable, and appropriate under the circumstances.

(h) The Debtors have requested entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Rules. For the reasons set forth in the Motion, the declarations filed in support of the Motion, and the record presented to the Court at the Interim Hearing, absent granting the relief sought by this Final Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the DIP Facility, granting DIP Secured Designated Coal Contract Counterparty status to Javelin and Uniper under the DIP Credit Agreement, and authorization of the use of the Prepetition Collateral (including the Cash Collateral) in accordance with this Final Order and the DIP Documents are, therefore, in the best interests of the Debtors' estates and are consistent with the Debtors' fiduciary duties.

(i) Pursuant to section 2.8 of the Collateral Trust Agreement, and as set forth in the Restructuring Support Agreement, (x) the Prepetition Second Lien Noteholders have consented or are deemed to have consented to the terms of the DIP Facility and this Final Order, (y) the Prepetition Second Liens and the Second Lien Adequate Protection Liens are subordinate to the

Carve Out, the Permitted Liens, the DIP Liens, the First Lien Adequate Protection Liens (as defined herein) and Prepetition First Liens, and (z) the Prepetition Second Lien Obligations are subject to the Carve Out and the Permitted Liens and the prior payment in full of the DIP Obligations, the First Lien Adequate Protection Obligations and, solely as provided in the Collateral Trust Agreement, the Prepetition First Lien Obligations.

6. *Authorization of the DIP Facility, the DIP Documents and the Javelin Agreements.*

(a) The Debtors are hereby expressly authorized and empowered to execute and deliver and, on such execution and delivery, directed to perform under the DIP Documents, including the DIP Credit Agreement, which is hereby approved and incorporated herein by reference.

(b) Upon entry of this Final Order, the Borrower is hereby authorized to borrow, and the Guarantors are hereby authorized to guaranty, (i) borrowings (A) up to an aggregate principal amount of $100,000,000.00 in New Money DIP Loans (plus interest, fees, indemnities, and other expenses and other amounts provided for in the DIP Credit Agreement), and (B) an aggregate principal amount of $75,000,000.00 in Roll-Up Loans (plus interest, fees and other expenses and amounts provided for in the DIP Credit Agreement), with $1.00 of Prepetition First Lien Debt, in an amount not to exceed $75,000,000.00 in the aggregate, being rolled-up into the DIP Facility for each $1.00 of New Money DIP Loans actually funded, including New Money DIP Loans funded into escrow, and (ii) incur the DIP Secured Designated Coal Contract Obligations, subject to and in accordance with this Final Order and the DIP Documents.

(c) Proceeds of the DIP Loans and Cash Collateral shall be used solely for the purposes permitted under the DIP Credit Agreement, the Interim Order and this Final Order and in accordance with the Cash Flow Forecast (as defined below), the DIP Documents, the Interim Order and this Final Order.

(d) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized, and the automatic stay imposed by Bankruptcy Code section 362 is hereby lifted to the extent necessary and applicable, to perform all acts and to make, execute and deliver all instruments and documents (including, without limitation, the DIP Credit Agreement and any collateral documents contemplated thereby), and to pay all fees, expenses, indemnities, and other amounts contemplated thereby or that may be reasonably required or necessary for the Debtors' performance of their obligations under the DIP Facility including, without limitation:

(i) the execution, delivery, and performance of the DIP Documents, including, without limitation, the DIP Credit Agreement and any collateral documents contemplated thereby;

(ii) the execution, delivery and performance of one or more amendments, waivers, consents or other modifications to and under the DIP Documents (in each case in accordance with the terms of the DIP Documents and in such form as the Debtors, the DIP Agent and the Required Lenders (as defined in the DIP Credit Agreement) may agree), it being understood that no further approval of the Court shall be required for any amendments, waivers, consents or other modifications to and under the DIP Documents or the Cash Flow Forecast, except that any modifications or amendments to the DIP Documents that shorten the maturity thereof, or increase the aggregate commitments thereunder or the rate of interest payable with respect thereto, shall be on notice and subject to a hearing and Court approval, as necessary;

(iii) the non-refundable and irrevocable payment to each of the DIP Lenders or the DIP Agent, as applicable, of the fees referred to in the DIP Documents (which fees, in each case, were and were deemed to have been, approved upon entry of the Interim

Order, and which fees shall not be subject to any challenge, contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise) and any amounts due (or that may become due) in respect of any indemnification obligations under the DIP Documents, including:

- an upfront fee of 3.0% of the aggregate principal amount of New Money DIP Commitments (the "Upfront Fee"), which shall be structured as original issue discount against the New Money DIP Loans when advanced;

- an exit premium of 1.0% of the aggregate principal amount of the New Money DIP Commitments (the "Exit Premium"), payable in the form of equity in reorganized FELP upon the Plan Effective Date (as defined in the DIP Credit Agreement) pursuant to the terms and conditions set forth in the DIP Credit Agreement and the Restructuring Support Agreement; provided, however, that upon the occurrence of an Event of Default under the DIP Credit Agreement or upon repayment of the DIP Loans in full and termination of all New Money DIP Commitments without the occurrence of the Plan Effective Date, the Exit Premium shall be immediately payable in cash in an amount equal to $2,000,000.00;

- a put option premium of 5.0% of the aggregate principal amount of the New Money DIP Commitments of the Backstop Parties (as defined herein) (the "Put Option Premium"), payable in the form of equity in the reorganized FELP upon the Plan Effective Date pursuant to the terms and conditions set forth in the DIP Credit Agreement, the Restructuring Support Agreement and related backstop commitment arrangements; provided, however, that upon the occurrence of an Event of Default under the DIP Credit Agreement or upon repayment of the DIP Loans in full and termination of all New Money DIP Commitments without the occurrence of the Plan Effective Date, the Put Option Premium shall be immediately payable in cash in an amount equal to $10,000,000.00;

- a commitment fee on each DIP Lender's commitment to fund the Delayed Draw DIP Term Loans (the "Delayed Draw Term Loan Commitment Fee") at a rate per annum equal to 1.00%, payable pursuant to the terms and conditions set forth in the DIP Credit Agreement; and

- all reasonable costs and expenses as may become due from time to time under the DIP Documents, the Restructuring Support Agreement, the Interim Order and this Final Order, including, without limitation, fees and expenses of counsel, financial advisors and other professionals retained by the DIP Agent and the DIP Lenders as provided for in the DIP Documents, the Interim Order and this Final Order, subject to the provisions of paragraph 28 hereof;

(iv) make the payments on account of the First Lien Adequate Protection Obligations provided for in the Interim Order and this Final Order; and

(v) the performance of all other acts required under or in connection with the DIP Documents.

(e) Upon execution and delivery of the DIP Credit Agreement and the other DIP Documents, such DIP Documents shall constitute valid, binding, and non-avoidable obligations of the Debtors enforceable against each Debtor party thereto in accordance with their respective terms and the terms of the Interim Order and this Final Order for all purposes during the Cases, any subsequently converted Case of any Debtor to a case under chapter 7 of the Bankruptcy Code, or after the dismissal of any Case. No obligation, payment, transfer, or grant of security under the DIP Credit Agreement, the other DIP Documents, the Interim Order or this Final Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under Bankruptcy Code sections 502(d), 548 or 549 or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, Uniform Voidable Transaction Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim.

(f) The Guarantors hereby are authorized and directed to jointly, severally and unconditionally guarantee in full all of the DIP Obligations of the Borrower and to incur any DIP Obligations and DIP Liens in connection therewith.

(g) Subject to final approval of the Coal Sales Motion, including the Javelin Agreements as contemplated therein, (i) the Debtors are authorized to designate Javelin and Uniper as DIP Secured Designated Coal Contract Counterparties under the DIP Documents and to perform their obligations under the Javelin Agreements as contemplated herein and therein; and (ii) the Debtors, on the one hand, and Javelin and Uniper, on the other, are authorized to setoff post-petition amounts owing to the other from time to time to the extent permitted by the Javelin Agreements; provided that none of the Javelin Agreements are being assumed hereunder.

7. *The Backstop DIP Parties and Syndication Procedures.*

(a) Funds and/or accounts affiliated with, or managed and/or advised by, Benefit Street Partners, LLC, DoubleLine Capital LP, GoldenTree Asset Management LP, Ivy Investments Management Company, KKR Credit Advisors (US) LLC, and Davidson Kempner Capital Management LP (together with their respective successors and permitted assignees, each a "Backstop Party" and collectively, the "Backstop Parties") will, severally and not jointly, backstop the DIP Facility in the amounts set forth in the DIP Documents and the Restructuring Support Agreement. Following entry of the Interim Order, (i) all eligible Prepetition First Lien Lenders (which, for the avoidance of doubt, includes any Backstop Party) were offered the right to participate in funding up to 46.375% of the New Money DIP Commitments based ratably on each such lender's holdings of Prepetition First Lien Debt and (ii) all eligible Prepetition Second Lien Noteholders (which, for the avoidance of doubt, includes any Backstop Party) were offered the right to participate in funding up to 3.625% of the New Money DIP Commitments based ratably on such noteholder's holdings of Prepetition Second Lien Debt, all as further set forth in the DIP Documents, the Restructuring Support Agreement and procedures satisfactory to the DIP Agent and the Backstop Parties, which included, among other things, a provision that required any such

participating Prepetition First Lien Lender or Prepetition Second Lien Noteholder to agree to be bound by the Restructuring Support Agreement.

8. *Budget*.

(a) Except as otherwise provided herein or in the DIP Documents, the Debtors may only use Cash Collateral and the proceeds of the DIP Facility in accordance with a projected statement of sources and uses of cash for the Debtors in the form attached to the Interim Order on Exhibit 1 for the week in which the Petition Date occurred and the subsequent calendar weeks thereafter (but not any preceding weeks) and for this calendar week and the 13 calendar weeks thereafter (but not any preceding weeks) in the form attached hereto as Exhibit 2 (as the same may be further amended, replaced, supplemented or otherwise modified in accordance with the terms of this Final Order and the DIP Documents, the "Cash Flow Forecast"), including without limitation, for: (A) working capital requirements; (B) general corporate purposes; (C) to cash collateralize existing letters of credit; and (D) the costs and expenses (including making payments on account of the Adequate Protection Obligations hereunder and payment of the allowed fees and expenses of professionals retained by the Debtors' estates) of administering the Cases (including payments under the Carve Out as provided herein). On the Thursday of the fourth calendar week following the week in which the Petition Date occurs, and thereafter on the Thursday following the end of every fourth calendar week, the Debtors shall deliver an updated Cash Flow Forecast, in each case substantially in the form attached hereto as Exhibit 1 (with only such changes thereto as the Required Lenders shall agree in their sole discretion) or is otherwise in form and substance satisfactory to the Required Lenders in their sole discretion; provided that the DIP Agent or the Required Lenders shall notify the Debtors or their financial advisor in writing within three (3) business days of receipt whether such updated Cash Flow Forecast is satisfactory and, if so notified that the updated Cash Flow Forecast is not satisfactory, then the existing Cash Flow Forecast will remain in effect until an updated Cash Flow Forecast shall have been agreed upon.

(b) On the first Thursday of the first full week following the Petition Date, and every Thursday thereafter, the Debtors shall deliver to (i) the DIP Agent, (ii) Akin Gump Strauss Hauer & Feld LLP ("Akin Gump") and Lazard Frères & Co. LLC ("Lazard" and, together with Akin Gump, the "Ad Hoc First Lien Advisors"), (iii) Milbank LLP ("Milbank") and Perella Weinberg Partners L.P. ("Perella" and, together with Milbank, the "Ad Hoc Crossover Advisors"), and (iv) Whiteford, Taylor & Preston, LLP and Berkeley Research Group, LLC (together, the "Committee Advisors"), a weekly variance report for the one week period following the Closing Date, the two week period following the Closing Date, the three week period following the Closing Date and the four week period following the Closing Date, and thereafter, a weekly variance report for the one week period following the most recently delivered Cash Flow Forecast, the two week period following the most recently delivered Cash Flow Forecast, the three week period following the most recently delivered Cash Flow Forecast and the four week period following the most recently

delivered Cash Flow Forecast, with the report for each week in a four week period including an individual report for such week and a cumulative report to date for such four week period (each such one week, two week, three week or four week cumulative period, a "Reporting Period"), in each case, setting forth for the applicable Reporting Period, ended on the immediately preceding Friday prior to the delivery thereof, (i) the negative variance (as compared to the applicable Cash Flow Forecast and the Budget[6]) of the operating cash receipts (on a line item by line item basis and an aggregate basis for all line items) of the Debtors for the applicable Reporting Period and for the last week of the applicable Reporting Period, (2) the positive variance (as compared to the applicable Cash Flow Forecast and the Budget) of the disbursements (on a line item by line item basis and an aggregate basis for all line items) made by the Debtors set forth under "MEC Affiliate Disbursements" in the Cash Flow Forecast (including, without limitation, any payments pursuant to the Management Services Agreement (as defined in the DIP Credit Agreement)) for the applicable Reporting Period and for the last week of the applicable Reporting Period, (3) the positive variance (as compared to the applicable Cash Flow Forecast and the Budget) of the total disbursements (on a line item by line item basis and an aggregate basis for all line items) (excluding professional fees, interest payments and disbursements made by the Debtors set forth under "MEC Affiliate Disbursements" in the Cash Flow Forecast (including, without limitation, any payments pursuant to the Management Services Agreement)) made by the Debtors for the applicable Reporting Period and for the last week of the applicable Reporting Period and (4) an explanation, in reasonable detail, for any material negative variance (in the case of receipts) or material positive variance (in the case of disbursements) set forth in such variance report, certified by an Authorized Officer of the Borrower (the "Budget Variance Report"). Without giving effect to the making of DIP Loans or the repayments or prepayments of DIP Loans, in no event shall (a) beginning with the delivery of the initial Budget Variance Report and tested, as of the last day of each applicable two-week period commencing with the last day of the first two-week period ending after the Closing Date, for such two-week period (i) the negative variance (as compared to the applicable Cash Flow Forecast) of the actual aggregate operating cash receipts of the Debtors exceed 15% and (ii) the positive variance (as compared to the applicable Cash Flow Forecast) of the aggregate operating disbursements (excluding professional fees, interest payments and disbursements made by the Debtors set forth under "MEC Affiliate Disbursements" in the Cash Flow Forecast (including, without limitation, any payments pursuant to the Management Services Agreement)) made by the Debtors shall exceed 15%, and (iii) the positive variance (as compared to the applicable Cash Flow Forecast) of the aggregate disbursements made by the Debtors set forth under "MEC Affiliate Disbursements" in the Cash Flow Forecast (including, without limitation, any payments pursuant to the Management Services Agreement)) exceed 15%, and (b) beginning with the delivery of the third Budget Variance Report, as of the last day of each applicable

[6] As used herein, the term "Budget" shall have the meaning assigned to the term "DIP Budget" in the DIP Credit Agreement

four-week period commencing with the last day of the first four-week period ending after the Closing Date, for such four-week period, (i) the negative variance (as compared to the applicable Cash Flow Forecast) of the actual aggregate operating cash receipts of the Debtors exceed 10%, (ii) the positive variance (as compared to the applicable Cash Flow Forecast) of the aggregate operating disbursements (excluding professional fees, interest payments and disbursements made by the Debtors set forth under "MEC Affiliate Disbursements" in the Cash Flow Forecast (including, without limitation, any payments pursuant to the Management Services Agreement) made by the Debtors exceed 10%, and (iii) the positive variance (as compared to the applicable Cash Flow Forecast) of the aggregate disbursements made by the Debtors set forth under "MEC Affiliate Disbursements" in the Cash Flow Forecast (including, without limitation, any payments pursuant to the Management Services Agreement) exceed 10%.

(c) The consent of the DIP Lenders to the Budget or any applicable Cash Flow Forecast shall not be construed as consent to the use of any Cash Collateral or DIP Loans after the occurrence of an Event of Default (as defined in the DIP Credit Agreement), regardless of whether the aggregate funds shown on the Budget or any applicable Cash Flow Forecast have been expended.

9. *Reporting Requirements/Access to Records*. The Debtors shall provide the DIP Lenders, the Ad Hoc First Lien Advisors, the Ad Hoc Crossover Advisors, and the Committee Advisors with all reporting and other information required to be provided to the DIP Agent under the DIP Documents. In addition to, and without limiting, whatever rights to access the DIP Agent and the DIP Parties have under the DIP Documents, upon reasonable notice, at reasonable times during normal business hours, the Debtors shall permit representatives, agents, and employees of the DIP Agent and the DIP Lenders to: (i) have access to and inspect the Debtors' assets; (ii) examine the Debtors' books and records; and (iii) discuss the Debtors' affairs, finances, and condition with the Debtors' officers and financial advisors.

10. *DIP Superpriority Claims*. Pursuant to Bankruptcy Code section 364(c)(1), all of the DIP Obligations shall constitute allowed senior administrative expense claims of the DIP Agent, the DIP Lenders, and the DIP Secured Designated Coal Contract Counterparties, as applicable, against each of the Debtors' estates (the "DIP Superpriority Claims"), without the need to file any proof of claim or request for payment of administrative expenses, with priority over any

and all administrative expenses, adequate protection claims, diminution claims and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in Bankruptcy Code sections 503(b) and 507(b), and over any and all administrative expenses or other claims arising under Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113, or 1114 or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall for the purposes of Bankruptcy Code section 1129(a)(9)(A) be considered administrative expenses allowed under Bankruptcy Code section 503(b) and which shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, including the proceeds of any claims or causes of action arising under chapter 5 of the Bankruptcy Code (the "Avoidance Actions"), subject only to the payment of the Carve Out to the extent specifically provided for herein. Except as set forth in, or permitted by, this Final Order, no other superpriority claims shall be granted or allowed in these Cases.

11. *DIP Liens*. As security for the DIP Obligations, effective and automatically perfected upon the date of the Interim Order, and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the DIP Agent or any other DIP Party of, or over, any DIP Collateral (as defined herein), the following security interests and liens are hereby granted by the Debtors to the DIP Agent, for the benefit of the DIP Agent and the other DIP Parties (all property identified in clauses (a), (b) and (c) below being collectively referred to as the "DIP Collateral"), subject only to the payment of the Carve Out to the extent specifically provided for herein and the Permitted Liens (if any) (all

such liens and security interests granted to the DIP Agent, for the benefit of the DIP Agent and the other DIP Parties, pursuant to the Interim Order, this Final Order and the DIP Documents, the "DIP Liens"):

(a) First Lien on Unencumbered Property. Pursuant to Bankruptcy Code section 364(c)(2), a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all prepetition and postpetition property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected and non-avoidable liens (or perfected after the Petition Date to the extent permitted by Bankruptcy Code section 546(b)), including, without limitation, any unencumbered cash of the Debtors (whether maintained with the DIP Agent or otherwise) and any investment of such cash, accounts, inventory, goods, contract rights, mineral rights, instruments, documents, chattel paper, patents, trademarks, copyrights, and licenses therefor, accounts receivable, receivables and receivables records, general intangibles, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, intercompany claims, contracts, owned real estate, real property leaseholds, fixtures, deposit accounts, commercial tort claims, securities accounts, instruments, investment property, letter-of-credit rights, supporting obligations, vehicles, machinery and equipment, real property, leases (and proceeds from the disposition thereof), all of the issued and outstanding capital stock of each Debtor, other equity or ownership interests, including equity interests in subsidiaries and non-wholly-owned subsidiaries, money, investment property, causes of action (including the proceeds of Avoidance Actions), and all cash and non-cash proceeds, rents, products, substitutions, accessions, profits and supporting obligations of any of the collateral described above, whether in existence on the Petition Date or thereafter created, acquired, or arising and wherever located.

(b) Liens Priming the Prepetition Liens. Pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all prepetition and postpetition property of the Debtors including, without limitation, the Prepetition Collateral, Cash Collateral, and any investment of such cash, accounts, inventory, goods, contract rights, mineral rights, instruments, documents, chattel paper, patents, trademarks, copyrights, and licenses therefor, accounts receivable, receivables and receivables records, general intangibles, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, intercompany claims, contracts, owned real estate, real property leaseholds, fixtures, deposit accounts, commercial tort claims, securities accounts, instruments, investment property, letter-of-credit rights, supporting obligations, vehicles, machinery and equipment, real property, leases (and proceeds from the disposition thereof), all of the issued and outstanding capital stock of each Debtor, other equity or ownership interests, including equity interests in subsidiaries and non-wholly-owned subsidiaries, money, investment property, causes of action, and all cash and non-cash proceeds, rents, products, substitutions, accessions, profits and supporting obligations of any of the collateral described above, whether in existence on the Petition Date or thereafter created, acquired, or arising and wherever located, that is subject to any of the Prepetition Liens securing the Prepetition Secured Obligations.

(c) Liens Junior to Certain Other Liens. Pursuant to Bankruptcy Code section 364(c)(3), a valid, binding, continuing, enforceable, fully-perfected security interest in and lien upon all prepetition and postpetition property of the Debtors (other than the property described in clauses (a) or (b) of this paragraph 11, as to which the liens and security interests in favor of the DIP Agent will be as described in such clauses), whether now existing or hereafter acquired, that is subject to valid, perfected and unavoidable liens in existence immediately prior to the Petition

Date, if any, that are senior to the liens securing the Prepetition First Lien Obligations, or to valid and unavoidable liens in existence immediately prior to the Petition Date, if any, that are perfected subsequent to the Petition Date as permitted by Bankruptcy Code section 546(b) that are senior to the liens securing the Prepetition First Lien Obligations, which security interests and liens in favor of the DIP Agent and the other DIP Parties are junior only to such valid, perfected and unavoidable liens (collectively, the "Permitted Liens").[7]

(d) Javelin. For the avoidance of doubt, the DIP Liens granted hereunder shall also secure on a *pari passu* basis the DIP Secured Designated Coal Contract Obligations, and the DIP Obligations shall include the DIP Secured Designated Coal Contract Obligations for purposes of this Final Order.

12. *Carve Out*.

(a) Carve Out. As used in this Final Order, the "Carve Out" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to $25,000.00 incurred by a trustee under Bankruptcy Code section 726(b) (without regard to the notice set forth in (iii) below); (iii) to the extent allowed, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the "Allowed Professional Fees") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals") and, subject to the Committee Monthly Cap, an official committee of unsecured creditors (the "Creditors' Committee") pursuant to Bankruptcy Code section 328 or 1103

[7] For the avoidance of doubt, "Permitted Liens" shall also include liens securing all pre and postpetition Cash Management Obligations (as defined in the DIP Credit Agreement) of the Debtors.

(the "Committee Professionals" and, together with the Debtor Professionals, the "Professional Persons") at any time before or on the first business day following delivery by the DIP Agent or the Required Lenders of a Carve Out Trigger Notice (as defined herein), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons, in an aggregate amount not to exceed $3,500,000.00, incurred after the first business day following delivery by the DIP Agent or the Required Lenders of the Carve Out Trigger Notice, to the extent allowed, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "Post-Carve Out Trigger Notice Cap"). For purposes of the foregoing, "Carve Out Trigger Notice" shall mean a written notice delivered by email (or other electronic means) by the DIP Agent or the Required Lenders to the Debtors, their lead restructuring counsel, the U.S. Trustee, and lead counsel to the Creditors' Committee providing that a Termination Event (as defined herein) has occurred and stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) Carve Out Reserves. On the day on which a Carve Out Trigger Notice is delivered (the "Termination Declaration Date"), the Carve Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of (i) the Allowed Professional Fees of Debtor Professionals, (ii) subject to the Committee Monthly Cap, the Allowed Professionals Fees of the Committee Professionals, and (iii) the obligations accrued as of the Termination Declaration Date with respect to clauses (i) and (ii) of the definition of Carve Out set forth in paragraph 12(a) above (the "Additional Carve Out Obligations"). The Debtors shall deposit and hold such amounts in a segregated account in a manner reasonably acceptable to the Required Lenders in trust to pay such then unpaid Allowed Professional Fees and Additional Carve

Out Obligations (the "Pre-Carve Out Trigger Notice Reserve") prior to the use of such reserve to pay any other claims. On the Termination Declaration Date, after funding the Pre-Carve Out Trigger Notice Reserve, the Debtors shall utilize all remaining cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap (the "Post-Carve Out Trigger Notice Reserve" and, together with the Pre-Carve Out Trigger Notice Reserve, the "Carve Out Reserves") prior to the use of such reserve to pay any other claims. All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the Additional Carve Out Obligations (the "Pre-Carve Out Amounts"), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay any post-Termination Declaration Date obligations under clauses (i) and (ii) of the Carve Out definition in paragraph 12(a) above and then to pay the DIP Agent for the benefit of itself and the other DIP Parties, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all commitments under the DIP Facility have been terminated, in which case any such excess shall be paid to the Prepetition Secured Parties in accordance with their rights and priorities as provided in the Prepetition Credit Documents, the Collateral Trust Agreement, and this Final Order. All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the "Post-Carve Out Amounts"), and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay any post-Termination Declaration Date obligations under clauses (i) and (ii) of the Carve Out definition in paragraph 12(a) above and then to pay the DIP Agent for the benefit of itself and the other DIP Parties, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all commitments under the DIP Facility have been terminated, in which case any such excess shall be

paid to the Prepetition Secured Parties in accordance with their rights and priorities as provided in the Prepetition Credit Documents, the Collateral Trust Agreement, and this Final Order. Notwithstanding anything to the contrary in the DIP Documents, or this Final Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in this paragraph 12, then, any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively, shall be used to fund the other Carve Out Reserve, up to the applicable amount set forth in this paragraph 12, prior to making any payments to the DIP Agent or the Prepetition Secured Parties, as applicable. Notwithstanding anything to the contrary in the DIP Documents or this Final Order, following delivery of a Carve Out Trigger Notice, the DIP Agent and the Prepetition First Lien Agents shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a valid and perfected security interest in any residual interest in the Carve Out Reserves, with any excess paid to the DIP Agent for application in accordance with the DIP Documents and this Final Order. Further, notwithstanding anything to the contrary in this Final Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not increase or reduce the DIP Obligations, or constitute additional DIP Loans (unless, for the avoidance of doubt, additional DIP Loans are used to fund the Carve Out Reserves), (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the Cash Flow Forecast, Carve Out, Post-Carve Out Trigger Notice Cap or the Carve Out Reserves, or any of the foregoing, be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors to the Debtors' Professionals. For the avoidance of doubt and notwithstanding anything to the contrary in this Final Order, the DIP Facility or in

any Prepetition Credit Document, the Carve Out shall be senior to all liens and claims securing the DIP Facility, the First Lien Adequate Protection Liens, the Second Lien Adequate Protection Liens, the First Lien Adequate Protection Superpriority Claim, the Second Lien Adequate Protection Superpriority Claim, the Prepetition Liens, the Prepetition Secured Obligations and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations or the Prepetition Secured Obligations.

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

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

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

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

13. *Limitation on Charging Expenses Against Collateral.* Effective as of the Petition Date, in light of the agreement of the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties to allow (x) the Debtors to use Cash Collateral as provided for herein, (y) the Carve Out, and (z) for the subordination of the Prepetition Liens to the DIP Liens, no expenses of administration of the Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Prepetition Collateral or the DIP Collateral (except to the extent of the Carve Out), the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties pursuant to Bankruptcy Code sections 105(a) or 506(c) or any similar principle of law or equity, without the prior written consent of the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties. Notwithstanding the foregoing, nothing contained in this paragraph shall affect or otherwise impact the charging lien available to the Prepetition First Lien Agents with respect to the Prepetition Collateral or any additional collateral subject to First Lien Adequate Protection Liens (as defined below) or funds or other property otherwise subject to distribution to recover payment of any unpaid fees, expenses or other amounts to which it is entitled under the Prepetition First Lien Credit Documents or the Collateral Trust Agreement, subject to the priority of the DIP Liens and DIP Claims in accordance with this Order.

14. *No Marshaling/Application of Proceeds.* Effective as of the Petition Date, the DIP Agent and the Prepetition Agents shall be entitled to apply the payments or proceeds of the DIP

Collateral and the Prepetition Collateral in accordance with the provisions of the Interim Order or this Final Order, as applicable, the DIP Documents and the Prepetition Credit Documents, as applicable, and in no event shall the DIP Agent, the DIP Lenders, or any of the Prepetition Secured Parties be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral or Prepetition Collateral; provided that the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties, as applicable, shall first look to, and apply the proceeds of, all other DIP Collateral and Prepetition Collateral in satisfaction of the applicable obligations before resorting to the proceeds of Avoidance Actions.

15. *Equities of the Case.* Effective as of the Petition Date, in light of the agreement of the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties to allow the Debtors to use Cash Collateral on the terms set forth herein, among other things, (i) the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties shall be entitled to all of the rights and benefits of Bankruptcy Code section 552(b) and (ii) the "equities of the case" exception under Bankruptcy Code section 552(b) shall not apply to such parties with respect to the proceeds, products, offspring or profits of any of the Prepetition Collateral or the DIP Collateral, as applicable.

16. *Use of Cash Collateral*. The Debtors were authorized under the Interim Order and are hereby authorized to use all Cash Collateral solely in accordance with this Final Order, the DIP Documents and the Cash Flow Forecast, including, without limitation, to make payments on account of the Adequate Protection Obligations and other obligations provided for in the Interim Order, this Final Order and the DIP Documents. Except on the terms and conditions of this Final Order, the Debtors shall be enjoined and prohibited from at any time using the Cash Collateral.

17. *Adequate Protection for the Prepetition First Lien Parties.* Subject only to the Carve Out and the terms of this Final Order, pursuant to Bankruptcy Code sections 361, 363(e),

and 364, and in consideration of the stipulations and consents set forth in the Interim Order and this Final Order, as adequate protection of their interests in the Prepetition Collateral (including Cash Collateral), for and equal in amount to the aggregate postpetition diminution in value of such interests (each such diminution, a "Diminution in Value"), resulting from the imposition of the priming DIP Liens on the Prepetition Collateral, the Carve Out, the sale, lease or use of the Prepetition Collateral (including Cash Collateral), the imposition of the automatic stay, and/or any other reason for which adequate protection may be granted under the Bankruptcy Code, the Prepetition First Lien Agents, for the benefit of themselves and the Prepetition First Lien Lenders, are hereby granted the following (collectively, the "First Lien Adequate Protection Obligations"):

(a) First Lien Adequate Protection Liens. As security for and solely to the extent of any Diminution in Value, additional and replacement valid, binding, enforceable non-avoidable, and effective and automatically perfected postpetition security interests in, and liens on, as of the date of the Interim Order (the "First Lien Adequate Protection Liens"), without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, all DIP Collateral. Subject to the terms of this Final Order, the First Lien Adequate Protection Liens shall be subordinate only to (A) the Carve Out, (B) the DIP Liens and (C) the Permitted Liens (if any). The First Lien Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral (including, for the avoidance of doubt, the Prepetition Liens, the Second Lien Adequate Protection Liens and any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under Bankruptcy Code section 551).

(b) First Lien Adequate Protection Superpriority Claim. As further adequate protection, and to the extent provided by Bankruptcy Code sections 503(b) and 507(b), an allowed administrative expense claim in the Cases to the extent of any postpetition Diminution in Value ahead of and senior to any and all other administrative expense claims in such Cases, except the Carve Out and the DIP Superpriority Claims (the "First Lien Adequate Protection Superpriority Claim"). The First Lien Adequate Protection Superpriority Claim shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof (excluding Avoidance Actions, but including the Avoidance Proceeds). Subject to the Carve Out and the DIP Superpriority Claims in all respects, the First Lien Adequate Protection Superpriority Claim will not be junior to any claims and shall have priority over all administrative expense claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(d), 726, 1113 and 1114. The Prepetition First Lien Parties shall not receive or retain any payments, property or other amounts in respect of the First Lien Adequate Protection Superpriority Claims under Bankruptcy Code section 507(b) granted hereunder unless and until the DIP Obligations have been indefeasibly paid in full, in cash, or satisfied in a manner otherwise agreed to by the Required Lenders, in each case as provided in the DIP Documents.

(c) Fees and Expenses. As further adequate protection, the Debtors are authorized and directed to pay, without further Court order, reasonable and documented fees and expenses (the "First Lien Adequate Protection Fees"), whether incurred before or after the Petition Date, of the Prepetition First Lien Agents, and the Ad Hoc First Lien Group (as defined below), and the Ad Hoc Crossover Group (as defined below), including, without limitation, the reasonable and

documented fees and expenses of (a) Sullivan & Worcester LLP, counsel to the Prepetition First Lien Term Loan Agent and the Prepetition Collateral Trustee, (b) Buchanan Ingersoll & Rooney PC, counsel to the Prepetition First Lien Administrative Agent, together with one local counsel to the Prepetition First Lien Agents, (c) in accordance with its engagement letter, Conway McKenzie, Inc., as financial advisor to the Prepetition First Lien Administrative Agent, (d) one local counsel, Thompson Coburn LLP, and one lead counsel, Akin Gump, as counsel to the ad hoc group of certain Prepetition First Lien Lenders (the "Ad Hoc First Lien Group"), (e) in accordance with its engagement letter, one financial advisor, Lazard, as financial advisors to Ad Hoc First Lien Group, (f) one local counsel, Bryan Cave Leighton Paisner LLP, and one lead counsel, Milbank LLP, as counsel to the ad hoc group of certain Prepetition First Lien Lenders and Prepetition Second Lien Noteholders (the "Ad Hoc Crossover Group"), and (g) in accordance with its engagement letter, one financial advisor, Perella Weinberg Partners LP, as financial advisor Ad Hoc Crossover Group. The invoices for such fees and expenses shall not be required to comply with any particular format, may be in summary form only, and may include redactions. The applicable professional shall serve copies of the invoices supporting the First Lien Adequate Protection Fees on counsel to the Debtors, the U.S. Trustee and counsel to the Creditors' Committee (if any), and any First Lien Adequate Protection Fees shall be subject to prior ten day review by the Debtors, the U.S. Trustee and the Creditors' Committee (if any), and in the event the Debtors, the U.S. Trustee or the Creditors' Committee shall file with this Court an objection to any such legal invoice, the portion of such legal invoice subject to such objection shall not be paid until resolution of such objection by this Court. If no objection is filed within such ten day review period, such invoice shall be paid without further order of the Court within five days following the expiration of the foregoing review period and shall not be subject to any further review, challenge, or disgorgement.

For the avoidance doubt, the provision of such invoices shall not constitute a waiver of attorney-client privilege or any benefits of the attorney work product doctrine.

(d) First Lien Accrued Adequate Protection Payments. As further adequate protection, the Prepetition First Lien Agents, on behalf of the Prepetition First Lien Lenders, shall receive monthly adequate protection payments (the "First Lien Accrued Adequate Protection Payments"), payable in-kind on the thirtieth day of each month equal to the interest at the Applicable Rate (as defined in the Prepetition First Lien Credit Agreement) that would otherwise be owed to the Prepetition First Lien Lenders under the Prepetition First Lien Credit Agreement during such monthly period in respect of the Prepetition First Lien Obligations that are not Roll-Up Loans, until such time as the full Prepetition First Lien Obligations Amount is paid in full, in cash.

(e) Information Rights. The Debtors shall promptly provide the Prepetition First Lien Agents and the Ad Hoc First Lien Advisors, and the Committee Advisors, respectively, as well as the Ad Hoc Crossover Advisors, with all required financial reporting and other periodic reporting that is required to be provided to the DIP Agent the DIP Lenders, or the DIP Secured Designated Coal Contract Counterparties, as applicable, under the DIP Documents.

18. *Adequate Protection for the Prepetition Second Lien Noteholders.* Subject only to the Carve Out, the Permitted Liens, the DIP Liens, the Prepetition First Liens, the First Lien Adequate Protection Liens, and the terms of this Final Order, pursuant to Bankruptcy Code sections 361, 363(e) and 364, and in consideration of the stipulations and consents set forth in the Interim Order and this Final Order, as adequate protection of their interests in the Prepetition Collateral (including Cash Collateral), for and equal in amount to the aggregate postpetition Diminution in Value of such interests, resulting from the imposition of the priming DIP Liens on the Prepetition Collateral, the Carve Out, the sale, lease or use of the Prepetition Collateral

(including Cash Collateral), the imposition of the automatic stay and/or any other reason for which adequate protection may be granted under the Bankruptcy Code, the Prepetition Second Lien Noteholders are hereby granted the following (collectively, the "Second Lien Adequate Protection Obligations" and, together with the First Lien Adequate Protection Obligations, the "Adequate Protection Obligations"):

(a) Second Lien Adequate Protection Liens. As security for and solely to the extent of any Diminution in Value, additional and replacement valid, binding, enforceable non-avoidable, and effective and automatically perfected postpetition security interests in, and liens on, as of the date of the Interim Order (the "Second Lien Adequate Protection Liens" and, together with the First Lien Adequate Protection Liens, the "Adequate Protection Liens"), without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, all DIP Collateral. Subject to the terms of this Final Order, the Second Lien Adequate Protection Liens shall be subordinate only to (A) the Carve Out, (B) the DIP Liens, (C) the First Lien Adequate Protection Liens, (D) the Prepetition First Liens, and (E) the Permitted Liens (if any). The Second Lien Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral.

(b) Second Lien Adequate Protection Superpriority Claim. As further adequate protection, and to the extent provided by Bankruptcy Code sections 503(b) and 507(b), an allowed administrative expense claim in the Cases ahead of and senior to any and all other administrative expense claims in such Cases to the extent of any postpetition Diminution in Value (the "Second Lien Adequate Protection Superpriority Claim" and, together with the First Lien Adequate Protection Superpriority Claim, the "Adequate Protection Superpriority Claims"), except the

Carve Out, the DIP Superpriority Claims and the First Lien Adequate Protection Superpriority Claim. Subject to the Carve Out, the DIP Superpriority Claims, the First Lien Adequate Protection Superpriority Claims, and the Prepetition First Lien Obligations in all respects, the Second Lien Adequate Protection Superpriority Claim will not be junior to any other claims and shall have priority over all administrative expense claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(d), 726, 1113 and 1114. The Prepetition Second Lien Noteholders shall not receive or retain any payments, property or other amounts in respect of the Second Lien Adequate Protection Superpriority Claim under Bankruptcy Code section 507(b) granted hereunder unless and until the DIP Obligations, the Prepetition First Lien Obligations and the First Lien Adequate Protection Obligations have been indefeasibly paid in full, in cash, in each case as provided in the DIP Documents.

19. *Section 507(b) Reservation*. Subject in all respects to the terms of the Collateral Trust Agreement, nothing herein shall impair or modify the application of Bankruptcy Code section 507(b) in the event that the adequate protection provided to the Prepetition Secured Parties is insufficient to compensate for any Diminution in Value of their interests in the Prepetition Collateral during the Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by any of the Prepetition Secured Parties that the adequate protection granted herein does in fact adequately protect any of the Prepetition Secured Parties against any diminution in value of their respective interests in the Prepetition Collateral (including the Cash Collateral).

20. *Restrictions on Disposition of Material Assets Outside the Ordinary Course of Business.* Except as expressly permitted under the "first day" pleadings or the DIP Documents,

the Debtors shall not use, sell or lease any material assets outside the ordinary course of business, or seek authority of this Court to the extent required by Bankruptcy Code section 363, without obtaining the prior written consent of the Required Lenders at least five days (or such shorter period as the DIP Agent, at the direction of the Required Lenders, may agree) prior to the date on which the Debtors seek the Court's authority for such use, sale, or lease. Except as otherwise provided under the DIP Documents, subject to the Carve Out and Permitted Liens, in the event of any such sale, lease, transfer, license, or other disposition of property of the Debtors that constitutes DIP Collateral outside the ordinary course of business (to the extent permitted by the DIP Documents and this Final Order), the Debtors are authorized and shall promptly pay, without further notice or order of this Court, the DIP Agent, for the benefit of the DIP Parties, 100% of the net cash proceeds resulting therefrom no later than the second business day following receipt of such proceeds. Upon payment in full of the DIP Obligations, subject to the Carve Out and Permitted Liens, the Debtors are authorized and shall promptly pay, without further notice or order of this Court, the Prepetition First Lien Agents, for the benefit of the Prepetition First Lien Lenders, 100% of the net cash proceeds resulting from any such sale, lease, transfer, license, or other disposition of property of the Debtors that constitutes DIP Collateral outside the ordinary course of business (to the extent permitted by the DIP Documents and this Final Order) no later than the second business day following receipt of such proceeds. Except as otherwise provided under the DIP Documents, subject to the Carve Out and Permitted Liens, in the event of any casualty, condemnation, or similar event with respect to property that constitutes DIP Collateral, the Debtors are authorized and shall promptly pay to the DIP Agent, for the benefit of the DIP Parties, any insurance proceeds, condemnation award, or similar payment (excluding any amounts on account of any D&O policies) no later than the second business day following receipt of payment by the

Debtors, unless the Required Lenders consent, each in its sole discretion, in writing, to the funds being reinvested by the Debtors.

21. *Insurance.* At all times the Debtors shall maintain casualty and loss insurance coverage for the Prepetition Collateral and the DIP Collateral on substantially the same basis as maintained prior to the Petition Date. Upon entry of the Interim Order, the DIP Agent was, and was deemed to be, without any further action or notice, named as additional insured and lender's loss payee on each insurance policy maintained by the Debtors which in any way relates to the DIP Collateral.

22. *Reservation of Rights of the DIP Agent, DIP Lenders, DIP Secured Designated Coal Contract Counterparties and Prepetition Secured Parties*. Notwithstanding any other provision in this Final Order to the contrary, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair: (a) any of the rights of any of the Prepetition Secured Parties to seek any other or supplemental relief in respect of the Debtors including the right to seek additional adequate protection in all respects subject to the Collateral Trust Agreement; provided that any such further or different adequate protection shall at all times be subordinate and junior to the claims and liens of the DIP Agent, the DIP Lenders, and the DIP Secured Designated Coal Contract Counterparties granted under the Interim Order, this Final Order and the DIP Documents; (b) any of the rights of the DIP Agent, the DIP Lenders, the DIP Secured Designated Coal Contract Counterparties, or the Prepetition Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right of any of the DIP Agent, the DIP Lenders, the DIP Secured Designated Coal Contract Counterparties, or the Prepetition First Lien Parties to (i) request modification of the automatic stay of Bankruptcy Code section 362, (ii) request dismissal of any of the Cases, conversion of any

of the Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers in any of the Cases, (iii) seek to propose, subject to the provisions of Bankruptcy Code section 1121, a chapter 11 plan or plans; or (c) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of any of the DIP Agent, the DIP Lenders, the DIP Secured Designated Coal Contract Counterparties, or the Prepetition Secured Parties (in the case of the Prepetition Secured Parties, in all respects subject to the Collateral Trust Agreement). The delay in or failure of the DIP Agent, the DIP Lenders, the DIP Secured Designated Coal Contract Counterparties, and/or the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies shall not constitute a waiver of any of the DIP Agent's, the DIP Lenders', the DIP Secured Designated Coal Contract Counterparties', or the Prepetition First Lien Parties' rights and remedies.

23. *Termination Event*. Subject to paragraph 24, the Debtors' authorization to use Cash Collateral and the proceeds of the DIP Facility pursuant to the Interim Order and this Final Order shall automatically terminate, and the DIP Obligations shall become due and payable, without further notice or action by the Court following the earliest to occur of any of the following (each a "Termination Event"): (a) the occurrence of an Event of Default (as defined in the DIP Credit Agreement), which are explicitly incorporated by reference into this Final Order; (b) the Debtors' failure to (i) comply with any provision of the Interim Order and this Final Order, (ii) comply with any other covenant or agreement specified in the Interim Order and this Final Order or the DIP Credit Agreement (which covenants and agreements, together with any applicable grace periods, are explicitly incorporated by reference into this Final Order), or (iii) comply with any of the Milestones (as defined in, and as set forth in, the DIP Credit Agreement); (c) the termination of the Restructuring Support Agreement or the Backstop Commitment Agreement (as defined in the

DIP Credit Agreement), in either case, other than as a result of a breach by the DIP Lenders thereunder; or (d) the occurrence of the Maturity Date (as defined in the DIP Credit Agreement).

24. *Remedies Upon a Termination Event.* The Debtors shall immediately provide notice to counsel to the DIP Agent, the DIP Lenders, the DIP Secured Designated Coal Contract Counterparties, the Prepetition First Lien Agents, the Ad Hoc First Lien Group, and the Ad Hoc Crossover Group (with a copy to counsel to the Creditors' Committee), of the occurrence of any Termination Event, at which time the Debtors' ability to use Cash Collateral hereunder shall terminate (subject to the proviso at the end of this paragraph 24) and the DIP Obligations shall become due and payable. Upon the occurrence of a Termination Event and following the giving of not less than three business days' advance written notice, which may be by email (the "Enforcement Notice"), to counsel to the Debtors, the U.S. Trustee, and counsel to the Creditors' Committee (if any) (the "Notice Period"), (a) the DIP Agent may exercise any rights and remedies against the DIP Collateral available to it under this Final Order, the DIP Documents, and applicable non-bankruptcy law, and the DIP Agent, the DIP Lenders, and the DIP Secured Designated Coal Contract Counterparties may exercise such other rights available to them under the DIP Documents, this Final Order, or the Javelin Agreements, as applicable, including but not limited to terminating all commitments to extend credit under the DIP Facility or Javelin Agreements, as applicable, and (b) the Prepetition First Lien Parties may exercise any rights and remedies to satisfy the Prepetition First Lien Obligations, the First Lien Adequate Protection Superpriority Claims and any other First Lien Adequate Protection Obligations, subject to the DIP Obligations, the DIP Superpriority Claims, Permitted Liens and, in each case, the Carve Out. The only permissible basis for the Debtors, the Prepetition Second Lien Noteholders, the Creditors' Committee, or any other party to contest, challenge or object to an Enforcement Notice shall be solely with respect to

the validity of the Termination Event(s) giving rise to such Enforcement Notice (*i.e.*, whether such Termination Event validly occurred and has not been cured or waived in accordance with this Final Order). The automatic stay pursuant to Bankruptcy Code section 362 shall be automatically terminated with respect to the DIP Agent, the DIP Lenders, the DIP Secured Designated Coal Contract Counterparties, and the Prepetition First Lien Parties at the end of the Notice Period, without further notice or order of the Court, unless the DIP Agent, the DIP Lenders, the DIP Secured Designated Coal Contract Counterparties, the Prepetition First Lien Agents, and the Prepetition First Lien Lenders elect otherwise in a written notice to the Debtors, which may be by email. Upon termination of the automatic stay, the DIP Agent, the DIP Lenders, the DIP Secured Designated Coal Contract Counterparties, and the Prepetition First Lien Parties, as applicable, shall be permitted to exercise all rights and remedies set forth herein, in the DIP Documents, the Javelin Agreements and the Prepetition First Lien Credit Documents, as applicable, and as otherwise available at law against the DIP Collateral and/or Prepetition Collateral, without any further order of or application or motion to the Court, and without restriction or restraint imposed by any stay under Bankruptcy Code sections 362 or 105, or otherwise, against (x) the enforcement of the liens and security interests in the DIP Collateral or the Prepetition Collateral, or (y) the pursuit of any other rights and remedies granted to the DIP Agent, the DIP Lenders, the DIP Secured Designated Coal Contract Counterparties, or the Prepetition First Lien Parties pursuant to the DIP Documents, the Javelin Agreements, the Prepetition First Lien Credit Documents, or this Final Order, as applicable; provided that during the Notice Period the Debtors may use the proceeds of the DIP Facility (to the extent drawn prior to the occurrence of a Termination Event) or Cash Collateral only to (i) fund operations in accordance with the DIP Credit Agreement and the Cash Flow Forecast and (ii) to fund the Carve Out Reserves; provided further that during the Notice Period

the Debtors, the DIP Lenders, and the DIP Agent consent to a hearing on an expedited basis to consider whether a Termination Event has occurred; provided further, that if a hearing to consider the foregoing is requested to be heard before the end of the Notice Period but is scheduled for a later date by the Court, the Notice Period shall be automatically extended to the date of such hearing, but in no event later than five business days after delivery of the Enforcement Notice; provided further that any fees and expenses incurred by the Debtors or the Creditors' Committee during the Notice Period shall permanently reduce the Post-Carve Out Trigger Notice Cap. Any party in interest shall be entitled to seek an emergency hearing for the purpose of contesting whether assets constitute assets of the Debtors' estates and nothing in this Final Order shall affect any party in interest's rights or positions at such hearing.

25. *No Waiver for Failure to Seek Relief.* The failure or delay of the DIP Agent, the DIP Lenders, the DIP Secured Designated Coal Contract Counterparties, or any of the Prepetition Secured Parties to exercise rights and remedies under this Final Order, the DIP Documents, the Prepetition First Lien Credit Documents, the Prepetition Second Lien Documents, or applicable law, as the case may be, shall not constitute a waiver of their respective rights hereunder, thereunder or otherwise.

26. *Perfection of the DIP Liens and Adequate Protection Liens.*

(a) Subject to the limitations in paragraph 27(a) of this Final Order, the DIP Agent and the Prepetition Agents are hereby authorized, but not required, to file or record (and to execute in the name of the Debtors, as their true and lawful attorneys, with full power of substitution, to the maximum extent permitted by law) financing statements, intellectual property filings, mortgages, depository account control agreements, notices of lien, or similar instruments in any jurisdiction in order to validate and perfect the liens and security interests granted hereunder. Whether or not

the DIP Agent or the Prepetition Agents shall, in their sole discretion, choose to file such financing statements, intellectual property filings, mortgages, notices of lien, or similar instruments, such liens and security interests shall be deemed valid, automatically perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination (subject to the priorities set forth in this Final Order), at the time and on the date of entry of the Interim Order. Upon the request of the DIP Agent, the Prepetition Collateral Trustee, or the Prepetition Second Lien Indenture Trustee, as applicable, each of the Prepetition Secured Parties and the Debtors, without any further consent of any party, is authorized to take, execute, deliver, and file such instruments (in the case of the Prepetition Secured Parties, without representation or warranty of any kind) to enable the DIP Agent, the Prepetition Collateral Trustee, or the Prepetition Second Lien Indenture Trustee to further validate, perfect, preserve, and enforce the DIP Liens and the applicable Adequate Protection Liens, respectively. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(b) A certified copy of this Final Order may, in the discretion of the DIP Agent or the applicable Prepetition Agents, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Final Order for filing and recording; provided, however, that notwithstanding the date of any such filing, the date of such perfection shall be the date of the Interim Order.

(c) Any provision of any lease or other license, contract or other agreement that requires (i) the consent or approval of one or more landlords or other parties, or (ii) the payment of any fees or obligations, in order for any Debtor to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest, or the proceeds thereof, or other collateral related thereto in

connection with the granting of the DIP Liens and the Adequate Protection Liens, is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code. Thereupon, any such provision shall have no force and effect with respect to the granting of the DIP Liens and the Adequate Protection Liens on such leasehold interest or the proceeds of any assignment, and/or sale thereof by any Debtor in accordance with the terms of the DIP Credit Agreement or this Final Order.

(d) Nothing in this Final Order, the DIP Documents, or any other agreement or document executed in connection with the DIP Loans or this Final Order will increase, enhance, or be deemed to increase or enhance the rights and/or interests of any of the Debtors in the real, personal, or mixed property interests underlying or related to the Pierce Deeds (as defined in the Limited Objection of the Subsidence Rights Claimants [Docket No. 199]).

27. *Preservation of Rights Granted Under this Final Order*.

(a) Unless and until all DIP Obligations, Prepetition First Lien Obligations, and First Lien Adequate Protection Obligations are indefeasibly paid in full, in cash, and all commitments to extend credit under the DIP Facility are terminated, the Prepetition Second Lien Noteholders shall, in each case solely to the extent provided for in the Collateral Trust Agreement and applicable law: (i) take no action to foreclose upon, or recover in connection with, the liens granted thereto pursuant to the Prepetition Second Lien Documents, the Interim Order or this Final Order, or otherwise seek to exercise or enforce any rights or remedies against such DIP Collateral; and (ii) be restricted from exercising any rights and remedies or taking any other actions in respect of the DIP Collateral to the extent provided by the Collateral Trust Agreement and applicable law.

(b) Subject to the Carve Out, other than as set forth in this Final Order, neither the DIP Liens nor the First Lien Adequate Protection Liens shall be made subject to or *pari passu* with any

lien or security interest granted in any of the Cases or arising after the Petition Date, and neither the DIP Liens nor the First Lien Adequate Protection Liens shall be subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under Bankruptcy Code section 551.

(c) In the event this Final Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise, any liens or claims granted to the Prepetition Secured Parties hereunder arising prior to the effective date of any such vacatur, reversal, or modification of this Final Order shall be governed in all respects by the original provisions of this Final Order, including entitlement to all rights, remedies, privileges, and benefits granted herein, and the Prepetition Secured Parties shall be entitled to the protections afforded in Bankruptcy Code section 363(m) with respect to all uses of the Prepetition Collateral (including the Cash Collateral) and all Adequate Protection Obligations.

(d) Subject to the Carve Out, unless and until all DIP Obligations, Prepetition First Lien Obligations, Prepetition Second Lien Obligations, and Adequate Protection Obligations are indefeasibly paid in full, in cash, and all commitments to extend credit under the DIP Facility are terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (i) except as permitted under the DIP Documents and with the prior written consent of the DIP Agent and the Required Lenders, (x) any modification, stay, vacatur, or amendment of this Final Order, (y) a priority claim for any administrative expense, secured claim or unsecured claim against any of the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation, any administrative expense of the kind specified in Bankruptcy Code sections 503(b), 507(a) or 507(b)) in any of the Cases, equal or superior to the DIP Superpriority Claims, the Adequate Protection Superpriority Claims, the Prepetition First Lien

Obligations, and the Prepetition Second Lien Obligations (or the liens and security interests securing such claims and obligations), or (z) any other order allowing use of the DIP Collateral; (ii) except as permitted under the DIP Documents, any lien on any of the DIP Collateral or the Prepetition Collateral with priority equal or superior to the DIP Liens, the Adequate Protection Liens, the Prepetition First Liens, or the Prepetition Second Liens, as the case may be; (iii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents and this Final Order; (iv) except as set forth in the DIP Documents, the return of goods pursuant to section 546(h) of the Bankruptcy Code (or other return of goods on account of any prepetition indebtedness) to any creditor of any Debtor; (v) an order converting or dismissing any of the Cases; (vi) an order appointing a chapter 11 trustee in any of the Cases; or (vii) an order appointing an examiner with enlarged powers in any of the Cases.

(e) Notwithstanding any order dismissing any of the Cases under Bankruptcy Code section 1112 or otherwise entered at any time, (x) the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, and the other administrative claims granted pursuant to the Interim Order or this Final Order, shall continue in full force and effect and shall maintain their priorities as provided in the Interim Order and this Final Order until all DIP Obligations and Adequate Protection Obligations are indefeasibly paid in full, in cash (and such DIP Liens, DIP Superpriority Claims, Adequate Protection Liens, Adequate Protection Superpriority Claims, and the other administrative claims granted pursuant to the Interim Order and this Final Order, shall, notwithstanding such dismissal, remain binding on all parties in interest); and (y) the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (x) above.

(f) Except as expressly provided in this Final Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, and all other rights and remedies of the DIP Agent, the DIP Lenders, the Prepetition First Lien Agents, and the Prepetition First Lien Lenders granted by the provisions of the Interim Order, this Final Order and the DIP Documents shall survive, shall maintain their priority as provided in the Interim Order and this Final Order, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Cases to a case under chapter 7, dismissing any of the Cases, terminating the joint administration of these Cases or by any other act or omission, (ii) the entry of an order approving the sale of any Prepetition Collateral or DIP Collateral pursuant to Bankruptcy Code section 363(b), or (iii) the entry of an order confirming a plan of reorganization in any of the Cases and, pursuant to Bankruptcy Code section 1141(d)(4), the Debtors have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of the Interim Order, this Final Order and the DIP Documents shall continue in these Cases, in any successor cases if these Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code. The DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens and Adequate Protection Superpriority Claims and all other rights and remedies of the DIP Parties and the Prepetition Secured Parties granted by the provisions of the Interim Order and this Final Order shall continue in full force and effect until the DIP Obligations and the Adequate Protection Obligations are indefeasibly paid in full, in cash (or, with respect to the DIP Obligations, otherwise satisfied in a manner agreed to by the Required Lenders).

28. *Expenses and Indemnification.*

(a) The Debtors shall pay: (i) the reasonable and documented out-of-pocket fees and expenses incurred by professionals or consultants retained by the DIP Agent and the DIP Lenders, including (x) the Ad Hoc First Lien Advisors and (y) the Ad Hoc Crossover Group Advisors (collectively, the "DIP Professionals"), incurred in connection with the Cases (in any capacity) and the DIP Facility, whether or not the DIP Facility is successfully consummated, (ii) the reasonable and documented out-of-pocket expenses (including, without limitation, fees, disbursements and other charges of DIP Professionals) of the DIP Agent and the DIP Lenders, for enforcement costs and documentary taxes associated with the DIP Facility and the transactions contemplated thereby, are to be paid by the Debtors, and (iii) the reasonable and documented out-of-pocket fees and expenses incurred by professionals or consultants (including Paul Hastings LLP and Carmody MacDonald P.C.) retained by the DIP Secured Designated Coal Contract Counterparties solely to the extent such fees and expenses are payable by the Debtors under the Javelin Agreements; provided, however, that the DIP Secured Designated Coal Contract Counterparties shall not be entitled to payment of, and the Debtors shall not be obligated to pay, any fees or expenses incurred by them in connection with the assertion of any claims, or litigation commenced, against the Debtors (other than in connection with the enforcement of their rights hereunder and under the Javelin Agreements), the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties. All fees and expenses described above shall be payable by the Debtors (whether accrued or incurred prior to, on, or after the Petition Date) within ten (10) calendar days after the delivery of invoices (which invoices shall not be required to comply with any particular format and may be in summary form only and may be in redacted form to protect privileged and confidential information) to the Debtors, the U.S. Trustee, and the Creditors' Committee, without

the necessity of filing motions or fee applications and such fees and expenses shall not be subject to any further review, challenge, or disgorgement following the expiration of such period; provided that if the Debtors, the U.S. Trustee, or the Creditors' Committee sends to the affected professional, the Debtors, and the U.S. Trustee within five (5) calendar days of receipt of any invoice a written objection to such invoice, then the portion of any invoice subject to such objection shall not be paid until resolution of the objection by this Court or by mutual consent.

(b) As set forth in the DIP Facility, the Debtors will, jointly and severally, indemnify the DIP Lenders, the DIP Agent, the DIP Secured Designation Coal Contract Counterparties, and their respective affiliates, successors and assigns and the officers, directors, employees, agents, advisors, controlling persons, and members of each of the foregoing (each an "Indemnified Person"), and hold them harmless from and against any and all losses, claims, damages, costs, expenses (including but not limited to reasonable and documented legal fees and expenses), and liabilities arising out of or relating to the execution or delivery of the DIP Credit Agreement and other DIP Documents, transactions contemplated hereby and thereby, and any actual or proposed use of the proceeds of any loans made under the DIP Facility in accordance with the terms of the DIP Credit Agreement; provided that no such person will be indemnified for costs, expenses, or liabilities to the extent determined by a final, non-appealable judgment of a court of competent jurisdiction to have been incurred solely by reason of the actual fraud, gross negligence, or willful misconduct of such person (or their related persons). No Indemnified Person shall have any liability (whether direct or indirect, in contract, tort or otherwise) to the Debtors or any shareholders or creditors of the Debtors for or in connection with the transactions contemplated hereby, except to the extent such liability is found in an final non-appealable judgment by a court of competent jurisdiction to have resulted solely from such Indemnified Person's actual fraud,

gross negligence or willful misconduct, and in no event shall any Indemnified Person be liable on any theory of liability for any special, indirect, consequential, or punitive damages.

29. *Limitation on Use of DIP Facility Proceeds, DIP Collateral, and Cash Collateral*

(a) Notwithstanding anything to the contrary set forth in this Final Order or in any other order of this Court to the contrary, none of the DIP Facility, the DIP Collateral, the Prepetition Collateral or the proceeds thereof, including Cash Collateral, shall be used to pay the fees incurred by Committee Professionals in the aggregate that are in excess of (i) accrued fees through the date of the conclusion of the Final Hearing, (ii) $637,500.00 for the month of April 2020, but prorated based upon the remaining number of days from the date of the conclusion of the Final Hearing, (iii) $637,500.00 for May 2020, (iv) $575,000.00 for June 2020, and (v) $525,000.00 for July 2020 and each month thereafter (collectively, the "Committee Monthly Cap"); provided that any unused amounts from one month may be applied to any other month in which the Committee Professionals' fees exceeded the Committee Monthly Cap. For the avoidance of doubt, the Committee Monthly Cap does not apply to the payment of the Committee's reasonable out-of-pocket expenses.

(b) Notwithstanding anything to the contrary set forth in this Final Order, none of the DIP Facility, the DIP Collateral, the Prepetition Collateral or the proceeds thereof, including Cash Collateral, or the Carve Out may be used: (a) to investigate (except as expressly provided herein), initiate, prosecute, join, or finance the initiation or prosecution of any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, or other litigation of any type (i) against any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties (each in their capacities as such) or seeking relief that would impair the rights and remedies of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties (each in their capacities as such) under the DIP

Documents, this Final Order, or the Prepetition Credit Documents to the extent permitted or provided hereunder, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors or any Creditors' Committee in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense, or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration, or similar relief that would impair the ability of any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties to recover on the DIP Collateral or the Prepetition Collateral, as provided for herein, or seeking affirmative relief against any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties related to the DIP Obligations, or the Prepetition Secured Obligations, (ii) seeking to invalidate, set aside, avoid, or subordinate, in whole or in part, the DIP Obligations, the DIP Superpriority Claims, or the DIP Agent's and the DIP Lenders' liens or security interests in the DIP Collateral, the Prepetition Secured Obligations or the Prepetition Liens, or (iii) for monetary, injunctive, or other affirmative relief against the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties (each in their capacities as such), or their respective liens on or security interests in the DIP Collateral or the Prepetition Collateral, or the DIP Superpriority Claims, that would impair the ability of any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties to assert or enforce any lien, claim, right, or security interest or to realize or recover on the DIP Obligations or the Prepetition Secured Obligations to the extent permitted or provided hereunder; (b) for objecting to or challenging in any way the legality, validity, priority, perfection, or enforceability of the claims, liens, or interests (including the Prepetition Liens) held by or on behalf of each of the Prepetition Secured Parties related to the Prepetition Secured Obligations, or by or on behalf of the DIP Agent and the DIP Lenders related to the DIP Obligations; (c) for asserting, commencing, or prosecuting any claims

or causes of action whatsoever, including, without limitation, any Avoidance Actions (as defined herein) related to the DIP Obligations, the DIP Superpriority Claims, the DIP Liens, the Prepetition Secured Obligations, or the Prepetition Liens; (d) for prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of: (x) any of the DIP Liens, the DIP Superpriority Claims, or any other rights or interests of the DIP Agent or the DIP Lenders related to the DIP Obligations or the DIP Liens, or (y) any of the Prepetition Liens or any other rights or interests of any of the Prepetition Secured Parties related to the Prepetition Secured Obligations or the Prepetition Liens; and (e) assert any claims, defenses, or any other causes of action any non-Debtor affiliates with respect to prepetition relationships with the Debtors; provided that no more than $250,000.00 of the proceeds of the DIP Facility, the DIP Collateral, or the Prepetition Collateral, including the Cash Collateral, in the aggregate, may be used by the Creditors' Committee (x) to investigate the foregoing matters within the Challenge Period (as defined herein) and (y) to investigate claims or causes of action against non-Debtor affiliates of the Debtors ("Challenge Budget"). Nothing herein shall prohibit the Creditors' Committee from investigating or litigating any party's compliance or non-compliance with the terms of the Interim Order, this Final Order, or the DIP Documents or the Javelin Agreements.

(c) All fees and expenses of the Committee Professionals in excess of (i) the Committee Monthly Cap and/or (ii) the Challenge Budget, as applicable, shall not be entitled to administrative expense priority pursuant to section 503(b) of the Bankruptcy Code or otherwise.

30. *Effect of Stipulations on Third Parties*.

(a) The Debtors' acknowledgments, stipulations, admissions, waivers, and releases set forth in the Interim Order and this Final Order shall be binding on the Debtors, their respective

representatives, successors and assigns. The acknowledgments, stipulations, admissions, waivers, and releases contained in the Interim Order and this Final Order shall also be binding upon the Debtors' estate and all other parties in interest, including the Creditors' Committee, or any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors (a "Trustee"), unless (a) such party with requisite standing, has duly filed an adversary proceeding (or, with respect to the Creditors' Committee only, has filed a motion to obtain standing (a "Standing Motion") to pursue such an adversary proceeding, and, if granted, then commences forthwith such an adversary proceeding within three (3) business days following entry of the order granting the Standing Motion) challenging the validity, perfection, priority, extent, or enforceability of the Prepetition Liens, or the Prepetition Secured Obligations, or otherwise asserting or prosecuting any Avoidance Actions or any other claims, counterclaims or causes of action, objections, contests, or defenses (collectively, the "Claims and Defenses") against the Prepetition Secured Parties in connection with any matter related to the Prepetition Collateral, the Prepetition Liens or the Prepetition Secured Obligations by no later than (i) with respect to the Creditors' Committee, the date that is 75 days after the Creditors' Committee's formation or (ii) with respect to other parties in interest, no later than the date that is 75 days after the entry of the Interim Order (the time period established by the later of the foregoing clauses (i) and (ii), the "Challenge Period"); provided that in the event that, prior to the expiration of the Challenge Period, (x) these chapter 11 cases are converted to chapter 7 or (y) a chapter 11 trustee is appointed in these chapter 11 cases, then, in each such case, the Challenge Period shall be extended for a period of 60 days solely with respect to any Trustee, commencing on the occurrence of either of the events described in the foregoing clauses (x) and (y); and (b) an order is entered by a court of competent jurisdiction and becomes final and non-appealable in favor of the plaintiff sustaining any such challenge or claim in any such duly filed

adversary proceeding. If no such adversary proceeding (or, for the Committee, the filing of a Standing Motion followed by, if the Standing Motion is granted, the commencement of such an adversary proceeding within three (3) business days following entry of the order granting the Standing Motion) is timely filed prior to the expiration of the Challenge Period, without further order of this Court: (x) the Prepetition Secured Obligations shall constitute allowed claims, not subject to any Claims and Defenses (whether characterized as a counterclaim, setoff, subordination, recharacterization, defense, avoidance, contest, attack, objection, recoupment, reclassification, reduction, disallowance, recovery, disgorgement, attachment, "claim" (as defined by Bankruptcy Code section 101(5)), impairment, subordination (whether equitable, contractual or otherwise), or other challenge of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law), for all purposes in these Cases and any subsequent chapter 7 cases, if any; (y) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected and of the priority specified in paragraphs 4(b) and 4(d), not subject to setoff, subordination, defense, avoidance, impairment, disallowance, recharacterization, reduction, recoupment, or recovery; and (z) the Prepetition Secured Obligations, the Prepetition Liens on the Prepetition Collateral and the Prepetition Secured Parties (in their capacities as such) shall not be subject to any other or further challenge and any party in interest shall be forever enjoined and barred from seeking to exercise the rights of the Debtors' estates or taking any such action, including any successor thereto (including any estate representative or a Trustee, whether such Trustee is appointed or elected prior to or following the expiration of the Challenge Period). If any such adversary proceeding (or, for the Creditors' Committee only, the filing of a Standing Motion followed by, if the Standing Motion is granted, the commencement of such an adversary proceeding within three (3) business days following entry of the order granting the Standing

Motion) is timely filed as provided above prior to the expiration of the Challenge Period, (a) the stipulations and admissions contained in the Interim Order and this Final Order shall nonetheless remain binding and preclusive on the Creditors' Committee and any other party in these cases, including any Trustee, except as to any stipulations or admissions that are specifically and expressly challenged in such adversary proceeding and (b) any Claims and Defenses not brought in such adversary proceeding shall be forever barred; provided that, if and to the extent any challenges to a particular stipulation or admission are withdrawn, denied or overruled by a final non-appealable order, such stipulation also shall be binding on the Debtors' estates and all parties in interest. The Challenge Period may be extended in writing from time to time in the sole discretion of the Prepetition Agents.

(b) Nothing in this Final Order vests or confers on any person (as defined in the Bankruptcy Code), including any Creditors' Committee, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, any challenge with respect to the Prepetition Credit Documents or the Prepetition Secured Obligations. In the event that the Creditors' Committee is successful in any such adversary proceeding initiated under this paragraph, the Court retains jurisdiction to grant a remedy that is appropriate under the circumstances.

31. *Release*. Subject to the rights and limitations set forth in paragraphs 29 and 30 of this Final Order, each of the Debtors and the Debtors' estates, on its own behalf and on behalf of each of their predecessors, their successors, and assigns shall to the maximum extent permitted by applicable law, unconditionally, irrevocably and fully forever release, remise, acquit, relinquish, irrevocably waive and discharge each of the DIP Lenders, the DIP Agent, the Prepetition Secured Parties, and each of their respective former, current or future officers, employees, directors, agents,

representatives, owners, members, partners, affiliated investment funds or investment vehicles, managed, advised or sub-advised accounts, funds or other entities, investment advisors, sub-advisors or managers, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors in interest, each in their capacity as such, of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description that exist on the date hereof with respect to or relating to the DIP Obligations, the DIP Superpriority Claims, the DIP Liens, the Prepetition Secured Obligations or the Prepetition Liens, as applicable, including, without limitation, (i) any so-called "lender liability" or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection or avoidability of the liens or claims of the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties. For the avoidance of doubt, this paragraph 31 shall not release the DIP Secured Designated Coal Contract Counterparties from any obligations under the Javelin Agreements.

32. *Collateral Trust Agreement.* The rights of the Prepetition Secured Parties shall at all times remain subject to the Collateral Trust Agreement.

33. *Credit Bidding*. (a) The DIP Agent, or any assignee or designee of the DIP Agent, acting at the direction of the Required Lenders and on behalf of the DIP Parties, shall have the

unqualified right to credit bid up to the full amount of any DIP Obligations in the sale of any of the Debtors' assets, including pursuant to (i) Bankruptcy Code section 363, (ii) a plan of reorganization or a plan of liquidation under Bankruptcy Code section 1129, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under Bankruptcy Code section 725, and (b) subject to the indefeasible payment in full in cash of the DIP Obligations, the Prepetition First Lien Agents (on behalf of the Prepetition First Lien Lenders) shall have the right to credit bid (x) up to the full amount of the Prepetition First Lien Obligations (other than the Roll-Up Loans) and (y) the First Lien Adequate Protection Obligations in the sale of any of the Debtors' assets, including, but not limited to, pursuant to (i) Bankruptcy Code section 363, (ii) a plan of reorganization or a plan of liquidation under Bankruptcy Code section 1129, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under Bankruptcy Code section 725. The DIP Agent, at the direction of the Required Lenders, and on behalf of the DIP Parties, shall have the absolute right to assign, sell, or otherwise dispose of its right to credit bid in connection with any credit bid by or on behalf of the DIP Parties to any acquisition entity or joint venture formed in connection with such bid. Except for the amount of any credit bid in accordance with this paragraph 33, nothing in this Final Order or the DIP Documents shall impair or adversely affect the right of the United States or any State to object to any credit bid for cause under section 363(k) of the Bankruptcy Code.

34. *Prepetition Undrawn Letter of Credit*. Within ten (10) days from entry of this Final Order, the Debtors shall have either (i) posted cash collateral with the Prepetition First Lien Administrative Agent equal to 103% of the face amount of all remaining prepetition issued and undrawn letters of credit (the "Prepetition Undrawn Letters of Credit"), and/or (ii) provided the Prepetition First Lien Administrative Agent with evidence of the release and/or cancellation of all such Prepetition Undrawn Letters of Credit. Notwithstanding anything to the contrary set forth in

the Interim Order or in this Final Order, the Prepetition First Lien Administrative Agent (for the benefit of the Prepetition First Lien Revolving Lenders) shall have a first priority lien and security interest in and to such cash collateral as security for any unreimbursed obligations owing to the Prepetition First Lien Revolving Lenders on account of any draws or presentments on such letters of credit. In the event of any presentment of the Prepetition Undrawn Letters of Credit which are not immediately reimbursed by the Debtors pursuant to the terms of the Prepetition First Lien Credit Agreement, the Prepetition First Lien Administrative Agent is authorized to apply such cash collateral to the payment of such unreimbursed obligations.

35. *Final Order Governs*. In the event of any inconsistency between the provisions of the Interim Order, the DIP Documents and this Final Order, the provisions of this Final Order shall govern.

36. *Binding Effect; Successors and Assigns*. The DIP Documents and the provisions of this Final Order, including all findings herein, shall be binding upon all parties in interest in these Cases, including without limitation, the DIP Agent, the DIP Lenders, the DIP Secured Designated Coal Contract Counterparties, the Prepetition Secured Parties, the Creditors' Committee, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to Bankruptcy Code section 1104, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Agent, the DIP Lenders, the DIP Secured Designated Coal Contract Counterparties, and the Prepetition First Lien Parties, provided that, except to the extent expressly set forth in this Final Order, the Prepetition First Lien Parties shall

have no obligation to permit the use of Cash Collateral or to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors.

37. *Limitation of Liability*. In determining to make any loan under the DIP Documents, permitting the use of Cash Collateral, or exercising any rights or remedies as and when permitted pursuant to this Final Order, the DIP Documents, the Prepetition First Lien Credit Documents, or the Prepetition Second Lien Documents, the DIP Agent, the DIP Lenders, the DIP Secured Designated Coal Contract Counterparties, and the Prepetition Secured Parties shall not be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors or their respective business (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.* as amended, or any applicable comparable federal, state or local law), nor shall they owe any fiduciary duty to any of the Debtors, their creditors or estates, or constitute or be deemed to constitute a joint venture or partnership with any of the Debtors. Furthermore, nothing in this Final Order, the DIP Documents or the Prepetition Credit Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, the DIP Secured Designated Coal Contract Counterparties or the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their respective affiliates (as defined in Bankruptcy Code section 101(2)).

38. *Master Proofs of Claim*. Notwithstanding anything to the contrary in the Motion or this Final Order, the Prepetition Agents, together with any other such agents or trustees referenced in this Final Order, are each authorized, but not directed or required, to file one master proof of claim on behalf of themselves and the Prepetition Secured Parties, as applicable, on

account of any and all of the respective claims arising under the Prepetition Credit Documents, as applicable, and hereunder (the "Master Proof of Claim"). For administrative convenience, any Master Proof of Claim authorized herein may be filed in the case of Debtor Foresight Energy LP with respect to all amounts asserted in such Master Proof of Claim, and such Master Proof of Claim shall be deemed to be filed and asserted by the applicable entity or entities against every Debtor asserted to be liable for the applicable claim. No authorized Master Proof of Claim shall be disallowed, reduced, or expunged on the basis that it is filed only against Debtor Foresight Energy LP and not in such Debtor's case. For the avoidance of doubt, the provisions set forth in this paragraph and any Master Proof of Claim filed pursuant to the terms hereof are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party in interest or their respective successors in interest, including, without limitation, the numerosity requirements set forth in section 1126 of the Bankruptcy Code. The Prepetition Agents shall not be required to attach any instruments, agreements, or other documents evidencing the obligations owing by each of the Debtors to the Prepetition Secured Parties, as applicable, which instruments, agreements, or other documents will be provided upon written request to counsel to the Prepetition Agents.

39. Notwithstanding anything to the contrary herein, (a) the designation of Javelin and Uniper as DIP Secured Designated Coal Contract Counterparties under the DIP Credit Agreement, (b) the designation of certain obligations arising under the Javelin Agreements as DIP Obligations, (c) the DIP Liens securing the DIP Secured Designated Coal Contract Obligations, and (d) all other rights and remedies granted to the DIP Secured Designated Coal Contract Counterparties hereunder shall, in each case, be subject to (x) the Debtors' entry into the Javelin Agreements and the Settlement Agreement, (y) the Court's approval of the Settlement Agreement, and (z) with

respect to (i) any amendments or modifications to the Javelin Agreements (as in effect on the Javelin Agreements Effective Date (as defined in Section 10.25(a) of the DIP Credit Agreement)) or (ii) the entry into any other proposed Designated Coal Contract (as defined in the DIP Credit Agreement) after the date of this Final Order, all such amendments, modifications or agreements shall be on terms consistent with and subject to the requirements of Section 10.25 of the DIP Credit Agreement and this Final Order.

40. *Governmental Matters*.

(a) Notwithstanding anything to the contrary in this Final Order or the DIP Documents, nothing in this Final Order or the various DIP Documents shall relieve the Debtors of any obligations under federal, state or local police or regulatory laws or under 28 U.S.C. § 959(b), provided that nothing herein shall limit or impair the Debtors' rights to assert defenses under applicable law and nothing herein shall create new defenses to obligations under police or regulatory laws or 28 U.S.C. § 959(b).

(b) Notwithstanding anything to the contrary in this Final Order or the DIP Documents, nothing in this Final Order or the various DIP Documents shall impair the United States of America's rights, claims and defenses of set-off and recoupment against the Debtors, or those of any State or any of the foregoing's respective agencies, departments or agents, and all such rights, claims and defenses shall be preserved in their entirety, and rights and defenses of the Debtors or other parties in interest are preserved in their entirety.

(c) Paragraphs 31 and 37 of this Final Order shall apply with respect to liabilities to governmental units under police or regulatory law so long as the actions of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties, or various DIP Facilities, as applicable, do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), participation in the management or

operational affairs of a vessel or facility owned or operated by the Debtors, or otherwise cause the waiver or termination of protections afforded lenders because of the status of controlling or otherwise becoming a responsible person, owner, or operator under applicable federal, state, or local law. For the avoidance of doubt, in determining to make any loan or other extension of credit under the DIP Credit Agreement, permitting the use of Cash Collateral, performing under this Final Order and the various DIP Documents in the ordinary course, none of the DIP Agent, DIP Lenders, or Prepetition Secured Parties, shall be deemed to have participated in the management or operational affairs of a vessel or facility owned or operated by the Debtors, or to have otherwise caused lender liability to arise; provided, however, that holding indicia of ownership for reasons that are not primarily to protect a security interest in a DIP Facility or exercising decision-making control over the Debtors' compliance with respect to environmental or mining regulatory laws or regulations shall not be considered ordinary course performance. Each DIP Agent, DIP Lender, and Prepetition Secured Party, and the DIP Facility, preserves and is not waiving any defenses it may have to any claims as set forth in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. as amended, or applicable comparable federal, state and local law.

(d) Notwithstanding anything to the contrary in this Final Order or the DIP Documents, nothing in this Final Order or the various DIP Documents shall impair or adversely affect any right under applicable law of any governmental unit with respect to any financial assurance, letter of credit, trust, or bond or limit any governmental unit in the exercise of its police powers in accordance with 11 U.S.C. § 362(b)(4).

41. Notwithstanding anything to the contrary in this Final Order or the DIP Documents, nothing in this Final Order or the DIP Documents shall be deemed to authorize the assumption,

sale, assignment or other transfer by the Debtors, the DIP Agent, DIP Lenders, or the Prepetition Secured Parties of any agreements, grants, grant funds, licenses, permits, authorizations, contracts, or leases, in each case to which any governmental unit is a party (collectively, "Government Interests"), without compliance with all terms of any statute, regulation or contract giving rise to the Government Interests and with all applicable non-bankruptcy law; *provided*, *however*, that, for the avoidance of doubt, the foregoing shall in no way limit the granting of the DIP Liens and the Adequate Protection Liens on the DIP Collateral as set forth in this Final Order.

42. *Effectiveness*. This Final Order shall constitute findings of fact and conclusions of law and shall take effect as of the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Final Order.

43. No later than 2 business days after the date of this Order, the Debtors' Claims and Noticing Agent shall serve on the Notice Parties a copy of this Final Order and shall file a certificate of service no later than 24 hours after service.

Kathy A. Surratt-States

KATHY A. SURRATT-STATES
Chief U.S. Bankruptcy Judge

DATED: April 9, 2020
St. Louis, Missouri
jjh

Exhibit 1

Cash Flow Forecast

Foresight Energy LP
13 Week Cash Flow Forecast 04/11/20 - 07/04/20
Summary View [Cleansing] [Updated 04/02/20]

Privileged and Confidential
DRAFT - Subject to Material Change

($ and Tons in 000s)	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
Week Number –>	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Total
Week Ending –>	11-Apr-20	18-Apr-20	25-Apr-20	2-May-20	9-May-20	16-May-20	23-May-20	30-May-20	6-Jun-20	13-Jun-20	20-Jun-20	27-Jun-20	4-Jul-20	13 Weeks
Total Tons Shipped	*165.4*	*165.4*	*165.4*	*165.4*	*216.5*	*216.5*	*216.5*	*216.5*	*254.0*	*254.0*	*254.0*	*254.0*	*286.6*	*2,830.1*
Total Receipts	**$ 875**	**$ 3,575**	**$ 14,645**	**$ 7,579**	**$ 5,767**	**$ 7,880**	**$ 3,866**	**$ 5,159**	**$ 6,665**	**$ 7,041**	**$ 7,255**	**$ 7,922**	**$ 7,947**	**$ 86,176**
Operating Disbursements														
Payroll Related & Employee Benefits	(2,226)	(1,553)	(2,035)	(1,970)	(2,035)	(1,332)	(2,035)	(1,295)	(2,035)	(1,321)	(2,046)	(1,295)	(2,035)	(23,217)
All Other Operating Expenses	(5,137)	(4,886)	(6,530)	(6,727)	(1,376)	(2,969)	(3,924)	(13,820)	(5,533)	(3,580)	(10,337)	(2,614)	(7,206)	(74,641)
Total Operating Disbursements	**(7,364)**	**(6,439)**	**(8,566)**	**(8,697)**	**(3,412)**	**(4,301)**	**(5,960)**	**(15,116)**	**(7,569)**	**(4,902)**	**(12,383)**	**(3,909)**	**(9,241)**	**(97,857)**
Net Operating Cash Flows	**(6,489)**	**(2,865)**	**6,080**	**(1,118)**	**2,355**	**3,579**	**(2,094)**	**(9,957)**	**(903)**	**2,139**	**(5,128)**	**4,013**	**(1,294)**	**(11,681)**
Restructuring Related Disbursements														
Professional Fees	(2,205)	-	-	-	(2,775)	-	-	(2,645)	(2,775)	-	-	-	(5,245)	(15,645)
Critical Vendor and Other Payments	(6,418)	(6,418)	(6,418)	(6,418)	(2,678)	(2,678)	(2,678)	(2,678)	-	-	-	-	-	(36,387)
Utility and Other Deposits	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Restructuring Related Disbursements	**(8,623)**	**(6,418)**	**(6,418)**	**(6,418)**	**(5,453)**	**(2,678)**	**(2,678)**	**(5,323)**	**(2,775)**	**-**	**-**	**-**	**(5,245)**	**(52,031)**
Financing Activity														
DIP Draws / Repayments	-	45,000	-	-	-	-	-	-	-	-	-	-	-	45,000
DIP Interest & Fees	(401)	(1,388)	-	-	(1,323)	-	-	-	(1,884)	-	-	-	(1,823)	(6,818)
LC Cash Collateralization	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Exit Financing	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Financing Activity	**(401)**	**43,613**	**-**	**-**	**(1,323)**	**-**	**-**	**-**	**(1,884)**	**-**	**-**	**-**	**(1,823)**	**38,182**
Total Net Cash Flow	**(15,513)**	**34,330**	**(339)**	**(7,536)**	**(4,421)**	**901**	**(4,772)**	**(15,280)**	**(5,562)**	**2,139**	**(5,128)**	**4,013**	**(8,362)**	**(25,531)**
Beginning Cash	**62,089**	**46,577**	**80,906**	**80,567**	**73,031**	**68,610**	**69,511**	**64,739**	**49,459**	**43,897**	**46,036**	**40,908**	**44,921**	**62,089**
Net Cash Flow	(15,513)	34,330	(339)	(7,536)	(4,421)	901	(4,772)	(15,280)	(5,562)	2,139	(5,128)	4,013	(8,362)	(25,531)
Ending Cash Balance	**$ 46,577**	**$ 80,906**	**$ 80,567**	**$ 73,031**	**$ 68,610**	**$ 69,511**	**$ 64,739**	**$ 49,459**	**$ 43,897**	**$ 46,036**	**$ 40,908**	**$ 44,921**	**$ 36,559**	**$ 36,559**

Exhibit 2

DIP Credit Agreement

Execution Version

SENIOR SECURED SUPERPRIORITY

DEBTOR-IN-POSSESSION CREDIT AND GUARANTY AGREEMENT

among

FORESIGHT ENERGY LLC,

as Borrower,

FORESIGHT ENERGY LP AND CERTAIN SUBSIDIARIES OF FORESIGHT ENERGY LLC,
as Guarantors,

CORTLAND CAPITAL MARKET SERVICES LLC,
as Administrative Agent and Collateral Agent,

the Other Lenders Party Hereto, and

the Designated Coal Contract Counterparties Party Hereto

Dated as of March 11, 2020

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SCHEDULES

EXHIBITS

Form of:

SENIOR SECURED SUPERPRIORITY
DEBTOR-IN-POSSESSION CREDIT AND GUARANTY AGREEMENT

This SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AND GUARANTY AGREEMENT (as amended, supplemented or otherwise modified, the "Agreement") is entered into as of March 11, 2020, among FORESIGHT ENERGY LLC, a Delaware limited liability company, as a debtor and debtor-in-possession, as borrower (the "Borrower"), FORESIGHT ENERGY GP LLC, a Delaware limited liability company, as a debtor and debtor-in-possession (the "General Partner"), FORESIGHT ENERGY LP, a Delaware limited partnership, as a debtor and debtor-in-possession ("Holdings"), CERTAIN SUBSIDIARIES OF BORROWER, each as a debtor and debtor-in-possession, as Guarantors, each lender from time to time party hereto (collectively, the "Lenders" and, individually, a "Lender"), the Designated Coal Contract Counterparties from time to time party hereto, and Cortland Capital Market Services LLC, as Administrative Agent and Collateral Agent.

PRELIMINARY STATEMENTS

WHEREAS, on March 10, 2020 (the "Petition Date"), the General Partner, Holdings, the Borrower and certain Subsidiaries of Borrower (collectively, the "Debtors" and each individually, a "Debtor") have commenced cases (the "Chapter 11 Cases") under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court (as defined below) and the Debtors have retained possession of their assets and are authorized under the Bankruptcy Code to continue the operations of their businesses as debtors-in-possession;

WHEREAS, the Debtors have asked the Lenders to make post-petition term loans and provide other financial or credit accommodations to the Borrower, and the Lenders have agreed, subject to the conditions set forth herein, to extend a senior secured multi-draw credit facility to the Borrower with all of the obligations with respect to the foregoing to be guaranteed by each Guarantor; and

WHEREAS, the Lenders have severally, and not jointly, agreed to extend such credit to the Borrower subject to the terms and conditions hereinafter set forth.

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

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

"Acceptable Plan" means a Reorganization Plan of the Debtors that is consistent with the Restructuring Support Agreement or otherwise satisfactory to the Required Lenders (as the same may be amended, supplemented, or modified from time to time after entry thereof with the consent of the Required Lenders).

"Accounting Change" means changes in accounting principles after the Closing Date required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board or, if applicable, the SEC.

"Acceptable Disclosure Statement" means the Disclosure Statement relating to the Acceptable Plan in form and substance satisfactory to the Required Lenders (as the same may be amended, supplemented, or modified from time to time after the initial filing thereof with the consent of the Required Lenders).

"Administrative Agent" means Cortland Capital Market Services LLC, in its capacity as the administrative agent, together with its successors and assigns.

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Affiliated Lender" means any Lender that is an Affiliate of any Loan Party.

"Agency Fee Letter" means a fee agreement separately agreed to by the Borrower and the Agents.

"Agent Parties" has the meaning specified in Section 10.02(c).

"Agents" means the Administrative Agent and the Collateral Agent.

"Aggregate Commitments" means the Commitments of all of the Lenders.

"Agreement" has the meaning specified in the introductory paragraph to this Agreement.

"Anti-Corruption Laws" has the meaning specified in Section 5.17(c).

"Applicable Percentage" means (i) (a) in respect of the Initial Term Loan Facility, with respect to any Term Lender at any time, the percentage (carried out to the tenth decimal place) of the aggregate principal amount of the Term Loan Facility represented by the principal amount of such Term Lender's Initial Term Loan Commitment and/or Initial Term Loans outstanding at such time and (b) in respect of the Delayed Draw Term Loan Facility, with respect to any Term Lender at any time, the percentage (carried out to the tenth decimal place) of the aggregate principal amount of the Delayed Draw Term Loan Facility represented by the principal amount of such Term Lender's Delayed Draw Term Loan Commitment and/or the Delayed Draw Term Loans outstanding at such time; provided that, if the commitment of each Term Lender to make Delayed Draw Term Loans have been terminated pursuant to Section 8.02, or if the Delayed Draw Term Loan Commitments have expired, then the Applicable Percentage of each Term Lender in respect of the Delayed Draw Term Loan Facility shall be determined based on the Applicable Percentage of such Lender in respect of the Delayed Draw Term Loan Facility most recently in effect, giving effect to any subsequent assignments, (ii) in respect of the Roll-Up Facility, with respect to any Roll-Up Lender, at any time, the percentage (carried out to the tenth decimal place) of the aggregate principal amount of the Roll-Up Facility represented by the principal amount of such Roll-Up Lender's Roll-Up Loans at such time (the initial Applicable Percentage of each Roll-Up Lender as of the Closing Date in respect of the Roll-Up Facility is set forth on Schedule 2.01(a) and, thereafter, in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable), and (iii) with respect to each Lender, the percentage (carried out to the tenth decimal place) of the aggregate principal amount of all Facilities represented by the principal amount of such Lender's Loans and/or Commitment at such time.

"Applicable Rate" means, in the case of any Loans, (i) 11.00% per annum for Eurocurrency Rate Loans and (ii) 10.00% per annum for Base Rate Loans.

"Applicable Reserve Requirement" means, at any time, for any Eurocurrency Rate Loan, the maximum rate, expressed as a decimal, at which reserves (including any basic marginal, special, supplemental, emergency or other reserves) are required to be maintained with respect thereto against "Eurocurrency liabilities" (as such term is defined in Regulation D) under regulations issued from time to time by the Board of Governors or other applicable banking regulator. Without limiting the effect of the foregoing, the Applicable Reserve Requirement shall reflect any other reserves required to be maintained by such member banks with respect to (i) any category of liabilities which includes deposits by reference to which the applicable Eurocurrency Rate or any other interest rate of a Loan is to be determined, or (ii) any category of extensions of credit or other assets which include Eurocurrency Rate Loans. A Eurocurrency Rate Loan shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to

reserve requirements without benefits of credit for proration, exceptions or offsets that may be available from time to time to the applicable Lender. The rate of interest on Eurocurrency Rate Loans shall be adjusted automatically on and as of the effective date of any change in the Applicable Reserve Requirement.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Assignee Group" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b), and accepted by the Administrative Agent) in substantially the form of Exhibit E (with such modifications as are necessary to reflect any effective amendment, amendment and restatement or other modification of this Agreement at the time of delivery thereof) or any other form approved by the Administrative Agent, in accordance with Section 10.06(b).

"Attributable Indebtedness" means, on any date, in respect of any Capital Lease Obligations of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

"Automatic Rejection Date" means with respect to any particular lease, the last day of the assumption period for the Loan Parties in the Chapter 11 Cases provided for in Section 365(d)(4) of the Bankruptcy Code, to the extent applicable (including as may have been extended in accordance with Section 365(d)(4) of the Bankruptcy Code).

"Avoidance Action" has the meaning specified in Section 5.23(c).

"Backstop Commitment" means, with respect to any Backstop Lender, the commitment to provide loans in an amount set forth opposite its name on Schedule 2.02.

"Backstop Commitment Agreement" means "Backstop Commitment Agreement" as defined in the Restructuring Support Agreement.

"Backstop Lenders" means the Lenders listed on Schedule 2.02 (collectively, on behalf of themselves or certain (i) of their affiliates or their affiliated investment funds, or (ii) investment funds, accounts, vehicles or other entities that are managed, advised or sub-advised by a member of the Backstop Lenders or their affiliate).

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

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

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor thereto.

"Bankruptcy Court" means the United States Bankruptcy Court for the Eastern District of Missouri, or any other court having jurisdiction over the Chapter 11 Cases from time to time.

"Base Rate" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 0.50%, (b) the Eurocurrency Rate (after giving effect to any Eurocurrency Rate "floor") that would be payable on such day for a Eurocurrency Rate Loan with a one month Interest Period plus 1%, and (c) the Prime Rate in effect on such day. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Rate shall be effective on the effective day of such change in the Prime Rate or the Federal Funds Rate, respectively. In no event, notwithstanding the rate determined pursuant to the foregoing, shall the Base Rate be less than 2.00%.

"Base Rate Loan" means any Loan that bears interest based on the Base Rate.

"Beneficiary" means each Agent, Lender and Designated Coal Contract Counterparty.

"Board of Directors" means, (a) with respect to the Borrower, the board of directors of the General Partner and (b) with respect to any other Person, (i) if the Person is a corporation, the board of directors of the corporation, (ii) if the Person is a partnership, the board of directors of the general partner of the partnership and (iii) with respect to any other Person, the board, committee or other group or entity of such Person serving a similar function.

"Borrower" has the meaning specified in the introductory paragraph hereto.

"Borrower Materials" has the meaning specified in Section 6.02.

"Borrowing" means a borrowing consisting of Term Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period.

"Borrowing Notice" means a written notice of a Borrowing in the form of Exhibit A attached hereto.

"Budget Variance Report" means a weekly variance report, commencing with a variance report for the one week period following the Closing Date, the two week period following the Closing Date, the three week period following the Closing Date and the four week period following the Closing Date, and thereafter a weekly variance report for the one week period following the most recently delivered Cash Flow Forecast, the two week period following the most recently delivered Cash Flow Forecast, the three week period following the most recently delivered Cash Flow Forecast and the four week period following the most recently delivered Cash Flow Forecast, with the report for each week in a four week period including an individual report for such week and a cumulative report to date for such four week period (each such one week, two week, three week or four week cumulative period, a "Reporting Period"), in each case, setting forth for the applicable Reporting Period ended on the immediately preceding Friday prior to the delivery thereof (1) the negative variance (as compared to the applicable Cash Flow Forecast and the DIP Budget) of the operating cash receipts (on a line item by line item basis and an aggregate basis for all line items) of the Debtors for the applicable Reporting Period and for the last week of the applicable Reporting Period, (2) the positive variance (as compared to the applicable Cash Flow Forecast and the DIP Budget) of the disbursements (on a line item by line item basis and an aggregate basis for all line items) made by the Debtors set forth under "MEC Affiliate Disbursements" in the Cash Flow Forecast (including, without limitation, any payments pursuant to the Management Services Agreement) for the applicable Reporting Period and for the last week of the applicable Reporting Period, (3) the positive variance (as compared to the applicable Cash Flow Forecast and the DIP Budget) of the total disbursements (on a line item by line item basis and an aggregate basis for all line items) (excluding professional fees, interest payments and disbursements made by the Debtors set forth under "MEC Affiliate Disbursements" in the Cash Flow Forecast (including, without limitation, any payments pursuant to the Management Services Agreement)) made by the Debtors for the applicable Reporting Period and for the last week of the applicable Reporting Period and (4) an explanation, in reasonable detail, for any material negative variance (in the case of receipts) or material positive variance (in the case of disbursements) set forth in such variance report, certified by a Responsible Officer of the Borrower.

"Building" means a Building as defined in 12 CFR Chapter III, Section 339.2.

"Business" has the meaning specified in Section 5.09(b).

"Business Day" means (i) any day excluding Saturday, Sunday and any day on which banking institutions located in the State of New York are authorized or required by Law or other governmental action to close and (ii) with respect to all notices, determinations, fundings and payments in connection with the Eurocurrency Rate or any Eurocurrency Rate Loans, the term "Business Day" means any day which is a Business Day described in clause (i) and which is also a day for trading by and between banks in Dollar deposits in the London interbank market.

"Capital Expenditures" means, for any Person for any period, the sum of, without duplication, all expenditures made by such Person during such period that, in accordance with GAAP as in effect on March 28, 2017,

are or should be included in "purchase of property and equipment" or similar items, or which should otherwise be capitalized, reflected in the statement of cash flows of such Person; provided that Capital Expenditures shall not include any expenditure for replacements and substitutions for fixed assets, capital assets or equipment to the extent made with Net Insurance/Condemnation Proceeds invested pursuant to Section 2.05(h) or with Net Proceeds invested pursuant to Section 2.05(e) or the substantially concurrent trade-in of existing equipment (solely to the extent of the value of the trade-in).

"Capital Lease" means, with respect to any Person, any lease of any property, which in conformity with GAAP as in effect on March 28, 2017, is required to be capitalized on the balance sheet of such Person; provided that the obligations of the Borrower or its Subsidiaries, or of a special purpose or other entity not consolidated with the Borrower and its Subsidiaries, either existing on the date hereof or created thereafter that (a) initially were not included on the consolidated balance sheet of the Borrower as a Capital Lease and were subsequently recharacterized as a Capital Lease or, in the case of such a special purpose or other entity becoming consolidated with the Borrower and its Subsidiaries were required to be characterized as a Capital Lease upon such consolidation, in either case, due to a change in accounting treatment or otherwise, or (b) did not exist on the date hereof and were required to be characterized as a Capital Lease but would not have been required to be treated as capital lease obligations on the date hereof had they existed at that time, shall for all purposes not be treated as a Capital Lease, Capital Lease Obligations or Indebtedness.

"Capital Lease Obligations" means, with respect to any Person as of any date of determination, the aggregate liability of such Person under Capital Leases reflected on a balance sheet of such Person under GAAP as in effect on March 28, 2017; provided that the obligations of the Borrower or its Subsidiaries, or of a special purpose or other entity not consolidated with the Borrower and its Subsidiaries, either existing on the date hereof or created thereafter that (a) initially were not included on the consolidated balance sheet of the Borrower as a capital lease obligations and were subsequently recharacterized as capital lease obligations or, in the case of such a special purpose or other entity becoming consolidated with the Borrower and its Subsidiaries were required to be characterized as capital lease obligations upon such consolidation, in either case, due to a change in accounting treatment or otherwise, or (b) did not exist on the date hereof and were required to be characterized as capital lease obligations but would not have been required to be treated as capital lease obligations on the date hereof had they existed at that time, shall for all purposes not be treated as Capital Leases, Capital Lease Obligations or Indebtedness.

"Capital Stock" means (a) in the case of a corporation, corporate stock, (b) in the case of an association or business entity, any and all shares, interests, participations rights or other equivalents (however designated) of corporate stock, (c) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests, and (d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

"Carve Out" means the Carve Out as defined in the Interim Order or the Final Order, as applicable.

"Cash Equivalents" means

(a) U.S. Government Obligations or certificates representing an ownership interest in U.S. Government Obligations with maturities not exceeding two years from the date of acquisition,

(b) (i) demand deposits, (ii) time deposits and certificates of deposit with maturities of two years or less from the date of acquisition, (iii) bankers' acceptances with maturities not exceeding two years from the date of acquisition, and (iv) overnight bank deposits, in each case with any bank or trust company organized or licensed under the Laws of the United States or any state thereof (including any branch of a foreign bank licensed under any such Laws) having capital, surplus and undivided profits in excess of $250,000,000 (or the foreign currency equivalent thereof) whose short-term debt is rated A-2 or higher by S&P or P-2 or higher by Moody's,

(c) commercial paper maturing within 364 days from the date of acquisition thereof and having, at such date of acquisition, ratings of at least A-1 by S&P or P-1 by Moody's,

(d) readily marketable direct obligations issued by any state, commonwealth or territory of the U.S. or any political subdivision thereof, in each case rated at least A-1 by S&P or P-1 by Moody's with maturities not exceeding one year from the date of acquisition,

(e) bonds, debentures, notes or other obligations with maturities not exceeding two years from the date of acquisition issued by any corporation, partnership, limited liability company or similar entity whose long-term unsecured debt has a credit rating of A2 or better by Moody's and A or better by S&P;

(f) investment funds at least 95% of the assets of which consist of investments of the type described in clauses (a) through (e) above (determined without regard to the maturity and duration limits for such investments set forth in such clauses, provided that the weighted average maturity of all investments held by any such fund is two years or less),

(g) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (b) above and

(h) in the case of a Subsidiary that is a Foreign Subsidiary, substantially similar investments, of comparable credit quality, denominated in the currency of any jurisdiction in which such Person conducts business.

"Cash Flow Forecast" means a projected statement of sources and uses of cash for the Loan Parties, prepared in accordance with Section 6.01(d), for the current and following 13 calendar weeks (but not any preceding weeks), including the anticipated uses of the proceeds of any Borrowing for each week during such period. As used herein, "Cash Flow Forecast" shall initially refer to the 13-week cash flow forecast most recently delivered on or prior to the Petition Date and, thereafter, the most recent Cash Flow Forecast delivered by the Borrower in accordance with Section 6.01(d).

"Cash Management Agreement" has the meaning specified in the definition of "Cash Management Obligations".

"Cash Management Motion" means the Debtors' Motion for Entry of Interim and Final Orders (A) Authorizing Continued Use of the Debtors' Existing Cash Management System; (B) Authorizing Use of Existing Bank Accounts And Business Forms; (C) Granting a Limited Waiver of Requirements of Section 345(B) of the Bankruptcy Code; (D) Authorizing Continuation of Ordinary Course Intercompany Transactions; (E) Granting Administrative Expense Priority Status to Postpetition Intercompany Claims; and (F) Granting Related Relief Docket No.4.

"Cash Management Obligations" means any and all obligations of the Borrower or any Subsidiary arising out of (a) the execution or processing of electronic transfers of funds by automated clearing house transfer, wire transfer or otherwise to or from the deposit accounts of the Borrower and/or any Subsidiary now or hereafter maintained with any financial institution or affiliate thereof, (b) the acceptance for deposit or the honoring for payment of any check, draft or other item with respect to any such deposit accounts, (c) any other treasury, deposit, disbursement, overdraft, and cash management services afforded to the Borrower or any Subsidiary by any such financial institution or affiliate thereof, and (d) stored value card, commercial credit card and merchant card services (any agreement to provide services described in clause (a), (b), (c) and/or (d), a "Cash Management Agreement") or otherwise arising under a Cash Management Obligations.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request or directive (whether or not having the force of law) by any Governmental Authority required to be complied with by any Lender. For purposes of this definition, (x) the Dodd-Frank Act and any rules, regulations, orders, requests, guidelines and directives adopted, promulgated or implemented in connection therewith, and (y) all

requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to have been adopted, issued, promulgated or implemented after the Closing Date, but shall be included as a Change in Law only to the extent a Lender is imposing applicable increased costs or costs in connection with capital adequacy and other requirements similar to those described in Sections 3.04(a) and 3.04(b) generally on other similarly situated borrowers of loans under United States credit facilities.

"Change of Control" means

(a) the first day on which (i) 100% of the outstanding Capital Stock of Borrower ceases to be owned directly by Holdings, (ii) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger of consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Borrower and its Subsidiaries, taken as a whole, to any Person (including any "person" (as that term is used in Section 13(d)(3) of the Exchange Act)), or (iii) the adoption of a plan relating to the liquidation or dissolution of the Borrower; or

(b) the Borrower becomes aware (by way of a report or any other filings pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) that any "person" or "group" (as such terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act), other than any of the Permitted Holders, is or becomes the "beneficial owner" (as such term is used in Rule 13d-3 under the Exchange Act), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the Borrower or the General Partner.

"Chapter 11 Cases" shall have the meaning assigned to such term in the recitals to this Agreement.

"Closing Date" means the date on which all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01 and the Initial Term Loans are made.

"Coal Contract" means any agreement pursuant to which Borrower or any other Loan Party agrees to sell and deliver a shipment of coal.

"Coal Liens" means:

(1) Liens incurred in the ordinary course of business on any specific coal producing property or any interest therein, construction thereon or improvement thereto to secure all or any part of the costs incurred for surveying, exploration, drilling, extraction, development, operation, production, construction, alteration, repair or improvement of, in, under or on such property and the plugging and abandonment of coal mines located thereon (it being understood that costs incurred for "development" shall include costs incurred for all facilities relating to such coal producing properties or to projects, ventures or other arrangements of which such properties form a part or which relate to such coal producing properties or interests) as long as such Liens do not secure obligations for the payment of borrowed money or other Indebtedness;

(2) Liens incurred in the ordinary course of business on a coal producing property to secure obligations incurred or guarantees of obligations incurred in connection with or necessarily incidental to commitments for the purchase or sale of, or the transportation or distribution of, the products derived from such coal producing property as long as such Liens do not secure obligations for the payment of borrowed money or other Indebtedness;

(3) Liens arising in the ordinary course of business under partnership agreements, coal leases, overriding royalty agreements, joint operating agreements or similar agreements, net profits agreements, production payment agreements, royalty trust agreements, incentive compensation programs on terms that are reasonably customary in the coal business for geologists, geophysicists and other providers of technical services to any of the Borrower or any of its Subsidiaries, master limited partnership agreements, farm-out agreements, farm-in agreements, division orders, contracts for the sale, purchase, exchange, transportation, gathering or processing of coal, unitizations and pooling designations, declarations, orders and agreements, development agreements, operating agreements, production sales contracts, area of mutual interest agreements, gas balancing or deferred production agreements,

injection, repressuring and recycling agreements, salt water or other disposal agreements, seismic or geophysical permits or agreements, and other agreements which are customary in the coal business as long as such Liens do not secure obligations for the payment of borrowed money or other Indebtedness and attach solely to the proceeds of sales of the products derived from such coal producing property; and

(4) Liens pursuant to contract mining agreements and leases granted in the ordinary course of business to others that do not interfere with the ordinary conduct of business of the Borrower or its Subsidiaries and do not secure obligations for the payment of borrowed money or other Indebtedness.

"Code" means the Internal Revenue Code of 1986, as amended from time to time (unless as indicated otherwise).

"Collateral" means, collectively, (i) all of the real, personal and mixed property and assets (including Equity Interests) in which Liens are purported to be granted pursuant to the Security Documents as security for all or any part of the Obligations (subject to exceptions contained in the Security Documents), in each case excluding any Excluded Assets, and (ii) "DIP Collateral" or words of similar intent, as defined in any Order.

"Collateral Agent" means Cortland Capital Market Services LLC, in its capacity as the collateral agent, together with its successors and assigns.

"Collateral Questionnaire" means a certificate in the form of Exhibit B that provides information with respect to the personal or mixed property of each Loan Party.

"Commitment" means, with respect to any Lender, such Lender's (i) Initial Term Loan Commitment and/or (ii) Delayed Draw Term Loan Commitment, as the context shall require.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended and any successor statute.

"Compliance Certificate" means a certificate substantially in the form of Exhibit D (with such modifications as are necessary to reflect any effective amendment, amendment and restatement or other modification of this Agreement at the time of delivery thereof).

"Consenting First Lien Lender" means "Consenting First Lien Lender" as defined in the Restructuring Support Agreement.

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Contract" has the meaning specified in the definition of Excluded Assets.

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

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Controlled Subsidiary" means, with respect to any consent, waiver or right to terminate or accelerate the obligations under a Contract, any Subsidiary that the Borrower directly or indirectly Controls for purposes of the provision of such consent, waiver or exercise of such right to terminate or accelerate the obligations under such Contract.

"Credit Extension" means the making of a Loan.

"Critical Vendor Report" means a report, in a form acceptable to the Financial Advisor (it being agreed that the form previously provided to the Financial Advisor prior to the Closing Date is acceptable), describing in reasonable detail the matter set forth in Exhibit H.

"Debtor Relief Laws" means (i) the Bankruptcy Code, (ii) any domestic or foreign law relating to liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally, and (iii) any order made by a court of competent jurisdiction in respect of any of the foregoing.

"Debtors" shall have the meaning assigned to such term in the recitals to this Agreement.

"Declined Proceeds" has the meaning specified in Section 2.05(l).

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means, with respect to Obligations, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate applicable to Base Rate Loans, plus (iii) 2% per annum; provided, however, that with respect to a Eurocurrency Rate Loan, the Default Rate shall be an interest rate equal to (i) the Eurocurrency Rate otherwise applicable to such Eurocurrency Rate Loan plus (ii) the Applicable Rate applicable to Eurocurrency Rate Loans plus (iii) 2% per annum.

"Defaulting Lender" means, subject to the last paragraph of Section 2.18, any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to any Agent, or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified the Borrower and the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to the last paragraph of Section 2.18) as of the date established therefor by the Administrative Agent in a written notice of such determination to the Borrower and each other Lender promptly following such determination.

"Delayed Draw Funding Date" means the date on which all the conditions precedent in Section 4.02 are satisfied or waived in accordance with Section 10.01 and the Delayed Draw Term Loans are made.

"Delayed Draw Term Lender" means any Term Lender holding Delayed Draw Term Loan Commitment and/or Delayed Draw Term Loans.

"Delayed Draw Term Loan" has the meaning set forth in Section 2.01(a).

"Delayed Draw Term Loan Commitment" means, as to each Lender, its obligation to make Delayed Draw Term Loans to the Borrower pursuant to Section 2.01(b) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 2.01 under the caption "Delayed Draw Term Loan Commitment" or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate amount of Delayed Draw Term Loan Commitments as of the Closing Date is $45,000,000.

"Delayed Draw Term Loan Commitment Fee" has the meaning set forth in Section 2.09(e).

"Delayed Draw Term Loan Facility" means, at any time (a) prior to the funding of the Delayed Draw Term Loans on the Delayed Draw Funding Date, the aggregate Delayed Draw Term Loan Commitments at such time and (b) on and after the funding of the Delayed Draw Term Loans on the Delayed Draw Funding Date, the aggregate principal amount of the Delayed Draw Term Loans of all Lenders outstanding at such time.

"Designated Coal Contract" means (i) each Existing Designated Coal Contract, (ii) any Coal Contract entered into from time to time by Borrower or any other Loan Party with an Existing Designated Coal Contract Counterparty, and (iii) any Coal Contract entered into from time to time by Borrower or any other Loan Party with a Designated Coal Contract Counterparty that is not an Existing Designated Coal Contract Counterparty; *provided* that, solely in the case of clauses (ii) and (iii), (x) Borrower shall have designated such Coal Contract as a "Designated Coal Contract" by a written notice to the Administrative Agent delivered on or prior to the fifth (5^{th}) Business Day prior to the date that such Coal Contract is entered into, or the date that the Person that is a party to such Coal Contract becomes a Secured Party, and (y) the Required Lenders shall have expressly approved such Coal Contract as a "Designated Coal Contract" (it being understood and agreed that each Existing Designated Coal Contract shall be a Designated Coal Contract as of the Final Order Entry Date). For the avoidance of doubt, no Coal Contract (other than, upon the entry of the Final Order, the Existing Designated Coal Contracts) shall be deemed to be a Designated Coal Contract hereunder without the express consent of the Required Lenders.

"Designated Coal Contract Counterparty" means (i) each Existing Designated Coal Contract Counterparty and (ii) any other Person that is a Secured Party or an Affiliate of a Secured Party at the time it entered into a Designated Coal Contract, in each case, solely in its capacity as a counterparty to a Designated Coal Contract as contemplated herein.

"Designated Letters of Credit" means letters of credit issued in the ordinary course of business with respect to Mine reclamation, workers' compensation and other employee benefit liabilities.

"DIP Budget" has the meaning specified in Section 4.01(g).

"DIP Collateral" means the "DIP Collateral" as defined in the Orders.

"Direct Debt Placement" means "Direct Debt Placement" as defined in the Restructuring Support Agreement.

"Disclosure Statement" means "Disclosure Statement" as defined in the Restructuring Support Agreement.

"Disposition" or "Dispose" means the sale, transfer or other disposition of any assets by any Person outside the ordinary course of business, including by means of a merger, consolidation or similar transaction and including any sale or issuance of the Equity Interests of any Subsidiary.

"Disqualified Equity Interest" means Equity Interests that by their terms (or by the terms of any security into which such Equity Interests are convertible, or for which such Equity Interests are exchangeable, in each case at the

option of the holder thereof) or upon the happening of any event (i) mature or are mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or are required to be redeemed or redeemable at the option of the holder for consideration other than Qualified Equity Interests, or (ii) are convertible at the option of the holder into Disqualified Equity Interests or exchangeable for Indebtedness, in each case of clauses (i) and (ii) prior to the date that is 91 days after the Stated Maturity Date hereunder, except, in the case of clauses (i) and (ii), if as a result of a change of control or asset sale, so long as the relevant provisions specifically state that such repurchase, payment or redemption upon the occurrence of such a change of control or asset sale event is subject to the prior payment in full of all Obligations and the termination of Commitments.

"Disqualified Institution" means (i) any banks, financial institutions and institutional investors and competitors of the Borrower identified by the Borrower to the Administrative Agent by name in writing from time to time on or prior to the Petition Date or as the Borrower and the Administrative Agent shall from time to time mutually agree after such date, (ii) any affiliates of the foregoing that are (A) identified by the Borrower from time to time in writing or (B) readily identifiable solely on the basis of similarity of their names; provided that (x) "Disqualified Institutions" shall not include any bona fide diversified debt fund or a diversified investment vehicle that is engaged in the making, purchasing, holding or otherwise investing in, acquiring or trading commercial loans, bonds and similar extensions of credit in the ordinary course; (y) the Administrative Agent shall not have any responsibility for monitoring compliance with any provisions of this Agreement with respect to Disqualified Institutions and (z) updates to the Disqualified Institution schedule shall not retroactively invalidate or otherwise affect any (1) assignments or participations made to, (2) any trades entered into with or (3) information provided to any Person before it was designated as a Disqualified Institution. A schedule of the Disqualified Institutions shall be made available on the Closing Date (and updated from time to time) by the Borrower to all Lenders by delivering such schedule (and such updates) to the Administrative Agent; provided, that any additional Person identified pursuant to an updated schedule shall not be deemed a Disqualified Institution until such time as such update to the schedule is provided to the Lenders.

"Disqualified Stock" means Capital Stock constituting Disqualified Equity Interests.

"Dodd-Frank Act" means the Dodd—Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173) signed into law on July 21, 2010, as amended from time to time.

"Dollar" and "$" mean lawful money of the United States.

"Domestic Subsidiary" means any Subsidiary that is organized under the Laws of the United States or any State thereof or the District of Columbia.

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

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Assignee" means (i) a Lender, (ii) an Affiliate of a Lender and (iii) an Approved Fund (any two or more Approved Funds being treated as a single Eligible Assignee for all purposes hereof), and (iv) any other Person (other than a natural person) approved by (x) the Borrower unless an Event of Default has occurred and is continuing (such approval not to be unreasonably withheld or delayed); provided that the Borrower shall be deemed to have approved an assignment of Loans to a Person pursuant to this clause (iv) unless it shall have objected thereto by written notice to the Administrative Agent within three (3) Business Days after having received notice thereof and (y) the

Administrative Agent; provided, that no Defaulting Lender, Disqualified Institution, any Loan Party or Affiliated Lender shall be an Eligible Assignee.

"Environmental Laws" means any and all applicable current and future federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions or common law causes of action relating to (a) protection of the environment or to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes into the environment including ambient air, surface, water, ground water, or land, (b) human health as affected by Hazardous Materials, and (c) mining operations and activities to the extent relating to environmental protection or reclamation, including the Surface Mining Control and Reclamation Act, provided that "Environmental Laws" do not include any Laws relating to worker or retiree benefits, including benefits arising out of occupational diseases.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Environmental Permits" means any and all permits, licenses, registrations, notifications, exemptions and any other authorization required under any applicable Environmental Law.

"Equity Interests" means, with respect to any Person, all of the shares of Capital Stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of Capital Stock of (or other ownership or profit interests in) such Person, and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination (but excluding any debt security that is convertible into, or exchangeable for, Equity Interests).

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"ERISA" means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time, the regulations promulgated thereunder and any successor statute.

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

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) the failure to meet the minimum funding standards of Sections 412 or 430 of the Code or Sections 302 or 303 of ERISA with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Code or Section 302(c) of ERISA) or the failure to make by its due date a required installment under Section 430(j) of the Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (c) a determination that any Pension Plan is, or is expected to be, in "at risk" status (as defined in Section 430 of the Code or Section 303 of ERISA); (d) a determination that any Multiemployer Plan is, or is expected to be, in "critical" or "endangered" status under Section 432 of the Code or Section 305 of ERISA; (e) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (f) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (g) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (h) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (i) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate; (j) receipt from the IRS

of notice of the failure of any Pension Plan (or any other Plan intended to be qualified under Section 401(a) of the Code) to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Code; (k) the imposition of a Lien pursuant to Section 430(k) of the Code or Section 303(k) of ERISA or a violation of Section 436 of the Code with respect to any Pension Plan; or (l) the occurrence of any Foreign Plan Event.

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

"Eurocurrency Rate" means, for any Interest Rate Determination Date with respect to an Interest Period for a Eurocurrency Rate Loan, the rate per annum obtained by dividing (i) (a) the rate per annum equal to the rate determined by the Administrative Agent, to be the London interbank offered rate administered by the ICE Benchmark Administration (or any other person which takes over the administration of that rate) for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars displayed on the ICE LIBOR USD page of the Bloomberg Screen (or any replacement page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Bloomberg, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, (b) in the event the rate referenced in the preceding clause (a) is not available, the rate per annum based on a substitute index reasonably selected by the Administrative Agent for Dollar deposits comparable to the principal amount of the applicable Loan for which the Eurocurrency Rate is then being determined with maturities comparable to such period as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (c) in the event that such rate is not ascertainable pursuant to the preceding clauses (a) or (b), the "Eurocurrency Rate" shall be the rate per annum determined by the Administrative Agent to be the average of the rates per annum at which deposits in Dollars are offered for such relevant Interest Period to major banks in the London interbank market in London, England at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the beginning of such Interest Period, by (ii) an amount equal to (a) one minus (b) the Applicable Reserve Requirement. In no event, notwithstanding the rate determined pursuant to the foregoing, shall the Eurocurrency Rate be less than 1.00%.

"Eurocurrency Rate Loan" means a Loan that bears interest at a rate based on the Eurocurrency Rate.

"Event of Default" has the meaning specified in Section 8.01.

"Excess Proceeds" has the meaning specified in Section 2.05(e).

"Excluded Assets" means

(a) (i) those assets over which the pledging or granting of a security interest in such assets (x) would be prohibited by any applicable law (other than any organizational document), rule or regulation (except to the extent such prohibition is unenforceable after giving effect to applicable anti-assignment provisions of the UCC, other than proceeds thereof, the assignment of which is expressly deemed effective under the UCC notwithstanding such prohibitions), (y) would be prohibited by, or cause a default under or result in a breach, violation or invalidation of, any lease, license or other written agreement or written obligation (each, a "Contract") to which such assets are subject, or would give another Person (other than the Borrower or any Controlled Subsidiary) a right to terminate or accelerate the obligations under such Contract or to obtain a Lien to secure obligations owing to such Person (other than the Borrower or any Controlled Subsidiary) under such Contract (but only to the extent such assets are subject to such Contract and such Contract is not entered into for purposes of circumventing or avoiding the collateral requirements of the indenture), unless the Borrower or any Guarantor may unilaterally waive it (in each case, except to the extent any such prohibition is unenforceable after giving effect to applicable anti-assignment provisions of the UCC) or (z) would require obtaining the consent, approval, license or authorization of any Person (other than the Borrower or any Guarantor) or applicable Governmental Authority, except to the extent that such consent, approval, license or authorization has already been obtained, and (ii) any Contract or any property or other asset subject to Liens securing a purchase money security interest, Capital Lease Obligation or similar arrangement or sale and leaseback transaction to the extent that a grant of a security interest therein requires the consent of any Person (other than the Borrower or any Controlled Subsidiary) as a condition to the creating of another security interest, would violate or invalidate such Contract or purchase money, capital lease or similar arrangement or create a right of termination in favor of any other party thereto (other than the Borrower or a Controlled Subsidiary) after giving effect to the applicable anti-assignment

provisions of the UCC), other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code notwithstanding such prohibition; provided, however, that the Collateral shall include (and such security interest shall attach) (x) immediately at such time as the contractual or legal prohibition shall no longer be applicable, (y) immediately at such time as such contractual or legal prohibition would be unenforceable due to applicable Debtor Relief Laws and (z) to the extent severable, immediately at such time to any portion of such lease, license, contract or agreement not subject to the prohibitions specified above;

(b) any "intent-to-use" application for registration of a trademark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing and acceptance of a "Statement of Use" pursuant to Section 1(d) of the Lanham Act or an "Amendment to Allege Use" pursuant to Section 1(c) of the Lanham Act with respect thereto,

(c) (i) margin stock, and (ii) any Equity Interests in any Subsidiary that is not a Wholly Owned Domestic Subsidiary (provided, that such term shall not include any FSHCO) by the Borrower or any Subsidiary or in a Joint Venture, if the granting of a security interest therein (A) would be prohibited by, cause a default under or result in a breach of, or would give another Person (other than the Borrower or any Controlled Subsidiary) a right to terminate, under any Organizational Document, shareholders, joint venture or similar agreement applicable to such Subsidiary or Joint Venture, or (B) would require obtaining the consent of any Person (other than the Borrower or any Controlled Subsidiary); provided, however, that the Collateral shall include (and such security interest shall attach) (x) immediately at such time as any such contractual limitations shall no longer be applicable, (y) immediately at such time as such contractual limitations would be unenforceable due to applicable Debtor Relief Laws and (z) to the extent severable, immediately at such time to any portion of any Equity Interests not subject to the limitations specified above, and

(d) to the extent made in accordance with the Cash Flow Forecast (subject to Permitted Variance), cash posted as margin by the Existing Designated Coal Contract Counterparty pursuant to the Existing Designated Coal Contract.

provided that the Collateral shall include the replacements, substitutions and proceeds of any of the foregoing unless such replacements, substitutions or proceeds also constitute Excluded Assets.

Nothing herein shall be deemed or construed to affect the right of the Existing Designated Coal Contract Counterparty, following a default (after the expiration of any applicable grace period) under the Designated Coal Contract, to offset the obligations owing by a Loan Party to the Existing Designated Coal Contract Counterparty against the receivables arising from the sale of coal owing by the Existing Designated Coal Contract Counterparty to a Loan Party under the Designated Coal Contract, and any amounts so offset shall not be subject to claims by any Secured Party.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the Laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 10.13) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.01, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure or inability to comply with Section 3.01(e) and (d) any Taxes imposed under FATCA.

"Existing Designated Coal Contract" means, each of (1) that certain Amended and Restated Parent Company Guarantee dated as of [_____], 2020, as the same may be further amended, restated, supplemented, replaced or otherwise modified from time to time as permitted by Section 10.25(b), by Holdings in favor of Uniper, (2) that certain Second Amended and Restated Master Coal Purchase and Sale Agreement dated as of [_____], 2020, by and among Javelin, Uniper, FCS, and Holdings, together with all confirmations, agreements and other documents entered into in

connection therewith, in each case, as may be further amended, restated, supplemented, replaced or otherwise modified from time to time as permitted by Section 10.25(b), and (3) that certain Coal Marketing Agreement dated as of [_____], 2020, as the same may be further amended, restated, supplemented, replaced or otherwise modified from time to time as permitted by Section 10.25(b), by and among Javelin, FCS, and Holdings.

"Existing Designated Coal Contract Counterparty" means, each of (a) Javelin Global Commodities Holdings LLP, its Wholly Owned Subsidiaries (including, without limitation, Javelin) and their successors, and (b) Uniper, its Wholly Owned Subsidiaries and their successors.

"Facility" means any Term Loan Facility and the Roll-Up Facility.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty, or convention among Governmental Authorities and implementing such Sections of the Code.

"FCS" means Foresight Coal Sales LLC.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) received from three federal funds brokers on such day on such transactions as determined by the Administrative Agent.

"Final Order" means, collectively, the order of the Bankruptcy Court entered in the Chapter 11 Cases after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court, which order shall be in the form of the Interim Order (with only such modifications thereto as are necessary to convert the Interim Order to a final order and such other modifications as are satisfactory to the Required Lenders (and with respect to modifications to the rights and duties of any Agent, such Agent)), and from which no appeal or motion to reconsider has been timely filed, or if timely filed, such appeal or motion to reconsider has been dismissed or denied with no further appeal and the time for filing such appeal has passed (unless the Required Lenders waive such requirement), together with all extensions, modifications, and amendments thereto, in form and substance satisfactory to the Required Lenders.

"Final Order Entry Date" means the date on which the Final Order is entered by the Bankruptcy Court.

"Financial Advisor" means, collectively, Lazard and Perella Weinberg Partners L.P., in their capacities as financial advisors to certain Backstop Lenders.

"Flood Certificate" means a "Standard Flood Hazard Determination Form" of the Federal Emergency Management Agency and any successor Governmental Authority performing a similar function.

"Flood Hazard Property" means any Real Property that constitutes Collateral in favor of Collateral Agent, for the benefit of Secured Parties, with buildings or mobile homes located in a Flood Zone.

"Flood Program" means the National Flood Insurance Program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994 and the Flood Insurance Reform Act of 2004, in each case as amended from time to time, and any successor statutes.

"Flood Zone" means areas having special flood hazards as described in the National Flood Insurance Act of 1968, as amended from time to time, and any successor statute.

"Foreign Lender" means any Lender that is not a "United States Person" as defined in Section 7701 (a)(30) of the Code.

"Foreign Plan" means any employee benefit plan, program, policy, arrangement or agreement maintained or contributed to by any Loan Party or any of their respective Subsidiaries with respect to employees employed outside the United States and paid through a non-United States payroll.

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

"Foreign Subsidiary" means a Subsidiary that is organized under the laws of a jurisdiction other than the United States or any State thereof or the District of Columbia and any Subsidiary thereof.

"Four-Week Test Period" means, at any time, the four-week period ended on the immediately preceding Friday; provided that only periods ending on the fourth Friday following the Closing Date and each fourth Friday thereafter shall constitute Four-Week Test Periods.

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

"FSHCO" means any Domestic Subsidiary that has no material assets other than Equity Interests of (x) a Foreign Subsidiary or (y) any other FSHCO.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"Funded Debt" means, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables), whether or not contingent, (i) in respect of borrowed money or advances or (ii) evidenced by loan agreements, bonds, notes or debentures or similar instruments or letters of credit (solely to the extent such letters of credit or other similar instruments have been drawn and remain unreimbursed) or, without duplication, reimbursement agreements in respect thereof.

"GAAP" means generally accepted accounting principles in the United States, which are applicable to the circumstances as of the date of determination. The sources of accounting principles and the framework for selecting the principles used in the preparation of financial statements of nongovernmental entities that are presented in conformity with GAAP in the United States, are set forth in the Financial Accounting Standards Board's Accounting Standards Codification.

"General Partner" has the meaning specified in the introductory paragraph hereto, or any successor general partner of Holdings.

"Governmental Authority" means the government of the United States or any other nation, or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantee" means, as to any Person (the "guaranteeing person"), any obligation of (a) the guaranteeing person or (b) another Person (including, without limitation, any bank under any letter of credit) to the extent the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation in order to induce the creation of such obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the "primary obligations") of any other third Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, reimbursement obligations under letters of credit and any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (A) for the purchase or payment of any such primary obligation or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee obligation shall not include (i) indemnification or reimbursement obligations under or in respect of Surety Bonds or Designated Letters of Credit, (ii) ordinary course performance guarantees by any Loan Party of the obligations (other than for the payment of borrowed money) of any other Loan Party and (iii) endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guaranteed Obligations" has the meaning specified in Section 11.01.

"Guarantors" means each of the General Partner, Holdings and any Subsidiary that is a Wholly Owned Domestic Subsidiary; provided, that such term shall not include any FSHCO. As of the Closing Date, each of the Debtors (other than the Borrower) is a Guarantor. For the avoidance of doubt, no Foreign Subsidiary now owned or hereafter formed or acquired shall be a Guarantor.

"Guaranty" means the guaranty of each Guarantor set forth in Article XI.

"Hazardous Materials" means (i) any explosive or radioactive substances or wastes and (ii) any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under, or that could reasonably be expected to give rise to liability under, any applicable Environmental Law, including, without limitation, asbestos, polychlorinated biphenyls, urea-formaldehyde insulation, gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products or any coal ash, coal combustion by-products or waste, boiler slag, scrubber residue or flue desulphurization residue.

"Hedging Agreement" means any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement (regardless of whether such agreement or instrument is classified as a "derivative" pursuant to FASB ASC Topic No. 815 and required to be marked-to-market) and any other agreements or arrangements designed to manage interest rates

or interest rate risk and other agreements or arrangements designed to protect such Person against fluctuations in currency exchange rates or commodity prices.

For the avoidance of doubt, Hedging Agreements do not include coal sales contracts requiring the delivery of coal that is priced pursuant to an established index created for the purposes of establishing a market price for the underlying commodity.

"Hedging Termination Value" means, in respect of any one or more Hedging Agreement, after taking into account the effect of any valid netting agreement relating to such Hedging Agreements, (a) for any date on or after the date such Hedging Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark- to-market value(s) for such Hedging Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedging Agreements (which may include a Lender, an Agent or any Affiliate of a Lender or an Agent) (it being understood that any such termination values and marked-to-market values shall take into account any assets posted as collateral or security for the benefit of a party to the Hedging Agreement).

"Highest Lawful Rate" means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws now allow.

"Historical Financial Statements" means as of the Closing Date, (i) the audited financial statements of Borrower and its Subsidiaries for the immediately preceding three fiscal years, consisting of balance sheets and the related consolidated statements of income, stockholders' equity and cash flows for such fiscal years, (ii) the unaudited financial statements of Borrower and its Subsidiaries for each of the first three fiscal quarters ended after the date of the most recent audited financial statements and at least 45 days prior to the Closing Date, consisting of a balance sheet and the related consolidated statements of income, stockholders' equity and cash flows for the three-, six- or nine-month period, as applicable, ending on such date.

"Holdings" has the meaning specified in the introductory paragraph hereto and includes any successor to Holdings as contemplated by Section 7.09.

"Huntington Cash Management Obligations" all of Huntington National Bank's customary service charges, overdraft and returned item fees, transfer fees, account maintenance fees, reasonable and documented legal fees, and expenses relating to any account under any account agreements, including without limitation the prepetition and post-petition Bank Fees (as defined in the Cash Management Motion) and any chargebacks or other amounts owing to the Huntington National Bank from (i) any checks or other items or receipts deposited in any account are returned unpaid or otherwise dishonored for any reason, (ii) any overdrafts on any account, (iii) any automated clearing house, wire transfer or other electronic entries for deposit into any account that are returned or otherwise dishonored, or (iv) claims of breach of the UCC's transfer or presentment warranties made against Huntington National Bank in connection with items deposited to any account.

"Increased Amount" has the meaning specified in Section 7.03.

"Incur" means, with respect to any Indebtedness, to incur, create, issue, assume or Guarantee such Indebtedness.

"Indebtedness" means, as to any Person, without duplication:

(a) all indebtedness of such Person for borrowed money;

(b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments (other than any obligations in respect of performance bonds, bid bonds, appeal bonds, surety bonds, reclamation bonds

and completion guarantees, bank guarantees and similar obligations under any Mining Law or Environmental Law or with respect to worker's compensation benefits);

(c) all obligations of such Person arising under letters of credit, bankers' acceptances or other similar instruments (solely to the extent such letters of credit, bankers' acceptances or other similar instruments have been drawn and remain unreimbursed);

(d) all obligations of such Person to pay the deferred purchase price of property or services;

(e) the Attributable Indebtedness of such Person in respect of Capital Leases;

(f) all Indebtedness of other Persons Guaranteed by such Person to the extent so Guaranteed;

(g) all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; and

(h) all obligations of such Person under Hedging Agreements;

if and to the extent any of the preceding items (other than Guarantees referred to in clause (e)) would appear as a liability upon a balance sheet of the specified Person prepared in accordance with GAAP;

provided that in no event shall Indebtedness include (i) asset retirement obligations, (ii) obligations (other than obligations with respect to Indebtedness for borrowed money or other Funded Debt) related to surface rights under an agreement for the acquisition of surface rights for the production of coal reserves in the ordinary course of business in a manner consistent with historical practice of the Borrower and its Subsidiaries, (iii) obligations under coal purchase and sale contracts or any Designated Coal Contract or any other Coal Contract, (iv) trade accounts payable and accrued expenses incurred in the ordinary course of business, (v) obligations under federal coal leases, (vi) obligations under coal leases which may be terminated at the discretion of the lessee, (vii) obligations for take-or-pay arrangements or (viii) royalties, the dedication of reserves under supply agreements or similar rights or interests granted, taken subject to, or otherwise imposed on properties consistent with customary practices in the mining industry.

The amount of any obligation under any Hedging Agreement on any date shall be deemed to be the Hedging Termination Value thereof as of such date. The amount of any Indebtedness issued with original issue discount shall be deemed to be the face amount of such Indebtedness less the remaining unamortized portion of the original issue discount of such Indebtedness. The amount of any Indebtedness secured by a Lien on an asset of such Person but not otherwise the obligation, contingent or otherwise of such Person, shall be deemed to be the lesser of (x) the fair market value (as reasonably determined by the Borrower in good faith)of such asset on the date the Lien attached as determined in good faith by the Borrower and (y) the amount of such Indebtedness. The amount of any other Indebtedness shall be the outstanding principal amount thereof.

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

"Indemnitees" has the meaning specified in Section 10.04(b).

"Information" has the meaning specified in Section 10.07.

"Initial Term Lender" means any Term Lender holding Initial Term Loans.

"Initial Term Loan" has the meaning set forth in Section 2.01(a).

"Initial Term Loan Commitment" means, as to each Lender, its obligation to make Initial Term Loans to the Borrower pursuant to Section 2.01(a) in an aggregate principal amount at any one time outstanding not to exceed the

amount set forth opposite such Lender's name on Schedule 2.01 under the caption "Initial Term Loan Commitment" or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate amount of Initial Term Loan Commitments as of the Closing Date is $55,000,000.

"Initial Term Loan Facility" means, at any time (a) prior to the funding of the Initial Term Loans on the Closing Date, the aggregate Initial Term Loan Commitments at such time and (b) on and after the funding of the Initial Term Loans on the Closing Date, the aggregate principal amount of the Initial Term Loans of all Lenders outstanding at such time.

"Interest Payment Date" means, (a) as to any Eurocurrency Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date (or, if sooner, the date on which the Obligations become due and payable pursuant to Section 8.02), and (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date.

"Interest Period" means, as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date one month thereafter; provided that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (iii) below, end on the last Business Day of a calendar month; and

(iii) with respect to each Facility, no Interest Period shall extend beyond its applicable Maturity Date.

"Interest Rate Determination Date" means, with respect to any Interest Period, the date that is two Business Days prior to the first day of such Interest Period.

"Interim Order" means the order of the Bankruptcy Court entered in the Chapter 11 Cases after an interim hearing (assuming satisfaction of the standard prescribed in Bankruptcy Rule 4001 and other applicable law) substantially in the form of Exhibit K hereto or otherwise in form and substance satisfactory to the Required Lenders (and with respect to the rights and duties of each Agent, such Agent), which among other matters but not by way of limitation, authorizes, on an interim basis, the Borrower and the Guarantors to execute and perform under the terms of this Agreement and the other Loan Documents.

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Capital Stock or other securities of another Person, (b) a loan, advance (excluding intercompany liabilities incurred in the ordinary course of business in connection with the cash management operations of the Borrower and its Subsidiaries) or capital contribution to, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be (i) the amount actually invested, as determined immediately prior to the time of each such Investment, without adjustment for subsequent increases or decreases in the value of such Investment minus (ii) the amount of dividends or distributions received in connection with such Investment and any return of capital and any payment of principal received in respect of such Investment that in each case is received in cash or Cash Equivalents.

"IP Rights" has the meaning specified in Section 5.18.

"IRS" means the United States Internal Revenue Service.

"Javelin" means Javelin Global Commodities (UK) Ltd.

"Javelin Agreements" has the meaning given to such term in the Final Order.

"Javelin Agreements Execution Date" means the date upon which the Javelin Agreements are entered into by all parties thereto; provided, that, with respect to Section 10.25(a), Javelin Agreements Execution Date shall mean the first such Javelin Agreements Execution Date.

"Joint Venture" means any Person (a) other than a Subsidiary in which the Borrower or its Subsidiaries hold an ownership interest or (b) which is an unincorporated joint venture of the Borrower or any Subsidiary.

"Junior Lien Indebtedness" means any other Indebtedness that is secured by a Lien on the Collateral (or any portion thereof) that is junior to the Liens on the Collateral securing the Obligations and that was permitted to be incurred and so secured hereunder.

"Laws" means, as to any Person, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, regulations, ordinances, codes, and determinations of arbitrators or courts or other Governmental Authorities, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Leasehold Property" means any interest of any Loan Party as lessee or licensee in, to and under leases or licenses of land, improvements and/or fixtures.

"Lender" has the meaning specified in the introductory paragraph hereto and shall include any Lender that may become a party hereto pursuant to an Assignment and Assumption or an amendment to this Agreement.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any Capital Lease having substantially the same economic effect as any of the foregoing).

"Liquidity" means, the sum of (i) the aggregate amount of cash and Cash Equivalents on the consolidated balance sheet of the Borrower and its Subsidiaries that is "unrestricted" in accordance with GAAP and (ii) at all times prior to the Delayed Draw Funding Date, the Delayed Draw Term Loan Commitment.

"LLC Division" means the statutory division of any limited liability company into two or more limited liability companies pursuant to Section 18.217 of the Delaware Limited Liability Company Act or a comparable provision of a different jurisdiction's laws, as applicable.

"Loan" or "Loans" means, individually or collectively as the context requires, a Term Loan and the Roll-Up Loans.

"Loan Documents" means this Agreement, each Note, the Agency Fee Letter, each Security Document, any fee letter or other document relating to the fees referred to in Section 2.08, and all other documents, certificates, instruments or agreements executed and delivered by a Loan Party for the benefit of the Agent, any Lender or other Secured Party solely in connection with this Agreement (other than Coal Contracts (including any Designated Coal Contracts)).

"Loan Parties" means, collectively, the Borrower and each Guarantor.

"Management Services Agreement" means the Second Amended and Restated Services Agreement entered into as of April 30, 2015 by and between Foresight Energy GP LLC and Murray American Coal, Inc. (or their respective successors), as amended, amended and restated, modified or replaced from time to time pursuant to one or more agreements.

"Management Incentive Plan" means the "Management Incentive Plan" as defined in the Restructuring Support Agreement.

"Material Adverse Effect" means any material adverse effect on (i) the business, condition (financial or otherwise), operations, performance, properties or contingent liabilities of the Debtors, taken as a whole (other than by virtue of the commencement and continuation of the Chapter 11 Cases and the events and circumstances giving rise thereto); (ii) the ability of the Loan Parties, taken as a whole, to fully and timely perform their respective material obligations under this Agreement and the Loan Documents; (iii) the legality, validity, binding effect or enforceability against a Loan Party of a Loan Document to which it is a party; or (iv) the rights, remedies and benefits available to, or conferred upon, any Agent and any Lender or any Secured Party under any Loan Document.

"Material Indebtedness" has the meaning specified in Section 8.01(e).

"Material Real Property" means (a) any fee owned or leased real property interest held by a Loan Party on the Closing Date that has a fair market value (as reasonably determined by the Borrower in good faith) in excess of $5,000,000 on the Closing Date, (b) any fee owned real property acquired by a Loan Party after the Closing Date that has a total fair market value (as reasonably determined by the Borrower in good faith) in excess of $5,000,000 as of the date acquired and (c) any leasehold interest in real property leased by a Loan Party after the Closing Date with a total fair market value (as reasonably determined by the Borrower in good faith) in excess of $5,000,000 as of the date of the lease thereof.

"Maturity Date" means the first to occur of: (a) the date that is 180 days following the Petition Date (the "Stated Maturity Date"); provided, that, if such date is not a Business Day, the Maturity Date shall be the preceding Business Day, (b) the Plan Effective Date, (c) the consummation of a sale or other disposition of all or substantially all assets of the Debtors under the section 363 of the Bankruptcy Code, and (d) the date on which the Obligations hereunder shall be accelerated in accordance with the provisions of this Agreement.

"Mine" means any excavation or opening into the earth in the United States now and hereafter made from which coal or other minerals are or can be extracted on or from any of the real properties in which any Loan Party holds an ownership, leasehold or other interest.

"Mining Financial Assurances" means letters of credit or performance bonds for reclamation or otherwise, surety bonds or escrow agreements and any payment or prepayment made with respect to, or certificates of deposit or other sums or assets required to be posted by the Borrower under Mining Laws for reclamation or otherwise.

"Mining Laws" means any and all current or future applicable federal, state, local and foreign statutes, laws, regulations, legally-binding guidance, ordinances, rules, judgments, orders, decrees or common law causes of action relating to mining operations and activities, including, but not be limited to, the Federal Coal Leasing Amendments Act; the Surface Mining Control and Reclamation Act; all other applicable land reclamation and use statutes and regulations; the Mineral Leasing Act of 1920; the Federal Mine Safety Act of 1977; the Black Lung Act; and the Coal Act; each as amended, and any comparable state and local laws or regulations.

"Mining Lease" means a lease, license or other use agreement which provides the Borrower or any Subsidiary the real property and water rights, other interests in land, including coal, mining and surface rights, easements, rights of way and options, and rights to timber and natural gas (including coalbed methane and gob gas) necessary or integral in order to recover coal from any Mine. Leases (other than Capital Leases or operating leases of personal property even if such personal property would become fixtures) which provide the Borrower or any other Subsidiary the right

to construct and operate a conveyor, crusher plant, silo, load out facility, rail spur, shops, offices and related facilities on the surface of the Real Property containing such reserves shall also be deemed a Mining Lease.

"Monthly Mine-Level Financial Reports" means financial reports with respect to the Borrower and its Subsidiaries, substantially in the form that has been previously provided to the Financial Advisor or in the form of Exhibit I for any fiscal month that set forth mine-level operational financial information and operating statistics delivered in accordance with Section 6.01(c).

"Monthly Consolidated Financial Reports" means financial reports with respect to the Borrower and its Subsidiaries, substantially in the form of Exhibit J hereto for any fiscal month that set forth consolidated information and operating statistics delivered in accordance with Section 6.01(c).

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

"Mortgage" means a mortgage, deed to secure debt, deed of trust or similar instrument in form and substance reasonably satisfactory to the Collateral Agent and the Required Lenders.

"Mortgaged Property" means all Real Property that constitutes Collateral.

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

"Murray Energy" means Murray Energy Corporation, an Ohio corporation.

"Murray Energy Group" has the meaning specified in the definition of "Permitted Holders".

"Narrative Report" means, with respect to the financial statements for which such narrative report is required, a management's summary describing the operations of the Borrower and its Subsidiaries for the applicable fiscal quarter and for the period from the beginning of the then current fiscal year to the end of such period to which such financial statements relate.

"Net Insurance/Condemnation Proceeds" means an amount equal to: (i) any cash payments or proceeds received by the Borrower or any of its Subsidiaries (a) under any casualty insurance policy in respect of a covered loss thereunder or (b) as a result of the taking of any assets of the Borrower or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (ii) (a) any actual and reasonable costs incurred by the Borrower or any of its Subsidiaries in connection with the adjustment or settlement of any claims of the Borrower or such Subsidiary in respect thereof, (b) any bona fide direct costs incurred in connection with any sale of such assets as referred to in clause (i)(b) of this definition, including Taxes paid or payable as a result of any gain recognized or otherwise in connection therewith and (c) any payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness that is secured by a Lien on the assets subject to the relevant event described in clause (i)(a) or (b) above that is required that to be repaid as a result of such event.

"Net Proceeds" means, with respect to any Disposition pursuant to Sections 7.05(b) or 7.05(c), the sum of (a) cash payments or proceeds actually received by the Borrower or any of its Subsidiaries in connection with such Disposition (including any cash received by way of deferred payment (excluding, for avoidance of doubt, royalty payments customary in the mining industry) pursuant to, or by monetization of, Cash Equivalents or a note receivable or otherwise, but only as and when so received) minus (b) the sum of (i) (A) the principal amount, premium or penalty, if any, interest and other amounts of any Indebtedness that is secured by (1) a Lien on an asset that is not Collateral or by a Lien on an asset that is Collateral which Lien is senior in priority to the Lien on such Collateral that secures the Obligations and, in each case, that is required to be repaid in connection with such Disposition (other than Indebtedness under the Loan Documents) or (B) any other required debt payments or required payments of other obligations relating to the Disposition, in each case, with the proceeds thereof, (ii) the reasonable or customary out-of- pocket fees and expenses incurred by the Borrower or its Subsidiaries in connection with such Disposition (including attorneys' fees,

accountants' fees, investment banking fees, real property related fees and charges and brokerage and consultant fees), (iii) all Taxes required to be paid or accrued or reasonably estimated to be required to be paid or accrued as a result thereof, (iv) in the case of any Disposition by a non-Wholly Owned Subsidiary, the pro rata portion of the Net Proceeds thereof (calculated without regard to this clause (iv)) attributable to minority or other third party interests and not available for distribution to or for the account of the Borrower or a Wholly Owned Subsidiary as a result thereof and (v) the amount of any reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (x) related to any of the applicable assets and (y) retained by the Borrower or any Subsidiary including, without limitation, pension and other post- employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations (however, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Proceeds of such Disposition occurring on the date of such reduction).

"New Common Equity" means the equity securities of Reorganized Foresight to be issued upon consummation of the Acceptable Plan in accordance with the Restructuring Support Agreement.

"Note" means a Term Loan Note and/or a Roll-Up Loan Note, as the context may require.

"Obligations" means (1) all advances to, and debts, liabilities and obligations of every nature of each Loan Party, including obligations from the time to time owed to any Agent (including any former Agent), Lenders or any other Secured Party, under any Loan Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding and (2) all Secured Designated Coal Contract Obligations.

"Obligee Guarantor" has the meaning specified in Section 11.07.

"OPEB" means post-employment benefits other than pension benefits, including, as applicable, medical, dental, vision, life and accidental death and dismemberment.

"Orders" means, collectively, the Interim Order and the Final Order.

"Organizational Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-US jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

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

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 10.13).

"Overnight Rate" means, for any day, the greater of (a) the Federal Funds Rate in the case of any amount denominated in Dollars and (b) an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

"Parent" means any direct or indirect parent of the Borrower.

"Participant" has the meaning specified in Section 10.06(e).

"Participant Register" has the meaning specified in Section 10.06(e).

"PATRIOT Act" has the meaning specified in Section 5.17(b).

"Payment in Full" means, (i) the time at which no Lender shall have any Commitments, any Loan or other Obligations unpaid, unsatisfied or outstanding (other than in respect of contingent obligations, indemnities and expenses related thereto that are not then payable or in existence) or (ii) in the cases of any Designated Coal Contract, satisfaction of the Secured Designated Coal Contract Obligations in a manner reasonably acceptable to the applicable Secured Party (other than in respect of contingent obligations, indemnities and expenses related thereto that are not then payable or in existence).

"PBGC" means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA, or any successor thereto.

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

"Permitted Holders" means, collectively, (a) (i) Chris Cline and his children and other lineal descendants, Robert E. Murray, Brenda L. Murray, Robert Edward Murray (son), Jonathan Robert Murray, Ryan Michael Murray (or any of their estates, or heirs or beneficiaries by will) and any Related Party of a Permitted Holder; (ii) the spouses or former spouses, widows or widowers and estates of any of the Persons referred to in clause (i) above; (iii) any trust having as its sole beneficiaries one or more of the persons listed in clauses (i) and (ii) above; and (iv) any Person a majority of the voting power of the outstanding Equity Interest of which is owned by one or more of the Persons referred to in clauses (i), (ii) or (iii) above, (b) Murray Energy Corporation, an Ohio corporation, and its Subsidiaries ("Murray Energy Group"), (c) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing are members; provided that, in the case of such group and without giving effect to the existence of such group or any other group, such Persons referenced in clauses (a) through (b) above, collectively, have beneficial ownership of more than 50% of the total voting power of the voting units or stock of the Borrower or Holdings (or any Parent), (d) Foresight Reserves L.P., (e) Holdings and any Parent and (f) the General Partner.

"Permitted Liens" means each of the Liens permitted pursuant to Section 7.01.

"Permitted Payments to Parent" means, without duplication as to amounts, dividends, distributions or the making of loans to Holdings or the General Partner, in each case, to the extent paid in accordance with the Cash Flow Forecast (subject to Permitted Variance):

(1) in amounts required for such entity to pay (i) general corporate overhead expenses (including, but not limited to, franchise taxes, legal expenses, accounting expenses, expenses to maintain their corporate existence and administrative expenses) and (ii) directors' fees and expense reimbursements under its charter or by-laws or pursuant to written agreements entered into prior to the Closing Date with any such Person to the extent relating to the Borrower and its Subsidiaries, in each case, when due; provided the aggregate amount set forth in this clause (1) shall not exceed $50,000 in any fiscal month;

(2) to pay customary indemnification obligations of Holdings' or the General Partner's owing to directors, officers, employees or other Persons under its charter or by-laws or pursuant to written agreements entered into prior to the Closing Date with any such Person to the extent relating to the Borrower and its Subsidiaries; and

(3) to pay obligations of Holdings or the General Partner in respect of director and officer insurance (including premiums therefor) to the extent relating to the Borrower and its Subsidiaries.

"Permitted Real Estate Encumbrances" means the following encumbrances which do not, in any case, individually or in the aggregate, materially detract from the value of any Mine subject thereto or interfere with the ordinary conduct of the business or operations of the Borrower and its Subsidiaries as presently conducted on, at or with respect to such Mine and as to be conducted following the Closing Date: (a) encumbrances customarily found upon real property used for mining purposes in the applicable jurisdiction in which the applicable real property is located to the extent such encumbrances would be permitted or granted by a prudent operator of mining property similar in use and configuration to such real property (e.g., surface rights agreements, wheelage agreements and reconveyance agreements); (b) rights and easements of (i) owners of undivided interests in any of the real property where the Borrower and its Subsidiaries own less than 100% of the fee interest, (ii) owners of interests in the surface of any real property where the applicable party does not own or lease such surface interest, (iii) lessees, if any, of coal or other minerals (including oil, gas and coal bed methane) where the Borrower and its Subsidiaries do not own such coal or other minerals, and (iv) lessees of other coal seams and other minerals (including oil, gas and coal bed methane) not owned or leased by such party; (c) with respect to any real property in which the Borrower or any Subsidiary holds a leasehold interest, terms, agreements, provisions, conditions, and limitations (other than royalty and other payment obligations which are otherwise permitted hereunder) contained in the leases granting such leasehold interest and the rights of lessors thereunder (and their heirs, executors, administrators, successors, and assigns), subject to any amendments or modifications set forth in any landlord consent delivered in connection with a Mortgage; (d) farm, grazing, hunting, recreational and residential leases with respect to which the Borrower or any Subsidiary is the lessor encumbering portions of the real properties to the extent such leases would be granted or permitted by, and contain terms and provisions that would be acceptable to, a prudent operator of mining properties similar in use and configuration to such real properties; (e) royalty and other payment obligations to sellers or transferors of fee coal or lease properties to the extent such obligations constitute a lien not yet delinquent; (f) rights of others to subjacent or lateral support and absence of subsidence rights or to the maintenance of barrier pillars or restrictions on mining within certain areas as provided by any mining lease, unless in each case waived by such other person; and (g) rights of repurchase or reversion when mining and reclamation are completed.

"Permitted Variance" has the meaning specified in Section 7.18.

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

"Petition Date" has the meaning specified in the recitals to this Agreement

"Plan" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established by the Borrower or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, by any ERISA Affiliate.

"Plan Effective Date" means the date of the substantial consummation (as defined in section 1101(2) of the Bankruptcy Code, which for purposes hereof shall be no later than the effective date) of one or more plans of reorganization confirmed pursuant to a final order entered by the Bankruptcy Court.

"Platform" has the meaning specified in Section 6.02.

"Prepetition Agent" means the "Administrative Agent" as defined in the Prepetition First Lien Credit Agreement.

"Prepetition Debt" means, collectively, the Indebtedness of each Debtor outstanding and unpaid on the date on which such Person becomes a Debtor.

"Prepetition First Lien Credit Agreement" means the Credit and Guaranty Agreement, dated as of March 28 2017, by and among the Borrower, Holdings and the other guarantors party thereto, The Huntington National Bank, as facilities administrative agent, Lord Securities Corporation, as term administrative agent, and the other lenders party thereto from time to time, as amended, restated, supplemented or otherwise modified from time to time.

"Prepetition First Lien Lender" means a "Lender" as defined in the Prepetition First Lien Credit Agreement.

"Prepetition First Lien Obligations" means the "Obligations" as defined in the Prepetition First Lien Credit Agreement.

"Prepetition Second Lien Indenture" means the Indenture, dated as of March 28, 2017 among Foresight Energy, LLC, Foresight Energy Finance Corporation, the guarantors party thereto and Wilmington Trust, National Association, as trustee.

"Prime Rate" means the rate of interest quoted in the print edition of *The Wall Street Journal*, Money Rates Section as the Prime Rate (currently defined as the base rate on corporate loans posted by at least 75% of the nation's thirty (30) largest banks), as in effect from time to time. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Any Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

"Production Payments" means with respect to any Person, all production payment obligations and other similar obligations with respect to coal and other natural resources of such Person that are recorded as a liability or deferred revenue on the financial statements of such Person in accordance with GAAP.

"Properties" has the meaning specified in Section 5.09(a).

"Public Lender" has the meaning specified in Section 6.02.

"Qualified Equity Interests" means all Equity Interests of a Person other than Disqualified Equity Interests.

"Qualified Stock" means all Capital Stock of a Person other than Disqualified Stock.

"Real Properties" means, collectively, all right, title and interest of the Borrower or any Subsidiary (including any leasehold or mineral estate) in and to any and all parcels of real property owned or operated by the Borrower or any Subsidiary, whether by lease, license or other use agreement, including but not limited to, coal leases and surface use agreements, together with, in each case, all improvements and appurtenant fixtures (including all conveyors, preparation plants or other coal processing facilities, silos, shops and load out and other transportation facilities), easements and other property and rights incidental to the ownership, lease or operation thereof, including but not limited to, access rights, water rights and extraction rights for minerals.

"Recipient" means any Agent, any Lender or any Designated Coal Contract Counterparty, as applicable.

"Register" has the meaning specified in Section 10.06(d).

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, members, directors, officers, employees, affiliated investment funds or investment vehicles, managed, advised or sub-advised accounts, funds or other entities, investment advisors, sub-advisors or managers, agents, representatives, attorneys, advisors or controlling persons of such Person and of such Person's Affiliates.

"Related Party of a Permitted Holder" means:

(a) any immediate family member of any Permitted Holder; or

(b) any trust, corporation, partnership, limited liability company or other entity, the beneficiaries, stockholders, partners, members, owners or Persons beneficially holding a majority (and controlling) interest of which

consist of any one or more Permitted Holders and/or such other Persons referred to in the immediately preceding clause (a).

"Reorganization Plan" means a plan of reorganization in any or all of the Chapter 11 Cases of the Debtors.

"Reorganized Foresight" means Holdings (or any other holding company or ultimate parent entity) immediately after consummation of the Reorganization Plan.

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

"Reporting Period" as defined in the definition of "Budget Variance Report".

"Required Lenders" means, as of any date of determination, Lenders having more than 60% of the aggregate outstanding principal amount of the Loans and unused Commitment of all Lenders; provided that the Loans and unused Commitments held or deemed held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders. For the avoidance of doubt, notwithstanding anything to the contrary herein or in any other Loan Document, the Secured Designated Coal Contract Obligations or any other amount owing or deemed owing by a Loan Party to any Designated Coal Contract Counterparty shall be excluded for purposes of making a determination of the Required Lenders.

"Required Prepayment Date" has the meaning specified in Section 2.05(l).

"Requirement of Law" means as to any Person, the Organizational Documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Responsible Officer" means the chief executive officer, president or any vice president of the Borrower, General Partner or Holdings or any applicable Subsidiary and, in addition, any Person holding a similar position or acting as a director or managing director with respect to any Foreign Subsidiary of the Borrower or, with respect to financial matters, the chief financial officer, treasurer or assistant treasurer of the Borrower, General Partner or Holdings.

"Restricted Payment" means (a) any dividend or other distribution (whether in cash, securities or other property) by the Borrower or any Subsidiary with respect to its Capital Stock, or any payment (whether in cash, securities or other property) by the Borrower or any Subsidiary, including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any of its Equity Interests, or on account of any return of capital to its stockholders, partners or members (or the equivalent Person thereof) and (b) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including covenant or legal defeasance), sinking fund or similar payment with respect to, any unsecured Indebtedness for borrowed money, Subordinated Indebtedness or Junior Lien Indebtedness.

"Restructuring Support Agreement" means that certain Restructuring Support Agreement dated as of March 10, 2020, executed and delivered by the Loan Parties and the other parties thereto, as such agreement may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"Roll-Up Amount" means, with respect to each Roll-Up Lender, the amount, if any, of the Prepetition First Lien Obligations held by such Roll-Up Lender (or one or more of its affiliates or any investment advisory client managed or advised by such Roll-Up Lender) equal to 0.808625 times the sum of (x) the amount of Initial Term Loans funded by such Roll-Up Lender (or one or more of its affiliates or any investment advisory client managed or advised by such Roll-Up Lender) on the Closing Date and (y) the amount of Delayed Draw Term Loan funded by such Roll-Up Lender (or one or more of its affiliates or any investment advisory client managed or advised by such Roll-Up Lender) on the Delayed Draw Funding Date. The aggregate Roll-Up Amount of all Roll-Up Lenders shall not exceed $75,000,000.

"Roll-Up Facility" as defined in the recitals hereto.

"Roll-Up Lender" means a Consenting First Lien Lender that is a Term Lender (or whose affiliates or whose affiliated investment funds, investment vehicles, investment advisory clients or other entities that are managed or advised by such Consenting First Lien Lender is a Term Lender), and any other Person that becomes a Roll-Up Lender pursuant to an Assignment and Assumption Agreement.

"Roll-Up Loan Note" means a promissory note in the form of Exhibit C-2, as it may be amended, restated, supplemented or otherwise modified from time to time.

"Roll-Up Loans" as defined in Section 2.01(b)(iii).

"Roll-Up Notice" as defined in Section 2.01(b)(iii).

"Sale and Lease-Backs" has the meaning assigned to such term in Section 7.16.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

"Same Day Funds" means immediately available funds.

"Sanctions" has the meaning specified in Section 5.17(a).

"Sanctions Laws" has the meaning specified in Section 5.17(a).

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Secured Designated Coal Contract Obligations" means obligations incurred or arising on and after the Petition Date owed by the Borrower or any other Loan Party to any Designated Coal Contract Counterparty pursuant to or evidenced by any Designated Coal Contract, including any such obligations therein and arising out of the post-petition performance of certain pre-petition arrangements, to the extent provided for under, and as provided in, the Orders and under such Designated Coal Contract.

"Secured Parties" means, collectively, the Agents, the Lenders and the Designated Coal Contract Counterparties.

"Security Documents" means (i) the Orders, and (ii) to the extent requested by the Collateral Agent or the Required Lenders, any security agreement, pledge agreement, intellectual property security agreements, the Mortgages (if any), each of the supplements thereto and any other documents, agreements or instruments, in each case, in form and substance reasonably satisfactory to the Collateral Agent and the Required Lenders, delivered to the Collateral Agent and/or the Lenders pursuant to this Agreement or any other Loan Documents or the Orders in order to grant or purport to grant a Lien on any assets of the Borrower or any other Loan Party to secure the Obligations.

"Similar Business" means any of the following, whether domestic or foreign: the mining, production, marketing, sale, trading and transportation (including, without limitation, any business related to terminals) of natural resources including coal, ancillary natural resources and mineral products, exploration of natural resources, any acquired business activity so long as a material portion of such acquired business was otherwise a Similar Business, and any business that is ancillary or complementary to the foregoing.

"Stated Equity Value" means the "Stated Equity Value" as defined in the Restructuring Support Agreement.

"Stated Maturity Date" has the meaning in clause (a) of the definition of "Maturity Date."

"Subordinated Indebtedness" means any Indebtedness of the Borrower or any Guarantor that is expressly subordinated in right of payment to the Indebtedness under the Loan Documents pursuant to a written agreement to that effect.

"Subsidiary" means, with respect to any Person, any corporation, association, limited liability company or other business entity of which more than 50% of the outstanding Voting Stock is owned, directly or indirectly, by, or, in the case of a partnership, the sole general partner or the managing partner or the only general partners of which are, such Person and one or more Subsidiaries of such Person (or a combination thereof). Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower.

"Superpriority Claim" means the "DIP Superpriority Claim" as defined in the Orders.

"Surety Bonds" means surety bonds obtained by the Borrower or any Subsidiary consistent with market practice and the indemnification or reimbursement obligations of the Borrower or such Subsidiary in connection therewith.

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

"Term Lender" means each financial institution listed on the signature pages hereto as a Lender (other than a Roll-Up Lender) and any other Person that becomes a party hereto pursuant to an Assignment and Assumption Agreement, in each case, that has a Term Loan Commitment or is a holder of a Term Loan.

"Term Loan" means the Initial Term Loan and the Delayed Draw Term Loan.

"Term Loan Commitment" means the Initial Term Loan Commitment and the Delayed Draw Term Loan Commitment.

"Term Loan Facility" means the Initial Term Loan Facility and/or the Delayed Draw Term Loan Facility.

"Term Loan Note" means a promissory note in the form of Exhibit C-1, as it may be amended, restated, supplemented or otherwise modified from time to time.

"Threshold Amount" means $5,000,000.

"Transactions" means the transactions contemplated herein to occur on or around the Closing Date, including the funding of the Initial Term Loan Facility, the provision of the Delayed Draw Term Loan Facility, the deemed funding of the Roll-Up Loans, and the commencement of the Chapter 11 Cases.

"Two-Week Test Period" means, at any time, the two-week period ended on the immediately preceding Friday; provided that only periods ending on the second Friday following the Closing Date and each second Friday thereafter shall constitute Two-Week Test Periods.

"Type" means, with respect to a Loan, its character as a Base Rate Loan or a Eurocurrency Rate Loan.

"UCC" means the Uniform Commercial Code as in effect in the applicable state of jurisdiction.

"Unfunded Pension Liability" means the excess of a Pension Plan's accrued benefit liabilities under Section 4001 (a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the actuarial assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

"Uniper" means Uniper Global Commodities UK Limited.

"United States" and "U.S." mean the United States of America.

"U.S. Government Obligations" means obligations issued or directly and fully guaranteed or insured by the United States of America or by any agency or instrumentality thereof, provided that the full faith and credit of the United States of America is pledged in support thereof.

"U.S. Tax Compliance Certificate" has the meaning specified in Section 3.01(e).

"Voting Stock" means, with respect to any Person, Capital Stock of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

"Waivable Mandatory Prepayment" has the meaning specified in Section 2.05(l).

"Wholly Owned" means, with respect to any Subsidiary, a Subsidiary all of the outstanding Capital Stock of which (other than any director's qualifying shares) is owned by the Borrower and one or more Wholly Owned Subsidiaries (or a combination thereof).

"Withholding Agent" means any Loan Party and the Administrative Agent.

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

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organizational Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof", "hereto" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only, shall not constitute a part hereof, shall not be given any substantive effect and shall not affect the interpretation of this Agreement or any other Loan Document.

1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP applied on a consistent basis.

(b) Changes in GAAP. If at any time any Accounting Change would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Required Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such Accounting Change as if such Accounting Change has not been made (subject to the approval of the Required Lenders); provided that, until so amended, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Change had not occurred.

1.04 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to New York City time (daylight or standard, as applicable).

1.05 LLC Division. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware Law (including any LLC Division, or any comparable event under a different jurisdiction's laws, as applicable): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests.

ARTICLE II
THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 The Loans.

(a) Term Loans.

(i) Subject to the terms and conditions set forth herein, each Term Lender agrees, severally and not jointly, to make a loan ("Initial Term Loan") to the Borrower in Dollars, on the Closing Date in an aggregate principal amount not to exceed such Term Lender's Initial Term Loan Commitment. Initial Term Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

(ii) Subject to the terms and conditions set forth herein, each Term Lender agrees, severally and not jointly, to make a loan ("Delayed Draw Term Loans") to the Borrower in Dollars, on the Delayed Draw Funding Date in an aggregate principal amount not to exceed such Term Lender's Delayed Draw Term Loan Commitment. Delayed Draw Term Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

(iii) Borrower may make only one Borrowing under the Initial Term Loan Commitment on the Closing Date, and Borrower may make only one Borrowing under the Delayed Draw Term Loan Commitment on the Delayed Draw Funding Date. Any amount borrowed under this Section 2.01(a) and subsequently repaid or prepaid may not be reborrowed. Each Term Lender's Initial Term Loan Commitment or the Delayed Draw Term Loan Commitment shall terminate immediately and without any further action on the Closing Date or the Delayed Draw Funding Date, as applicable, after giving effect to the funding of such Term Lender's Commitment on such date. Notwithstanding anything to the contrary, unless the Administrative Agent and the Borrower shall otherwise agree, the initial Interest Period of any Delayed Draw Term Loans that are Eurocurrency Rate Loans shall commence on the date of funding and shall end on the last day of the then-current Interest Period for all Eurocurrency Rate Loans that are Initial Term Loans then outstanding.

(b) Roll-Up Loan.

(i) Subject to the terms and conditions set forth herein and the Orders, the Prepetition First Lien Obligations held by each Consenting First Lien Lender shall be automatically substituted and exchanged for (and

prepaid by) loans hereunder (the "Roll-Up Loans") in a principal amount equal to such Roll-Up Lender's Roll-Up Amount on the Final Order Entry Date. Such Roll-Up Loans shall be deemed funded on the Final Order Entry, and shall constitute, and shall be deemed to be, Loans hereunder.

(ii) No later than three (3) Business Days (or such later time as reasonably acceptable to the Administrative Agent) prior to the Delayed Draw Funding Date, the Administrative Agent shall have received a written notice, in form and substance satisfactory to the Administrative Agent and the Required Lenders (the "Roll-Up Notice"), which shall (A) attach a schedule identifying each Roll-Up Lender and the principal amount of such Roll-Up Lender's Roll-Up Loans deemed issued hereunder, (B) attach a joinder to this Agreement executed by such Roll-Up Lender, pursuant to which, inter alia, such Roll-Up Lender shall represent and warrant that it has delivered to the Administrative Agent a completed Administrative Questionnaire, such documentation and other information under applicable "know your customer" and anti-money laundering rules and regulations requested by the Administrative Agent and such documentation and other information required under Section 3.01, and (C) include a certification from the Borrower as to the accuracy of the information set forth in such schedule delivered pursuant to clause (A) of this Section 2.01(b)(ii).

(iii) The parties hereto agree that the Administrative Agent and the Prepetition Agent may each conclusively rely on the Roll-Up Notice and this Section 2.01(b) in adjusting the Register and the Register (as defined in the Prepetition First Lien Credit Agreement) to reflect the cancellation of the Prepetition First Lien Obligations and the Roll-Up Loans to be received by the Roll-Up Lender on the Final Order Entry Date.

2.02 Borrowings, Conversions and Continuations of the Loans.

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made by delivery by Borrower of an irrevocable Borrowing Notice, appropriately completed and signed by a Responsible Officer of the Borrower, to the Administrative Agent. Each Borrowing Notice must be received by the Administrative Agent, not later than 11:00 a.m., New York City time, (i) three Business Days (or, such shorter period as may be acceptable to the Administrative Agent) prior to the requested date of any Borrowing of, conversion to or continuation of Eurocurrency Rate Loans or of any conversion of Eurocurrency Rate Loans, and (ii) one (1) Business Day prior to the requested date of any Borrowing of Base Rate Loans. Each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans shall be in a principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $250,000 in excess thereof. Each Borrowing Notice shall specify (i) whether the requested Borrowing is to be a Base Rate Loan or Eurocurrency Rate Loan, (ii) the requested date of the Borrowing, a conversion of Loans from one Type to the other, or a continuation of Eurocurrency Rate Loans, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted and (v) wire instructions for where Loan funds should be sent. If the Borrower fails to specify a Type of Loan in a Borrowing Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation of Eurocurrency Rate Loans, then the Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans.

(b) Following receipt of a Borrowing Notice, the Administrative Agent shall promptly notify each applicable Lender of the amount of its Applicable Percentage under the applicable Facility of the Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each applicable Lender of the details of any automatic conversion to Base Rate Loans as described in the preceding subsection. In the case of a Borrowing of any Term Loans, each applicable Lender shall make the amount of its Term Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office, not later than 1:00 p.m. on the Business Day specified in the applicable Borrowing Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), and receipt of all requested Loan funds, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent by wire transfer of such funds in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

(c) Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan. During the existence of an Event of Default, no Loans of any Facility may be requested as, converted to or continued as Eurocurrency Rate Loans if the Required Lenders or the Administrative Agent so notify the Borrower.

(d) Promptly on each Interest Rate Determination Date, Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the Eurocurrency Rate Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to the Borrower and each Lender. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Prime Rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one type to the other, and all continuations of Loans as the same Type, there shall not be more than four (4) Interest Periods in effect hereunder in respect of the Loans.

2.03 [Reserved].

2.04 [Reserved].

2.05 Prepayments.

(a) Voluntary Prepayments. The Borrower may, upon written notice to the Administrative Agent at any time or from time to time voluntarily prepay Loans, in each case, in whole or in part, subject to Section 2.09(c) and Section 2.09(d); provided that (i) such notice must be received by the Administrative Agent not later than 11:00 a.m., New York City time (or such other later date and time which is acceptable to the Administrative Agent), (A) three Business Days prior to any date of prepayment of Eurocurrency Rate Loans, and (B) one Business Day prior to the date of prepayment of Base Rate Loans; (ii) any prepayment of Eurocurrency Rate Loans shall be in a principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $250,000 in excess thereof or, in each case, the entire amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Facility(ies) and Type(s) of Loans to be prepaid and, if Eurocurrency Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the applicable Facility). If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided that any such notice may be contingent upon the consummation of a refinancing or other transactions and such notice may otherwise be extended or revoked by the Borrower by notice to the Administrative Agent prior to the specified effective date if such condition is not satisfied, in each case, with the requirements of Section 3.05 to apply to any failure of the contingency to occur and any such extension or revocation. Any prepayment of a Eurocurrency Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each prepayment of the outstanding Loans pursuant to this Section 2.05(a) shall be applied as specified in Section 2.05(j), and each prepayment of Loans shall be paid to the Lenders in accordance with their respective Applicable Percentages.

(b) [Reserved].

(c) [Reserved].

(d) [Reserved].

(e) Asset Sales. No later than five Business Days following the consummation of any Disposition by the Borrower or a Subsidiary pursuant to Sections 7.05(b) or 7.05(c) that results in the amount of Net Proceeds (as of the date of such receipt) exceeding $250,000 in an aggregate amount of all Net Proceeds received since the Closing

Date (such excess amount, the "Excess Proceeds"), the Borrower shall prepay the Loans in an aggregate amount equal to 100% of the Excess Proceeds. Any prepayment of a Eurocurrency Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with additional amounts required pursuant to Section 3.05.

(f) Issuance of Debt. On the first Business Day following receipt by Borrower or any of its Subsidiaries of any cash proceeds from the incurrence of any Indebtedness of Borrower or any of its Subsidiaries (other than with respect to Indebtedness permitted to be incurred pursuant to Section 7.03), Borrower shall prepay the Loans in an aggregate amount equal to 100% of such proceeds, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, including reasonable legal fees and expenses.

(g) [Reserved].

(h) Insurance/Condemnation Proceeds. No later than five Business Days following the date of receipt by the Borrower or any of its Subsidiaries, or the Collateral Agent as loss payee, of any Net Insurance/Condemnation Proceeds, Borrower shall prepay the Loans in an aggregate amount equal to such Net Insurance/Condemnation Proceeds.

(i) [Reserved].

(j) Application of Prepayments. Each prepayment of the outstanding Loans (including all Base Rate Loans and all Eurocurrency Rate Loans) pursuant to this Section 2.05 shall be accompanied by accrued interest to the extent required by Section 2.08. Subject to the Carve Out, each prepayment of Loans pursuant to Section 2.05 shall be, subject to the Orders, remitted by the Borrower to the Administrative Agent and applied by the Administrative Agent in accordance with Section 8.04.

(k) [Reserved].

(l) Waivable Mandatory Prepayment. Anything contained herein to the contrary notwithstanding, in the event the Borrower is required to make any mandatory prepayment (a "Waivable Mandatory Prepayment") not less than five Business Days prior to the date (the "Required Prepayment Date") on which the Borrower is required to make such Waivable Mandatory Prepayment, the Borrower shall notify the Administrative Agent in writing of the amount of such prepayment, and the Administrative Agent will promptly thereafter notify each Lender of the amount of such Lender's Applicable Percentage of such Waivable Mandatory Prepayment. Each such Lender may exercise such option by giving written notice to the Borrower and the Administrative Agent of its election to do so on or before 5:00 p.m., New York City time, on the third Business Day prior to the Required Prepayment Date (it being understood that any Lender which does not notify the Borrower and the Administrative Agent of its election to exercise such option on or before the third Business Day prior to the Required Prepayment Date shall be deemed to have elected, as of such date, not to exercise such option). On the Required Prepayment Date, (i) the Borrower shall pay to the Administrative Agent an amount equal to that portion of the Waivable Mandatory Prepayment that is payable to those Lenders that have elected not to exercise such option, to prepay the Loans of such Lenders (which prepayment shall be applied in accordance with the terms of this Section 2.05), and (ii) the portion of the Waivable Mandatory Prepayment otherwise payable to Lenders that have elected to exercise such option ("Declined Proceeds") may be retained by the Borrower to be used for any purpose not prohibited hereunder.

2.06 [Reserved].

2.07 Repayment of Loans. The Borrower hereby unconditionally agrees to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of such Lender's Loans, together with all other amounts owed hereunder with respect thereto, including all applicable fees in accordance with Section 2.09 on the Maturity Date.

2.08 Interest.

(a) Subject to the provisions of subsection (b) below, (i) each Eurocurrency Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency

Rate for such Interest Period plus the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) If any amount of principal or interest of any Loan (or any other Obligations) is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.09 Fees.

(a) Agency Fee. The Borrower shall pay to each Agent for its own account, in Dollars, fees in the amounts and at the times specified in the Agency Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(b) Upfront Fee. The Borrower shall pay to the Administrative Agent (i) on the Closing Date for the account of each Initial Term Lender, as fee compensation for the funding of such Initial Term Lender's Initial Term Loan, an upfront fee in an amount equal to 3.00% of the aggregate principal amount of such Initial Term Lender's Initial Term Loan Commitment, payable to such Initial Term Lender from the proceeds of its Initial Term Loan on the Closing Date, and (ii) on the Delayed Draw Funding Date for the account of each Delayed Draw Term Lender, as fee compensation for the funding of such Delayed Draw Term Lender's Delayed Draw Term Loan, an upfront fee in an amount equal to 3.00% of the aggregate principal amount of such Delayed Draw Term Lender's Delayed Draw Term Loan Commitment, payable to such Delayed Draw Term Lender from the proceeds of its Delayed Draw Term Loan on the Delayed Draw Funding Date. Such upfront fees will be in all respects fully earned, due and payable upon the funding of the Initial Term Loans or the Delayed Draw Term Loans, as the case may be, and shall be non-refundable and non-creditable thereafter.

(c) Put Option Premium. The Borrower shall pay to each Backstop Lender (or any Affiliate, or any affiliated investment fund, investment vehicle or entity that is managed, advised or sub-advised by such Backstop Lender or such Affiliate, in each case, designated by such Backstop Lender in writing to the Administrative Agent) a put option premium in an amount equal to 5.0% of the aggregate principal amount of such Backstop Lender's Backstop Commitments (as in effect immediately prior to the funding of Initial Term Loans), which shall be due on the Plan Effective Date and payable in the form of New Common Equity at a 35% discount to the Stated Equity Value, subject to dilution for the Management Incentive Plan; provided, however, that, after the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable) upon the occurrence of any Event of Default under this Agreement or upon repayment of the Loans in full and termination of all Commitments without the occurrence of the Plan Effective Date, the Borrower shall pay to each Backstop Lender (or any Affiliate, or any affiliated investment fund, investment vehicle or entity that is managed, advised or sub-advised by such Backstop Lender or such Affiliate, in each case, designated by such Backstop Lender in writing to the Administrative Agent) in cash a put option premium in an amount equal to $10,000,000, ratably in accordance with their Backstop Commitments (as in effect immediately prior to the funding of the Initial Term Loans). Such put option premium will be fully earned in all respects on the Closing Date, and shall be non-refundable and non-creditable thereafter. The Agents shall have no responsibility for the distribution of any New Common Equity to the Backstop Lenders.

(d) Exit Fee. The Borrower shall pay to each Term Lender (or any Affiliate, or any affiliated investment fund, investment vehicle or entity that is managed, advised or sub-advised by such Term Lender or such Affiliate, in each case, designated by such Term Lender in writing to the Administrative Agent) an exit fee in an aggregate amount equal to 1.0% of the aggregate principal amount of the Term Loan Commitment (prior to any funding of Term Loans), which shall be due on the Plan Effective Date, ratably in accordance with Term Loans then outstanding and any unfunded Term Loan Commitments then outstanding, and payable in the form of New Common Equity at a 35%

discount to the Stated Equity Value, subject to dilution for the Management Incentive Plan; provided, however, that, after the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable) upon the occurrence of any Event of Default under this Agreement or upon repayment of the Loans in full and termination of all Commitments without the occurrence of the Plan Effective Date, the Borrower shall pay to each Term Lender (or any Affiliate, or any affiliated investment fund, investment vehicle or entity that is managed, advised or sub-advised by such Term Lender or such Affiliate, in each case, designated by such Term Lender in writing to the Administrative Agent) in cash an exit fee in an amount equal to $2,000,000, ratably in accordance with their Term Loans outstanding at such time. Such exit fees will be fully earned in all respects on the Closing Date, and shall be non-refundable and non-creditable thereafter. The Agents shall have no responsibility for the distribution of any New Common Equity to the Term Lenders.

(e) Delayed Draw Term Loan Commitment Fee. The Borrower shall pay to the Administrative Agent, for the account of each Delayed Draw Term Lender, as fee compensation for such Term Lender's Delayed Draw Term Loan Commitment, a commitment fee (the "Delayed Draw Term Loan Commitment Fee") on the Delayed Draw Term Loan Commitment (whether or not then available) of such Term Lender accruing, during the period commencing from the Closing Date to the Delayed Draw Funding Date, at a rate per annum equal to the 1.00%, payable to such Term Lender from the proceeds of its Delayed Draw Term Loan on the Delayed Draw Funding Date. Such Delayed Draw Term Loan Commitment Fee will be in all respects fully earned, due and payable upon the funding of the Delayed Draw Term Loans, and shall be non-refundable and non-creditable thereafter.

2.10 Computation of Interest and Fees.

(a) All computations of interest for Base Rate Loans, where the rate of interest is calculated on the basis of the Prime Rate, shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by an Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.11 Evidence of Debt.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender to the Borrower, the Borrower shall execute and deliver a Note to such Lender, which shall evidence such Lender's Loans to the Borrower in addition to such accounts or records. Each Lender may attach schedules to a Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

2.12 Payments Generally; Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent for the account of the Lenders, to which such payment is owed, at the Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m., New York City time, on the date specified herein. The Administrative Agent will promptly distribute to each applicable Lender its Applicable Percentage of such payment in like funds as received by wire transfer to such applicable Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m., New York City time, may, in Administrative Agent's discretion, be deemed received on the next succeeding Business Day and

any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurocurrency Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon., New York City time, on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if an applicable Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Overnight Rate plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans of the Facility and Type comprising such Borrowing. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Term Loan, included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the applicable Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the applicable Lenders, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the applicable Lenders, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in Same Day Funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent at the Overnight Rate.

A notice of the Administrative Agent to any applicable Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender to the Borrower as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall promptly return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Term Loans and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Term Loan or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Term Loan or to make its payment under Section 10.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

2.13 Pro Rata; Sharing of Payments by Lenders. Except as otherwise expressly provided in this Agreement, each payment (including each prepayment) by the Borrower on account of principal of and interest on any Loans shall be allocated by the Administrative Agent pro rata according to the respective outstanding principal amounts of such Loans then held by the respective Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payment on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact and (b) purchase (for cash at face value) participations in the Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be; provided that:

(a) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(b) the provisions of this Section shall not be construed to apply to (i) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (ii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply), (iii) any payments pursuant to the Agency Fee Letter, or (iv) any payments made pursuant to Article III or Section 10.13.

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

2.14 [Reserved].

2.15 [Reserved].

2.16 [Reserved].

2.17 [Reserved].

2.18 Defaulting Lenders. Notwithstanding anything contained in this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(a) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to any Agent hereunder; *second*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of

which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *third*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders, as a result of any judgment of a court of competent jurisdiction obtained by any Lender, against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *sixth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, such payment shall be applied solely to pay the Loans of all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders pro rata in accordance with the Commitments hereunder. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

A Lender that has become a Defaulting Lender because of an event referenced in the definition of Defaulting Lender may cure such status and shall no longer constitute a Defaulting Lender as a result of such event when (i) such Defaulting Lender shall have fully funded or paid, as applicable, all Loans or other amounts required to be funded or paid by it hereunder as to which it is delinquent (together, in each case, with such interest thereon as shall be required to any Person as otherwise provided in this Agreement), (ii) the Administrative Agent and each of the Borrower shall have received a certification by such Defaulting Lender of its ability and intent to comply with the provisions of this Agreement going forward, and (iii) each of the Administrative Agent and the Borrower shall have determined (and notified the Administrative Agent) that they are satisfied, in their sole discretion, that such Defaulting Lender intends to continue to perform its obligations as a Lender hereunder and has all approvals required to enable it, to continue to perform its obligations as a Lender hereunder. No reference in this subsection to an event being "cured" shall by itself preclude any claim by any Person against any Lender that becomes a Defaulting Lender for such damages as may otherwise be available to such Person arising from any failure to fund or pay any amount when due hereunder or from any other event that gave rise to such Lender's status as a Defaulting Lender.

2.19 Priority and Liens; No Discharge.

(a) The relative priorities of the Liens with respect to the Collateral shall be as set forth in the Interim Order (and, when entered, the Final Order). Notwithstanding anything to the contrary in this Agreement or in any Loan Document, all of the Liens described herein shall be effective and perfected upon entry of the Interim Order without the necessity of the execution or recordation of filings by the Debtors of security agreements, mortgages, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Collateral Agent, as applicable, of, or over, any Collateral, as set forth in the Interim Order and, when entered, the Final Order.

(b)

(i) Each Loan Party that is a Debtor hereby confirms and acknowledges that, pursuant to the Interim Order (and, when entered, the Final Order), the Liens in favor of the Collateral Agent on behalf of and for the benefit of the Secured Parties in all of the Collateral and the proceeds thereof, which includes, without limitation, all of such Debtor's Real Properties (other than Excluded Assets), now existing or hereafter acquired, shall be created and perfected without the recordation or filing in any land records or filing offices of any mortgage, assignment or similar instrument.

(ii) Further to Section 2.19(b)(i) and the Interim Order (and, when entered, the Final Order), subject to Section 2.19(b)(iv) below, to secure the full and timely payment and performance of the Obligations, each Loan Party that is a Debtor hereby MORTGAGES, GRANTS, BARGAINS, ASSIGNS, SELLS, CONVEYS and CONFIRMS, to the Collateral Agent, for the ratable benefit of the Secured Parties, all or any Real Properties (in any case, excluding any Real Properties that are Excluded Assets), but which, for the avoidance of doubt, shall include all of such Loan Party's right, title and interest now or hereafter acquired in and to (a) any and all easements, rights-of-

way, reversions, sidewalks, strips and gores of land, drives, roads, curbs, streets, ways, alleys, passages, passageways, sewer rights, waters, water courses, water rights, mineral, gas and oil rights, as-extracted collateral and all power, air, light and other rights, estates, titles, interests, privileges, liberties, servitudes, licenses, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining thereto, or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto; (b) the lessee's interest and estate in, to and under any leases and subleases to which such Loan Party is a party (as such leases and subleases may be extended, amended, supplemented, modified or restated), together with any and all easements, rights-of-way, reversions, sidewalks, strips and gores of land, drives, roads, curbs, streets, ways, alleys, passages, passageways, sewer rights, waters, water courses, water rights, mineral, gas and oil rights, as-extracted collateral and all power, air, light and other rights, estates, titles, interests, privileges, liberties, servitudes, licenses, tenements, hereditaments and appurtenances whatsoever, in any way demised under such leases and subleases; (c) any and all tipples, loading and coal washing facilities, railroad tracks, buildings, foundations, structures and other fixtures and improvements and any and all alterations and all materials now or hereafter intended for construction, reconstruction or repair thereof; (d) any and all permits, certificates, authorizations, consents, approvals, licenses, franchises, waivers or other instruments now or hereafter required by any Governmental Authority to operate or use and occupy the Real Properties and related assets for its intended uses; (e) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by such Loan Party, and water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or not situated in easements or used or useful in connection with mining coal or other minerals or in connection with any related activities or the maintenance or preservation thereof; (f) all goods, accounts, general intangibles, instruments, documents, chattel paper, as-extracted collateral and all other personal property of any kind or character, including such items of personal property as defined in the UCC; (g) all reserves, escrows or impounds and all deposit accounts; (h) such Loan Party's right, title and interest as lessor, landlord, sublessor, sublandlord, franchisor, licensor or grantor, in all leases and subleases (including, without limitation, intercompany leases) of land or improvements, leases and subleases of space, oil, gas and mineral leases, franchise agreements, licenses, occupancy or concession agreements or other agreements which grant to any Person (other than such Loan Party) a possessory interest in, or the right to use any Real Properties, including, all rents, additional rents, royalties, cash, guaranties, letters of credit, bonds, sureties or securities deposited thereunder to secure performance of the lessee's, sublessee's, franchisee's, licensee's or obligee's obligations thereunder, revenues, earnings, profits and income, advance rental or royalties, payments, payments incident to assignment, sublease or surrender of a lease, claims for forfeited deposits and claims for damages, now due or hereafter to become due, with respect to any lease, any indemnification against, or reimbursement for, sums paid and costs and expenses incurred by such Loan Party under any lease or otherwise, and any award in the event of the bankruptcy of any tenant or lessee under or guarantor of a lease; (i) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of any Real Properties; (j) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing; (k) all property tax refunds payable to such Loan Party; (l) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof; (m) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by such Loan Party; and (n) any awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Real Properties (BUT EXCLUDING from the foregoing grants, Excluded Assets), TO HAVE AND TO HOLD to the Collateral Agent, and such Loan Party does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to such property, assets and interests unto the Collateral Agent.

(iii) Each Loan Party that is a Debtor further agrees that upon the request of the Collateral Agent (acting at the direction of the Required Lenders), such Loan Party shall execute and deliver to the Collateral Agent, as soon as reasonably practicable following such request but in any event within 45 days following such request (or such later date as may be extended by the Collateral Agent), with respect to Real Properties owned or leased by such Loan Party (in any case, excluding any Real Properties that are Excluded Assets) and identified by the Collateral Agent, the applicable Loan Party shall deliver:

1. fully executed and notarized Mortgages, in proper form for recording in all appropriate places in all applicable jurisdictions, encumbering each such Real Properties, and any ancillary deliverables as reasonably requested by the Collateral Agent (including, without

limitation, memoranda of leases in recordable form, duly executed by the applicable landlord and Loan Party);

2. an opinion of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) in each state in which each such Real Property is located with respect to the enforceability of the form(s) of Mortgages to be recorded in such state and such other matters as Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to Collateral Agent; and

3. (A) a completed Flood Certificate with respect to any Real Property that constitutes Collateral and that is improved with structures eligible for flood insurance under the Flood Program, which Flood Certificate shall (x) be addressed to the Collateral Agent and (y) otherwise comply with the Flood Program; (B) if the Flood Certificate states that such Real Property is located in a Flood Zone, Debtor's written acknowledgment of receipt of written notification from the Collateral Agent (x) as to the existence of each such Real Property and (y) as to whether the community in which such Real Property is located is participating in the Flood Program; and (C) if such Real Property is located in a Flood Zone and is located in a community that participates in the Flood Program, evidence that Debtor has obtained a policy of flood insurance that is in compliance with all applicable requirements of the Flood Program.

(iv) Each of the Loan Parties agrees that to the extent that its Obligations have not been Paid in Full, (i) its obligations shall not be discharged by any order confirming a Reorganization Plan (and each of the Loan Parties, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (ii) the Superpriority Claim granted to the Secured Parties pursuant to the Orders and the Liens granted to the Secured Parties pursuant to the Orders shall not be affected in any manner by any order confirming a Reorganization Plan; *provided* that such Obligations shall be discharged upon such Payment in Full, and such Obligations may be otherwise treated in accordance with an Acceptable Plan and such treatment will provide for the discharge of the Obligations arising hereunder if so provided by such Acceptable Plan.

ARTICLE III
TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any Loan Party hereunder or under any other Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law (as determined in the good faith discretion of the applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 3.01(a)) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by the Borrower. Without duplication of any obligation set forth in subsection (a) above, the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of any Other Taxes.

(c) Indemnification by the Borrower. The Loan Parties shall jointly and severally indemnify each Recipient within 10 days after written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient, or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered

to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of an applicable Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 3.01, the applicable Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to any payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times prescribed by applicable Law and from time to time when reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is not a Foreign Lender shall deliver to the Borrower and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter as prescribed by applicable Law or upon the reasonable request of the Borrower or the Administrative Agent), duly completed and executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender, to the extent it is legally entitled to do so, shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of any Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, duly completed and executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) duly completed and executed copies of IRS Form W-8ECI or IRS Form W-8EXP;

(3) in the case of any Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit M-1 to the effect that such Foreign Lender is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" related to a Loan Party as described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) duly completed and executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable;

(4) to the extent any Foreign Lender is not the beneficial owner, duly completed and executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8EXP, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit M-2 or Exhibit M-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit M-4 on behalf of each such direct and indirect partner;

(C) in addition, any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), duly completed and executed copies of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in United States federal withholding Tax duly completed and executed together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrower or Administrative Agent to determine the withholding or deduction required to be made; provided, that notwithstanding anything to the contrary in this Section 3.01(e); the completion, execution and submission of the documentation described in this subclause 3.01(e)(ii)(C) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender; and

(D) if a payment made to a Lender under any Loan Document would be subject to Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or Section 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times as prescribed by Law and at such time or times as reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for the purposes of this subclause 3.01(e)(ii)(D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.01 (including by the payment of additional amounts pursuant to this Section 3.01), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority), in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying or any other Person.

(g) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of any Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments, the repayment, satisfaction or discharge of all obligations under any Loan Document, and the termination of this Agreement.

3.02 Illegality. If any Lender determines that as a result of any Change in Law it becomes unlawful, or that any Governmental Authority asserts that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurocurrency Rate Loans, or to determine or charge interest rates based upon the Eurocurrency Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the applicable interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (a) any obligation of such Lender to make or continue Eurocurrency Rate Loans or to convert Base Rate Loan to Eurocurrency Rate Loans, shall be suspended and (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurocurrency Rate component of the Base Rate, the interest rate on Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate, in each case, until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or convert all such Eurocurrency Rate Loans of such Lender to Base Rate Loans (the interest rate on Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans and (ii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurocurrency Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurocurrency Rate component thereof until the Administrative Agent is advised in writing by such Lender, which it shall do as promptly as possible, that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurocurrency Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

3.03 Inability to Determine Rates

(a) If the Administrative Agent determines that for any reason in connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof that (i) adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan, or (ii) the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurocurrency Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurocurrency Rate Loans in the affected currency or currencies shall be suspended and (y) in the event of a determination described in the preceding sentence with respect to the Eurocurrency Rate component of the Base Rate, the utilization of the Eurocurrency Rate component in determining the Base Rate shall be suspended, in each case, until the Administrative Agent (upon the instruction of the Required Lenders, who agree to so instruct the Administrative Agent once the circumstances giving rise to the inability to determine rates no longer exist) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

(b) If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in Section 3.03(a)(i) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in Section 3.03(a)(i) have not arisen but the supervisor for the administrator of the Eurocurrency Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the Eurocurrency Rate shall no longer be used for determining interest rates for loans, then the Administrative Agent and the Borrower shall endeavor to establish an alternate rate of interest to the Eurocurrency Rate that (x) gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans of similar type in the United States at such time, and (y) is a rate that the Administrative Agent is able to calculate and administer, and the Borrower and the

Administrative Agent shall enter into an amendment to this Agreement to effectuate such alternate rate of interest and such other changes to this Agreement as may be necessary or desirable in connection therewith. Notwithstanding anything to the contrary in Section 10.01, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five Business Days of the date that notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment. Until an alternate rate of interest shall be determined in accordance with this paragraph (b) (but in the case of the circumstances described in Section 3.03(b)(ii), only to the extent the Eurocurrency Rate is not available or published at such time on a current basis), Sections 3.03(a)(i) and (ii) shall be applicable.

3.04 Increased Costs; Reserves on Eurocurrency Rate Loans.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Eurocurrency Rate contemplated by Section 3.04(e));

(ii) subject any Recipient to Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Eurocurrency Rate Loans made by such Lender or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurocurrency Rate Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon written request of such Lender setting forth in reasonable detail such increased costs, the Borrower will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender, as the case may be, for such additional costs incurred or reduction suffered; provided that before making any such demand, each Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions and so long as such efforts would not be materially disadvantageous to it, in its reasonable discretion, in any legal, economic or regulatory manner) to designate a different Eurocurrency lending office if the making of such designation would allow the Lender or its Eurocurrency lending office to continue to perform its obligation to make Eurocurrency Rate Loans or to continue to fund or maintain Eurocurrency Rate Loans and avoid the need for, or reduce the amount of, such increased cost.

(b) Capital Requirements. If any Lender reasonably determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements has the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time, after submission to the Borrower (with a copy to the Administrative Agent) of a written request therefor setting forth in reasonable detail the change and the calculation of such reduced rate of return, the Borrower will pay to such Lender, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section, describing the basis therefor and showing the calculation thereof in reasonable detail, and delivered to the Borrower shall be conclusive, absent manifest error. The Borrower shall pay such Lender, as the case may be, the amount shown as due on any such certificate within 30 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than 90 days prior to the date that such Lender, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 90-day period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Additional Reserve Requirements. The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurocurrency Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as reasonably determined by such Lender in good faith, which determination shall be conclusive, absent manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Eurocurrency Rate Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive, absent manifest error), which in each case shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least 10 Business Days' prior notice (with a copy to the Administrative Agent) of such additional interest or costs from such Lender describing the basis therefor and showing the calculation thereof, in each case, in reasonable detail. If a Lender fails to give notice 10 Business Days prior to the relevant Interest Payment Date, such additional interest or costs shall be due and payable within 30 days from receipt of such notice.

(f) Certain Rules Relating to the Payment of Additional Amounts. If any Lender requests compensation pursuant to this Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, such Lender shall either (A) forego payment of such additional amount from the Borrower or (B) reasonably afford the Borrower the opportunity to contest, and reasonably cooperate with the Borrower in contesting, the imposition of any Indemnified Taxes or other amounts giving rise to such payment; provided that the Borrower shall reimburse such Lender for its reasonable and documented out-of-pocket costs, including reasonable and documented attorneys' and accountants' fees and disbursements incurred in so cooperating with the Borrower in contesting the imposition of such Indemnified Taxes or other amounts.

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower;

(c) [reserved]; or

(d) any assignment of a Eurocurrency Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13;

including any foreign exchange losses and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan, from fees payable to terminate the deposits from which such funds were obtained

or from the performance of any foreign exchange contract, but excluding any loss of anticipated profits. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurocurrency Rate Loan made by it at the Eurocurrency Rate used in determining the Eurocurrency Rate for such Loan by a matching deposit or other borrowing in the offshore interbank market for such currency for a comparable amount and for a comparable period, whether or not such Eurocurrency Rate Loan was in fact so funded.

3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall (i) use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (A) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (B) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender, as applicable, and (ii) promptly inform the Borrower and the Administrative Agent when the circumstances giving rise to the applicability of such Sections no longer exists. The Borrower hereby agrees to pay all reasonable and documented costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, if any Lender gives a notice pursuant to Section 3.02 or if any Lender is at such time a Defaulting Lender, then the Borrower may replace such Lender in accordance with Section 10.13.

3.07 Survival. The parties' obligations under this Article III shall survive the resignation or replacement of any Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments, the repayment, satisfaction or discharge of all obligations under any Loan Document, and the termination of this Agreement.

ARTICLE IV
CONDITIONS PRECEDENT

4.01 Conditions Precedent to the Closing Date. The effectiveness of this Agreement is subject to satisfaction of the following conditions precedent:

(a) Petition Date. The Petition Date shall have occurred and the Borrower and each Guarantor shall be a debtor and debtor-in-possession in the Chapter 11 Cases.

(b) Loan Documents. The Administrative Agent shall have received each Loan Document required to be delivered on the Closing Date, each of which shall be in form and substance reasonably acceptable to the Required Lenders, including:

(i) this Agreement, executed and delivered by the Administrative Agent, the Borrower, each Guarantor and each Person that is a Lender as of the Closing Date;

(ii) [reserved];

(iii) the Agency Fee Letter, executed and delivered by the Agents and the Borrower;

(iv) [reserved];

(v) Notes, executed and delivered by the Borrower in favor of each Lender requesting any Note;

(vi) a certificate of each Loan Party signed on behalf of such Loan Party by a Responsible Officer, dated the Closing Date (the statements made in which certificate shall be true on and as of the Closing Date), certifying as to (A) the Organizational Documents of each Loan Party, certified, to the extent applicable, by the applicable Governmental Authority, and the absence of any amendments to the Organizational Documents of such Loan Party since the date certified by such Governmental Authority, including a true and correct copy of the bylaws, limited liability company agreement, or partnership agreement of such Loan Party as in effect on the date on which the resolutions referred to in Section 4.01(b)(vi)(B) were adopted and on the Closing Date, (B) copies of resolutions of the board of directors and/or similar governing bodies of each Loan Party approving and authorizing the Transactions and the execution, delivery and performance of the Loan Documents to which it is a party, (C) the good standing or valid existence of such Loan Party as a corporation, limited liability company or partnership organized or formed under the laws of the jurisdiction of its incorporation or formation and the absence of any proceeding for the dissolution or liquidation of such Loan Party; and (D) the signatures and incumbency of each Responsible Officer of each Loan Party executing the Loan Documents to which it is a party; and

(vii) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the conditions specified in Sections 4.01 and 4.02 have been satisfied, and (B) that there has not occurred since December 31, 2018, any Material Adverse Effect.

(c) Personal Property Collateral. Each Loan Party shall have delivered to the Collateral Agent:

(i) evidence reasonably satisfactory to the Collateral Agent of the compliance by each Loan Party of their obligations under the Security Documents (including their obligations to execute or authorize, as applicable, and deliver UCC financing statements (including, without limitation, as-extracted financing statements), originals of securities, instruments and chattel paper, in each case, constituting Collateral, as provided therein);

(ii) a completed Collateral Questionnaire dated the Closing Date and executed by a Responsible Officer of each Loan Party, together with all attachments contemplated thereby;

(iii) [reserved]; and

(iv) evidence that each Loan Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument (including any intercompany notes evidencing Indebtedness permitted to be incurred pursuant to Section 7.03) and made or caused to be made any other filing and recording (other than as set forth herein) reasonably required by the Collateral Agent or the Required Lenders.

(d) Approvals; No Restrictions. All governmental and third party approvals necessary or required in connection with the Transactions and the continuing operations of the Borrower and its Subsidiaries (including shareholder approvals, if any) shall have been obtained and be in full force and effect. The Loan Parties and their Affiliates shall not be subject to contractual or other restrictions that would be violated by the execution and delivery of the Loan Documents or the initial extension of credit hereunder and there shall not exist any action, suit, investigation, litigation, proceeding or hearing, pending or threatened in any court or before any arbitrator or Governmental Authority that affects the Transactions or otherwise impairs the ability of the Loan Parties to consummate the Transactions and no preliminary or permanent injunction or order by a state or federal court shall have been entered, in each case that would be material and adverse to the Agents or the Lenders.

(e) Fees; Expenses. Any fees required to be paid on or before the Closing Date to the Agents and/or the Lenders under this Agreement, the Agency Fee Letter, or otherwise in connection with the Facilities shall have been paid and, unless waived by the Agents and/or the Lenders, as applicable, the Borrower shall have paid all reasonable and documented costs and expenses of the Agents and the Lenders (including the reasonable and documented fees and expenses of (i) Akin Gump Strauss Hauer & Feld LLP, Milbank LLP, and Bryan Cave Leighton

Paisner LLP, counsel to the Lenders, (ii) Lazard and Perella Weinberg Partners L.P., financial advisors to the Lenders, and (iii) Ropes & Gray LLP, counsel to the Agents).

(f) No Material Adverse Effect. Since December 31 2018, no Material Adverse Effect (after giving effect to the qualifications set forth in such definition) shall have occurred.

(g) Budget and Cash Flow Forecast. The Administrative Agent shall have received (x) weekly operating and cash flow projections for the Debtors for the period commencing on the Petition Date and ending on July 11, 2020, in form and substance satisfactory to the Financial Advisor (the "DIP Budget"), and (y) the Cash Flow Forecast; provided that such Cash Flow Forecast may be amended, replaced, supplemented or otherwise modified from time to time to the extent such amended, replaced, supplemented or modified Cash Flow Forecast is in form and substance satisfactory to the Required Lenders in their sole discretion.

(h) Existing Indebtedness. Borrower and its Subsidiaries shall have no outstanding Indebtedness other than Indebtedness permitted under this Agreement.

(i) Financial Statements. Administrative Agent shall have received from Borrower (i) the Historical Financial Statements, (ii) a pro forma consolidated balance sheet of Borrower and its Subsidiaries on a consolidated basis as of the last day of the most recently completely four-fiscal quarter period for which financial statements were delivered under clause (i) of the definition of the term "Historical Financial Statements", reflecting the related financings and the other transactions contemplated by the Loan Documents to occur on or prior to the Closing Date as if such transactions occurred as of such date.

(j) Interim Order. No later than five (5) days following the Petition Date (or such later date as the Required Lenders may agree), the Interim Order shall have been entered by the Bankruptcy Court in form and substance acceptable to the Required Lenders and the Administrative Agent shall have received a certified copy thereof; provided that the Interim Order shall not have been vacated, reversed, modified, amended or stayed in any respect without the prior written consent of the Required Lenders.

(k) First Day Orders. All "first day" orders intended to be entered by the Bankruptcy Court at or immediately after the Debtors' "first day" shall have been entered by the Bankruptcy Court in form and substance acceptable to the Required Lenders.

(l) Patriot Act. The Lenders and the Administrative Agent shall have received prior to the Closing Date all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act (which shall include, but not be limited to, a duly executed IRS Form W-9, or other applicable tax form); provided that such information is requested at least 3 Business Days prior to the Closing Date.

Without limiting the generality of the provisions of Section 9.04, for purposes of determining compliance with the conditions specified in this Section 4.01 or Section 4.02, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received written notice from such Lender specifying its objection thereto.

4.02 Conditions Precedent to Each Term Loan. The agreement of each Lender to make any extension of credit requested to be made by it on any date (including, without limitation, any Loans on the Closing Date) is subject to satisfaction of the following conditions precedent:

(a) No Default. There shall exist no Default or Event of Default under the Loan Documents.

(b) Representations and Warranties. The representations and warranties of the Borrower and each Guarantor herein and in the other Loan Documents shall be true and correct in all material respects (or in the case of representations and warranties with a "materiality" qualifier, true and correct in all respects) immediately prior to, and after giving effect to, such funding of the applicable Loans to the same extent as though made on and as of that date,

except to the extent such representations and warranties specifically relate to an earlier date, in which case, such representations and warranties shall have been true and correct in all materials respects on and as of such earlier date; provided that in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof. .

(c) Interim Order. At any time prior to the Final Order Entry Date, the Interim Order shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed in any respect without the prior written consent of the Required Lenders.

(d) Final Order. With respect to any Credit Extension on or after the Final Order Entry Date, the Final Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay and shall not have been modified or amended in any respect without the prior written consent of the Required Lenders.

(e) Restructuring Support Agreement. The Restructuring Support Agreement (i) shall be in full force and effect, (ii) shall not have been amended or modified without the prior written consent of the Required Lenders, and (iii) no breach that would, after the expiration of any applicable notice or cure period, give rise to a right to terminate the Restructuring Support Agreement shall exist.

(f) Notice of Borrowing. The Administrative Agent shall have received a duly executed Borrowing Notice from the Borrower pursuant to and in accordance with Section 2.02(a).

(g) No Trustee. No trustee, receiver or examiner with expanded powers to operate or manage the financial affairs, the business, or reorganization of the Loan Parties shall have been appointed or designated.

(h) Dismissal; Conversion. None of the Chapter 11 Cases of any Debtors shall have been dismissed. The Chapter 11 Cases shall not have been converted to Chapter 7 of the Bankruptcy Code.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

In order to induce the Agents and the Lenders to enter into this Agreement and to make each Credit Extension to be made hereby, each Loan Party represents and warrants to the Agents and the Lenders that the following statements are true and correct:

5.01 Existence, Qualification and Power. Each Loan Party and its Subsidiaries (a) (i) is duly organized or formed and validly existing and (ii) is in good standing under the Laws of the jurisdiction of its incorporation or organization, if such legal concept is applicable in such jurisdiction, (b) subject to any restriction arising on account of Borrower's or each of its Subsidiaries' status as a "debtor" under the Bankruptcy Code, has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) subject to entry of the Orders and the terms thereof, execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified, licensed, and in good standing (to the extent good standing is an applicable legal concept in the relevant jurisdiction), under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; where the failure to so qualify or be in good standing could not reasonably be expected to have a Material Adverse Effect.

5.02 Authorization; No Contravention. Subject to entry of the Orders and the terms thereof, the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, (a) have been duly authorized by all necessary corporate or other organizational action and (b) do not and will not (i) contravene the terms of any of such Person's Organizational Documents; (ii) except to the extent excused as a result of the Chapter 11 Cases, conflict with or result in any breach or contravention of, or the creation of, any Lien (other than Permitted Liens) under, or require any payment to be made under (A) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (B) any order, injunction, writ or decree of any Governmental Authority to which such Person or its property is subject or (C) any arbitral award to which such Person or its property is subject; or (iii) violate any Law binding on such Loan Party,

except in each case referred to in clauses (b)(ii) or (b)(iii) to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

5.03 Governmental Authorization. Except for the entry of the Orders, (a) no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority and (b) no material approval, consent, exemption, authorization, or other action by, or notice to, or filing with any other Person, in each case, is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for those approvals, consents, exemptions, authorizations or other actions which have already been obtained, taken, given or made and are in full force and effect.

5.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. Subject to the entry of the Orders and the terms thereof, this Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other Laws relating to or affecting creditors' rights generally, general principles of equity, regardless of whether considered in a proceeding in equity or at law and an implied covenant of good faith and fair dealing.

5.05 Financial Conditions; No Material Adverse Effect.

(a) The Historical Financial Statements were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of such dates and their results of operations for the period covered thereby, subject, in the case of any unaudited financial statements, to the absence of footnotes and to normal year end adjustments.

(b) Since December 31, 2018, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect (after giving effect to the qualifications set forth in such definition).

(c) The financial projections and estimates and information of a general economic nature prepared, or as directed by, the Loan Parties or any of their representatives and that have been made available to any Lender or its Related Parties in connection with the Transactions or the other transactions contemplated by this Agreement as of the date delivered in connection with this Agreement have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable in light of the conditions existing at the time of delivery of such forecasts (it being understood that any such information is subject to significant uncertainties and contingencies, many of which are beyond the Borrower's control, and that no assurance can be given that the future developments addressed in such information can be realized).

5.06 Litigation.

(a) There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower threatened, at law, in equity, by or before any Governmental Authority, by or against the Borrower or any of its Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) except as specifically disclosed in public filings prior to the date hereof, as to which there is a reasonable possibility of an adverse determination and that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) None of Borrower or any of its Subsidiaries or their respective properties or assets is in violation of (nor will the continued operation of their material properties and assets as currently conducted violate) any currently applicable Law (including any zoning, building or environmental law, mine safety law, ordinance, code or approval or any building permit) or any restriction of record or agreement affecting any Mortgaged Property, or is in default

with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.07 No Default. . Other than as a result of the commencement of the Chapter 11 Cases and the effects thereof, none of the Borrower or any of its Subsidiaries is in default under or with respect to any Contractual Obligation that could reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing or would result from the consummation of the Transactions or any other transactions contemplated by this Agreement or any other Loan Document.

5.08 Ownership and Identification of Property.

(a) The Borrower and its Subsidiaries have good record and marketable title in fee simple to, or valid leasehold interests in, all Real Property necessary or used in the ordinary conduct of its business, except for minor defects in title as could not reasonably be expected to have a Material Adverse Effect. As of the Closing Date, with respect to all real property listed on Schedule 5.08(c): (i) the Borrower and its Subsidiaries possess all leasehold interests necessary for the operation of the Mines currently being operated by each of them and included or purported to be included in the Collateral pursuant to the Security Documents, except where the failure to possess such leasehold interests could not reasonably be expected to have a Material Adverse Effect, (ii) each of their respective rights under the leases, contracts, rights-of-way and easements necessary for the operation of such Mines are in full force and effect, except to the extent that failure to maintain such leases, contracts, rights of way and easements in full force and effect could not reasonably be expected to have a Material Adverse Effect; and (iii) each of the Borrower and its Subsidiaries possesses all licenses, permits or franchises which are necessary to carry out its business as presently conducted at any Mine included or purported to be included in the Collateral pursuant to the Security Documents, except where failure to possess such licenses, permits or franchises could not, in the aggregate, be reasonably expected to have a Material Adverse Effect.

(b) Schedule 5.08(b) lists completely and correctly as of the Closing Date all Material Real Property fee owned by the Borrower and the other Loan Parties.

(c) Schedule 5.08(c) lists completely and correctly as of the Closing Date all Leasehold Properties constituting Material Real Property leased by the Borrower and the other Loan Parties and the lessors thereof.

(d) Except as could not be expected to have a Material Adverse Effect, there are no pending or, to the knowledge of any Loan Party, proposed special or other assessments for public improvements or otherwise affecting any material portion of any owned Real Property of the Loan parties, nor are there contemplated improvements to such owned Real Property of the Loan Parties that may result in such special or other assessments.

5.09 Environmental Compliance. Except as disclosed on Schedule 5.09, or as otherwise could not reasonably be expected to have a Material Adverse Effect:

(a) The facilities and properties currently or formerly owned, leased or operated by the Borrower, or any of its respective Subsidiaries (the "Properties") do not contain any Hazardous Materials in amounts or concentrations which (i) constitute a violation of, or (ii) could reasonably be expected to give rise to liability under, any applicable Environmental Law.

(b) None of the Borrower, nor any of its respective Subsidiaries has received any notice of violation, alleged violation, non-compliance, liability or potential liability regarding compliance with or liability under Environmental Laws with regard to any of the Properties or the business operated by the Borrower, or any of its Subsidiaries (the "Business"), or any prior business for which the Borrower has retained liability under any Environmental Law.

(c) Hazardous Materials have not been transported or disposed of from the Properties in violation of, or in a manner or to a location which could reasonably be expected to give rise to liability under, any applicable Environmental Law, nor have any Hazardous Materials been generated, treated, stored or disposed of at, or under any

of the Properties in violation of, or in a manner that could reasonably be expected to give rise to liability under, any applicable Environmental Law.

(d) No judicial proceeding or governmental or administrative action is pending or, to the knowledge of the Borrower, threatened under any Environmental Law to which the Borrower, or any of its Subsidiaries is or, to the knowledge of the Borrower, will be named as a party or with respect to the Properties or the Business, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other similar administrative or judicial requirements outstanding under any Environmental Law with respect to the Properties or the Business.

(e) There has been no release or threat of release of Hazardous Materials at or from the Properties, or arising from or related to the operations of the Borrower, or any of its Subsidiaries in connection with the Properties or otherwise in connection with the Business, in violation of or in amounts or in a manner that could reasonably be expected to give rise to liability under any applicable Environmental Laws.

(f) The Properties and all operations at the Properties are in compliance with all applicable Environmental Laws.

(g) The Borrower and each of its Subsidiaries has obtained, and is in compliance with, all Environmental Permits required for the conduct of its businesses and operations, and the ownership, occupation, operation and use of its Property, and all such Environmental Permits are in full force and effect.

5.10 Insurance.

(a) The properties of the Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies which may be Affiliates of the Borrower, in such amounts (after giving effect to any self-insurance compatible with the following standards), with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Subsidiary operates.

(b) As to any Building located on Material Real Property and constituting Collateral, all flood hazard insurance policies required hereunder have been obtained and remain in full force and effect, and the premiums thereon have been paid in full.

5.11 Taxes. The Borrower and its Subsidiaries have filed or caused to be filed all applicable U.S. federal, state, foreign and other material Tax returns and reports required to be filed, and have paid or caused to be paid all U.S. federal, state, foreign and other Taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, in each case, except as otherwise permitted under Section 6.04. No Tax Lien has been filed which would not be permitted under Section 7.01 and, to the knowledge of the Borrower, no claim is being asserted, with respect to any Tax, fee or other charge which could reasonably be expected to result in a Material Adverse Effect. As of the Closing Date, neither Borrower nor any Subsidiary thereof is party to any tax sharing agreement.

5.12 ERISA Compliance. Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect:

(a) Each Plan is in material compliance in all respects with the applicable provisions of ERISA, the Code and other Federal or state Laws (except that with respect to any Multiemployer Plan which is a Plan, such representation is deemed made only to the knowledge of the Borrower), and each Foreign Plan is in material compliance in all respects with the applicable provisions of Laws applicable to such Foreign Plan.

(b) There has been no nonexempt "prohibited transaction" (as defined in Section 406 of ERISA) or violation of the fiduciary responsibility rules with respect to any Plan.

(c) (i) As of the Closing Date, no ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; and (iii) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

5.13 Subsidiaries. As of the Closing Date, the Borrower has no Subsidiaries other than those specifically disclosed in Schedule 5.13.

5.14 Margin Regulations; Investment Company Act.

(a) The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) None of the Borrower, any Person Controlling the Borrower, nor any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

5.15 Disclosure. No report, financial statement, certificate or other information furnished in writing by any Loan Party to any Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document, taken as whole with any other information furnished or publicly available, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading as of the date when made or delivered; provided that, with respect to any forecast, projection or other statement regarding future performance, future financial results or other future developments, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of delivery of such information (it being understood that any such information is subject to significant uncertainties and contingencies, many of which are beyond the Borrower's control, and that no assurance can be given that the future developments addressed in such information can be realized).

5.16 Compliance with Laws. Each of Holdings and its Subsidiaries is in compliance in all material respects with the requirements of all Laws (including any zoning, building, ordinance, code or approval or any building or mining permits and all orders, writs, injunctions and decrees applicable to it or to its properties), except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

5.17 Anti-Corruption; Sanctions; Terrorism Laws.

(a) None of the Borrower, any Subsidiary nor, to the knowledge of the Borrower, any director, officer, agent, employee or Affiliate of the Borrower or any Subsidiary is (i) a person on the list of "Specially Designated Nationals and Blocked Persons" or (ii) subject of any active sanctions administered or enforced by the U.S. Department of State or the U.S. Department of Treasury (including the Office of Foreign Assets Control) or any other applicable Governmental Authority (collectively, "Sanctions", and the associated laws, rules, regulations and orders, collectively, "Sanctions Laws"); and the Borrower will not directly or, to the knowledge of the Borrower, indirectly use the proceeds of the Loans for the purpose of financing the activities of any Person that is the subject of, or in any country or territory that at such time is the subject of, any Sanctions.

(b) The Borrower and each Subsidiary is in compliance, in all material respects, with the (i) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (ii) the USA PATRIOT Act (Title III of Pub. L. 107-56), as amended (the "PATRIOT Act"), (iii) Sanctions Laws and (iv) Anti-Corruption Laws.

(c) No part of the proceeds of any Loan will be used, directly or, to the knowledge of the Borrower, indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business

or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, or any other applicable anti-bribery or anti-corruption laws, rules, regulations and orders (collectively, "Anti-Corruption Laws").

5.18 Intellectual Property; Licenses, Etc. The Borrower and its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, "IP Rights") that are reasonably necessary for the operation of their respective businesses, except where the failure to own or possess the right to use such IP Rights could not reasonably be expected to have a Material Adverse Effect. To the best knowledge of the Borrower, the use of such IP Rights by the Borrower or any Subsidiary does not infringe upon any rights held by any other Person except for any infringement that could not reasonably be expected to have a Material Adverse Effect. Except as specifically disclosed in Schedule 5.18, no claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Borrower, threatened, which could reasonably be expected to have a Material Adverse Effect.

5.19 Security Interest in Collateral. Subject to the entry of the Order and the terms thereof, the provisions of the Orders, this Agreement and the other Loan Documents create legal and valid Liens on all Collateral in favor of the Collateral Agent, for the benefit of the Secured Parties, and upon entry of the Orders, such Liens constitute perfected and continuing Liens on the Collateral, securing the Obligations, enforceable (except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or similar laws affecting creditors' rights generally and general principles of equity (regardless of whether the application of such principles is considered in a proceeding in equity or at law)) against the applicable Loan Party and all third parties, and having priority with respect to other Liens on the Collateral as contemplated by the Orders.

5.20 Mines. Schedule 5.20 sets forth a complete and accurate list of all Mines (including addresses and the owner thereof) owned or operated by the Borrower or any of its Subsidiaries as of the Closing Date and included or purported to be included in the Collateral.

5.21 [Reserved].

5.22 Labor Relations. Neither the Borrower nor any of its Subsidiaries is engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. There is (a) no unfair labor practice complaint pending against the Borrower or any of its Subsidiaries, or to the best knowledge of the Borrower, threatened against any of them before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against the Borrower or any of its Subsidiaries or to the best knowledge of the Borrower, threatened against any of them, (b) no strike or work stoppage in existence or threatened involving the Borrower or any of its Subsidiaries, and (c) to the best knowledge of the Borrower, no union representation question existing with respect to the employees of the Borrower or any of its Subsidiaries and, to the best knowledge of the Borrower, no union organization activity that is taking place, except (with respect to any matter specified in clause (a), (b) or (c) above, either individually or in the aggregate) such as is not reasonably likely to have a Material Adverse Effect.

5.23 Bankruptcy Related Matters.

(a) The Chapter 11 Cases were commenced on the Petition Date in accordance with applicable law and proper notice thereof was given for (i) the motion seeking approval of the Loan Documents and the Interim Order and Final Order, (ii) the hearing for the entry of the Interim Order, and (iii) the hearing for the entry of the Final Order (provided that notice of the final hearing will be given as soon as reasonably practicable after such hearing has been scheduled).

(b) After the entry of the Interim Order, and pursuant to and to the extent provided in the Interim Order and the Final Order, the Obligations will constitute allowed administrative expense claims in the Chapter 11 Cases having priority over all administrative expense claims and unsecured claims against the Debtors now existing or hereafter arising, of any kind whatsoever, including all administrative expense claims of the kind specified in Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under Section 364(c)(1) of the Bankruptcy Code, subject to (i) the Carve Out and (ii) the priorities set forth in the Interim Order or Final Order, as applicable.

(c) After the entry of the Interim Order and pursuant to and to the extent provided in the Interim Order and the Final Order, the Obligations will be secured by a valid and perfected Lien on all of the Collateral subject, as to priority, to the extent set forth in the Interim Order or the Final Order, and in any case, (i) subject to Permitted Liens and (ii) excluding claims and causes of action under sections 502(d), 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code (collectively, "Avoidance Actions") (but including, upon entry of the Final Order, the proceeds thereof).

(d) The Interim Order (with respect to the period on and after entry of the Interim Order and prior to entry of the Final Order) or the Final Order (with respect to the period on and after entry of the Final Order, as the case may be), is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), vacated, or without the Required Lenders' (and with respect to any provision that affects the rights or duties of any Agent, such Agent's) consent, modified or amended. The Loan Parties are in compliance in all material respects with the Orders.

(e) The DIP Budget, the Cash Flow Forecast, and all other projected consolidated balance sheets, income statements and cash flow statements of Borrower and its Subsidiaries delivered to the Administrative Agent were prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed in good faith by the Borrower to be fair in light of the conditions existing at the time of delivery of such report or projections (it being understood that any projections or estimates made in the items described in this subsection (e) are not to be viewed as facts and are subject to significant uncertainties and contingencies, that no assurance can be given that any such projections or estimates will be realized, that actual results may differ from projected results and such differences may be material).

ARTICLE VI
AFFIRMATIVE COVENANTS

Until Payment in Full of all Obligations, the Borrower shall, and shall cause each of its Subsidiaries to:

6.01 Financial Statements. Deliver to the Administrative Agent and each Lender, in form and detail reasonably satisfactory to the Financial Advisor (which shall be entitled to deliver such information to the Lenders in its sole discretion):

(a) Annual Financial Statements. Commencing with the fiscal year ending December 31, 2019, within 90 days after the end of each fiscal year of the Borrower (or with respect to the fiscal year ending December 31, 2019, no later than April 30, 2020), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail (together with a Narrative Report), and prepared in accordance with GAAP; such consolidated statements shall be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and which may contain a "going concern" qualification.

(b) Quarterly Financial Statements. Within 45 days after the end of each fiscal quarter of each fiscal year of the Borrower (commencing with the fiscal quarter ended March 31, 2020), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail (together with a Narrative Report) and certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations, changes in shareholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

(c) Monthly Financial Statements. (i) Within 30 days after the end of each month (commencing with the month ending March 31, 2020), the Monthly Consolidated Financial Report, certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition as at the dates indicated and the results

of their operations and their cash flows for the periods indicated, and (ii) within 30 days after the end of each month (commencing with the month ending March 31, 2020), the Monthly Mine-Level Financial Report, certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial information reported therein.

(d) Cash Flow Forecast. No later than 12:00 p.m. on the Thursday following the end of every fourth calendar week, commencing with the Thursday of the fourth calendar week following the week in which the Petition Date occurs, a Cash Flow Forecast, substantially in the form of the initial Cash Flow Forecast provided pursuant to Section 4.01(g) or as otherwise reasonably satisfactory to the Financial Advisor. Each Cash Flow Forecast delivered after the Closing Date pursuant to this Section 6.01(d) shall be reasonably acceptable to the Required Lenders, and no such Cash Flow Forecast shall be effective until so approved; provided that the Required Lenders shall be deemed to have approved such Cash Flow Forecast unless the Lenders constituting the Required Lenders shall have objected to such Cash Flow Forecast prior to 11.59 p.m. on the Monday immediately succeeding the delivery of such Cash Flow Forecast. The Borrower may, at its option, at other times propose that an amendment or supplement to or replacement of any Cash Flow Forecast that has become effective (any such proposal to be submitted at least three (3) Business Days prior to the proposed effectiveness thereof) and any proposed amendment or supplement to or replacement of any Cash Flow Forecast shall become effective upon the approval of the Required Lenders; provided that, until any such proposed amendment or supplement to or replacement of the Cash Flow Forecast is so approved, the then-current Cash Flow Forecast shall remain in effect.

(e) Budget Variance Report. No later than 7:00 p.m. on Thursday of each week after each Reporting Period (commencing with the Thursday of the first full week following the Petition Date), a Budget Variance Report for the immediately preceding Reporting Period. Each such report shall be certified by a Responsible Officer of the Borrower as being prepared in good faith and fairly presenting in all material respects the information set forth therein.

(f) Critical Vendor Report. No later than 7:00 p.m. on the Thursday of every other week (commencing with the Thursday of the first full week following the Petition Date), a Critical Vendor Report. Each such report shall be certified by a Responsible Officer of the Borrower as being prepared in good faith and fairly presenting in all material respects the information set forth therein.

6.02 Certificates; Other Information. Deliver to the Administrative Agent, in form and detail reasonably satisfactory to the Financial Advisor:

(a) concurrently with the delivery of the financial statements referred to in Section 6.01(a) and (b) (commencing with the delivery of the financial statements for the first full fiscal quarter ending March 31, 2019), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower;

(b) promptly after the same are available, copies of each annual report, proxy or financial statement or other report sent to the holders of Equity Interests in Holdings or Borrower, and copies of all annual, regular, periodic and special reports and registration statements which Holdings or Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Exchange Act, and not otherwise required to be delivered to the Administrative Agent pursuant hereto; and

(c) promptly, such additional information regarding the business, financial or corporate affairs of Holdings, the Borrower or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender (through the Administrative Agent) may from time to time reasonably request that is reasonably available without undue cost or burden.

Documents required to be delivered pursuant to Section 6.01(a) or 6.01(b) or Section 6.02(b) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Holdings or the Borrower posts such documents, or provides a link thereto on Holdings' or the Borrower's website on the Internet at the website address listed on Schedule 10.02; (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); or (iii) on which such documents are filed for public availability on the SEC's Electronic Data Gathering and Retrieval system.

In the event that Holdings or any Parent reports on a consolidated basis, such consolidated reporting at Holdings or such Parent's level in a manner consistent with that described in clauses 6.01(a) and 6.01(b) of this Section 6.01 for the Borrower will satisfy the requirements of such clauses.

The Borrower hereby acknowledges that (a) the Administrative Agent may make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders may be "public-side" Lenders (*i.e.*, Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "Public Lender"). The Borrower hereby agrees that (a) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (b) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat the Borrower Materials as not containing any material non- public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent the Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); and (c) all Borrower Materials marked "PUBLIC" or not marked as containing material non-public information are permitted to be made available through a portion of the Platform designated "Public Investor." Notwithstanding the foregoing, the Borrower shall not be under any obligation to mark the Borrower Materials "PUBLIC" or as containing material non-public information; provided, however, that the following Borrower Materials shall be deemed to be marked "PUBLIC" unless the Borrower notifies the Administrative Agent prior to posting that any such document contains material non-public information: (1) the Loan Documents, and (2) any notification of changes in the terms of the Facilities. The Borrower acknowledges and agrees that the list of Disqualified Institutions does not constitute non-public information and shall be posted to all Lenders by the Administrative Agent. In connection with the foregoing, each party hereto acknowledges and agrees that the foregoing provisions are not in derogation of their confidentiality obligations under Section 10.07.

6.03 Notices. Notify the Administrative Agent:

(a) Promptly upon any Responsible Officer of the Borrower obtaining knowledge thereof, of the occurrence of any Default or Event of Default hereunder;

(b) Promptly upon any Responsible Officer of the Borrower obtaining knowledge thereof, of any event which could reasonably be expected to have a Material Adverse Effect;

(c) of the occurrence of any ERISA Event that, individually or in the aggregate, would be reasonably likely to have a Material Adverse Effect, promptly and in any event within 30 days after any Responsible Officer of the Borrower knows or has obtained notice thereof;

(d) within 15 days of the Borrower or any Guarantor changing its legal name, jurisdiction of organization or the location of its chief executive office or sole place of business; and

(e) promptly, as to any Building located on Material Real Property and constituting Collateral, of any redesignation of any such property on which such Building is located into or out of a special flood hazard area.

Each notice pursuant to Sections 6.03(a)-(c) shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

6.04 Payment of Tax Obligations. Subject to the Bankruptcy Code, the terms of the applicable Orders and any required approval by the Bankruptcy Court, except where failure to do so could not reasonably be expected to result in a Material Adverse Effect, with respect to the Borrower and each of its Subsidiaries, pay and discharge all Tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary.

6.05 Preservation of Existence, Etc.; Activities of Foresight Energy Finance Corporation. Subject to the Bankruptcy Code, the terms of the applicable Orders and any required approval by the Bankruptcy Court,

(a) Preserve, renew and maintain in full force and effect its legal existence except in a transaction permitted by Section 7.04.

(b) With respect to Foresight Energy Finance Corporation, a Delaware corporation, cause such Subsidiary not to hold any material assets and not engage in any material business or activity other than maintaining its corporate existence.

6.06 Maintenance of Properties.

(a) Maintain, preserve and protect all of its material properties and material equipment, including Collateral, necessary in the operation of its business in good working order and condition (ordinary wear and tear and damage by fire or other casualty or taking by condemnation excepted), except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) Keep in full force and effect all of its material leases and other material contract rights, and all material rights of way, easements and privileges necessary or appropriate for the proper operation of the Mines being operated by the Borrower or a Subsidiary and included or purported to be included in the Collateral by the Security Documents, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.07 Maintenance of Insurance.

(a) Maintain with financially sound and reputable insurance companies which may be Affiliates of the Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance compatible with the following standards) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Subsidiary operates, except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) With respect to any Building located on Material Real Property and constituting Collateral, the Borrower shall and shall cause each appropriate Loan Party to (i) maintain fully paid flood hazard insurance on any such Building that is located in a special flood hazard area, on such terms and in such amounts as required by The National Flood Insurance Reform Act of 1994 and (ii) furnish to the Collateral Agent an insurance certificate evidencing the renewal (and payment of renewal premiums therefor) of all such policies prior to the expiration or lapse thereof (or at such other time acceptable to the Collateral Agent). The Borrower shall cooperate with the Collateral Agent's reasonable request for any information reasonably required by the Collateral Agent to comply with The National Flood Insurance Reform Act of 1994, as amended.

6.08 Compliance with Laws. Except as otherwise excused by the Bankruptcy Code, comply in all respects with the requirements of all Laws (including the PATRIOT Act, Sanctions Laws, the Anti-Corruption Laws and Environmental Laws) and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect (or, in the case of compliance with the PATRIOT Act, Sanctions Laws and the Anti-Corruption Laws, the failure to comply therewith is not material).

6.09 Books and Records. (a) Maintain proper books of record and account, in which in all material respects full, true and correct entries in conformity with GAAP shall be made of all material financial transactions and matters involving the assets and business of the Borrower or such Subsidiary, as the case may be; and (b) maintain such books of record and account in material conformity with all material requirements of any Governmental Authority having regulatory jurisdiction over the Borrower or such Subsidiary, as the case may be.

6.10 Inspection Rights. Permit representatives and independent contractors of the Administrative Agent and each Lender (provided that, subject to no Event of Default having occurred or be continuing, such Lender to be accompanied by the Administrative Agent) to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom (except to the extent (a) any such access is restricted by a Requirement of Law or (b) any such agreements, contracts or the like are subject to a written confidentiality agreement with a non-Affiliate that prohibits the Borrower or any of its Subsidiaries from granting such access to the Administrative Agent or the Lenders; provided that, with respect to such confidentiality restrictions affecting the Borrower or any of its Subsidiaries, a Responsible Officer is made available to the Administrative Agent and such Lender (provided that, subject to no Event of Default having occurred or be continuing, such Lender to be accompanied by the Administrative Agent) to discuss such confidential information to the extent permitted), and to discuss the business, finances and accounts with its officers and independent public accountants at such reasonable times during normal business hours and as often as may be reasonably desired, provided that the Administrative Agent or such Lender shall give the Borrower reasonable advance notice prior to any contact with such accountants and give the Borrower the opportunity to participate in such discussions, provided further that the costs of one such visit per calendar year (or an unlimited amount if an Event of Default has occurred and is continuing) for the Administrative Agent, the Lenders and their representatives as a group shall be the responsibility of the Borrower. In no event shall the Administrative Agent be required to bear any cost or expense hereunder.

6.11 Use of Proceeds. The proceeds of the Loans shall be used in accordance with the terms of the Cash Flow Forecast (subject to Permitted Variances), including to (i) pay for the fees, costs and expenses incurred in connection with the Transactions and the Chapter 11 Cases and (ii) to fund working capital of the Loan Parties (including, without limitation, payments of fees and expenses to professionals under Section 328 and 331 of the Bankruptcy Code and administrative expenses of the kind specified in Section 503(b) of the Bankruptcy Code incurred in the ordinary course of business of the Loan Parties or otherwise approved by the Bankruptcy Court (and not otherwise prohibited under this Agreement)).

6.12 Additional Guarantors. Within 10 days (or such longer period as the Administrative Agent may agree in its sole discretion) of a Person becoming a Subsidiary that is required to be a Guarantor by virtue of the definition of a Guarantor, the Borrower shall cause any such Subsidiary to become a Guarantor by executing and delivering to the Administrative Agent a counterpart of the Guaranty or such other documents as the Administrative Agent shall deem appropriate for such purpose.

6.13 [Reserved].

6.14 Preparation of Environmental Reports. If an Event of Default caused by reason of a breach under Sections 6.08 or 5.09 with respect to compliance with Environmental Laws shall have occurred and be continuing, at the reasonable request of the Required Lenders through the Administrative Agent, provide, in the case of the Borrower, to the Lenders within 60 days after such request, at the expense of the Borrower, an environmental or mining site assessment or audit report for the Properties which are the subject of such breach prepared by an environmental or mining consulting firm reasonably acceptable to the Required Lenders and indicating the presence or absence of Hazardous Materials and the estimated cost of any compliance or remedial action in connection with such Properties and the estimated cost of curing any violation or non-compliance of any Environmental Law.

6.15 Certain Long Term Liabilities and Environmental Reserves. To the extent required by GAAP, maintain adequate reserves for (a) future costs associated with any lung disease claim alleging pneumoconiosis or silicosis or arising out of exposure or alleged exposure to coal dust or the coal mining environment, (b) future costs associated with retiree and health care benefits, (c) future costs associated with reclamation of disturbed acreage, removal of facilities and other closing costs in connection with closing its mining operations and (d) future costs associated with other potential environmental liabilities.

6.16 Covenant to Give Security.

(a) Personal Property including IP of New Guarantors. Concurrently with any Subsidiary becoming a Guarantor pursuant to Section 6.12 (or a later date to which the Collateral Agent agrees), any property of such Subsidiary constituting Collateral shall automatically become subject to the Lien securing the Obligations pursuant to the Orders, and the Borrower shall, or cause such Subsidiary to, deliver any Security Document as the Collateral Agent

or the Required Lenders may request, including the delivery of stock certificates, if any, representing the Capital Stock of such Subsidiary accompanied by undated stock powers or instruments of transfer executed in blank.

(b) Real Property of New Guarantors.

(i) New Real Property Identification. With respect to any Subsidiary becoming a Guarantor pursuant to Section 6.12, concurrently with such Subsidiary becoming a Guarantor (or a later date to which the Collateral Agent agrees), furnish to the Collateral Agent a description of all Material Real Property fee owned or leased by such Subsidiary.

(ii) Real Property. With respect to any Subsidiary becoming a Guarantor pursuant to Section 6.12, any Real Property of such Subsidiary shall automatically become subject to the Lien securing the Obligations as provided in Section 2.19, and Section 2.19(b)(iii) shall apply to such Real Property. In addition to the foregoing, Borrower shall, at the reasonable request of the Collateral Agent or the Required Lenders, deliver to the Collateral Agent such appraisals as are required by law or regulation of Real Property with respect to which Collateral Agent has been granted a Lien, evidence of the filing of as-extracted UCC-1 financing statements in the appropriate jurisdiction, and such other instruments in connection therewith as the Collateral Agent or the Required Lenders shall reasonably require.

(iii) Consents Related to Leaseholds Concerning Material Real Property. With respect to any leasehold interest of any Subsidiary becoming a Guarantor pursuant to Section 6.12 that would constitute Material Real Property but for the need to obtain the consent of another Person (other than the Borrower or any Controlled Subsidiary) in order to grant a security interest therein, upon the request of Collateral Agent or the Required Lenders, the Borrower and its Subsidiaries shall use commercially reasonable efforts to obtain such consent for the 120 day period commencing after such entity becomes a Guarantor, provided that there shall be no requirement to pay any sums to the applicable lessor other than customary legal fees and administrative expenses (it is understood, for avoidance of doubt, that, without limiting the foregoing obligations of the Borrower set forth in this Section 6.16(b)(iii), any failure to grant a security interest in any such leasehold interest as a result of a failure to obtain a consent shall not be a Default hereunder, and, for avoidance of doubt, the Borrower and its Subsidiaries shall no longer be required to use commercially reasonable efforts to obtain any such consent after such above-mentioned time period to obtain a consent has elapsed).

(c) Personal Property (including IP) Acquired by Borrower or Guarantors. If requested by the Collateral Agent or the Required Lenders, the Borrower shall, or shall cause any Subsidiary, (i) to the extent that any Capital Stock in, or owned by, a Loan Party constitutes Collateral, promptly deliver stock certificates, if any, representing such Capital Stock accompanied by undated stock powers or instruments of transfer executed in blank to the Collateral Agent and/or execute and deliver to the Collateral Agent any Security Document as any Agent or the Required Lenders may request to pledge any such Capital Stock and (ii) to the extent that any intellectual property owned by a Loan Party constitutes Collateral, promptly deliver any Security Document or supplements thereto as may be requested by the Collateral Agent or the Required Lenders.

(d) Real Property Acquired by Borrower and Guarantors.

(i) New Real Property Identification. Within 10 days (or such longer period as the Collateral Agent may agree in its sole discretion) of any acquisition of a new Real Property by any Loan Party, such Loan Party shall notify the Collateral Agent of the acquisition of any such Real Property (fee owned or leased by such Loan Party.

(ii) Real Property. Any Real Property acquired by the Borrower or any Guarantor shall automatically become subject to the Lien as *provided* in Section 2.19, and Section 2.19(b)(iii) shall apply to such Real Property. In addition to the foregoing, Borrower shall, at the reasonable request of the Collateral Agent or the Required Lenders, deliver to the Collateral Agent such appraisals as are required by law or regulation of Real Property with respect to which Collateral Agent has been granted a Lien, evidence of the filing of as-extracted UCC-1 financing statements in the appropriate jurisdiction, and such other instruments in connection therewith as the Collateral Agent or the Required Lenders shall reasonably require.

(iii) Consents Related to Leaseholds Concerning Material Real Property. With respect to the acquisition of any leasehold interest by any Subsidiary that would constitute Material Real Property but for the need to obtain the consent of another Person (other than the Borrower or any Controlled Subsidiary) in order to grant a security interest therein, upon the request of Collateral Agent or the Required Lenders, the Borrower and its Subsidiaries shall use commercially reasonable efforts to obtain such consent for the 120 day period commencing on the date of the notification provided pursuant to Section 6.16(d)(i), provided that there shall be no requirement to pay any sums to the applicable lessor other than customary legal fees and administrative expenses (it is understood, for avoidance of doubt, that, without limiting the foregoing obligations of the Borrower set forth in this Section 6.16(d)(iii), any failure to grant a security interest in any such leasehold interest as a result of a failure to obtain a consent shall not be a Default hereunder, and, for avoidance of doubt, the Borrower and its Subsidiaries shall no longer be required to use commercially reasonable efforts to obtain any such consent after such above-mentioned time period to obtain a consent has elapsed).

(e) Further Assurances. Subject to any applicable limitation in any Security Document and subparagraph (f) below, upon request of the Collateral Agent or the Required Lenders, at the expense of the Borrower, promptly execute and deliver any and all further instruments and documents and take all such other action as the Collateral Agent or the Required Lenders may deem necessary or desirable in order to effect fully the purposes of the Orders and the Loan Documents, including the filing of financing statements necessary or advisable in the opinion of the Collateral Agent or the Required Lenders to perfect any security interests created under the Orders or any other Security Document.

(f) Collateral Principles. Notwithstanding anything to the contrary in any Loan Document, (i) no actions in any non-U.S. jurisdiction or required by the Requirement of Law of any non-U.S. jurisdiction shall be required in order to create any security interests in assets located or titled outside of the U.S. (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction), (ii) the Collateral Agent in its discretion may grant extensions of time for the creation or perfection of security interests in, and Mortgages on, or taking other actions with respect to, particular assets where it reasonably determines in consultation with the Borrower, that the creation or perfection of security interests and Mortgages on, or taking other actions, cannot be accomplished without undue delay, burden or expense by the time or times at which it would otherwise be required by this Agreement or the Security Documents, and (iii) any Liens required to be granted from time to time pursuant to Security Documents and this Agreement on assets of the Loan Parties to secure to the Obligations shall exclude the Excluded Assets.

6.17 [Reserved].

6.18 Post Closing Covenants. Cause to be delivered or performed the documents and other agreements and actions set forth on Schedule 6.18 within the time frame specified on such Schedule 6.18.

6.19 ERISA. Except, in each case, to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect, comply with the provisions of ERISA, the Code, and other Laws applicable to the Plans.

6.20 Lender Calls. Borrower will participate in a telephonic conference call with (x) the Administrative Agent and the Lenders once during each two-week period at such time as may be agreed to by Borrower and Administrative Agent and (y) the Financial Advisor once during each week at such time as may be agreed to by Borrower and Financial Advisor, in each case, to discuss cash flows and operations of the Borrower and its Subsidiaries; it being understood and agreed that the calls in clauses (x) and (y) shall be conducted separately.

6.21 First and Second Day Orders. The Borrower shall cause all proposed "first day" orders, "second day" orders and all other orders establishing procedures for administration of the Chapter 11 Cases or approving significant or outside the ordinary course of business transactions submitted to the Bankruptcy Court to be in accordance with and permitted by the terms of this Agreement and acceptable to the Required Lenders in all material respects, it being understood and agreed that the forms of orders approved by the Required Lenders prior to the Petition Date are in accordance with and permitted by the terms of this Agreement in all respects and are acceptable**.**

6.22 Milestones. Comply with the following milestones (unless extended or waived by the Required Lenders):

(a) no later than thirty-five (35) calendar days after the Petition Date, (i) the Bankruptcy Court shall have entered the Final Order, and (ii) the Loan Parties shall have filed the Reorganization Plan and the Disclosure Statement (which shall include the Valuation Analysis (as defined in the Restructuring Support Agreement), which shall be acceptable to the Required Lenders in their sole and absolute discretion) with the Bankruptcy Court;

(b) no later than fifty (50) calendar days after the Petition Date, the Loan Parties shall have entered into each of Renegotiated Contracts/Leases (as defined in the Restructuring Support Agreement), in form and substance acceptable to the Loan Parties and the Required First Lien Lenders (as defined in the Restructuring Support Agreement);

(c) no later than seventy (70) calendar days after the Petition Date, the Bankruptcy Court shall have entered an order approving the Disclosure Statement in form and substance reasonably acceptable to the Loan Parties and the Required First Lien Lenders (as defined in the Restructuring Support Agreement) and, solely with respect to the economic treatment provided on account of the Second Lien Claims (as defined in the Restructuring Support Agreement), reasonably acceptable to the Required Second Lien Lenders (as defined in the Restructuring Support Agreement);

(d) no later than one hundred fifteen (115) calendar days after the Petition Date, the Bankruptcy Court shall have entered the Confirmation Order (as defined in the Restructuring Support Agreement) in form and substance acceptable to the Loan Parties and the Required First Lien Lenders (as defined in the Restructuring Support Agreement) and, solely with respect to the economic treatment provided on account of the Second Lien Claims (as defined in the Restructuring Support Agreement), reasonably acceptable to the Required Second Lien Lenders (as defined in the Restructuring Support Agreement); and

(e) no later than one hundred thirty (130) calendar days after the Petition Date, the Plan Effective Date shall have occurred.

6.23 Bankruptcy Notices. The Borrower will furnish to the Financial Advisor, the Administrative Agent, and Akin Gump Strauss Hauer & Feld LLP and Milbank LLP, as counsel to the Backstop Lenders:

(a) copies of any informational packages provided to potential bidders, draft agency agreements, purchase agreements, status reports, and updated information related to the sale or any other transaction and copies of any such bids and any updates, modifications or supplements to such information and materials; and

(b) use commercially reasonable efforts to provide draft copies of all definitive documents and any other material motions or applications or other material documents to be filed in the Chapter 11 Cases to counsel to the Consenting Stakeholders, if reasonably practicable at least two (2) Business Days in advance of when the Loan Parties intend to file such documents, and, without limiting any approval rights set forth in this Agreement or the Restructuring Support Agreement, consult in good faith with counsel to the Consenting Stakeholders regarding the form and substance of any such proposed filing.

6.24 Bankruptcy Related Matters. The Borrower will and will cause each of the other Loan Parties to:

(a) cause all proposed (i) "first day" orders, (ii) "second day" orders, (iii) orders related to or affecting the Loans and other Obligations, the Prepetition Debt and the Loan Documents, any other financing or use of cash collateral, any sale or other disposition of Collateral outside the ordinary course, cash management, adequate protection, any plan of reorganization and/or any disclosure statement related thereto, (iv) orders concerning the financial condition of the Borrower or any of its Subsidiaries or other Indebtedness of the Loan Parties or seeking relief under section 363,364 or 365 of the Bankruptcy Code or rule 9019 of the Federal Rules of Bankruptcy Procedure, (v) orders authorizing additional payments to critical vendors (outside of the relief approved in the "first day" and "second day" orders) and (vi) orders establishing procedures for administration of the Chapter 11 Cases or approving significant transactions submitted to the Bankruptcy Court, in each case, proposed by the Debtors to be in accordance

with and permitted by the terms of this Agreement and acceptable to the Required Lenders (and (i) with respect to any provision that affects the rights or duties of any Agent, such Agent and (ii) with respect to any orders described in clause (v) above, acceptable to the Required Lenders in their reasonable discretion) in all respects, it being understood and agreed that the forms of orders approved by the Required Lenders (and with respect to any provision that affects the rights or duties of any Agent, such Agent) prior to the Petition Date are in accordance with and permitted by the terms of this Agreement and are acceptable in all respects;

(b) comply in all material respects with each order entered by the Bankruptcy Court in connection with the Chapter 11 Cases; and

(c) comply in a timely manner with their obligations and responsibilities as debtors in possession under the Bankruptcy Code, the Bankruptcy Rules, the Interim Order and the Final Order, as applicable, and any other order of the Bankruptcy Court.

6.25 Chief Executive Officer. At all times following the Closing Date, the Borrower shall cause Robert D. Moore to hold the position of chief executive officer of the Borrower.

ARTICLE VII
NEGATIVE COVENANTS

Until Payment in Full, the Borrower shall not, nor shall it permit any Subsidiary to, directly or indirectly:

7.01 Liens. Create, incur, assume or permit to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) (i) Liens in favor of the Collateral Agent for the benefit of the Secured Parties granted pursuant to any Loan Document and (ii) Liens securing obligations in respect of Huntington Cash Management Obligations;

(b) (i) Liens existing on the Petition Date and set forth on Schedule 7.01 and (ii) any Lien in favor of non-affiliated third party existing on the Petition Date that is not set forth on Schedule 7.01 to the extent (x) the amount of obligations secured by such Liens do not exceed $2,000,000 individually or $5,000,000 in the aggregate, and (y) a revised Schedule 7.01 including such Lien is delivered to the Administrative Agent for distribution to the Lenders;

(c) Liens for Taxes or for pre-petition utilities, assessments or governmental charges or levies on the property of the Borrower or any Subsidiary if the same shall not at the time be delinquent as of the Petition Date and can be paid without penalty, or are being contested in good faith and by appropriate proceedings, provided that any reserve or appropriate provision that shall be required in conformity with GAAP shall have been made therefor;

(d) Liens imposed by law, such as landlord's, carriers', warehousemen's, materialmen's, construction and repairmen's, vendors' and mechanics' Liens and other similar Liens, with respect to amounts which are not yet overdue for a period of more than 60 days or are being contested in good faith and by appropriate proceedings;

(e) [reserved];

(f) (i) Liens incurred, or pledges or deposits under or to secure the performance of bids, trade contracts and leases (other than Indebtedness), reclamation bonds, return of money bonds, insurance bonds, Mining Financial Assurances, statutory obligations or bonds, government contracts, health or social security benefits, unemployment or other insurance obligations, workers' compensation claims, water treatment obligations, insurance obligations, reclamation obligations, obligations under Mining Laws or similar legislation, stay bonds, utility bonds, surety and appeal bonds (including surety bonds obtained as required in connection with federal coal leases), performance bonds, bid bonds, performance guarantees (including, without limitation, performance guarantees pursuant to coal supply agreements or equipment leases), bankers acceptances, completion guarantees, bank guarantees and letters of credit, customs duties and other obligations, including self-bonding arrangements, of a like nature incurred in the ordinary course of business, or (ii) Liens on assets to secure obligations under surety bonds obtained as required in connection

with entering into of federal coal leases; provided that no more than $7,500,000 of cash may be posted following the Petition Date under this Section 7.01(f)

(g) survey exceptions, easements, rights-of-way, zoning restrictions, leases, subleases, licenses, other restrictions and other similar encumbrances which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person, Liens set forth as exceptions to the Borrower's or any Subsidiary's title insurance policies and Liens as set forth as exceptions to the title opinions delivered;

(h) Liens granted to provide adequate protection pursuant to the Interim Order or the Final Order;

(i) Liens (including the interest of a lessor under a Capital Lease) on property and improvements that secure Indebtedness incurred pursuant to Section 7.03(j) for the purpose of financing all or any part of the purchase price or cost of construction or improvement of such property; provided that the Lien does not (i) extend to any additional property and (ii) secure any additional obligations, in each case other than the initial property so subject to such Lien and the Indebtedness and other obligations originally so secured (other than improvements on and accessions to such property, proceeds and products thereof, customary security deposits and any other assets pursuant to after-acquired property clauses in effect with respect to such Lien at the time of acquisition on property of the type that would have been subject to such Lien notwithstanding the occurrence of such acquisition);

(j) [reserved];

(k) [reserved];

(l) Liens as a result of the filing of UCC financing statements as precautionary measure in connection with leases, operating leases or consignment arrangements;

(m) [reserved];

(n) [reserved];

(o) [reserved];

(p) Liens in favor of collecting or payor banks having a right of setoff, revocation, refund or chargeback with respect to money or instruments of the Borrower or any Subsidiary on deposit with or in possession of such bank;

(q) [reserved];

(r) [reserved];

(s) customary Liens in favor of trustees, paying agents and escrow agents, and netting and setoff rights, bankers' liens and the like in favor of financial institutions and counterparties to financial obligations and instruments, including Hedging Agreements;

(t) [reserved];

(u) Permitted Real Estate Encumbrances;

(v) [reserved];

(w) [reserved];

(x) Coal Liens;

(y) [reserved];

(z) Liens on insurance policies and proceeds thereof, or other deposits, to secure insurance premium financings;

(aa) (x) Production Payments, royalties, dedication of reserves under supply agreements or similar or related rights or interests granted, taken subject to, or otherwise imposed on properties or (y) cross charges, Liens or security arrangements entered into in respect of a Joint Venture for the benefit of a participant, manager or operator of such Joint Venture, in each case, consistent with normal practices in the mining industry;

(bb) other Liens securing Indebtedness or obligations in an aggregate principal amount at any time outstanding not to exceed $500,000;

(cc) [reserved];

(dd) [reserved];

(ee) Liens in the ordinary course of business securing obligations in respect of trade-related letters of credit permitted under Section 7.03(p) covering only the goods (or the documents of title in respect of such goods) financed by such letters of credit and the proceeds and products thereof;

(ff) Liens incurred or assumed in connection with the issuance of revenue bonds the interest on which is tax-exempt under the Code;

(gg) Liens in the ordinary course of business on specific items of inventory, equipment or other goods and proceeds of any Person securing such Person's obligations in respect thereof or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(hh) deposits made in the ordinary course of business to secure reclamation liabilities, insurance liabilities and/or surety liabilities;

(ii) (x) surface use agreements, easements, zoning restrictions, rights of way, encroachments, pipelines, leases (other than Capital Lease Obligations), subleases, rights of use, licenses, special assessments, trackage rights, transmission and transportation lines related to Mining Leases or mineral rights or constructed coal mine assets or other Real Property including re-conveyance obligations to a surface owner following mining, royalty payments and other obligations under surface owner purchase or leasehold arrangements necessary to obtain surface disturbance rights to access the subsurface coal deposits and similar encumbrances on Real Property imposed by law or arising in the ordinary course of business that do not secure any monetary obligation and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Subsidiary and (y) Liens on the property of the Borrower or any Subsidiary, as tenant under a lease or sublease entered into in the ordinary course of business by such Person, in favor of the landlord under such lease or sublease, securing the tenant's performance under such lease or sublease, as such Liens are provided to the landlord under applicable law and not waived by the landlord; and

(jj) Liens on deposits made to cash collateralize obligations in respect of letters of credit existing on the Closing Date.

For purposes of determining compliance with this Section 7.01, (A) a Lien securing an item of Indebtedness need not be permitted solely by reference to one category of permitted Liens (or any portion thereof) described in Sections 7.01(a) through (jj) but may be permitted in part under any combination thereof and (B) in the event that a Lien securing an item of Indebtedness (or any portion thereof) meets the criteria of one or more of the categories of permitted Liens (or any portion thereof) described in Sections 7.01(a) through (jj), the Borrower may, in its sole discretion, classify or reclassify, or later divide, classify or reclassify (as if incurred at such later time), such Lien securing such item of Indebtedness (or any portion thereof) in any manner that complies with this Section 7.01 and at the time of incurrence, classification or reclassification will be entitled to only include the amount and type of such Lien or such item of Indebtedness secured by such Lien (or any portion thereof) in one of the above clauses (or any portion thereof). In addition, with respect to any Lien securing Indebtedness that was permitted to secure such

Indebtedness at the time of the incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness.

7.02 Investments. Make any Investments, except:

(a) Investments held by the Borrower or any Subsidiary in cash or Cash Equivalents;

(b) to the extent made in accordance with the Cash Flow Forecast (subject to Permitted Variance), loans or advances, payroll, travel and other loans or advances to current or former officers, directors, employees, managers, directors or consultants of the Borrower or Holdings in an aggregate amount not to exceed $100,000 at any time outstanding, made in the ordinary course of business;

(c) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(d) Investments (including debt obligations and Capital Stock) received in satisfaction of judgments or in connection with the bankruptcy or reorganization of suppliers and customers of the Borrower and its Subsidiaries and in settlement of delinquent obligations of, and other disputes with, such customers and suppliers arising in the ordinary course of business;

(e) to the extent made in accordance with the Cash Flow Forecast (subject to Permitted Variance), Investments in the nature of Production Payments, royalties, dedication of reserves under supply agreements or similar or related rights or interests granted, taken subject to, or otherwise imposed on properties;

(f) to the extent made in accordance with the Cash Flow Forecast (subject to Permitted Variance), (i) Investments in existence on the Petition Date or made pursuant to a legally binding written commitment in existence on the Petition Date and listed on Schedule 7.02, and (ii) any Investment existing on the Petition Date that is not set forth on Schedule 7.02 to the extent (x) the amount of such Investment does not exceed $2,000,000 individually or $5,000,000 in the aggregate, and (y) a revised Schedule 7.02 including such Investment is delivered to the Administrative Agent for distribution to the Lenders; provided that the amount of any such Investment set forth in Schedule 7.02 may be increased (x) as required by the terms of such Investment as in existence on the date hereof or (y) as otherwise permitted hereunder;

(g) Investments received in compromise or resolution of (A) obligations of trade creditors or customers that were incurred in the ordinary course of business of the Borrower and its Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer, (B) litigation, arbitration or other disputes or (C) the foreclosure with respect to any secured investment or other transfer of title with respect to any secured investment;

(h) [reserved];

(i) Hedging Agreements or Cash Management Obligations permitted under this Agreement;

(j) to the extent made in accordance with the Cash Flow Forecast (subject to Permitted Variance), Investments acquired solely in exchange for management services provided by the Borrower or a Subsidiary;

(k) to the extent made in accordance with the Cash Flow Forecast (subject to Permitted Variance), Investments by the Borrower or any Subsidiary in any Debtor, and Investments by any Debtor in the Borrower;

(l) to the extent constituting Investments, Designated Coal Contracts (it being understood and agreed that purchases and sales, payment of any fees, expenses and indemnities and all other disbursements made by the Debtors pursuant to any Coal Contracts (including, without limitation, any Designated Coal Contracts) shall be made in accordance with the Cash Flow Forecast (subject to Permitted Variance);

(m) to the extent made in accordance with the Cash Flow Forecast (subject to Permitted Variance), additional Investments by the Borrower or any Debtor in an aggregate amount not to exceed $1,000,000, but without duplication, the cash return thereon received after the date hereof as a result of any sale for cash, repayment, return, redemption, liquidating distribution or other cash realization not to exceed the amount of such Investments in such Person made after the date hereof in reliance on this Section 7.02(m) shall be deducted in determining the amount of Investments outstanding pursuant to this Section 7.02(m);

(n) [reserved];

(o) [reserved];

(p) (i) receivables owing to the Borrower or any Subsidiary if created or acquired in the ordinary course of business, (ii) endorsements for collection or deposit in the ordinary course of business and (iii) securities, instruments or other obligations received in compromise or settlement of debts created in the ordinary course of business, or by reason of a composition or readjustment of debts or reorganization of another Person, or in satisfaction of claims or judgments;

(q) Investments made pursuant to surety bonds, reclamation bonds, performance bonds, bid bonds, appeal bonds and related letters of credit or similar obligations, in each case, to the extent such surety bonds, reclamation bonds, performance bonds, bid bonds, substituting appeal bonds, related letters of credit and similar obligations are permitted under this Agreement;

(r) to the extent made in accordance with the Cash Flow Forecast (subject to Permitted Variance), Investments consisting of indemnification obligations in respect of performance bonds, bid bonds, appeal bonds, surety bonds, reclamation bonds and completion guarantees and similar obligations in respect of coal sales contracts (and extensions or renewals thereof on similar terms), under any Mining Law, Environmental Law or other applicable law or with respect to workers' compensation benefits, unemployment insurance and other social security laws or regulations or similar legislation, or to secure liabilities to insurance carriers under insurance arrangements in respect of such obligations, or good faith deposits, prepayments or cash payments in connection with bids, tenders, contracts or leases or to secure public or statutory obligations, customs duties and the like, or for payment of rent, in each case entered into in the ordinary course of business, and pledges or deposits made in the ordinary course of business in support of obligations under coal sales contracts (and extensions or renewals thereof on similar terms) or any other Indebtedness, or Liens securing Indebtedness, of the type referred to in Section 7.03(p);

(s) [reserved];

(t) [reserved];

(u) to the extent substituting an Investment, purchases and acquisitions, in the ordinary course of business, of inventory, supplies, material or equipment;

(v) Investments resulting from liens, pledges and deposits permitted under Section 7.01;

(w) [reserved]; and

(x) to the extent made in accordance with the Cash Flow Forecast (subject to Permitted Variance), any Permitted Payments to Parent, to the extent constituting an Investment.

7.03 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness except:

(a) Indebtedness arising under the Loan Documents;

(b) (i) Indebtedness outstanding on the Petition Date and listed on Schedule 7.03, and (ii) any Indebtedness outstanding on the Petition Date that is not set forth on Schedule 7.03 to the extent (x) the aggregate principal amount of such Indebtedness does not exceed $2,000,000 individually or $5,000,000 in the aggregate, and

(y) a revised Schedule 7.03 including such Indebtedness is delivered to the Administrative Agent for distribution to the Lenders;

(c) [reserved];

(d) (i) Indebtedness of the Borrower or any Subsidiary consisting of Guarantees of Indebtedness of any Subsidiary otherwise permitted under this Section 7.03 and (ii) Indebtedness of any Subsidiary consisting of Guarantees of Indebtedness of the Borrower otherwise permitted under this Section 7.03; provided that (i) if the Indebtedness being guaranteed is subordinated to or pari passu with the Obligations, then the guarantee must be subordinated or pari passu, as applicable, to the same extent as the Indebtedness guaranteed and (ii) if incurred by the Borrower or a Subsidiary, such guarantee shall be permitted as an Investment pursuant to Section 7.02;

(e) Indebtedness in respect of (i) Cash Management Obligations incurred in the ordinary course of business and consistent with past practice and (ii) Hedging Agreements that are not speculative in nature and incurred in the ordinary course of business and consistent with past practice, in each case of the Borrower or any Subsidiary;

(f) Indebtedness of the Borrower and any Debtor owed to any other Debtor and of any Debtor owed to the Borrower;

(g) [reserved];

(h) [reserved];

(i) [reserved];

(j) to the extent incurred in accordance with the Cash Flow Forecast (subject to Permitted Variance), Indebtedness of the Borrower or any Subsidiary incurred to finance all or any part of the acquisition, construction, development or improvement of any property or assets, including purchase money obligations, Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets before the acquisition thereof, provided that the aggregate principal amount of any Indebtedness Incurred pursuant to this Section 7.03(j) and outstanding at the time of Incurrence, may not exceed $1,000,000;

(k) [reserved];

(l) [reserved];

(m) [reserved];

(n) [reserved];

(o) additional Indebtedness of the Loan Parties in an aggregate principal amount outstanding at the time of Incurrence, not to exceed $500,000;

(p) Indebtedness of the Borrower or any Subsidiary in connection with one or more standby or trade-related letters of credit, performance bonds, bid bonds, stay bonds, appeal bonds, bankers acceptances, Mining Financial Assurances, statutory obligations or bonds, health or social security benefits, unemployment or other insurance obligations, workers' compensation claims, water treatment obligations, insurance obligations, reclamation obligations, bank guarantees, surety bonds, utility bonds, performance guarantees (including, without limitation, performance guarantees pursuant to coal supply agreements or equipment leases) completion guarantees or other similar bonds and obligations, including self-bonding arrangements, issued by or on behalf of the Borrower or a Subsidiary, in each case, in the ordinary course of business or pursuant to self- insurance obligations and not in connection with the borrowing of money or the obtaining of advances;

(q) [reserved];

(r) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; and

(s) Indebtedness of the Borrower or any Subsidiary consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply or other arrangements.

For purposes of determining compliance with this Section 7.03 or Section 7.01, the amount of any Indebtedness denominated in any currency other than Dollars shall be calculated based on customary currency exchange rates in effect, in the case of such Indebtedness incurred (in respect of term Indebtedness) or committed (in respect of revolving Indebtedness) on or prior to the Closing Date, on the Closing Date and, in the case of such Indebtedness incurred (in respect of term Indebtedness) or committed (in respect of revolving Indebtedness) after the Closing Date, on the date on which such Indebtedness was incurred (in respect of term Indebtedness) or committed (in respect of revolving Indebtedness); provided, that if such Indebtedness is incurred to refinance other Indebtedness denominated in a currency other than Dollars (or in a different currency from the Indebtedness being refinanced), and such refinancing would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed (i) the outstanding or committed principal amount, as applicable, of such Indebtedness being refinanced plus (ii) the aggregate amount of fees, underwriting discounts, premiums (including tender premiums), accrued interest, defeasance costs and other costs and expenses incurred in connection with such refinancing.

Further, for purposes of determining compliance with this Section 7.03, in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the categories set forth in Sections 7.03 (a) through (s), the Borrower will be permitted to divide and classify such item of Indebtedness (or any portion thereof) on the date of its Incurrence, or later re-divide and reclassify all or a portion of such item of Indebtedness in any manner that complies with this Section 7.03.

In addition, with respect to any Indebtedness that was permitted to be incurred hereunder on the date of such incurrence, any Increased Amount of such Indebtedness shall also be permitted hereunder after the date of such incurrence. "Increased Amount" of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness, the accretion of original issue discount, or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies.

This Agreement will not treat (1) unsecured Indebtedness as subordinated or junior to secured Indebtedness merely because it is unsecured and (2) senior Indebtedness as subordinated Indebtedness or junior to any other senior Indebtedness merely because it has junior priority with respect to the same collateral.

7.04 Fundamental Changes. Subject to Section 10.21, merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of related transactions) all or substantially all of the assets (whether now owned or hereafter acquired) of the Borrower and its Subsidiaries, taken as a whole, to or in favor of any Person, except if no Default exists or would immediately result therefrom:

(a) any Subsidiary may merge or consolidate with (i) the Borrower, provided that the Borrower shall be the continuing or surviving Person or (ii) any one or more other Subsidiaries, provided that (A) when any Wholly Owned Subsidiary is merging with another Subsidiary, a Wholly Owned Subsidiary shall be the continuing or surviving Person, (B) when any Subsidiary is merging with any other Subsidiary, the continuing or surviving Person shall be a Subsidiary, (C) when any Foreign Subsidiary is merging with any Domestic Subsidiary, the continuing or surviving Person shall be the Domestic Subsidiary and (D) when any Guarantor is merging with any other Subsidiary, the continuing or surviving Person shall be a Guarantor;

(b) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation, dissolution or otherwise) to the Borrower or to another Subsidiary; provided that (i) if the transferor in such a transaction is a Subsidiary, then the transferee must either be the Borrower or another Subsidiary, (ii) if the transferor

is a Domestic Subsidiary, then the transferee must either be the Borrower or another Domestic Subsidiary and (iii) if the transferor is a Guarantor, then the transferee must either be the Borrower or another Guarantor;

(c) the Borrower may Dispose of all or a portion of the Equity Interests of any of its Subsidiaries to a Guarantor (other than Holdings or General Partner);

(d) the Borrower and any Subsidiary may merge or consolidate with any other Person in a transaction in which the Borrower or the Subsidiary, as applicable, is the surviving or continuing Person; provided that, the Borrower may not merge or consolidate with any Subsidiary unless the Borrower is the surviving or continuing Person; and

(e) any Subsidiary may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and the assets, if any, of any Subsidiary so liquidated or dissolved are transferred (x) to another Subsidiary or the Borrower and (y) to a Guarantor or the Borrower if such liquidated or dissolved Subsidiary is a Guarantor.

7.05 Dispositions. Make any Disposition (other than Dispositions permitted pursuant to Sections 7.01, 7.02, 7.04 and 7.06), except:

(a) (i) the sale or Disposition of damaged, obsolete, unusable or worn out equipment or equipment that is no longer needed in the conduct of the business of the Borrower and its Subsidiaries, (ii) sales or Dispositions of inventory, used or surplus equipment or reserves and Dispositions related to the burn-off of mines or (iii) the abandonment or allowance to lapse or expire or other disposition of intellectual property by the Borrower and its Subsidiaries in the ordinary course of business;

(b) sales, transfers or other dispositions of assets with respect to any Debtor pursuant to any order of the Bankruptcy Court, in form and substance reasonably satisfactory to the Required Lenders, permitting a de minimis asset disposition without further order of the Bankruptcy Court, so long as the proceeds thereof are applied in accordance with Section 2.05, if applicable;

(c) to the extent Investments made pursuant to the Designated Coal Contract under Section 7.02(l) involve sales of coal, such sales of coal made pursuant to the terms and conditions set forth under such Designated Coal Contracts and, in the case of the Debtors, in accordance with the Cash Flow Forecast (subject to Permitted Variance);

(d) Dispositions of cash and Cash Equivalents;

(e) [reserved];

(f) (A) the sale of defaulted receivables in the ordinary course of business and (B) Dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceeding;

(g) any transfer of property or assets that consists of grants by the Borrower or its Subsidiaries in the ordinary course of business of licenses or sub-licenses, including with respect to intellectual property rights;

(h) [reserved];

(i) (A) the grant in the ordinary course of business of any non-exclusive easements, permits, licenses, rights of way, surface leases or other surface rights or interests and (B) any lease, sublease or license of assets (with a Loan Party as the lessor, sublessor or licensor) in the ordinary course of business;

(j) Dispositions of assets resulting from condemnation or casualty events;

(k) [reserved];

(l) [reserved];

(m) [reserved];

(n) [reserved];

(o) (i) any surrender or waiver of contractual rights or the settlement, release, or surrender of contractual, tort or other claims of any kind or (ii) any settlement, discount, write off, forgiveness, or cancellation of any Indebtedness owing by any present or former directors, officers, or employees of the Borrower or` any Subsidiary or any of their successors or assigns;

(p) the unwinding or termination of any Hedging Agreements;

(q) [reserved];

(r) [reserved];

(s) [reserved];

(t) exchanges or relocations of easements for pipelines, oil and gas infrastructure and similar arrangements in the ordinary course of business; and

(u) Dispositions of assets acquired in connection with an acquisition by the Borrower or any Subsidiary that are Disposed of for fair market value (as reasonably determined by the Borrower in good faith) within 90 days of such acquisition.

7.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, or issue or sell any Equity Interests or accept any capital contributions, except that:

(a) dividends or distributions by a Subsidiary payable, on a pro rata basis or on a basis more favorable to the Borrower or a Subsidiary, to all holders of any class of Equity Interests of such Subsidiary a majority of which is held, directly or indirectly through Subsidiaries, by the Borrower;

(b) the Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other Equity Interests of such Person or another Subsidiary;

(c) to the extent made in accordance with the Cash Flow Forecast (subject to Permitted Variance), Permitted Payments to Parent;

(d) to the extent made in accordance with the Cash Flow Forecast (subject to Permitted Variance), so long as no Event of Default shall have occurred and is continuing or would result therefrom, Restricted Payments made pursuant to this Section 7.06(d) in an amount not to exceed $100,000 in the aggregate; and

(e) to the extent made in accordance with the Cash Flow Forecast (subject to Permitted Variance), Restricted Payments made to Holdings (or any Parent) to enable Holdings (or any Parent) to pay (i) operating costs and expenses and other administrative fees and costs, in each case, to the extent expressly required to be paid pursuant to the Management Services Agreement, and (ii) after the entry of an order by the Bankruptcy Court (which order shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed in any respect without the prior written consent of the Required Lenders), authorizing the Debtors' entry into, or an assumption of, an amendment to the Management Services Agreement, in form and substance satisfactory to the Required Lenders, (x) management fees, to the extent expressly required to be paid pursuant to such amended terms of the Management Services Agreement, and (y) minimum royalty payments to Murray Energy Group on account of any Debtor's coal mine leases with Colt LLC.

7.07 Change in Nature of Business. Engage in any business other than a Similar Business.

7.08 Transactions with Affiliates. Enter into, renew or extend any transaction or arrangement, including the purchase, sale, lease or exchange of property or assets or the rendering of any service, with any Affiliate of the Borrower or any Subsidiary. Notwithstanding the foregoing, the foregoing restrictions shall not apply to the following:

(A) transactions between or among the Borrower and any of its Subsidiaries or a Person that becomes a Subsidiary;

(B) to the extent made in accordance with the Cash Flow Forecast (subject to Permitted Variance), the payment of reasonable and customary (as determined in good faith by the Borrower) regular fees, compensation, indemnification and other benefits to current, former and future directors of the Borrower, a Subsidiary, or Holdings, who are not employees of the Borrower, such Subsidiary or Holdings, including reimbursement or advancement of reasonable and documented out-of-pocket expenses and provisions of liability insurance;

(C) to the extent made in accordance with the Cash Flow Forecast (subject to Permitted Variance), loans or advances to officers, directors or employees of the Borrower or Holdings in the ordinary course of business of the Borrower or its Subsidiaries or Holdings or Guarantees in respect thereof or otherwise made on their behalf (including payment on such Guarantees) but only to the extent permitted by applicable law and Section 7.02(b);

(D) to the extent made in accordance with the Cash Flow Forecast (subject to Permitted Variance), transactions arising under any contract, agreement, instrument or other arrangement in effect on the Closing Date and set forth on Schedule 7.08;

(E) to the extent made in accordance with the Cash Flow Forecast (subject to Permitted Variance), intercompany Investments permitted by Section 7.02 and Restricted Payments permitted by Section 7.06;

(F) to the extent made in accordance with the Cash Flow Forecast (subject to Permitted Variance), after the entry of an order by the Bankruptcy Court (which order shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed in any respect without the prior written consent of the Required Lenders), authorizing the Debtors' entry into, or an assumption of, an amendment to the Management Services Agreement, in form and substance satisfactory to the Required Lenders, minimum royalty payments to Murray Energy Group on account of any Debtor's coal mine leases with Colt LLC;

(G) the Management Services Agreement (and transactions arising pursuant to the terms thereof) as in effect on the Closing Date; provided that any payment or distribution by any Debtor to any of its Affiliates pursuant to the Management Services Agreement shall only be made pursuant to Section 7.06(d);

(H) to the extent made in accordance with the Cash Flow Forecast (subject to Permitted Variance), any agreements entered into in connection with the Transactions; and

(I) Designated Coal Contracts.

7.09 Permitted Activities of General Partner and Holdings. (a) General Partner and Holdings shall not incur or permit to exist any Lien other than (i) Liens created under the Loan Documents and (ii) Liens not prohibited by Section 7.01 on any of the Equity Interests issued by the Borrower held by General Partner or Holdings and (b) General Partner and Holdings shall do or cause to be done all thing necessary to preserve, renew and keep in full force and effect its legal existence; provided, that so long as no Default has occurred and is continuing or would result therefrom, Holdings may merge with any other Person (and if it is not the survivor of such merger, the survivor shall assume Holdings' obligations, as applicable, under the Loan Documents).

7.10 Use of Proceeds. Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of any regulation of the FRB, including Regulations T, U and X.

7.11 [Reserved].

7.12 Burdensome Agreements. Enter into any Contractual Obligation (other than any Loan Document) that (x) limits the ability of the Borrower or any Guarantor to create, incur, assume or suffer to exist any Lien upon any of its property to secure the Obligations hereunder or (y) limits the ability of any Subsidiary to make Restricted Payments to the Borrower or any Guarantor or to otherwise transfer property to the Borrower or any Guarantor; provided, however, that the foregoing clause shall not apply to Contractual Obligations which:

(a) exist as of the Petition Date and are set forth on Schedule 7.12;

(b) are binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary of the Borrower, so long as such Contractual Obligations were not entered into solely in contemplation of such Person becoming a Subsidiary of the Borrower;

(c) customary restrictions and conditions contained in the document relating to any Lien, so long as (i) such Lien is permitted by Section 7.01 and such restrictions or conditions relate only to the specific asset subject to such Lien and (ii) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 7.12;

(d) [reserved];

(e) restrictions imposed by applicable law;

(f) any restriction on a Subsidiary imposed pursuant to an agreement entered into for the sale or Disposition of the Equity Interests or assets of a Subsidiary pending the closing of such sale or Disposition to the extent relating to the Equity Interests or assets that are then subject to such sale or Disposition;

(g) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures or the Equity Interests therein;

(h) are customary restrictions contained in leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the assets subject thereto;

(i) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Subsidiary;

(j) are customary limitations (including financial maintenance covenants) existing under or by reason of leases entered into in the ordinary course of business;

(k) are restrictions on cash or other deposits imposed under contracts entered into in the ordinary course of business;

(l) are customary provisions restricting assignment of any agreements;

(m) [reserved];

(n) any restrictions imposed by any agreement relating to secured Indebtedness permitted by Section 7.03 of this Agreement to the extent that such restrictions apply only to the property or assets securing such Indebtedness;

(o) [reserved];

(p) customary net worth provisions contained in Real Property leases entered into by Subsidiaries, so long as the Borrower has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of the Borrower and its Subsidiaries to meet their ongoing obligations; or

(q) are set forth in any agreement evidencing an amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing of the Contractual Obligations referred to in Sections 7.12(a) through 7.12(p) above; provided, that such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing is, in the good faith judgment of the Borrower, not materially less favorable to the Loan Party with respect to such limitations than those applicable pursuant to such Contractual Obligations prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing (it being understood that the introduction of any such limitation in a Contractual Obligation that did not previously contain any such limitation shall be deemed to be adverse in a material respect to the interest of the Lenders unless otherwise of the type permitted by this Section 7.12).

7.13 [Reserved].

7.14 Maximum Capital Expenditure. Make or incur Capital Expenditures, in any period indicated below in an aggregate amount for Borrower and its Subsidiaries in excess of the amount set forth below opposite such period:

Period	Maximum Capital Expenditures
Petition Date through March 31, 2020	$16,200,000
Petition Date through April 30, 2020	$19,410,000
Petition Date through May 31, 2020	$20,540,000
Petition Date through June 30, 2020	$27,490,000
Petition Date through July 31, 2020	$28,500,000

7.15 Fiscal Year. Change its fiscal year-end from December 31.

7.16 Sale and Lease-Backs. Other than in respect of Sale and Lease-Backs in existence on the Closing Date, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which the Borrower or such Subsidiary (a) has sold or transferred to any other Person (other than the Borrower or any of its Subsidiaries) and (b) thereafter rents or leases such property that it intends to use for substantially the same purpose as the property which has been sold or transferred (collectively, the "Sale and Lease- Backs").

7.17 Amendments or Waivers of Organizational Documents. Amend, restate, supplement, modify or waive any provision of any of its Organizational Documents after the Closing Date, in each case, to the extent the same, taken as a whole, would be material and adverse to any Secured Party (in the good faith determination of the Borrower).

7.18 Budget Variance. (a) As of the last day of each applicable Two-Week Test Period commencing with the last day of the first Two-Week Test Period ending after the Closing Date, for such Two-Week Test Period (i) the negative variance (as compared to the Cash Flow Forecast) of the actual aggregate operating cash receipts of the Debtors shall not exceed 15%, (ii) the positive variance (as compared to the applicable Cash Flow Forecast) of the aggregate operating disbursements (excluding professional fees, interest payments and disbursements made by the Debtors set forth under "MEC Affiliate Disbursements" in the Cash Flow Forecast (including, without limitation, any payments pursuant to the Management Services Agreement)) made by the Debtors shall not exceed 15% and (iii) the positive variance (as compared to the applicable Cash Flow Forecast) of the aggregate disbursements made by the Debtors set forth under "MEC Affiliate Disbursements" in the Cash Flow Forecast (including, without limitation, any payments pursuant to the Management Services Agreement)) shall not exceed 15%, and (b) beginning with the delivery of the third Budget Variance Report, as of the last day of each applicable Four-Week Test Period commencing with the last day of the first Four-Week Test Period ending after the Closing Date, for such Four-Week Test Period, (i) the negative variance (as compared to the applicable Cash Flow Forecast) of the actual aggregate operating cash receipts of the Debtors shall not exceed 10%, (ii) the positive variance (as compared to the applicable Cash Flow

Forecast) of the aggregate operating disbursements (excluding professional fees, interest payments and disbursements made by the Debtors set forth under "MEC Affiliate Disbursements" in the Cash Flow Forecast (including, without limitation, any payments pursuant to the Management Services Agreement) made by the Debtors shall not exceed 10% and (iii) the positive variance (as compared to the applicable Cash Flow Forecast) of the aggregate disbursements made by the Debtors set forth under "MEC Affiliate Disbursements" in the Cash Flow Forecast (including, without limitation, any payments pursuant to the Management Services Agreement) shall not exceed 10% (such variance that does not breach this covenant, the "Permitted Variance").

7.19 Minimum Liquidity. Permit Liquidity at any time to be less than (i) prior to the Delayed Draw Funding Date, $20,000,000, and (ii) on or after the Delayed Draw Funding Date, $40,000,000.

7.20 [Reserved].

7.21 Additional Bankruptcy Matters. Permit any of its Subsidiaries to, without the Required Lenders' prior written consent, do any of the following:

(a) use any portion or proceeds of the Loans or the Collateral, or disbursements set forth in the Cash Flow Forecast, for payments or purposes that would violate the terms of the Interim Order or the Final Order;

(b) incur, create, assume, suffer to exist or permit any other superpriority administrative claim which is *pari passu* with or senior to the claim of the Secured Parties against any Loan Party, except for the Carve Out or as otherwise expressly permitted by the Orders;

(c) subject to the Orders, assert, join, investigate, support or prosecute any claim or cause of action against any of the Secured Parties (in their capacities as such), unless such claim or cause of action is in connection with the enforcement of the Loan Documents against any of the Secured Parties;

(d) other than as provided in any "first day" order, enter into any agreement to return any of its inventory to any of its creditors for application against any pre-petition Indebtedness, pre-petition trade payables or other pre-petition claims under Section 546(c) of the Bankruptcy Code or allow any creditor to take any setoff or recoupment against any of its pre-petition Indebtedness, pre-petition trade payables or other pre-petition claims based upon any such return pursuant to Section 553(b)(1) of the Bankruptcy Code or otherwise if, after giving effect to any such agreement, setoff or recoupment, the aggregate amount applied to pre-petition Indebtedness, pre-petition trade payables and other pre-petition claims subject to all such agreements, setoffs and recoupments since the Petition Date would exceed $250,000;

(e) seek, consent to, or permit to exist, without the prior written consent of the Required Lenders, any order granting authority to take any action that is prohibited by the terms of this Agreement, the Interim Order, the Final Order or the other Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement, the Interim Order, the Final Order or any of the other Loan Documents;

(f) subject to the terms of the Orders and subject to Article VIII, object to, contest, delay, prevent or interfere with in any material manner the exercise of rights and remedies by the Agents, the Lenders or other Secured Parties with respect to the Collateral following the occurrence of an Event of Default, including without limitation a motion or petition by any Secured Party to lift an applicable stay of proceedings to do the foregoing (*provided* that any Loan Party may contest or dispute whether an Event of Default has occurred in accordance with the terms of the Orders);

(g) except as expressly provided or permitted hereunder (including, without limitation, to the extent pursuant to any "first day" or "second day" orders complying with the terms of this Agreement) or, with the prior consent of the Required Lenders, make any payment or distribution to any non-Debtor Affiliate or insider of any Debtor unless otherwise contemplated in the Cash Flow Forecast (subject to Permitted Variances);

(h) except for the Carve Out or as otherwise expressly permitted by the Orders, incur, create, assume, suffer to exist or permit (or file an application for the approval of) any other Superpriority Claim which is

pari passu with or senior to the claims of the Administrative Agent, the Collateral Agent, Lenders and the other Secured Parties constituting Obligations against the Loan Parties or the adequate protection Liens or claims granted under the Orders; or

(i) make or permit to be made any change to the Final Order without the consent of the Required Lenders.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an Event of Default (each, an "Event of Default"):

(a) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within five Business Days after the same becomes due and payable, any interest on any Loan, , or any fee due hereunder, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. The Borrower fails to perform or observe any term, covenant or agreement contained in any of Sections 6.01(a), 6.01(b), 6.01(c), 6.01(d), 6.01(e), 6.01(f), 6.02(a), 6.03(a), 6.05, 6.11, 6.18 6.21 6.22, 6.23 or Article VII; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. Unless the enforcement thereof is stayed by operation of the Chapter 11 Cases, any Loan Party or any Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness under the Loan Documents) in each case having an aggregate principal amount of more than the Threshold Amount ("Material Indebtedness"), beyond the period of grace, if any, provided in the instrument or agreement under which such Material Indebtedness was created or (B) fails to observe or perform any other agreement or condition relating to any such Material Indebtedness, or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause or to permit the holder or holders of such Material Indebtedness, or the beneficiary or beneficiaries of such Material Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity, or such Guarantee to become due or payable; provided, that this clause 8.01(e) shall not apply to any secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness if (i) such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness, (ii) such Indebtedness becomes due substantially contemporaneously with the completion and closing of such voluntary sale and transfer (and not upon entry into the purchase or transfer agreement related thereto) and (iii) the process of such voluntary sale or transfer are applied to pay in full such Indebtedness substantially contemporaneously with such sale or transfer; or

(f) Insolvency Proceedings, Etc. Any Loan Party or Subsidiary that is not a Debtor institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 30 calendar days; or any proceeding under any Debtor

Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 30 calendar days, or an order for relief is entered in any such proceeding; or

(g) [Reserved].

(h) Judgments. There is entered against any Loan Party or any Subsidiary a final judgment or order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third party insurance), and such judgments or orders shall not have been vacated, discharged, waived, stayed or bonded pending appeal within 60 days from the entry thereof; or

(i) ERISA. The occurrence of any of the following events that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect: (i) an ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in an actual obligation to pay money of the Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan; or

(j) Invalidity of Loan Documents. Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or Payment in Full, ceases to be in full force and effect; or any Loan Party contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or any Security Document ceases to create a valid Lien with the priority required thereby on the Collateral covered thereby (other than (x) as to any immaterial portion of the Collateral or (y) as expressly permitted thereunder or solely as a result of the acts or omissions of any Agent); or

(k) Change of Control. There occurs any Change of Control; or

(l) Restructuring Support Agreement or Backstop Commitment Agreement Termination. (i) The bringing of a motion or taking of any action by any of the Loan Parties or any Subsidiary to terminate the Restructuring Support Agreement and/or the Backstop Commitment Agreement, or (ii) the Restructuring Support Agreement and/or the Backstop Commitment Agreement is terminated for any reason, or modified, amended or waived in any manner materially adverse to the Secured Parties without the prior consent of the Required Lenders; or

(m) Management Services Agreement Termination. (i) The bringing of a motion or taking of any action by any of the Loan Parties or any Subsidiary to terminate the Management Services Agreement or (ii) the Management Services Agreement is terminated for any reason, or modified, amended or waived in any manner materially adverse to the Secured Parties without the prior consent of the Required Lenders; or

(n) Guarantees, Security Documents and Loan Documents. At any time after the execution and delivery thereof, (i) the Guaranty for any reason, other than the Payment in Full of all Obligations (other than contingent indemnity obligations), shall cease to be in full force and effect (other than in accordance with its terms or in connection with a transaction permitted by Section 7.04) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) any Security Document shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected Lien (subject to Permitted Liens) on the Collateral purported to be covered thereby and with the priority contemplated by the Orders, and (iii) any Loan Party shall contest the validity or enforceability of any Loan Document or any Order in writing or repudiate or rescind (or purport to repudiate or rescind) or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any provision of any Loan Document to which it is a party or shall contest the validity or perfection of any Lien in any Collateral purported to be covered by any Order or any other Security Document; or

(o) Chapter 11 Cases. There occurs any of the following in the Chapter 11 Cases:

(i) the bringing of a motion or taking of any action by any of the Loan Parties or any Subsidiary (A) to grant any Lien other than Liens permitted pursuant to Section 7.01 upon or affecting any Collateral, or (B) to use cash collateral of the Agents and the other Secured Parties under section 363(c) of the Bankruptcy Code without the prior written consent of the Required Lenders, except as *provided* in the Interim Order or Final Order;

(ii) the entry of an order in any of the Chapter 11 Cases confirming a Reorganization Plan that is not an Acceptable Plan;

(iii) (A) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the Interim Order or the Final Order in any material respect without the written consent of the Required Lenders, or the Interim Order or the Final Order shall otherwise not be in full force and effect or (B) any Loan Party or any Subsidiary shall fail to comply with the Orders in any material respect;

(iv) the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against, any Agent, any Lender, any other Secured Party or any of the Collateral;

(v) (A) the appointment of a trustee, receiver or an examiner (other than a fee examiner) in the Chapter 11 Cases with expanded powers to operate or manage the financial affairs, the business, or reorganization of the Loan Parties, or (B) the sale without the Required Lenders' consent of any material portion of the Debtors' assets either through a sale under Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Chapter 11 Cases or otherwise that does not result in Payment in Full in cash of all of the Obligations under this Agreement at the closing of such sale or initial payment of the purchase price or effectiveness of such plan of reorganization, as applicable;

(vi) the dismissal of any Chapter 11 Case, or the conversion of any Chapter 11 Case from one under Chapter 11 to one under Chapter 7 of the Bankruptcy Code or any Loan Party shall file a motion or other pleading seeking the dismissal of the Chapter 11 Case under Section 1112 of the Bankruptcy Code or otherwise or the conversion of the Chapter 11 Cases to Chapter 7 of the Bankruptcy Code;

(vii) any Loan Party shall file a motion seeking, or the Bankruptcy Court shall enter an order granting relief from or modifying the automatic stay under Section 362 of the Bankruptcy Code (A) to allow any creditor (other than the Agents) to execute upon or enforce a Lien on any Collateral, (B) approving any settlement or other stipulation not approved by the Required Lenders (which approval shall not be unreasonably withheld) with any secured creditor of any Loan Party providing for payments as adequate protection or otherwise to such secured creditor, (C) with respect to any Lien on or the granting of any Lien on any Collateral to any federal, state or local environmental or regulatory agency or authority or (D) to permit other actions that would have a Material Adverse Effect on the Debtors or their estates (taken as a whole);

(viii) [reserved];

(ix) the entry of an order in the Chapter 11 Cases avoiding or permitting recovery of any portion of the payments made on account of the Obligations owing under this Agreement;

(x) the entry of an order in the Chapter 11 Cases terminating or modifying the exclusive right of any Loan Party to file a Reorganization Plan pursuant to Section 1121 of the Bankruptcy Code;

(xi) the failure of any Loan Party to perform in all material respects any of its obligations under the Orders;

(xii) the existence of any claims or charges, or the entry of any order of the Bankruptcy Court authorizing any claims or charges, other than the Obligations in, or as otherwise permitted under the applicable Loan Documents or permitted under the Orders, entitled to superpriority administrative expense claim status in any Chapter 11 Case pursuant to Section 364(c)(1) of the Bankruptcy Code pari passu with or senior to the claims of the Agents and the Secured Parties under this Agreement and the other Loan Documents, or there shall arise or be granted by the Bankruptcy Court (A) any claim having priority over any or all administrative expenses of the kind specified in clause

(b) of Section 503 of the Bankruptcy Code or clause (b) of Section 507 of the Bankruptcy Code (other than the Carve Out) or (B) any Lien on the Collateral having a priority senior to or pari passu with the Liens and security interests granted herein, except, in each case, as expressly *provided* in the Loan Documents or in the Orders then in effect (but only in the event specifically consented to by the Administrative Agent (at the direction of the Required Lenders)), whichever is in effect;

(xiii) the Interim Order (prior to the Final Order Entry Date) or, on and after entry thereof, the Final Order shall cease to create a valid and perfected Lien on the Collateral or to be in full force and effect, shall have been reversed, modified, amended, stayed, vacated, or subject to stay pending appeal, in the case of modification or amendment, without prior written consent of the Required Lenders);

(xiv) an order in the Chapter 11 Cases shall be entered limiting the extension under Section 552(b) of the Bankruptcy Code of the Liens of the Prepetition Debt on the Collateral to any proceeds, products, offspring, or profits of the Collateral acquired by any Loan Party after the Petition Date;

(xv) an order of the Bankruptcy Court shall be entered denying or terminating use of cash collateral by the Loan Parties;

(xvi) an order materially adversely impacting the legal rights and interests of the Agents and the Lenders under the Loan Documents shall have been entered by the Bankruptcy Court or any other court of competent jurisdiction;

(xvii) any Loan Party shall challenge, support or encourage a challenge of any payments made to any Agent, any Lender, or any Secured Party with respect to the Obligations, or without the consent of the Required Lenders and, if required by Section 10.01, any other Secured Party, the filing of any motion by the Loan Parties seeking approval of (or the entry of an order by the Bankruptcy Court approving) adequate protection to any holder of Prepetition Debt that is inconsistent with an Order;

(xviii) without the Required Lenders' consent, the entry of any order by the Bankruptcy Court granting, or the filing by any Loan Party or any of its Subsidiaries of any motion or other request with the Bankruptcy Court (in each case, other than the Orders and motions seeking entry thereof or permitted amendments or modifications thereto) seeking, authority to use any cash proceeds of any of the Collateral or to obtain any financing under Section 364 of the Bankruptcy Code other than the Loan Documents or any other financing that results in the Payment in Full of the Obligations;

(xix) any Loan Party or any person on behalf of any Loan Party shall file any motion seeking authority to (A) consummate a sale of assets (constituting Collateral or otherwise) outside the ordinary course of business or (B) reject any executory contract or unexpired lease (relating to property that constitutes Collateral or otherwise) without the consent of the Required Lenders, and in each case not otherwise permitted hereunder;

(xx) any Loan Party shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any Prepetition Debt or payables other than payments permitted under this Agreement to the extent authorized or required by one or more "first day" or "second day" orders or any of the Orders (or other orders with the consent of Required Lenders) and consistent with the Cash Flow Forecast (subject to Permitted Variances);

(xxi) without the Required Lenders' consent or as otherwise permitted by the Orders, any Loan Party or any Subsidiary thereof shall file any motion or other request with the Bankruptcy Court seeking (A) to grant or impose, under Section 364 of the Bankruptcy Code or otherwise, liens or security interests in any Collateral, whether senior, equal or subordinate to the Collateral Agent's liens and security interests; or (B) to modify or affect any of the rights of the Agents, the Lenders or the Secured Parties under the Orders or the Loan Documents and related documents by any Reorganization Plan confirmed in the Chapter 11 Cases or subsequent order entered in the Chapter 11 Cases; and

(xxii) the filing by any of the Loan Parties of any Reorganization Plan other than an Acceptable Plan.

8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, subject to the terms of the Orders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) [reserved]; and

(d) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents, any Order or applicable Law (including, but not limited to, the Bankruptcy Code and the UCC), including the right to set off any amounts held as cash collateral (including, without limitation, in any cash collateral account held for the benefit of the Secured Parties);

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under Debtor Relief Laws of the United States or any other Event of Default under Section 8.01(f) or (g) hereof, the obligation of each Lender to make Loans shall automatically terminate and the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable without further act of the Administrative Agent or any Lender.

8.03 [Reserved].

8.04 Application of Funds. Subject to the Orders, after the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations (including proceeds of Collateral) shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including reasonable fees, charges and disbursements of counsel to the Agents and amounts payable under Article III) payable to the Agents in their capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts payable to the Secured Parties (including fees, charges and disbursements of counsel to the respective Secured Parties (including fees and time charges for attorneys who may be employees of any Secured Parties) and amounts payable to the Lenders under Article III, ratably among the Secured Parties (or, in the case of Article III, the Lenders) in accordance with, in the case of the Lenders, their respective Applicable Percentages;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest in respect of the Loans and other Obligations, ratably among the Secured Parties in accordance with, in the case of the Lenders, their respective Applicable Percentages;

Fourth, to payment of, in each case, on a pro rata basis, that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in accordance with their respective Applicable Percentages, and the payment of all such outstanding Secured Designated Coal Contract Obligations, ratably among the Designated Coal Contract Counterparties in proportion to the respective amounts of such outstanding Secured Designated Coal Contract Obligations held by them;

Fifth, to payment of any remaining Obligations, ratably among the Lenders and the other Secured Parties (in the case of the Lenders, ratably in accordance with their respective Applicable Percentages); and

Last, the balance, if any, after all of the Obligations have been indefeasibly Paid in Full, to the Borrower or as otherwise required by Law;

provided, that the application to the Obligations of amounts received in respect of the Collateral is expressly subject to the priorities set forth in the Interim Order (and, when entered, the Final Order), and all such amounts shall first be allocated in accordance with such priorities.

ARTICLE IX
AGENTS

9.01 Appointment and Authority.

(a) Each of the Lenders and the Designated Coal Contract Counterparties hereby irrevocably appoints Cortland Capital Market Services LLC to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents, and irrevocably authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers, rights and remedies as are delegated or granted to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Except with respect to Section 9.06 and Section 9.10, the provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Designated Coal Contract Counterparties, as the case may be, and neither the Borrower, nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. In performing its functions and duties hereunder, the Administrative Agent shall act solely as an agent of the Lenders and the Designated Coal Contract Counterparties, and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for the Borrower or any of its Subsidiaries.

(b) Each of the Lenders and the Designated Coal Contract Counterparties hereby irrevocably appoints Cortland Capital Market Services LLC to act on its behalf as the Collateral Agent hereunder and under the other Loan Documents for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. Without limiting the generality of the foregoing, the Lenders, and by accepting the benefits of the Loan Documents the other Secured Parties, hereby expressly authorize the Collateral Agent to (i) execute any and all documents with respect to the Collateral (including any amendment, supplement, modification or joinder with respect thereto) and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Loan Documents and acknowledge and agree that any such action by the Collateral Agent shall bind the Secured Parties and (ii) negotiate, enforce or settle any claim, action or proceeding affecting the Secured Parties in their capacity as such, at the direction of the Required Lenders, which negotiation, enforcement or settlement will be binding upon each Secured Party.

9.02 Rights as a Lender. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loans, the Person serving as an Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as an Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent hereunder, and may accept fees and other considerations from the Borrower for service in connection herewith and otherwise without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. No Agent shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, no Agent:

(a) shall be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(b) shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 10.01), provided that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law, including, for the avoidance of doubt, any action that, in its opinion or the opinion of its counsel, may violate the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; provided, further, that if any Agent so requests, it shall first be indemnified and provided with adequate security to its sole satisfaction (including reasonable advances as may be requested by such Agent) by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such directed action;

(c) shall, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as an Agent or any of its Affiliates in any capacity;

(d) shall be responsible or have any liability for or in connection with, or have any duty to ascertain, inquire into, monitor, maintain, update or enforce, compliance with the provisions hereof relating to Disqualified Institutions; and without limiting the generality of the foregoing, no Agent shall (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Institution;

(e) neither any Agent nor any of its Related Parties shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 10.01) or (ii) in the absence of its own gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction (which shall not include any action taken or omitted to be taken in accordance with clause (i), for which such Agent shall have no liability);

(f) shall be deemed to have knowledge of any Default or Event of Default unless and until written notice describing such Default and is labeled a "Notice of Default" is given to such Agent by the Borrower or a Lender; or

(g) shall be responsible for or have any duty to ascertain or inquire into (i) any recital, statement, warranty or representation made in or in connection with this Agreement, any other Loan Document, or any Coal Contract, or made in any written or oral statements made in connection with the Loan Documents, any Coal Contract, and the transactions contemplated thereby, (ii) the contents of any financial or other statements, instruments, certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, whether made by such Agent to the Lenders or by or on behalf of any Loan Party to such Agent or any Lender in connection with the Loan Documents and the transactions contemplated thereby, (iii) the financial condition or business affairs of any Loan Party or any other Person liable for the payment of any Obligations, (iv) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the use of proceeds of the Loans or the occurrence or possible occurrence of any Default or Event of Default or to make any disclosures with respect to the foregoing, (v) the execution, validity, enforceability, effectiveness, genuineness, collectability or sufficiency of this Agreement, any other Loan Document, any Coal Contract, or any other agreement, instrument or document or the creation, preservation, perfection, maintenance of perfection, or priority of any Lien purported to be created by the Loan Documents or any Coal Contract, (vi) the value or the sufficiency of any Collateral, (vii) whether the Collateral exists, is owned by Borrower or its Subsidiaries, is cared for, protected, or insured or has been encumbered, or meets the eligibility criteria applicable in respect thereof, or (viii) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent.

Anything contained herein to the contrary notwithstanding, no Agent shall have any liability arising from confirmation of the amount of outstanding Loans or the component amounts thereof.

For the avoidance of doubt, and without limiting the other protections set forth in this Article 9, with respect to any determination, designation, or judgment to be made by the Administrative Agent or the Collateral Agent herein or in the other Loan Documents, the Administrative Agent or the Collateral Agent, as applicable, shall be entitled to request that the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 10.01) make or confirm such determination, designation, or judgment.

No Agent shall be responsible or have any liability for or in connection with, or have any duty to ascertain, inquire into, monitor, maintain, update or enforce compliance with the provisions hereof relating to Coal Contracts. No Agent shall be deemed to have notice of any Secured Designated Coal Contract Obligations unless such Agent has received written notice of such Secured Designated Coal Contract Obligations, together with such supporting documentation as such Agent may request, from the applicable Designated Coal Contract Counterparty.

9.04 Reliance by Agents. Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, each Agent may presume that such condition is satisfactory to such Lender unless such Agent shall have received written notice to the contrary from such Lender prior to the making of such Loan and such Lender shall have not made its ratable portion of such Loan available to the Administrative Agent. Each Agent shall be entitled to rely on and may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Delegation of Duties. Each Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more co-agents, sub-agents and attorneys-in-fact appointed by such Agent. Each Agent and any such co-agent, sub-agent and attorney-in-fact may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The rights, privileges, protections, immunities, and indemnities of this Article and Section 10.04 shall apply to any such co-agent, sub-agent or attorney-in-fact and to the Related Parties of such Agent and any such co-agent, sub-agent or attorney-in-fact, and shall apply to each of their respective activities in such capacities as if such co-agent, sub-agent or attorney-in-fact and Related Parties were named herein. Notwithstanding anything herein to the contrary, with respect to each co-agent, sub-agent or attorney-in-fact appointed by any Agent, (i) such co-agent, sub-agent or attorney-in-fact shall be a third party beneficiary under this Agreement with respect to all rights, privileges, protections, immunities, and indemnities of this Article and Section 10.04 and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, privileges, protections, immunities, and indemnities of this Article and Section 10.04 directly, without the consent or joinder of any other Person, against any or all Loan Parties and the Lenders, (ii) rights, privileges, protections, immunities, and indemnities of this Article and Section 10.04 shall not be modified or amended without the consent of such co-agent, sub-agent or attorney-in-fact, and (iii) such co-agent, sub-agent or attorney-in-fact shall only have obligations to such Agent and not to any Loan Party, Lender or any other Person, and no Loan Party, Lender or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such co-agent, sub-agent or attorney-in-fact. No Agent shall be responsible for the negligence or misconduct of any such co-agents, sub-agents and attorneys-in-fact except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that such Agent acted with gross negligence or willful misconduct in the selection of such co-agents, sub-agents and attorneys-in-fact.

9.06 Resignation of Agent. Each Agent may at any time give notice of its resignation to the applicable Lenders, and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the approval of the Borrower unless an Event of Default under Section 8.01(f) or (g) has occurred or is continuing

(such approval not to be unreasonably withheld), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above; provided that (x) in no event shall any successor Agent be a Defaulting Lender, a Disqualified Institution or an Affiliated Lender and (y) if such Agent shall notify the Borrower and the applicable Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the retiring Collateral Agent on behalf of the Lenders under any of the Loan Documents, the retiring Collateral Agent shall continue to hold such collateral security until such time as a successor Collateral Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through such retiring Agent shall instead be made by or to each applicable Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as an Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Agent shall be the same as those payable to its applicable predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article, Section 10.04, and all other rights, privileges, protections, immunities, and indemnities granted to such Agent hereunder or the other Loan Documents shall continue in effect for the benefit of such retiring Agent, its co-agents, sub-agents and attorneys-in-fact and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent.

9.07 Non-Reliance on Agents and Other Lenders.

(a) Each Lender acknowledges represents and warrants that it has, independently and without reliance upon any Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon any Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

(b) No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such analysis on behalf of the Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to the Lenders. Each Lender, by delivering its signature page to this Agreement or an Assignment and Assumption, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by any Agent, Required Lenders, or Lenders, as applicable, on the Closing Date. Each Lender acknowledges that none of the Agents or their Related Parties have made any representation or warranty to it, and that no act by any Agent or its Related Parties hereinafter taken shall be deemed to constitute any representation or warranty by any Agent or its Related Parties to any Lender. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by an Agent, no Agent or any of its Related Parties shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of the Borrower or any other Person party to a Loan Document that may come into the possession or control of such Agent or its Related Parties.

9.08 No Other Duties, Etc. Each Agent shall have only those duties and responsibilities that are expressly specified herein for such Agent and the other Loan Documents. Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. The duties of each Agent shall be mechanical and administrative in nature; and no Agent shall have, by reason hereof or any of the other Loan Documents, a fiduciary relationship in respect of any Lender or any other Person; and nothing herein or any of the other Loan Documents, expressed or implied, is intended to or shall be so construed as to impose upon such Agent

any obligations in respect hereof or any of the other Loan Documents except as expressly set forth herein or therein. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement or the other Loan Documents with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only a representative relationship between independent contracting parties.

9.09 [Reserved].

9.10 Guaranty and Collateral Matters.

(a) Each Secured Party hereby and/or by accepting the benefits of the Collateral authorizes each Agent, on behalf of and for the benefit of Secured Parties, to be the agent for and representative of Secured Parties with respect to the Guaranty, the Collateral and the Security Documents, as applicable. Subject to Section 10.01, without further written consent or authorization from any Secured Party, each Agent may execute any documents or instruments necessary to (i) under the circumstances described in clause (A) of Section 10.21(a), confirm or acknowledge that the Liens on the Collateral no longer secure the Obligations, (ii) in connection with a sale or disposition of assets permitted by this Agreement, release any Liens encumbering any item of Collateral that is the subject of such sale or other disposition of assets or to which the Required Lenders (or such other Lenders as may be required to give such consent under Section 10.01) have otherwise consented, (iii) release any Guarantor from the Guaranty pursuant to Section 10.21 or with respect to which Required Lenders (or such other Lenders as may be required to give such consent under Section 10.01) have otherwise consented or (iv) acknowledge and confirm that specified assets of the Loan Parties are Excluded Assets.

(b) The Secured Parties irrevocably authorize the Administrative Agent to release any Guarantor from its obligations under the Guaranty in accordance with the terms of Section 10.21. Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10.

(c) The Secured Parties irrevocably authorize the Collateral Agent to release any Lien on any property granted to or held by the Collateral Agent under any Loan Document in accordance with the terms of Section 10.21. Upon request by the Collateral Agent at any time, the Required Lenders will confirm in writing the Collateral Agent's authority to release its interest in particular types or items of property in accordance with this Section.

9.11 Withholding Tax. To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. Without limiting the provisions of Section 3.01 or 3.04, each Lender shall, and does hereby, indemnify the Administrative Agent, and shall make payable in respect thereof within 30 days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the IRS or any other Governmental Authority as a result of the failure of such Administrative Agent to properly withhold tax from amounts paid to or for the account of any applicable Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding tax ineffective), whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any applicable Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this Section 9.11. The agreements in this Section 9.11 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments, the repayment, satisfaction or discharge of all obligations under any Loan Document, and the termination of this Agreement.

9.12 Concerning the Collateral and Related Loan Documents. Each Lender authorizes and directs each Agent to enter into, and agrees to be bound by, this Agreement (and to make all representations, warranties, covenants, and agreements on behalf of the Lenders as set forth therein), the Security Documents, and the other Loan

Documents, including, without limitation, each Loan Document to be executed by such Agent and set forth on Schedule 6.18 hereto. Each Lender hereby acknowledges and agrees that (x) the foregoing instructed actions constitute an instruction from all the Lenders under this Section and (y) this Article 9 and Section 10.04 and any other rights, privileges, protections, immunities, and indemnities in favor of any Agent hereunder apply to any and all actions taken or not taken by such Agent in accordance with such instruction. Each Lender agrees that any action taken by the Collateral Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by the Collateral Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders.

9.13 Survival. The agreements in this Article 9 shall survive the resignation or replacement of any Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments, the repayment, satisfaction or discharge of all obligations under any Loan Document, and the termination of this Agreement.

ARTICLE X
MISCELLANEOUS

10.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower, or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower, or the applicable Loan Party (in each case with a copy to the Agents), as the case may be, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) (it being understood that the waiver of, or amendment to the terms of, any mandatory prepayment shall not constitute such a postponement) without the written consent of each Lender directly affected thereby;

(c) waive, reduce or postpone the principal of, or the stated rate of interest specified herein on, any Loan, or (subject to clause (y) of the first *proviso* after clause **Error! Reference source not found.** below) any fees or premiums or other amounts payable hereunder without the written consent of each Lender directly affected thereby; provided, however, that, without limiting the effect of clauses **Error! Reference source not found.** below or the proviso directly below, only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate;

(d) change Section 2.13 or Section 8.04 in a manner that would alter the pro rata sharing of payments required thereby in a manner that by its terms modifies the application of such payments required thereby to be on a non- pro rata basis without the written consent of each affected Lender and affected Designated Coal Contract Counterparty adversely affected thereby;

(e) change the Superpriority Claims status of any Lenders or Designated Coal Contract Counterparty under the Orders or under any Loan Document without the written consent of each such Lender and Designated Coal Contract Counterparty directly and adversely affected thereby;

(f) change any provision of this Section 10.01 or the definitions of "Required Lenders," or "Applicable Percentage" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written consent of each Lender affected thereby; provided, with the consent of the applicable Required Lenders, additional extensions of credit pursuant hereto may be included in the determination of "Required Lenders" or "Applicable Percentage" on substantially the same basis as the Term Loans and the Roll-Up Loans, as applicable, are included on the Closing Date.

(g) other than as permitted by Section 9.10 and Section 10.21, release (i) all or substantially all of the Guarantors from the Guaranty (as measured by value, not by number) or all or substantially all of the Collateral, except as expressly provided in the Loan Documents and except in connection with a "credit bid" undertaken by the Collateral Agent at the direction of the Required Lenders pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code or other sale or disposition of assets in connection with an enforcement action with respect to the Collateral permitted pursuant to the Loan Documents (in which case only the consent of the Required Lenders will be needed for such release) or (ii) all or substantially all of the Collateral covered by the Security Documents without the written consent of each Lender and each Designated Coal Contract Counterparty, in each case unless the release is permitted hereunder pursuant to Section 10.21; or

(h) change (i) the ratable treatment of Obligations (other than the Secured Designated Coal Contract Obligations) on the one hand and Secured Designated Coal Contract Obligations on other hand, or (ii) the definition of "Coal Contract", "Designated Coal Contract Counterparty", "Designated Coal Contract", "Existing Designated Coal Contract", "Existing Designated Coal Contract Counterparty," "Obligations", "Secured Designated Coal Contract Obligations" or "Secured Obligations" (as defined in this Agreement or any applicable Security Document), in each case of clause (i) and (ii), to the extent any such amendment, waiver or consent would directly and adversely affect the rights or the ratable treatment of any Lender or Designated Coal Contract Counterparty hereunder or in any other Loan Document without the written consent of any such Lender or such Designated Coal Contract Counterparty directly and adversely affected thereby;

provided, that (x) no amendment, waiver or consent shall, unless in writing and signed by the applicable Agent in addition to the Lenders required above, affect the rights or duties of such Agent under this Agreement or any other Loan Document; and (y) any Agency Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties to such Agency Fee Letter. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that (i) the Commitment of such Lender may not be increased or extended and (ii) the principal of any Loan owed to such Lender may not be reduced without the consent of such Lender.

Notwithstanding the foregoing, the Borrower and the Agents may amend this Agreement and the other Loan Documents without the consent of any Lender (a) to cure any ambiguity, omission, mistake, error, defect or inconsistency (as reasonably determined by the Borrower in consultation with the Agents), so long as such amendment, modification or supplement does not directly and adversely affect the rights of any Lender or any Designated Coal Contract Counterparty, or the Lenders and Designated Coal Contract Counterparties shall have received at least five (5) Business Days' prior written notice thereof and the Administrative Agent shall not have received, within five Business Days of the date of such notice to the Lenders and Designated Coal Contract Counterparties, a written notice from the Required Lenders or a Designated Coal Contract Counterparty stating that the Required Lenders or such Designated Coal Contract Counterparty object to such amendment, (b) to add a Guarantor with respect to the Loans or collateral to secure the Loans, (c) to make administrative changes that do not directly and adversely affect the rights of any Lender, (d) to integrate any other Funded Debt of the Borrower and its Subsidiaries that is secured by Liens on the Collateral (or any portion thereof) that rank pari passu in right of security with the Liens on the Collateral securing the Obligations or (e) to make technical, administrative or other changes that do not directly and adversely affect the rights of any Lender or Designated Coal Contract Counterparty in respect of provisions relating to the respective rights, roles or responsibilities of the Agents.

The Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Loan Party in any case shall entitle any Loan Party to any other or further notice or demand in similar or other circumstances.

Any such waiver and any such amendment or modification pursuant to this Section 10.01 shall apply equally to each of the Lenders and Designated Coal Contract Counterparties and shall be binding upon the Borrower, the Lenders, the Agents, the Designated Coal Contract Counterparties, and all future holders of the Obligations. In the case of any waiver, the Borrower, the Lenders, the Designated Coal Contract Counterparties, and the Agents shall be restored to their former positions and rights hereunder and under the other Loan Documents, and any Default or Event of Default that is waived pursuant to this Section 10.01 shall be deemed to be cured and not continuing during the period of such waiver.

10.02 Notices; Effectiveness; Electronic Communication.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail, sent by telecopier (except for any notices sent to any Agent) as follows or sent by electronic communication as provided in subsection (b) below, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower or any Agent to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02;

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified on Schedule 10.02 or in its Administrative Questionnaire; and

(iii) if to any Designated Coal Contract Counterparty, to the address, telecopier number, electronic mail address or telephone number specified in Schedule 10.02 or in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not sent during normal business hours for the recipient, shall be deemed to have been sent at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b). Notwithstanding the foregoing, (a) no notice to any Agent shall be effective until received by such Agent and (b) any such notice or other communication shall at the request of such Agent be provided to any co-agent, sub-agent or attorney-in-fact appointed pursuant to Section 9.03(c) as designated by such Agent from time to time.

(b) Electronic Communications. Notices and other communications to any Agent and the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites, including the Platform) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Agents or the Borrower may, in their discretion, agree to accept notices and other communications to the Agents or the Borrower hereunder by electronic communications pursuant to procedures approved by the Administrative Agent or the Borrower, as applicable, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. Each Loan Party understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution. In no event shall any Agent or any of its Related

Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the such Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses have resulted from the gross negligence or willful misconduct of such Agent Party, as determined by a final non- appealable judgment of a court of competent jurisdiction; provided, however, that in no event shall the Borrower or any Agent Party have any liability to the Borrower, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages); provided that such waiver shall not limit any Loan Party's reimbursement or indemnification obligations under Sections 10.04(a) or 10.04(b), respectively. Each Loan Party, each Lender, and each Agent agrees that any Agent may, but shall not be obligated to, store any electronic communication on the Platform in accordance with such Agent's customary document retention procedures and policies.

(d) Defaults. Any notice of Default or Event of Default may be provided by telephone if confirmed promptly thereafter by delivery of written notice thereof.

(e) Change of Address, Etc. The Borrower and any Agent may change its address, electronic mail address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, electronic mail address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each of the Lender and Designated Coal Contract Counterparties agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender or such Designated Coal Contract Counterparty, as the case may be.

(f) Reliance by Agents and Lenders. The Agents, the Designated Coal Contract Counterparties and the Lenders shall be entitled to rely and act upon any notices (including telephonic Borrowing Notices) purportedly given by or on behalf of the Borrower, even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. All telephonic notices to and other telephonic communications with any Agent may be recorded by such Agent, and each of the parties hereto hereby consents to such recording.

(g) Private Side Information Contacts. Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable law, including United States federal and state securities laws, to make reference to information that is not made available through the "Public-Side Information" portion of the Platform and that may contain Private-Side Information. In the event that any Public Lender has determined for itself to not access any information disclosed through the Platform or otherwise, such Public Lender acknowledges that (i) other Lenders may have availed themselves of such information and (ii) neither the Borrower nor any Agent has any responsibility for such Public Lender's decision to limit the scope of the information it has obtained in connection with this Agreement and the other Loan Documents.

10.03 No Waiver; Cumulative Remedies. No failure by any Lender, any Designated Coal Contract Counterparty or any Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall impair such right, remedy, power or privilege or be construed to be a waiver of any default or acquiescence therein; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided and in the other Loan Documents or any of the Designated Coal Contracts are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

10.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable and documented out-of-pocket legal and other expenses incurred by the Agents and their respective Affiliates (including the reasonable and documented fees, charges and disbursements of (x) Ropes & Gray LLP, as primary counsel for the Agents and their Affiliates, (x) Akin Gump Strauss Hauer & Feld LLP and Milbank LLP and Bryan Cave Leighton Paisner LLP, as counsel to the Backstop Lenders, (y) a single local counsel in each relevant jurisdiction and any special counsel reasonably deemed necessary by the Agents, and (z) a single local counsel in each relevant jurisdiction and any special counsel reasonably deemed necessary by the Lenders), in each case, in connection with the preparation, due diligence, negotiation, execution, delivery, administration and enforcement of this Agreement and the other Loan Documents or any amendments, modifications, consents, or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) [reserved] and (iii) all reasonable and documented out-of-pocket legal and other expenses (including the cost of any investigation or preparation) incurred by any Agent, any Lender or other Secured Party (except that, as to a Designated Coal Contract Counterparty, solely as provided in the applicable Designated Coal Contract) (including the reasonable fees, charges and disbursements of (w) Ropes & Gray LLP, as primary counsel for the Agents and their Affiliates, (x) Akin Gump Strauss Hauer & Feld LLP and Milbank LLP, as counsel to the Backstop Lenders, (y) a single local counsel in each relevant jurisdiction and any special counsel reasonably deemed necessary by the Agents, and (z) a single local counsel in each relevant jurisdiction and any special counsel reasonably deemed necessary by the Lenders and/or the other Secured Parties (and, in the case of an actual or perceived conflict of interest where the Indemnitees affected by such conflict notifies the Borrower of the existence of such conflict, of another firm of counsel for such affected Indemnitees and local counsel for the conflicted party)), in each case, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made hereunder, including all such reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Agents (and any co-agent, sub-agent or attorney-in-fact thereof), each Lender, each other Secured Party, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities (including any Environmental Liability), obligations, penalties, actions, judgments, and related reasonable and documented out-of-pocket costs, fees and expenses (including the reasonable documented out-of-pocket fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee (whether or not such investigation, litigation, claim or proceeding is brought by the Borrower, the Borrower's equity holders, affiliates or creditors or an Indemnitee and whether or not any such Indemnitee is otherwise a party thereto and without regard to the exclusive or contributory negligence of such Indemnitee) or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of any Agent (and any co-agent, sub-agent or attorney-in-fact thereof) and its Related Parties only, the administration and enforcement of this Agreement and the other Loan Documents, (ii) any Loan or the use or proposed use of the proceeds therefrom and (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto and without regard to the exclusive or contributory negligence of such Indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are found in a final, non-appealable judgment by a court of competent jurisdiction to (x) have resulted from the gross negligence or willful misconduct of such Indemnitee (or any of such Indemnitee's controlled affiliates or any of its or their respective officers, directors, employees, agents, controlling persons or members of any of the foregoing) or (y) have arisen out of or in connection with any claim, litigation, loss or proceeding not involving an act or omission of the Borrower or any of its Related Parties and that is brought by an Indemnitee against another Indemnitee (other than any claims against an Indemnitee in its capacity or in fulfilling its role as an Agent or arranger or any similar role under this Agreement or any claims arising out of any act or omission of the Borrower or any of its Affiliates). The Borrower also agrees that no Indemnitee shall have any liability (whether direct or indirect, in contract, tort or whether based on such Indemnitee's exclusive or contributory negligence or otherwise) to the Borrower for or in connection with this Agreement or the other Loan Documents, any transactions contemplated hereby or thereby or such Indemnitees' role or services in connection herewith or therewith, except to the extent that any liability for losses, claims, demands, damages, liabilities or expenses incurred by the Borrower resulted from the gross negligence or willful misconduct of such Indemnitee, as determined by a court of

competent jurisdiction in a final, non-appealable judgment. This Section 10.04(b) shall not apply with respect to Taxes other than any taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement and Indemnification by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Agents (or any such co-agent, sub-agent or attorney-in-fact thereof) or any Related Party (and without limiting its obligation to do so), each Lender severally agrees to reimburse and indemnify the Agents (or any such co-agent, sub-agent or attorney-in-fact) or such Related Party, as the case may be, with respect to such Lender's Applicable Percentage (determined as of the time that such reimbursement or indemnity is sought), for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature which may be imposed on, asserted against or incurred by any Agent (or any Affiliate thereof) in performing its duties hereunder or under any other Loan Document or in any way relating to or arising out of this Agreement or any other Loan Document; provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's (or such Affiliate's) gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, no party hereto shall assert, and each hereby waives, any claim against the Borrower and its Affiliates or any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof; provided that such waiver shall not limit any Loan Party's reimbursement or indemnification obligations under Sections 10.04(a) or 10.04(b), respectively. No Indemnitee referred to in subsection (b) above or the Borrower and its Affiliates shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby, except to the extent such damages result from the gross negligence or willful misconduct of such Indemnitee.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

(f) Survival. The agreements in this Section shall survive the resignation or replacement of any Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments, the repayment, satisfaction or discharge of all obligations under any Loan Document, and the termination of this Agreement. The reimbursement, indemnity and contribution obligations of the Borrower under this Section 10.04 will be in addition to any liability which the Borrower may otherwise have, will extend upon the same terms and conditions to any affiliate of any Indemnitee and the partners, members, directors, agents, employees, and controlling persons (if any), as the case may be, of any Indemnitee and any such affiliate, and will be binding upon and inure to the benefit of any successors and assigns of the Borrower, any Indemnitee, any such affiliate, and any such Person.

10.05 Marshalling; Payments Set Aside. Neither any Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Loan Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any payment by or on behalf of the Borrower is made to the Agents or any Lender, or the Agents or any Lender enforces any security interests or exercises its right of setoff, and such payment or the proceeds of such enforcement or setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Agents or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to each Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by such Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect, in the applicable

currency of such recovery or payment. The obligations of the Lenders under clause (b) of the preceding sentence shall survive Payment in Full and the termination of this Agreement.

10.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder, except through a transaction permitted hereunder, without the prior written consent of the Agents and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (e) of this Section, (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section or (iv) pursuant to the syndication of Loans in accordance with the Restructuring Support Agreement. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (e) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time sell, assign or transfer to one or more Eligible Assignees (and any assignee pursuant to syndication of Loans in accordance with the Restructuring Agreement), upon the giving of notice to the Borrower and the Administrative Agent, all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans at the time owing to it or other Obligations); provided that:

(i) except (a) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it, which such amount is less than the applicable minimum transfer amount set forth below, (b) in the case of an assignment of Loans in connection with the syndication of Loans contemplated in the Restructuring Support Agreement, or (c) in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent, shall not be less than $1,000,000 in the case of an assignment of Loans and, unless each of the Administrative Agent and, so long as no Event of Default under Section 8.01(a), (f) or (g) has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided that the Borrower shall be deemed to have consented to an assignment of Loans unless it shall have objected thereto by written notice to the Administrative Agent within seven (7) Business Days after having received notice thereof; provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned;

(iii) [reserved];

(iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500 (provided however, that (i) the Administrative Agent may in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment and (ii) the Administrative Agent does hereby waive such processing and recordation fee in connection with an assignment to an assignee which is already a Lender or is an affiliate or Approved Fund of a Lender or a Person under common management with a Lender) and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and to the Administrative Agent and the Borrower any such know-your-customer documents, forms, certificate or other evidence, if any, as the assignee under such Assignment and Assumption, including that as may be required to deliver pursuant to Section 3.01;

(v) in connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to any Agent and any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Laws without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs; and

(vi) pro rata assignments shall not be required and each assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any applicable Loan and related Commitments.

Subject to acceptance and recording thereof in the applicable Register by the Administrative Agent pursuant to subsection (d) of this Section, from and after the closing date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Section 3.01 (subject to the requirements and limitations therein, including the requirements of Section 3.01(e)), 3.04, 3.05 and 10.04 with respect to facts and circumstances occurring prior to the closing date of such assignment. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Commitments and Loans, as the case may be, represents and warrants as of the Closing Date or as of the effective date of such Assignment and Assumption that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitments or Loans, as the case may be and (iii) it will make or invest in, as the case may be, its Commitments or Loans for its own account in the ordinary course and without a view to distribution of such Commitments or Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 10.06, the disposition of such Commitments or Loans or any interests therein shall at all times remain within its exclusive control).

(c) [Reserved].

(d) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of (and stated interest on) the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Any assignment of any Loan, whether or not evidenced by a Note, shall be effective only upon appropriate entries with respect thereto being made in the Register (and each Note shall expressly so provide). The Register shall be available for inspection by the Borrower and each Lender (solely as to the amount of Loans of such Lender) at any reasonable time and from time to time upon reasonable prior written notice.

(e) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or any Agent, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender, to the extent that it has a consent right hereunder, will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (a), (b), (c), (g) and (h) of the first proviso to Section 10.01 that affects such Participant (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Commitment shall not constitute a change in the terms of such participation, and that an increase in any Commitment or Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof). Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Section 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment, provided, that in the case of Section 3.01, such Participant shall have complied with the requirements of such section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the participating Lender). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender; such Participant agrees to be subject to Section 2.13 as though it were a Lender.

Each Lender that sells a participation, acting for this purpose as a non-fiduciary agent (solely for tax purposes) of the Borrower, shall maintain a register for the recordation of the names and addresses of the Participants and principal amount of (and stated interest on) each Participant's interest in the Loans or other obligations under this Agreement (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that the relevant parties, acting reasonably and in good faith, determine that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender and each Loan Party shall treat each Person whose name is recorded in the Participant Register pursuant to the terms hereof as the owner of such participation for all purposes of this Agreement, notwithstanding notice to the contrary.

(f) Limitation upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

(g) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note(s), if any) to secure obligations of such Lender to secure obligations to a Federal Reserve Bank or other central bank having jurisdiction over such Lender; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto; provided further, that in no event shall the applicable Federal Reserve Bank, pledgee or trustee, be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder.

(h) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New

York State Electronic Signatures and Records Act, or any other similar state Laws based on the Uniform Electronic Transactions Act.

10.07 Treatment of Certain Information; Confidentiality. Each of the Agents and the Lenders agrees that it will treat as confidential (to the extent clearly identified at the time of delivery as confidential) all information provided to it hereunder or under any other Loan Document by or on behalf of the Borrower or any of its Subsidiaries or Affiliates (collectively, "Information") in accordance with the Agents' and the Lenders' applicable customary procedures for handling confidential information of such nature, except to the extent such Information (a) is publicly available or becomes publicly available other than by reason of disclosure by the Agents or the Lenders, any of their respective affiliates or representatives in violation of this Agreement or the other Loan Documents, (b) was received by the Agents and the Lenders from a source (other than the Borrower or any of its affiliates, advisors, members, directors, employees, agents or other representatives) not known by the Agents and the Lenders to be prohibited from disclosing such Information to such Person by a legal, contractual or fiduciary obligation to the Borrower or (c) was already in the Agents' and the Lenders' possession from a source other than the Borrower or any of its affiliates, advisors, members, directors, employees, agents or other representatives or is independently developed by such Person without the use of or reference to any such confidential information; provided, however, that nothing herein will prevent the Agents and the Lenders from disclosing any such Information (including Information regarding Disqualified Institutions) (a) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding, or otherwise as required by applicable Law or compulsory legal process (in which case such Person agrees to inform the Borrower promptly thereof to the extent not prohibited by law), (b) upon the request or demand of any regulatory authority or any self-regulatory authority having jurisdiction over such Person or any of its affiliates, (c) to such Person's affiliates and such Person's and affiliates' respective officers, directors, partners, members, employees, affiliated investment funds or investment vehicles, managed, advised or sub-advised accounts, funds or other entities, investment advisors, sub-advisors or managers, legal counsel, independent auditors and other experts or agents who need to know such Information and on a confidential basis and who are informed of the confidential nature of the Information, (d) to existing Lenders and to potential and prospective Agents, Lenders, assignees, participants and any direct or indirect contractual counterparties to Hedging Agreement relating to the Borrower or its obligations under this Agreement, in each case, subject to such recipient's agreement (which agreement (other than Disqualified Institutions) may be in writing or by "click through" agreement or other affirmative action on the part of the recipient to access such Information and acknowledge its confidentiality obligations in respect thereof pursuant to customary practice) to keep such Information confidential on substantially the terms set forth in this Section 10.07, (e) to ratings agencies who have agreed to keep such Information confidential on terms no less restrictive than this Section 10.07 in any material respect or otherwise on terms acceptable to the Borrower in connection with obtaining ratings of the Loans, (f) for purposes of establishing a "due diligence" defense, (g) on a confidential basis, to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loans, (h) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder or (i) upon Borrower's prior written consent (which may be by email). In addition, the Agents may disclose the existence of this Agreement and Information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to the Agents in connection with the administration and management of this Agreement and the other Loan Documents.

Each of the Agents and the Lenders acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Laws, including Federal and state securities laws.

10.08 Right of Setoff. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, subject to the Orders, upon the occurrence of any Event of Default or at maturity each Lender and its Affiliates is hereby authorized by each Loan Party at any time or from time to time subject to the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed), without notice to any Loan Party or to any other Person (other than the Administrative Agent), any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by such Lender to or for the credit or the account of any Loan Party against and on account of the obligations and liabilities of any Loan Party to such Lender hereunder, including all claims of

any nature or description arising out of or connected hereto, irrespective of whether or not (a) such Lender shall have made any demand hereunder or (b) the principal of or the interest on the Loans or any other amounts due hereunder shall have become due and payable pursuant to Article II and although such obligations and liabilities, or any of them, may be contingent or unmatured; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Sections 2.18 and 8.04 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and its Affiliates under this Section 10.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender or its Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.09 Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, the Borrower shall pay to the Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and the Borrower to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Loans made hereunder or be refunded to the Borrower.

10.10 Counterparts; Integration. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means (i.e., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.

10.11 Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof and the funding of any Borrowing. Such representations, warranties and agreements have been or will be relied upon by each Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that any Agent or any Lender may have had notice or knowledge of any Default at the time of any Borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Loan Party set forth in Sections 3.01, 3.04, 3.05, 10.04(a), 10.04(b) and 10.08 and the agreements of Lenders set forth in Sections 2.13, 9.03, 9.12, 10.04(c), and 10.05 shall survive the resignation or replacement of any Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments, the repayment, satisfaction or discharge of all obligations under any Loan Document, and the termination of this Agreement.

10.12 Severability. If any provision of this Agreement or the other Loan Documents or any obligation hereunder or under any other Loan Document is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions or obligations of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal,

invalid or unenforceable provisions or obligations with valid provisions or obligations the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions or obligations. The invalidity of a provision or obligation in a particular jurisdiction shall not invalidate or render unenforceable such provision or obligation in any other jurisdiction.

10.13 Replacement of Lenders. If (a) any Lender requests compensation under Section 3.04, (b) the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, (c) any Lender is at such time a Defaulting Lender or has given notice pursuant to Section 3.02 or (d) any Lender becomes a "Nonconsenting Lender" (hereinafter defined), then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to (and such Lender shall) assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interest, rights (other than its existing rights to payments pursuant to Section 3.01 or 3.04) and obligations under this Agreement and the related Loan Documents to an assignee selected by the Borrower that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Administrative Agent shall have received the assignment fee specified in Section 10.06(b) from the Borrower (provided however, that the Administrative Agent may in its sole discretion elect to waive such processing and recordation fee in the case of any assignment);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Laws,

(e) neither any Agent nor any Lender shall be obligated to be or to find the assignee; and

(f) in the case of an assignment resulting from a Lender becoming a Nonconsenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. In the event that (x) the Borrower or the Administrative Agent has requested the Lenders to consent to a departure or waiver of any provisions of the Loan Documents or to agree to any amendment thereto and (y) the Required Lenders have agreed to such consent, waiver or amendment, then any such Lender, who does not agree to such consent, waiver or amendment and whose consent would otherwise be required for such departure, waiver or amendment, shall be deemed a "Nonconsenting Lender." Any such replacement shall not be deemed a waiver of any rights that the Borrower shall have against the replaced Lender.

Each Lender agrees that if the Borrower exercises its option hereunder to cause an assignment by such Lender as a Nonconsenting Lender or otherwise pursuant to this Section 10.13, such Lender shall, promptly after receipt of written notice of such election, execute and deliver all documentation necessary to effectuate such assignment in accordance with Section 10.06. In the event that a Lender does not comply with the requirements of the immediately preceding sentence within one Business Day after receipt of such notice, each Lender hereby authorizes and directs the Borrower to execute and deliver such documentation as may be required to give effect to an assignment in accordance with Section 10.06 on behalf of a Nonconsenting Lender or Lender replaced pursuant to this Section 10.13, and any such documentation so executed by the Borrower shall be effective for purposes of documenting an assignment pursuant to Section 10.06.

10.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER (INCLUDING, WITHOUT LIMITATION, ANY CLAIMS SOUNDING IN CONTRACT LAW OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK AND (TO THE EXTENT APPLICABLE) THE BANKRUPTCY CODE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK AND (TO THE EXTENT APPLICABLE) THE BANKRUPTCY CODE.

(b) CONSENT TO JURISDICTION. SUBJECT TO CLAUSE (E) OF THE FOLLOWING SENTENCE, ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER LOAN DOCUMENTS, OR ANY OF THE OBLIGATIONS, SHALL BE BROUGHT IN THE BANKRUPTCY COURT AND, IF THAT COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, ANY FEDERAL COURT OF THE UNITED STATES SITTING IN THE BOROUGH OF MANHATTAN OR, IF THAT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, IN ANY STATE COURT LOCATED IN THE CITY AND COUNTY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH LOAN PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (A) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE (SUBJECT TO CLAUSE (E) BELOW) JURISDICTION AND VENUE OF SUCH COURTS; (B) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (C) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE LOAN PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.02; (D) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (C) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE LOAN PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (E) AGREES THAT THE AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY LOAN DOCUMENT OR AGAINST ANY COLLATERAL OR THE ENFORCEMENT OF ANY JUDGMENT, AND HEREBY SUBMITS TO THE JURISDICTION OF, AND CONSENTS TO VENUE IN, ANY SUCH COURT.

10.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER LOAN DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.15 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY OTHER

DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

10.16 USA PATRIOT Act Notice. Each Lender that is subject to the Act (as hereinafter defined) and each Agent (for itself and not on behalf of any Lender) hereby notifies each Loan Party that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender or such Agent, as applicable, to identify such Loan Party in accordance with the PATRIOT Act.

10.17 Time of the Essence. Time is of the essence of the Loan Documents.

10.18 [Reserved].

10.19 No Advisory or Fiduciary Responsibility. Each Loan Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Agent or Lender, on the one hand, and such Loan Party, its stockholders or its affiliates, on the other. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Agents and the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Borrower and their Affiliates, on the one hand, and the Agents, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each Agent, and each Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for any Loan Party, its management, stockholders, creditors or any of its affiliates or any other Person with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise any Loan Party, its stockholders or its Affiliates on other matters) or any other obligation to any Loan Party except the obligations expressly set forth in the Loan Documents and (B) neither any of the Agents nor any Lender has any obligation to the Borrower or any of its respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agents and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that conflict with those of the Borrower and its respective Affiliates, and neither any of the Agents nor any Lender has any obligation to disclose any of such interests to the Borrower or its respective Affiliates. Each Loan Party agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Loan Party, in connection with such transaction or the process leading thereto. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Agents with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.20 [Reserved]

10.21 Release of Liens and Release from Guaranty.

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, but subject to the Orders, the Collateral Agent is hereby irrevocably authorized by each Lender to release any Lien on any property granted to or held by the Collateral Agent under any Loan Document or otherwise encumbering any item of Collateral (and to execute any documents or instruments necessary, advisable or otherwise required or reasonably requested by any Loan Party to do so) (A) after Payment in Full, (B) (i) upon any sale or other transfer by any Loan Party of any Collateral that is permitted under this Agreement (other than a sale or other transfer to a Loan Party or any other Person that is required to become a Loan Party) or (ii) upon effectiveness of any written consent to the release of the security interest created under any Security Document in any Collateral pursuant to Section 10.01, (C) upon the approval, authorization or ratification in writing by the Required Lenders (or such other percentage of the Lenders whose consent is required by Section 10.01) with respect to the release of such Collateral, (D) upon a

Guarantor no longer being a Guarantor by virtue of the definition thereof or a transaction permitted hereunder, with respect to the Collateral owned by such Guarantor or (E) if an asset becomes an Excluded Asset. After any of (v) Payment in Full, (w) upon any sale or other transfer of a Loan Party that is permitted under this Agreement (other than a sale or other transfer to a Loan Party or any other Person that is required to become a Loan Party), (x) upon the approval, authorization or ratification in writing by the Required Lenders (or such other percentage of the Lenders whose consent is required by Section 10.01) with respect to the release of any Guarantor under the terms of the Guaranty or (y) upon a Guarantor no longer being a Guarantor by virtue of the definition thereof or a transaction permitted hereunder, each applicable Guarantor (or, in the case of clause (w) above, the applicable Guarantor so sold or transferred) shall automatically be released from the Guaranty, all without delivery of any instrument or performance of any act by any Person; provided that any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, subject to the Orders, in connection with any termination or release pursuant to this Section 10.21, the Administrative Agent and/or the Collateral Agent, as applicable, shall be, and are hereby irrevocably authorized by each Lender (without requirement of notice to or consent of any Lender) to execute and deliver, and shall promptly execute and deliver to the applicable Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence such termination or release (including (1) UCC termination statements and (2) in the case of a release of Mortgages, a partial release) or to confirm that an asset of a Loan Party is not Collateral (including returning to the Borrower any possessory Collateral that is in the possession of the Collateral Agent and is the subject of such release); provided, that (1) neither Agent shall be required to execute any document or take any action necessary to evidence such termination or release on terms that, in its opinion or the opinion of its counsel, could expose such Agent to liability or create any obligation or entail any consequence other than such termination or release without recourse, representation, or warranty, and (2) the Loan Parties shall have provided such Agent with such certifications or documents as such Agent shall reasonably request in order to demonstrate that the requested termination or release is permitted under this Section 10.21.

(c) Any execution and delivery of documents, or the taking of any other action, by any Agent pursuant to this Section 10.21 shall be without recourse to or representation or warranty by such Agent.

10.22 Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

10.23 Independent Nature of Lenders' Rights. Nothing contained herein or in any other Loan Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

10.24 Acknowledgment and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

10.25 Designated Coal Contracts.

(a) Notwithstanding anything to the contrary in this Agreement, the Loan Parties shall be entitled to designate any Coal Contract entered into in accordance with this Agreement and the Orders as a "Designated Coal Contract" hereunder, so long as, with respect to any Coal Contract (other than (A) the Existing Designated Coal Contracts entered into on or around the Javelin Agreements Execution Date and (B) with respect to the Existing Designated Coal Contract described in clause (ii) of such definition, all confirmations, agreements and other documents entered into in connection therewith), (i) Borrower shall designate such Coal Contract as a "Designated Coal Contract" by a written notice to the Administrative Agent delivered on or prior to the fifth (5^{th}) Business Day prior to the date that such Coal Contract is entered into, or the date that the Person that is a party to such Coal Contract becomes a Secured Party, and (ii) the Required Lenders shall have expressly approved such Coal Contract as a "Designated Coal Contract" hereunder. For the avoidance of doubt, (x) no Coal Contract (other than, upon the entry of the Final Order, the Existing Designated Coal Contracts) shall be deemed to be a Designated Coal Contract hereunder without the express consent of the Required Lenders, and (y) upon the entry of the Final Order, the Existing Designated Coal Contracts shall be deemed to be Designated Coal Contracts for all purposes hereunder.

(b) After the Javelin Agreements Execution Date, Javelin Agreements (other than with respect to the amendments, supplements or modifications of the Existing Designated Coal Contract described in clause (2) of such definition which constitute entry into a confirmation (but not amendments, restatements, renewals, replacements, extensions, supplements or modifications of an existing confirmation)) shall only be amended, restated, renewed, replaced, extended, supplemented or otherwise modified from time to time with the prior written consent of the Required Lenders; provided, that, the Confirmations (as defined in the Javelin Agreements) pursuant to the Javelin Agreements may be amended, restated or modified from time to time, without the prior consent of the Required Lenders, in the ordinary course of business and consistent with past practice, including, without limitation, modifications relating to scheduling, price adjustments, quality, quantity, delivery, delivery scheduling and other matters ancillary to delivery of Shipments (as defined in the Javelin Agreements); provided, that any such amendment, restatement or modification shall only apply with respect to such amended, restated or modified Shipment and shall not affect the terms of the Javelin Agreements as applied to any subsequent Shipment (as defined in the Javelin Agreements) or Confirmation (as defined in the Javelin Agreements).

(c) Any purchases and sales, payment of any fees, expenses and indemnities and all other disbursements to be made by the Debtors pursuant to any amendment, restatement or modification permitted by Section 10.25(a) or Section 10.25(b) shall be made in accordance with the Cash Flow Forecast (subject to Permitted Variance); provided, that, a breach of this Section 10.25(c) shall not (i) invalidate the effectiveness of any agreement, amendment, restatement or modification under Section 10.25(a) or (b) above or (ii) exclude the obligations arising thereunder from constituting Secured Designated Coal Contract Obligations.

ARTICLE XI
GUARANTY

11.01 Guaranty of the Obligations. Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to the Administrative Agent, for the ratable benefit of the Beneficiaries, the due and punctual payment in full of all Obligations when the same shall become due, whether at stated maturity, by required

prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) (collectively, the "Guaranteed Obligations").

11.02 [Reserved].

11.03 Payment by Guarantors. Subject to Section 11.01, Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of Borrower to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), Guarantors will upon demand pay, or cause to be paid, in cash, to the Administrative Agent for the ratable benefit of Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for Borrower's becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against Borrower for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to Beneficiaries as aforesaid.

11.04 Liability of Guarantors Absolute. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability. This Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(b) Administrative Agent may enforce this Guaranty upon the occurrence, but only during the continuance, of an Event of Default notwithstanding the existence of any dispute between Borrower and any Beneficiary with respect to the existence of such Event of Default;

(c) the obligations of each Guarantor hereunder are independent of the obligations of Borrower and the obligations of any other guarantor (including any other Guarantor) of the obligations of Borrower, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against Borrower or any of such other guarantors and whether or not Borrower is joined in any such action or actions;

(d) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations;

(e) any Beneficiary, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect hereof or the Guaranteed Obligations

and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith or any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any other Loan Party or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Loan Documents or any Designated Coal Contract; and

(f) this Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Guaranteed Obligations (other than contingent indemnity obligations not then due and payable), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Loan Documents or any Designated Coal Contracts, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Loan Documents or any Designated Coal Contracts, any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Loan Document, such Designated Coal Contracts, or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Loan Documents, any Designated Coal Contract, or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of General Partner, Holdings (or any Parent) or any of its Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations (subject to the limitations set forth in the Security Documents); (vii) any defenses, set-offs or counterclaims which Borrower may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

11.05 Waivers by Guarantors. Each Guarantor hereby waives, to the extent permitted by applicable law, for the benefit of Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (i) proceed against Borrower, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from Borrower, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any deposit account or credit on the books of any Beneficiary in favor of any Loan Party or any other Person, or (iv) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Borrower or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Borrower or any other Guarantor from any cause other than payment in full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and

notices of any action or inaction, including acceptance hereof, notices of default hereunder, any Designated Coal Contracts, any agreement or instrument related thereto, notices under any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to Borrower and notices of any of the matters referred to in Section 11.04 and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

11.06 Guarantors' Rights of Subrogation, Contribution, Etc. Until the Payment in Full of the Guaranteed Obligations (other than contingent obligations under general indemnification provisions as to which no claim is pending), each Guarantor hereby waives, to the extent permitted by law, any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against Borrower or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against Borrower with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against Borrower, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until Payment in Full of the Guaranteed Obligations (other than contingent obligations under general indemnification provisions as to which no claim is pending), each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against Borrower or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against Borrower, to all right, title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when the Payment in Full of all Guaranteed Obligations (other than contingent obligations under general indemnification provisions as to which no claim is pending) shall not have occurred, such amount shall, to the extent possible under applicable law, be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to the Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

11.07 Subordination of Other Obligations. Any Indebtedness of Borrower or any Guarantor now or hereafter held by any Guarantor (the "Obligee Guarantor") is hereby subordinated in right of payment to the Guaranteed Obligations, and any such Indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall, to the extent permitted by applicable law, be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to the Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

11.08 Continuing Guaranty. This Guaranty is a continuing guaranty and shall remain in effect until the Payment in Full of all of the Guaranteed Obligations (other than contingent obligations under general indemnification provisions as to which no claim is pending). Each Guarantor hereby irrevocably waives, to the extent permitted by applicable law, any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

11.09 Authority of Guarantors or Borrower. It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or Borrower or the officers, directors or any agents acting or purporting to act on behalf of any of them.

11.10 Financial Condition of Borrower. Any Credit Extension may be made to Borrower or continued from time to time, and any Designated Coal Contract may be entered into from time to time, in each case in accordance with this Agreement, without notice to or authorization from any Guarantor regardless of the financial or other condition of Borrower at the time of any such grant or continuation or at the time such Designated Coal Contract is entered into, as the case may be. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor

its assessment, or any Guarantor's assessment, of the financial condition of Borrower. Each Guarantor has adequate means to obtain information from Borrower on a continuing basis concerning the financial condition of Borrower and its ability to perform its obligations under the Loan Documents and the Designated Coal Contracts, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of Borrower and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives, to the extent permitted by applicable law, and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of Borrower now known or hereafter known by any Beneficiary.

[Signature pages follow]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective authorized officers as of the date first above written.

FORESIGHT ENERGY LLC

By: _____
Name: Robert D. Moore
Title: President and Chief Executive Officer

FORESIGHT ENERGY LP
By Foresight Energy GP LLC, its general partner

By: _____
Name: Robert D. Moore
Title: President and Chief Executive Officer

FORESIGHT ENERGY GP, LLC
ADENA RESOURCES, LLC
AKIN ENERGY LLC
AMERICAN CENTURY MINERAL LLC
AMERICAN CENTURY TRANSPORT LLC
COAL FIELD CONSTRUCTION COMPANY LLC
COAL FIELD REPAIR SERVICES LLC
FORESIGHT COAL SALES LLC
FORESIGHT ENERGY EMPLOYEE SERVICES CORPORATION
FORESIGHT ENERGY FINANCE CORPORATION
FORESIGHT ENERGY LABOR LLC
FORESIGHT ENERGY SERVICES LLC
HILLSBORO TRANSPORT LLC
LD LABOR COMPANY LLC
LOGAN MINING LLC
M-CLASS MINING, LLC
MACH MINING, LLC
MACOUPIN ENERGY LLC
MARYAN MINING LLC
OENEUS LLC (D/B/A SAVATRAN LLC)
SENECA REBUILD LLC
SITRAN LLC
SUGAR CAMP ENERGY, LLC
TANNER ENERGY LLC
VIKING MINING LLC
WILLIAMSON ENERGY, LLC
HILLSBORO ENERGY LLC
PATTON MINING LLC
FORESIGHT RECEIVABLES LLC

By: _____
Name: Robert D. Moore
Title: President and Chief Executive Officer

Cortland Capital Market Services LLC
as Administrative Agent and Collateral Agent,

By: _____
Name:
Title:

[ ],
as a Lender

By: _____
Name:
Title:

JAVELIN GLOBAL COMMODITIES (UK) LTD,
as a Designated Coal Contract Counterparty

By: _____
Name:
Title:

UNIPER GLOBAL COMMODITIES UK LIMITED,
as a Designated Coal Contract Counterparty

By: _____
Name:
Title: